

(1996) 07 MAD CK 0011

In the Madras High Court

Case No : Second Appeal No. 982 of 1995 and Civil Miscellaneous Appeal No. 575 of 1995

Hindustan Petroleum Corp. Ltd. and M/s. Lorry Owners Association

APPELLANT

Vs

K.M. Yakub (Died) by L.Rs. and Others
Zohra Yacub and 5 Others Vs M/s. Hindustan Petroleum Corporation Ltd., and Another

RESPONDENT

Date of Decision : 19-07-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 133, 136, 226, 227

Citation : (1996) 07 MAD CK 0011

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : R. Krishnamurthi, A.G. for Mr. K. Kumars in Second Appeal, for the Appellant; S.K. Raghunathan, for the Respondent

Final Decision : Allowed

Judgement

S.S. Subramani, J.—In Second Appeal, defendants 1 and 2 are the appellants. In the Civil Miscellaneous Appeal, the legal representatives

of the plaintiff are the appellants. Reference to the parties in both these Appeals will be as in the suit.

2. Plaintiff - K.M. Yakub filed O.S. No. 1286 of 1978, on the file of Second Additional Sub Judge, Erode, for recovery of the schedule

properties from the defendants. Plaintiff is the owner, and he leased out the same from 1953 onwards in favour of the first defendant's predecessor

and the lease continued by various renewals, upto 29-2-1976. Thereafter, there was no renewal. But the enactment "Caltex Oil Refining (India)

Limited under the Caltex (Acquisition of Shares of Caltex Oil Refining (India)

Limited and of the Undertakings in India of Caltex (India) Limited, 1977 came into force on 30-12-1976, whereby the total interest of Caltex (India) Limited vested in the Central Government. Thereafter, it became a Government-owned Company, called Caltex Oil Refining (India) Limited. The said Government Company was amalgamated with the first defendant- Company. The lease was admitted by the defendants also, and they claimed the benefits of City Tenants Protection Act. The first defendant filed I.A.374 of 1979 u/s 9 of the City Tenants Protection Act. Evidence was taken. The trial court held that the first defendant has no possession, and the same was sub leased to the second defendant. The matter was taken in C.M.A.32 of 1983, without success. A revision was filed before this Court as C.R.P No. 2100/1985. A learned Judge of this Court, as per order dated 24-9-1993, dismissed the Revision, holding that the first defendant has no possession, and the second defendant is in exclusive possession of the property. It held that when the first defendant had not physical possession, it cannot be a tenant, much less a tenant entitled to the benefits of City Tenants Protection Act. So holding, the Civil Revision Petition was dismissed. A SLP preferred before the Supreme Court was also without success.

3. Thereafter, when the suit came for trial before the trial court, defendants, put forward a contention that the suit was not maintainable since notice u/s 11 of the City Tenants Protection Act was not issued. The trial court held that there is waiver, and accordingly rejected the contention. The matter was taken in appeal before the lower appellate court A.S.No.63 of 1985. The lower appellate court also held that the first defendant has waived the right u/s 11 of the City Tenants Protection Act, but remanded the case to assess the value of the improvement, so that it could be paid to the tenant u/s 3 of the Act 11 is against the said decree. Second Appeal No. 982 of 1995 is filed by the defendants. Against the order or remand, plaintiffs have preferred the Civil Miscellaneous Appeal.

4. The Second Appeal was originally dismissed by a learned Judge of this Court at the admission stage itself. Aggrieved by the dismissal, when the matter was taken before the Supreme Court as SLP No. 27953 of 1995, the Supreme Court held that since a connected C.M.A. is pending, the dismissal at the admission stage itself was not proper, and it directed this Court

to consider the question involved for consideration as expeditiously

as possible and a status quo as to possession was directed to be maintained till the final disposal of the appeal by this Court.

5. After the direction of the Supreme Court, the Civil Miscellaneous Appeal was also posted along with the Second Appeal, so that both the appeals could be heard together.

6. According to the appellants, the following substantial questions of law set out in the Memorandum of Appeal arise for consideration in the

Second Appeal:-

- 1) Whether the courts below were right in fixing the quantum of damages?
- 2) Whether the courts below had ample jurisdiction to decide the issues?
- 3) Whether the courts below were right in holding that the first appellant was only a sub-tenant?
- 4) Whether the lower courts were right in holding that the second appellant was in possession of the suit property even though the second defendant/appellant had no right over the suit property in terms of Exhibit B-4 and that the respondents/plaintiffs were receiving rent only from the defendant-appellant No. 1?
- 5) Whether Section 11 Notice under City Tenants Protection Act is mandatory before institution of a suit?
- 6) Whether Section 11 notice under City Tenants Protection Act is waived by the conduct of the appellants by filing Section 9 application prior to filing written statement?
- 7) Whether Section 11 notice is dependent and excludes the time period of 30 days for filing Section 9 application if the written Statement is filed prior to Section 9 application?
- 8) Whether the courts below were right in holding that the suit is maintainable even by non-service of Section 11 notice under the City Tenants Protection Act ?

6. The only question raised by learned counsel for the appellants was, the applicability of Section 11 of the City Tenants Protection Act and the maintainability of the suit.

8. "Tenant" has been defined in Section 2 (4) of the said Act thus:-

In this Act, unless there is anything repugnant in the subject or context.

"Tenant" in relation to any land

(i) means a person liable to pay rent in respect of such land under a tenancy agreement, express or implied, and

(ii) includes

(a) any such person as is referred to in sub-clause (i) who continues in possession of the land after the determination of the tenancy agreement.

(b) any person who was a tenant in respect of such land under a tenancy agreement to which this Act is applicable under sub-section (3) of Sec. 1

and who or any of his predecessors-in-interest had erected any building on such land and who continues in actual physical possession of such land

and building not with standing that

(1) such person was not entitled to the rights under this Act by reason of the proviso to section 12 of this Act as it stood before the date of the

publication of the Madras City Tenants' Protection (Amendment) Act 1972 (Tamil Nadu Act 4 of 1972), or

(2) a decree for declaration or a decree or an order for possession or for similar relief has been passed against such person on the ground that the

proviso to Sec. 12 of this Act as it stood before the date of the publication of the Madras City Tenants Protection (Amendment Act 1972) (Tamil

Nadu Act 4 of 1972) disentitled such person from claiming the right under this Act, and

(c) the heirs of any such person as is referred to in sub-clause (i) or sub-clause (ii) (a) or ii (b) but does not include a sub-tenant or his heirs.

7. As per various decisions of this Court, physical possession by the tenant must be proved, and only such persons can claim the benefit of the

Act.

8. In 89 L.W. 1 (Haridas Girdhardas and others v. M. Varadaraja Pillai and another), this question was considered by a Division Bench of this

Court. In paragraph 10 of the said judgment, their Lordships have held thus:-

Firstly, when on 24th March 1974, Varadaraja Pillai delivered to the landlord physical possession of the land and building covered by the tenancy,

he would have ceased to be a tenant even within the extended definition of a tenant under S. 2 of the Amending Act 24 of 1973. In order for any

person to come within the extended definition of a tenant, (1) he must be a person liable to pay rent in respect of the land to which the tenancy relates under the tenancy agreement, express or implied, and (2) such person continues in possession of the land even after the determination of the tenancy agreement, or (1) he must be a person who was a tenant, which means that determination of the tenancy does not matter, (2) he should have been a tenant under a tenancy agreement to which the Act was applicable, (3) he or his predecessor-in-interest had erected any building on the land, and (4) he "continues in actual physical possession of the land and building". If these requisites are satisfied by any one, he will be a tenant within the extended definition of the expression and this will be so notwithstanding the fact that such person was not entitled to the rights under the Act by reason of the proviso to S. 12, as it stood before its repeal or that a decree for declaration or a decree or order for possession had been made against such person on the ground of the proviso to S. 12, before its repeal which disentitled him from claiming rights under the Act. In our opinion, the requirement under S. 2 (4) (ii) (a) or (b) as to continuance in possession of the land, or continuance in possession of the land and building has to be satisfied not only as on the date of the Amending Act 24 of 1973, came into force and on the date of the application for sale, but also subsequently until an order is made under S. 9 and the same as well the provisions of that Section are fully worked out. Such a requirement is necessary. Clauses (2) and (3) of S. 9, as a matter of fact, imply that the tenant continues in possession of the lands to be dealt with as contemplated therein even after the stage of fixing the price and payment thereof, even in the context of application under S. 9 (1) (a) (ii). Once Varadaraja Pillai put the landlord in possession of the land and building as aforesaid, he no more had any rights under the Act, in particular to claim to be a tenant within the extended definition and on that basis to apply and get an order for sale of the land under S. 9 (1) (a) (ii). S. 5 of the Amending Act 4 of 1972, as already noticed, made Ss. 3 and 4 inapplicable to a case in which the tenant before the commencement of that Act, had delivered actual physical possession. The principle that once the tenant has delivered possession of the demised land and building to the landlord, there is an end of the tenancy and the tenant ceased to have that character any more, is with better force applicable to the extended

definition of a tenant under the Amending Act 24 of 1973.

9. In 1986-1-M.L.J.393 (K.J. Srinivasan and others v. Hindustan Petroleum Corporation Limited (HPCL) Head Office for India at Bombay and

others), this question was considered, and the judgment of the Division Bench (cited supra) was followed. Nainan Sundaram, J. (as he then was)

declared "that actual physical possession is a sine qua non to claim and obtain the benefits of the Act has been countenanced by more than one

pronouncement of this Court".

10. In T.R.P. Raja Sekara Bhoopathy Vs. Navaneethammal and Others, also, T. Ramaprasada Rao, C.J. said thus:-

..The primordial requirement for the tenant to claim the benefits under the Act is that he should be in actual physical possession of such land and

building.

11. The same principle has been enunciated in 1983 2 M.L.J. 319 = 96 L.W. 417 (Estate of T.P. Ramaswami Pillai v. Mohd. Yousuf). While

considering the same, v. Ratnam, J. (as he then was) has held thus:-

To recognise a claim to the benefits of Section 9 of the Act by the heirs of the tenant (as defined under sections 2 (4) (i) and 2 (4) (ii) (a) and (b),

u/s 2(4) (c) of the Act) who are not at all in possession would be to violate the very definition of the word "tenant" and also totally defeat the very

object with which the provisions of the Act had been enacted.

12. I have already stated the facts wherein I have said that the tenant filed an application u/s 9 of the City Tenants Protection Act, where his claim

was rejected. A Revision was filed before this Court in C.R.P. No. 2100 of 1985 and relevant portion of the order passed thereon reads as

follows:-

Despite the above said different points of arguments, it is clear to me that the Civil Revision Petition could be disposed of on one of the above said

points of arguments alone and hence I propose to deal with that alone, viz., whether the petitioner or the 2nd defendant is in physical possession of

the suit site. If the petitioner is not in physical possession, then certainly the petitioner cannot invoke Section 9 of the Act in view of the several

decisions of this Court, to which the learned counsel for the petitioner had not taken any exception, as indicated in paragraph 9 above. In this

connection, I may point out straightaway the following admission by D.Ws. 1 and 2 who are respectively the Accountant and Manager of the 2nd

defendant, who are the only witnesses on the side of the defendants. Though in the chief-examination, D.W.1 deposed that the 2nd defendant is a

licensee under the 1st defendant, he admitted in cross-examination thus:-

Similarly, D.W.2 also admitted as follows in cross-examination:-

Further, I also find that in paragraph 11 of the plaint, it is stated thus:-

The plaintiff understands that the second defendant is in possession as an assignee or sub-lessee or licensee from Caltex (India) Ltd., and he is in

actual possession of the suit site.

But, as against this assertion that the 2nd defendant is in actual possession, there is no denial in the written statement of either of the defendants. No

doubt, the learned counsel for the petitioner argues that as per F.x.B-4 dated 24-11-1976, the 2nd defendant was only a licensee, and not having

exclusive possession as a sub-lessee. In this connection, he also draws my attention to the relevant portion in clause 4 of Ex.B-4, which also is

entitled as "licence agreement".

This agreement shall not be construed as creating any right, interest or tenancy in favour of the Dealer in respect of the Service Station.

But this agreement is only between the 1st defendant's predecessor, viz., Caltex (India) Limited and the 2nd defendant. It is also admitted that

there is a written agreement between defendants 1 and 2 also. But that has not been exhibited. So, the above said admission by D.Ws.1 and 2 that

the 2nd defendant is paying rent to the 1st defendant all these years and the above said non-denial of the above said relevant allegation in the plaint

has to be given full effect and it must be held that the 1st defendant is not in physical possession of the suit site. Therefore, since the 1st defendant is

not in physical possession of the suit site, the 1st defendant is not entitled to invoke the above said Section 9 and purchase the suite site. As already

indicated, this Court has also held consistently that if the tenant under the Act is not in physical possession of the site in question, he is not entitled

to invoke Section 9 of the Act (Vide Estate of T.P. Ramaswami Pillai v. Mohd. Yousuf (1983) 2 M.L.J. 319 = 96 L.W. 417) T.R.P. Raja Sekara

Bhoopathy Vs. Navaneethammal and Others, and N. Kannayiram v. Sri Kallalagar (99 L.W.929).

13. In view of the finding in the Civil Revision Petition aforementioned, it cannot be doubted that the first defendant herein is not in possession. If

possession is a sine qua non to claim the benefit of the Act, and if it is found that the first defendant is not in possession, then, he cannot be said to

be a tenant under the Act. The finding in C.R.P. No. 2100 of 1985 concludes the matter, even though that was in an interlocutory stage. A reading

of Section 11 of the City Tenants Protection Act makes it clear that the institution of the suit is barred only against those tenants who are entitled to

claim the benefits of the tenancy or who come Within the definition of "tenant" under the Act. I hold that the finding in C.R.P. 2100 of 1985 even

though it is in the same suit, will be conclusive so far as the first appellant in the Second Appeal is concerned in view of the following decisions.

14. In Satyadhyan Ghosal and Others Vs. Sm. Deorajin Debi and Another, it was held thus:-

The principle of res judicata is based on the need of giving a finality to judicial decisions, what it says is that once a res judicata, it shall not be

adjudged again. Primarily it applies as between past litigation and future litigation. When a matter - whether on a question of fact or a question of

law - has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher

court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties

to canvass the matter again. This, principle of res judicata is embodied in relation to suits in S. 11 of the Code of Civil Procedure; but even where

S. 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is

that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct.

The principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher

court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the

same proceedings.

This decision of the Supreme Court was followed again in Arjun Singh Vs. Mohindra Kumar and Others, and in a little more extent, their

Lordships held thus:-

Scope of the principle of res judicata is not confined to what is contained in S. 11 but is of more general application. Again, res judicata could be

as much applicable to different stages of the same suit as to findings on issues in different suits.

If the court which rendered the first decision was competent to entertain the suit or other proceedings, and had therefore competency to decide the

issue or matter, the circumstances that it is a tribunal of exclusive jurisdiction or one from whose decision no appeal lay would not by themselves

negative the finding on the issue by it being res judicata in later proceedings. Where the principle of res judicata is invoked in the case of the

different stages of proceedings in the same suit, the nature of the proceedings, the scope of the enquiry which the adjectival law provides for the

decision being reached, as well as the specific provisions made on matters touching such decision are some of the material and relevant factors to

be considered before the principle is held applicable.

Interlocutory orders are of various kinds; some like orders of stay, injunction or receiver are designed to preserve the status quo pending the

litigation and to ensure that the parties might not be prejudiced by the normal delay which the proceedings before the court could usually take. They do

not, in that sense decide in any manner the merits of the controversy in issue in the suit and do not, of course, put an end to it even in part. Such

orders are certainly capable of being altered (sic) varied by subsequent applications for the same relief though normally only on proof of new facts

or new situations which subsequently emerge. As they do not impinge upon the legal rights of parties to the litigation the principle of res judicata

does not apply to the findings on which these orders are based, though if applications were made for relief on the same basis after the same has

once been disposed of, the court would be justified in rejecting the same as an abuse of the process of court....

(Emphasis supplied)

Their Lordships further went on to thus:-

....If the principle of res judicata is applicable to the decision on a particular issue of fact, even if fresh facts were placed before the court, the bar

would continue to operate and preclude a fresh investigation of the issue....

(Emphasis supplied)

15. In *Management of Northern Railway Co-operative Society Ltd. Vs. Industrial Tribunal, Rajasthan, Jaipur and Another*, the question of res

judicata in the same proceedings came for consideration. There, the maintainability of an industrial dispute was challenged before the Labour

Court, as a preliminary issue. The matter was taken before the High Court. The High Court held that it is an industrial dispute. After the finding by

the High Court that it is an industrial dispute, the matter was taken back to the Labour Court, and evidence was adduced. From the final order, the

matter went to the Supreme Court. Before the Supreme Court, the finding of the High Court that it is an industrial dispute was challenged. Since

the finding by the High Court was in a proceeding under Article 226 of the Constitution of India, against which there was no appeal under Article

133 of the Constitution of India, their Lordships said that the judgment of the High Court concludes the matter. The relevant observations made by

the Supreme Court read thus:-

....In these circumstances, it is clear that if the appellant wanted to challenge the corrections of the decision of the High Court holding that this

dispute was an industrial dispute, the appropriate remedy was to come up in appeal against the judgment of the High Court either by a certificate

under Art. 133 or by Special Leave under Art. 136 of the Constitution. The appellant having failed to do so, the judgment of the High Court

became final, and, consequently, binding between the parties. The parties to that petition were the parties now before us in this appeal. In this

appeal brought up against the award of the Tribunal, consequently, it is no longer open to the appellant to raise the plea which was rejected by the

High Court by its judgment dated 7th February, 1962. The first point raised on behalf of the appellant, therefore, fails.

16. In *The United Provinces Electric Supply Co. Ltd., Allahabad Vs. Their Workmen*, a similar question was again considered. But their

Lordships distinguished the decision reported in *Management of Northern Railway Co-operative Society Ltd. Vs. Industrial Tribunal, Rajasthan,*

Jaipur and Another, after approving the principles enunciated therein. It was held as follows in that case:-

Lastly, we must deal with the contention raised on behalf of the respondents that

the order of the Allahabad High Court made on July, 12, 1966

quashing the award after following the decision of this Court in Guest Keen Williams Pvt. Ltd. should be deemed to be final and should debar any

fresh consideration or decision of that point by virtue of the rule or principle of res judicata. It is noteworthy that the order of the Allahabad High

Court was not final against which the matter could have been taken in appeal either to a Division Bench of the High Court or to this Court.

Reliance has been placed on a decision of this Court in Management of Northern Railway Co-operative Society Ltd. Vs. Industrial Tribunal,

Rajasthan, Jaipur and Another, where reference had been made by the State Government to the Industrial Tribunal on the Railway Workers"

Union having raised an industrial disputes against the Management of the Northern Railway Co-operative Society Ltd. The society filed a writ

petition on the ground that the dispute having been raised by the Railway Workers" Union and not by the Society"s own employees, the reference

to the Tribunal was not competent. The High Court dismissed the petition. Thereafter, the Tribunal heard the matter and gave its decision in favour

of the workman concerned. The society appealed to this Court by special leave. It was held that the order of the High Court was not inter-locator

but was a final order in regard to the proceedings under Art 226. The appropriate remedy for the appellant in that case was to appeal against the

High Court"s order and that not having been done the appellant"s plea relating to the competency of the reference was barred by res judicata as

the same had been raised before the High Court and had been rejected. The present case is clearly distinguishable inasmuch as the order made by

the High Court was not final and a remand had been directed presumably under Art. 227 of the Constitution. That order in fact did not finally

terminate any proceedings at all...

Since the order in the Civil Revision Petition, mentioned supra has become final, the same matter cannot be agitated by the tenant again. He also

cannot claim the benefit of Section 11 of the City Tenants Protection Act.

17. Even on merits, I do not find that the appellants-defendants have a case. After receiving summons, the first defendant filed an application u/s 9

of the C.T.P. Act. That means, it wanted an adjudication in its favour, namely, that it is a tenant entitled to the benefits of the Act and also to enable

it to purchase the land, which is the subject-matter of the suit. Such a claim u/s 9 of the Act can only be in a validly instituted suit or which the tenant treats as a suit validly instituted. If the suit was not maintainable without notice u/s 11 of the Act, then, naturally, it cannot be said that it is a validly instituted suit. I also perused the application filed by the first defendant, when it initiated proceedings u/s 9 of the Act. In the affidavit, filed in support of the application, it has not stated anything about the lack of notice and the affidavit has been filed as if it is a properly instituted suit. It is settled law that even though the wordings in Section 11 of the Act are mandatory in nature, it could be waived. That waiver can be either express or implied. Once it is waived, the tenant treats it as a validly instituted suit and seeks relief in the same case that he may be allowed to purchase the property. Various decisions have been cited by the learned counsel. But I would like to refer only to the decision reported in N. Natesa Naicker and Others Vs. Vedagiri, where P.R. Gokulakrishnan, J. (as he then was) held that the filing of an application u/s 9 of the Act by the tenant would amount to a waiver of notice u/s 11 of the Act. The same principle is reiterated in the decision reported in Sri Agatheeswarar Prasanna Venkatesa Perumal Devasthanam Vs. M. Narasimhan, wherein a Bench of this Court considered the entire question and held that the right under S. 11 of the Act could be waived, and the Waiver can be either express or implied. But, on facts, in that case, the Bench held that there was no waiver. In that case, Section 9 petition was filed after the filing of written statement. In the written statement, a definite contention was taken that the suit is not maintainable in view of lack of notice u/s 11. Thereafter, by way of abundant caution, he filed an application u/s 9. The contention taken in the written statement at the initial stage was taken by their Lordships as not amounting to waiver. In paragraph 11 of the judgment, their Lordships said thus:-

...It is well-established that waiver is a question of fact and ought to be pleaded and proved in every case. No doubt, the filing of an application u/s 9 without any demur as regards the non-compliance with Section 11 could amount to waiver of notice as to the tenant's conduct in not raising the objection relating to notice. Taking advantage of the filing of the suit by the plaintiff the filing of an application u/s 9 by the defendant would amount

to conduct from which the waiver of notice can be inferred. But in this case the defendant has filed a written statement questioning the plaintiffs right

to institute" the suit and the jurisdiction of the Court to entertain the suit without a proper notice u/s 11. He has filed an application u/s 9 by way of

abundant caution as he was not sure whether has objection regarding the maintainability of the suit based on the non-compliance with Section 11

will be accepted by the Court or not....

18. The same principle was enunciated in. the decision reported in 1983 1 M.L.J. 280 N. Balasubramania Iyer v. Sri Ponneswari and Muthu

Kumaraswamy Devasthanam, by its Managing Trustee K. Natarajan).

19. In 1992 1 L.W. 560 (Sundara Rajan and another v. Sundaramoorthy), the learned Judge who decided the Civil Revision Petition also held that

the plea that the suit is not maintainable due to lack of notice u/s 11 could be waived by the tenant. In that case, the defendant filed written

statement in which he did not take such a contention. But subsequently when he filed an additional written statement, such plea was taken and the

learned Judge said that it will amount to waiver.

20. In view of the settled position of law on merits also, the first appellant-first defendant cannot contend that the suit is not maintainable since no

notice was issued to it. According to me since it is not a tenant under the Act, Section 11 notice also is not necessary. The only point egged before

me at the time of arguments in the Second Appeal was regarding the maintainability of the suit since there was lack of notice u/s 11 of the Act.

21. For the reasons stated above, the substantial questions of law raised by the appellants in this Second Appeal arc found against the appellants,

and the Second Appeal is dismissed with costs.

C.M.A. No. 575 of 1995: 22. In so far as the Civil Miscellaneous Appeal is concerned, in view of the reasoning that the first defendant is not a

tenant in possession, the question of payment for improvement also will not arise.

23. The lower appellate court has remanded the matter to the trial court to consider about the fixation of amount payable to the first defendant u/s

3 of the C.T.P. Act. For payment of compensation also, the person claiming compensation must be a tenant under the Act. To that extent, the

judgment of the lower appellate court is inconsistent. Having held that the first defendant has waived the benefit u/s 11 of the Act, and also having

held that the first defendant is not in possession, the lower appellate court was not right in referring the matter for fixing the quantum, as if the first defendant is a tenant under the Act. So, that portion of the judgment of the lower appellate court cannot be upheld. In the result, the Civil Miscellaneous Appeal is allowed with costs throughout. The judgment of the lower appellate court where by it directed the trial court to fix the quantum of improvements u/s 3 of the Act is set aside. I hold that the first defendant is not entitled to claim the benefits of Act 3 of the Cultivating Tenants Protection Act.