

(1973) 12 MAD CK 0007

In the Madras High Court

Case No : Appeal No"s. 197 and 201 of 1968 and Appeal against Order No. 302 of 1969

M. Arasu Chettiar and Others

APPELLANT

Vs

S.P. Narasimhalu Naidu and Others

RESPONDENT

Date of Decision : 20-12-1973

Acts Referred:

Madras City Tenants Protection (Amendment) Act, 1972 — Section 3, 4, 5
Madras City Tenants Protection Act, 1922 — Section 12, 2(1), 2(4), 4, 9

Citation : (1974) ILR (Mad) 322

Hon'ble Judges : Ramaprasada Rao, J;Natarajan, J

Bench : Division Bench

Advocate : S. Nainarsundaram, Natartjan and Nicholas, for the Appellant; B. Sriramulu and K. Alagiriswamy, for the Respondent

Final Decision : Dismissed

Judgement

Ramaprasada Rao, J.—We shall deal with the parties with reference to Appeal Suit No. 197 of 1968. (The first Defendant) in Original Suit

No. 89 of 1963, on the file of the Subordinate Judge of Coimbatore, is the Appellant. Under exhibit A-2, dated June 27, 1956, the first Defendant

obtained a lease over a land of an extent of 1 acre 80 cents in Coimbatore Town for a period of five years. The landlord is S. P. Narasimhalu

Naidu, Estate Trust, Mill Road, Coimbatore. That the lessee committed default in the payment of rent due under the lease deed is not in dispute.

After the period of the demise expired by efflux of time, the lesson caused the lawyer"s notice, exhibit B-1, dated 16th June 1960, to be sent to the

first Defendant calling upon him to pay the arrears of rent by then due and payable by him under the lease deed and also asking him to surrender

possession of the land. This was followed by another notice exhibit B-2, dated

12th July 1961, which was after the lease expired. Here again, the default on the part of the Appellant was brought home to him, and, in addition, the Appellant as lessee was informed that he was continuing in possession after the period of the lease and that such occupation was unauthorised and he was asked to deliver possession; besides, the first Defendant's attention was drawn to his unauthorisedly subletting the premises to Defendants 2 to 32. who were made parties to the action.

2. The first Defendant sent a reply under exhibit 13-3 enclosing a cheque for the arrears of rent. But the cheque for the said arrears was returned under exhibit B-4 by the Trust stating that the trust was anxious to obtain possession of the property, rather than accept the arrears of rent. Under exhibit B-5, the first Defendant replied that there was no delay in the payment of rent on his part and incidentally he claimed that no suit for eviction could be filed as against him as he was entitled to protection under the Madras City Tenants Protection Act of 1922, herein after referred to as the Act. It is common ground that the Plaintiff was not willing to receive the rent subsequent to the notice since it was of the view that, that might create the impression that it waived the notice to quit. But, finally, another notice exhibit A-4, dated 16th April 1962 was issued to the first Defendant by the Plaintiff categorically stating that it intended to take action for taking possession of the property for its own use and occupation. The first Defendant was called upon to surrender possession of the property on or before 10th August 1962 failing which a suit was threatened. The Plaintiff denied that the first Defendant was entitled to the protection under the Act. But the Plaintiff offered as an ex gratia payment a compensation of Rs. 3,000 towards the value of the superstructures put up by the first Defendant during the course of his occupation of the demised land. Under exhibit A-5 the first Defendant reiterated his stand that he was entitled to protection under the Act and he also stated that the compensation of Rs. 3,000 offered by the Plaintiff under exhibit A-4 was too low that he was willing to purchase the land at a value to be fixed by the appropriate authority under the Act. When the Plaintiff initiated the action for eviction, the first Defendant filed the usual statutory application in Interlocutory Application No. 522 of 1963 u/s 9 of the Act for his right to purchase the land being recognised by the Court.

3. Defendants 2 to 32 who are added as Defendants to the action are sub-tenants, inducted into the suit premises by the first Defendant.

Defendants 33 to 37 were added as the legal representatives of the second, Defendant, who died subsequent to the filing of the suit. As

Defendants 34 to 37 were minors, a guardian ad litem, was also appointed.

4. In the course of the evidence, it was brought out that the first Defendant was in possession of only 19 cents out of the extent of 1 acre 80 cents

and it is only over that extent of land in the demised property that he was put up superstructures. It is also in evidence that the sub-tenants were let

into possession of the rest of the land and it appears that they also have put up superstructures on them as such subtenants. The Plaintiff's main

contention in the application filed by the first Defendant u/s 9 of the Act is that he was not entitled to such protection as the property was trust

property.

5. On the pleadings, the learned Subordinate Judge, framed the following issues:

1. Is the Plaintiff not entitled to possession of suit properties?
2. In Defendant No. 1 or other Defendants entitled to any benefits provided in the Madras City Tenants Protection Act?
3. Is the Plaintiff entitled to the past and future arrears of rent or damages for use and occupation. If so, to what amount and at what rate?
4. Is the 1st Defendant or Other Defendants entitled to compensation for the superstructure? If so, at what amount?
5. Are Defendants 2 to 32 not necessary parties to the suit?
6. Is the suit by the manager not maintainable?
7. To what reliefs is the Plaintiffs entitled?

The only point for decision in the interlocutory application was this:

1. Whether the Petitioner 1st Defendant is entitled to the benefits of Section 9 of the Madras City Tenants Protection Act?

6. On the issue whether the first Defendant was entitled to protection under the Madras City Tenants Protection Act, the learned Subordinate

Judge found that he was not entitled to such protection basing his decision on the earlier judicial pronouncements of the Supreme Court which in

turn revolved on the interpretation of the proviso to Section 12 of the Act. As the first Defendant admittedly raised superstructures on the demised

property or a portion thereof in contravention of the terms and stipulation contained in the lease, the learned Subordinate Judge, following the ratio

in the decided cases of this Court and of one Supreme Court, held that the first Defendant was not entitled to protection under the Act. We may

add that the contention of the Plaintiff trust that its properties are beyond the pale of the Act for the sole reason that they are trust properties did

not find favour with the learned Subordinate Judge. But the application u/s 9 made by the first Defendant was dismissed for the reason already

stated. The lower Court also held that Defendants 2 to 37, being sub-tenants, were not entitled to protection under the Act, nor could they set up

any right superior to that of their landlord, namely, the first Defendant, and in that view, directed Defendants 2 to 37 to suffer eviction and granted

time to them to deliver such possession. In so far as the claim for arrears of rent was concerned, the learned Subordinate Judge accepted the claim

of the Plaintiff and decreed the suit on the basis of the agreed rent till the date of the filing of the suit and at Rs. 650 per month for the rest of the

period, though the Plaintiff claimed a sum of Rs. 1,000 towards damages for such use and occupation for the period after the filing of the suit.

Finally, the lower Court said that the first Defendant should suffer eviction, but awarded him the ex gratia payment of Rs. 3,000 which the Plaintiff

was willing to pay, towards the cost of the superstructures put up by the first Defendant on the 19 cents of the suit property in his possession. The

lower Court granted time to the first Defendant to vacate. It is as against this the first Defendant has come up to this Court.

7. Civil Miscellaneous Appeal No. 302 of 1969 is directed against the order of the learned Subordinate Judge in Interlocutory Application No.

522 of 1963.

8. In this Court, permission to raise additional grounds is sought by the learned Counsel for the Appellant in Civil Miscellaneous Petition No.

13916 of 1973. The Petitioner prays for permission to add the following grounds to his other grounds of appeal on which the appeal rests.

1. Without prejudice to his contention that the Appellant has not contravened any covenant of the lease deed regarding the erection of the

superstructures, the Appellant states that by virtue of Sections 3 and 4 of the Tamil Nadu Act 4 of 1972, any stipulation made in the lease deed as

to the erection of superstructures to the extent such a stipulation takes away or limit his rights under the principal Act as amended by this Act, be

and shall be deemed always to have been, null and void and accordingly the tenant shall be, and shall be deemed always to have been entitled to

the rights under the principal Act as amended by this Act.

2. By virtue of Tamil Nadu Act 4 of 1972 the rights of the Appellant under the Madras City Tenants Protection Act are saved, even assuming that

the Appellant committed breach of any covenant in the lease deed regarding the erection of the superstructures.

3. Any stipulation which takes away or limit the Appellant's rights under the Madras City Tenants Protection Act shall be deemed always to have

been null and void.

We see no ground to reject the request of the Petitioner to raise these additional grounds as they are purely resting on the present law of the land.

The learned Counsel for the Respondent however lightly objected to the acceptance of the additional grounds. But as the additional grounds spring

from the amended law as reflected in Act IV of 1972, we granted permission to the learned Counsel for the Appellant-Petitioner to raise these

additional grounds. In this sense, Civil Miscellaneous Petition No. 13916 of 1973 is allowed.

9. If we find that the first Defendant is entitled to protection under the Act and in consequence his application u/s 9 of the Act has to be allowed,

then it would follow that the decree for possession passed by the learned Subordinate Judge cannot stand. It is in this light, we intend considering

both the Civil Miscellaneous Appeal and Appeal Suit No. 197 of 1968 filed by the first Defendant.

10. Under the Act, express protection is given to certain classes of tenants in certain areas specified for the purpose from time to time. It is not in

dispute that Coimbatore Town is one such specified area. Section 12 of the Act, before amendment, read as follows:

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 building in so far as they relate to buildings erected after the date of the

contract.

It is common ground that one of the stipulations under the lease exhibit A-2 was to the effect that the tenant should not erect permanent buildings

on and after the date of the demise and that permanent buildings were however raised by the first Defendants contrary to the agreed stipulation

under the contract of lease. On the basis of this stipulation, and on the strength of the decisions of this Court and of the Supreme Court, which

interpreted the proviso to Section 12, the learned Subordinate Judge negated the right of the Plaintiff to protection under the Act. This was on the

basis that the tenant having openly contracted in a manner provided under the statute and he having contemporaneously contracted to give up his

protective rights guaranteed to him under the provisions of the Act, he could not thereafter approbate and reprobate and claim such rights u/s 9 of

the Act. Under the Tamil Nadu Act IV of 1972; Section 12 of the principal Act was amended, Section 3 of the amending Act provides:

In Section 12 of the principal Act, the portion commencing with the words provided that " and ending with the words " date of the contract " shall

be, and shall be deemed always to have been, omitted.

Section 4 (Validation) of the Act Provides:

Notwithstanding anything contained in any judgment decree or order of any court or other authority to the contract, any stipulations made by a

tenant in writing registered as to the erection of buildings, in so far as they relate to building erected after the date of the contract shall, to the extent

such stipulations take away or limit his rights under the principal Act as amended by this Act, be and shall be deemed always to have been null and

void and accordingly the tenant shall be and shall be deemed always to have been, entitled to the rights under the Principal Act as amended by this

Act.

11. The question that arises for consideration before us is what is the effect of Sections 3 and 4 of the Madras City Tenants Protection

(Amendment) Act IV of 1972. We have already noted the text of Section 12 of the Act. Without the proviso, Section 12 reads as follows:

Nothing in any contract made by a tenant shall take away or limit his rights under this Act.

12. Mr. Nainarsundaram, learned Counsel for the Appellant, rightly contended that the amending Act IV of 1972 is specifically retrospective in

operation and therefore any contract relating to the erection of buildings made by a tenant, who would otherwise be entitled to protection under the provisions of the Act, cannot be used to deny the statutory right and protection guaranteed under the Act to the tenant. The question, however, is whether Act IV of 1972 is retrospective in operation. The learned Counsel for the Respondent would state that as all laws would only be prospective, even so Section 3 of the amending Act IV of 1972 should be so interpreted. Retrospectively of an Act is to be gathered by the text and language used by the Legislature in a particular statute which comes up for interpretation. Such retrospective operation could either be expressly made clear or under certain circumstances it could be necessarily implied. But if once the machinery chosen by the Legislature is understood and is express, then it has to be given effect to by Courts of law. Reading Sections 3 and 4 of the amending Act IV of 1972, we have no hesitation to accept the contention of the learned Counsel for the Appellant that Act IV of 1972 is expressly made retrospective. Section 3 would say that the proviso to Section 12 starting with the words provided that and ending with the words date of the contract shall be and shall be deemed always to have been omitted. The present text of Section 12 of the Act does not in any way affect the rights of a tenant under the Act by reason of any contract having been made by him in relation to the demised land. The expression shall be deemed to always to have been omitted is expressive of the express retrospectively of Act IV of 1972. That such is the intention is also made clear by the validation Section 4 of the amending Act. This section says that any judgment, decree or order of Court, which denies such a statutory right to a tenant, who would otherwise be entitled to such a right under the Act, would be void and inoperative in view of the amending Act IV of 1972. As a matter of fact, the validation section makes it clear that even if there was any stipulation regarding the erection of buildings on the demised land, the tenant who was a party to such a contract and who would otherwise be entitled to protection under the Act, would not be denied such a right only for the reason that he had made a stipulation regarding the erection of the buildings on the land after the date of entering into the contract. The decisions referred to by the learned Subordinate Judge held the field when the proviso was the law. But now by reason of the amending Act, the proviso to Section 12 is no

longer the law, or shall be deemed to have been the law. Ever since the introduction of the amended Act any stipulation made by the tenant which would have an impact on his statutory right of protection guaranteed under the Act would be invalid and would not affect or prejudice his vested or gained right under the principal Act. We may incidentally point out that the amending Act does not disturb the vested rights in the sense that if a landlord has already secured possession of the land and building before Act IV of 1972 became law, then such vested rights and settled situation ought not to be disturbed Vide Section 5 of that Act. It, therefore, follows that the first Defendant would be entitled to the protection u/s 9 of the Act which was dismissed by stipulation made by him under exhibit A-2 regarding the erection of permanent buildings on the land demised to him. Interlocutory Application No. 522 of 1963 filed by the first Defendant u/s 9 of the Act ought to be allowed. It was however dismissed on the interpretation of the law as was done prior to the amending Act IV of 1972. Now that the law has, changed, the first Defendant is entitled to such protection and his application u/s 9 ought to stand allowed. In this sense, Civil Miscellaneous Appeal No. 302 of 1969 is allowed. There will be no order as to costs.

13. If, therefore, the first Defendant is entitled in law to protection u/s 9 of the Act and he should be permitted to work out the privileges attached to such a statutory right in the normal course, then he cannot be directed to suffer a decree for possession, which was passed by the Court below, in consequence of its having dismissed the application of the first Defendant u/s 9 of the Act. It, therefore, follows that Appeal Suit No. 197 of 1968 should be allowed and the Appellant's application u/s 9 of the Act which was dismissed by the lower Court be directed to be restored to its file and the parties permitted to pursue the said application in the usual manner. It is however made clear that the first Defendant is claiming his rights under the Act only over 19 cents of land out of the total extent of land, 1 acre 80 cents. It is for the lower Court to dispose of the application u/s 9 in the usual manner.

14. In so far as the decree for arrears of rent up to the date of the suit is concerned, there cannot be any dispute and therefore the decree of the Court below for a sum of Rs. 6,866 towards the arrears of rent up to the date of

the suit shall stand. For the subsequent period, the decree of the Court below directing the first Defendant to pay a sum of Rs. 650 per month is set aside as the first Defendant would only be liable to pay the contractual rent and not on the basis that he was in unauthorised occupation of the land and that he should suffer a decree for damages for such use and occupation.

It is brought to our notice that there is a Receiver who is collecting rents and income from these properties directly from the tenants in occupation

thereof. This aspect will be taken note of by the Court below while execution is sought of the decree for arrears of rent as against the first

Defendant. Appeal Suit No. 197 of 1968 is therefore allowed, but in the circumstances of this case, there will be no order as to costs.

15. Appeal Suit No. 201 of 1968 is filed by Defendants 3 to 9 to 12, 14 to 25 and 27 to 37. They are admittedly sub-tenants who were inducted

into the suit property by the first Defendant. The Court below, after noticing the definition of the tenant u/s 2(4) of the Act and after having been

satisfied that the tenant does not include a sub-tenant decreed the suit for possession as prayed for by the Respondent-landlord. It is as against

this, the present appeal has been filed.

16. Mr. K. Sarvabhauman, learned Counsel for the Appellants, was asked as to how we could disturb the judgment of the Court below, which in

turn was based upon the provisions of the Act. He was unable to say anything to the contrary and in fact he could not contend that the judgment of

the learned Subordinate Judge is in any way or in anywise wrong or against law.

The definition of a tenant u/s 2(1)(ii)(b) makes it very clear that a tenant in relation to any land which comes within the purview of the Act does not

include a sub-tenant or his heirs. The Appellants as above admittedly were let into possession of the rest of the land, other than the 19 cents

actually in occupation of the first Defendant, as such tenants, and they have no right independent de hors, their landlord namely, the first Defendant.

They have no answer to the suit for possession laid by the landlord-Respondent. The decree for possession thus passed by the Court below as

against the Appellants, who have no right to remain in the property after the period of the demise granted to the first Defendant, has to stand.

17. No other point was urged before us contending that the judgment of the

Court below is in any way vitiated. In accordance with the provision of the Article the Appellants should suffer a decree for possession. In this sense, the judgment and decree of the lower Court, in so far as they are directed against the Appellants, is sustained and the appeal is dismissed. But there will be no order as to costs.

18. Mr. Sarvabhauman, learned Counsel for the Appellants, requests that the Appellants may be granted some time to vacate the lands as they have raised certain superstructures on them during the course of their occupation. The Appellants are granted three months time from this date to vacate and deliver possession.