



A.S.(MD)No.64 & 65 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 06.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.(MD)No.64 & 65 of 2022

and

C.M.P.(MD)No.2572 of 2022

Abdul Razack (Died)

1.Shahul Hameed

2.Samsunisha

3.Natharsha

4.Tajudeen

5.Kamal Nazar

6.Mohamed Ibrahim

... Appellants / defendants 2 to 7
in both Appeal Suits

Vs.

K.A.S.Ramdas (Died)

2.Rajeswari Ramdas

3.K.A.S.R.Sivakumar

4.K.A.S.R.Saravanan

5.K.A.S.R.Prabhu

6.K.A.S.R.Arun Kumar

1/28



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(Respondents 2 to 6 are brought on record as LR's of the deceased sole respondent vide Court order dated 25.07.2022 made in C.M.P.(MD)Nos.6009 & 6008 of 2022 in A.S.(MD)No.64 & 65 of 2022 respectively)

... Respondents / Appellant
in both Appeal Suits

COMMON PRAYER: These Appeals Suits are filed under Section 96 of C.P.C., 1908 against the judgment and decree dated 06.12.2021 made in O.S.Nos.153 of 2012 & 98 of 2015, on the file of III Additional District Judge, Tiruchirappalli.

For Appellant : Mr.M.Ajmalkhan,
Senior Counsel for
M/s.Ajmal Associates

For Respondents : Mr.V.Meenkashi Sundaram,
Senior Counsel for
Mr.S.Vinod Sathya Lazar
R1 Died (Steps Taken)

COMMON JUDGMENT

Aggrieved over the common decree and judgment passed in O.S.Nos.153 of 2012 and 98 of 2015, both the appeals came to be filed.



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2. O.S.No.153 of 2012 was filed for declaration and recovery of possession of the suit property. O.S.No.98 of 2015 is filed for permanent injunction restraining the defendants from making further alteration and improvements in the superstructure of the suit property.

3. Since the facts in both the suits are one and the same, the brief facts, which are necessary to dispose of the appeals, are as follows:

3.1. An extent of 20,800 sq.ft., was purchased by one Razia Begam on 24.09.1946. Subsequently, she has executed a settlement deed on 14.06.1964 in favour of her four sisters viz., Habibunnissa Begam, Hanifa Begam, Mohamadha Begam and Feroza Begam. The said Razia Begam died on 03.01.1975. The settlement deed executed by the said Razia Begam in favour of her four sisters was challenged by one Mr.Babu by filing a Civil Suit in O.S.No.440 of 1975. Civil Court had finally upheld the validity of the settlement deed executed in favour of the sisters of Razia Begam.

3.2. It is the case of the plaintiff that taking advantage of the dispute among the title holders, the tenants inducted by Razia Begam were enjoyed the possession without renewing or extending the lease. The beneficiaries under the settlement



deed and their legal descendants generously and magnanimously had permitted the occupants who are originally inducted into possession as tenants to carry on their business. In fact the occupants had located their shops according to their whims and fancies. The superstructure were also changed and altered frequently to suit their business. The locations are shifted to one place and another and the area of occupation also varied by mutual adjustment among the occupants. The occupants were also allowed to pay tax to the superstructures put up by them. On 05.03.1992, one Abdul Salam, who is the vendor of the plaintiff, has purchased 1531 ½ sq.ft., of land from the legal heirs of one of the beneficiaries by name Habibunnissa Begam, who died on 09.12.1991. The vendor of Mr.Abdul Salam sold another extent of 1682 sq.ft., to one Krishnaveni. The purchasers viz., Krishnaveni and Abdul Salam had a dispute with regard to the location of their respective properties. However, the dispute was resolved peacefully.

3.3. The plaintiff has purchased an extent of 480 sq. ft., from Abdul Salam with specific boundaries. Even before the sale in favour of the plaintiff, Abdul Salam had sent a legal notice dated 27.04.2000. After the legal notice, the defendants have approached the plaintiff's vendor and requested to permit them to carry on the business and they expressed their inability to pay the rent. In



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pursuance of the request, the plaintiff's vendor gave up their demand for payment of rent and allowed to them to carry on the business. Since the plaintiff has purchased 480 sq.ft., on 14.06.2006, from the legal heirs of Abdul Salam, the defendants became enraged and started to threaten the plaintiff and attempted to make alteration in the superstructures. Therefore, the plaintiff has filed both the suits.

4. In the written statement, the defendant took a stand denying the title of the property. Hence, the plaintiff has issued a legal notice on 01.07.2012, cancelling the permission for carrying on the business in the suit property. Reply was also sent on the false allegations on 11.07.2012. It is the contention of the defendants that the plaintiff has purchased only undivided share and he has no title to the property. Hence, the plaintiff has filed a suit for declaration and recovery of possession.

5. It is the case of the defendants that an extent of 20,800 sq.ft., was originally owned by one Razia Begam. She has executed a registered settlement deed dated 14.06.1964 in favour of her four sisters. She has leased out certain portions to several parties and the lessees had put up superstructures in their



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respective sites. First defendant has become a tenant on 02.02.1972 for an extent of 30 feet East West and North South 12 feet on a monthly rent of Rs.30. The said Razia Begam died on 03.01.1975. After her demise, her four sisters filed a suit in O.S.No.440 of 1975, claiming absolute title in the above property and the suit was dismissed on 06.04.1978. As against the same, they filed an appeal in A.S.No.374 of 1978 and the same was allowed. Aggrieved by the said order, one Babu preferred an appeal before this Court in L.P.A.No.7 of 1984, wherein this Court held that Habibunnissa Begam and other sisters were entitled only to the site. Hence, it is the contention of the defendants that 20,800 sq.ft. has not been partitioned at all. Whereas the vendor of the plaintiff has purchased only an extent of 480 sq. ft., from the legal heirs of Abdul Salam on 14.06.2006.

6. Further, it is the contention of the defendants that though registered sale deed was executed, the site was taken on lease for the purpose of business carried on by him and one Khaja Moideen. The superstructure was put up by the defendants in the year 1972 itself at huge cost. The superstructure was assessed for property tax by the City Corporation in the name of the defendants and they have been remitting the property tax as well as the electricity consumption charges regularly till date. By virtue of the partition deed dated 15.05.1975, an extent of



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East West 15 feet and North South 12 feet was allotted to Khaja Moideen, who is none other than the brother's son of the defendant. Similarly, an extent of East West 13 feet and North South 10 feet on the South Eastern part of the leased site to Khaja Moideen, under a registered release deed dated 09.09.1983. Hence, Khaja Moideen became owner of superstructure to an extent of East West 15 feet on Southern side 13 feet on Northern side and North South 22 feet. The said Khaja Moideen in turn sold an extent of east west – 6 ½ feet on the Southern side and East West 7 ½ feet on the Northern side and North South 22 feet on the Eastern side to one P.M.Thulkarnai under a registered sale deed dated 04.09.1990 for a sum of Rs.2,500/-. The said Thularnai in turn has sold that property to the second defendant under a registered sale deed dated 25.03.1988.

7. Therefore, it is the contention of the first defendant that he had already put up constructions on the eastern side of the portion allotted to him in the partition deed 15.05.1975 and also in the portion retained by him on the eastern side while executing registered released deed dated 09.09.1983. Hence, the superstructure in the suit property is belonged to the defendants 1 and 2. The rent has been paid towards the vacant site to the said Razia Begam and later on to the receiver appointed by this Court in A.S.No.374 of 1978. Therefore, the defendants



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are tenants in respect of the site of the suit property and owners in respect of the superstructure comprised therein.

8. The legal heirs of Abdul Salam have issued a legal notice on 27.04.2000 to these defendants, thereby admitting that the defendants are tenants. Therefore, the allegation that the plaintiff is absolute owner of the suit site, the plaintiff has purchased the suit property by virtue of the registered sale deed dated 14.06.2006, the plaintiff's vendor had acquired title over the suit property and defendants are permissive occupier are denied. The plaintiff has purchased only undivided property and could not be identified on ground. There is no privity of contract between the plaintiff and defendants. The first defendant is the lessee of the site and he has put up superstructure even in the year 1972 based on the lease agreement. Neither the plaintiff nor his vendors have any title over the superstructure. Therefore, the defendants are entitled to claim the benefits of superstructure and he has also entitled to the benefits of the Tamil Nadu City Tenants Protection Act, 1921. Hence, prayed for dismissal of the suit.



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9. In O.S.No.98 of 2015, the trial Court has framed the following issues:

- “1. Whether the plaintiff is entitled to get the permanent injunction as prayed for?*
- 2. To what other relief?”*

10. In O.S.No.153 of 2012, the trial Court has framed the following issues:

- “1. It is true to state that the plaintiff has purchased undivided 480 sq.ft., extent only through the sale deed dated 14.06.2006?*
- 2. Has the D1 any right to assign and release portion of leased property in favour of one Khaja Moideen?*
- 3. Is such an assignment, release valid and enforceable in law?*
- 4. Is the sale by one Khaja Moideen, to the 2nd defendant on 25.03.1998 a valid one?*
- 5. Is the D1 entitled for the benefit of City Tenants Protection Act?*
- 6. Is the plaintiff entitled for a declaration as prayed for in the suit?*
- 7. Is the plaintiff entitled for recovery of possession of the suit property?*
- 8. Is the plaintiff entitled for future damages?*
- 9. Any other relief?”*

11. On the side of the plaintiff, one witness was examined as P.W.1 and 15 documents were marked as Ex.A1 to Ex.A15. On the side of the defendants, one witness was examined as D.W.1 and 29 documents were marked as Ex.B1 to



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Ex.B29. Joint trial was conducted in both the suites and the trial Court has decreed both the suits. Challenging the same, the present appeals came to be filed.

12. The learned counsel appearing for the defendants / appellants mainly submitted that originally the larger extent of 20,800 sq.ft., was owned by one Razia Begam. After that in the year 1964, Razia Begam executed a settlement deed in favour of her four sisters. The first defendant has become a tenant in the year 1972 in respect of a vacant site to an extent of 360 sq.ft. and put up a construction and has been regularly paying the rent to Razia Begam and thereafter to the receiver, who was appointed by this Court. There was some dispute pending between the four sisters in respect of the settlement. Ultimately, the same ended in L.P.A. before this Court, wherein it has been clearly held that all the four sisters are entitled only to the vacant site. It is the contention of the learned counsel appearing for the defendants / appellants that once he was inducted as tenant, he could not be called as a permissive occupier. The plaintiff has purchased the property in the year 2006 from one Abdul Salam, who has purchased the suit property from the legal heirs of one of the sisters of the Razia Begam. Therefore, it is his contention that the property undivided without subdivision cannot be identified.



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13. It is the further contention of the learned counsel appearing for the defendants / appellants that entire superstructure have been constructed by the defendants, which is an admitted fact. Therefore, he is entitled to protection under the Tamil Nadu City Tenants Protection Act, 1921. However, the lower Court has not considered the same and decreed the suit. According to him, since he is the tenant, he is entitled to such benefits. Further, the plaintiff has not sent any legal notice nor informed the purchase and filed a suit as if the defendants were permissive occupiers.

14. Hence, it is his contention that as along as the defendants were in possession as per the lease deed of the year 1972, it cannot be construed as a permissive occupation. Hence, it is his contention that when the undivided share has been purchased, the property could not be identified and several developments took place and the superstructure built by the first defendant were also partitioned among himself and one Khaja Moideen, the suit for declaration and recovery of possession will not be maintainable. It is his contention that the appellants were originally inducted as tenants though they are estopped from challenging the title of their landlord during continuance of the tenancy, yet the tenant / lessee is entitled to challenge the derivative title of an assignee / vendee of the original



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landlord (lessor) of the demised property in an action brought by the assignee / vendee against the tenant under the rent laws. In support of his submission, he has also relied upon the judgment of the Hon'ble Apex Court in ***Bismillah Be Vs. Majeed Shah*** reported in ***(2017) 2 Supreme Court Cases 274***.

15. Whereas, the learned counsel appearing for the plaintiff / respondents would submit that it is an undisputed fact that an extent of 20,800 sq. ft., of land owned by one Razia Begam. During her life time, she has sold 7946 sq. ft to one Sundaram and Andavar & company. In respect of the remaining 12854 sq.ft., she has settled the above extent in favour of her four sisters. There was a dispute between the parties and settlement deed was challenged by one Babu, which ultimately ended in L.P.A.No.7 of 1984 on the file of this Court and this Court has held that the settlees are entitled to vacant site and all the settlement deeds were held to be valid. One of the settlee viz., Habibunnissa Begam alienated 1531 ½ sq. ft in favour of one Abudl Salam, who is the vender of the plaintiff. The plaintiff has purchased an extent of 480 sq. ft. When the notice was sent by the plaintiff's vender, the defendants did not admit the tenancy. In fact they questioned the title and did not come forward to pay the rent and in fact they sought permission to continue in the demised premises, since some superstructure



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have been put up by them. Even after, the plaintiff purchased the property, it is the stand of the defendants that the plaintiff has no title to the property.

16. Therefore, it is the contention of learned counsel appearing for the plaintiff / respondents that the question of benefit under the Tamil Nadu City Tenants Protection Act, 1921 will not be available to the defendants. To avail the benefit under the Tamil Nadu City Tenants Protection Act, 1921 the title of the landlord should have been accepted by the tenant. Whereas the defendants have denied the title in this case. That apart, even during the pendency of the suit, an application under Section 9 of the Tamil Nadu City Tenants Protection Act, 1921 has not been filed within a time limit as prescribed. Therefore, when the person has failed to exercise any right under the statute within a time stipulated, now cannot claim such benefits in the appeal stage. Therefore, it is his contention that taking advantage of the litigation among the sisters, the tenants, who occupied some extent has put up some constructions, according to their whims and fancies and when the properties have been sold by all other co-owners with the specific boundaries, it cannot be said that the properties are undivided properties.



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17. It is the further contention of the learned counsel appearing for the plaintiff / respondents that all other extent have been sold by other respective co-owners from their shares. Further, it is the contention of the plaintiff / respondents that when the nephew of the first defendant has purchased undivided property and he enjoyed the property, now the first defendant cannot take a different stand that the purchase of undivided share did not convey any title to the plaintiff. It is further contention that though 360 sq.ft. of land was given lease in the year 1972, superstructure has been put up in 482 sq.ft. of the land. Further, though some rent has been received during the pendency of the earlier litigation, the earlier litigation was over in the year 1984 itself and thereafter, no rent whatsoever has been paid by the defendants. Therefore, once the lease period has already been expired and the tenant continue to remain in possession without payment of rent, his possession is akin to the trespasser.

18. Hence, it is his contention that when the title itself is denied, the plaintiff is entitled to file a suit for declaration and for consequential relief of recovery of possession. The trial Court has ordered recovery of possession along with superstructure and directed to pay the building value to the defendants. Hence, it is his contention that decree and judgment of trial Court does not require any



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interference and the Trial Court has also decreed the suit for permanent injunction not to put up any alteration or improvement in the superstructure.

19. In the light of the above submissions, now the point arise for consideration in this appeal are as follows:

1. Whether the defendants can deny the title of the purchaser when they were inducted into possession of the property as tenants?

2. Whether the defendants can be termed as tenants when they have not paid any rent from the year 1990 onwards, even after expiry of the lease?

3. Whether the defendants are entitled to any benefits under the Tamil Nadu City Tenancy Protection Act, 1921?

4. To what other relief?

20. It is admitted case of both sides that the suit property is a commercial property situate at the prominent place in Trichy. This fact has surfaced during the argument of both sides. From the pleadings and evidence, it is seen that a larger extent of vacant site covering 20800 sq. ft was originally owned by one Razia Begam. She has purchased the suit property in the year 1946. it is also admitted



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in the evidence of the defendants that the suit property was purchased by Razia Begam in the year 1946. During her life time, she has sold an extent of 7946 sq. ft. This fact has also been admitted in evidence. In respect of remaining 12854 sq. ft., the said Razia Begam has executed a settlement deed under Ex.A2 in favour of his four sisters viz., Habibunnissa Begam, Hanifa Begam, Muhamadha Begam and Ferossa Begum. This fact has also not been disputed. It is also admitted by both sides that the said settlement deed was challenged by one Babu and finally in L.P.A.No.7 of 1984, this Court has held that settlement is valid and the settlees are entitled to vacant site.

21. First defendant has originally become a tenant in respect of vacant site for an extent of 360 sq. ft., under Ex.B1 dated 02.02.1972 on a monthly rent of Rs. 30. The lease period was for 10 years and expired on 01.02.1982. Thereafter, there was no renewal of the lease legally. However, the fact remains that during the pendency of the civil suit filed in O.S.No.440 of 1975, challenging the settlement deed it appears that an Advocate receiver was also appointed by this Court. It is the case of the defendants that they have continued to pay the rent to the receiver appointed by this Court. It is relevant to note that the civil suits are disposed in the year 1990 in L.P.A.No.7 of 1984. The first defendant has also



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admitted that after the above suits are over, he did not pay any rent to the Advocate receiver and he has not even made an attempt to find out who was real owner to pay the rent and not even taken any steps to pay rent to all the co-owners nor taken any steps to deposit the amount in the Court.

22. Therefore, the above facts makes it clear that the defendants are squatting on the property without paying any rent whatsoever though he is said to have put up some superstructure on the demised premises. Whereas the four sisters of Razia Begam and their legal heirs dealt their shares independently with specific boundaries. The legal heirs of Habibunnisa Begam have sold to an extent of 1531 ½ sq. ft. in favour of Abdul Salam under Ex.A3. The recitals in the above sale deeds make it clear that co-sharers have dealt their shares though the properties have not been partitioned. However, the fact remains that the properties have been sold with the specific boundaries. Similarly under Ex.A.4, the legal heirs of Abudl Salam has sold an extent of 351 sq. ft. to one Khaja Moideen, who is the brother son of the first defendant. The above sale deed also clearly indicates that property has been separately subdivided and 351 sq. ft has been sold with specific boundaries.



23. It is the case of the first defendant that there is also some arrangement between the said Khaja Moideen and himself in respect of the suit property built by them. Therefore, when his own brother's son title has been accepted under Ex.A4, he has also purchased undivided shares with specific boundaries, now the first defendant cannot contend that the property purchased by the plaintiff an extent of 480 sq. ft. did not convey any title. It is also to be noted that under Ex.A8, the said Khaja Moideen has sold certain extent of 180 sq. ft with specific boundaries to one Jajahan. Similarly, in all the sale deeds filed on the side of the plaintiff viz., Ex.A8 to Ex.A15, the properties have been dealt by other co-sharers with the specific boundaries. Though the properties were not partitioned legally, the co-sharers have dealt the property in respect of their shares and sold with specific boundaries.

24. The Abdul Salam has purchased 1531 ½ sq. ft., on 05.03.1992 and the legal heirs of the said Abdul Salam has sold 700 sq. ft., under Ex.A5 on 14.06.2006 and have also sold 480 sq.ft., to the plaintiff on 16.06.2006 under Ex.P11. All the documents make it clear that the property was dealt by all the co-owners with specific boundaries. Therefore, it cannot be contended that merely because the properties not legally partitioned, undivided sale did not convey any



title to the plaintiff. In fact, the manner in which the sale has been effected under Ex.A3, Ex.A4, Ex.A5 and Ex.A8 to Ex.A13 makes it very clear that sub-division has also been given and the parties viz., the co-shares understood their shares and dealt it separately sold with specific boundaries.

25. It is not disputed by the defendants that purchase has been made by the plaintiff in respect of 480 sq. ft. Though it is the stand of the first defendant that he has put up a superstructure, it is relevant to note that to claim any benefit under Section 4 of the Tamil Nadu City Tenancy Protection Act, 1921, the defendant ought to have filed an application under Section 9 of the Tamil Nadu City Tenancy Protection Act, 1921. Section 9 of the Tamil Nadu City Tenancy Protection Act, 1921 reads as follows:

“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 (Central Act XV of 1882), taken by the landlord may, [within one month of the date of the publication of the [Chennai] City Tenants' Protection (Amendment) Act, 1979 (Tamil Nadu Act 2 of 1980) in the Tamil Nadu Government Gazette 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



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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.]

(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 clause (a) of 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 as 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 instalment or instalments, 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 direct 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, and 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 interests 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.]

(3-A) Notwithstanding anything contained in clause (b) of sub-section (3) of this section or in section 5 of the [Chennai] City Tenants' Protection (Amendment) Act, 1972 (Tamil Nadu Act 4 of 1972), or any other law for the time being in force, the Court which passed the decree or order referred to in sub-clause (ii) (b)(2) of clause (4) of section 2, shall, on application made by the tenant referred to in that sub-clause within a period of two months from the date of the publication of the [Chennai] City Tenants' Protection (Amendment) Act, 1972, (Tamil Nadu Act 4 of 1972) reopen or review the proceedings relating to such decree or order and may pass a decree or an order that the tenant referred to in the said sub-clause, is entitled to the rights under this Act and pass such other supplemental, incidental or consequential orders as are necessary for the purpose as if the [Chennai] City Tenants' Protection (Amendment) Act, 1973 (Tamil Nadu Act 4 of 1972), were in force at the time at which the decree or order was passed."



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26. On a careful perusal of the above Section makes it clear that any tenant who is entitled to benefit under the said Act, within one month after the service on him of summons, apply to the Court for a direction to sell the whole or part of the extent of land specified in the application. No such application whatsoever has been filed before the trial Court. It is relevant to note that sub-clause (1) 9(b) of Section 9 of the Tamil Nadu City Tenants Protection Act, 1921, makes it very clear that once the said application is filed 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. The price shall be the average market value of three years immediately preceding the date of the order.

27. Sub-clause (2) of Section 9 of the Tamil Nadu City Tenants Protection Act, 1921 makes it clear that if any default of payment by the tenant of any one installment, the application under clause (a) of sub-Section (1) shall stand dismissed. From the conjoint reading of the provision makes it clear that to avail the benefit under Section 9 of the Tamil Nadu City Tenancy Protection Act, 1921 the application ought to have been taken by the person, who put up superstructure



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within a time stipulated under Section 9 of the Tamil Nadu City Tenancy Protection Act, 1921. Even any default of payment of installment, after the Court fixes such amount, the application stands dismissed automatically. The above makes it very clear that to avail the benefit under the Tamil Nadu City Tenancy Protection Act, 1921, the application should have been filed in time which has not been done so in this case. Further to avail the benefit under the said Act relationship of landlord and tenant should have been admitted. Whereas the first defendant had denied the title of the plaintiff in this case and that he has taken alternative plea in the written statement to avail the benefit. It is to be noted that the said written statement has also been filed beyond the period of 1 month stipulated under Section 9 of the Tamil Nadu City Tenants Protection Act, 1921.

28. It is also relevant to note that though the first defendant has taken inconsistent view in the written statement, he has to stand on a particular plea in the trial and he cannot approbate or reprobate. The one view of the first defendant is that plaintiff has no title to the property and the other view is that he is entitled to benefit under the Tamil Nadu City Tenants Protection Act, 1921. However, he has not chosen to elect the particular plea to avail the benefit under the Tamil Nadu City Tenants Protection Act, 1921. Therefore, having failed to elect the plea



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before the trial Court, exercising the option to avail the benefit under Section 9 of the Tamil Nadu City Tenants Protection Act, 1921 during the appeal stage is not maintainable. Having chosen to deny the title from the reply notice and written statement, this Court is of the view that the defendants are not entitled to the benefit of the Tamil Nadu City Tenants Protection Act, 1921. It is also relevant to note that the defendants having said to have paid the rent to the receiver in an earlier suit between one Babu and the sisters of Razia Began, thereafter they neither taken any steps either to pay the rent to all the co-owners or the person who had entitled to receive the rent nor made any attempt to deposit the same to the Court.

29. Such being a position, when a tenancy period has already been expired in the year 1982 and squatting on the property without paying any rent is akin to the trespasser and nothing more. Further having admitted the title of his brother's son viz., Kajamohideen, now he cannot deny the title of the plaintiff. Admittedly, suit properties and other area is a commercial area in Trichy. When a portion of the suit property has been dealt by one of the sharers with specific boundaries, all other co-owners have not made any objection with regard to the title and they have also sold their respective shares and the purchasers are enjoying the property



including the brother's son of the first defendant who is claiming right under the basis of the said sale.

30. Such being a position, the denial made by the first defendant as to the title of the plaintiff is not a *bona fide* one and has been made only in order to delay the suit. This Court is of the view that taking advantage of the litigations among the co-owners and others, the defendants squatting over the property without even paying any rent on the basis of the lease deed of the year 1972, which has been expired in the year 1982. When the denial of title is also not *bona fide*, he cannot resist the suit for declaration and recovery of possession.

31. In the judgment relied upon by the learned counsel appearing for the defendants / appellants in ***Bismillah Be Vs. Majeed Shah*** reported in (2017) 2 ***Supreme Court Cases 274***, the Hon'ble Supreme Court in paragraph No.24, has held as follows:

“25. Law relating to derivative title of the landlord (Lessor) and challenge, if made, to such title by the tenant (Lessee) during subsistence of tenancy in relation to demised property is fairly well settled. Though by virtue of Section 116 of the Evidence Act, 1872, the tenant is estopped from challenging the title of his landlord during continuance of the tenancy, yet the tenant/lessee is entitled to challenge the derivative title



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of an Assignee/Vendee of the original landlord (Lessor) of the demised property in an action brought by the Assignee/Vendee against the tenant for his eviction from the demised property under the Rent laws. This right of a tenant is, however, subject to one caveat that the tenant/lessee has not attorned to the Assignee/Vendee. In other words, if the tenant/lessee pays rent to the Assignee/Vendee of the tenanted property then it results in creation of an attornment between the parties which, in turn, deprives the tenant/lessee to challenge the derivative title of an Assignee/Vendee in the proceedings.”

32. In the present case, plaintiff title has been clearly established. However, admittedly, lease has been expired in the year 1982 and after the earlier proceedings over, no rent whatsoever has been paid and the first defendant has squatting on the property without paying any rent and he is not a tenant by holding over and his possession is akin to trespasser. Such view of the matter, this Court is of the view that notice under Section 106 of Transfer of Property Act, 1882 to determine the tenant is also not required. As the title itself has been denied from the date of reply notice of the year 2012, filing the suit for declaration and recovery of possession by the plaintiff is well in order. Such view of the matter, all the points are answered against the appellants.



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33. In the result, these appeal suits are dismissed. The judgment and decree dated 06.12.2021 made in O.S.Nos.153 of 2012 & 98 of 2015, by the learned Additional District Judge, Tiruchirappalli. is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

06.06.2023

NCC : Yes /No
Index : Yes/No
vsm

To

- 1.The Additional District Judge,
Tiruchirappalli.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

vsm

Judgment in
A.S.(MD)No.64 & 65 of 2022

06.06.2023