



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **22.08.2023**

CORAM

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

S.A.No.925 of 2012
and M.P.No.1 of 2012

- 1.Jaya Radhakrishnan
- 2.R.Ethiraj (Died)
- 3.R.Santhanam
- 4.Nirmala
- 5.Leela (died)
- 6.R.Loganathan
- 7.E.Selvakumari
- 8.E.Ramesh
- 9.R.Dhanalakshmi
- 10.E.Jayakumar
- 11.E.Bhakiyalakshmi
- 12.E.Parthiban

... Appellants

A2 and A5 died, A7 to A11 are brought on records as LR's of deceased A2 and A12 is brought on record as LT of deceased A5 vide Court order dated 09.08.2023 made in C.M.P.Nos.18071 and 18061 of 2023 in S.A.No.925 of 2012.

Vs

- 1.The Official Trustee of Tamil Nadu,
Representing the Trust Estate
of M.M.Charities,
Additional City Civil Court Buildings,
High Court Buildings, Chennai - 600 104.



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2.V.Durairaj

3.3.D.Vasanthakumar

... Respondents

PRAYER:-This Second Appeal has been filed under Section 100 of Civil Procedure Code to call for the records pertaining to the judgment and decree passed in A.S.No.613 of 2007 dated 05.03.2010 on the file of the learned V-Additional Judge, City Civil Court, Chennai and set aside the same and restore the judgment and decree passed in O.S.No.4369 of 1986 dated 31.01.2007 on the file of the learned XII Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.R.Natarajan

For Respondents: Ms.R.Madhumith for Official Trustee
for Mr.E.V.Chandru

: R2 - Died

: R3 - No appearance

ORDER

This appeal arises against the judgment passed in A.S.No.613 of 2007, dated 05.03.2010 on the file of the learned V-Additional Judge, City Civil Court, Chennai

2. O.S.No.4369 of 1986 is a suit for ejectment. In the said



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suit for ejectment, the tenant claimed right under the City Tenant Protection Act, 1921. The learned trial Judge allowed the application under Section 9 of the Act and simultaneously dismissed the suit. This is contrary to the procedure consistently laid down by this Court. The procedure, being the application under Section 9 after it is being allowed, the suit must be adjourned *sine die*. Once the proceedings under Section 9 are concluded either in favour of the tenant or in his default in favour of the landlord, the suit must be taken up for disposal. Giving a go-by to this principle, the trial Court had dismissed the suit.

3. The lower Appellate Court following the procedure laid down by this Court, had allowed the appeal and restored the suit on to the file of the learned trial Judge. He held that the tenant is not entitled to the protection under the City Tenants Protection Act, 1921. Today, by an order in C.R.P.No.3106 of 2012, I have confirmed the order passed by the lower Appellate Court in C.M.A.No.134 of 2007,



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dated 05.03.2010. In that proceedings, I have concluded that the tenant is not entitled to the benefits under the City Tenants Protection Act.

4. I have heard this appeal on the following substantial questions of law.

1. *Whether the lower Appellate Court has not framed correct point for consideration as required under Order XLI Rule 31 C.P.C.?*

2. *Whether the lower Appellate Court has committed an error in granting a decree as prayed for in the plaint much against its observation that the suit ought to have been kept pending till the compliance with the provisions of Section 9 of the City Tenants Protection Act?*

3. *Whether the lower Appellate Court has committed an error in decreeing the suit solely on the ground of dismissal of the application under Section 9 of the City Tenant's Protection Act without affording an opportunity to the contesting defendants to lead evidence in the suit resisting the claim of the plaintiff for*



ejectment?"

5. On the first question of law that the learned Appellate Judge did not frame the correct point for consideration, I have already held that it is the duty of the trial Court to keep the ejectment suit pending till the application under Section 9 is disposed of. Therefore, the point of consideration framed by the lower Appellate Court is correct.

6. In so far as the second question of law is concerned, it has been the consistent view of this Court that till the petition under Section 9 is disposed of in its entirety, the suit cannot be taken up for hearing. If the application under Section 9 is allowed and the tenant pays the entire amount fixed by this Court, only thereafter, the suit must be dismissed. In case, the tenant does not pay the amount, then the trial Court necessarily will have to take up the ejectment suit for consideration and pass a decree. Therefore, the second question of law also does not arise for consideration.



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7. In so far as the third question of law is concerned, the learned lower Appellate Court has decreed the suit holding that Section 9 does not apply to the tenant.

8. Here is a case, where the relationship between the parties are not denied. On the contra, accepting the relationship of landlord and tenant, the tenant had filed an application under Section 9, which unfortunately went against him. Once Section 9 application has been dismissed, all that remains to see is whether a valid notice terminating the lease has been issued by the landlord to the tenant.

9. I have to take note of the fact that after the amendment to Section 106 of Transfer of Property Act, 1882, the question of validity of the notice period has been removed as a defence from the statute. The notice dated 20.03.1986 had terminated the tenancy of the residential property giving more than a months time with the



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month ending in April 1986. Therefore, the notice issued under Section 106 of the Transfer of Property Act, 1882 is valid.

10. Once these grounds have been found in favour of the landlord, nothing further remains for consideration of the Court below. Therefore, all the three substantial questions of law framed are answered against the Appellants and in favour of the respondents.

11. In fine, the judgment and decree in A.S.No.613 of 2007, dated 05.03.2010 in reversing the judgment and decree of the XII Assistant City Civil Court in O.S.No.4369 of 1986 dated 31.07.2007 stands confirmed. The suit stands decreed. Time for eviction is six months.

12. Accordingly, this Second Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.



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Index: Yes/ No

Speaking order: Yes/ No

Neutral Citations: Yes/ No

To

1. The V-Additional Judge, City Civil Court, Chennai.

2. Record Keeper

VR Section

High Court of Madras, Chennai.

V. LAKSHMINARAYANAN, J.

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