
(2013) 08 MAD CK 0117
In the Madras High Court
Case No : CRP (PD) No. 1656 of 2010

Sampath and Kuppammal alias Sarala	APPELLANT
Vs	
S.N. Sundaram and Others	RESPONDENT

Date of Decision : 02-08-2013

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2013) 5 CTC 366 : (2013) 5 LW 366 : (2013) 6 MLJ 412

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : R. Subramanian, for the Appellant; A. Seshan for R1 to R5 and
Given up for 6th Respondent, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Sivagnanam, J.—This Civil Revision Petition filed under Article 227 of the Constitution of India is directed against the order dated

12.11.2007 in C.M.A. No. 24 of 2007 on the file of the VII Additional City Civil Court, Chennai, reversing the order dated 12.11.2003, in I.A.

No. 8107 of 1989 in O.S. No. 2878 of 1984 on the file of the VI Assistant City Civil Court, Chennai. The defendants 3 & 4 are the petitioners

and the respondents 1 to 4 are the plaintiffs. The plaintiffs filed the Suit in O.S. No. 2878 of 1984 for declaring that the defendants are the tenants

under the plaintiffs, to direct them to deliver vacant possession of the property more fully described in schedule B after removing the

superstructure, pay arrears of rent and damages for wrongful use and occupation.

2. The defendants filed an Application in I.A. No. 8107 of 1989 u/s 9 of the Madras City Tenants Protection Act, 1955, (in short "the Act") to

appoint an Advocate Commissioner to ascertain the land required for the

defendants convenient enjoyment and to fix the market value of the said land as per the provisions of section 9 of the Act. In the affidavit filed in support of the petition, the defendants stated certain details regarding the title to the property and submitted that their defence in the Suit is that the property is an endowed property of Arulmighu Sandana Vinayagar Thirukoil, Thoppetai, and not the joint family property of the plaintiffs as claimed by them. But, inasmuch as the plaintiffs are also the Trustees of the said temple without prejudice to their defence, they are willing to purchase the suit land on a price to be fixed by the Court as per the provisions of Section 9 of the Act.

3. The plaintiffs filed a counter affidavit, stating that the defendants are not entitled to the benefit of section 9 of the Act. The trial Court by an order dated 8.10.1996, allowed the Application.

4. From a perusal of the order dated 8.10.1996, it is seen that the trial Court did not go into the issue whether the defendants are entitled to invoke section 9 of the Act, having raised a plea in their affidavit stating that the property is endowed to a temple and not a joint family property of the plaintiffs. It is stated that both parties produced documentary evidence, however, in the order dated 8.10.1996, there was no list of documents given. Curiously the trial Court has made an observation of that those questions have to be determined at the time of trial.

5. The observation and finding recorded by the trial Court was wholly erroneous. If a person to be entitled to the benefit of section 9 of the Act, the primary requirement is that he should accept that the plaintiff is his landlord and he is a tenant under him. A tenant who denies the title of the landlord, is not entitled to claim the benefit of the Act. (see *Boologanathan v. P. Govindarajan* [1992 LW 273] and *Bhargavakula Nainargal Sangam Vs. Chakravarthi*,

6. Thus, it appears that the plaintiffs were led to believe that the question as to whether the defendants are entitled to the benefit of section 9 of the Act is to be decided at a latter point of time, the plaintiffs appear to have not questioned the order. But, subsequently, the same Application being

I.A. No. 8107 of 1989, was posted for further orders and the trial Court fixed the extent to be conveyed as 1507 sq.ft. at the rate of Rs. 275/-

per sq.ft. and the amount to be payable in 18 monthly instalments. Being

aggrieved by such an order, the plaintiffs preferred appeal to the lower Appellate Court in C.M.A. No. 24 of 2007.

7. The lower Appellate Court after taking note of the decisions of this Court on the point that a tenant who denies title of the landlord is not entitled to benefit u/s 9 of the Act, allowed the appeal and set aside the order passed by the trial Court, by order dated 12.11.2007. It appears that after the order passed by the trial Court dated 12.11.2003, the trial Court by Judgment dated 7.9.2004, closed the Suit with liberty to restore the same after completion of the period of 18 months stipulated in the order dated 12.11.2003.

8. In the light of the order passed by the lower Appellate Court in C.M.A. No. 24 of 2007, the judgment passed by the trial Court dated 7.9.2004 should necessarily be revoked.

9. The learned counsel appearing for petitioners would contend that the lower Appellate Court overlooked the matter and that the trial Court has found that the defendants are entitled to the benefit u/s 9 of the Act. Further it is contended that the plaintiffs are not entitled to maintain the appeal as against the consequential order alone and therefore, the order calls for interference.

10. After hearing the learned counsel for the parties and perusing the materials available on record, this Court is fully convinced that the order passed by the lower Appellate Court dated 12.11.2007 is valid and proper. The following reasons are assigned in support of such conclusion.

11. Section 9 of the Act is a statutory provision which confers certain rights on tenants to seek for direction from the Court by making an Application to direct the landlord to sell for a fixed price as fixed by the Court below or part of the extent of land specified in that Application. This benefit conferred on the tenant is a statutory benefit and a person entitled to avail such benefit must necessarily confirm to the requirement of the Act. The case of the plaintiffs is that the tenant is not entitled to maintain Application u/s 9 of the Act as he has denied the title of the landlord.

12. In the affidavit filed in support of the Petition filed u/s 9 of the Act, in unequivocal terms, the tenant has stated that the suit property is an endowed property of Arulmighu Sandana Vinayagar Thirukoil, Thoppetai, and not the joint family property of the plaintiffs claimed by them.

However, a plea has been raised stating that without prejudice to such defence they are willing to purchase the suit land on a price to be fixed by

the Court inasmuch as the plaintiffs are also trustees of the said temple.

13. The plaintiffs claim that late Murugappa Mudaliar died issueless and adopted one S. Nadaraja Mudaliar as his son. As per law of succession

as it stood at the time of Angu Mudaliar, Sadayappa Mudaliar and Murugappa Mudaliar, S.A. Ramalinga Mudaliar, S. Nataraja Mudaliar and S.

Appavoo Mudaliar alone are absolutely entitled to the joint family property. That S. Nataraja Mudaliar was managing the joint family property on

behalf of members of the family and he died on 7.9.1983 leaving behind the plaintiffs 2 & 3 as his legal heirs. Though S.A. Ramlinga Mudaliar died

in the year 1964 leaving behind plaintiffs 4 to 6 as his legal heirs and the suit property is the only joint family available for partition and it was kept

in common without any division and the other properties have been already divided.

14. It is the further case of the plaintiffs that the defendant became a tenant under late S. Nataraja Mudaliar in respect of a vacant land described in

schedule B of the Plaint schedule and he did not pay rents regularly. It appears that the defendants did not file written statement, but filed an

Application u/s 9 of the Act.

15. The Hon''ble Supreme Court in Palani Ammal Vs. Viswanatha Chettiar (dead) and others, considered an appeal arising out of a proceedings

under the City Tenants Protection Act. One among the question which fell for consideration in the said case was whether the defendants therein

were entitled to invoke the benefits of the Act. While deciding the question, the Hon''ble Supreme Court took note of the scheme of the Act and

observed as hereunder:

15. ...Consequently it must be held that for operation of Section 9 an admitted relationship of landlord and tenant must exist. If the tenant alleges

that the landlord is not the real owner of the property but somebody else is the owner or he himself is the owner there would remain no occasion

for him to offer any price of such land to such a landlord whom he treats as a stranger to that land. On such a stand taken by the tenant of the open

land there would also remain no occasion for the so-called landlord to accept the price of the land and to convey his right, title and interest in the

land pursuant to the order of the court to such tenant.

19. ...On the other hand learned Senior Counsel for the plaintiffs invited our attention to two decisions of Srinivasan, J. (as he then was) in the case

of Subbaroyan v. Devadas Nadar and in the case of Bhargavakula Nainargal Sangam v. Chakravarthi. The learned Judge in those cases had taken

the view that a tenant who denies the title of the landlord would not be entitled to get the benefit of the provisions of the Protection Act. In our

view, the said decisions of the learned Single Judge of the High Court also are well sustained on the statutory scheme of the Protection Act as

discussed by us earlier.

16. In S.R. Radhakrishnan and Others Vs. Neelamegam, the Hon''ble Supreme Court culled out the procedure for claiming the relief u/s 9 of the

Act and laid down four conditions to be satisfied before a tenant is entitled to relief. They being-

i) He should be a tenant in possession of the land;

ii) He should have erected a superstructure on the land in respect of which he would be entitled to claim compensation u/s 3;

iii) A suit or proceeding for eviction should have been taken by the landlord against him;

iv) He should have applied to the court for direction in that regard within one month from the date of service of summons in such suit.

17. The learned counsel for the petitioners contended that the plea raised in the affidavit filed in support of the Application u/s 9 of the Act is an

alternate submission and even in the same affidavit, the petitioners had agreed to purchase the property from the plaintiffs.

18. As noticed above, the plaintiffs have traced their title and claimed that the property is a joint family property. The defendants on the other hand

made a categorical statement that the property is not a joint family property, but a property endowed to a temple. Having taken such a stand, there

cannot be any contrary stand to state that inspite of the denial of title of the plaintiffs the defendants are willing to purchase the property from the

plaintiffs. Though it has been stated that the party would be entitled to take inconsistent plea, such a plea cannot be mutually destructive more so in

an Application u/s 9 of the Act. The defendants having taken a stand that the plaintiffs are not the owners of the property there would be no

occasion for the plaintiffs to accept the price of the land and to convey any right or interest in the property to the defendants. Therefore, this Court is of the firm view that the stand taken by the defendants that the suit property is not a joint family property of the plaintiff, but an endowed property is the categorical stand and it amounts to denial of landlord-tenant relationship, thereby dis-entitling the defendants to the benefit of section 9 of the Act.

19. As observed earlier, the defendants did not produce any oral or documentary evidence before the trial Court. The trial Court noticed the objection raised by the plaintiffs regarding the maintainability of the Application u/s 9 of the Act, on the ground that there is denial of landlord tenant relationship. While so, the trial Court did not make any endeavour to decide such question, but made an erroneous observation that such question will be decided at the time of trial. The landlord- tenant relationship is sine quo non for maintaining an Application u/s 9 of the Act. Therefore when a dispute arose as to whether the defendant is a tenant under the plaintiff or not, there was a duty cast on the trial Court to decide such issue. The further serious error committed by the trial Court is that after having postponed the decision in the matter relating to the landlord-tenant relationship to be decided at the time of trial, proceeded further with the Application and fixed the price payable for the property. This direction of the trial Court is wholly without jurisdiction and patently erroneous.

20. The learned counsel for the petitioners submitted that the plaintiffs have challenged only a consequential order and not the order appointing the Advocate Commissioner u/s 9 of the Act. As the trial Court made an observation that the question relating to landlord and tenant relationship is to be decided latter, in my view, the plaintiffs were fully justified in being lead to believe that the matter will have to be thrashed out at the time of trial and therefore the order at that point of time did not cause any prejudice to the plaintiffs for them to challenge the same. The prejudice was caused only when the trial Court took up the very same application, without going into the question relating to landlord-tenant relationship and proceeded to fix the market value of the property. Therefore such contention raised on behalf of the petitioner must necessarily fail. For all the above reasons, it is held that the petitioners/defendants are not entitled to the benefit of section

9 of the Act and the Civil Revision Petition being devoid of merits,
is dismissed. No costs.