

(1975) 03 MAD CK 0057
In the Madras High Court

Y. Abdul Mallik and Another

APPELLANT

Vs

St. Francis Xavier's Church

RESPONDENT

Date of Decision : 21-03-1975

Acts Referred:

Citation : (1975) 88 LW 512 : (1975) 2 MLJ 204

Hon'ble Judges : V. Ramaswami, J

Bench : Division Bench

Judgement

V. Ramaswami, J.—The suit, out of which this second appeal arises, was filed by the respondent for recovery of possession of the suit property. The first defendant was the tenant of the plaintiff in respect of the vacant site. The lease was long prior to 1955, the monthly rent being Rs. 20. The first defendant put up a superstructure also prior to 1955 on the site as a tenant. On 15th July, 1965 the first defendant assigned both the leasehold right and the superstructure in favour of the second defendant. The plaintiff determined the tenancy by notice dated 2nd May, 1966 and called upon the first defendant to deliver vacant possession. In the notice, the plaintiff had offered compensation of Rs. 300 to the first defendant for the superstructure put up by him. It was also claimed by the plaintiff that the site which was leased out to the first defendant was part of the plaintiff Church and that therefore, the first defendant has no right of purchase of the land itself. In reply to this notice, the first defendant stated that he sold the superstructure to the second defendant and that the second defendant would pay the future rent to the plaintiff. The plaintiff sent a further notice to the effect that the first defendant had no right to assign and that the sale was not binding on the plaintiff. Thereafter, the suit was filed for recovery of vacant possession against both tenant and his assignee, the second defendant. The second defendant filed a written statement in which he claimed that, by virtue of the assignment of the leasehold right and the superstructure, he became a tenant entitled to the protection under the City Tenants Protection Act. He further contended that no notice was issued to him as required by Section 11 of that Act and that therefore, the suit was not maintainable. He also contended

that the plaintiff Church could not be represented by the Parish Priest and the suit was not properly instituted. The second defendant also filed an application u/s 9 of the Act for purchase of the land. The written statement filed by the second defendant was adopted by the first defendant by filing a memo.

2. Both the Courts below have now held that the suit site is part of the Church itself and that therefore, the application u/s 9 is not maintainable in view of the decisions of this Court of which one is *Sundaresvoorar Devasthanm v. Marimuthu* ILR (1963) Mad. 1054 : 76 L.W. 381 : AIR 1963 Mad. 369. The Courts below have also held that an assignee of a tenancy-right with the superstructure is not entitled to the protection of the City Tenants Protection Act as he will not be a tenant under the Act. In support of this contention, they relied on the decision of this Court in *Kuppa Bai Vs. A. Rajagopal Nadar and Another*, . When the second appeal was pending the Legislature amended the definition of "tenant " in Section 2(4) by Tamil Nadu Act XXIV of 1973. The learned Counsel for the appellants relied on this amended definition and contended that the second defendant had now become a tenant even if there was any doubt as to whether he was a tenant prior to the amendment of the definition. The first question, therefore, that arises for consideration is whether the assignee of a superstructure and the leasehold right could claim the benefit of the City Tenants Protection Act as a tenant. The definition of the word " tenant " as it stood originally, ran as follows:

"Tenant" means tenant of land liable to pay rent on it, and every other person deriving title from him, and includes persons who continue in possession after the termination of the tenancy.

This definition was substituted by Tamil Nadu Act XIII of 1960, which came into force on 27th July, 1960 and the amended definition ran as follows:

"Tenant" in relation to any land:

(i) means a person liable to payment in respect of such land, under a tenancy agreement express or implied, and

(ii) includes:

(a) any such person as is referred to in Sub-clause (1) 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.

This definition was farther amended by substituting Clause (ii) by the following clause by Act XXIV of 1973,:

(ii) 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,

(b) any person who was a tenant in respect of such land under a tenancy agreement to which this Act is applicable under Sub-section (3) of Section 1 and who or any of his predecessors in interest had erected any building on such land and who continues in actual physical possession of such land and building, notwithstanding that:

(1) such person was not entitled to the rights under this Act by reason of the proviso to Section 12 of this Act as it stood before the date of the publication of the Madras City Tenants Protection (Amendment) Act, 1972 (Tamil Nadu Act IV of 1972), or

(2) a decree for declaration or a decree or an order for possession or for similar relief has been passed against such person on the ground that the proviso to Section 12 of this Act as it stood before the date of the publication of the Madras City Tenants Protection (Amendment) Act, 1972 (Tamil Nadu Act IV of 1972) disentitled such person from claiming the rights under this Act, and

(c) the heirs of any such person as is referred to in Sub-clause (i) or Sub-clause (ii) (a) or (ii) (b) but does not include a sub-tenant or his heirs.

It would be seen from the definition, as it originally stood, that it included within the term "tenant" every other person deriving title from him. These words would include not only the heirs of the tenant, but also an assignee of such tenant. But by the substituted definition of the word, "tenant" by Tamil Nadu Act XIII of 1960, the heirs of the tenant alone were included in the definition and the assignees were excluded. The effect of this amendment came up for consideration before this Court in *Kuppa Bai Vs. A. Rajagopal Nadar and Another*. In that case, the suit was filed for eviction against two defendants. The first defendant was the wife of the original tenant and the second defendant was assignee of the site and building by the first defendant. The assignment, in that case, was on 22nd June, 1960, before the definition was amended by Tamil Nadu Act XIII of 1960. It was held that the amended definition restricted the right to the heirs of a tenant only and the right of the assignees which was originally included was taken away. The learned Judge also considered that though, on the day when the assignment was effected in that case, the amended definition had not come into force, and on the definition as it originally stood, even an assignee would be entitled to the protection under the Act, the amended definition would have to be applied even in respect of that tenancy. In other words, the amended definition was held to be applicable even to assignments made before the amendment. Thus, the position subsequent to the amendment of the definition in 1960 was that an assignee of the superstructure and the tenancy right will not be entitled to the benefit of the Act irrespective of the fact whether the assignment was prior to 1960 or subsequent to 1960.

3. Tenants entitled to the protection under the Act were given certain special rights under the provisions of the Act. Broadly stated, they are entitled to purchase the land in which they had put up a superstructure or entitled to get

the compensation for the superstructure on eviction. Under the original definition as seen already, the tenant was also entitled to assign these rights to any person. But, this was subject to the provisions of Section 12. That section, before it was amended, in 1972, read as follows:

Nothing in any contract made by a tenant shall take away or limit his rights under this Act, provided that nothing herein contained shall affect any stipulation made by the tenant in writing registered as to the erection of building, in so far as they relate to buildings erected after the date of the contract.

Considering this provision, the Supreme Court held in *Haridas Girdhardas and Others Vs. Varadaraja Pillai and Another*, that, where under a registered lease, the lessee had agreed to put up a construction on the site leased to him according to certain specifications after the prior approval of the lessors at a particular cost and covenanted that on the expiry of the lease, the lessor shall have the option of buying the building and if the lessor was not willing to purchase, the lessee shall be at liberty to remove and carry away the erections, that clause in the deed amounted to a stipulation as to the erection of the building within the meaning of the proviso to Section 12 and that, therefore, the lessee would not be entitled to claim either the compensation for the building or a right to purchase and land itself. Thus, the protection given under the Act was held to be taken away if there was a stipulation to that effect in the lease deed itself. The Legislature amended Section 12 by the Tamil Nadu Act IV of 1972 deleting the proviso to that section and restoring the right of the tenant even if the lease deed contained any stipulation as to the erection of the building.

4. Thus, after the amendment in 1972, the position of the tenant was, he will be entitled to purchase the land u/s 9 or get compensation for the superstructure in spite of the fact, that under the lease deed, he had agreed not to claim compensation in respect of the superstructure or agreed to remove the same. But, the assignee will not be entitled to this protection under the Act. To put it negatively, the right of the tenant to assign the leasehold right and the superstructure to any person with rights under the Act "was taken away. At this stage, the Legislature has amended the definition of the terra " tenant " by Tamil Nadu Act XXIV of 1973. v

5. The definition itself has been extracted already in the earlier part of this judgment. It is seen from Sub-clause (b) of Clause (ii) of Clause (4.) of Section 2 that three conditions will have to be satisfied in order that a person may come under that clause. One is, under the first part of that provision, he must be a tenant in respect of the land under a tenancy agreement to which the Act is applicable under Sub-section (3) of Section 1. That means, the tenancy agreement in respect of the land in his favour should have been prior to the coming into force of Tamil Nadu Act XIX of 1955, namely, 12th September, 1965. The second condition is, such a tenant or any of his predecessors-in-interest shall have erected the building on such land. These conditions clearly show that not only the tenancy and the erection of the building should be prior to 12th

September, 1965 but, in cases where the tenant has assigned, the assignment must also be prior to 12th September, 1955. The third condition is the person who claims the right under the Act should have continued in actual physical possession of such land and building. These three conditions, in my opinion, clearly show that the definition of the term "tenant" is intended to include an assignee of such tenant of the land and superstructure, provided the assignment was prior to 12th September, 1955 and the assignee continued to remain in possession thereafter. The non-obstante clauses 1 and 2 of this sub-clause gave the benefit of the protection to such an assignee in spite of the fact that the lease deed executed by the assignor contained a provision with reference to the erection of the building within the proviso to Section 12 which was deleted in 1972 or a decree had been granted, when the proviso was in operation, disentitling the tenant or the assignee from claiming the rights under the Act. I am therefore of opinion that though an assignee is now given protection under the Act, it is not all assignees that will get the protection, but it is those assignees of lands and buildings who[got the assignment prior to 12th September, 1955 and continued in possession thereafter, that will be entitled to the benefit of the protection under the amended definition of the term "tenant". In this case, the assignment in favour of the appellant's predecessor, viz., the second defendant, was on 15th July, 1965 and therefore, he will not be entitled to the protection of the City Tenants Protection Act.

6. The next question for consideration is, whether, though the second defendant was not entitled to the protection under the Act since the first defendant was a tenant, the plaintiff is liable to pay the compensation for the superstructure. The learned Counsel for the appellants submitted that the decree could not be granted without directing the plaintiff to pay the compensation for the superstructure to the first defendant. The Trial Court, while decreeing the suit for vacant possession, held that the first and second defendants were not entitled to any compensation for the superstructure, but that they are entitled to remove the superstructure before delivering possession.

The first defendant has not appealed against this decree. Apart from this, I am also unable to see how the first defendant would be entitled to compensation after he has assigned the superstructure to the second defendant. Though the assignee is not entitled to the benefit of the protection under the Act, the assignment itself is not invalidated. Therefore, the first defendant had ceased to be the owner of the superstructure. If the compensation is to be paid for the superstructure the first defendant would not be in a position to hand over possession of the superstructure to the plaintiff. Therefore, in cases where the original tenant had assigned the leasehold rights and the superstructure put up by him, he will not be entitled to compensation also for the it superstructure as such. Therefore, while is open to the second defendant to remove the superstructure before handing over vacant possession of the site, neither the first defendant nor the second defendant would be entitled to compensation for the superstructure.

7. It was next contended by the learned Counsel for the appellants that the plaintiff is not properly represented by the Parish Priest. This contention is based on the ground that the property is vested in the Archbishop of Madras and the Parish Priest who had filed the suit on behalf of Saint Francis Xavier Church, had not shown his authority to represent the Church in this suit and that therefore the suit was not properly laid. This is a suit by a landlord for eviction. The definition under the Act includes within the word "landlord" every person entitled to collect the rent of the whole or any portion of the land. It is not in dispute that prior to the assignment the first defendant was paying rent to the Parish Priest of this Church. It is not shown that he was illegally collecting the rent or he was not authorised to collect the same. Therefore, the Parish Priest was entitled to lay the suit on behalf of the Church. But, I am bound to add that. I would have expected the Parish Priest to have shown his authority to represent the Church when the defendants raised specific plea that he had no authority to represent and only the Archbishop of Madras could have represented the Church. He could have easily shown his authority to represent either by producing an authority from the Archbishop himself or with reference to any of his duties and functions as Parish Priest with reference to the Church itself. But, since I have already held that, as a person entitled to receive the rent, he could have filed the suit, the suit itself is not liable to be dismissed on the ground that it could not have been maintained by him. Though the learned Counsel for the appellants raised the further question that the second defendant had not been issued notice as required by Section 11 of the Act and that, therefore, the suit is not maintainable, in view of my finding that he is not a tenant entitled to the protection of the Act, he will not be entitled to a notice also under that provision.

8. For the foregoing reasons, the decree of the Courts below is confirmed and the second appeal is dismissed. There will be no order as to costs. No leave. The appellants are given three months" time from this date to remove the superstructure and give vacant possession of the site to the plaintiff.