

(2011) 08 MAD CK 0343

In the Madras High Court

Case No : S.A. No. 1298 of 2009 and M.P. No. 1 of 2009

Mrs. S. Ramani and Mr. K. Sukumar

APPELLANT

Vs

The Managing Trustee Sath Sampradhaya Vardhini Trust

RESPONDENT

Date of Decision : 10-08-2011

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 2(8)

Citation : (2011) 08 MAD CK 0343

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : M. Mahendra Kumar, for the Appellant; T. Karunakaran, for the Respondent

Final Decision : Allowed

Judgement

R.S. Ramanathan, J.—The unsuccessful Plaintiffs are the Appellants herein. The Appellants/plaintiffs filed the suit for injunction, restraining the Respondent from resorting to any unlawful acts to evict them from the suit property.

2. The case of the Appellants/plaintiffs was that one Mrs. Perundevi, was the tenant of the suit property under the Respondent/defendant. The first Plaintiff is the daughter of the said Mrs. Perundevi and the second Plaintiff is her son-in-law and they both were living along with Mrs. Perundevi, till her life time and after the death of Mrs. Perundevi also, the Appellants/plaintiffs continued to live in the suit property as tenants. As the Respondent refused to receive the rent from the Appellants/plaintiffs and also attempted to demolish the old building for the purpose of constructing a new building, the suit was filed for the relief stated above.

3. The Respondent/defendant contested the suit stating that the grandfather of the first Plaintiff viz., Thiru Kanikannan, was the tenant of a portion of 200 sq.ft in the first floor of the suit property and Mrs. Perundevi, continued as a tenant in the suit property and after her death, the Plaintiffs claimed to be in possession of

the suit property and the Appellants/plaintiffs are not the tenants under the Respondent and they have no right to be in possession of the suit property. Therefore, the Appellants/plaintiffs are not entitled to the relief of injunction prayed for.

4. Both the Courts below have held that the Appellants/plaintiffs have not proved that they are in possession of the suit property as a tenants and even according to the evidence of the second Appellant, the Appellants/plaintiffs are not in possession of the entire extent of the suit property and the Appellants/plaintiffs claimed to be in possession of a portion of the suit property measuring 7 1/2 x 7 1/2 feet and therefore, the Appellants/plaintiffs have not come to Court with clean particulars about the suit property and the second Appellant has also admitted that after the death of Mrs. Perundevi, they have not produced any document to prove their possession in the suit property. Therefore, the Appellants cannot claim any right of tenancy to be in possession of the suit property. Hence, the Appellants/plaintiffs are not entitled to the relief of injunction prayed for. Aggrieved by the same, this Second Appeal has been filed.

5. The following substantial questions of law were framed at the time of admitting the Second Appeal:

i) Whether after the death of first Appellant's grandfather Thiru. Kanikannan, the tenancy rights in respect of the suit property devolved and inherited by/upon his legal heir/his wife Tmt. Perundevi and subsequent to her death the tenancy rights devolved upon the first Appellant, who is daughter, in the absence of valid attornment of tenancy?

ii) Whether in the absence of any valid termination of tenancy by the Respondent-trust against the Appellants, the findings of the Courts below declaring the Appellants as trespassers is correct or valid?

iii) Whether the Appellants are tenants and lawful occupier, who are paying the monthly rent to the Respondent-trust, entitled to protect their possession from illegal interference/demolition from the hands of the Respondent-trust, in the absence of any valid demolition order from the Corporation of Chennai?

6. It is submitted by the learned Counsel appearing for the Appellants that the Respondent admitted that Mrs. Perundevi was the tenant under them and the first Appellant is the daughter of Mrs. Perundevi and documents were filed to prove that she was residing along with her mother-Mrs. Perundevi, till her life time. Therefore, as per the definition of "tenant" under the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960 (hereinafter referred to as "the Act") any person, who continued to be in possession of the suit property, along with the tenant, can also claim tenancy. Hence, the learned Counsel submitted that the first Appellant became the tenant of the suit property as per the definition of the term "tenant" u/s 2(8) of the Act 18 of 1960 and as such, the Appellants/plaintiffs are entitled to protect their possession, until the eviction is ordered by following due process of law and that was not properly appreciated by the Courts

below.

7. The learned Counsel for the Appellants further submitted that even though the Appellants claim to be in possession of two rooms, one hall and one kitchen bearing Door No. 28, situate at Mulla Sahib Street, Chennai-79, having regard to the admission of the second Appellant and P.W.2, that the Appellants are in possession of two rooms, each measuring 7 1/2" x 7 1/2" feet and therefore, they may be granted injunction only in respect of those two portions, even though they are not entitled to claim protection in respect of the entire area.

8. Per contra, the learned Counsel appearing for the Respondent submitted that no proof was produced by the Appellants that they continued to be in possession of the suit property after the death of Mrs. Perundevi and P.W.1, the second Appellant has also admitted in evidence that he has not produced any proof that they are in possession of the suit property after the death of Mrs. Perundevi. Even assuming without admitting that the Appellants lived along with Mrs. Perundevi, during her life time, unless the Appellants prove that they continued to live in the suit property immediately after the death of Mrs. Perundevi, they cannot claim the status of a tenant.

9. The learned Counsel for the Respondent further submitted that injunction being a discretionary remedy, cannot be granted to a person, who has come to Court with unclean hands and the Appellants have stated that they are in possession of the property bearing Door No. 28, having two rooms, one hall and one kitchen and now they contended that they are in possession of two rooms, each room measuring 7 1/2" x 7 1/2" feet and that was rightly considered by the Courts below and held that the Appellants were not able to give a correct particulars of the suit property and considering all these aspects, both the Courts below have rightly dismissed the suit and the concurrent findings do not call for any interference.

10. The learned Counsel for the Appellants submitted that when the Appellants were found to be in possession of the suit property during the life time of Mrs. Perundevi, and they continued to be in possession of the suit property after the life time of Mrs. Perundevi, unless, it was proved that they are not living in the same property and the possession of the Appellants in the suit property was also admitted by the Respondent in their notices sent to the same address and hence, it cannot be contended that the Appellants are not in possession of the suit property after the death of Mrs. Perundevi.

11. Heard both sides.

12. In this appeal, it is admitted that the original tenant was Thiru. Kanikannan, viz., the grandfather of the first Appellant and after his death, tenancy was inherited by his daughter Mrs. Perundevi and the Respondent also accepted Mrs. Perundevi, as the tenant. It is contended by the Appellants that they lived along with the said Mrs. Perundevi, during her life time and continued to remain in possession of the suit property after her death also and therefore, they are

statutory tenants and their possession is liable to be protected, unless, they are evicted by following due process of law.

13. It is no doubt true that when the family members of the tenant continued to remain in possession of the tenanted property, after the death of the main tenant, they are entitled to claim protection, as they are the statutory tenants and they cannot be evicted, except, under due process of law. Therefore, to claim the status of statutory tenant, the person, who claims that right or status must prove that he was in possession of the property along with the tenant and the person, is the son or daughter or legal representatives of the deceased/tenant and in this case, it is seen from the documents viz., Exs.A-8, 9 & 10, viz., ESI identity card, photocopy of the passport of the second Plaintiff, ration card, all would disclose that on the date of death of Mrs. Perundevi, the Appellants were in possession of the suit property, along with Mrs. Perundevi.

14. Therefore, as per the definition of the term " Tenant" under the Act 18 of 1960, the daughter, who was living with the tenant in the building as a member of the tenant's family up to the death of the tenant can also claim the status of the tenant. Unfortunately, this aspect was not considered by the Courts below and the Courts below erred in holding that the Appellants are not the tenants, though they have proved their possession in the suit property, along with the deceased/Mrs. Perundevi. Further, the Courts below held that no proof was adduced by the Appellants that they have attorned tenancy in favour of the landlord. Under the provisions of the said Act, there is no necessity for the legal representatives of the Appellant/tenant to attorn the tenancy with the landlord and it is enough if the son/daughter was living with the tenant as one of the family members and in that capacity, such person is entitled to claim status of tenant. It is not made clear whether the Respondent is a public trust or private trust and if it is a private trust, the provisions of the Act will apply and the provisions of Section 2(8) of the Act will also cover the situation. Even assuming that the Respondent is a public trust and the Act is not applicable to such a trust, the principles stated in the Act, can be made applicable to the Respondent-trust. When Mrs. Perundevi, was admittedly the tenant under the Respondent and the Appellants proved their possession in the suit property along with Mrs. Perundevi, as stated above, in my opinion, they are also entitled to have the status of tenants. Hence, I hold that the first Appellant is a tenant under the Respondent.

15. The next question that arises for consideration is whether the Appellants are in possession of the suit property as described in the schedule of property. In the schedule of property, they claimed two rooms, one hall and one kitchen bearing Door No. 28, situate at Mulla Sahib Street, Chennai-79, and P.W.1. admitted that they are in possession of two rooms in the first floor and each room is having an extent of 7 1/2" x 7 1/2" feet. The evidence of P.W.2, also corroborated the same. Therefore, it is admitted by the Appellants that they are not in possession of the entire extent of the suit property as stated in the suit schedule and they

are in possession of only two rooms, each room having an extent of 7 1/2" x 7 1/2" feet viz., 100 sq. ft in total. Therefore, they are entitled to claim protection only in respect of that extent of property and they are not entitled to the entire suit property. Though the second Appellant has stated in evidence that there was no documents filed to prove their possession, after the death of Mrs. Perundevi, admittedly, notice was sent to the Appellants stating that the Appellants are residing at Mulla Sahib Street, Chennai-79, and that would prove the possession of the above extent of property by the Appellants. Further, the Section only insists that the person, who claim status of tenancy must be the son or daughter or legal representatives of the deceased/tenant and he/she must have resided along with the tenant as a family member.

16. As I have held that the first Appellant stayed with the deceased/tenant Mrs. Perundevi in the same premises, till her life time and the first Appellant being the daughter of Mrs. Perundevi, she is entitled to claim the status of tenant in respect of two rooms of an extent of 100 sq.ft as stated above. Therefore, the Appellants are entitled to claim relief of injunction in respect of 100 sq.ft in the first floor, as they are the tenants in respect of that portion and they are entitled to be in possession unless and until, they are evicted by following due process of law.

17. Therefore, the substantial questions of law are answered in favour of the Appellants and I hold that the first Appellant is a tenant in respect of 100 sq.ft of property viz., two rooms, each room having an extent of 7 1/2" x 7 1/2 " feet and they are entitled to be in possession of the property until they are evicted by due process of law.

18. In the result, the Second Appeal is hereby partly allowed, by setting aside the judgment and decree of the Courts below in the manner stated above. In the circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.