

Palaniammal Vs. Rangaswami

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Court : Chennai

Decided On : Oct-26-1979

Reported in : (1980)1MLJ339

Appellant : Palaniammal

Respondent : Rangaswami

Advocate for Pet/Ap. : Mr. T.R. Mani

Judgement :

Balasubrahmanyam, J.

1. The petitioner, in this Civil Revision Petition, is the landlady, of a piece of land in Karur town. The respondent was a tenant under her. She filed a suit in ejectment against the respondent after giving him a notice of termination of tenancy. During the pendency of the suit, the respondent-tenant filed a petition under Section 9(i)(ii) of the Madras City Tenants Protection Act, 1921, under which he prayed that the Court may pass an order directing the landlady to sell the land to him. There was some controversy before the Court as to whether the superstructure was or was not constructed by the respondent/tenant. But, the trial Court held that there was no evidence at all that it was the landlady who built up the superstructure and on the basis of the evidence, it could fairly be inferred that the superstructure was put up only by the respondent. There were, however, other objections put forward by the landlady to the application filed by the tenant under

Section 9 of the Act. One was that the application was belated and the other was that the application itself did not lie. On the first question, it was found that the Act was extended by a Government notification dated 25th June, 1975 to Karur town. Under Section 9, a tenant, desiring to take advantage of the benefits of that section should move an application before the Court within two months of the notification. The contention of the landlady was that the application under Section 9 was filed by the tenant only on 7th October, 1975, which was more than two months beyond the date of notification. The trial Court found on verification of the records that the petition was filed by the tenant as early as 25th August, 1975 which was within the limited period of two months.

2. The other point raised by the landlady before the trial Court was, that once the owner of a land, on which the tenant had constructed his superstructure, had given a notice to quit, the tenant ceases to be a tenant in the eye of the law and his continued possession in the property thereafter could only be regarded as that of a mere trespasser. On the basis of this submission, it was argued that the petitioner, having given notice to quit to the respondent and followed it up by filing a suit for ejectment, can no longer be regarded as the landlady of the respondent and thereafter his continued possession was only that of a trespasser and he was not thereafter competent to file a petition under Section 9 of the Act. The learned District Munsif rejected this contention holding that the respondent was entitled to invoke the benefits which the Act granted to him under Section 9 even after notice of termination of the tenancy.

3. On the basis of the above reasons, the Court allowed the application of the respondent under Section 9 of the Act. On appeal, the findings of trial Court were confirmed. This revision has been preferred by the landlady against the decision.

4. Mr. T.R. Mani, learned Counsel for the petitioner/landlady, puts forward the same two contentions, which were raised by his client in the course of the argument of the appeal. On the first submission, namely, that the application filed under Section 9 of the Act by the tenant was belated, learned Counsel relied on the preamble to the order of the trial Court. That preamble referred to the application filed by the tenant under Section 9(i)(ii) of the Act as an application

dated 7th October, 1975. In contrast, both the Courts below had observed that the application was really filed on 25th August, 1975. As a matter of verification, I looked into the original petition and I found that it bears the date seal of 25th August, 1975 I am, therefore, satisfied that there is no merit in the submission that the application filed by the tenant was belated.

5. On the other question as to the maintainability of an application by a tenant against whom a valid termination notice had been given by his landlady, Mr. Mani referred me to a decision of a division Bench of our High Court, briefly reported in *Sri Mahalingeswar Devasthanam v. Sankara Iyer* : AIR1963 Mad160 The Bench, which consisted of Ganapatia Pillai and Kunhahmed Kutti, JJ', held that a person, whose tenancy had been determined before the amendment of the Madras City Tenants' Protection Act in 1955, but who merely continued in possession as a trespasser will not be a tenant, who could claim the benefit of the Act. They referred to the definition of the term 'tenant' under Section 2(4) of the Act. In their opinion, although the statute defined that expression in wide language, it was still necessary, having regard to the scheme of the Act, to limit the application of that expression only to those who still carried the jural relationship of tenants to their landlords, and were under a continued liability to pay rent. According to the learned Judges, where a tenant, after termination of the tenancy refuses to surrender possession of the demised property he would only be in the position of a trespasser, liable to pay mesne profits and not rent in respect of his possession of the demised property. In that situation, according to the learned Judges, he would not be entitled to invoke the provisions of the Act.

6. The definition of the expression 'tenant' has been clarified by the Tamil Nadu Act XXIV of 1973. After the amendment the expression 'tenant' not only refers to a person liable to pay rent in respect of the land under a tenancy agreement, express or implied, but it also includes any such person who continues in possession of the land after the determination of the tenancy agreement. The words of the inclusive definition, which were inserted by Tamil Nadu Act XXIV of 1973 were in express terms given retrospective operation although the Act came into force on 28th July, 1973. The amendment section ran as follows : The following sub-clause shall be and shall be deemed always to have been

substituted:... In view of the retrospective amendment, it may not be necessary to consider, even in an academic manner, whether the Division Bench ruling is correct even on the basis of the scheme, the scope and the policy of the Act. Under the present definition of 'tenant' in the Act, even those tenants, against whom valid notices to quit had been given by their landlords, would yet be entitled to the benefits of the Act, if they were otherwise eligible to take advantage of the provisions.

7. Mr. Sivamani, learned Counsel for the tenant referred me to a recent decision of a learned single Judge of this Court, reported in *Govindaswamy v. Bhoopalan* (1977) 2 ML.J. 236. In that case the learned Judge held, that, even where the tenant had forfeited the tenancy by denial of the title of the landlord, he would nevertheless be a tenant within the meaning of Section 2 of the Madras City Tenants (Protection) Act, if he was still in possession of the land. Apparently the learned Judge had not noticed the law before and after the introduction of the amending Act XXIV of 1973. It may be mentioned that the decision was rendered on the definition of the tenant after amendment of the Act.

8. In view of the clear terms of the Act which comprehends also tenants, against whom notices of termination had already been validly issued, I am satisfied that the respondent in this case was competent to file a petition under Section 9(i)(ii) of the Act. and nonetheless so for the tenancy having been terminated prior thereto. I may add that even without resorting to the amended Section 2(4) of the Act defining 'tenant' in a comprehensive manner, the rights conferred by Section 4 are in express terms, available whether or not there is a suit in ejectment against the tenant. If a suit in ejectment, in order to be maintainable, can only be instituted after a proper notice of termination of the tenancy it must follow that in every case a tenant, who finds himself in the position of the defendant in such suit and still in possession of the premises, must be in the position of a trespasser. Nevertheless, Section 9 of the Act in express terms grants him a right to purchase the land on the terms set out in this section. This is an additional reason as to why the argument of the learned Counsel for the petitioner could not be accepted on the question of maintainability of the respondent's petition under Section 9 of the Act.

9. For all the above reasons, I find no merits in this Civil Revision Petition and it is accordingly dismissed. There will be no order as to costs.

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