

Thulasiammal, Vs. Kalyani,

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Court : Chennai

Decided On : Nov-08-2002

Reported in : 2003(1)CTC609

Judge : N.V. Balasubramanian, J.

Acts : Tamil Nadu City Tenants Protection Act - Sections 2(4), 9 and 11; Transfer of Property Act - Sections 106, 111 and 116; Limitation Act - Schedule - Articles 65 and 67

Appeal No. : S.A. No. 1842 of 2002 and C.M.P. No. 15577 of 2002

Appellant : Thulasiammal, ;dr. S. Vijayakumar, ;s. Vijayalakshmi, ;s. Mohanakumar, ;s. Udyakumar, ;s. Sundaramoo

Respondent : Kalyani, ;p.L.S. Ramalakshmi, ;sakthivasan, ;s. Shanmugahvadivu, ;s. Venkatesan and Santhanom

Advocate for Pet/Ap. : M. Venkateswaran, Adv.

Disposition : Petition closed

Judgement :

N.V. Balasubramanian, J.

1. The defendants 3 to 10, who lost in the trial Court as well as the first appellate Court are the appellants herein. The respondents are the plaintiffs who are the legal representatives of P.L. Shanmugam who originally filed the suit, O.S. no. 310 of 1988. The suit was filed by P.L. Shanmugam who died during the pendency of the suit against one Soundarapandian who also died during the pendency of the suit and his legal representatives were impleaded as defendants 3 to 10, who are the appellants herein. The suit in O.S. no. 310 of 1988 was filed for declaration and for delivery of vacant possession of the suit property and for mesne profits, both past and future.

2. Another suit in O.S. no. 291 of 1989 was filed for permanent injunction by Soundarapandian who died during the pendency of the suit. It is necessary to notice the facts of the suit in O.S. no. 310 of 1988 for the disposal of the appeal, as the appeal is filed only against the judgment and decree rendered in the appeal in A.S. no. 81 of 2001 filed against the judgment and decree rendered in O.S. no. 310 of 1988.

3. According to the plaint, the first plaintiff, P.L. Shanmugam was the absolute owner of the suit property and he purchased the property by a registered sale deed dated 15.9.1974 from one Rajeswari ammal. It is stated that the first plaintiff was declared as a bona fide purchaser of the suit property in A.S. no. 40 of 1981 and A.S. no. 82 of 1981, by common judgment dated 9.12.1981. It is stated that the first defendant was in possession of the land as tenant under the previous landlord, Rajeswari ammal and did not attorn the tenancy in favour of the first plaintiff. The first defendant Soundarapandian filed the suit in O.S. no. 138 of 1978 on the file of the Additional Subordinate Judge, Chengalpattu for specific performance. The trial Court dismissed the suit for specific performance, but granted a decree for compensation for the value of the superstructure put up by the first plaintiff. The first defendant herein preferred an appeal as against the decree for rejection of the relief of specific performance by the trial court and the said appeal was dismissed on 9.12.1981. Thereafter the first defendant preferred a second appeal in S.A. no. 1847 of 1984 before this Court and this Court also dismissed the second appeal, by judgment dated 8.12.1987, wherein Mr. M. Srinivasan, J. (as His Lordship then was) held that the first defendant herein has

not established the oral agreement. As regards compensation, the learned Judge held that the question whether the first defendant would be entitled to compensation for the value of the superstructure under the provisions of the Tamil Nadu City Tenant's Protection Act has not been gone into in the said proceedings and that is a matter to be decided in a proceeding which may be initiated by the first plaintiff herein. It was also held that the only remedy that is available to the first defendant is to remove the superstructure put up by him and he is not entitled to claim title as a tenant in respect of the superstructure.

4. A notice dated 9.2.1982(Ex.A-2) was issued by the first plaintiff through his counsel stating that the first defendant did not attorn tenancy in favour of the first plaintiff from the date of his purchase and the first defendant also failed to pay the rent in spite of several demands made. It is also stated that the first defendant had gone to the extent of denying the title of the first plaintiff in the suit property. It is stated that the first defendant is liable to pay the entire arrears of rent and he has committed wilful default in payment of rent. It is also stated that the property is required for the personal use of the first plaintiff to carry on business. The notice was therefore issued calling upon the first defendant to quit and deliver vacant possession of the property and also to pay the entire arrears of rent.

5. The first defendant, in his reply dated 15.2.1982 (Ex.A-3), has denied the title of the first plaintiff. It is stated that the property does not belong to the first plaintiff and the first defendant is the absolute owner of the site as well as the superstructure. It is also stated that the sale by Rajeswari ammal in favour of the first plaintiff is void and not binding on the first defendant. It is also stated that the deed was a sham document and the first plaintiff has no means to purchase the property. In that reply notice, the first defendant has referred to the earlier proceedings in O.S. no. 138 of 1978 initiated by him for specific performance and stated that as against the judgment of the first appellate Court, he has taken steps to prefer second appeal before this Court. It is relevant to notice that the first defendant filed a second appeal in S.A. no. 1847 of 1984 which came to be decided on 8.12.1987.

6. It is also relevant to mention here that in spite of directions of this Court, learned counsel for the appellants has not produced the entire document in Ex.A-3, but he has only produced pages 1 and 2 of the said document, Ex.A-3. The first plaintiff therefore came forward with the suit that there is no tenancy agreement either express or implied between the first plaintiff and the first defendant and the first defendant is not the tenant and he has to deliver possession of the property and he has not paid the rent also and there is no legal relationship of landlord and tenant between the first plaintiff and the first defendant which was admitted by the first defendant in his reply notice dated 28.4.1982 (probably the correct date of the reply notice is 15.2.1982) and also in the notice dated 27.4.1987 wherein the first defendant has stated that there is no privity of contract between the first plaintiff and the first defendant and there is no question to be decided.

7. The first defendant died during the pendency of the suit and his legal heirs were added and the first plaintiff also died during the pendency of the suit and his legal heirs were added.

8. The first defendant filed a written statement. The first defendant referred to the rent control proceedings in R.C.O.P. no. 26 of 1983 wherein it was found that there was no tenancy of the building which was constructed. It is stated that the rent control petition was dismissed on 12.11.1984, and the first defendant as lessee of the vacant site has put up superstructure and therefore, he is entitled to the benefit of the Tamil Nadu City Tenants Protection Act. It is also stated that the suit is not maintainable. It is stated that the first plaintiff is not the owner of the house and the house belongs to the first defendant. It is stated that the first defendant is in lawful possession and he is not a trespasser. It is also stated that the suit is barred by limitation and the suit is not maintainable for want of notice under section 11 of the Tamil Nadu City Tenants Protection Act.

9. The second defendant also filed a written statement. Other defendants filed a written statement stating that they are adopting the written statement filed by the first defendant. Necessary issues were framed. The suit was decreed which was confirmed by the first appellate Court.

10. Learned counsel for the appellants raised two points. The first point is that the first defendant, who was a tenant, was holding the suit land and on his death, the appellants herein are entitled to the benefits of the Tamil Nadu City Tenants Protection Act. His second point is that the suit is barred by limitation.

11. As far as the first point is concerned, the submission of the learned counsel is that the first defendant Soundarapandian was admittedly a tenant of the site in question and in the absence of notice under section 11 of the Tamil Nadu City Tenants Protection Act, the suit is not maintainable. Learned counsel also submitted that prior notice under section 106 of the Transfer of Property Act was also not given and therefore the suit is not maintainable. As far as the question regarding notice under section 11 of the Tamil Nadu Cultivating Tenants Protection Act is concerned, the appellants during the pendency of the suit filed a petition under section 9 of the Tamil Nadu City Tenants Protection Act claiming that they are entitled to the benefit of the Tamil Nadu City Tenants Protection Act and the said petition was dismissed and an appeal in C.M.A. no. 3 of 1999 was preferred and the appeal was also dismissed and against the judgment and decree in C.M.A. no. 3 of 1999, the appellants preferred a revision before this Court. This Court considered the matter and found that the appellants have set up their own title and denied the title of the landlord and also denied that they are tenants at all. It was also found that there is absolutely no evidence to show that the appellants have accepted the tenancy. This Court held as under:-

' To make a claim under section 9 of the Act, the person must be a tenant within the meaning of section 2(4) of the Act. A tenant in relation to any land means a person liable to pay rent in respect of such land, under a tenancy agreement, express or implied. This will include any such person, referred to earlier, who continues in possession of the land after the determination of the tenancy agreement. But, the point is whether there is any tenancy agreement, express or implied, and whether the petitioners are liable to pay rent in respect of such land to the respondents? In this case, neither Soundarapandian, nor his legal representatives, the petitioners herein, at any point of time conceded that there is tenancy agreement between the petitioners and the respondents, either express or implied. On the contrary, from the pleadings it could be seen that the petitioners

have put up a specific stand of title of their own and denied the title of the respondents in categorical terms. Therefore there is absolutely no evidence to show that the petitioners have accepted the tenancy, either express or implied, with the respondents. The exchange of notices, pleadings and the findings, all consistently and clearly establish that the petitioners have set up their own title on the basis of an oral agreement of sale from Rajeswari ammal and have denied the title of the respondents on that basis and let out the property to third parties. It is in evidence and not in dispute that they have not paid any rent to the respondents. The non-issue of notice under section 11 of the Act does not arise in this case and the petitioners are not entitled to claim benefit under the Act and from the eviction.'

The above decision rendered in the appellants' own case and reported in 2001 3 L.W.693 (Thulasimaniammal & Others v. Kalyani & others) has become final.

12. The Supreme Court in the case of PALANI AMMAL v. VISWANATHA CHETTIAR DEAD) AND OTHERS (1998) 2 L.W.7 and this Court in ESTATE OF M.VENKATESA SARMA, ETC. v. A.N.RAJALAKSHMI AND 9 OTHERS (1998) 3 L.W.369 have held that the notice under section 11 of the Tamil Nadu City Tenants Protection Act is mandatory only if the existence of landlord-tenancy relationship is established and a person not a tenant on his own showing, cannot claim rights under sections 106, 111 and 116 of the Transfer of Property Act.

13. This Court in appellants' own case in 2001 3 L.W.693 (Thulasimaniammal and others v. Kalyani & others) held that the tenant denying title of the landlord is not entitled to the benefit of the Tamil Nadu City Tenants Protection Act and the question of issue of notice under section 11 of the said Act does not arise. I hold that in the light of the decision of this Court rendered in the appellants' own case, reported in 2001 3 L.W.693, the appellants are not entitled to claim that prior notice under section 11 of the City Tenants Protection Act is mandatory and once this Court has held that there is no landlord-tenant relationship between the respondents and the appellants, notice under section 106 of the Transfer of Property Act is also not necessary. The appellants by their own conduct, have forfeited the rights conferred on them as tenants under the Tamil Nadu City Tenants Protection Act as well as under the Transfer of Property Act.

14. Further, learned counsel for the appellants submitted that the decision rendered in the appellants' own case, reported in 2001 3 L.W.693 would not operate as res judicata as it was rendered at interlocutory stage. I am unable to accept the said submission. In ARJUN SINGH v. MOHINDRA KUMAR , the Supreme Court has laid down the law as under:-

' If the court which rendered the first decision was competent to entertain the suit or other proceeding, and had therefore competency to decide the issue or matter, the circumstance that it is a tribunal of exclusive jurisdiction or one from whose decision no appeal lay would not by themselves negative the finding on the issue by it being res judicata in later proceedings Where the principle of res judicata is invoked in the case of the different stages of proceedings in the same suit, the nature of the proceedings, the scope of the enquiry which the adjectival law provides for the decision being reached, as well as the specific provisions made on matters touching such decision are some of the material and relevant factors to be considered before the principle is held applicable.'

Applying the principles laid down by the Supreme Court, the decision rendered by this Court in 2001 3 L.W.693 cannot be regarded as an interlocutory order as the merits of the controversy have been decided and the rights of the parties have been decided in the earlier proceedings in the same suit. Further, the decision was arrived at by the Court which is competent to entertain and decide the issue. Hence, I reject the submission of the learned counsel for the appellants that the earlier judgment would not operate as res judicata. I am of the view that even if it does not operate as res judicata, the earlier decision of this Court in the appellants' own case, reported in 2001 3 L.W. 693 is binding on the appellants and following the said decision, I hold that the appellants are not entitled to the benefit under the Tamil Nadu City Tenants Protection Act as well as the Transfer of Property Act.

15. The next point that arises is whether the suit is barred by limitation. The suit was filed on 2.9.1988. According to the learned counsel for the appellants, the first plaintiff has purchased the property on 15.9.1974. He referred to Ex.A-2 and a reading of Ex.A-2 clearly shows that the first defendant refused to attorn tenancy in favour of the first plaintiff. In Ex.A-2 it is also stated that the first defendant had

gone to the extent of denying the title of the landlord. It is therefore submitted by the learned counsel for the appellants that the time limit to determine the period of limitation has to be considered from the date of purchase of the property and since the suit was filed after a period of 13 years, 11 months and 17 days from the date of purchase, the suit is barred by limitation.

16. I am unable to accept the submission of the learned counsel for the appellants. In Ex.A-3 which was sent as a reply to the notice Ex.A-2, the first defendant denied the title of the landlord. Ex.A-3 is dated 15.2.1982 and the suit was filed on 2.9.1988. As far as notice (Ex.A-2) is concerned, the notice merely called upon the first defendant to pay the entire arrears of rent and also to deliver vacant possession of the property. Even before the issue of Ex.A-2 notice, the suit for specific performance filed by the first defendant was dismissed. In the notice issued to the first defendant in Ex.A-2 it is not stated anywhere that the first defendant was denying the title of landlord even from the date of purchase by the first plaintiff, but it is stated that the tenant had gone to the extent of denying the title of the landlord. In that notice, it is not stated that from which date, the first defendant has denied title of the first plaintiff. There is no evidence from the side of the appellants that the first defendant had denied the title of the landlord even from the date of purchase. In the absence of any such evidence, both the Courts relied upon Ex.A-3 as the starting point for the computation of limitation period, and found that the suit filed by the first plaintiff is within the time. Learned counsel for the appellants referred to Article 67 of the Limitation Act and submitted that Article 67 would only apply and not Article 65. However, since it is a suit for declaration and delivery of possession and since the possession of the first defendant has become adverse to the first plaintiff, I am of the view that Article 65 of the Limitation Act would apply and therefore the 12 year period has to be computed from the date of Ex.A-3 notice issued by the first defendant. I therefore hold that both the Courts are correct in holding that the suit filed is within the time.

17. I do not find any question of law, much less a substantial question of law that arises out of the judgment and decree of the first appellate Court. Consequently, the second appeal fails and the same is dismissed, in limine, at the admission stage itself. Consequently, C.M.P. no. 15577 of 2002 is closed.

