

(1963) 09 MAD CK 0018

In the Madras High Court

Case No : Civil Revision Petition No. 1579 of 1962

T. Parthasarathy Chetti

APPELLANT

Vs

K. Shyamalamba by agent P. Lakshminarayana

RESPONDENT

Date of Decision : 20-09-1963

Acts Referred:

Madras City Tenants Protection Act, 1922 — Section 2(4), 3, 9

Citation : AIR 1964 Mad 439 : (1964) ILR (Mad) 559 : (1964) 77 LW 187

Hon'ble Judges : S. Ramachandra Iyer, C.J.;Anantanarayanan, J

Bench : Division Bench

Advocate : V. Janakiraman and V. Gajapathy, for the Appellant; Sivaramakrishna Iyer, for K. Gopalaswami and R. Subramaniam, for the Respondent

Final Decision : Allowed

Judgement

S. Ramachandra Iyer, C.J.—This civil revision petition raises an important question relating to the rights of a sub-tenant of land who had put

up a superstructure thereon, to purchase the interest of his lessor, namely, the head tenant of the original owner under the provisions of Section 9 of

the Madras City Tenants Protection Act which will be referred to hereafter as the Act.

The courts below have expressed divergent views on that question. The land which forms the subject-matter of these proceedings forms part of a

larger area, which belongs to one Thanikesam Pillai. He granted a lease in the year 1937 of the entire area to one Mahommad Ismail for a period

of 99 years with an option in the tenant to obtain renewal of the same for a like period. The respondent is a transferee from the tenant. She

parcelled out of the land and granted sub-leases of portions thereof to several persons, one of them being the petitioner. He after having taken the

sub-lease from the former, put up a building thereon in the year 1947 and has been in enjoyment of the same since then.

2. However, the respondent by her notice dated 27-1-1961 purported to terminate the sublease granted by her to the petitioner and called upon

the latter to deliver vacant possession. This was followed by proceedings u/s 41 of the Presidency Towns Small Cause Courts Act for ejectment of

the petitioner, who countered the respondent's move by filing an application u/s 9 of the Act, calling upon the latter to convey the leasehold interest

possessed by her in his favour. The learned trial Judge allowed the application filed by the petitioner; but on appeal that order was set aside. Hence

the present civil revision petition.

3. The land in question is situate in Muthialpet area within the limits of the Madras City. The petitioner put up the superstructure on the property in

the year 1947 who, if the other conditions imposed by the Act were satisfied, would be entitled to the benefits thereunder.

4. No relief, however, is claimed against the owner of the property who is not even a party to these proceedings; the relief claimed is restricted to

the conveyance of such interest as the tenant possesses in the land. In other words, the interest which the sub-tenant seeks to purchase u/s 9 of the

Act, is the leasehold interest possessed" by the tenant by virtue of the lease granted by Thanikesam Pillai in the year 1937.

5. Section 3 of the Act entitles every tenant of the land to be paid as compensation at the time of eviction the value of any building erected by him

or by his predecessor in interest. Section 9 gives a further right to the tenant by way of an option to purchase the land leased out to him. Any tenant

who is entitled to compensation u/s 3 and against whom a suit in ejectment has been instituted, may within the time specified in the section apply to

the court for an order that the landlord shall be directed to sell for a price to be fixed by the court, the whole or part of the extent of the land

specified in his application. The rights created by these two sections exist only in respect of tenancies granted prior to the commencement of the

Amending Act of 1955.

6. There will be no difficulty in working out the rights granted under the Act between 3 landlord who is the owner of the property and his tenant

who obtained a lease from him and put up a superstructure thereon. But where

the tenant of a land has merely sublet it without himself putting up any superstructure on it, but the subtenant put up a superstructure thereon, a question will arise whether the latter will have the right to recover compensation for the building put up by him in case he is sought to be evicted and have the option to purchase the land. There can be little doubt that those rights will not be available to a sub-tenant as against the original owner of the property, namely, the landlord. This has been put beyond doubt by the revised definition of the term "tenant" introduced by the Amending Act 13 of 1960 (who alone would be entitled to claim the rights referred to above). That says-

Tenant" in relation to any land means -

(i) a person liable to pay rent in respect of such land under a tenancy agreement express or implied; and (i) includes (a) any such person as is referred to in sub-clause (i) who continues in possession of the land after the determination of the tenancy agreement, and (b) the heirs of any such person as is referred to in sub-clause (i) or sub-clause (ii) (a) but does not include a sub tenant or his heirs.

It will, thus, be plain that as against the original landlord, the owner of the property, the subtenant of a land will not be entitled to enforce rights to compensation for any superstructure that he might have put up on the land or call upon him to convey the land.

7. But the question in the present case is, whether this will be so even in regard to his own landlord, namely, the head tenant. The answer to that question will depend on the true construction of Sections 3 and 9 of the Act in the light of the definition of the term "tenant" referred to above. As

we said, Section 3 entitles any tenant who had put up a building on the land leased out to him, at the time of his eviction to get from his landlord

compensation. The question then is-can a subtenant of the land be regarded as tenant within the meaning of the Act vis-a-vis the head tenant? If

that be so, he would be entitled to the relief under the section though he might not be entitled to that relief as against the head lessor, i.e., the owner

of the property. From the terms of the definition of the word "tenant" set out above, it will be clear that a person liable to pay rent in respect of the land, under a tenancy agreement express or implied would be a tenant.

8. A sub-tenant is certainly under a contractual agreement to pay rent to the

head tenant, that is his lessor. The question then is whether the property for which he pays rent, could be regarded as land. The definition of the term "land" in Section 2(2) is not very helpful to solve that problem as it is merely negative in form and states that land does not include buildings. But the explanation to Section 9 defines the term "land" as used in that section. That says;

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

From the foregoing, it would follow that any interest in the land possessed by a person will be land within the meaning of the section. Now turning

to the definition of landlord, in Section 2(3)", what the term really means is "Any person owning any land and includes every person entitled to

collect the rent of the whole or any portion of the land" (rest of the definition omitted as not necessary for the present purpose). If, therefore, the

word "land" can be regarded as embracing even an interest in a land, a person owning such interest will be a land-lord if he has let out such interest

to another for rent. In other words, a lessee would be a landlord" within the meaning of the definition if his leasehold interest can be regarded as

interest in land and if under an agreement with his sub-tenant, he is entitled to collect rent in respect of the rights granted to him.

9. We shall now consider whether a lease of Immovable property will amount to transfer of an interest to the lessee. A lease of Immovable

property is a transfer for consideration of a right to enjoy it for a certain time or in perpetuity. It postulates the existence of a contract between the

lessor and the lessee and also a transfer of interest in the land, namely, the right to enjoy it, although that transfer will not be equivalent to transfer of

ownership either in the whole or in part of the property.

10. Referring to the characteristic features of a lease, Lord Shaw in *Thakur Giridhari Singh v. Megh Lal Pandey* ILR 45 Cal 87 : AIR 1917 PC

163 observes:

It must be borne in mind also that the essential characteristics of a lease is that the subject is one which is occupied and enjoyed and the corpus of

which does not in the nature of things and: by reason of the user, disappear.

Section 108(c) and (j) of the Transfer of Property Act, recognise that a lessee has an interest in the property leased out to him; the former

provision creates a statutory covenant on the part of the lessor with the lessee that the latter can hold the property for the duration of the lease so

long as he performs his part of the contract without interruption by any person; the latter clause confers a right on the lessee to transfer either

absolutely or by way of a mortgage or sub-lease his interest in the property. These provisions are, no doubt, subject to a contract or local usage to

the contrary. But they proceed on the assumption that; what the lessee obtains under a lease of Immovable property is not a mere transfer of a

right to occupy, but an interest in the property demised, there being thus both privity of contract as well as of estate. Unless, there is a contract or

local; usage to the contrary, the right of enjoyment given to a lessee on account of a lease can be assigned or sub-let.

11. Where there is an assignment of lease, the lessor not being a party to the contract or arrangement, there can only be a privity of estate between

him and the assignee; that is because of the interest in land which the lessee has. In the case of a sub-lease however, there will neither be privity of

contract nor privity of estate. In Woodfall's Landlord and Tenant, Vol. I, 26th Edn., dealing with the general right to sub-let the learned author

says (at page 870): -

As a sub lease is a demise by a lessee (or his assignee) for a less term than he himself has. Every lessee, however short his term may be, and even

a tenant from year to year may make a sub lease unless and except, where, which frequently happens, he "is restrained by the contract of tenancy

from sub-letting or restricted in his power of sub-letting by a requirement, either absolute or qualified, that the consent of the landlord must first be

obtained. Even then the sub-lease is effective to vest an estate but defeasible by exercise of the lessor's right to re-entry.

But the sub-lessee will not be affected by any voluntary surrender of the lease by the lessee (whom we can call as the mesne lessor). Under the

English law, a sub-lease demised for a whole term of the lease will amount to an assignment of the lease itself; but the law in this country is

different. In AIR 1930 59 (Privy Council) it was held that an under-lease for the

entire residue of the under-lessor's term operated in the absence of a contract to the contrary as an under-lease and did not as under the English law constitute an assignment of the lease.

12. The result of the foregoing discussion is that so long as there is no prohibition by the superior lessor against sub-letting, his tenant will be entitled to sub-let the property and thereby create an interest in it in favour of his subtenant; but such a sub-tenant will be a tenant only so far as his own lessor is concerned; he will have neither privity of contract nor of estate so far as the superior lessor is concerned. As the interest which the mesne lessor possesses in the land demised to him, is an interest in Immovable property, it will be land within the explanation to Section 9 of the Act. The sub-tenant being his tenant, he must be held entitled so far as the mesne lessor is concerned to all the rights declared to him by the Act. It is, however, unnecessary to repeat that these rights will not be available as against the superior lessor.

13. In *S.M. Ranganatha Naicker Vs. B. Govindaswamy Naidu and Another*, Subrahmanyam J. held that the interest of a lessee of a plot of land would be interest in land capable of transfer within the meaning of the Explanation to Section 9(2) of the Madras City Tenants Protection Act and that, therefore, the leasehold interest in a lessee could be directed to be conveyed under the provisions of that section if his own tenant, namely, the sub-tenant required him to do so.

14. But Mr. Sivaramakrishniah, appearing for the respondent, has contended that the above proposition cannot be regarded as good law after the amendment of the term "tenant" in Section 2(4) of the Act, which expressly excludes from its ambit a sub-tenant. It is argued that the legislature, when it recast the definition under Act 13 of 1960, must be presumed to have the decision aforesaid before it and that with a view to counteract its effect, it proceeded to expressly exclude a sub-tenant from claiming the benefit of the Act. We have already indicated that the exclusion of the sub-tenant from the concept of the definition of the word "tenant" must be regarded only in relation to the actual lessor. There can be no subtenant except under a tenant. That specific exclusion was necessary because of the wide terms in which sub-clause (1) in that provision has been couched. That does not mean that the sub-tenant of a land cannot be regarded

as a tenant of a subordinate interest in land even as against his own lessor, viz., the mesne lessor. To hold otherwise would entail a limited operation of the beneficent provisions of Section 9. The Explanation to that section to which we made reference earlier definitely contemplates that land would include any interest in the land. We have earlier pointed out that the leasehold interest is interest in the land. If really the legislature had intended to exclude the entire category of sub-tenants from claiming the benefit of the Act even as against their own lessors, it would have amended the provisions of the Explanation to Section 9 also.

15. It is next contended that if the sub-tenant were permitted to purchase the right of the mesne lessor u/s 9 of the Act, it will in. directly permit him

to obtain what the Act expressly denied him. The argument is put thus;; Under the Act a sub-tenant can in no event obtain compensation for any

building put up by him on the land or compel the superior lessor or the owner of the land to sell it to him. If the sub-tenant were allowed to enforce

his rights u/s 9 as against the mesne lessor, he will thereby get assigned in his favour all the rights of the mesne lessor and he can thereafter compel

the superior lessor to convey the property to him. We are unable to find any substance in this argument. It is conceded that if instead of granting a

sublease, the lessee assigns his leasehold rights, such an assignee would be entitled to enforce the rights conferred on the lessee under the Act as

against the landlord. Now the effect of conveyance u/s 11 of the lessee's interest in favour of the sub-lessee will only amount to making" a sub-

lessee an assignee of the lessee. If the former type of assignee can enforce rights as against his landlord, we are unable to see how a lessee who

obtain an assignment by virtue of a statute could be placed in a different position. But for obtaining relief against the head lessor mere assignment of

the lease will not be sufficient, there may be other difficulties in the way of a subtenant in enforcing such rights as against the original lessor for it

might be argued that the superstructure on the property had not been put up by the tenant-the subtenant when he put up the building not being a

tenant. It is, however, unnecessary to pursue that matter for the purpose of the present case. It is sufficient to say that the sub-lessee before us

does not want and indeed cannot pursue any rights as against the superior lessor. What all, he now seeks is to enforce the rights secured to him

under the Act as against the mesne lessor from whom under an agreement he obtained a sub-lease.

16. That a sub-lessee can obtain right granted to a tenant under a statute qua mesne lessor has been recognised by us in interpreting to another

enactment, namely, the Madras Cultivating Tenants Protection Act 1955 - In Kathaperumal Padayachi Vs. Muthiah Odayar, , a person took on

lease a certain area of land from its owner and later sublet a part of it to another. The sub-lessee was held entitled to the protection afforded by the

Act as against his lessor, namely, the chief tenant, although he could not have had any rights as against the head lessor there being neither privity of

estate nor privity of contract between the head lessor and the sub-lessee. It was observed that) the chief tenant, generally speaking, stood in the

same relationship to the sub-tenant as the owner landlord stood towards the former.

17. Mr. Sivaramakrishniah, however, argues that this view, if accepted, would lead to inconvenient and anomalous results. In this connection he

cited the example of a tenant holding over creating a sub-lease and if that sub-lessee were allowed to obtain the rights of his lessor, namely, the

tenant holding over. He said it will merely be a case of an illusory transfer for he could be evicted by the superior lessor within no time. This

argument ignores the fact that a tenant at sufferance cannot grant or create a sub-lease.

18. Further we do not see how that problem can at all arise under the provisions of the Madras City Tenants Protection Act. The Act gives

protection only to tenants as defined therein who had put up buildings on the land leased out to them before coming into force of the Act. There is

thus no scope for a tenant at sufferance who had not put up a building to sub-lease it. We are of the opinion that the leasehold interest owned by a

person on a land would be interest possessed in the land by that person within the meaning of the Explanation to Section 9 and if that person had

granted a sub-lease of the land that is to say, had created a lease of his leasehold right, he will be in the position of the landlord so far as the sub-

lessee of the land is concerned, and his interest in the land, that is the right of enjoyment for the duration of the lease in his favour could be directed

to be transferred under the provisions of Section 9 of the Act. The civil revision petition, therefore, succeeds and is allowed. There will be no order

as to costs.