

(1986) 11 MAD CK 0047
In the Madras High Court

Pudukkulam alias Kuttikulam Vaharaya Trust
Vs

APPELLANT

T. Kamalambal

RESPONDENT

Date of Decision : 04-11-1986

Acts Referred:

Citation : (1988) 1 LW 187 : (1988) 1 MLJ 353

Hon'ble Judges : Srinivasan, J

Bench : Division Bench

Judgement

Srinivasan, J.—The suit out of which these proceedings arise is one for ejectment of a tenant of the plaintiff. It is not necessary to set out all the facts in view of the position that the tenancy is now an admitted one. The only question that is raised in the proceedings is whether the tenant is entitled to the benefits of the City Tenants' Protection Act.

2. Prior to the filing of this suit, the plaintiff filed a suit, O.S. 1017 of 1973 for recovery of possession against the same tenant. That suit was decreed by the District Munsif's Court, Thanjavur, but when the appeal was pending in the Sub Court, the Tamil Nadu City Tenants Protection Act was extended to the area in which the property is situated. On such extension of the Act, the appellate Court took the view that the suit was not maintainable because of the absence of a notice u/s 11 of the Act. The landlord was directed to issue a notice and take fresh proceedings for eviction and the appeal by the tenant was allowed on such directions.

3. Consequently, the present suit came to be filed after issue of a notice by the landlord. In this suit the tenant claimed the benefits of the Tamil Nadu City Tenants Protection Act. The trial Court negatived his claim on the ground that a Division Bench of this Court in Sree Siddhi Budhi Vinayakagar Sree Sundareswarar Devastanam Vs. S.V. Marimuthu, , had decided that in the case of trust properties, there could not be any order u/s 9 of the Act unless there was a necessity for the sale or benefit to the trust. In that view, the trial Court granted a decree in favour of the plaintiff, but directed an enquiry into the value of the

superstructure for the purpose of the plaintiff paying compensation to the tenant u/s 3 of the Act.

4. The tenant preferred an appeal against the decree in the suit and also a civil miscellaneous appeal against the order in the original petition. The learned Subordinate Judge of Thanjavur held rightly that the decision in *Sree Siddhi Budhi Vinayakagar Sree Sundareswarar Devasthanam Vs. S.V. Marimuthu*, was wrongly understood by the trial Court. The learned Subordinate Judge held that in the case of trust properties, which are not *Res Extra Commercium* there can be a direction to sell u/s 9 of the Act, even in the absence of any necessity or benefit to the trust. In that view, the appeal was allowed. It must also be mentioned that another contention was raised on behalf of the plaintiff that the tenant forfeited his rights under the Act in view of his denial of title in the written statement filed in O.S. 1017 of 1973. This contention was also rejected by the learned appellate Judge. He took the view that there was no such denial as contended by the plaintiff. Consequently, the learned appellate Judge dismissed the suit and ordered the application u/s 9 of the Act.

5. The present second appeal is against the dismissal of the suit and the civil revision petition is against the order in C.M.A. 110 of 1978. Learned Counsel for the appellant-petitioner raised three interesting questions. The first question is that the civil miscellaneous appeal before the learned Subordinate Judge filed by the tenant was not maintainable in view of the fact that he had prayed for two alternative reliefs in his application u/s 9 of the Act and one of the said reliefs had been granted in his favour by the learned District Munsif. The tenant in his application u/s 9 of the Act, had prayed not only for the sale of the property in his favour but in the alternative prayed for payment of compensation for the superstructure erected by him. Learned Counsel for the appellant contended that the trial Court has passed an order for payment of compensation, and, therefore, the tenant was not a person aggrieved in order to maintain the civil miscellaneous appeal before the learned Subordinate Judge. In this connection learned Counsel places reliance upon the decision of a Division Bench of this Court in *Sakkubai Ammal v. Babu Reddiar Alias R.B. Reddiar* (1977) 1 M.L.J. 311 : 90 L.W. 110. In that case, a suit for specific performance or in the alternative for return of advance and for damages for breach of contract was filed and the trial Court gave a decree for return of advance and damages in favour of the plaintiff and refused to grant the relief of specific performance. The plaintiff filed an appeal in this Court against the decree refusing to grant specific performance. The Division Bench took the view that the appeal was not maintainable as the plaintiff had got the alternative relief and was not, therefore, an aggrieved person.

6. Learned Counsel, however, was fair enough to refer to two subsequent decisions of this Court, one in *Manickam alias Manickavasagam and Others Vs. Ramaswamy Gounder and Another*, and the other of a Division Bench of this Court in *Senniappa Gounder v. Venkataraman* (1981) 2 M.L.J. 110 : 94 L.W. 591.

The first of the decisions is that of a single Judge. That was a case in which a declaration of title and injunction were sought by the plaintiff and in the alternative partition of 1/8th share in the total properties was sought for. While the trial Court granted the relief of partition and refused to grant the relief of declaration and injunction, the plaintiff preferred an appeal and the defendants preferred a memorandum of cross objections. The learned Subordinate Judge allowed the appeal and dismissed the memorandum of cross-objections thereby granting the relief of declaration and injunction. Against the said decree, the defendants preferred a second appeal before this Court. Reliance was placed by the appellant therein on the decision in *Sakkubai Ammal v. Babu Reddiar Alias R.B. Reddiar* (1977) 1 M.L.J. 311, and it was contended that the appeal before the Subordinate Judge was not maintainable. The learned single Judge who dealt with the matter distinguished the decision in *Sakkubai Ammal v. Babu Reddiar Alias R.B. Reddiar* (1977) 1 M.L.J. 311, and pointed out that the ratio contained in that decision would not apply to the facts of the said case. The learned single Judge took the view that the two alternative reliefs prayed for in the plaint could not be treated as alternative reliefs in the strict sense of the term and that the plaintiff had not placed the second of the prayers on a par with the first prayer. The learned Judge observed as follows:

Therefore, it follows that unless a party is shown to have fully approbated to an alternative relief granted to him, he will not stand legally precluded from reprobating the decree and re-agitating his claim for the other relief which was not given to him.

For coming to said conclusion, the learned Judge relied upon the decision of the Supreme Court in *Ramesh Chandra v. Chunilal* (1971) 2 S.C.J. 848 : AIR 1971 S.C. 1239.

7. The second decision in *Senniappa Gounder v. Venkataramana* (1981) 2 M.L.J. 110 : 94 L.W. 591, is that of a Division Bench. The Division Bench approved the decision of the single Judge in *Manickam alias Manickavasagam and Others Vs. Ramaswamy Gounder and Another*, Now it is contended before me that in view of the conflict between the two Division Benches the matter should be referred to a Full Bench. I understand that there is already a reference to Full Bench with regard to the said question. However, I am not inclined to refer this matter to the Full Bench for the following reasons. In the present case, the prayers in the original petition read as follows:

V (a) The petitioner therefore prays that this Honourable Court may be pleased to direct the sale of the schedule mentioned property comprised in the respondent's suit in ejectment pending in O.S. 19 of 1977 of this Court to this petitioner at the price to be determined by this Court as contemplated u/s 9 of Madras City Tenants Protection Act.

(b) If for any reason the Court holds that the trustee has no power of disposal of the schedule mentioned property, alternatively to order money compensation for

the superstructure, well, latrine, trees etc, owned by the petitioner to be paid by the respondent to the petitioner.

The said original petition is one filed u/s 9 of the Tamil Nadu City Tenants Protection Act. Of course, Section 3 is also quoted at the top of the petition. If we look into the provisions of the Act, we find that Section 3 does not contemplate filing of any petition. Section 3 of the Act makes it mandatory on the part of the landlord to pay compensation for any building that has been erected by the tenant. Section 3 of the Act reads this:

3. Payment of compensation of ejectment Every tenant shall on ejectment be entitled to be paid as compensation the value of any building, which may have been erected by him by any of his predecessors in interest or by any person not in occupation at the time of the ejectment who derived title from either of them, and for which compensation has not already been paid. A tenant who is entitled to compensation for the value of any building shall also be paid the value of trees which may have been planted by him on the land and of any improvements which may have been made by him.

The Act does not contemplate the filing of any petition for getting compensation u/s 3 of the Act. Hence, it cannot be construed that the original petition filed by the tenant in the present case contains two alternative reliefs on par with each other. The second relief that is prayed i.e., the relief of compensation need not at all have been prayed for by the tenant. The only relief which the tenant could have claimed is the relief u/s 9 i.e., for a sale of the property in his favour. There was no question of a choice of one as against the other. Hence, this case will not be governed by the decision of the Division Bench in *Sakkubai Ammal v. Babu Reddiar Alias B.R. Reddiar* (1977) 1 M.L.J. 311 : 90 L.W. 110.

8. Secondly, there was also a suit for ejectment and the Original petition was filed only during the pendency of the suit. In the suit there is a decree against the tenant for eviction. The tenant is certainly aggrieved by the said decree and he is entitled to maintain an appeal against the said decree. He had in fact filed an appeal which was numbered as A.S. 104 of 1978. In that appeal, the question whether the tenant is entitled to the benefits of Section 9 of the Act or not had to be gone into. It cannot, therefore, be contended that the civil miscellaneous appeal is not maintainable and consequently the tenant will not be entitled to canvass the question in the second appeal. When he had a right of appeal against the decree for eviction and thereby a right to canvass the question whether he was entitled to the benefits of the Act or not that cannot be taken away by the principle laid down in the decision in *Sakkubai Ammal v. Babu Reddiar Alias R.B. Reddiar* (1977) 1 M.L.J. 311 : 90 L.W. 110.

9. Lastly, this objection to the maintainability of the civil miscellaneous appeal was not raised before the learned Subordinate Judge nor has it been raised in the memorandum of grounds in the civil revision petition. For the first time, this objection was raised at the time of the arguments. Though I have not rejected

the contention on the technical ground that it was raised earlier, I am of the opinion that the contention has no substance in view of the facts already stated. Therefore, I cannot agree with this contention of learned Counsel for the appellant.

10. The second contention that is urged by the learned Counsel for the appellants is that the decision in *Sree Siddhi Budhi Vinayakagar Sree Sundareswarar Devasthanam Vs. S.V. Marimuthu*, , requires reconsideration. According to learned Counsel, the Division Bench had not taken into account the Explanation to Section 9 of the Act. Learned Counsel lays stress upon the following words found in the Explanation:

... the full interest which a trustee can convey under the power possessed by him to convey trust property when necessity exists for the same or the alienation of the property is for the benefit of the estate or trust.

Learned Counsel submits that the explanation contemplates the decision of a question whether the sale is supported by necessity or is one for the benefit of the trust whenever a trust land is sought to be purchased u/s 9 of the Act. I cannot agree with this contention for two reasons. Firstly, the Division Bench has taken into account the language of the Explanation to Section 9 of the Act and come to the conclusion that any land which is not *Res Extra Commercium* could be directed to be sold u/s 9 of the Act. Secondly, in my view, the explanation only refers to the necessity and benefit for the purpose of determining the total interest which could be conveyed by a trustee in a trust land. In other words, whenever a trustee sells a trust land, it would be fully valid and he would be able to convey the full interest in the same, if the sale is supported by necessity or benefit. The power which a trustee has got in such a situation can also be invoked whenever a sale is directed u/s 9 of the Act, even in the absence of such necessity or benefit to the estate. The sale u/s 9 of the Act is by a statutory direction intended for conferring a benefit on the tenant. That cannot be taken away by the provisions in the general law of Trusts which provides that in the absence of necessity or benefit in the Trust, its property cannot be sold. This aspect was also considered by the Division Bench in the said decision. There is absolutely no warrant to hold that the decision of the Division Bench requires reconsideration. Hence, I am unable to accept this contention also.

11. The third contention relates to the denial of title by the tenant in the prior proceeding. Though the contention has been raised in the lower appellate Court, the written statement filed in O.S. 1017 of 1973 in which the tenant is said to have denied the title of the landlord has not been filed in the present proceedings. In the absence of the said written statement, the question whether there was a denial of title and a consequent forfeiture of the rights of the tenant cannot be decided in the present proceedings. Hence, all the three contentions raised by the learned Counsel for the appellant have to be rejected. Consequently, the second appeal as well as the civil revision petition fail and they are dismissed.

12. However, the form in which the decree had been passed by the lower appellate Court is erroneous. The learned Subordinate Judge has chosen to dismiss the suit even at this stage. I find that it is invariably done by the Subordinate Courts whenever a petition u/s 9 of the Tamil Nadu City Tenants Protection Act is allowed. But, the Act does not contemplate such a procedure. The relevant provisions of Section 9 are found in the following terms:

3. (a) On payment of the price fixed under Clause (b) of Sub-section (I) the Court shall pass an order directing the conveyance by the landlord to the tenant of the extent of land for which the said price was fixed. The Court shall by the same order direct the tenant to put the landlord into possession of the remaining extent of land, if any. The stamp duty and registration fee in respect of such conveyance shall be borne by the tenant.

(b) On the order referred to in Clause (a) being made, the suit or proceeding shall stand dismissed, and any decree or order in ejectment that may have been passed therein but which has not been executed shall be vacated.

A reading of the said section makes it clear that the suit can be dismissed only after an order is made under Clause 3(a) of Section 9, Clause 3(a) provides for payment of the price fixed by the Court for the land and after such payment, the Court shall make an order directing the conveyance by the landlord to the tenant of the extent of land for which the price was fixed. If the suit is dismissed even at this stage and if the tenant fails to deposit the amount fixed by the Court as price of the land, the landlord will be left in the lurch without having a decree for evicting the tenant. Such a situation is not contemplated by the provisions of the Act. That is why the Act provides that there should be no dismissal of the suit until an order directing conveyance of the land to the tenant is made. That stage reaches only when the tenant makes the deposit of the entire price of the land within the time fixed by the Court. The provisions of Section 9 of the Act and the procedure to be adopted by the Court have been discussed at some length by a Division Bench of this Court in *M. Arasan Chettiar and Others Vs. S.P. Narasimhalu Naidu's Estate Trust, Coimbatore and Others*, . The Bench has observed as follows:

From the above conclusion of ours on the interpretation and scope of Section 9, the following consequences will follow:

(1) If a controversy arises whether a particular tenant is entitled to the benefits of the Act or not, in the sense that he is a tenant complying with the definition of the term "tenant" in Section 2(4), that question has necessarily to be considered by the Court, because, an affirmative decision in favour of the tenant alone will enable the Court to proceed further with the application made u/s 9(1)(a) of the Act, and a negative decision against the tenant will render any application filed by the tenant u/s 9(1)(a) as not maintainable and such an order is not an order u/s 9 and the date of that order has no relevancy to the fixation of the price of the land to be sold by the landlord to the tenant;

(2) When once the Court has decided that the tenant is entitled to the benefits of the Act or there is no controversy that the tenant is entitled to the benefits of the Act, the Court will have to dispose of the application filed by the tenant u/s 9(1)(a);

(3) For the purpose of disposing of this application, the Court must first decide upon the minimum extent of the land which may be necessary for the convenient enjoyment of the tenant. Any such decision of the Court, from the very nature of the case, can only be by means of an order and the date of that order will be the relevant for the purpose of fixing the price mentioned in the third sentence in Section 9(1)(b). If the decision of the Court on the minimum extent is taken up further by way of appeal or revision and that decision is either affirmed or modified and if there had been a stay of further proceedings, during the pendency of such appeal or revision, naturally, the date of the order contemplated in the third sentence in Section 9(1)(b) will be the date of the order of the appellate or revisional Court;

(4) After having determined the minimum extent of the land or if such determination had been the subject matter of further proceedings and those proceedings have concluded, the Court will then proceed to fix the price of the land;

(5) For the purpose of deciding upon the minimum extent of the land or for the purpose of fixing the price of the land, certainly it is open to the Court to appoint a Commissioner to record evidence and submit a report to the Court;

(6) After the price to be paid by the tenant to the landlord for the purchase of the land has been determined, the Court will have to pass an order directing the tenant within a period to be determined by the Court, not being less than three months and not more than three years from the date of such order, to pay into Court or otherwise as directed by it, the price so fixed in one or more instalments with or without interest;

(7) If the tenant complies with such a direction, then the Court will pass a final order u/s 9(3)(a) of the Act directing the landlord to convey the extent of the land decided to the tenant for the price so fixed and in the same order directing the tenant to put the landlord into possession of the remaining extent of the land if, any;

(8) If, on the other hand, the tenant commits default in the payment of the amount as directed and the Court itself, had not excused the delay by giving further opportunity, the application filed by the tenant u/s 9(1)(a) shall stand dismissed; and

(9) If the tenant has fulfilled the direction given by the Court and the Court has passed the order u/s 9(3)(a) then the suit or proceeding shall stand dismissed and any decree or order in ejectment that might have been passed there in but which has not been executed shall be vacated. If, on the other hand, the tenant

has committed default and the application filed by him u/s 9(1)(a) stands dismissed u/s 9(2), then the suit will proceed or any decree or order in ejectment that may have been passed therein shall stand.

13. In my opinion, the suit should be kept pending till the disposal of the application u/s 9 completely. That stage can be reached only when the tenant makes a deposit or fails to make a deposit. If he fails to make a deposit, the application u/s 9 shall stand dismissed and there shall be a decree for eviction as against the tenant. If the tenant makes the deposit within the time given by the Court, then the suit shall stand dismissed. The lower appellate Court is, therefore, not correct in dismissing the suit straightaway on giving a finding that the tenant is entitled to the benefits of Section 9 of the Act. Learned Counsel for the appellants suggested a conditional decree can be passed in the suit in favour of the landlord stating that the suit would stand dismissed in the event of the tenant making a deposit of the amount fixed by the Court under the provisions of Section 9 of the Act and that if the tenant failed to make such deposit, the decree for eviction can be executed. But, unfortunately, no such procedure has been prescribed by the provisions of the Act. My attention has not been drawn to any rule or procedure in those matters. As a matter of practice, I find that suits are dismissed as and when the tenant's entitlement to purchase the land u/s 9 of the Act is decided. On a plain reading of the provisions of the Act, my view is that the suit should be kept pending and no decree shall be passed until the application u/s 9 of the Act is completely disposed of. If the application u/s 9 of the Act is dismissed on the failure of the tenant to make a deposit of the amount as prescribed by the Court within the time stipulated, a decree for eviction can be passed in favour of the landlord and if the application u/s 9 of the Act is ordered thereby directing conveyance of the property to the tenant by the landlord, then the suit shall be dismissed.

14. Another aspect of the matter that has to be taken note of is that there may be cases where the direction to sell may relate only to a portion of the property demised. The Act contemplates a sale of only such extent as may be required by the tenant necessarily for his enjoyment. If in a given case a larger extent was leased out to the tenant and the direction to sell is confined to a portion thereof then for the remaining portion, there must be a decree in favour of the landlord. That stage can arise only when the Court finally determines the extent to be sold in favour of the tenant and when the tenant deposits the price fixed therefor. I am, therefore, of the opinion that the suit should be kept pending till the stage contemplated in Section 9(3)(b) is reached.

15. Hence, in this case, the decrees of the trial Court and the lower appellate Court are set aside. The suit will be kept on the file of the trial Court till O.P. 3 of 1977 is finally disposed of. After an order is passed in the O.P. either directing the conveyance of the property or dismissing the same on account of a default on the part of the tenant the appropriate decree will be passed by the trial Court in the suit.

16. With these observations, though the judgment of the lower appellate Court is confirmed, the decree passed by the said Court is set aside and the matter is sent back to the trial Court for the purpose of passing final orders in accordance with this judgment. The civil revision petition is dismissed. In the circumstances, the parties will bear their respective costs throughout.