

(1993) 04 MAD CK 0046
In the Madras High Court

Jagadambal and Another

APPELLANT

Vs

T.E. Varadhan and Others

RESPONDENT

Date of Decision : 28-04-1993

Acts Referred:

Madras City Tenants Protection Act, 1922 — Section 9

Citation : (1993) 2 MLJ 446

Hon'ble Judges : Bellie, J

Bench : Single Bench

Judgement

Bellie, J.—This second appeal arises out of a suit O.S. No. 789 of 1979, and the civil revision petition arises out of LA. No. 1367 of 1980 in that suit.

2. The suit was filed by the landlord for eviction of the first defendant-tenant and also the second defendant-subtenant from the suit premises, and also for damages for use and occupation of the premises after the termination of tenancy. The first defendant-tenant filed I.A. No. 1367 of 1980 contending that he has put up the superstructure in the plaintiffs land and therefore u/s 9 of the City Tenants Protection Act, hereinafter referred to as the Act, he is entitled to purchase the land for the value to be fixed by the court. This application was resisted by the plaintiffs contending inter alia that the landlord let out to the first defendant the land together with the building thereon and therefore no question of claiming benefit by the first defendant u/s 9 of the City Tenants Protection Act arises.

3. The trial court considering both the suit and the I.A., held that the plaintiffs had let out only the land, and the superstructure has been put up by the first defendant. It appears it was contended before the trial court on behalf of the plaintiffs that since the first defendant has sublet the premises to the second defendant and therefore he is not in actual possession of the premises he is disentitled claim the benefits under the Act. This contention was rejected by the trial court. Ultimately the trial court dismissed the suit and allowed the I.A.

4. Against the dismissal of the suit the plaintiffs filed the appeal A.S. No. 238 of 1981, and against the order in I. A., they filed C.M.A. No. 183 of 1981. The appellate Court dismissed the appeal. In the C.M.A. it held that the first defendant is entitled to purchase the land u/s 9 of the City Tenants Protection Act, but he would be entitled to purchase only that extent of land which is necessary for his convenient enjoyment but that has not been determined by the court below. On these findings it allowed the C.M.A. and remanded the I.A. to the trial court for determination of the extent necessary for the convenient enjoyment of the first defendant-tenant.

5. Now, the second appeal has been filed by the plaintiffs against the dismissal of the appeal, and the C.R.P. has been filed by the plaintiffs against the remand order in the C.M.A. Since both the matters are connected they can be disposed of in one Judgment.

6. Mr. V. Raghavachari, learned Counsel appearing for the appellants-plaintiffs in both the matters contends that (i) the plaintiffs let out both the land and the superstructure standing thereon and the superstructure was not put up by the first defendant-tenant and therefore no question of the tenant claiming benefits under the City Tenants Protection Act arises; (ii) I.A. No. 1367 of 1980 filed u/s 9 of the City Tenants Protection Act has been filed beyond the time of limitation and therefore it should have been dismissed as time barred; and (iii) the first defendant-tenant has sub-let the premises to the second defendant and therefore the first defendant is not in actual possession and as such he is disentitled to claim the benefits under the Act.

7. The first point is devoid of any merit because the schedule of property which has been leased out under Ex.A-1 in clear and unequivocal terms states that only the vacant site has been leased out. Correctly the courts below have found that only the vacant site has been leased out and the superstructure has been put by the first defendant-tenant.

8. Regarding the second point that the I.A. filed u/s 9 of the Act is barred by limitation, this plea has not at all been taken either in the trial court or in the first appellate court. For the first time it is argued in the second appeal. It is contended that u/s 9 of the Act the application shall be filed within 30 days from the date of receipt of the summons, but the application I.A. No. 1367 of 1980 has been filed long after 30 days and hence it is barred by limitation. The learned Counsel submits that the application has been filed long after the receipt of summons as seen from the "B" Diary maintained by the court. But from this alone at this stage it cannot be held that indeed the petition has been filed beyond 30 days from the date of receipt of summons. The original records showing when the summons was received is not before court. In the absence of this and also in the absence of any plea made in the trial court as well as in the appellate court the plea of the learned Counsel made only on the basis of "B" diary cannot be accepted. Hence this plea has to be rejected.

9. Now coming to the third point, the learned Counsel submits that in any event it is a fact that the first defendant has sub-let the land and the superstructure to the second defendant and therefore the first defendant is not in possession and this being the case he cannot claim benefit u/s 9. The trial court seems to have held that it is not necessary that the first defendant must be in actual possession. The first appellate court has held that the first defendant is in actual possession of the land and only the superstructure has been let out to the second defendant and hence the first defendant is entitled to claim the benefits. In the written statement the first defendant has pleaded that he has let out only the superstructure which the first appellate Court has accepted. The plaintiffs have filed Ex.A-2 as the registration copy of the concerned lease deed between the first defendant and the second defendant, and this is not disputed. Perusal of this document would clearly show that what has been sub-let is not only the superstructure but also the land. Therefore, there is no substance in the first defendant's contention that only the superstructure has been sublet.

Now, the Supreme Court in *P. Ananthakrishnan Nair and Anr. v. Dr. G. Ramakrishnan and another*, 100 L.W. 1093, has laid down that a tenant who is not in possession but has sub-let the property will not be entitled to claim benefits u/s 9. A reading of this decision would show that to claim benefits u/s 9 the tenant must be in possession of both the land and the superstructure. Therefore even if the first defendant-tenant is not in possession of only the superstructure even then he will not be entitled to the benefits u/s 9 of the Act. In this view of the matter, the first defendant cannot contend that he is entitled to purchase the land for a value to be fixed by the court. Hence his application filed u/s 9 of the Act has to be dismissed.

10. Mr. Raghavachari also argued that the plaintiffs will be entitled to reasonable compensation for the use and occupation of the property after the termination of tenancy but the Courts below have allowed only Rs. 125 per mensem and this is too low. But as per Ex.A-1 lease deed executed by the plaintiffs and the first defendant the rent fixed is Rs. 125 per mensem and that rent has been awarded, and therefore it cannot be said that the compensation awarded is unreasonably low.

11. In the result, the civil revision petition is allowed and the application I.A. No. 1367 of 1980 is dismissed. The second appeal also is allowed and there will be a decree for the relief of possession. As regards the claim of damages the defendants shall pay a sum of Rs. 125 per mensem from the date of termination of tenancy till delivery of possession. No costs.