

(1958) 11 MAD CK 0042

In the Madras High Court

Case No : C.R. Ps. No's. 186 and 187 of 1958

Sivananda Gramani and another

APPELLANT

Vs

Mohamed Ismail and another

RESPONDENT

Date of Decision : 12-11-1958

Acts Referred:

Citation : (1958) 11 MAD CK 0042

Hon'ble Judges : Ramachandra Iyer, J

Bench : Single Bench

Advocate : R. Dandapani and T. Srinivasachariar, for the Appellant; U. Somasundaram and P. Kothandaraman, for the Respondent

Final Decision : Dismissed

Judgement

Ramachandra Iyer, J.—These are two revision petitions by two tenants against the order of the Court of Small Causes at Madras, rejecting their application for relief under S. 9 of the Madras City Tenants Protection Act. The respondent, who is the landlord filed applications for ejectment in the Small Cause Court. Pending these applications petitioners herein applied for relief under the Madras City Tenants Protection Act. The tenants state that they have put up huts on R.S. No. 4125/2 now bearing No. 4126 in St. Mary's Road, Mandavali, Mylapore. That property belongs to the respondent, Ashraf Sha and Faridali Sha Takkiya which is represented by its managing committee. In C.S. No. 344 of 1933 (Sha Mir Md. Raza Khadri Saheb v. P. Ramanuja Mudaliar and others) this Court held that the property wherein a Thakia also is situate is a muslim burial ground. Certain portions of that property have been let out to tenants who have put up structures thereon.

2. The applications of the tenants for purchasing the land under S. 9 of the Madras City Tenants Protection Act were resisted by the respondent on the ground that the property being part of a graveyard could not be sold under the provisions of that Act. Under the Mohammadan law a cemetery or a graveyard is a consecrated ground and is wakf property. It is not a private property and is

inalienable and not heritable. It cannot be sold or partitioned. That property is *res extra commercium* being dedicated for the benefit of the muslims in general. The question is whether the provisions of S. 9 of the Madras City Tenants Protection Act would apply to such a property.

3. In *Doraivelu v. Natesan* 47 Mad. 761=20 L.W. 165 (F. B.) this Court held that S. 9 of the Act applies to the landlords who hold their lands as trustees of a religious or a charitable institution. But that does not mean that all the properties belonging to the trust or a religious institution could by the application of S. 9 be sold, *Coutts Trotter*, C.J. observed at page 772 thus:

A trustee landlord can convey the interest of the trust in certain given circumstances. Two of those circumstances have been already referred to—necessity and benefit for the trust and I think there is added a further one by this new Act III of 1922, namely, when a tenant has been in possession of the land and has put up a superstructure on the land, and to eject whom would be in certain circumstances plainly inequitable without compensation, and in other circumstances, such as the one contemplated by the section would be inequitable without giving him an opportunity of acquiring the land for himself on payment.

4. This decision occasioned an amendment to the then existing S. 9 of the Act. An explanation was added to S. 9 by Act VI of 1926, and it runs thus:

Land means the interest of the landlord in the land and all other interest which he can convey under any power and includes also the full interest which a trustee can convey under a power possessed by him to convey trust property when necessity arises for the same or when the alienation of the property is for the benefit of the estate or trust.

5. By reason of this explanation it is clear that S. 9 was intended to apply and could apply only to a case where a trustee could lawfully dispose of the property. If a property is such that even a trustee could not dispose of, like a mosque temple etc., then S. 9 could not be invoked for a sale to the tenant of the property. In the present case the suit property has been found to be part of a public graveyard attached to a Thakiya which was mentioned as a Kabrasthan and held to be such in C.S. No. 344 of 1933 (*Shah Mir Md. Raza Khadiri Sahib v. P. Ramanuja Mudaliar*). There will, therefore, be no jurisdiction in the Court to direct a sale to the tenant of the property.

6. But I am of the view that notwithstanding his inability to obtain a sale of the land, the tenant would be entitled to get a compensation. Under S. 3 a tenant has been defined as a person liable to pay rent and it is not disputed that the petitioners are tenants. Indeed they have been treated as tenants and the application for ejectment has been filed against them on that basis. He would be entitled to compensation under S. 3 for any building which he might have erected on the property, although he may not be entitled to the benefits of the provisions of S. 9 by reason of the fact that the property on which he has put up the structure would not be deemed to be land within the meaning of S. 9. The

order of the lower Court holding that the tenants were not entitled to purchase the property of the landlord is correct. These revision petitions fail and are dismissed, There will be no order as to costs.