

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2018

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.329 of 2008

- 1.Radha Bai (Deceased)
- 2.K.Krishnan
- 3.K.Ranganathan
- 4.K.Jamuna
- 5.K.Jayalakshmi

[Appellants 4 and 5 brought on record as legal representatives of the deceased 1st appellant vide order dated 20.08.2018 made in CMP.No.14410 of 2018 in SA.No.329 of 2008]

...Appellants/Defendants 5 to 7

Vs.

- 1.Sri Bhasyakara Adhi Chennakesava Perumal Temple,
Rep. by its fit person N.P.Muruganantham,
No.6, Govindan Road, West Mambalam
Chennai - 600 033.

2.Janakiraman

3.Nadanamani Balu @ Balasubramanian

- 4.Ellusamy Reddy
- ...Respondents/Plaintiffs/Defendants 2 to 4
(R2 to 4 given up in the
1st appeal, hence the RR@ to 4 given up herein)

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree datd 09.02.2007 in A.S.No.528 of 2005 passed by V Fast Track Judge, City Civil Court, Chennai which is confirmed by the judgment and decree dated 28.01.2005 in O.S.No.8576 of 1978 passed by IV Assistant Judge, City Civil Court, Chennai and allow the appeal.

For Appellants : Mr.C.Umashankar
For Respondents : No Appearance

J U D G M E N T

1. The appeal is by the defendants in OS.No.8576 of 1978. The suit was filed by the respondent, temple seeking ejectment.

Pending suit the original tenant Kuppusamy Reddy died and his legal representatives were brought on record as defendants 5, 6 and 7. The defendants 2, 3 and 4 are said to be sub-tenants. It is now stated that they have vacated the premise and the appeal has been dismissed as against them. Both the Courts below held that the defendants/ appellants are not entitled to the benefits of Section 9 of the Madras City Tenants' Protection Act, 1921, in view of the amendment introduced by the Madras City Tenants Protection (Amendment) Act, 1994.

2. The following questions of law have been framed for determination in this Second Appeal:

(a) Whether the Courts below are right in not appreciating the Provisions of City Tenants' Protect Act (Amendment) 1994 properly?

(b) Whether the rights of the parties herein have been determined prior to commencement of Act 2 of 1996?

3. Even during his life time, the said Kuppusamy Reddy filed an application in IA.No.4026 of 1979 under Section 9 of the Madras City Tenants' Protection Act, 1921 seeking direction to the landlord viz., the temple to sell the property to him, inasmuch as the building belonged to him. The said application was allowed by the trial Court on 20.12.1983 directing the tenant to pay Rs.48,000/- per ground. It is also on record that the Temple challenged the said order in IA.No.4026 of 1999 dated 20.12.1983 by filing a Civil Miscellaneous Appeal in CMA.No.337 of 1985 and the said Civil Miscellaneous Appeal came to be disposed of on 08.04.1986 increasing the cost of the land to Rs.50,000/- instead of Rs.48,000/-. The other directions made in the order dated 20.12.1983 were upheld.

4. It not in dispute that the legal representatives of Kuppusamy Reddy who were brought on record in Civil Miscellaneous Appeal have not paid the consideration as directed by the appellate Court in CMA.No.337 of 1985. In the mean time the Madras City Tenants' Protection Act, 1921 was amended by the Madras City Tenants' Protection (Amendment) Act, 1994 (Tamil Nadu Act 2 of 1996). The effect of the amendment was to withdraw the protection afforded to the tenants of religious Institutions. Section 3 of the Amending Act reads as follows:-

Certain pending proceedings to abate.--

(3) Every proceeding instituted by a tenant in respect of any land owned by any religious institution or religious charity belonging to Hindu, Muslim, Christian or other religion and pending before any Court or other authority or officer on the date of

the publication of this Act in the Tamil Nadu Government Gazette, shall, in so far as the proceeding relates to any matter falling within the scope of the principal Act, as amended by this Act, in respect of such land, abate, and all rights and privileges which may have accrued to that tenant in respect of any such land and subsisting immediately before the said date shall in so far as such rights and privileges relate to any matter falling within the scope of the principal Act, as amended by this Act, cease and determine and shall not be enforceable:

Provided that nothing contained in this Section shall be deemed to invalidate any suit or proceeding in which a decree or order passed has been executed or satisfied in full before the said date.

5. The amending Act was published in the Tamil Nadu Government Gazette on 11th January 1996. It is not in dispute that the tenants viz., legal representatives of the deceased Kuppusamy Reddy had not paid the amount as directed by the appellate Court in CMA.No.337 of 1985. In view of the amendment brought in, in the year 1996, the tenants have lost their right to purchase the property in terms of order passed in CMA.No.337 of 1985.

6. Mr.C.Umashankar, learned counsel appearing for the appellants would contend that once an order has been made finding that the appellants are entitled to the benefits of Section 9 of the Tamil Nadu City Tenants' Protection Act, the same cannot be upset by a subsequent amendment. I do not think such submission can be countenanced in view of the specific provision of the Amending Act which provides for abatement of all proceedings except those proceedings which had concluded in full satisfaction of the order directing sale.

7. The question as to what is the meaning of the expression "Satisfied in full", used in proviso to Section 3 of the Amending Act was considered by the Full Bench of this Court in Arulmigu Kasi Viswanathaswamy Devasthanam Vs. Kasthuriammal reported in 2006 (2) LW 282, the Full Bench after analysis of the entire provisions of the Amending Act summed up the law as follows:-

To sum up: The Amendment Act 2 of 1996 would apply when the two conditions exist

i) The proceedings initiated by the tenant in respect of any land owned by the religious institution must be pending before

any Court on the date of publication of the Act.

ii) The decree or order has not been executed or not satisfied in full.

In this case, on the application filed under Section 9, seeking for a direction to the landlord to sell the land by execution of the sale deed, an order has been passed under Section 9(3)(a) after compliance of the conditions imposed by the trial Court by the tenant. Therefore, the moment the order under Section 9(3)(a) is passed, it shall be construed that the proceedings got terminated and the suit stood dismissed as per Section 9(3)(b) of the act. Accordingly, the first ingredient, namely the pendency of the proceedings is absent. Further, when once a final order under Section 9(3)(a) is passed, the deeming provision 9(3)(b) comes into play, thereby meaning that the order is fully satisfied and complied with by the tenant and the statute does not contemplate any further action in this regard. Consequently, the second ingredient also is absent. Hence, the Amendment Act 2 of 1996 would not apply to the present case. The question is answered accordingly.

8. Admittedly, in the case on hand no order either under 9(3)(a) or 9(3)(b) was passed inasmuch as the tenant had not paid the amount or make an attempt to deposit the amount to the Court. Mr. Umashankar, would however draw our attention to the evidence of the Executive Officer of the Temple, wherein, he had stated that the appellants had attempted to pay the amount and the Temple had refused to receive the amount. I do not think that such an evidence would alone nullify the effect of the amending Act.

9. Under the provisions of the Madras City Tenants' Protection Act, the defendant is not called upon to pay the money to the landlord, it is the duty of the tenant to deposit the consideration as fixed by the Court and seek execution of the sale deed as per Section 9(3)(a) and 9(3)(b). In the absence of any evidence to show that the tenants had deposited the amount in the Court and the Court had in fact passed an order under Section 9(3)(b) of the Act directing execution of the sale deed, it cannot be said that the order passed in IA.No.4026 of 1999 has been fully satisfied.

10. In view of the above, both the questions of law are answered against the appellants and the appeal fails and the same is dismissed. However, there shall be no order as to costs.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

dsa
To

1. The V Fast Track Judge,
City Civil Court, Chennai.
2. The IV Assistant Judge,
City Civil Court, Chennai.

copy to
The Section officer
VR Section, High court, Madras 104.

+1 CC to Mr.C. Uma Shankar, Advocate sr 63744.

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SAI (CO)
SP (08/10/2018)

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