
(1957) 11 MAD CK 0013
In the Madras High Court

S.M. Ranganatha Naicker

APPELLANT

Vs

B. Govindaswamy Naidu and Another

RESPONDENT

Date of Decision : 01-11-1957

Acts Referred:

Presidency Small Cause Courts Act, 1882 — Section 41, 41

Citation : (1958) 71 LW 173 : (1958) 1 MLJ 310

Hon'ble Judges : Subrahmanyam, J

Bench : Division Bench

Judgement

Subrahmanyam, J.—The first respondent instituted an application against the petitioner in the Small Cause Court, Madras, in ejectment, u/s

41 of the Presidency Small Cause Courts Act. The first respondent alleged in that petition that he had taken the property on lease from the

Administrator-General who was managing the estate of a minor and that the estate was handed over by the Administrator-General to the owner in

1955. The first respondent pleaded further that he had attorned to the guardian of the minor and that he continued to be the lessee of the property

involved in this litigation. The parcel of land concerned in the application formed part of a much larger plot. The first respondent alleged that he had

taken that plot on lease from the Administrator-General and that he continued as lessee of that larger plot under the owner. He alleged further that

that larger plot was divided into several parcels, one of which formed the parcel, to which the application in the Small Cause Court related and

which was sub-leased by the first respondent to the petitioner. There seems to have been some controversy in the Small Cause Court between the

petitioner and the first respondent regarding the precise relationship between them. The petitioner appears to have alleged in the Small Cause

Court that the first respondent was a mere agent for collection of rents, originally under the Administrator-General and subsequently under the owner. Today, however, Mr. G. Venkatraman, appearing for the petitioner, abandoned that plea that the first respondent was a mere agent for collection of rents and requested me to hear this petition on the basis that the first respondent had been a lessee under the Administrator-General and became lessee thereafter under the owner and that the petitioner was, and continues to be, sub-lessee under the first respondent. This petition is therefore heard and decided on that basis. Both the applications in the Small Cause Court filed u/s 41 of the Presidency Small Cause Courts Act and the petition u/s 9(1) of City Tenants Protection Act will be heard in the lower Court on the basis that the first respondent is lessee under the owner and that the petitioner is sub-lessee under the first respondent.

2. u/s 9, the petitioner filed a petition that the first respondent-landlord be directed to sell the land for a price to be fixed by the Court. To that petition, the petitioner made the first respondent and the second respondent parties. The second respondent, according to the learned advocate for the respondents, is the mother of the minor to whom the property belongs. She says that she does not have any interest of her own in the property.

The learned Counsel for the petitioner says that he does not know whether the property belongs to the mother or to her daughter. In any event, an application u/s 9(1) of the City Tenants Protection Act can lie only against the landlord who has filed an application u/s 41 of the Presidency Small Cause Courts Act. Since neither the owner, namely, the minor girl nor her mother, namely, the 2nd respondent filed any application in ejectment, the second respondent was not a necessary or proper party to the petition filed by the petitioner u/s 9(1) of the City Tenants' Protection Act. She will be exonerated from the application filed by the petitioner u/s 9(1).

3. We have now to consider the petition filed by the petitioner (sub-lessee) u/s 9(1) of the City Tenants' Protection Act as against the first respondent (lessee). The learned Registrar, Small Cause Court, who heard the petition said that the petitioner was not entitled to relief and dismissed the petition. He gave two reasons in support of that order. The first is that the petitioner was not entitled to compensation u/s 3 of the Madras City Tenants' Protection Act. Section 3 entitles a tenant who has

constructed any building on the land to compensation for such construction. The learned Registrar overlooked the schedule of property which includes a superstructure constructed on the site. The learned Counsel for the respondent concedes quite fairly that that particular reason given by the Registrar cannot be supported.

4. The second reason given by the learned Registrar is that the first respondent did not have power to transfer the interest which he had in the property. It is difficult to follow the learned Registrar's reasoning. Section 9(1) of the City Tenants' Protection Act enacts:

Any tenant who is entitled to compensation u/s 3 and against whom ...a proceeding u/s 41 of the Presidency Small Cause Courts Act has been taken by the landlord may ...apply to the Court for an order that the landlord be directed to sell the land for a price to be fixed by the Court.

5. The Explanation to the section thus defines land:

Land"" means the interests of the landlord in the land and all other interests which he can convey under any power..

The first respondent's own allegation in the application which he filed was that he was a lessee under the owner. The interest of a lessee is an interest in land capable of transfer. It is difficult to see why the learned Registrar thought that the first respondent's interest in the land could not be transferred. He apparently misunderstood the meaning and scope of the expression "" all other interests which he can convey under any power "".

That phrase is added so as to confer power on the Court to compel the landlord to transfer not merely the interest which he owns for his own

benefit but also any other interest which, by reason of any power conferred on him by some other person, he could transfer. It is not the

petitioner's case that the first respondent has power to transfer any interest which he does not himself own in the land. The only interest which the

first respondent owns in the land is his interest as lessee under the owner. That interest is clearly capable of being conveyed.

6. The order of the Registrar, Small Cause Court, is set aside. The second respondent is exonerated in the petition filed u/s 9(1) of the City

Tenants' Protection Act in the lower Court. The Registrar will restore the petition to its original number on his file and will proceed to pass an

order directing the landlord to sell the land for a price to be fixed by the

Registrar, the land being the interest of the first respondent as lessee so far as the lease relates to this particular parcel of land.

7. The parties will bear their own costs in this Civil Revision Petition.