

(1958) 05 MAD CK 0015
In the Madras High Court

A. Ponnambala Achary

APPELLANT

Vs

K. Mani

RESPONDENT

Date of Decision : 13-05-1958

Acts Referred:

Presidency Small Cause Courts Act, 1882 — Section 12, 9

Citation : (1958) 2 MLJ 516

Hon'ble Judges : Ramachandra Iyer, J; Ramachandra Aiyar, J

Bench : Division Bench

Judgement

Ramachandra Iyer, J.—This is a revision filed at the instance of the landlord against the order directing the issue of a commission to value a plot of land in the backyard of premises No. 61, Market Street, Siruvallur, Perambur, Madras.

2. On 9th July, 1949, the petitioner's father granted a lease of the house-site mentioned above to the respondent for the purpose of enjoying the same by erecting a thatched shed for a period of five years from the date of lease at a rental of Rs. 2 per month. It was stipulated in the lease deed:

At the end of the fifth year, I (lessee) shall remove the shed and shall deliver possession of the site to you. I shall not construct any stone building in the undermentioned site.

3. On the termination of the lease, the petitioner (his father being dead by then) filed an application for ejectment to the lower Court u/s 41 of the Presidency Small Cause Courts Act, in Ejectment Suit No. 402 of 1955. The ejectment was ordered and by consent nine months' time was granted for delivery of possession.

4. Shortly after the ejectment decree, Madras Act XIX of 1955 came into force by which certain rights were given to tenancies of land created before" 10th September, 1955- That Act extended the provisions of the Madras City Tenants Protection Act III of 1922 to tenancies of land created prior to the passing of Act XIX of 1955. On 4th October, 1955, the respondent filed M.P. No. 2721/B of 1955

before the lower Court claiming relief under Act III of 1922 and praying for the appointment of a Commissioner to value the plot of land mentioned in the lease and fix its price so as to enable the respondent, the tenant, to purchase the same. The learned Judge directed the issue of the commission. The landlord has filed this revision petition against that order.

5. The only contention urged by Mr. O. Radhakrishnan on behalf of the landlord was that under the terms of the lease, Exhibit A-i there was an agreement to remove the shed and deliver possession at the end of the lease. That agreement, according to the learned Counsel was a stipulation that was permitted u/s 12 of the Act and which could be given effect to. Section 12 states:

...Nothing in any contract made by a tenant shall take away or limit his rights under this Act, provided that nothing herein contained shall affect any stipulations made by the tenant in writing, registered as to the erection of buildings in so far as they relate to buildings erected after the date of the contract.

6. It was contended on behalf of the petitioner that an agreement to deliver vacant possession after the removal of the superstructure is a stipulation as to the erection of buildings by the tenant and, therefore, the landlord could take advantage of the contract. I cannot agree with his contention. The Madras City Tenants Protection Act was intended to protect tenants of land who had spent moneys in erecting buildings. This protection was given notwithstanding the fact that the lease was terminable. Section 12 of the Act will have to be read consistent with the object and provisions of the enactment. The provisions of Section 12 only refer to the erection of building that is with respect to its type, nature, size, etc., and not to any other stipulation like its demolition and delivery of vacant possession. The provisions of Section 9 of the Act are not subject to any contract between the parties. Section 12 cannot be read so as to enable the parties to contract out of the statute. In *Pamidi Vedavalli Thayarammal Vs. Junus Chettiar*, *Pandurang Rao, J.*, observed:

The Proviso applies, in my opinion, only to stipulations regarding the erection of buildings that is to say, stipulations restricting the right of the tenant to build such buildings as he likes either as regards the size, their cost, their situation and so on, and it certainly cannot relate to stipulations cutting down or extinguishing altogether the right of the tenant to get compensation in respect of buildings built by him which is given to him by the Act.

7. I am of opinion, therefore, that the provisions of the lease deed as to the surrender of possession at the end of the period after removing the superstructure cannot be held to be one protected by the Proviso to Section 12 and that the tenant would be entitled to the protection afforded by Section 9 of the Act.

8. The Civil Revision petition, therefore, fails and is dismissed. There will be no order as to costs.