

(1997) 01 MAD CK 0119
In the Madras High Court

V.M. Subramania Mudaliar and Sons and Others	APPELLANT
Vs	
Sri Bhavasarakshriya Seva Samaj	RESPONDENT

Date of Decision : 03-01-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 105
Presidency Small Cause Courts Act, 1882 — Section 41

Citation : (1997) 1 LW 267 : (1997) 1 MLJ 414

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Judgement

P. Sathasivam, J.—Defendants in O.S. No. 1017 of 1992 on the file of Principal District Munsif, Vellore, aggrieved against the order in I.A. No. 824 of 1994 wherein the court below refused to dispose of the application filed u/s 9 of the Tamil Nadu City Tenants' Protection Act prior to the disposal of the main suit, has filed the present revision before this Court.

2. The respondent/plaintiff filed O.S. Nov. 1017 of 1992 before the Principal District Munsif, Vellore, seeking decree for payment of Rs. 5,250 being the arrears of rent from 1.12.1990 to 31.8.1992 and directing the defendants to vacate and hand over vacant possession of the schedule mentioned property to the plaintiff. The first defendant filed a written statement disputing various plaintiff averments. Pending suit the defendants filed an application in I.A. No. 47 of 1994 u/s 9 of the City Tenants Protection Act praying for an order directing the plaintiff to sell the suit land for a price to be fixed by the court. Thereafter, the petitioners herein filed another application, namely, I.A. No. 824 to the disposal of the suit. The said application was resisted by the plaintiff and contended that the application filed u/s 9 of the said Act can be disposed of simultaneously that is along with the main suit, hence there is no need to take up and the said application prior to the disposal of the suit.

3. I have heard Mr. V. Raghavachari learned Counsel for the petitioners and Mr. S. Parthasarathy, learned Counsel for the respondent.

4. Now we have to consider whether the application filed u/s 9 of the Tamil Nadu City Tenants' Protection Act (hereinafter referred to as "the Act") can be disposed of prior to the disposal of the main suit or both can be tried and disposed of prior to the disposal of the main suit or both can be tried and disposed of simultaneously. For answering the above point it is useful to refer Section 9 of the Act.

9. Application of court for directing the landlord to sell land:- (1)(a)(i) 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, 1882, taken by the landlord may, within one month of the date of the publication of Madras City Tenants' Protection (Amendment) Act, 1979, in the Tamil Nadu Government Gazette or of the date with effect from which this Act is extended to the municipal town, township or village in which the land is situate or within one month after the service on him of summons, 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 land specified in the application, (ii) Notwithstanding anything contained in Clause (a)(i) of this Sub-section, any such tenant as is referred to in Sub-clause (ii)(b) of Clause (4) of Sub-section (2) or his heirs, may within a period of two months from the date of the publication of the Madras City Tenants' Protection (Amendment) Act, 1973 apply to the court whether or not a suit for ejectment has been instituted by proceeding u/s 41 of the Presidency Small Cause Courts Act, 1882 (Central Act XV of 1882) has been taken by the landlord or whether or not such suit or proceeding is pending having jurisdiction to entertain a suit for ejectment or in the City of Madras other to such court or to the Presidency Small Causes Court, for an order that the landlord under the tenancy agreement shall be directed to sell for a price to be fixed by the court the whole or part of the extent of land specified in the application.

(b) On such application, the court shall first decide the minimum extent of the land which may be necessary for the convenient enjoyment by the tenant. The court, shall, then fix the price of the minimum extent of the land decided as aforesaid, or of the extent of the land specified in the application under Clause (a) whichever is less. The price aforesaid shall be the average market value of the three years immediately preceding the date of the order. The court shall order that within a period to be determined by the court, not being less than three months and not more than three years from the date of the Order, the tenant shall pay into court or otherwise as directed the price so fixed in one or more instalments with or without interest.

(2) In default of payment, by the tenant of any one instalment, the application under Clause (a) of Sub-section (1) shall stand dismissed. Provided that on sufficient cause being shown, the Court may excuse the delay and pass such orders as it may think fit, but not so as to extend the time for payment beyond three years above mentioned. On the application being dismissed, the court shall

order the amount of the instalment or instalments, if any, paid by the tenant to be re-paid to him without any interest.

(3)(a) xxxxxx

(b) On the order referred to in Clause (a) being made, the suit or proceeding shall stand dismissed, and any decree order in ejectment that may have been passed therein but which has not been executed shall be vacated.

Relying on the above mentioned provisions, the learned Counsel for the petitioners submits that the court below initially dispose of the application filed u/s 9 of the Act and after knowing the outcome it is open to the court below to dispose of the suit. He has also relied on a decision of Srinivasan, J. (as he then was) reported) in Pudukkulam alias Kuttikulam Vaharaya Trust Vs. T. Kamalambal, In the said decision the learned Judge after referring Clause 3(a) and (b) of Section 9 of the Act, has held thus:

A reading of the said section makes it clear that the suit can be dismissed only after an order is made under Clause 3(a) of Section 9, Clause 3(a) provides for payment of the price fixed by the court for the land and after such payment, the court shall make an order directing the conveyance by the landlord to the tenant of the extent of land for which the price was fixed. If the suit is dismissed even at this stage and if the tenant fails to deposit the amount fixed by the court as price of the land, the landlord will be left in the lurch without having a decree for evicting the tenant. Such a situation is not contemplated by the provisions of the Act. That is why the Act provides that there should be no dismissal of the suit until an order directing conveyance of the land to the tenant is made. That stage reaches only when the tenant names the deposit of the entire price of the land within the time fixed by the court. The provisions of Section 9 of the Act and the procedure to be adopted by the court have been discussed at some length by a Division Bench of the Court in M. Arasan Chettiar v. Narasimhalu Naidu Trust Estate Coimbatore 93 L.W. 392. The Bench has observed as follows:

From the above conclusion of ours on the interpretation and scope of Section 9, the following consequences will follow:

(1) If a controversy arises whether a particular tenant is entitled to the benefit of the Act or not, in the sense that he is a tenant complying with the definition of the term "tenant" in Section 2(4), that question has necessarily to be considered by the court, because, an affirmative decision in favour of the tenant alone will enable the court to proceed further with the application made u/s 9(1)(a) of the Act, and a negative decision against the tenant will render any application filed by the tenant u/s 9(1)(a) as; not maintainable and such an order is not an order u/s 9 and the date of that order has no relevancy to the fixation of the price of the land to be sold by the landlord to the tenant.

(2) When once the court has decided that the tenant is entitled to the benefit of the Act or there is no controversy that the tenant is entitled to the benefits of

the Act, the court will have no dispose of the application filed by the tenant u/s 9(1)(a).

(3) For the purpose of disposing of this application, the court must first decide upon the minimum extent of the land which may be necessary for the convenient enjoyment of the land. Any such decision of the court, from the very nature of the case, can only be by means of an order and the date of that order will be the relevant date for the purpose of fixing the price mentioned in the third sentence in Section 9(1)(b). If the decision of the court on the minimum extent is taken up further by way of appeal or revision and that decision is either affirmed or modified and if there had been a stay of further proceedings, during the pendency of such appeal or revision, naturally, the date of the order contemplated in the third sentence in Section 9(1)(b) will be the date of the order of the appellate or revisional court,

(4) After having determined the minimum extent of the land or if such determination, had been the subject-matter of further proceedings and those proceedings have concluded, the court will then proceed to fix the price of the land;

(5) For the purpose of deciding upon the minimum extent of the land or for the purpose of fixing the price of the land, certainly it is open to the court to appoint a Commissioner to record evidence and admit a report to the court;

(6) After the price to be paid by the tenant to the landlord for the purchase of the land has been determined, the court will have to pass an order directing the tenant within a period to be determined by the court, not being less than three months and not more than three years from the date of such order, to pay into court or otherwise as directed by it, the price so fixed in one or more instalments with or without interest.

(8) If the tenant complies with such a direction, then the court will pass a final order u/s 9(3)(a) of the Act, directing the landlord to convey the extent of the land decided to the tenant for the price so fixed and in the same Order directing the tenant to put the landlord into possession of the remaining extent of the land, if any;

(9) If, on the other hand, the tenant commits default in the payment of the amount as directed and the court itself had not executed the delay by giving further opportunity the application filed by the tenant u/s 9(1)(a) shall stand dismissed; and

(9) If the tenant has fulfilled the direction given by the court and the court has passed the order u/s 9(3)(a) then the suit or proceeding shall land dismissed and any decree order in ejectment that might have been passed therein but which has not been executed shall be vacated. If, on the other hand, the tenant has committed default and the application filed by him u/s 9(1)(a) stands dismissed u/s 9(2), then the suit will proceed or any decree or order in ejectment that may

have been passed therein shall stand.

In my opinion, the suit should be kept pending till the disposal of the application u/s 9 completely. That state can be reached only when the tenant makes a deposit or fails to make a deposit. If he fails to make a deposit, the application u/s 9 shall stand dismissed and there shall be a decree for eviction as against the tenant. If the tenant makes the deposit within the time given by the court, then the suit shall stand dismissed. The lower appellate court, is therefore, not correct in dismissing the suit straightway on giving a finding that the tenant is entitled to the benefits of Section 9 of the Act. Learned Counsel for the appellants suggested a conditional decree can be passed in the suit in favour of the landlord stating that the suit would stand dismissed in the event of the tenant making a deposit of the amount fixed by the court under the provisions of Section 9 of the Act and that if the tenant failed to make such amount, the decree for eviction can be executed. But, unfortunately, no such procedure has been prescribed by the provisions of the Act. My attention has not been drawn to any rule or procedure in those matters. As a matter of practice, I find that suits are dismissed as and when the tenant's entitlement to purchase the land u/s 9 of the Act is decided. On the plain reading of the provisions of the Act, my view is that the suit shall be kept pending and no decree shall be passed until the application u/s 9 of the Act is dismissed. On the failure of the tenant to make a deposit of the amount as prescribed by the court within the time stipulated, a decree for eviction can be passed in favour of the landlord and if the application u/s 9 of the Act is ordered thereby directing conveyance of the property to the tenant by the landlord, then the suit shall be dismissed.

4. Another aspect of the matter that has to be taken note of is that there may be cases where the direction to sell may relate only to a portion of the property leased. The Act contemplates a sale of only such extent as may be required by the tenant necessarily for his enjoyment. If, in a given case a larger extent was leased out to the tenant and the "direction; to sell is confined to a portion thereof, then, for the remaining portion, there must be a decree in favour of the landlord. That stage can arise only when the court finally determines the extent to be sold in favour of the tenant and when the tenant deposits the price fixed therefor. I am, therefore, of the opinion that the suit should be kept pending till the stage contemplated in Section 9(3)(b) is reached.

5. A reading of the provisions stated above as well as the position of law as stated by Srinivasan, J. (as he then was) shows that as and when any application is filed u/s 9 of the Act in the suit, a duty is cast on the court to dispose of the said application initially and if the tenant succeeds in the said petition and also complies with the provisions in Section 9, ultimately it is open to the court below to dispose of the suit depending on the outcome of the order of the Section 9 application.

6. S. Parthasarathy, learned Counsel for the respondent, relying on a decision of the Supreme Court reported in *Thailammal v. Janardhau Raju* (1992) 2 L.W. 595

submitted that there is no warrant to dispose of Section 9 application at the first instance and the suit at a later date. In the case referred to by Mr. Parthasarathy, the Supreme Court considering the facts of that case with reference to Section 9 of the Act has held thus.

Such an allocation would be in the nature of an interlocutory application in the suit. In such a situation, it follows that once an appeal is filed by the defendant against the decree of the trial court, he is entitled to challenge the correctness of any interlocutory order passed in the suit, in such appeal, by virtue of Section 105 of the Civil Procedure Code. It is not necessary in such a case that he should prefer an independent appeal against the order dismissing an interlocutory application, even if it is appealable. This principle is of equal application herein even though the interlocutory application is one u/s 9 of the Act. Accordingly, it must be held that in the appeal/second appeal against the decree of the trial court, it was open to the defendants to challenge the correctness of the order dismissing their application u/s 9. The High Court was, therefore not right in holding that the said application having been dismissed by trial court and no fresh application having been filed, it must be held that there was no application u/s 9. The application filed by the defendants in the trial court must be deemed to be pending during the pendency of the appeal/second appeal.

A reading of the decision of the Supreme Court shows that if the application u/s 9 of the Act is dismissed and an appeal is pending against the decree passed in the main suit without filing separate appeal against the said order passed on the Section 9 application, it is open to the party concerned, to agitate the same in the appeal itself as if the dismissed application is also pending before the appellate court. That is not the question to be decided in our case. Hence the decision referred to by the learned Counsel for the respondent is not applicable to our case.

7. In the light of the factual position in our case, namely, the tenant has filed the proper application u/s 9 of the Act in the suit in view of the law laid down by this Court in the above referred to decision which in turn refers to the Division Bench judgment of this Court, I am of the opinion that the application filed u/s 9 of the Act has to be disposed of prior to the disposal of the main suit. Since after passing the order u/s 9 of the Act the successful tenant has to comply with some conditions as per the statute and as construed by the above decision, it is better that the said application has to be disposed of initially and thereafter depending on the outcome of the order in the said application, the main suit has to be disposed of.

8. In view of the conclusion reached by me, the order of the court below dismissing I.A. No. 824 of 1994 is set aside and the court below is directed to dispose of the application filed u/s 9 of the Act at the first instance and thereafter dispose of the main suit, namely, O.S. No. 1017 of 1992 on merits after giving proper opportunity to parties concerned. The civil revision petition is allowed. However, there will be no order as to costs. C.M.P. No. 3776 of 1995 is dismissed

as unnecessary.