

(1960) 04 MAD CK 0013
In the Madras High Court

Gulam Mohamood

APPELLANT

Vs

Ammani Ammal (deceased) and Others

RESPONDENT

Date of Decision : 01-04-1960

Acts Referred:

Citation : (1960) 73 LW 688 : (1960) 2 MLJ 351

Hon'ble Judges : Anantanarayanan, J

Bench : Division Bench

Judgement

Anantanarayanan, J.—These are related appeals by the plaintiff and the defendants respectively in a suit for recovery of arrears of rent,

damages for use and occupation and possession through ejectment. The suit was decreed with costs as prayed for The plaintiff (landlord) purports

to be aggrieved by the decree which is not in respect of the entire land according to the plaint schedule, but is specifically limited to the 5 or 6 huts

thereon occupied by the defendants. The defendants (tenants) claimed to be aggrieved by the decree in ejectment, which totally ignores the

provisions of the Madras City Tenants' Protection Act (Act III of 1922 as modified by Act XIX of 1955) and particularly the rights given to

tenants under Sections 3 and 11 of that Act. These related appeals thus raise the following issues : (i) whether the Madras City Tenants' Protection

Act, 1921 (Act III of 1922) applies to the present case, either as it stood, or as amended by Madras Act XIX of 1955; (ii) whether, if the Act is

applicable, the decree in, ejectment can be supported, when the landlord admittedly failed to comply with the provisions of Section 11 of the Act,

and when Section 3 of the Act has also not been complied with; (iii) whether the fact that the tenants preferred I.A. No. 124 of 1956 u/s 9 of the

Act for exercising the option to purchase the land, which was dismissed by the Court below on the ground of limitation, amounts to any waiver by

the tenants of the requirements of Section 11, upon the authority of *Vedachala Naicker v. Doraiswarni Mudaliar* (1950) 1 M.L.J. 32 and (iv)

whether, assuming that the suit ought not to have been decreed for ejectment the portion of the decree which relates to the claim for arrears of rent

ought to be sustained, and what further observations should be now made concerning the mutual rights of parties?

2. In the interests of justice I am constrained to observe that the trial of this suit by the learned Additional Judge of the City Civil Court, appears to

have been both hasty and superficial. The learned Judge does not find that the Madras City Tenants Protection Act, 1921 (Madras Act III of

1922) as modified by Madras Act XIX of 1955, does not apply to the facts of this case, or to the parties. But he seems to hold, as far as I can

follow him, that since the defendants denied the tenancy in their written statement and set up an independent title perfected by adverse possession,

they should be held to have forfeited their rights u/s 111 (g) of the Transfer of Property Act. I shall quote the authorities on this aspect later, but

two broad propositions must suffice to dispose of this reasoning, which is fallacious. Firstly, the defendants admitted the tenancy at the trial, as the

learned Judge explicitly finds, and even filed I.A. No. 124 of 1956 for reliefs u/s 9 of the Act, as acknowledged tenants. Secondly, the law is very

clear that for Section 111 (g) of the Transfer of Property Act to operate, the forfeiture alleged must have occurred prior to the suit, so that it would

be part of the cause of action upon which the suit was based. The authorities are very clear that a denial of the tenancy after the suit is instituted,

would not work out as any such forfeiture of the lease u/s III (g) of the Transfer of Property Act. Further, as I have observed, the repudiation of

the tenancy by the defendants in the written statement was not adhered to at the trial, and the defendants expressly acknowledged the tenancy and

claimed the protection of the City Tenants' Protection Act, Madras Act III of 1922, as amended by Madras Act XIX of 1955. Therefore, the fact

that the notice issued in this case (Exhibit A-i, dated 27th July, 1954) admittedly ignores the provisions of Section 11 of the Act does, according to

all the authorities, render the suit in ejectment liable to be dismissed.

3. I shall first dispose of the argument relating to forfeiture before proceeding further. It is clear enough that this matter was not carefully gone into

by the lower Court, with reference to the authorities. It is indisputable that the tenancy was denied and an independent title by prescription

advanced only after the suit was instituted, and through the written statement, and at no earlier stage. The Privy Council observed in *Maharaja of*

Jeypore v. Rukmini Pattamahadevi Gam (1918) 36 M.L.J. 543 : L.R. 46 IndAp 109 : ILR 42 Mad. 589 (P.C.);

Denial in the suit will not work a forfeiture of which advantage can be taken in that suit, because the forfeiture must have accrued before the suit

was instituted; See *Nizamuddin v. Mandeeuddin* (1900) ILR 28 Cal. 135 already referred to and the previous case of *Pramath Shaha v. Madhu*

Khula ILR (1886) Cal. 96 there cited,

4. In Mulla's Transfer of Property Act, 1956 Edition, at page 688, the learned author observes with reference to Section 111 (g):

The disclaimer must be before suit filed to eject the lessee, that is on the principle that the cause of action must be based on something accruing

before the suit, and the rule is followed by all the Courts in India, for it has been held that a disclaimer in the written statement or after suit filed, will

not support a forfeiture.

5. That disposes of the argument that any forfeiture of their rights by the tenants really occurred in the present case. The tenants were undoubtedly

not barred from claiming the benefits of the Madras City Tenants' Protection Act, and, as I have earlier stressed, it is not in dispute that the notice

was not in accordance with Section 11, and that, in fact, compensation for the improvements (building and trees) has neither been offered by the

landlord, nor assessed in this case, in accordance with the provisions of the Act.

6. Even otherwise, and assuming for a moment that the Madras City Tenants' Protection Act does not apply, the notice was not even in

accordance with Section no 6 of the Transfer of Property Act read with section in of the Act, as it should otherwise be. The authorities are very

dear that such notice, to be valid, must determine the tenancy by the time of 15 days expiring with the end of the month of the tenancy. In the

present case, there was simply no evidence to prove when the tenancy began, or what the month of the tenancy was. The notice, Exhibit A-1

requires delivery of possession with the expiry of¹ a month ending with 30th August, 1954. But even in the plaint, I find no averment whatever

about the actual date of commencement of the tenancy, or whether the tenancy ran from the commencement from the first of each calendar month!

There is a most vague and unsatisfactory allegation that the defendants were tenants " in or about the end of the year 1950". There is no other

evidence. Apart from this, it is very difficult to see why the Madras City Tenants' Protection Act will not apply¹ to the case. *Prirha Jack* it will

apply, for under the Act as amended by Madras Act XIX of 1955, it has been made applicable, in the City of Madras, ""to tenancies of land

created before the commencement of the Madras, City Tenants' Prdtectibri Act (Amendment) Act, 1955."" Also see *Kanniappa Chettiar v.*

Ramachandra Iyer and Anr. (1922) 46 M.L.J. 407 for the view that Section 9 of Act III of 1922 did apply to cases in which suits were pending at

that time, and even where suits had resulted in decrees, which had not been fully executed.

7. learned Counsel for the landlord attempts to argue, upon the strength of certain observations of Chandra Reddy, J., in *Vedachala Naicker Vs.*

P.K. Duraiswami Mudaliar, that there is an option given to the tenant either to choose the benefits u/s 9 or u/s 11, and that where the tenant

chooses the benefits u/s 9 he must be held to have waived the objection that the suit itself was not instituted in accordance with the mandatory

provisions of Section 11 of the Act. I have read this decision carefully (the head-note itself is somewhat misleading), and I am quite unable to see

how any principle of the decision can apply to the present facts. Firstly, I must observe that it has been clearly laid down in several prior decisions

of this Court that the provisions of Section 11 of the Madras City Tenants' Protection Act were mandatory, and that failure to comply with those

provisions would necessarily entail the dismissal of the suit. Those authorities are : *Rahmat Bi Saheba and Others Vs. R. Krishna Doss Lala*,

Ganesa Naidu and Others Vs. C. Mallaram Singh, Rao Bahadur V. Ranganatham Chettiar and Others Vs. Mariappa Mudali and Others, .

Patanjali Sastri, J., as he then was, explicitly finds in the last decision that the provisions of Section 11 were mandatory, and that absence of

compliance with those provisions would be fatal to the suit. Chandra Reddy, J., definitely observes in *Vedachala Naicker Vs. P.K. Duraiswami*

Mudaliar, that he was not differing from these prior authorities. Actually, had he done so, the matter would necessarily have proceeded to a Bench for an authoritative pronouncement.

8. The learned Judge then states:

I am inclined to agree with the argument advanced on behalf of the petitioner that the only consequence of the failure to observe the provisions of

Section 11 of the City Tenants' Protection Act is the dismissal of the suit, and that it does not affect the institution of the suit.

9. With great respect, I do not find the reasoning of the above passage to be very clear, particularly in view of the explicit language of Patanjali

Sastri, J., in Rao Bahadur V. Ranganatham Chettiar and Others Vs. Mariappa Mudali and Others, . But this point need not trouble us at present.

The point is that, in any event all these authorities including Vedachala Naicker Vs. P.K. Duraiswami Mudaliar, stress that failure to comply with

the mandatory provisions of Section 11 would be fatal to the suit. But the learned Judge later observed:

Further it must be borne in mind that the provisions of Section 11 of the Act were enacted for the benefit of the tenant, as pointed out in the rulings

referred to above, and not for his detriment, and the landlord cannot therefore take advantage of the provision to the prejudice of the tenant.

10. The facts of that case show that the landlord desired to withdraw the suit in ejectment under Order 33, Rule 1, Civil Procedure Code, after the

defendants had filed an application u/s 9 of the Act, on the ground of the formal defect arising from the failure to comply with the provisions of

Section 11. The landlord was not permitted to do so, as such permission would entail the loss of privilege or right of the tenant to purchase the

land, u/s 9, with reference to his application. The present facts are totally different, Here, we have a case of a tenant, who actually could not obtain

the benefit of Section 9 of the Act, because his application was out of time. The Court has no power to condone such a delay. Vide Observations

of Subrahmanyam, J., in Nagammal Vs. C.R. Govindarajulu Naicker, . The result is that the tenant was not able to exercise any option, and to

obtain the benefits of Section 9 of the Act. Under those circumstances, it would be opposed to all principles of equity, and to the law, to hold that

the tenant's unsuccessful attempt to invoke Section 9 amounts to a waiver with

regard to his rights under Sections 3 and 11 of the Act, and that, in consequence, the suit must be held to have been validly instituted, notwithstanding the failure to comply with section n, the provisions of which are mandatory and absolute.

11. I think it is very clear, therefore, that this suit ought not to have been decreed in ejectment. learned Counsel for the landlord now states that the improvements may be ascertained, and the compensation determined, which the landlord would be willing to pay. But that is not the proper procedure. The proper procedure is for the landlord to issue a fresh notice in ejectment, complying with the mandatory provisions of the Madras City Tenants' Protection Act, and to take appropriate proceedings if the lessees do not surrender possession. In this view, it is not necessary to deal on the merits with the appeal of the landlord relating to the specific areas leased.

12. As there is no objection to decree for rent as awarded, I confirm that portion of the decree alone. The decree in ejectment is set aside. Under the circumstances, including the fact that the plaintiff is a person functioning as a mutawalli of a Muslim Wakf and not in his personal right, I direct the parties to bear their own costs throughout.