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C.R.P.No.3750 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.3750 of 2016 and
C.M.P.No.19096 of 2016

P.Sengodan

... Petitioner

Vs.

1.R.Muthusamy
(Declared as missing)
2.M.Rasammal
3.M.Ravichandran
4.Angammal
5.Srirangan
6.Pappu
7.Official Receiver
Salem
Lakshmi (Died)
8.Venkatachalam

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decretal order made in O.P.No.101 of 1992 on the file of the Sub-Court, Namakkal and District dated 20.10.2008 as confirmed by the fair order and decretal order made in C.M.A.No.461 of 2011 dated 04.02.2016 on the file of the Principal District Judge, Namakkal and District.



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C.R.P.No.3750 of 2018

For Petitioner : M/s.R.Saseetharan

For Respondent 1 : Declared as missing

For respondents 2 and 3 : Mr.N.S.Elamugilan

For Respondent 4 to 8 : No appearance

ORDER

The Civil Revision Petition is filed challenging the order passed by the Principal District Judge, Namakkal, dismissing the appeal filed by the petitioner by confirming the order passed by the Subordinate Court, Namakkal, allowing the application filed by the respondents 1 to 3 under Section 9 r/w 3 of The Madras City Tenants' Protection Act, 1921 (Hereinafter referred to as “Act” for brevity) exercising option to purchase the petition mentioned property.

2. The petition mentioned property originally belonged to one Perumal Gounder and respondents 4 to 6 are his legal representatives. Yet another son of Perumal Gounder namely Periya paiyan @ Ramasamy and respondents 4 and 5 were declared as insolvents and pending said proceedings Periya Paiyan

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@ Ramasamy died leaving 4th respondent as his only heir. Thus, the petition mentioned property vested with official receiver 7th respondent herein. The 7th respondent sold the petition mentioned property to petitioner herein under Sale Deed dated 20.08.1976. Thus, the petitioner is claiming title over the petition mentioned property.

3. The respondents 1 to 3 filed Original Petition in O.P.No.101 of 1992, on the file of Subordinate Court, Namakkal, under Section 9 r/w 3 of Madras City Tenants Protection Act, 1921 exercising option to purchase the petition mentioned property on the ground that the 1st respondent was tenant of the vacant site belonged to Perumal Gounder. It was his case that 1st respondent entered the petition mentioned property as a tenant of the vacant site and had been paying monthly rent of Rs.6/- to Perumal gounder. He also claimed that he had put up present super structure over the vacant site for residential purpose and had been residing there from 1966. Thus, he claimed benefit under the above said Act.



4. The Court of first instance held that respondents 1 to 3 were entitled to benefit of Madras City Tenants' Protection Act and allowed the application by holding respondents 1 to 3 were entitled to benefit of Section 9 of the said Act. Aggrieved by the same, the petitioner herein preferred an appeal in C.M.A.No.461 of 2011 on the file of Principal District Court, Namakkal and the same was also dismissed. Hence, the petitioner is before this Court.

5. The learned counsel for the petitioner, assailing the orders passed by the Courts below, raised the following points:-

- The respondents 1 to 3 set up oral lease agreement between 1st respondent and Perumal Gounder and in the absence of written agreement, the respondents 1 to 3 are not entitled to the benefit of the Act. It is his case that a lease for one year or more shall be by way of written instrument as per the provisions of Transfer of Property Act and in the case on hand, the respondents 1 to 3 are claiming leasehold right from 1966 for more than 40 years and hence, in the absence of written lease arrangement, the respondents 1 to 3 cannot claim themselves as tenant and seek benefit of the Act. In support of the said contentions, he



relied on the decision of the Hon'ble Apex Court in the case of

Harshad Govardhan Sondagar Vs International Assets Reconstruction Company Limited and Others reported in (2014) 6 SCC 1.

- The respondents 1 to 3 failed to produce any evidence to show that they had paid rent either to Perumal gounder or his legal representatives.
- As per the case of the respondents 1 to 3, the 1st respondent was tenant under Perumal Gounder and pending Original Petition filed by him, he became untraceable and therefore, respondents 2 and 3, his wife and son, were allowed to proceed with the original petition. Since original tenant is not dead or declared as dead by taking recourse to Civil Death Provision, the respondents 2 and 3 cannot be treated as his heirs entitled to benefit of Section 2(4)(ii)(c) of Madras City Tenants' Protection Act. The learned counsel further submitted that in the written arguments submitted by the respondents 2 and 3, they themselves admitted that application filed by them for their impleadment was filed only in their capacity as person in occupation of the property but not as heir of Muthusamy.



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6. The learned counsel appearing for the contesting respondents 2 and 3 submitted that Trial Court, by relying on oral and documentary evidence let in by the contesting respondents, came to the conclusion that they were tenants of the vacant site and the super structure standing there on was put up by 1st respondent in the year 1966 and the said factual finding is based on proper appreciation of evidence available on record. The learned counsel further submitted that order passed by the Court below allowing respondents 2 and 3 to get themselves impleaded and continue the original petition in the absence of 1st respondent was not challenged by the petitioner by way of revision and therefore, it is not open to him to question the competency of respondents 2 and 3 to continue the original petition.

7. The First legal submission made by the learned counsel for the petitioner is with regard to the absence of written agreement. It is the specific submission of the learned counsel for the petitioner that unless there is a written agreement, the benefit of the Act cannot be claimed.



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8. Section 2(4) of the Act defines the word “tenant” reads as follows:-

(4) 'Tenant' in relation to any land

(i) means a person liable to pay rent in respect of such land, under a tenancy agreement express or implied, and

[(ii) includes-

(a) any such person as is referred to in sub-clause

(i) who continues in possession of the land after the determination of the tenancy agreement,

(b) any person who was a tenant in respect of such land under a tenancy agreement to which this Act is applicable under sub-section (3) of Section 1 and who or any of his predecessors in interest had erected any building on such land and who continues in actual physical possession of such land and building, notwithstanding that-

(1) such person was not entitled to the rights under this Act by reason of the proviso to Section 12 of this Act as it stood before the date of the publication of the Madras City Tenants' Protection (Amendment) Act, 1972(Tamil Nadu Act 4 of 1972), or



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(2) a decree for declaration or a decree or an order for possession or for similar relief has been passed against such person on the ground that the proviso to Section 12 of this Act as it stood before the date of the publication of the Madras City Tenants' Protection (Amendment) Act, 1972(Tamil Nadu Act 4 of 1972) disentitled such person from claiming the rights under this Act, and

*(c)the heirs of any such person as is referred to in sub-clause (i) or sub-clause (ii)(a) or (ii)(b),
but does not include a sub-tenant or his heirs;]*

9. A reading of Section 2(4)(i) would make it clear that tenant means a person who is liable to pay rent in respect of the land, under tenancy agreement express or implied. Therefore, the Act recognizes not only the express tenancy agreement but also implied tenancy agreement. When the Act recognizes implied tenancy agreement, it can be inferred from the conduct of the parties and other attendant circumstances. Therefore, by virtue of the definition under the Act, existence of written agreement is not *sine qua non* for claiming benefit under the Act. In view of the same, the First submission of the learned counsel for the petitioner is not acceptable to this Court.



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10. The learned counsel for the petitioner by relying on the judgment of the Hon'ble Apex Court in **Harshad Govardhan Sondagar** case submitted that when the lease is for more than one year, the same shall be recognized only in case of registered instrument and any lease for more than one year by way of unregistered instrument or oral agreement cannot be recognized. The relevant observation in the above mentioned judgment reads as follows:-

“36. We may now consider the contention of the respondents that some of the appellants have not produced any document to prove that they are bona fide lessees of the secured assets. We find that in the cases before us, the appellants have relied on the written instruments or rent receipts issued by the landlord to the tenant. Section 107 of the Transfer of Property Act provides that a lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made “only by a registered instrument” and all other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession. Hence, if any of the appellants claim that they are entitled to possession of a secured asset for any term exceeding one year from the date of the lease made in



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his favour, he has to produce proof of execution of a registered instrument in his favour by the lessor. Where he does not produce proof of execution of a registered instrument in his favour and instead relies on an unregistered instrument or oral agreement accompanied by delivery of possession, the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, will have to come to the conclusion that he is not entitled to the possession of the secured asset for more than a year from the date of the instrument or from the date of delivery of possession in his favour by the landlord”.

11. In the above mentioned case, having regard to the object of SARFAESI Act, the Hon’ble Apex Court held that a claim made by a tenant under an unregistered instrument or oral agreement cannot be recognized for more than one year. The said judgment was rendered while considering the right of the lessees in respect of secured assets in the light of the provisions of SARFAESI Act. In the case on hand, the Madras City Tenants' Protection Act was enacted with the object to give protection to tenants of the site against eviction. The statement of objects and reasons for the Madras City Tenants' Protection Act reads as follows:-

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“In many parts of the City of Madras, dwelling houses and other buildings have, from time to time, been erected by tenants on lands belonging to others, in the full expectation that subject to payment of a fair ground rent, they would be left in undisturbed possession, notwithstanding the absence of any specific contract as to the duration of the lease or the terms on which the buildings were to be leased. Recently, attempts made or steps taken to evict a large number of such tenants have shown that such expectations are likely to be defeated. The tenants, if they are evicted, can at the best remove the superstructure, which can only be done by pulling down the buildings. As a result of such wholesale destruction, congested parts of the City will become more congested to the serious detriment of public health. In these circumstances, it is just and reasonable that the landlords when they evict the tenants should pay for and take the buildings. There may, however, be cases where the landlord is unwilling to eject a tenant if he can get a fair rent for the land. The Act provides for the payment of compensation to the tenant in case of ejectment for the value of any building which may have been erected by him or his predecessors-in-interest. It also provides for the settlement of fair rent at the instance of the landlord or tenant. Provision is also



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made to enable the tenant to purchase the land in his occupation subject to certain conditions”

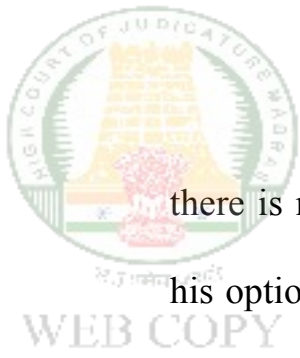
12. Therefore, the object of the Act is to confer benefit on the tenant to enable him to purchase the land in his occupation in case landlord choose to evict him.

13. The preamble portion of the Act reads as follows:-

“An Act to give protection to certain classes of tenants (in [municipal towns and townships] and adjoining areas in the [State of Tamil Nadu])

[WHEREAS, it is necessary to give protection against eviction to tenants, who in [municipal towns and townships] and adjoining areas in the State of Tamil Nadu have constructed buildings on others' lands, so long as they pay a fair rent for the land;]”.

14. This is a special enactment with the object of protection to the tenants and the definition of the word “tenant” recognize implied tenancy arrangement. Hence, when act itself recognize implied tenancy arrangement,



there is no impediment to consider the petition filed by the tenant exercising his option to purchase the land by relying on oral arrangement. Therefore, the above mentioned case law relied on by the learned counsel for the petitioner will not be helpful to advance his arguments.

15. The learned counsel for the petitioner submitted that respondents 1 to 3 failed to produce any document to show that they paid rent to the lessor and hence, lease arrangement has not been proved. In order to prove their case, the 2nd respondent, wife of 1st respondent was examined as P.W.1 and one Sethuraman, son of Muthuveeran was examined as P.W.2 and 41 documents were marked on the side of the respondents to prove their case. The respondents produced receipts for purchasing construction materials and the same was issued by one Muthuveeran, father of P.W.2 in the year 1966. His signature was identified and proved by P.W.2 . In fact, in the earlier round of litigation, in O.P.No.20 of 1977 filed by the 1st respondent, the said Muthuveeran was examined and he deposed in favour of contesting respondents and the same is referred to in the orders passed in O.P.No.20 of 1977 and the CMA.No.32 of 1979. The contesting respondents also produced



receipts for payment of electricity charges from 1966 down to the year 2000.

From the said receipts, it is clear that the electricity service connection in the super structure stands in the name of 1st respondent and contesting respondents have been paying the electricity charges. If the super structure is not constructed and owned by 1st respondent, absolutely there is no chance for the assessment of electricity service connection in the name of 1st respondent. The construction of building in suit site and electricity service connection in the name of 1st respondent lead to the inevitable inference that 1st respondent was allowed to put up super structure as he was lessee of site.

16. The Courts below, on appreciation of above mentioned documents, came to the conclusion that contesting respondents 1 to 3, proved that 1st respondent had put up superstructure in the petition mentioned site as a lessee. In the absence of any acceptable contra evidence on the part of the petitioner, I do not find anything to interfere with the said concurrent finding reached by the Courts below.

17. The petitioner has not examined any independent witness. The



interested testimony of the petitioner was rejected by the Courts below on the ground that he was not competent enough to deny the lease arrangement between 1st respondent and Perumal Gounder in the year 1966 as he purchased the suit site from official receiver at a later point of time. In fact, the petitioner as R.W.1 pleaded ignorance of rental arrangement between 1st respondent and Perumal Gounder. Hence, I do not find any error in the concurrent facts reached by the Courts below that 1st respondent, as a tenant of the site, had put up super structure in the petition mentioned land.

18. The next legal submission made by the learned counsel for the petitioner is, as per the admitted case of respondents 1 to 3, the 1st respondent was tenant under original owner of the land Perumal Gounder. During pendency of original petition filed by him, he became untraceable. Therefore, the respondents 2 and 3 were impleaded to continue the proceedings. The learned counsel submitted that since the death of 1st respondent is not proved, the respondents 2 and 3 cannot claim themselves as heirs of the 1st respondent.



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19. A perusal of Section 2(4)(i) of the Act would make it clear that “tenant” means a person liable to pay rent in respect of such land under tenancy agreement express or implied. A further perusal of Section 2(4)(ii)(c) of the Act would indicate such tenant includes his heirs. Now, the question is whether the respondents 2 and 3 can be treated as heirs of 1st respondent in the absence of proof of his death. As per the evidence available on record, the 1st respondent is untraceable.

20. The word “heir” is defined under Oxford English dictionary as follows:-

“A person who has the legal right to receive property, money or title when that person dies”.

21. The respondents 2 and 3 are wife and son of 1st respondent. Certainly, on death of 1st respondent, respondents 2 and 3 are entitled to



succeed to his estate as Class 1 heirs. Therefore, there is nothing wrong in treating them as heirs of 1st respondent. In the case on hand, the 1st respondent filed the original petition exercising option to purchase the land under the Act. When the matter was posted for recording evidence of P.W.1, he became untraceable. It is not in dispute that 2nd and 3rd respondents are his wife and son, who lived along with him at the relevant point of time. If we say the 2nd and 3rd respondents cannot be allowed to continue the original petition filed by the 1st respondent claiming benefit under the Act, it would amount to defeating the object of the Act which was passed with the main object of conferring benefit on the tenant or protecting tenant from eviction.

22. The word “heir” employed in Section 2(4)(ii)(c) shall be interpreted in order to achieve or further the object of the present enactment which is to give protection to the tenants. In order to advance the said object, the respondents 2 and 3 shall be treated as heirs of the 1st respondent in his physical absence to continue the original petition even though there is no evidence to prove his death.



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23. The question can be viewed in another angle also. The 1st respondent became untraceable in the year 2003. Hence, application was filed by the 2nd and 3rd respondents to implead themselves in order to continue the original petition. Till date, the 1st respondent remains untraceable. Hence, under Section 108 of Indian Evidence Act, civil death can be presumed and as on today, 2nd and 3rd respondents can be treated as legal representatives of 1st respondent. In such circumstances, the legal submission made by the learned counsel for the petitioner in this regard is also not acceptable to this Court.

24. In view of the discussions made earlier, I do not find any illegality or irregularity in the order passed by the Courts below enabling this Court to exercise the revisional jurisdiction. Accordingly, the Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

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Index : Yes / No



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To

1. The learned Principal District Judge, Namakkal
2. The learned Sub-Judge, Namakkal



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S.SOUNTHAR, J.

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