



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.04.2022

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.625 of 2010

Mathi ... Appellant / Respondent /
Plaintiff

Vs.

T.Harikrishnan (Died) ... Respondent / Appellant /
Defendant

2. Dhanasingh

3. Sindhiya

4. Sheela

(R-2 to R-4 were brought on record as LR.
of the deceased sole respondent vide Order dated
12.03.2021 made in C.M.P.(MD)Nos.6442 to 6444 of
2020)

... Respondents 2 to 4

Prayer: Second appeal filed under Section 100 of C.P.C., to set aside the Judgment and Decree passed in A.S.No.17 of 2003 dated 30.11.2005 on the file of the learned I Additional Sub Judge, Tirunelveli, reversing the Judgment and Decree passed in O.S.No.715 of 1999 dated 25.10.2002 on the file of the learned Principal District Munsif, Tirunelveli.

For Appellant : Mr.V.Meenakshi Sundaram,
for Mr.D.Nallathambi.

For R-2 to R-4 : Mr.H.Arumugam

J U D G M E N T

The plaintiff in O.S.No.715 of 1999 on the file of the Principal District Munsif, Tirunelveli, is the appellant in this second appeal.



2. The suit was filed for directing the defendant to hand over vacant possession of the suit property after removal of the superstructure and for recovery of rental arrears and for damages for use and occupation with effect from 01.11.1999. The defendant filed written statement controverting the plaint averments. The respondent herein had also filed O.S.No.723 of 1999 seeking the relief of permanent injunction that he must not be dispossessed except by due process of law. He also filed I.A.No.1009 of 2001 under Section 9 of the Tamil Nadu City Tenants Protection Act. Both the suits and the petition filed under Section 9 of the Act were taken up together and given a disposal by a common judgment and decree. The ejection suit in O.S.No.715 of 1999 was decreed as prayed for. O.S.No.723 of 1999 filed by Thiru.Harikrishnan was dismissed. Likewise, the petition under Section 9 of the Act was also dismissed on 25.10.2002. Aggrieved by decreeing of the suit in O.S.No.715 of 1999, the defendant therein filed A.S.No.17 of 2005 before the I Additional Sub Court, Tirunelveli. Before the first appellate Court, the defendant filed additional written statement. After considering the evidence on record and other subsequent developments, the first appellate Court by the impugned judgment and decree dated 30.11.2005, partly allowed the appeal as regards recovery of possession and for mesne profits and confirmed the decision of the trial Court as regards recovery of rents alone. Challenging the same, this second appeal came to be filed.

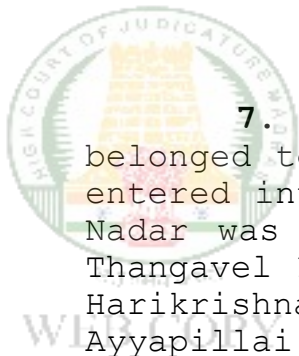
3. The second appeal was admitted on 28.07.2010 after framing substantial questions of law. After hearing the learned counsel on either side, on the previous occasion the substantial questions of law were re-formulated as follows:-

" Whether the first appellate Court ought to have held that the respondent herein is not entitled to the benefit under Section 11 of the Tamil Nadu City Tenants' Protection Act?"

4. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial question of law in favour of the appellant and set aside the impugned judgment and decree and restore the decision of the trial Court.

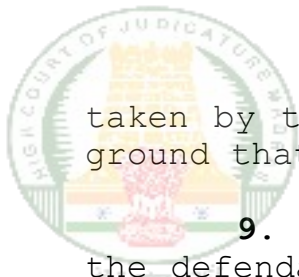
5. Per contra, the learned counsel appearing for the respondent submitted that the impugned judgment and decree do not warrant any interference.

6. I carefully considered the rival contentions and went through the evidence on record.



7. There is no dispute that the suit property originally belonged to one Ayyapillai. The said Ayyapillai and Thangavel Nadar entered into a lease agreement as early as on 09.11.1971. Thangavel Nadar was paying ground rent to the landlord, namely, Ayyapillai. Thangavel Nadar also constructed a rice mill on the suit property. Harikrishnan is none other than the son of Thangavel Nadar. Ayyapillai passed away intestate. He did not leave behind any class-1 legal heir. While so the appellant herein, namely, Mathi purchased the suit property from two of the class-2 legal heirs of Ayyapillai under sale deed dated 06.12.1985 (Ex.A.4). According to the appellant, her father-in-law Mahalingam Pillai was collecting rent from the defendant. Till 1991 the defendant was paying rent and thereafter he failed to do so and that therefore, the plaintiff issued legal notice dated 22.03.1999 calling upon Harikrishnan to vacate and hand over vacant possession of the suit property after removing superstructures. The defendant issued interim reply dated 23.04.1999 stating that the plaintiff had not disclosed all relevant facts and he sought time to issue a detailed reply. Such a reply was never issued. Be that as it may, in November 1999 O.S.No.715 of 1999 was filed. The defendant filed written statement. According to the defendant apart from the vendors of the plaintiff, there were three other class-2 legal heirs. Partition suit was pending between the class-2 legal heirs of Ayyapillai. Later, preliminary decree was also passed. The defendant alleged that the plaintiff was not a *bona fide* purchaser for value. The title of the plaintiff was specifically questioned. The defendant also contended that there was no landlord and tenant relationship between them. The locus standi of the plaintiff to file the suit was also questioned. In the face of such stand, the trial Court framed the necessary issues. The plaintiff's husband Balakrishnan was examined as P.W.1. Ex.A.1 to Ex.A.8 were marked. Harikrishnan was examined as D.W.1. Ex.B.1 to Ex.B.9 were marked. An Advocate Commissioner was appointed and his report and plan were marked as Ex.C.1 and Ex.C.2. As already pointed out, the trial Court decreed the suit filed by the plaintiff as prayed for. Before the first appellate Court, Harikrishnan filed written statement admitting his status as that of a tenant. He thereupon argued that the suit was not maintainable because notice as contemplated under Section 11 of the said Act was not issued. The first appellate Court accepted the said contention and reversed the decision of the trial Court in decreeing the suit as regards recovery of possession. The question that arises for consideration is whether the first appellate Court was justified in non-suiting the appellant herein by holding that the requirement laid down in Section 11 of the said Act was not complied with.

8. I sustain the contention of the learned counsel appearing for the respondent that the defendant was entitled to file additional written statement before the first appellate Court. It was held in **1993 (1) L.W. 569 (Sundararajan V. Sundaramoorthy)** that if the additional written statement is in consonance with the stand



taken by the plaintiff, filing of the same cannot be denied on the ground that the defendant was setting up an inconsistent defence.

9. The only question that falls for consideration is whether the defendant can be said to have waived his right under Section 11 of the Act. Harikrishnan is no more. His legal heirs have come on record. The learned counsel appearing for the respondents placed reliance on the decision of the Hon'ble Division Bench of Madras High Court reported in **1998 (2) LW 7 (Palani Ammal V. Viswanatha Chettiar (dead) and others)** and the decision of the Hon'ble Supreme Court reported in **1997 (1) CTC 298 (Ramachandran S.A. V. S.Neelavathy)**. The Hon'ble Division Bench held that the requirement under Section 11 of the Act is mandatory and the suit for ejection of the tenant filed without complying with the provisions is liable to be dismissed. Dealing with the contention that since application under Section 9 of the Tamil Nadu City Tenants Protection Act was filed, the tenant should be deemed to have waived the benefit under Section 11 of the Act, the Hon'ble Division Bench held that filing of an application under Section 9 of the Act which was preceded by written statement questioning the maintainability of the suit without prior notice cannot amount to waiver of the notice under Section 11 of the Act. In the present case, the defendant had before filing a petition under Section 9 of the Act had questioned the maintainability of the suit not on the ground of lack of notice under Section 11 of the Act, but on the ground that the plaintiff lacked title and that there was no relationship of landlord and tenant. I therefore distinguish the decision of the Hon'ble Division Bench on facts. In the decision reported in **1997 (1) CTC 298 (Ramachandran S.A. V. S.Neelavathy)**, the Hon'ble Supreme Court had once again emphasized the mandatory nature of Section 11 of the Act. In the said case, the tenant did not have an occasion to invoke provisions of Section 9 of the Act because it was filed beyond time and the application for condoning the delay was rejected.

10. The case on hand is squarely covered by the judgment of the Hon'ble Division Bench reported in **1997 (1) CTC 367 (Hamsa Patel V. S.Balakrishnan)**. The Hon'ble Division Bench held that by filing an application under Section 9 of the Act, the tenant is estopped from raising the issue of want of notice under Section 11 of the Act. In this case the petition filed under Section 9 of the Act was dismissed and the civil miscellaneous petition filed against the same was also withdrawn. Respectfully following the ratio laid down in the decision reported in **1997 (1) CTC 367 (Hamsa Patel V. S.Balakrishnan)**, I answer the substantial questions of law in favour of the appellant. In this view of the matter, the decision of the first appellate Court is set aside and the decision of the trial Court is restored.



11. The second appeal is allowed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

WEB COPY

/ /2022

Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The I Additional Sub Judge,
Tirunelveli.
2. The Principal District Munsif,
Tirunelveli.
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.D. NALLATHAMBI, Advocate (SR-17257[F] dated 07/04/2022)

S.A.(MD)No.625 of 2010
06.04.2022

RK(01/06/2022) 5P 6C