

(2014) 11 MAD CK 0069

In the Madras High Court

Case No : Second Appeal Nos. 821, 910 and 911 of 2012 and M.P. Nos. 1 and 1 of 2012 in S.A. Nos. 821 and 910 of 2012 and C.R.P. No. 2889 of 2012

Mettupalayam Lorry Owners Association and Others

APPELLANT

Vs

M.K. Janakiraja and Others

RESPONDENT

Date of Decision : 25-11-2014

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : (2015) 1 LW 868 : (2015) 2 MLJ 400

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : A. Thiyagarajan, Advocates for the Appellant; R. Bharathkumar, Advocates for the Respondent

Judgement

B. Rajendran, J.—Since, the issue involved in all these matters is one and the same, by consent, all the Second Appeals and Civil Revision Petition, which came up before me as "Specially Ordered Cases" are taken up together for common disposal. Second Appeals are filed against the common judgment and decree of the learned I Additional District Judge, Coimbatore, in A.S. Nos. 170, 144, 158 of 2003, dated 30.09.2005, confirming the common judgment and decree of the learned II Additional Subordinate Judge, Coimbatore, in O.S. Nos. 1229 of 1995, 1229 of 1995 and 1164 of 1999, dated 16.12.2002.

2. Civil Revision Petition is filed against the fair and decretal order passed by the I Additional District Judge, Coimbatore, dated 30.09.2005 made in C.M.A. No. 43 of 2003, confirming the order of the II Additional Subordinate Judge, Coimbatore, in I.A. No. 661 of 2001 in O.S. No. 1229 of 1995, dated 16.12.2002.

3. The brief facts in a nut-shell are as follows:-

(1) The suit in O.S. No. 1229 of 1995 was filed by the plaintiffs viz., M.K. Janakiraja and M.K. Shanmugaraja for the relief of recovery of possession of the suit property and for payment of the past and future damages. The suit in O.S.

No. 1164 of 1999 was filed by M/s. Hindustan Petroleum Corporation Limited for the relief of permanent injunction, restraining defendants 1 and 2 from in any way interfering with the modernisation development work being carried out by the plaintiff in the suit property. I.A. No. 661 of 2001 in O.S. No. 1229 of 1995 was filed by M/s. Hindustan Petroleum Corporation Limited seeking the benefit under Section 9 of the Tamil Nadu City Tenants Protection Act.

(2) The plaintiffs viz., M.K. Janakiraja and M.K. Shanmugaraja, who have filed the suit in O.S. No. 1229 of 1995, have averred in the plaint that they are brothers and they are the absolute owners of the vacant site morefully described in the plaint schedule and the same is leased out to Mettupalayam Lorry Owners Association under a registered lease deed dated 18.10.1989 for five years from 01.06.1989 to 30.06.1994. After the expiry of the said lease period, the plaintiffs were asked to vacate the suit property. Since, the lessee failed to vacate the suit property, a notice was issued to him on 02.04.1995. Having received the said notice, the lessee has neither chosen to send any reply nor vacated the suit property. Hence, the plaintiffs have filed the suit in O.S. No. 1229 of 1995, for recovery of possession. The lessee viz., M/s. Mettupalayam Lorry Owners Association has filed a written statement contending that they took the vacant site on lease from one M.P. Rangasamy Mudaliar in 1960 for a period of ten years and the lease deed expressly permitted sub-lease by the lessee and also for putting up necessary construction in the vacant site and therefore, the same was leased out for similar term to M/s. Standard Vaccum Oil Company. The lessee was subsequently appointed as a dealer of M/s. Standard Vacuum Oil Company. M/s. ESSO Eastern Inc. was successor in interest to M/s. Standard Vacuum Oil Company. Under ESSO (Acquisition of Undertaking of India) Act, 1974, the right, title and interest of M/s. ESSO Eastern Inc. devolved on M/s. Hindustan Petroleum Corporation Limited and therefore, the lease deed, dated 18.10.1989, was executed by the plaintiffs in favour of the lessee for a period of five years and the same permits sub-lease in favour of M/s. Hindustan Petroleum Corporation Limited. Since, the lessors refused to receive the rent, the lessee and sub-lessee have deposited the amount into the Court. In the mean while, the suit in O.S. No. 1164 of 1999 was filed by the sub-lessee viz., M/s. Hindustan Petroleum Corporation Limited for the relief of permanent injunction and I.A. No. 661 of 2001 in O.S. No. 1229 of 1995 was filed by the sub-lessee seeking the benefit under Section 9 of the Tamil Nadu City Tenants Protection Act. Both the Suits and Interlocutory Application were jointly tried by the Lower Court and on considering the oral and documentary evidence, it has passed a common judgment and decree, thereby, decreeing the suit in O.S. No. 1229 of 1995 in favour of the lessors and dismissing the suit in O.S. No. 1164 of 1999 and also the application in I.A. No. 661 of 2001. Aggrieved against the same, the Appeal Suits were preferred before the Lower Appellate Court by the lessee and sub-lessee and C.M.A. No. 43 of 2003 was filed by the sub-lessee. In the appeal, the Lower Appellate Court dismissed the Appeal Suits and C.M.A. by common judgment, dated 30.09.2005, thereby, confirming the judgment and decree of

the Lower Court and hence, the Second Appeals and Civil Revision Petition are filed by the lessee and sub-lessee.

4. For the sake of convenience, the parties are hereinafter referred to as the lessors, lessee and sub-lessee.

5. The learned counsel for the lessee would submit that the lease is liable to be terminated only on giving proper and valid notice as contemplated under Section 106 of the Transfer of Property Act. He would further submit that merely because, the lease period expired that will not give rise to the cause of action to summarily seek for eviction without proper notice under Section 106 of the Transfer of Property Act. He would further contend that as there is a renewal clause in the original agreement, there is automatic renewal and therefore, the suit filed by the lessors as such is not maintainable, which was not taken into consideration by both Courts below. He would further contend that the rent was sent by money order, which was not received by the lessors and therefore, the lessee and sub-lessee have deposited the rent amount into Court. He would further point out that even in the notice-Ex. A. 2, dated 02.04.1995, no time was given to vacate the suit property, therefore, the very notice itself is wrong.

6. The learned counsel appearing for the sub-lessee would contend that the lease deed, dated 18.10.1989, was executed by the plaintiffs in favour of the lessee for a period of five years and the same permits sub-lease in favour of a sub-lessee and therefore, M/s. Hindustan Petroleum Corporation Limited was given sub-lease and spending huge amount, they have put up construction in the suit property and therefore, they would contend that they have got legal right to continue as a sub-lessee in the suit property. He would further add that though the lessee and sub-lessee have sent Ex. B. 12-reply notice dated 13.04.1995, calling upon the lessors to renew the lease for a further period of five years, but, the same was refused to be received by the lessors, and therefore, it is wrong on the part of the lower Court in not accepting the said letter. He would further add that even a sub-lessee can claim the benefit under the Tamil Nadu City Tenants Protection Act and therefore, rightly the application in I.A. No. 661 of 2001 was filed under Section 9 of the Tamil Nadu City Tenants Protection Act, but, both Courts below came to the wrong conclusion that the sub-lessee is not entitled to the benefit under the said Act and therefore, the findings of both Courts below is wrong and hence, challenging the same the Civil Revision Petition is filed. He would submit that before seeking to vacate the suit property, the lessors should have issued a notice under Section 11 of the Tamil Nadu City Tenants Protection Act and not under Section 106 of the Transfer of Property Act and further, the Rent Control Act will not be applicable to the case on hand.

7. The learned counsel appearing for the lessors would submit that the lease is for a fixed period, therefore, no notice either under Section 106 of the Transfer of Property Act or Section 11 of the Tamil Nadu City Tenants Protection Act is necessary, in fact, the alleged letter dated 10.05.1994 under Ex. B. 10 is not at all received by them and in proof of having sent the same, neither postal

acknowledgment has been produced nor it was marked. Even, there is no mention about the same in the plaint or in the written statement, but, it is only marked through D.W. 1. He would further add that under Ex. B. 12-reply notice dated 13.04.1995, it is admitted that what was sought for by the lessors in the decree is the vacant site and if the lessee and sub-lessee have put up any superstructure, it is for them to remove the superstructure and hand over the vacant possession. He would further add that both Courts below have categorically come to the conclusion that the delivery of vacant possession should be handed over to the lessors and rightly, it has been granted and both Courts below have rightly held that the sub-lessee under law is not entitled for any relief. He would rely on the judgments of the Hon''ble Supreme Court reported in *Rup Chand Gupta Vs. Raghuvanshi Private Limited and Another*, and *Burmah Shell Oil Distributing now known as Bharat Petroleum Corporation Ltd. Vs. Khaja Midhat Noor and Others*, , for the proposition that in the suit for ejectment filed against the lessee for the possession of the land without giving any notice to the sub-lessee terminating the lease is well maintainable and no notice on the sub-lessee is necessary. He would further rely on the decisions of this Court reported in *Regional Manager, Hindustan Petroleum Corporation. Ltd., 861 Anna Salai, Madras-2 and another Vs. Thiagarajan*, , *P.T. Lee Chengalvaroya Naicker Trust Vs. M/s. A.R. Brothers*, *M/s. Aishma Customs Private Bonded Warehouse, M/s. Ramnath and Company and M/s. Lloyd Insulation (India) Ltd.*, .

8. The Second Appeals were admitted on 04.10.2012 and at the time of admission, the following substantial question of law is framed for consideration in S.A. No. 821 of 2012:-

"Whether the non-issuance of reply to Ex. B10-notice seeking renewal of the lease while the appellants were allowed to continue to be in possession beyond the period of lease prescribed in Ex. A1, shall bar the respondents from contending that the lease was not renewed by the principle of estoppel.?"

The following substantial question of law is framed for consideration in S.A. Nos. 910 and 911 of 2012:-

"Whether the appellant, being a sub-tenant in respect of the suit property, is entitled to the benefits contemplated in Section 9 of the City Tenants Protection Act?"

9. Heard the learned counsel on either side and I have considered the above submissions.

10. When we analyse the entire judgment of both Courts below as well as the argument and documents produced by both sides one thing is crystal clear that the main lessee is the Mettupalayam Lorry Owners Association and M/s. Hindustan Petroleum Corporation Limited is the sub-lessee. No doubt, there is a clause in the original agreement that there can be sub-lease, which is admitted by both parties. Firstly, I would like to analyse the first question of law raised in S.A. No. 821 of 2012 as to, Whether the non-issuance of reply to Ex. B10-notice

seeking renewal of the lease while the appellants were allowed to continue to be in possession beyond the period of lease prescribed in Ex. A1, shall bar the respondents from contending that the lease was not renewed by the principle of estoppel?. As we have pointed out earlier the plaintiffs in O.S. No. 1229 of 1995, are the brothers and they are the absolute owners of the vacant site morefully described in the plaint schedule and the same is leased out to the lessee, viz., Mettupalayam Lorry Owners Association under a registered lease deed dated 18.10.1989 for five years from 01.06.1989 to 30.06.1994. After the expiry of the said lease period, the plaintiffs asked to vacate the suit property. Since, the lessee failed to vacate the suit property, a notice was issued to him on 02.04.1995. Having received the said notice, the lessee neither chosen to send any reply nor vacated the suit property and therefore, they cannot be allowed to continue according to the lessors. The period of lease comes to an end on 30.06.1994. According to the lessee, when the notice under Section 106 of the Transfer of Property Act has not been properly issued, the lease period should have been extended. Therefore, now the question is whether notice under Section 106 of Transfer of Property Act is necessary. It is common knowledge that once the period of lease expires, there is no need to give any notice at all. Further, Exs. A. 1 and A. 2 are already issued stating that they have to vacate and hand over the vacant possession of the property. Further, in my considered opinion, it is not notice under Section 106 of the Transfer of Property Act, but, it is the notice to remind the lessee to vacate the property and it is clearly admitted by both parties, that the lessors have not received the rent subsequent to the expiry of the period of lease. Therefore, notice under Section 106 of the Transfer of Property Act is not required. It is pertinent to point out that Ex. B. 10-notice is the only document, which has been produced for renewal of lease. Ex. B. 10 is the notice supposed to have been sent on 10.05.1994. But, as rightly pointed out by the Lower Appellate Court, had it been true that the lessee have truly sent Ex. B. 10 and subsequently, he has met the lessors in person, he would have come to know of the indifferent attitude of the lessors in not renewing the lease period and he would have thought it fit to issue legal notice or to initiate any other legal action in this regard, but, their inaction for nearly one year would compel this Court to disbelieve the defence in this regard. According to the lessee, he has made a written request before the expiry of the lease period for the renewal of lease for a further period of five years, in the considered opinion of this Court is only an afterthought and Ex. B. 10 is to be treated as invented for the purpose of the case to suit the convenience of the lessee and sub-lessee and it cannot be relied upon and it is rightly rejected by the Lower Court. Similarly, both Courts below have categorically pointed out that insofar as to the renewal is concerned, neither in the pleading nor in the written statement filed by the lessors or in the plaint filed by the lessee, they have not pleaded about the so called letter dated 10.05.1994. Further they have not produced any acknowledgment card or postal receipt to show whether it is accepted by them or not. Under those circumstances, when there is no letter for renewal that too by the main lessee, the question of seeking for extension of

lease does not arise. Further more, in the judgment reported in Smt. Shanti Devi Vs. Amal Kumar Banerjee, the Supreme Court has held that where the lease was for a definite term, it expires by efflux of time.

11. In the decision relied on by the learned counsel for the lessors reported in P.T. Lee Chengalvaroya Naicker Trust Vs. M/s. A.R. Brothers, M/s. Aishma Customs Private Bonded Warehouse, M/s. Ramnath and Company and M/s. Lloyd Insulation (India) Ltd., , this Court has held that the right to seek for renewal of the lease is not an absolute right, but a qualified one viz., even as per the document, when there is a renewal clause the lessee was conferred with the right to seek renewal, the mere sending of letter/notice seeking renewal of lease period, even as alleged is not enough, when the scope is not explained and no steps taken. It is relevant to extract paragraph No. 16.19, which reads as under:-

"16.19. A right to seek renewal conferred upon the First Defendant under the Deed of Lease, cannot be enforced simply by informing the plaintiff. According to the first defendant, even before the expiry of the original term of lease, the plaintiff sought re-possession. Though from 1992 till 1996, the first defendant has been writing letters seeking renewal, I do not think that the mere writing of Letters could be taken to be an enforcement of the right of renewal. The First Defendant could have at least filed a Suit for Specific Performance or filed a counter claim in this very same Suit, seeking the determination of terms and conditions on which the lease could be renewed for another term of 20 years. Their failure to do so dis-entitles the First Defendant to have the lease renewed."

In the decision cited supra, this Court has clearly pointed out that the sending of letters seeking renewal is not enough and the lessee could have filed a suit for specific performance or filed a counter claim in the very same suit bringing to the notice of the Court the terms and conditions on which he seeks for renewal of lease. But, admittedly, in the case on hand, it has not been done and hence, the question of law raised in S.A. No. 821 of 2012 is answered against the lessee.

12. Now when we come to the question of law raised in S.A. Nos. 910 and 911 of 2012, "Whether the appellant, being a sub-tenant in respect of the suit property, is entitled to the benefits contemplated in Section 9 of the Tamil Nadu City Tenants Protection Act?". It is the admitted case of both parties that the main lessee is Mettupalayam Lorry Owners Association. Now the only argument raised by the sub-lessee is that he is a sub-lessee under the main lessee and the lease deed, dated 18.10.1989, was executed by the lessors in favour of the lessee for a period of five years and the same permits sub-lease in favour of a sub-lessee and therefore, M/s. Hindustan Petroleum Corporation Limited was given sub-lease and spending huge amount, they have put up construction in the suit property and therefore, they would contend that they have got legal right to continue as a sub-lessee in the suit property. But, on a perusal of the Appellate Court judgment, it is seen that a clear finding has been clearly given to the effect that the sub-lessee at no point of time has paid the rent to the lessor, which fact has been clearly admitted by the main lessee as well as the sub-lessee in the

pleading as well as in the evidence that the rents are paid to the lessors only by the main lessee and not by the sub-lessee. As a matter of fact under Exs. A. 5 and B. 14 letters, the rents are offered only by the main lessee and not by the sub-lessee. As such the sub-lessee cannot be brought under the definition of the lessee contained in Section 2 of Tamil Nadu City Tenants Protection Act.

13. Infact, if we see the definition under Section 2(4) of the Tamil Nadu City Tenants Protection Act, "Tenant" means a person liable to pay rent in respect of such land, under a tenancy agreement express or implied. When it is the admitted case of the lessee that the sub-lessee has not been paying the rent and main lessee is paying the rent, when we analyse the question as to, Whether the sub-lessee is entitled to come under the definition of "Tenant" under Section 2(4) of the Tamil Nadu City Tenants Protection Act, the answer is definitely the sub-lessee will not come under the category of tenant seeking for the remedy under Section 9 of the Tamil Nadu City Tenants Protection Act. From a cursory perusal of Section 9 of the Tamil Nadu City Tenants Protection Act, it is seen that the word used is "Any tenant who is entitled to compensation". Therefore, it is clearly established that the sub-lessee will not come under the definition of Section 9 of the Tamil Nadu City Tenants Protection Act, the question of law now raised in the Second Appeal as to whether the sub-lessee is entitled to the benefits under the Tamil Nadu City Tenants Protection Act cannot arise for consideration. In fact, both Courts below have categorically held that the sub-lessee cannot be brought under the definition of the tenant contained in Section 2(4) of the Tamil Nadu City Tenants Protection Act. There is also an assignment by the main lessee in favour of the sub-lessee; that is also not accepted, because, he has no legal right.

14. In the judgment of this Court reported in J. Lease and Co and 2 others Vs. M.S.A. Mohamed Farooq, , this Court has categorically held that unless there was an agreement express or implied between him and the landlord and the landlord has received rent from such assignee in pursuance of the said agreement and in the absence of one such agreement and on the failure of the sub-tenant to have paid or offered any rent to the owners, the question of holding the sub-lease (i.e.,) transfer of interest in respect of the entire suit property in his favour as an assignment does not at all arise herein.

15. In fact, the Division Bench of this Court in the judgment reported in T. Parthasarathy Chetti Vs. K. Shyamalamba by agent P. Lakshminarayana, by agent P. Lakshminarayanan, has clearly held that the sub-lease demised for a whole term in the absence of a contract to the contrary, will not constitute an assignment for lease and the sub-tenant will be a tenant insofar as his own lessors is concerned and he will neither have privity of contract nor estate so far as the superior lessors is concerned and the right to recover the compensation and to have the right to purchase the land will not be available to the sub-tenant who has put up superstructure on it as against the original owner of the property and the exclusion of the sub-tenant from the concept of the word tenant must be

regarded in relation to the actual lessors. That being the settled legal position, in my considered opinion, the sub-lease in favour of the sub-lessee cannot be regarded as an assignment of lease and he cannot be brought under the definition of tenant under the Tamil Nadu City Tenants Protection Act so as to claim any benefit under Section 9 of the Act, which is available only to the main tenant.

16. In the judgment of the Hon''ble Supreme court reported in P. Ananthakrishnan Nair and Another Vs. Dr. G. Ramakrishnan and Another, , the Supreme Court has held that as the main tenant does not keep for himself the land or superstructure, nor he is residing therein or carrying on any business, the question of convenient enjoyment of the land by him could not arise and the question of deciding as to whether he is entitled to the benefits under Section 9 of the Act also does not arise.

17. In the judgment of this Court reported in Regional Manager, Hindustan Petroleum Corporation. Ltd., 861 Anna Salai, Madras-2 and another Vs. Thiagarajan, , Regional Manager, Hindustan Petroleum Corporation Limited vs. Thiagarajan , this Court has specifically barred that sub-tenant will not be entitled to benefits under City Tenants Protection Act. In paragraph No. 17 of the said judgment, this Court has held as under:-

"17. Mere authorisation for empowering the tenant to sub-lease the land leased out to him cannot confer the benefits contained in the City Tenants Protection Act, upon the sub-tenant, because, we have seen the definition of "tenant" contained in Section 2(4) as it stood from the amendment from 1960. It specifically excludes the sub-tenant when it says that the definition does not include a sub-tenant or his heirs. Therefore, if the chief-tenant has not put up a superstructure or if the superstructure put up does not belong to the chief-tenant, the landlord cannot issue a notice under Section 11 of the Act, because the notice under Section 11, as we have noticed earlier has to contain requiring the tenant to surrender the building and also an offer to pay the compensation for the building. Notice under Section 11 cannot be issued by splitting the requirement to surrender and the offer to pay compensation any thereby ignoring the building and compensation i.e., a notice cannot be issued by simply calling upon the tenant to surrender the land alone. It is not the object of the said section, in particular and the object of the entire enactment, in general, cannot ignore the purpose of the object, notice to be given and the object sought to be achieved by the enactment which contemplates a notice like the one under section 11 of the Act."

In the light of the foregoing discussions, the substantial question of law in S.A. Nos. 910 and 911 of 2012 is answered against the sub-lessee.

18. When we come to the revision it is filed by the sub-lessee as against the order passed order passed by the I Additional District Judge, Coimbatore, dated 30.09.2005 made in C.M.A. No. 43 of 2003, confirming the order of the II

Additional Subordinate Judge, Coimbatore, in I.A. No. 661 of 2001 in O.S. No. 1229 of 1995, dated 16.12.2002. As we have categorically stated in the appeal itself that the sub-lessee is not entitled to benefits of Section 9 of the Tamil Nadu City Tenants Protection Act, both Courts below have rightly dismissed the application under Section 9 of the said Act.

19. Hence, I do not find any reason to interfere with the reasoned judgment and decree of the Lower Appellate Court, dated 30.09.2005, in view of the order passed by this Court in Regional Manager, Hindustan Petroleum Corporation. Ltd., 861 Anna Salai, Madras-2 and another Vs. Thiagarajan, , Regional Manager, Hindustan Petroleum Corporation Limited vs. Thiagarajan , wherein, this Court has clearly held that the sub-tenant is barred from having recourse under Section 9 of the Tamil Nadu City Tenants Protection Act. In the result, all the Second Appeals are dismissed and the Civil Revision Petition is dismissed. The judgment and decree passed by the Lower Appellate Court dated 30.09.2005 is confirmed. Consequently, connected Miscellaneous Petitions are closed. No costs.