

(1955) 02 MAD CK 0007

In the Madras High Court

Case No : Original Side Appeals 131 and 132 of 1951 and 29 of 1952

Annamalai and Co. Ltd.

APPELLANT

Vs

C.H. Sibgathulla Saheb by Power-of-Attorney Agent, M.S.
Mahadeva Iyer

RESPONDENT

Date of Decision : 17-02-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2
Madras City Tenants Protection Act, 1922 — Section 11, 2(3), 2(4), 3, 9
Presidency Small Cause Courts Act, 1882 — Section 41

Citation : AIR 1956 Mad 98 : (1956) ILR (Mad) 251

Hon'ble Judges : P.V. Rajamannar, C.J.; Rajagopala Ayyangar, J

Bench : Division Bench

Advocate : K. Rajah Ayyar, M. Murugappa Chettiar, C.R. Venkatachala Ayyar and C.S. Vidyasankar, for the Appellant; T.S. Ragavachariar and O.K. Ramalingam, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Rajamannar, C.J.—These three appeals are from the judgment of Rajagopalan, J., in Civil Suit No. 132 of 1948. The fifth Defendant is

the Appellant in Original Side Appeal No. 131 of 1951, and the second Defendant is the Appellant in Original Side Appeal No. 29 of 1952. The

suit was for the recovery of possession of pieces of vacant land in Original Suit No. 27 corresponding to Re-survey No. 4693 in Thyagarayanagar,

Madras, in the separate possession of Defendants, of whom there were seven. These plots were comprised in a big block of 8 cawnies, 7

grounds, 2,160 square feet, which originally was situated in the zamindari village of Mambalam. The Sri Parthasarathy Swami temple, Triplicane,

owned this block of land in inam. The Plaintiff purchased this entire block from the temple by a sale deed, dated 14th March 1947. The title of the

temple and the Plaintiff as the vendee from the temple is not disputed. The said lands appear to have been originally leased to one Balu Mudali, and

after his death, they were in the occupation of his son, Ramaswami Mudali, after, whose death the lands came to be occupied by his sons.

Subsequently, the sons, evidently as a result of a partition, were in separate occupation and enjoyment of portions of the said block. The

Defendants were alienees from the descendants of one or other of the sons of Ramaswami. The Defendants raised several defences, namely, that

the suit lands were ryoti lands in an estate within the meaning of the Estates Land Act, that they were entitled to rights of permanent occupancy,

that they were tenants within the meaning of the City Tenants Protection Act, entitled to the benefit of Sections 9 and 11 of the Act and the suit

should fail because of the absence of valid notices u/s 11 of that Act, and that the suit was bad for misjoinder of parties and causes of action. The

learned Judge, who tried the suit, Rajagopalan, J., passed a decree for possession against Defendants 1, 2, 4 and 5. The suit had been dismissed

against Defendants 6 and 7, and there was a consent decree against the third Defendant. Original Side Appeal No. 131 of 1951, and Original Side

Appeal No. 29 of 1952 are appeals against this decision of Rajagopalan, J., by Defendants 5 and 2 respectively. Defendant 5 filed an application

u/s 9 of the Madras City Tenants Protection Act for a direction to the Plaintiff to sell him the lands in his occupation for a price, to be fixed by the

Court. That application was dismissed and Original Side Appeal No. 32 of 1951, is against the order dismissing it.

2. On behalf of the Appellants, no objection was taken to the finding of the learned Judge that the Defendants had failed to prove that they were

entitled to permanent rights of occupancy under the Madras Estates Land Act. The main contention on behalf of the Appellants before us was that

they were entitled to the benefits of the Madras City Tenants Protection Act. This contention was practically founded on the decision in a prior suit,

Civil Suit No. 758 of 1936, on the file of the Madras City Civil Court. It is, therefore, necessary to set out the circumstances under which that suit

was filed and what exactly was decided in that suit. That suit was filed by the trustees of Sri Parthasarathy Swami temple, Triplicane, against the

descendants of Balu Mudali for recovery of possession of the entire block of 8 cawnies odd. It was stated in the plaint that the trustees of the

temple had granted a lease to the four sons of Ramaswami mentioned above in fasli 1292, and that they were in occupation of the lands as tenants

and after them their descendants and heirs had been likewise holding and enjoying the lands as tenants and that the tenancy of the Defendants had

been determined by notices to quit. The main defence was that the Defendants were entitled to the benefit of the provisions of the City Tenants

Protection Act. There was also a plea of misjoinder of parties and causes of action. The learned City Civil Judge dismissed the suit on the ground

that, as framed, it was not maintainable, because there were separate tenancies and the suit was bad for misjoinder of parties and causes of action.

The learned Judge, however, held that the Defendants were not entitled to the benefit of the City Tenants Protection Act. There was an appeal to

this Court which was heard and disposed of by Patanjali Sastri, J., as he then was. The learned Judge held, differing from the City Civil Judge, that

the suit as framed, was not vitiated by misjoinder of parties and causes of action; but he held, also differing from the learned trial Judge, that the suit

should fail because of the provisions of the City Tenants Protection Act. The chief reason why the City Civil Judge held that the Defendants were

not entitled to the benefits of the Act was that it did not apply to the lands in suit, as they were not part of the City of Madras at the time the Act

was passed. Patanjali Sastri, J., took a different view and held that the Act was applicable to the lands in suit. Another objection raised by the

Plaintiffs was that there were no buildings or superstructures on the entire lands and that some portions of the land had been let for building

purposes and other portions for cultivation, and in any event, the Act could apply only to that portion of the land which had been let for building

purposes. The learned Judge overruled the objection on the ground that no differentiation could be made between lands let for building and lands

let for cultivation and that the whole block of land should be treated as a single item of property and as there were buildings on portions of the land,

the Act would apply to the entire block and as the requirements of Section 11 of the Act had not been complied with, the suit should fail. The

appeal was accordingly dismissed. The trustees of the temple filed a Letters Patent Appeal against the judgment of Patanjali Sastri, J. This was

dismissed by a Divisional Bench consisting of Sir Lionel Leach, C.J., and Lakshmana Rao, J. The learned Judges agreed with Patanjali Sastri, J.,

on both points, namely, misjoinder and the application of the Act.

3. It was during the pendency of the suit Original Side No. 758 of 1936, that the fifth Defendant purchased a portion of the block of lands which

formed the subject-matter of that suit from some of the descendants of Balu Mudali. The second Defendant purchased another portion of the

block of lands in 1941 during the pendency of the appeal to this Court. The sale to the Plaintiff was in 1947, long after the final termination of the prior litigation.

4. There is one important difference between the prior suit and the present suit. In the prior suit, the Defendants were the descendants of the

original lessees and the suit was in respect of the entire block of land on which admittedly there were superstructures. The present suit, however, is

only against some of the persons occupying portions of the land, and it is common ground that there are no superstructures on the lands which form

the subject-matter of the present suit. It was represented to us that the Plaintiff had dealt with the persons who were alienees of the portions of the

land on which there were superstructures on the footing that they were tenants entitled to the benefits of the City Tenants Protection Act. The

Plaintiff's contention was that so far as the contesting Defendants are concerned, they would not be tenants within the meaning of the Act, because

there were no buildings on the lands in their occupation.

5. Mr. Rajah Ayyar, learned Counsel for the Appellants, relied on the decision in the prior suit as being conclusive in favour of the Appellants being

entitled to the benefits of the Act. His argument was that, as the predecessors of the Appellants were held to be entitled to the benefits of the Act,

they, who were transferees from the parties to that litigation, could take advantage of the decision.

6. This argument is, in our opinion, fallacious. The question for decision in the present case is whether a particular Defendant is entitled to the

benefits of the City Tenants Protection Act. To decide that question, all that we have to do is to take the relevant provisions of the Act and see if

the Defendant is or is not entitled to the benefit of the material provisions of the Act. We shall assume for the purpose of this argument that each of

the Defendants is a tenant within the meaning of Section 2(4) of the Act and that the Plaintiff is a landlord within the meaning of Section 2(3).

7. Section 3 runs thus:

Every tenant shall on ejectment be entitled to be paid as compensation the value of any building, which may have been erected by him, by any of

his predecessors-in-interest, or by any person not in occupation at the time of the ejectment who derived title from either of them, and for which

compensation has not already been paid. A tenant who is entitled to Compensation for the value of any building shall also be paid the value of trees

which may have been planted by him on the land and of any improvements which may have been made by him.

Section 9(1) permits a tenant

who is entitled to compensation u/s 3

to make an application to the Court for an order that the landlord shall be directed to sell the land in his occupation for a price to be fixed by the

Court. Section 11 relates to notice before institution of suits or applications in ejectment, and runs as follows:

No suits in ejectment or application u/s 41 of the Presidency Small Cause Courts Act, 1882, shall be instituted or presented against a tenant until

the expiration of three months next after notice in writing has been given to him requiring him to surrender possession of the land and building, and

offering to pay compensation for the building and trees, if any, and stating the amount thereof.

A copy of such notice shall be at the same time be sent to the Commissioner of the Corporation of Madras.

Admittedly, there is no building on the land in the occupation of either the second Defendant or the fifth Defendant. So there can be no question of

either of them being paid as compensation the value of the building u/s 3. It is equally clear that the landlord could not have given a notice u/s 11

offering to pay compensation for any building, when there is none. So Section 11 cannot apply. And Section 9 in terms confers a right only on a

tenant who is entitled to compensation u/s 3. It is, therefore, clear that neither the second Defendant nor the fifth Defendant can to-day claim to be

entitled to the benefit of either Section 3 or Section 11, and consequently of Section 9. Mr. Rajah Ayyar was indeed compelled to agree that this

would be so. The only way in which he tried to escape from this clear conclusion was to rely on the previous judgment of this Court. Now, that

judgment proceeded on the footing that the suit was for possession of the entire block of 8 cawnies odd in the occupation of the descendants of

the original lessees, and admittedly there were superstructures on portions of the land. We have nothing like that here now. The lessees appear to

have divided the land into several plots, and it is only on some plots that buildings exist. The Respondent's Advocate conceded that the tenants in

occupation of those portions on which there are superstructures would be entitled to the rights conferred by Sections 3, 9 and 11 of the Act. But

the other Defendants are only in occupation of vacant pieces of land. How they can be held to be entitled to the benefit of the Act, we are unable

to conceive. From the practical aspect of the matter, the anomaly that would result from an acceptance of Mr. Rajah Ayyar's argument would

become evident. Supposing we were to hold that the second Defendant is entitled to the benefit of the Act, then what is the proper notice that

should have been given by the landlord u/s 11 of the Act? What is the compensation which the landlord could offer to pay? Surely it could not be

compensation for the building existing on somebody else's land, because the landlord may have to offer the value of that building when he seeks to

eject the person in occupation of the land on which the building is situated. It would be literally impossible for the landlord to comply with Section

11 in the case of either Defendant 2 or Defendant 5 and yet, if we accept Mr. Rajah Ayyar's argument, the landlord's suit must be dismissed,

because he did not comply with Section 11. Nothing compels us to accept an argument which leads to this extraordinary position. The same

anomaly would exist in the application of Section 3 and Section 9 also. In this connection, the following observations of Krishnaswami Aiyangar,

J., in *Vedavalli Thayar Ammal v. Junus Chettiar* (1939) 2 M.L.J. 112, 113, 114 are apposite:

It is clear that the notice referred to in this section (Section 11) is one requiring the tenant to surrender possession of the land and building and

offering to pay compensation for the building and trees, if any. There is nothing in the section or in the Act which enables the tenant to ask for

compensation, when he does not own the building. In a case where the tenant is not the owner of the superstructure it is impossible to see how he

can ask for compensation in respect of something which does not belong to him, or why the landlord should offer by his notice to pay

compensation for a building which he himself owns. The entire scheme of the Act as the preamble shows it, is to afford protection to a tenant who has constructed a building on another's land and not to throw obstacles in the way of a landlord enforcing his rights, even where there are no rights of a tenant to be protected. This is apparent from the language of the section itself, which seems to limit its operation to the case where the tenant is the owner of the superstructure.

The rule of *res judicata* cannot apply to cases where the applicability of an Act would depend upon the circumstances actually present at the time when the Act is sought to be applied. Taking the very Defendants who were parties to the prior suit, if sometime after that litigation, owing to some reason or other all the superstructures had been destroyed or removed from the land, then could it be contended on the strength of that decision they would nevertheless be entitled to the benefit of the Act? We agree with the learned Judge, Rajagopalan, J., that the decision in the prior suit, Original Suit No. 758 of 1936, is no bar to the investigation of the claim of the several Defendants in the present suit, namely, that they are tenants and that they are entitled to the protection afforded by the City Tenants Protection Act. And we also agree with him that they are not entitled to that protection, as none of them satisfies the necessary requirements.

8. We were unable to follow the argument of Mr. Rajah Ayyar as regards the defect in the frame of the suit. Before the learned trial Judge, the objection which was pressed was that the suit was bad for misjoinder of parties. There was nothing in this objection, and learned Counsel did not reiterate that objection. But he sought to rely on Order II, Rule 2, Code of Civil Procedure. We fail to see, however, how this provision can have any application to this case. It is not alleged that, against any of these Defendants, the Plaintiff could have claimed any further relief. So far as we are aware, Order II, Rule 2, has always been applied to the case of a cause of action which the Plaintiff has against a particular Defendant. The objection in this form was not raised before the learned trial Judge, and there is no substance either in it. Original Side Appeal Nos. 131 of 1951 and 29 of 1952 are dismissed with costs.

9. Original Side Appeal No. 132 of 1951, is an appeal against an order dismissing the application of the fifth Defendant in the suit u/s 9 of the City

Tenants Protection Act. As we have held that the Act does not apply to him, his application was rightly dismissed. This appeal is dismissed. No order as to costs.