

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2019

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

S.A.No. 811 of 2016
and
CMP No.15381 of 2016

M/s. Indian Oil Corporation Limited,
rep. by its Chief Divisional Sales Manager,
Chennai Divisional Office,
500, Anna salai,
Teynampet,
Chennai - 600 018 Appellant/ Appellant
1st Defendant

Vs.

1. Mrs. Kiran K.Rajani

2. Mr. Anil K.Rajani

3. Mr. Sunil K.Rajani ... Respondents/ Respondents
Plaintiff

all rep. by their father and
power agent
/Mr. J.H. Kumar

4. Raj Agencies,
Agent of Indian Oil Corporation Petrol Bunk,
Old NO.87/1 , New Avadi Road, Kilpauk,
Chennai - 600 010 ... Respondent/ Respondent
2nd Defendant

Prayer : This Second Appeal has been filed under Section 100 CPC against the judgment and decree dated 08.01.2016 passed in A.S.No.70 of 2015 on the file of the learned VII Additional City Civil Court, Chennai, confirming the judgment and decree dated 22.07.2013 passed in O.S.No.1037 of 2008 on the file of the learned III Assistant City Civil Court, Chennai.

For Petitioner : Mr T. R. Rajagopalan,
Sr. counsel
for Abdul Saleem,

For respondents : M/s. P.B.Ramanujam

JUDGMENT

The appellant herein is the first defendant and the respondents 1 to 3 are the plaintiffs in the original suit.

2. The plaintiffs have filed a suit for possession, to direct the defendants to vacate and hand over the possession of the suit schedule property and also to pay damages of Rs.3,55,000/-.

3. The case of the plaintiffs is that they are the absolute owners of the suit schedule mentioned property. The first defendant Indian Oil Corporation took the property for lease and the second defendant, who is the agent of the first defendant is running the petrol bunk in the suit schedule property. The lease Agreement was entered into between the parties on 26.02.2001 and the lease period expired on 05.01.2008. It was also agreed between the parties that the first defendant is not entitled for any further extension of lease. It was also further agreed that the rent will be paid at the rate of Rs.35,000/- per month. On 16.07.2007, the plaintiffs have written a letter to the first defendant informing that there will be no further extension of lease, followed by a legal notice dated 04.09.2007. Thereafter, the defendant has sent a reply on 09.10.2007 stating that they are ready to negotiate the renewal of lease, for that, the plaintiffs have sent a rejoinder on 24.10.2007, stating that there is no question of renewal of lease. The plaintiffs sent another legal notice to the defendants asking for damages for use and occupation of the property, for which the first defendant sent reply on 21.01.2008 stating that they are willing to negotiate. Since the defendant failed to vacate the premises, the plaintiffs have filed the suit.

4. The first defendant filed a written statement stating that, one ChandraDevi was the original owner of the suit property, which was a vacant land and the same was leased out to the 1st defendant through a Lease Deed dated

24.10.1968 for a period of 20 years, which got expired on 05.01.1988. In the year 1990, the said Chandradevi, expired and she left a Will dated 12.03.1990, whereby, bequeathing the suit property to her children namely, Kiran, Anil and Sunil, who are the plaintiffs herein. The plaintiffs represented by their father and Natural Guardian, filed O.P.No.616 of 1991 to probate the Will and this Court by an order dated 19.02.1992 granted a Letter of Administration in favour of the plaintiffs and thereafter, the plaintiffs had become the owner of the suit property and that the first defendant is in authorized possession of the suit property since 24.10.1968, have repeatedly approached the plaintiffs for renewal of lease and the first defendant also paying the rent regularly. The first defendant is always ready and willing to negotiate for extension of the lease period. The first defendant is a tenant and the plaintiffs are the landlords within the meaning of the Tamil Nadu City Tenants Protection Act 1922 and the first defendant is entitled for compensation in the event of eviction from the suit property under Section 3 of the Tamil Nadu City Tenants Protection Act 1922, and the Indian Oil Corporation is entitled to the legal protection and to purchase the property under Section 9 of the Tamil Nadu City Tenants Protection Act as they are in physical possession of the property for more than 39 years and constructed a building therein. The first defendant also filed an additional written statement stating that the plaintiff has failed to issue a mandatory notice under Section 11 of the Tamil Nadu City Tenants Protection Act, 1922 and to offer compensation for the building constructed by him and hence, the suit is not maintainable.

5. The second defendant also filed a written statement contending that they are the agent of the first defendant and and they are in possession of the suit property and running the Petrol pump.

6. The trial Court negatived the contention of the defendants that the suit is not maintainable for want of notice under Section 11 of the Tamil Nadu City Tenant's Protection Act, and held that even 5 months prior to filing the suit, the plaintiffs have sent proper notice to the first defendant informing them about their intention not to renew the lease further. Hence, the first defendant is not entitled for compensation under Section 11 of the said Act and apart from that since the lease period has already expired, they are not entitled to continue in possession,

and decreed the suit vide judgment and decree dated 22.07.2013. Challenging the same, the appellant filed an appeal in A.S.No.70 of 2015 on the file of the VII Additional City Civil Court, Chennai. The First Appellate Court also concurred with the findings of the trial Court, confirmed the judgment of the trial Court and dismissed the appeal by a judgment and decree dated 08.01.2016. Now, challenging the above judgment and decree, the appellant is before this Court in this second appeal.

7. In the grounds of appeal, the following substantial questions of law have been raised :-

a) Are Courts below correct and justified in allowing the suit when the issuance of mandatory notice to the tenant under section 11 of the Tamil Nadu City Tenants and Protection Act, 1921 itself is not complied ?

b) Whether the suit for ejectment maintainable without the mandatory notices under Section 11 of Tamil Nadu City Tenants and Protection Act, 1921 ?

c) When the defendant had taken the defence that the suit for ejectment is not maintainable as the mandatory notice is not given, is the courts below have right in holding that the defendant have waived their right ?

d) When the Tamil Nadu City Tenants and Protection Act, 1921 provide two reliefs, one under Section 9 and the other under Section 3, is the court below have right in holding that the tenant waived the right to defend the suit invoking Section 11 of the Act by seeking relief under Section 9 of the Act ?

8. I have heard both sides and perused the materials available on records carefully.

9. Admittedly, the lease period had expired on 05.01.2008. Even before expiry of the lease, the respondents/plaintiffs had intimated the appellant/first respondent that they are not intending to renew the lease. Since the defendants failed to vacate the premises, they have also issued another notice demanding damages. As per Ex.A.1, lease deed, the appellant/first defendant not entitled to any further extension of lease, and as and when the lease period expires, they should deliver the vacant possession to the plaintiffs and also to remove the installation and erection made by the defendants and to restore the original possession to the landlord. The contention of the appellant is that the mandatory notice under Section 11 of the Tamil Nadu City Tenants Protection

Act has not been given. In the instant case, admittedly, the defendants has filed an application under Section 9 of the Act to purchase the suit property and the same has been dismissed by the trial Court holding that the appellant is not in actual possession of the suit property and hence they cannot claim any benefit under the Act.

10. In a similar circumstances, the Division Bench of this Court in a case reported in 2001 (4) LW 937 (Indian Oil Corporation /vs/ Lakshmi Ubrahmanyam & others) held that since the defendants failed to prove the possession of the property, they are not entitled to benefit of notice under Section 11 of the Act. The relevant portion of the said Judgment reads as follows :-

17. As we have already held, even if it is assumed that the defendants 1 and 2/appellants are entitled to the benefits of the Act, as per the decision of the Honourable Supreme Court as well as the latest Division Bench of this Court mentioned supra, necessarily the factum of possession has to be proved by the defendants 1 and 2/appellants and admittedly, they have not proved that they are in actual physical possession and enjoyment of the property. Admittedly, only the dealers of the defendants 1 and 2/appellants and sub-tenant namely ICICI Bank are in possession of the suit property. Under those circumstances, we hold that the defendants 1 and 2/appellants are not in actual physical possession of the property as required under the Act and they are not entitled to the benefits of the Act.

18. If that be so, it has to be seen as to whether the argument of the learned Senior counsel for the appellant that non-issuance of notice under Section 11 of the Act by the plaintiffs/respondents 1 to 4 is fatal to the suit or not. Section 11 notice is a notice to be issued by the land owners calling upon the tenant to express their willingness for payment of compensation

prior to their eviction. In this case, admittedly, a notice was issued by the plaintiffs/ respondents 1 to 4 to the defendants 1 and 2/appellants one year prior to the expiry of the lease, calling upon the defendants 1 and 2/appellants to vacate and deliver vacant possession of the suit property. In and by that notice, the plaintiff/respondents 1 to 4 also categorically indicated that they are not willing to sell the property to the defendants 1 and 2/appellants. Even though there were correspondences between the parties after the notice, since there was no consensus-ad-idem between the parties, the offer of the defendants 1 and 2/appellants was not accepted by the plaintiffs/respondents 1 to 4 and they stood by their notice of eviction and did not seek for waiver of notice. As stated supra, first and foremost, the question is whether the defendants 1 and 2/appellants comes within the definition and meaning of the tenant given in the Act and to prove that they are the tenant, they have to remain in possession of the property, but the possession was not proved, as required. Though the dealers possession can be a lawful possession, as per the decision of the Division Bench of this Court, such possession of the defendants 1 and 2/ appellants cannot be termed as a tenant, as enumerated under Section 2 (4) of the Act to seek the benefits conferred under the Act. As rightly pointed by the learned single Judge, even prior notice issued by the landowner can be termed or deemed to be a notice under Section 11 of the Act. In any view of the matter, in view of the finding that the defendants 1 and 2/ appellants are not a tenant as per the Act and that agreement itself was of the year 1985, the question of invoking Section 11 of the Act does not apply.

Therefore, the argument of the learned senior counsel for the defendants 1 and 2/appellants that non-issuance of notice under Section 11 of the Act by the plaintiffs/respondents 1 to 4 prior to filing of the suit is fatal to the suit is rejected. "

The application filed by the appellant/first defendant, under Section 9 of the Act has been dismissed holding that they are not in actual possession of the property and hence, they are not entitled for a notice under Section 11 of the Act. The First Appellate Court, after considering all the entire materials on facts, concurred with the findings of the trial Court came to a conclusion that the appellant is not in actual possession of the property and thereby dismissed the appeal. On careful consideration of the materials available on record, I find no infirmity or illegality in the judgments of the Courts below.

10. At this juncture, the learned senior counsel appearing for the appellants would submit that as on date, they have paid entire arrears of rent. So far as the damages are concerned, the learned senior counsel appearing for the appellant submits that they are in possession of the property from the year 1968 and he had made lot of improvements therein and he require some more time to vacate and hand over the possession.

11. The learned counsel appearing for the respondents submits that he has no objection in granting reasonable time to vacate and hand over possession of the property by the defendants.

12. Considering the fact that the appellant is in possession of the property for a long period, the appellant is directed to vacate and hand over possession to the respondents/plaintiffs on or before 31.03.2020. It is also made clear that the appellant should pay the entire arrears of rent as on date within a period of six weeks from the date of receipt of a copy of this order and continue to pay the rent till 31.03.2020 without any default. In the event of any default in payment of rent , the respondents are entitled to evict the appellant.

13. With the above directions, the second appeal is dismissed and the judgment and decree of the First

Appellate court confirming the judgment and decree of the trial court is confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

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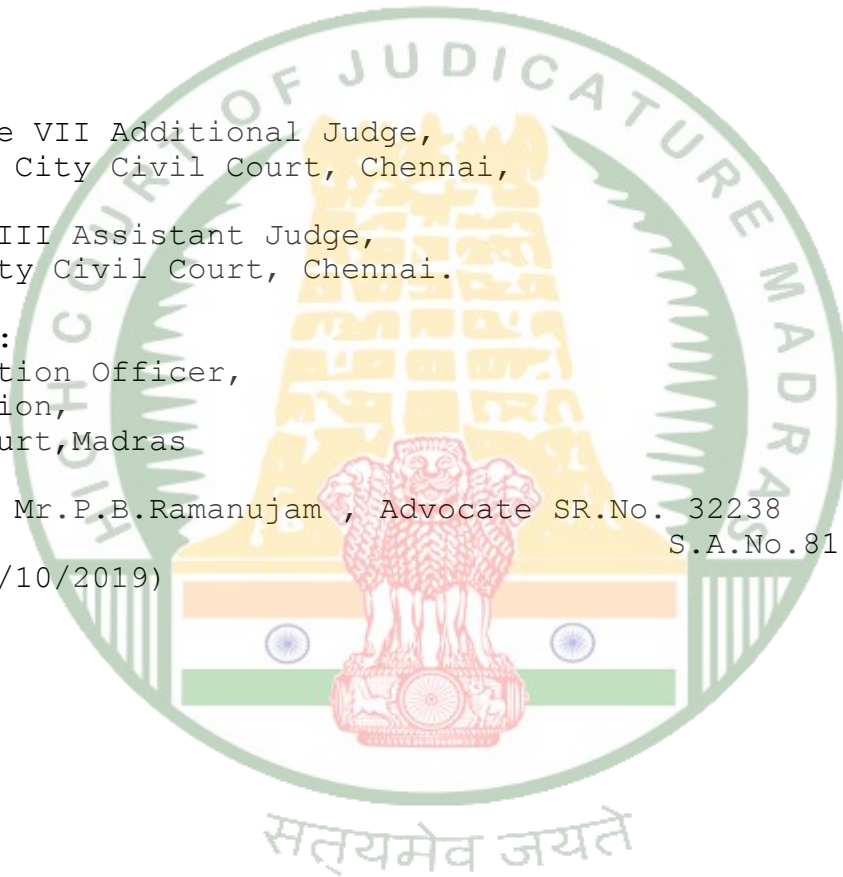
Sub Assistant Registrar

mrp
To

1. The VII Additional Judge,
City Civil Court, Chennai,
2. The III Assistant Judge,
City Civil Court, Chennai.

Copy to:
The Section Officer,
VR Section,
High Court, Madras

+lcc to Mr.P.B.Ramanujam , Advocate SR.No. 32238
S.A.No.811 of 2016
A.SK(16/10/2019)



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