

(1971) 02 MAD CK 0056

In the Madras High Court

Case No : Letter Patent App. No. 50 of 1966

Silambani Sri Chidambara Vinayagar Swami Devasthanam
Devakkottai and Others

APPELLANT

Vs

Duraisami Nadar and Others

RESPONDENT

Date of Decision : 09-02-1971

Acts Referred:

Citation : AIR 1971 Mad 474 : (1971) 84 LW 492 : (1971) 2 MLJ 278

Hon'ble Judges : K. Veeraswami, C.J.;Raghavan, J

Bench : Division Bench

Judgement

Veeraswami, C.J.—This appeal by the quondam landholder is from a judgment of Natesan, J., reported in *Silambani Sri Chidambara Vinayagar Devasthanam Vs. Duraisamy Nadar and Another*, . The suit out of which the appeal arises was instituted by Silambani Sri Chidambara Vinayagar Devasthanam, Devakottai, by its trustees, to recover rent from the first respondent in respect of a site let out to him for building purposes. The tenancy commenced prior to 1948. The site is situate in a village which constituted an estate. That was notified and taken over under the provisions of Madras Act XXVI of 1948. On that date, the building continued in the first respondent's occupation. There is no dispute that on the notified date Devasthanam was the landholder. The defence was that under the provisions of Madras Act XXVI of 1948, the suit site along with the building had vested in the first respondent, and the title of the appellant as a landholder got extinguished. There appears to have been a question of jurisdiction raised, but it is no longer before us. The first appellate Court held that the Devasthanam had lost its right on the notification made under the provisions of the Act. It is also held that the first respondent was not estopped from disputing the title of the Devasthanam. Natesan, J. dismissed the second appeal, he being of the view that immediately on the notification, the appellant, the quondam landholder, had lost his interest in the site, which is vested in the Government. The learned Judge, therefore, considered that the appellant was not entitled to claim any rent for the site from the first respondent.

2. It is contended for the appellant that the real effect of Section 18(4) was to vest the building in it. This is on the view that as mentioned by sub-section (5) of the section building includes the site, and, therefore, whoever owned the building became owner of the site. In our view, this contention cannot be accepted. Sub-section (4) and (5) of S. 18 reads:-

"Every building other than a building referred to in sub-sections (1), (2) and (3) shall, with effect on and from the notified date, vest in the person who owned it immediately before the date; but the Government shall be entitled, for each year commencing with the fasli in which the estate is notified

(i) in every case, to levy the appropriate assessment thereon; and

(ii) in the case of a building which vests in a person other than a landholder also the payments which such person was liable immediately before the notified date to make to any landholder in respect thereof, whether periodically or not and whether by way of rent or otherwise, in so far as such payments may accrue due on or after the notified date.

(5) In this section "building" includes the site on which it stands and any adjacent premises occupied as an appurtenance thereof."

The result of sub-section (5), to our mind, is that the definition contained therein, when incorporated in sub-section (4), would have this consequence, that, if the building as well as the site on which it stands both belong to the same person, upon the notification, both of them will vest in that person. That, we think, is the true scope of sub-sections (4) & (5) read together. These provisions do not contemplate a transfer of the building where it had not already belonged to him. Unless there is a coalescence of the ownership of the building as well as of the site on which it stands, there will be no vesting under sub-section (4). That is the view Natesan, J., took and we agree with him.

3. But that will not conclude against the appellant. On our view of the effect of sub-ss. (4) & (5) read together it would follow that clause (ii) of subsection (4) will have no application to the instant case, which, in our opinion, cannot be relied on by the State to collect the rent. If the State has any right to it, that is to be found from the general vesting u/s 3 (b) of the Act. But we are not concerned in these proceedings with that aspect. That Government is not a party to them. If the appellant even after the notified date continues in possession of the land undisturbed by the rightful owner, if any, that, in our opinion, would entitle it to demand and collect rent from the first respondent. It is an axiom of the law that even a trespasser who is in possession is entitle to it except as against the lawful owner. The possessory title, therefore, of the appellant subsequent to the date of the notification, will enable it to maintain the claim for rent. But it has not been investigated so far whether, after the notified date, the appellant continued to be in possession of the site.

4. We set aside the judgments and decrees of the courts below, including those

of Natesan, J., and direct that the suit be remitted to the trial court for a finding, after giving the parties an opportunity of adducing such evidence as they can, as to whether the appellant continued to be in possession of the site on which the building stands after the notified date. If the trial court came to the conclusion that the appellant was in such possession, the suit should be decreed as prayed for. But, if the finding were to be against the appellant, the suit would, of course, fail and would stand dismissed. The second appeal is accordingly allowed. Costs throughout will abide the result.

5. Case remanded.