



S.A.(MD).Nos.676 of 2020 and 6 of 2021 and batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 02.08.2024

DELIVERED ON : 21.10.2024

quorum

THE HON'BLE MR.JUSTICE G.ILANGO VAN

S.A.(MD).Nos.676 of 2020 and 6 of 2021
and C.R.P.(MD).Nos.292 and 293 of 2021.
and C.M.P.(MD).Nos.7139 of 2020 and 58 of 2021

S.A.(MD).No.676 of 2020:

P.Karuppursamy ... Appellant/Respondent/Defendant

Vs.

1.J.Premasekaran

2.J.Jeyabaskaran ... Respondents/Appellants/Plaintiffs

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree dated 02.01.2020 passed by Sub Court, Palani, in A.S.No.49 of 2016 reversing the Judgment and Decree dated 08.08.2016 passed by District Munsif Court, Palani, in O.S.No.57 of 2002.

For Appellant : Mr.S.Anand Chandrasekar
for M/s.S.Sarvabhauman Associates
For Respondents : Mr.R.Janakiramulu



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S.A.(MD).No.6 of 2021:

Natrayan (Died)

1.Kannagi

2.N.Rajarajan

3.N.Rajendran

... Appellants/Respondents/Defendants

Vs.

1.J.Premasekaran

2.J.Jeyabaskaran

... Respondents/Appellants/Plaintiffs

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree dated 02.01.2020 passed by Sub Court, Palani, in A.S.No.50 of 2016 reversing the Judgment and Decree dated 08.08.2016 passed by District Munsif Court, Palani, in O.S.No.58 of 2002.

For Appellants : Mr.S.Anand Chandrasekar
for M/s.S.Sarvabhauman Associates
For Respondents : Mr.R.Janakiramulu

C.R.P.(MD).No.292 of 2021:

1.Kannagi

2.N.Rajarajan

3.N.Rajendran

... Petitioners/Appellants/Petitioner

Vs.



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1.J.Premasekaran

2.J.Jeyabaskaran

... Respondents/Respondents/Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 02.01.2020 passed by the Subordinate Court, Palani, in C.M.A.No.5 of 2016, confirming the fair and decreetal order dated 18.03.2015 passed by District Munsif Court, Palani, in C.T.O.P.No.1 of 2005.

For Appellants : Mr.S.Anand Chandrasekar
for M/s.S.Sarvabhauman Associates

For Respondents : Mr.R.Janakiramulu

C.R.P.(MD).No.293 of 2021:

P.Karuppusamy

... Petitioner/Appellant/Petitioner

Vs.

1.J.Premasekaran

2.J.Jeyabaskaran

... Respondents/Respondents/Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 02.01.2020 passed by the Subordinate Court, Palani, in C.M.A.No.6 of 2016, confirming the fair and decreetal order dated 18.03.2015 passed by



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District Munsif Court, Palani, in C.T.O.P.No.2 of 2005.

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For Appellant : Mr.S.Anand Chandrasekar
for M/s.S.Sarvabhauman Associates

For Respondents : Mr.R.Janakiramulu

COMMON JUDGMENT

These second appeals have been filed against the Judgment and Decree dated 02.01.2020 passed by Sub Court, Palani, in A.S.Nos.49 & 50 of 2016 reversing the Judgment and Decree dated 08.08.2016 passed by District Munsif Court, Palani, in O.S.Nos.57 & 58 of 2002.

Civil Revision Petitions have been filed against the fair and decreetal order dated 02.01.2020 passed by the Subordinate Court, Palani, in C.M.A.Nos.6 & 5 of 2016, confirming the fair and decreetal order dated 18.03.2015 passed by District Munsif Court, Palani, in C.T.O.P.Nos.2 & 1 of 2005.

2.The second appeal in S.A.(MD).No.676 of 2020 is pertaining to suit in O.S.No.57 of 2002 on the file of the District Munsif Court, Palani and S.A.(MD).No.6 of 2021 is pertaining to O.S.No.58 of 2002 on the file of the District Munsif Court, Palani.



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3.The averments in O.S.No.57 of 2002 in brief:

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To avoid the confusion, the parties will be referred by their name in stead of their rank before the trial Court in both the matters.

The plaintiff in O.S.No.57 of 2002 are Premasekaran and Jeyabaskaran. The defendant is Karuppasamy. This suit is for recovery of possession and directing the defendant to receive the compensation to be fixed by the Court and to hand over possession along with superstructure and for cost. The property situated in S.Nos.772/1, 772/2, 774/1 and 774/2, originally belongs to one Subramaniam Chettiyar and others. Among the owners, one Valliappa Chettiyar leased out the portion abutting the National Highway to various persons on monthly rent. At that time it was vacant site.

4.Karuppasamy's father was one among the tenants. The monthly tenant was Rs.29/-. The site measuring east west 10 feet and north south 13 feet situated in S.Nos.772/1 bearing No.39A. His father put up construction namely superstructure at his own cost and conducting saloon. Gradually the monthly rent was raised to Rs.30/-.



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5.Later another owner namely Lakshmana Chettiyar filed a suit in O.S.No.165 of 1977 before the Sub Court, Dindigul, seeking partition of the properties mentioned above. In that suit the plaintiffs namely Premasekaran and Jeyabaskaran's fathers were impleaded as defendants 50, 51 and 52. A preliminary decree for partition was passed on 29.06.1951 and final decree was also passed in I.A.No.995 of 1983 on 20.07.1954. In the final decree 9th defendant was allotted 14320 sq. feet in S.No.774/1B and 5000 square feet in S.No.774/1 and 2640 square feet in S.No.774/2B. Totally 21960 square feet was allotted. After the allotment, Sathappan sold separate portions to various persons. Later the plaintiffs in the suit namely Premasekaran and Jeyabaskaran purchased the portion, allotted to the Vimalendran and Alamelu on 19.08.1983 and from Sivaraman on 11.04.1990, from Ramakrishnan on 13.07.1987, the remaining portion. Similarly, the above said two cents was sold to Vimalendran. Later on 29.01.1997, they purchased 1742 square feet from Chandrakantha, Packia Lakshmi. On 31.05.1997, the plaintiffs purchased the property from Velu Gounder and Murugananda, measuring about 762 $\frac{3}{4}$ and 438 $\frac{3}{4}$ square feet through various sale deeds. By that way the entire property belongs to Sathappa Chettiyar. Now the plaintiff



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become the owners by virtue of the purchase. In I.A.No.138 of 1999 delivery was effected to the plaintiffs. By that way they acquired the right to evict the defendants. The superstructure is now is worth about Rs.5,000/-. Plaintiffs are ready and willing to pay compensation for the superstructure and demanded possession without superstructure on 25.08.2001. The defendant received the notice, sent the reply containing false averments. So the suit is laid for the above said relief.

6.Written statement filed by the defendant, which containing the following averments:

Originally the defendants namely Karuppasamy's father by name Patta Navithan become a tenant under one Valliappa Chettiyar in 1970. Valliappa Chettiyar related to Uthama Chettiyar. Original monthly rent was Rs.15/-. After constructed the superstructure running barber shop. After his father's death, he is continuing the business. Now the monthly rent is Rs.30/-. After the death of Valliappa Chettiyar his son namely Soundararajan managed the property.



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7.Suit in O.S.No.587 of 1981 was filed by one Subramanian Pandithan and Ponnusamy stating that they purchased the property from the original owners and for recovery of possession. That suit was dismissed. Against which they filed appeal and second appeal. All those appeals were dismissed. Now Ponnusamy filed a suit for declaration and consequential possession relating to the suit property in O.S.No.710 of 1998. It is pending.

8.The defendant was not a party in the above said proceedings. So the title of the plaintiff must be proved by them. The present market value of the property is not less than Rs.50,000/-. He does not own any other property for his business purpose. They expressed their willingness to purchase the vacant site. But, the plaintiffs are not willing. Simultaneously, the defendants also filed an application under Section 9 of the City Tenants Protection Act and to purchase the vacant site.

9.On the basis of the above said pleadings, the trial Court has formulated the following issues:



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1. Whether the plaintiffs is entitled for possession in respect of schedule property?
2. Whether Court fee paid by the plaintiffs is correct or not?
3. To what other relief?

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10.To substantiate the case, on the side of the plaintiffs PW1 was examined and 18 documents were marked. On the side of the defendant DW1 was examined and 6 documents were marked.

11.After full trial, the trial Court dismissed the suit granting liberty to the plaintiff to initiate action under the provisions of the Tamil Nadu Lease and Rent Control Act, 1960, by the Judgment and decree dated 08.08.2016. Against which A.S.No.49 of 2016 was filed before the Sub Court Palani. Appeal was allowed. The judgment and decree of the trial court were set aside. The cost of superstructure was assessed as Rs.1,00,000/- and directed the plaintiffs to deposit Rs.1,00,000/- within a period of three months. After depositing, the defendants were directed to hand over the possession by receiving the deposited money. Against which, this second appeal is preferred by the plaintiff.



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12.The averments of the plaint filed in O.S.No.58 of 2002 in brief:

The very same plaintiffs in O.S.No.57 of 2002, namely Premasekaran and Jeyabaskaran filed suit in O.S.No.58 of 2002 against one Velu. He died pending the suit. His legal representative was brought on record as second defendant by name Natrayan. The plaint pleadings is the repetition of the averments made in O.S.No.57 of 2002. Here the tenant's name is Velu. The original rent was Rs.7/-. The measurement is east west 7 feet and north south 30 feet in S.No.772/1. The tenant was doing laundry business. With regard to the purchase the very same pleadings are repeated, which is not required now to be repeated.

13.It is further stated that in pursuance of the delivery order, now they got right to evict the defendant from the premises and according to them the market value of the superstructure was estimated as Rs.5,000/-. The relief is same relief.

14.Statement filed by the defendants with the following averments:

With regard to the acquirement of title over the properties



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the defendants have no knowledge. But the tenantship and the original rent are admitted. The plaintiff issued a lawyer notice demanding vacant possession. Suitable reply was given and the present value of the superstructure is Rs.50,000/-. He does not own any property for running the business. He wanted to purchase the vacant site. He expressed the willingness in the reply notice also. But without waiting, they filed the suit. The defendants also filed application under Section 9 of the Suit Tenancy Protection Act, to purchase the vacant site.

15. On the basis of the above said pleadings, the trial Court has formulated the following issues:

1. Whether the plaintiffs is entitled for recovery of possession in respect of schedule property?
2. Whether the plaintiffs is entitled for the relief under City Tenants Protection Act?
3. Whether Court fee paid by the plaintiffs is correct or not?
4. To what other relief?



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16.To substantiate the case, on the side of the plaintiffs PW1 was examined and 18 documents were marked. On the side of the defendant DW1 was examined and 5 documents were marked.

17.After full trial, the trial Court dismissed the suit granting liberty to file petition under the provisions of Tamil Nadu Lease and Rent Control Act, 1960. Against which, A.S.No.50 of 2016 was filed before the Sub Court, Palani. That was allowed. Suit was decreed by assessing the compensation amount for the superstructure at Rs.1,00,000/-. Plaintiff was directed to deposit the above said amount. The defendant was directed to vacate the premises and hand over the possession by receiving the deposited money. Against which this second appeal is preferred by the defendant.

18.The facts in C.R.P.(MD).Nos.292 & 293 of 2021 are in brief:

As noted in the pleadings the defendant in the above O.S.No.58 of 2002 Natrayan filed O.P.No.1 of 2005 before the District Munsif, Palani under Section 9 of the Tamil Nadu City Tenants



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Protection Act, repeating the allegation made in the written statement in the suits. Apart from that it is also stated by him that for the reasons stated, the petition is filed seeking direction to the plaintiffs in the original suit namely Premasekaran and Jeyabaskaran to sell the suit site to them. Fair price to be fixed by the Court. On the very same reasoning C.T.O.P.No.2 of 2005 was filed by Karuppa Samy, who is the defendant in O.S.No.57 of 2002 seeking the very same relief. Counter in both the matters are the repetition of the plaint averments in O.S.Nos.57 and 58 of 2002, which need not be repeated here.

19.Apart from those facts, the further fact stated by the plaintiffs are that they are ready to pay Rs.5,000/- as cost towards superstructure. The property is located in a heavy business area, which is having commercial value. They are having properties adjacent to the present property. For evicting the other tenants also, suits were filed. They proposed to build commercial blocks in that area. So they are not willing to sell the property to the tenants. If any order is passed it will cause serious prejudice to their interest.



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20.The very same averments is made in the counter affidavit in C.T.O.P.No.1 of 2005 also. C.T.O.P.No.1 of 2005 was tried by the District Munsif Court, Palani and by the order dated 18.03.2015, dismissed the same. Against which, C.M.A.No.5 of 2016 was filed before the Sub Court, Palani. It dismissed the appeal dismissing the order passed by the trial court. The same was the result in C.T.O.P.No.2 of 2005 also. Against which C.M.A.No.6 of 2016 was filed. Against the dismissal order tenants are before this Court by filing C.R.P.(MD).Nos. 292 and 293 of 2021.

21.Since the common substantial question of law and facts arises in all the matters, they were taken together for discussion and judgments and orders as the case may be. Arguments also heard in common.

22.Perusal of records shows that the suit for ejectment were filed and within a month from the date of receipt of summons, the petitions were filed by the tenants under Section 9 of the City Tenants Protection Act. The trial Court tried both the matters separately. The suit was



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contested by the trial court on 08.08.2016. But, C.T.O.P.No.2 of 2005 was decided on 18.03.2015. Much before the date of the Judgment in the suit. Similarly in respect of the C.T.O.P.No.1 of 2005, it was decided on 18.03.2015. The suit was decided on 08.08.2016. The trial court has taken up C.T.O.P.Nos.1 and 2 of 2005 is for consideration and decision. It was rightly done so. Because it is a fundamental principal that petition filed under Section 9 of the Act must be decided first, even though the suit is filed and pending for ejectment. After dismissal of both the petitions as mentioned above Civil Miscellaneous Appeals were preferred and they were dismissed. And appeal against the judgment and decree of the trial court in ejectment suit were also heard and separate judgments were passed reversing the judgment and decree of the trial Court allowing the suit for ejectment and directing the plaintiff to pay compensation amount as mentioned above. So at the time of the admission in both the second appeals the following substantial question of law were framed, which are intrincsticly connected with the civil revision petitions. Answering the substantial question of law will answer and dispose the Civil Revision Petitions also.



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23.Substantial question of law framed in S.A.(MD).No.676 of 2020:

1. Whether the Courts below were right in concluding that the appellants/tenants are not entitled to the benefit of Section 9 of the Madras City Tenants Protection Act, 1921, on the ground that they are in arrears of rent?
2. Whether the Courts below were right in overlooking the provisions of Section 4(3) of the Madras City Tenants Protection Act, 1921 which provides for set off?

24.Substantial question of law framed in S.A.(MD).No.6 of 2021:

1. Whether the Lower appellate court was right dismissing the application filed under Section 9 of the City Tenants Protection Act on the ground that the tenant is in arrears of rent?
2. Whether the lower appellate Court was right in overlooking the provisions of Section 4(iii) of the City Tenants Protection Act, which provides for set off of rents payable by the tenant?

25.Now coming to the substantial question of law framed. The trial



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court as well as the appellate court recorded the finding that the tenants in both the matters did not take any proper steps either to pay the rent or deposit the rent. It has been stated that they were not in position to pay the rent without knowing who is entitled for the same. But whether the explanation offered by the tenants is acceptable is a matter for consideration. Before that we will go to the finding of fact recorded by the trial Court in C.T.O.P.No.1 of 2005. The petitioner in C.T.O.P.No.1 of 2005 has admitted during the course of evidence that he was running the business for about 40 years. But, he did not pay any rent. Similarly, the petitioner in C.T.O.P.No.2 of 2005 also has stated that his father expired some 25 years ago. So during his life time none came forward claiming rent. He deposits arrear of rent for 7 years and that too was deposited to the credit of one Soundararajan, who alleged to have stated that he purchased the property. So on the basis of the above said admission, the trial court as well as the appellate court recorded a finding that they cannot be construed as tenant.

26.In the light of the above said finding of fact and the right of tenants to maintain the petition and the learned counsel for the appellant



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submitted that there is no dispute with regard to the superstructure belongs to both the tenants as per section 9 of the Act, it is the duty of the trial Court to undertake the exercise of finding out the limited extend required by a tenant for a convenient enjoyment. He would further submit that he satisfied with the ingredients of Section 9. There was no plea of default of payment of rent by the landlord. Even if there is any arrears of rent, there is no bar to claim the protection under Section 9. He would further submit that only a limited extend was occupied by both the tenants. No prejudice would be caused to the landlord for erecting any commercial enterprises as he now thinks. Now he wants to distinguish the Judgment relied by the trial Court as well as the appellate Court in the case in *Alagirisami Naidu Vs. M.R.S.Manickavelu Chettiar and Others* reported in 77 L.W. 468. Per contra the learned counsel for the respondent would submit that the tenants have not paid rent properly. So they cannot claim the protection under Section 9 of the Act.

27.Now we will resolve the first issue whether as per section 9 is absolute right is conferred upon the tenant to claim the sale of the



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property. Now it has been held that section 9 is only a statutory right conferred upon the tenant and it is a discretionary power of the court. So it is not a absolute right conferred upon the title. So when discretionary relief is sought for it is the duty of the tenant to satisfy not only the requirement of law, but also must satisfy that his conduct confers such a right upon him.

28.We will go to the Judgment of the Honourable Supreme Court passed in the case of ***Bharat Petroleum Corporation Ltd. And another Vs. N.R.Vairamani and another*** reported in ***2004 (5) CTC 74***, paragraph Nos.14, 15 and 16 of the Judgment, which reads as under:

“14.Once a suit is filed by the landlord for the eviction of a tenant from land the tenant has right to apply to the court within one month from the date of the service of summons for the issuance of order directing the landlord to sell the whole or part of the extent of land as specified in the application to him for a price to be fixed by the court. On making of such an application the court is under a mandatory duty to first decide the minimum extent of the land "which may be necessary for the convenient enjoyment by the



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tenant". The court must hold enquiry to determine whether the tenant requires the land for his convenient enjoyment, and if so, what area or portion of the land would be necessary for his convenient enjoyment. The court may on the facts of a particular case come to the conclusion that the tenant does not require any portion of the land and in that event it may reject the application and decree the suit for ejectment and direct the landlord to pay compensation to the tenant. But if the court finds that the tenant needs the whole or any portion of the demised land for "convenient enjoyment", the court has to fix the price of the land on the basis of market value of three years immediately preceding the date of the order. The court may thereupon direct the tenant to deposit the amount so determined within a specific period being less than three months and not more than three years. If the tenant fails to pay the amount so determined, the tenant's application shall stand dismissed.

15. [Section 9](#) confers a privilege on a tenant against whom a suit for eviction has been filed by the landlord but that privilege is not absolute. [Section 9](#) itself imposes restriction on the tenant's right to secure conveyance of only such



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portion of the holding as would be necessary for his convenient enjoyment. It creates a statutory right to purchase land through the medium of court on the fulfillment of conditions specified in Section 9 of the Tenants Act. It is not an absolute right, as the court has discretion to grant or refuse the relief for the purchase of the land. In [Swami Motor Transport \(P\) Ltd. v. Sri Sankaraswamigal Mull](#) (1963 Supp (1) SCR 282) this Court considered the question whether the right of a tenant to apply to a court for an order directing the landlord to sell the land to him for a price to be fixed by it under Section 9 of the Tenants Act is a property right. The court held, that the law of India does not recognize equitable estates, a statutory right to purchase land does not confer any right or interest in the property. The right conferred by [Section 9](#) is a statutory right to purchase land and it does not create any interest or right to the property. The tenant's right to secure only such portion of the holding as may be necessary for his convenient enjoyment is equitable in nature. Under the common law a tenant is liable to eviction and he has no right to purchase the land demised to him at any price as well as under the [Transfer of Property Act](#). The only right of a tenant who may



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have put up structure on the demised land is to remove the structure at the time of delivery of possession on the determination of the lease. [Section 9](#) confers an additional statutory right to a tenant against whom suit for ejectment is filed to exercise an option to purchase the demised land to that extent only which he may require for convenient enjoyment of the property. The tenant has no vested right in the property instead; it is a privilege granted to him by the statute which is equitable in nature.

16. Whenever an application is made by a tenant before the court for issuance of direction to the landlord for the sale of the whole or part of the land to him, the court is under a mandatory duty to determine the minimum extent of the land which may be necessary for the convenient enjoyment by the tenant. This determination can obviously be made only after an enquiry is held by the court having regard to the area of the demised land and the extent of superstructure standing thereon, and the tenant's need for the land for the beneficial enjoyment of the superstructure which he may have constructed thereon. The enquiry presupposes that the tenant making the application has been in the occupation of the land and the superstructure



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wherein he may be either residing or carrying on business, and on his eviction he would be adversely affected. The policy underlying Section 9 of the Tenants Act is directed to safeguard the eviction of those tenants who may have constructed superstructure on the demised land, so that they may continue to occupy the same for the purposes of their residence or business. [Section 9\(1\)\(b\)](#) ordains the court to first decide the minimum extent of the land which may be necessary for the convenient enjoyment by tenant, it therefore contemplates that the tenant requires the land for the convenient enjoyment of the property. If the tenant does not occupy the land or the superstructure or if he is not residing therein or carrying on any business, the question of convenient enjoyment of the land by him could not arise. The court has to consider the need of the tenant and if it finds that the tenant does not require any part of the land, it may reject the application and direct eviction of the tenant, in that event the landlord has to pay compensation to the tenant for the superstructure.”

29.By pointing out these guidelines, he would submit that the



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above said exercise was not undertaken either by the trial Court or by the appellate Court. It has simply dismissed the petition stating that the tenant has not paid the rent. So he cannot be construed as a tenant, who claim protection under the Act. As mentioned above, he wants to distinguish 77 L.W 468.

30.As pointed out in Bharath Petroleum Corporation Limited Vs. N.R.Varamani cited supra, judgments of the courts cannot be and should not be taken as statute. Because the facts may differ. Only based upon the facts, decisions are rendered. So now we will see what are the facts available in 77 L.W. 468 which are different from the present issue. And he is referring to the following paragraph for distinguishing the fact.

“The question that I have to consider in this appeal is whether the appellant is a tenant under Section 2(4) of the Act. It is true that the plaintiff came with a definite case that there was a tenancy agreement. But, the appellant himself pleaded that he was not a tenant. On the other hand, he contended that he purchased the property from another co-owner and entered into possession of the property and put up a superstructure with the knowledge of all the co-sharers. When he himself pleaded that he was not a



tenant, the lower Courts were right in holding that he was not entitled to the benefits of the Act. Under S.2(4) of the Act, a tenant of land is a person liable to pay rent in respect of such land under a tenancy agreement express or implied. Here the appellant has not proved whether he paid rent either to the plaintiff or to the other co-sharers. I agree with the finding of the lower Court that the appellant is not a tenant.”

31. So according to him in that case the tenants pleaded that he purchased the property from co-owner and put up superstructure. Only on that ground such a decision was rendered. Here, there is no such issue. The ownership over the property is not disputed by him.

32. Even if we consider that they were not aware of the purchasers namely the respondents herein, they have not intimated about the purchase. But it is highly unthinkable that for several decades the tenants were enjoying the property without even minding to trace out or search the landlord. They simply enjoyed the property for several decades. This shows that their conduct is not fit to the genuine and bonafideness. Now



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in this context we will go back to the definition clause under the provisions of the Madras City Tenants Protection Act. The word tenant is defined under Section 4 as

“4)Disposal of suits for ejectment.- (1) In a suit for ejectment against a tenant in which the landlord succeeds, the court shall ascertain the amount of compensation, if any, payable under section 3 and the decree in the suit shall declare the amount so found due and direct that, on payment by the landlord into court, within three months from the date of the decree, of the amount so found due, the tenant shall put the landlord into possession of the land with the building and trees thereon.

(2) In an application under section 41 of the Presidency Small Cause Courts Act, 1882(Central Act XV of 1882), in which the landlord succeeds, the court shall ascertain the amount of compensation payable under section 3 and shall pass an interim order declaring the amount so found due and stating that, on payment by the landlord into court within three months of the date of the said interim order of the amount so found due, the landlord shall be entitled to the order contemplated by section 43



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of the Presidency Small Cause Courts Act, 1882(Central Act XV of 1882).

(3) If in such suit or application the court finds that any sum of money is duo by the tenant to the landlord for rent or otherwise in respect of the tenancy, the court shall set off such sum against the sum found due under sub-section (1) or sub-section (2), as the case may be, and shall pass a decree or interim order declaring as the amount payable to the tenant on ejectment the amount, if any, remaining due to him after such set-off.

(4) If the amount found due is not paid into court within three months from the date of the decree under subsection (1) or of the interim order under sub-section (2), or if no application is made under section 6, the suit or application, as the case may be, shall stand dismissed, and the landlord shall not be entitled to institute a fresh suit for ejectment, or present a fresh application for recovery o f possession for a period of five years from the date of such dismissal.”

33.That cannot be the interpretation to say the person who has not past the rent will not come under the definition of tenant. It is not denied by both



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sides that the appellants are tenants. So we need not give any importance to the findings of the trial Court. But, whether the appellants are entitled for discretionary relief is the only point to be considered in the light of the above said fact that the appellants are in occupation for more than several decades without even paying a single pie towards the rent. We will refer to the rights and liabilities of the lessee or tenant under Section 108 of the Transfer of Property Act.

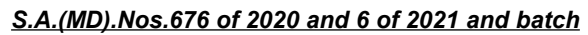
34. Section 108 (1) Transfer of Property Act is extracted hereunder:

“108. Rights and liabilities of lessor and lessee. —

.....

(1) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf;”

35. So it is the duty of the lessee to pay the rent not only paying rent, but also tender at the proper time and place. So by their own conduct the appellants have made by themselves ineligible to claim the protection under Section 9 of the Act.



They have not even disclosed what is the barest minimum, since it is admitted by themselves that they have occupied only smaller extent running barber shop and laundry shop etc. So there is no question of minimum requirement arises here. Either they must be permitted to occupy the extent, now they are in occupation or they must be evicted. Absolutely, there is no scope for determining any lesser extent or convenient extent. So this may not serve any purpose.

37. Now regarding the claim of the respondent or the reason in ejectment they say that they went to put up commercial complex in that place considering the location of the property. So as mentioned in the plaint it is seen that it is located in the prime area. So as a landlord they cannot be prevented from developing the property. So considering all those aspects, I am of the considered view that the request or the prayer made by the appellants is not equitable in nature. The discretion cannot be exercised in their favour. On that ground the order passed by the Courts requires no interference and the substantial question of law are answered accordingly. Both the appeals and revisions fail.



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38. Accordingly, both second appeals stand dismissed and both civil revision petitions are also stand dismissed. The Judgment and Decree passed by the appellate Court are hereby confirmed. The order passed in above said C.M.A.Nos.5 & 6 of 2016 on the file of the Subordinate Court, Palani are also hereby confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

21.10.2024

Index : Yes / No
Internet : Yes / No
TM

To

1. The Subordinate Judge, Palani.
2. The District Munsif, Palani.
3. The Section Officer, E.R. Section/V.R. Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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S.A.(MD).Nos.676 of 2020 and 6 of 2021
and C.R.P.(MD).Nos.292 and 293 of 2021.

21.10.2024