

Dharmalingam Vs. S. Mahalingam (Deceased by Lrs.) and ors.

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Court : Chennai

Decided On : Sep-19-1986

Reported in : AIR1989Mad1; (1987)IMLJ451

Judge : M.N. Chandurkar, C.J.

Acts : Tamil Nadu City Tenants Protection Act, 1922 - Sections 9

Appeal No. : C.R.P. No. 657 of 1982

Appellant : Dharmalingam

Respondent : S. Mahalingam (Deceased by Lrs.) and ors.

Advocate for Pet/Ap. : R. Sukuntharaj, Adv.

Disposition : Petition allowed

Judgement :

ORDER

M.N. Chandurkar, C.J.

1. This revision filed by the landlord arises out of the orders passed by the X Assistant Judge, City Civil Court, Madras and the First Additional Judge, City Civil Court, Madras on a petition filed under Section 9 of the City Tenants Protection Act, seeking a direction to the landlord to sell the petition land to the tenant for a price to be fixed by the Court. It appears that the original tenant died during the

pendency of the proceedings and his legal representatives have been brought on record They will, however, be described as a 'tenant' hereafter.

2. The tenant's case was that he was a tenant under the grandfather of the present petitioner of an open site and he had put up a superstructure over the same. His further case was that he was also a tenant under the present petitioner-landlord and he was entitled to claim the right under Section 9 of the City Tenants Protection Act. It is not necessary to refer in detail to the several defences raised with regard to the status of the tenant. For the purpose of the present revision petition, it is enough to refer to the contention raised on behalf of the landlord that the petition under Section 9 itself was not maintainable because no proceeding for ejectment had been taken by the landlord.

3. The X Assistant Judge, City Civil Court, Madras, however, allowed the original petition and appointed a Commissioner to determine the market value. This order was confirmed by the First Additional Judge, City Civil Court, Madras in appeal.

4. The only contention which is relevant for the purpose of the present revision petition is whether the present respondent who has described himself as a tenant is entitled to invoke the provisions of Section 9 of the Tamil Nadu City Tenants Protection Act, even though there is no proceeding taken by the landlord for his eviction. The original petitioners have been served but there is no appearance on their behalf.

5. It appears on a bare reading of the provisions of Section 9 that recourse to the provisions of Section 9 can be taken only by a tenant against whom a suit in ejectment has been instituted or against whom a proceeding under Section 41 of the Presidency Small Cause Courts Act, 1882 has been taken by the landlord. The relevant provision in Section 9(1)(a)(1) of the Act reads as follows:--

'Any tenant who is entitled to compensation under Section 3 and against whom a suit in ejectment has been instituted or proceeding under Section 41 of the Presidency Small Cause Courts Act, 1882 taken by the landlord may, within one month of the date of the publication of the 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 extent of land specified in the application.

6. A bare reading of Section 9(1)(a)(1) of the Act will show that a person who claims to be a tenant before he could claim the right under Section 9, must first satisfy the condition that he is entitled to compensation under Section 3 and the tenant must be a tenant against whom a suit in ejectment has been instituted or proceeding for ejectment under Section 41 of the Presidency Small Cause Courts Act, 1882 has been taken by the landlord. When Section 9(1)(a)(1) refers to entitlement to compensation under Section 3 and when we read Section 3 of the Act, it is clear that the entitlement to compensation arises only on ejectment. Section 3 of the Act reads as follows: --

'Payment of compensation on ejectment: Every tenant shall on ejectment be entitled to be paid as compensation the value of any, building, which may have been erected by him by any of his predecessors-in-interest or by any person not in occupation at the time of the ejectment who derived title from either of them, and for which compensation has not already been paid. A tenant who is entitled to compensation for the value of any building shall also be paid the value of trees which may have been planted by him on the land (and of any improvements which may have been made by him.)'

Under Section 3, it is made very clear that it is only in ejectment that the tenant will be entitled to be paid as compensation the value of any building, which may have been erected by him, by any of his predecessors-in-interest or by any person not in occupation at the time, of the ejectment who derived title from either of them, and for which compensation has not already been paid. Therefore, both under Section 3 and Section 9, a proceeding for ejectment is the sine qua non before a claim under Section 9 can be made. There does not appear to be any other provision under the Act which: entitles a person claiming to be a tenant to have his right to purchase the superstructure claimed to have been erected by him and sold

to him by the landlord through the medium of the Court. On this short ground, in my view, the original petition filed by the tenant should have been dismissed. It is, therefore, not necessary to go into the other controversy as to whether the tenant had constructed the superstructure because it is obvious that the findings recorded on the other issues would be findings without jurisdiction as there is no jurisdiction in the Court to entertain a petition under Section 9 simpliciter without any proceeding for ejectment pending against the original tenant. It is also, therefore, not necessary to decide as to whether the proceeding should have been taken in the civil Courts or in the Small Cause Court.

7. Apart from the fact that the position of law that Section 9 can be invoked only if and when a proceeding for ejectment is taken is clear from the terms of the section itself, the position seems to be well settled as far back as in *Rajagopal Chettiar v. Razak Sahib* : AIR1950 Mad759 in which the learned single Judge has taken the view that reading Sections 3 and 9 of the Madras City Tenants Protection Act, together it is clear that the tenant's right to file a petition under Section 9 of the Act accrues on his being served with a notice of a suit in ejectment. To the same effect is the decision in *Syed Ibrahim v. Jalma* : (1968)2MLJ83 , in which Ismail, J. as he then was, has also taken the view that a person to come within the scope of Section 9 of the Act must be a person against whom a suit in ejectment has been instituted and the expression 'to institute' which has a definite connotation in law meant, in relation to any proceeding when the machinery is set in motion. Accordingly, the orders of both the courts are set aside and this revision petition is allowed. Their original petition under Section 9 of the City Tenants Protection Act stands dismissed. There will be no order as to costs.

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