

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.07.2017

CORAM

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER
AND
THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

O.S.A.No.336 of 2011
and M.P.No.1 of 2011

Hindustan Petroleum Corporation Ltd.,
"Petro Bhavan", Second Floor,
No.82, T.T.K.Road, Alwarpet,
Chennai-600 018
previously at Gandhi Irwin Road,
Egmore, Chennai-8. ... Appellant/1st Defendant

Vs.

1. M.Rose
2. M.Theresa
3. M.Margarita rep.by its
Power Agent Miss. B. Helan ... Respondents/Plaintiffs

4. M/s.Venus Agencies,
No.9, Poonamallee High Road,
(Junction of Poonamallee High Road
and New Avadi Road),
Chennai-10. ** ... Respondents/
2nd Defendant

** R4 given up as per order dated 11.07.2017
made in O.S.A.No.336 of 2011

Prayer : Appeal filed under Order XXXVI, Rule 1 of Original Side
Rules read with Clause 15 of Letters Patent, against the
Judgment and Decree dated 22.03.2010 made in C.S.No.370 of 2002
on the file of this Hon'ble Court.

For Appellant : Mr.M.Vijayan,
for M/s.King and Partridge

For Respondents : Mr.P.R.Raman for RR 1 to 3
R4 given up

JUDGEMENT

(Judgement of the Court was delivered by RAJIV SHAKDHER, J.)

1. This is an appeal preferred against the judgement and decree dated 22.03.2010, passed by the learned Single Judge in C.S.No.370 of 2002.

2. This is a second round of litigation. The suit had, initially, been decreed on 29.04.2005. Against the said judgement and decree, an appeal was preferred to the Division Bench, which was numbered as : O.S.A.No.192 of 2005. The said appeal was dismissed on 01.09.2005. Against the said dismissal, a review petition was filed, which was also dismissed on 29.01.2007. Aggrieved by the same, the appellant carried the matter in appeal by way of Special Leave Petition.

2.1. In the interregnum, on 07.01.2006, the appellant had handed over possession of the suit property to respondents No.1 to 3.

2.2. The Supreme Court vide order dated 02.12.2009, while setting aside the judgement and decree dated 29.04.2005, remanded the matter to the learned Single Judge, only for the purpose of deciding one singular issue, which is, whether mesne profits should run from the date of expiry of the lease, or, from the date when, the decree for handing over possession was passed.

2.3. It is, in this context, the impugned judgement and decree has been passed by the learned Single Judge.

3. Mr.Vijayan, who appears for the appellant, has submitted that, since, during the pendency of the suit proceedings, an application had been filed under Section 9 of the Chennai City Tenants' Protection Act, 1921 (in short, "1921 Act"), the appellant would be protected as a tenant, in the very least, till such time, the suit was decreed, i.e., till 29.04.2005.

4. As against this, learned counsel for the contesting respondents, i.e., respondents No.1 to 3, has submitted that the application, which was moved under Section 9 of the 1921 Act, was allowed by the Court on 09.01.2003, whereby, eight (8) weeks time was given to the appellant to pay the money, and therefore, the protection, if any, which, the appellant enjoyed, dissolved on the expiry of the said time frame.

4.1. Learned counsel submitted that, since, the period of eight (8) weeks expired on 08.03.2003, the liability of the appellant to pay mesne profits, would run from 09.03.2003.

5. We may also note that during the course of the submissions advanced on behalf of the appellant, and in order to buttress the stand taken and noticed hereinabove, it was

contended that under Section 4 of the 1921 Act, the appellant had to be paid compensation for the superstructure, which it had erected on the suit land and therefore, in terms of the said section, it continued to enjoy the protection of a tenant as contemplated under the 1921 Act, till the date of the decree and for a period of three months thereafter.

5.1. Learned counsel further submitted that, though, the fact that under the provisions of Section 4 of the 1921 Act, the appellant would have enjoyed the protection of the 1921 Act for a period of three (3) months, beyond the date of the decree, the appellant has, consciously, chosen to confine the protection only till 29.04.2005, which is the date of the decree.

5.2. In support of his submissions, learned counsel for the appellant relied upon the judgement of the Supreme Court in Atma Ram Properties (P) Limited V. Federal Motors (P) Limited, (2005) 1 SCC 705.

6. We have heard the learned counsel for the parties and perused the record.

7. The contesting parties before us share a long litigation history. We do not wish to revisit the history, as the Supreme Court confined the issue, while setting aside the judgement and decree dated 29.04.2005, obtained by the respondent in the first round, to one singular issue, to which, we have made a reference above. Suffice it to say that the learned Single Judge has ruled that the appellant/ defendant was entitled to protection under the 1921 Act from the date of filing of the suit, till 08.03.2003. Accordingly, the learned Judge has further ruled that respondents No.1 to 3, will be entitled to damages (i.e., mesne profits) at the rate of Rs.50,000/- per month towards use and occupation of the suit property from 09.03.2003, till the date of delivery of possession. To be noted, the date of possession, as noted in the judgement, is 09.01.2006, though, we are informed by the counsel for the appellant that possession was given on 07.01.2006. To our minds, nothing turns on this, albeit, purported discrepancy.

7.1. The submissions advanced on behalf of the appellant are pivoted on the provisions of Section 4 and Section 9 of the 1921 Act. To be noted, the broad purpose and object, with which, the 1921 Act was enacted is that, wherever, tenants had built superstructures on land leased out to them, they could vis-a-vis the superstructures, avail, inter alia, either the benefit of compensation qua the superstructures put in place, or, exercise the option of purchasing the entire suit property, which included the land and the superstructures erected thereon.

7.2. Admittedly, the appellant had moved an application under Section 9 of the 1921 Act. It is also admitted by the appellant that a price, in that behalf, was fixed by the Court, by allowing its application, on 09.01.2003 and that, eight (8) weeks time was given for payment of price, so fixed, to the respondents.

7.3. It appears that the appellant had challenged the rate on which, it was asked to purchase the suit property by preferring an appeal, which was numbered as O.S.A.No.173 of 2005. Concededly, the said appeal was dismissed on 09.08.2005.

7.4. Therefore, clearly, the limited window that the appellant had, by way of protection, under the 1921 Act, dissolved, when it failed to pay the price, as quantified by the Court vide order dated 09.01.2003.

7.5. The argument of the appellant's counsel is that, under Section 2(4) of the 1921 Act, which defines the expression "tenant", the appellant, would continue to remain protected as a tenant, since, it was in possession of the suit property, even after the determination of the tenancy agreement. In other words, it was sought to be argued that, since, in the first instance, the suit was decreed on 29.04.2005, the protection under the 1921 Act would continue, at least, till the date of the decree.

7.6. According to us, this argument is misconceived, as the provisions of Section 9 make it clear that had the appellant paid the price, as fixed by the Court vide order dated 09.01.2003, then, the suit proceedings would have stood terminated instantly. This is clear upon a bare perusal of Clauses (a) and (b) of Sub-Section (3)(a) of Section 9 of the 1921 Act. For the sake of convenience, the provisions of Section 9, in its entirety, are extracted hereafter :

"9. Application to Court for directing the landlord to sell land -

(1)(a)(i) Any tenant who is entitled to compensation under Section 3 and against whom a suit in ejectment has been instituted or proceeding under Section 41 of the Presidency Small Cause Courts Act, 1882, taken by the landlord may within one month of the date of the publication of Chennai City Tenants Protection (Amendment) Act, 1979, in the Tamil Nadu Government Gazetted or of the date with effect from which this Act is extended to the municipal town, township or village in which the land is situate, or within one month after the service on him of summons, apply to the Court for an order that the landlord

shall be directed to sell for a price to be fixed by the Court, the whole or part of, the extent of land specified in the application.

Notwithstanding anything contained in clause (a) (i) of this sub-section, any such tenant as is referred to in sub-clause (ii)(b) of clause (4) of section 2 or his heirs, may within a period of two months from the date of publication of the Chennai City Tenants' Protection (Amendment) Act, 1973 apply to the court [whether or not a suit for ejectment has been instituted or proceeding under Section 41 of the Presidency Small Causes Courts Act, 1882 (Central Act XV of 1882) has been taken by the landlord or whether or not such suit or proceeding is pending] having jurisdiction to entertain a suit for ejectment or in the City of Chennai either to such court or to the Presidency Small Causes Courts, for an order that the landlord under the tenancy agreement shall be directed to sell for a price to be fixed by the Court the whole or part of the extent of land specified in the application."

(b) On such application, the Court shall first decide the minimum extent of the land which may be necessary for the convenient enjoyment by the tenant. The Court shall, then, fix the price of the minimum extent of the land decided as aforesaid, or of the extent of the land specified in the application under clause (a), whichever is less. The price aforesaid shall be the average market value of the three years immediately preceding the date of the order. The Court shall order that within a period to be determined by the Court, not being less than three months and not more than three years from the date of the order, the tenant shall pay into Court or otherwise as directed the price so fixed in one or more instalments with or without interest.

(2) In default of payment by the tenant of any one instalment, the application under sub-section (1) shall stand dismissed, provided that on sufficient cause being shown, the Court may excuse the delay and pass such orders as it may think fit, but not so to extend the time for payment beyond the three years above-mentioned. On the application being dismissed, the court shall order the amount of the installment or installments, if any, paid by the tenant to be repaid to him without any interest.

(3) (a) On payment of the price fixed under clause (b) of sub-section (1), the Court shall pass an order directing the conveyance by the landlord to the tenant of the extent of land for which the said price was fixed. The Court shall by the same order directing the tenant to put the landlord into possession of the remaining extent of the land, if any. The stamp duty and registration fee in respect of such conveyance shall be borne by the tenant.

(b) On the order referred to in clause (a) being made, the suit or proceeding shall stand dismissed, any any decree or order in ejectment that may have been passed therein but which has not been executed shall be vacated.

Explanation - 'Land' means the interest of the landlord in the land and all other interest which he can convey under any power and includes also the full interest which a trustee can convey under the power possessed by him to convey trust property when necessity exists for the same or the alienation of the property is for the benefit of the estate or trust."

(emphasis is ours)

7.7. The argument advanced on behalf of the learned counsel for the appellant that despite the determination of the tenancy agreement, it would continue to be a protected tenant under the 1921 Act, has to be appreciated in the context of the relevant provisions, on which, reliance was placed by him.

7.8. As indicated at the outset, the purpose and the object behind the enactment of the 1921 Act was to give protection, against eviction, to tenants who, in the municipal towns, townships and adjoining areas in the State of Tamil Nadu, had constructed building/ superstructures on land belonging to others. The protection would extend to such tenants, till such time, they paid fair rent qua the land in issue. In case, the ejectment was resorted to by the landlord, the tenant was entitled to payment of compensation vis-a-vis the superstructure erected on such land by him or by his predecessor-in-interest under Section 3 of the 1921 Act.

7.9. Furthermore, in addition thereto, such tenants also had the option to approach the Court under Section 9 of the 1921 Act for issuance of a direction to the landlord to sell the whole, or, part of the land specified in the application at the price fixed by it. Once, price, so fixed, was paid by the tenant, the Court could pass an order directing conveyance of the specified land by the landlord to the tenant. Consequently, the suit or the proceedings, if any, instituted by the landlord would stand dismissed.

8. Section 4(1) of the 1921 Act provides that in a suit for ejectment against a tenant, in which, a landlord succeeds, the Court shall factor in the compensation payable to the tenant under Section 3 of the very same Act, while passing the Decree. The Court is, thus, obligated in terms of Section 4 of the 1921 Act, to indicate the compensation qua the superstructure in the decree for ejectment. Furthermore, the Court is required to grant a period of three (3) months for payment of such compensation. The tenant, on his part, is required to put the landlord in possession.

8.1. The argument of the learned counsel for the appellant that, since, compensation had to be factored in, for the superstructure, while disposing of the suit for ejectment, in terms of Section 4 of the 1921 Act, and therefore, the appellant would continue to be dealt with as a protected tenant under the 1921 Act till the date of decree, and thereafter, for a period of three (3) months from the said date, is misconceived, as the provision for compensation has nothing to do with payment of damages by way of mesne profits. The two expressions are conceptually different. Mesne profits are damages paid to a landlord/lessor for wrongful possession of leased or tenanted premises, whereas, compensation under Section 3 of the 1921 Act is paid to the tenant towards costs incurred for erection of the superstructure on the leased land. The former relates to wrongful occupation, while latter seeks to reimburse actual costs incurred in erecting the superstructure.

8.2. Furthermore, the record shows (and to that extent, the learned counsel for the appellant has not raised a cavil before us) that this aspect of the matter was neither argued nor raised before the suit court, either in the first round or in the second round. According to us, this is a submission of desperation, and therefore, cannot be entertained at this stage.

8.3. In the instant case, the appellant took recourse to only Section 9 of the 1921 Act. No application, as it appears (none was brought to our notice), was filed under Section 3 of the 1921 Act, for determination of compensation qua superstructure. Clearly, therefore, Section 4 of the 1921 Act would have no application.

8.4. As indicated above, the only application, the appellant had filed, is the application filed under Section 9 of the 1921 Act. The appellant, having failed to comply with the order passed under Section 9 of the 1921 Act, decided to contest the suit for eviction and the claim made for mesne profits. The fact that the ejectment suit got decreed on 29.04.2005, cannot be used by the appellant to contend that mesne profits would run only from the date of decree.

8.5. Quite clearly, if the provisions of Section 9 of the 1921 Act were not available to the appellant, mesne profits, if, found payable by the said Court, would have run from the date, when the lease was determined. It is because the benefit of the provisions of Section 9 of the 1921 Act was available to the appellant that the Court ruled that the period, for which, the respondents 1 to 3 would be entitled to mesne profits, would commence from 09.03.2003, which was eight weeks after the date, when, the order dated 09.01.2003, was passed. The protection, as a tenant, cannot, by any stretch of imagination, extend to 29.04.2005, i.e., the date of the decree.

9. We may only indicate that the judgement relied upon by the learned counsel for the appellant in Atma Ram Properties (P) Limited V. Federal Motors (P) Limited, (2005) 1 SCC 705, is not applicable to the facts and circumstances of the case. The said judgement was rendered, in the context of the Delhi Rent Control Act, which, both in its scope and also ambit, is quite different from the provisions of 1921 Act, which we are called upon to consider. The said judgement is, clearly, distinguishable on facts.

10. Accordingly, the appeal is dismissed with costs of Rs.25,000/- (Rupees twenty five thousand only) payable to respondents 1 to 3. Resultantly, pending application shall stand closed. There shall, however, be no order as to costs.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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TO

The Sub Asst. Registrar, Original Side,
High Court, Madras.

Copy to: The Section Officer,
Record Section, (Original Side),
High Court, Madras.

+ 1 cc to M/s. King & Partridge, Advocate Sr.48739

+ 1 cc to Mr. C. Seethapathy, Advocate Sr.43836

O.S.A.No.336 of 2011
and M.P.No.1 of 2011

BR(CO)

EU(3/10/2017)