
(1972) 11 MAD CK 0031
In the Madras High Court

T.V. Sambandam Chetty

APPELLANT

Vs

St. Francis Xavier's Church

RESPONDENT

Date of Decision : 17-11-1972

Acts Referred:

Madras City Tenants Protection Act, 1922 — Section 9

Citation : (1973) 86 LW 516 : (1973) 2 MLJ 2

Hon'ble Judges : Ramaswami, J

Bench : Division Bench

Judgement

Ramaswami, J.—The defendant is the appellant. The suit was filed by the respondent Church for ejectment and the appellant herein filed an

application u/s 9 of the Madras City Tenants' Protection Act for purchasing the site. The trial Court held that the site, being appurtenant to the

respondent Church, is res extra commercium and therefore, the appellant cannot claim the benefit of Section 9 of the Act. The trial Court held that

the respondent is entitled to the possession of the site and granted a decree for possession. The decree directed further that the respondent would

be entitled to file a petition for appointment of a Commissioner for valuing the superstructure. On appeal, the learned Principal City Civil Judge

confirmed the finding that the suit property is appurtenant to the Church and therefore res extra commercium and regarding such property Section

9 of the City Tenants' Protection Act would not apply. But, he modified the decree so far as the compensation is concerned and held that the

defendant shall deliver possession of the property only on the respondent-plaintiff paying the value of the superstructure to be determined in

execution proceedings by the appointment of a Commissioner as compensation to the defendant within a period to be fixed by the executing Court.

The defendant has also filed a civil revision petition in C.R.P. No. 2379 of 1970 against the dismissal of his appeal. C.M.A. No. 65 of 1969

preferred against the order of the trial Court dismissing his application u/s 9 of the City Tenants' Protection Act.

2. In this second appeal, the learned Counsel for the appellant contended that the finding that the suit land is appurtenant to the Church is not

correct. The Church, which is called St. Francis Xavier's Church, is stated to be facing east and the main gate of the Church compound is in

Broadway. The Church is abutting three streets on the east, north and west. On the east there is Broadway, on the north there is St. Xavier Street

and on the west is the Pidariyar Koil Street. The Church is having entrance both from Broadway and from Pidariyar Koil Street. The suit property

is having an entrance from St. Xavier Street. The suit property is within the compound on the Church itself. The evidence disclosed that the suit site

is at a distance of less than 40 feet in a corner of the Church compound itself and because the Church is surrounded by streets on three sides, an

opening has been given to the suit site in St. Xavier Street. I am satisfied, on the facts and circumstances of this case, that the suit site is

appurtenant to the Church and the finding of the lower appellate Court in this regard is correct. If the land of a Church is appurtenant to the

Church, it could not be disputed that the land is *res extra commercium*. It has been held in the decisions reported in *Natesa Mudaliar v. S. B. K. P.*

K. Brajana Matam (1966) 1 M.L.J. 130, and *Sree Siddhi Budhi Vinayakagar Sree Sundareswarar Devasthanam Vs. S.V. Marimuthu*, that in

respect of temples or churches or the buildings appurtenant thereto, Section 9 of the City Tenants' Protection Act is not applicable. In these

decisions a distinction has been pointed out between two types of properties which a temple or a church may possess, viz. (i) the site of the temple

or church, its building and appurtenances thereto and; (ii) other properties owned by the temple or the church. There will be no power, under any

circumstances, in the trustee to sell or otherwise alienate the first category of property and the second category of property can; however, be

alienated subject to certain conditions and limitations. In respect of the first category of properties, it is the consistent view of this Court that

Section 9 of the City Tenants' Protection Act is not applicable.

3. The learned Counsel for the appellant, relying on the decree directing the respondent to pay compensation for the superstructure, contended that

Section 9 is applicable to the instant case " For this contention he relied on the wording in Section 9 which begins by stating, that ""any tenant, who

is entitled to compensation u/s 3 and against whom a suit in ejectment has been instituted or proceeding u/s 41 of the Presidency Small Cause

Courts Act taken by the landlord"", may file an application u/s 9. It is true that one of the conditions which a tenant will have to satisfy for enabling

him to file the application is that he is a tenant who is entitled to compensation u/s 3. But that does not mean that all those tenants who are entitled

to compensation u/s 3 will automatically be entitled to file an application u/s 9 irrespective of the fact whether the property itself satisfies the

definition of land in the Explanation to Section 9. Section 9 imposes a number of conditions one of which is that the tenant shall be entitled to

compensation u/s 3 Another is that the application should be filed within a period of one month. Yet another condition is that it should be a land

within the Explanation to Section 9. This Court had an occasion to consider a similar question in the decision reported in Sivananda Gramani v.

Mohamed Ismail (1959) 1 M.L.J. 263. It was held in that case tha¹ the inability of the tenant to obtain a sale of the land does not and could not

stand in the way of such tenant getting compensation u/s 3 for the superstructure he has put up. Section 9 is inapplicable in this case by reason of

the fact that the suit property is res extra commercium. The Courts below were therefore entitled to give compensation u/s 3, even though Section

9 is not applicable to the facts and circumstances of this case. There is yet another answer for this. In fact, the lower appellate Court did not

state that the appellant was entitled to compensation u/s 3 of the City Tenants' Protection Act. What all the judgment and decree of the lower

appellate Court provide is that the defendant shall deliver possession of the property only on the plaintiff paying the value of the superstructure to

be determined in execution proceedings by the appointment of a Commissioner as compensation to the defendant within a period to be fixed by

the executing Court, It may be mentioned here that u/s 108 of the Transfer of Property Act, a lessee may, even after the determination of the lease,

remove, at any time while he is in possession of the property leased, all things which he has attached to the earth and it has been held in Ismail Kani

Rowthan v. Ndzarali Sahib ILR (1904) Mad. 211 : 14 M.L.J. 25, that though the right to remove the building negatives the right to compensation, an option is given to the lessor either to take the building on paying compensation or, if he is unwilling to pay compensation, to allow the lessee to remove the building. In this case, the respondent, even in the notice terminating the lease, offered to pay compensation. During the trial and in the appeal before the lower appellate Court, it appears, the respondent was willing to pay compensation for the superstructure if the tenant is willing to leave the building as it is. In fact, the respondent has not taken any objection to the decree and he has not filed any appeal. Under such circumstances, the direction to pay compensation need not necessarily be one u/s 3 of the City Tenants' Protection Act. No other point has been urged in this second appeal. The second appeal is accordingly dismissed. But there will be no order as to costs. No leave.