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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 21.11.2024

PRONOUNCED ON : 03.12.2024

CORAM

THE HONOURABLE MR.JUSTICE **N.SENTHILKUMAR**

C.R.P.(MD)(PD)Nos.1168 and 1519 of 2016
and

C.M.P.(MD)Nos.5721 of 2016, 10605 and 10606 of 2018

C.R.P.(MD)No.1168 of 2016:-

The Present Registrar in-charge,
Alagappa University,
Karaikudi Town,
Karaikudi Taluk, Sivagangai District.

... Petitioner

vs.

R.M.Subramanian

...Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the fair and decreetal order dated 06.02.2016 made in C.M.A.No.9 of 2014 on the file of the Subordinate Court, Devakottai, reversing the fair and decreetal dated 26.09.2013 made in I.A.No.515 of 2012 in O.S.No.145 of 2009 on the file of the District Munsif-cum-Judicial Magistrate Court, Karaikudi.



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For Petitioner :Mr.M.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates
For Respondent :Mr.R.Sundar Srinivasan

C.R.P.(MD)No.1519 of 2016:-

The Present Registrar in-charge,
Alagappa University,
Karaikudi Town,
Karaikudi Taluk, Sivagangai District.

... Petitioner

vs.

Mani

...Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the fair and decreetal order dated 06.02.2016 made in C.M.A.No.10 of 2014 on the file of the Subordinate Court, Devakottai, reversing the fair and decreetal dated 26.09.2013 made in I.A.No.514 of 2012 in O.S.No.143 of 2009 on the file of the District Munsif-cum-Judicial Magistrate Court, Karaikudi.

For Petitioner :Mr.M.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates
For Respondent :Mr.R.Sundar Srinivasan



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COMMON ORDER

Both the Civil Revision Petitions have been filed by the Registrar of Alagappa University, Sivagangai, who is the plaintiff in O.S.Nos.143 and 145 of 2009 on the file of the District Munsif-cum-Judicial Magistrate Court, Karaikudi, as against the order, dated 06.02.2016, made in C.M.A.Nos.9 and 10 of 2014 on the file of the Subordinate Court, Devakottai, and are therefore taken up for hearing and decided together.

2.The case of the Revision Petitioner is that the suit property originally belonged to Dr.Alagappa Chettiar Education Trust, Karaikudi and the same was transferred as gift to the Government of Tamil Nadu for the purpose of establishing a University. Subsequently, the Government of Tamil Nadu transferred the properties including the suit property to Alagappa University by way of grant vide G.O.Ms.No.761, dated 03.06.1986.

3.As the respondents herein had trespassed into the suit property and put up superstructures, the Revision Petitioner herein originally filed suits in O.S.Nos.37



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and 38 of 2003 for the relief of recovery of possession among other reliefs. The said suits as well as the first appeal ended in favour of the Revision Petitioner. In the Second Appeals filed by the respondents herein, this Court has allowed the Second Appeals on the ground that without complying with the mandatory provisions under the Tamil Nadu City Tenants Protection Act, 1921 (hereinafter referred to as “the Act”), the suits were not maintainable and liberty was given to the Revision Petitioner to file afresh by following the mandatory provisions under the Act.

4.Subsequently, the Revision Petitioner, as plaintiff, filed the suits in O.S.No.143 and 145 of 2009 on the file of the District Munsif-cum-Judicial Magistrate Court, Karaikudi. During the pendency of the suits, the respondents herein filed interlocutory applications under Section 9 of the the Tamil Nadu City Tenants Protection Act, 1921, for a direction to sell the suit property to them. The learned trial Judge by order dated 26.09.2013, observed that for maintaining the application filed under Section 9 of the Act, the respondent herein/the applicant has to satisfy that:



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(a) the applicant must be in possession and enjoyment of the suit property as a tenant;

(b) the applicant must have constructed the superstructure over the suit property;

(c) the owner of the land must have filed a suit for eviction; and

(d) the applicant must have filed a petition under Section 9 of the Act within a period of one month from the date of receipt of suit notice.

5. While deciding the first issue, the trial Court had considered the suit filed by the University in O.S.Nos.37 and 38 of 2003 and concluded that the respondents herein have been identified as tenants. While deciding the second issue, though no document was filed to sustain that they have constructed the building and put up superstructures, the sworn affidavits filed by them, had contentions that a Mangalorean tiled house, a tea shop apart, an asbestos sheet-car shed along with a Well and an overhead tank had been constructed. While



deciding the third issue, the trial Court had considered the fact that the petitioner herein filed suits in O.S.No.143 of 2009 and O.S.No.145 of 2009 for recovery of possession. While deciding the fourth issue, the trial Court had come to the conclusion that the suit was filed on 25.11.2009 and summons were served on the individual on 13.12.2009. As per Section 9 of the Act, an application has to be filed within a period of 30 days. The respondents/individuals have filed applications under Section 9 of the Act only on 19.03.2010. Hence, there is a huge delay, as against the contemplated period of 30 days under Section 9 of the Act. The trial Court also came to the conclusion that the respondents/individuals have not filed any application for condonation of delay.

6.Upon deciding the issues as above, the trial Court dismissed both the interlocutory applications filed by the respondents herein. Challenging the above orders made in I.A.No.515 of 2012 in O.S.No.145 of 2009 and I.A.No.514 of 2012 in O.S.No.143 of 2009, the respondents herein filed their appeals in C.M.A.Nos.9 and 10 of 2014 before the Subordinate Court, Devakottai.

7.While considering whether Section 9 of the Act could be invoked, the



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appellate Court by referring to Section 1(6) of the Act had held that the property in question does not fall under the jurisdiction as contemplated under Section 1(6) of the Act. The appellate Court had considered that the property in dispute, is a grant by the State of Tamil Nadu as per G.O.No.761, dated 03.06.1986. The appellate Court also considered the observations made by this Court in the Second Appeals filed by the respondents by referring Ex-P1 document, which reads as follows:

“The plaintiff is bound to give notice under Section 11 of the Chennai City Tenants Protection Act, 1923 prior to the institution of the present suit.”

8.Finally, the appellate Court had set aside the order passed by the trial Court and allowed the appeals and directed the trial Court to appoint a Commissioner to ascertain the area which is required for the appellants/respondents herein and also for the purpose of fixation of market value in case a compensation was to be awarded. Challenging the said orders, the present Revision Petitions have been filed by the plaintiff.



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9. Heard Mr.M.Ajmal Khan, learned Senior Counsel appearing for the Revision Petitioner and Mr.R.Sundar Srinivasan, learned Counsel appearing for the respondent in both cases.

10.Mr. M. Ajmal Khan, learned Senior Counsel appearing for the Revision Petitioner contended that the first and primary objection with regard to the finding of the appellate Court is that the appellate Court has miserably failed to note that the respondents/individuals had not established that they are tenants under the Revision Petitioner/University. The learned Senior Counsel for the Revision Petitioner further contended that as per Section 9 of the Act, the individuals ought to have filed applications within a period of one month from the date of receipt of notice and submitted that when the suit was filed on 25.11.2009 and the summons were served on the individual on 13.12.2009, the Section 9 application was filed only on 19.03.2010. The learned Senior Counsel further contended that the individuals have not filed any application for condonation of delay, in filing the application under Section 9 of the Act.

11.The learned Senior Counsel vehemently contended that the first



appellate Court had wrongly interpreted the filing of the suit in O.S.Nos.143 and 145 of 2009 by the University and held that the Revision Petitioner/plaintiff indirectly and impliedly has admitted to the territorial jurisdiction as well as the application under Section 9 of the Act pertaining to the suit property. The learned Senior Counsel further contended that when an application is filed under Section 9 of the Act, then in the event of any delay in filing the application under Section 9 of the Act, a condone delay application ought to have been filed by the individual, whereas, there is no material to show that the individual has filed an application to condone the delay and taking cognizance is without jurisdiction.

12.The learned Senior Counsel also submitted that the appellate Court neither discussed nor considered the issue of whether the application filed under Section 9 of the Act was filed within time or whether there was a delay as contended by the University. The learned Senior Counsel for the petitioner would contend that the order passed by the appellate Court is *per se* illegal and it has to be treated as null and void.

13.In support of his contentions, the learned Senior Counsel for the



Revision Petitioner relied on the following judgments:

(a) This Court in **2023 (5) CTC 269** between **Abdul Razack (died) and others vs K.A.S.Ramdas (Died) and others**, held as follow:

“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 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.



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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 subsection (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 subsection (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’



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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."

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 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



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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 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.”

14. The learned Counsel appearing for the respondent contended that the University did not issue a notice as contemplated under Section 11 of the Act by giving three months' time to the individual to refute the contentions made in the notice as per Section 9 of the Act and considering the case of the respondents herein, the appellate Court has rightly allowed the appeals filed by them. The



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learned Counsel for the respondent also submitted that once the property is given by way of a grant, then the petitioner cannot file an application under the Tamil Nadu City Tenants Protection Act, 1921 and submitted that the same needs no interference by this Court and prayed to dismiss these Revision Petitions.

15. In support of his contentions, the learned Counsel for the respondent relied on the following judgments:

(a) This Court in *AIR 1970 Mad 27* between *State of Madras vs T.M.Oosman Haji and others*, held as follows:

“We hold that it is open to the State to put forward successfully the contention that the express stipulation found in the terms of the grant, such as that the lessee should surrender possession after the expiry of the term of demise etc. can take effect, notwithstanding the provisions of the Madras Cultivating Tenants Protection Act. It is also our view that it is not necessary for the Madras City Tenants Protection Act to contain any provision excluding the State from the operation for such an exclusion from the operation of any particular enactment may, be found in a different enactment covering the same field. In so far as the Madras City Tenants Protection Act provides for the control over the eviction of cultivating tenants, though the relevant section excluding its operation in the case of lands belonging to certain specified bodies are concerned does not expressly refer to the exclusion of lands belonging to the State the Government Grants Act confers that exclusion.”



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(B) This Court in *AIR 1985 Mad 154* between *N.V.Panchapagasan vs Swaminathan*, held as follows:

4. If is, however, seen even from the principles laid down in the decision relied on by the learned counsel for the petitioner that in considering the question of rest judicator, the Court is not concerned with the correctness or otherwise of the judgment rendered. A finding rendered on a fact in issue by a competent Court in earlier proceedings should be regarded as having been finally decided in a subsequent litigation raising the same issue between the same parties. Even if a mixed question of fact and law had been determined between the same parties, that may not also be questioned in the subsequent proceedings. Where the decision is on a question of law, namely, interpretation of a statute, that would also operate as rest judicator in a subsequent proceedings between the same parties where the cause of action is also the same. In this case, the extent of the land as well as its price were the subject-matter of the earlier proceedings and the Courts which decided those questions had jurisdiction to decide them. The questions decided were essentially factual. Even on the basis that something turned upon the interpretation of the words, "the date of the order", the questions decided earlier by the Courts would be mixed questions of law and fact and as pointed out by the Supreme Court in *Mathura Prasad Sarjoo Jaiswal v. Dossibai N. B. Jeejeebhoy*, such admixed question of law and fact determined in the earlier proceedings between the same parties may not, for the reason that it had been decided in an earlier proceeding, again be questioned. In the decision in *Panchapakesan v. Swaminathan* (1976) 1 Mad U 338, Ramaprasada Rao, J., (as he then was) has affirmed the decision of the Courts below and found that 24-3-1965 is the relevant date, as the respondent was first held entitled to claim the benefits of the Act then. Even on the assumption that it was an erroneous decision, the parties should be held to be bound by the same. The circumstance that the decision of



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Ramprasada Rao., (as he then was in Panchapakesan v. Swaminathan (1976) 1 Mad U 338 was not accepted by the Division Bench in Arasan Chettiar v. Narasimhalu Naidu's Estate Trust would not enable the petitioner to contend that on that account, it ceases to operate as rest judicator. A final binding adjudication inter partes on a mixed question of fact as well as law, as we have in this case, will not in any manner be affected by any subsequent decision not accepting the principle laid down ' in the former decision. (Vide Sadhu Charan v. H. Naick,). The correctness or otherwise of a decision viewed in the light of a subsequent decision has really no bearing upon the question whether it would operate as rest judicator or not. All that is necessary to be established is that the matter was directly and substantially in issue in the former proceeding and that it had also been heard and finally decided. To accept the stand of the petitioner that by reason of the decision in Arasan Chettiar v. Narasimbalu Naidu's Estate Trust , the prior decision in Panchapakesan v. Swaminathan (1976) 1 Mad LJ 338 would not operate as rest judicator, is to undo and alter the rights of parties settled by an adjudication of a Court of competent jurisdiction. If the binding character of a decision is made to fluctuate with every change in the current of authority, the Court machinery would be reduced to one for unsettling the rights rather than giving effect to rights already ascertained. Under those circumstances, the lower appellate Court was right in its conclusion that the prior adjudication in C. R. P. No. 2954 for 1974 operated as rest judicator and would preclude the petitioner from contending that a predetermination or re-fixation of the price should be made contrary to the earlier adjudication. In view of this, it is really unnecessary to consider any other question. Consequently, the order of the lower appellate Court is confirmed and the Civil Revision Petition is dismissed. There will be, however, no order as to costs."

16. Having given anxious consideration to the arguments advanced by the



learned Senior Counsel for the Revision Petitioner and the learned Counsel appearing for the respondent, it is not in dispute that the present suit had a history of an earlier suit filed by the University for recovery of possession as against the respondents herein in O.S.Nos.37 and 38 of 2003. Aggrieved by the judgment and decree, which was awarded by the trial Court in favour of the University, the respondents thereon filed appeals before the first appellate Court. The first appellate Court had confirmed the judgment and decree passed by the trial Court. As against the judgment and decree of the first appellate Court, the respondents have filed Second Appeals before this Court. The Second Appeals were allowed and an observation was made by this Court that the University ought to have taken out an application only under the Tamil Nadu City Tenants Protection Act. In the Second Appeals, this Court has also recorded that the respondents herein had paid rent in the year 1987.

17.The learned Senior Counsel contended that even assuming for a moment that the respondents were competent enough to file an application under Section 9 of the Act, the respondents will have to first, establish that they are the tenants under the University and they had paid rent. The learned Senior Counsel has raised an objection that the respondents have not filed a single document to



establish that they were paying the rent to the University, when they filed the applications under Section 9 of the Act.

18. The non-payment of rent is a primary question and in the absence of any material shown by the respondents for payment of rent to the University, the Respondents lose their *locus standi* to maintain an application under Section 9 of the Act. The respondents herein have not shown even a semblance of evidence/document to show that they have paid rent, since 1987.

19. When an application under Section 9 application is preferred, the respondents ought to have filed such a petition within 30 days from the date of receipt of summons in the suit. From the available records, it is seen that the respondents have not filed any application for condonation of delay. Nonetheless, as per Section 5 of the Limitation Act, 1963, for a court to exercise its discretion on the aspect of condonation of delay, 'sufficient cause', as required under Section 5, has to be shown. No applicant can seek condonation of delay as a matter of right, without either filing an application for condonation of delay and/or showing sufficient cause. The respondents herein, having not shown



sufficient cause in any manner, cannot avail any protection under the Limitation Act, in sustaining a Section 9 application.

20.The respondents having not paid any rent and in the absence of any material to show that the respondents were paying continuous rent to the University, the respondents failed to establish a relationship between the University and the respondents as a landlord and tenant. The respondents cannot therefore sustain that they are tenants under the University.

21.The submission of the learned Counsel for the respondent that the petitioner cannot file an application under the Tamil Nadu City Tenants Protection Act cannot be accepted by this Court, as this Court in the Second Appeal directed the Petitioner/University to file an application under the Tamil Nadu City Tenants Protection Act before the trial Court, which has been strictly adhered to by the Petitioner/University.

22.In view of the above, the orders, dated 06.02.2016, made in C.M.A.Nos. 9 and 10 of 2014 by the learned Subordinate Judge, Devakottai, are set aside and



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the Civil Revision Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

03.12.2024

Internet :Yes/No
NCC :Yes/No
Index :Yes/No

To

- 1.The Subordinate Judge, Devakottai.
- 2.The District Munsif-cum-Judicial Magistrate, Karaikudi.



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N.SENTHILKUMAR, J.

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Common order made in
C.R.P.(MD)(PD)Nos.1168 and 1519 of 2016

03.12.2024