

S. Venkitachalam Iyer

Vs

S. Rama Iyer

Civil Appeal No. 1317 of 1988

(CJI Ranganath Misra, M. H. Kania, Kuldeep Singh JJ)

12.09.1991

JUDGEMENT

KANIA, J.:-

1. This is an appeal by special leave against the decision of a learned single Judge of the Madras High Court in Civil Revision Petition No. 2792 of 1979* filed in that Court. We propose to set out only the few facts necessary for the disposal of the appeal.

2. The appellant is the managing trustee of a trust. The said trust owned two properties comprising 60 cents and 20 cents of land at Nagercoil in Tamil Nadu. The said lands were leased by the appellant to one Padakalingam in 1930 who in turn assigned the lease in favour of one Ramaswamy Mudaliar in 1931. Swami Mudaliar secured a further assignment of the said lease from the said Ramaswamy Mudaliar. Swami Mudaliar put up a building on the said land and the respondent herein purchased the building from him in 1943 for a sum of Rs. 4,475/-. In 1944 the trust had leased out the said property in favour of the respondent for six years. The terms of the lease are not relevant for the purposes of resolving the controversy raised before us. As the respondent failed to pay the rent to the Trust, the Trust filed a suit for ejectment against the respondent which suit was later transferred to the District Munsifs Court, Nagercoil. The said suit was decreed by the learned District Munsif. The decree for eviction was passed by the learned District Munsif on condition that the respondent will pay to the appellant costs of the building or the superstructure. This litigation was carried up to the High Court in Second Appeal. The decree of the trial Court for eviction was upheld by the High Court. During the pendency of the second appeal an application was filed by the respondent under S. 9 of the **Tamil Nadu Tenants' Protection Act, 1921, as amended by Act XIX of 1955 and Tamil Nadu Adaptation of Laws Order, 1969 (hereinafter referred to as "the said Act"). The provisions of the said Act were extended to Nagercoil town in respect of non-residential buildings by a government order which was published in the Gazette on June 29, 1975. In the said application under S. 9 of the said Act, the respondent claimed that the appellant should be directed to sell out of the said property, the land adjoining the said building and necessary for the beneficial enjoyment of the building on such terms and conditions as might be fixed by the Court. This application was resisted by the appellant. The District Munsif's Court, Nagercoil, dismissed the said application of the respondent on the ground that a previous application with the said prayer had been dismissed and hence, a fresh application for the same relief was barred. The respondent preferred an appeal to the Sub-Court at Nagercoil which was allowed by the learned Subordinate Judge. The High Court took the view that the decree in favour of the appellant was a simple decree of ejectment and did not take away the right of the respondent to the building or superstructure. It further took the view that the deposit of the amount of costs of the superstructure by the appellant did not affect the right of the respondent. The respondent had not surrendered the possession of the

property despite the deposit of the amount of compensation by the appellant and the appellant had been compelled to resort to the Court. The execution proceedings were stopped. The High Court held that in these circumstances, the respondent was entitled to make an application under S. 9 of the said Act during the pendency of the execution proceedings. The High Court also dismissed the review petition preferred by the appellant.

* Reported in AIR 1984 Mad 75.

** Or Madras City Tenants'Protection Act, 1921 - Ed.

3. Only two submissions were made before us by Mr. Krishnamurthy Iyer, learned counsel for the appellant. The first was that the respondent was not entitled to exercise his right to purchase the land immediately adjoining the superstructure as might be required for the beneficial enjoyment of the said structure as the said structure had not been put up by him.

4. As we have already pointed out earlier, the said superstructure was purchased by the respondent from Swami Mudaliar who had put up the said structure and was an assignee of the lease. The respondent himself obtained a lease of the land subsequently. We now come to the relevant provisions of the said Act. We propose to set out the effect of the relevant sections so far as it is necessary for the purposes of this case. Under Cl. (ii)(a) of sub-sec. (4) of S. 2, a person referred to in sub-cl. (i) who continues in possession after the determination of his tenancy agreement is included in the definition of the term 'tenant'. The inclusive definition of the term 'tenant' under S. 2(4)(ii)(a) takes within its ambit a tenant whose tenancy has been determined but continues to remain in possession. S. 3 of the said Act provides that every tenant as defined under the said Act shall, on ejection, be entitled to be paid as compensation the value of any building which may have been erected by him or by any of his predecessors-in-interest, or by any person not in occupation at the time of the ejection who derived title from either of them, and for which compensation has not already been paid. Again, very briefly stated, Section 9 prescribes that any tenant who is entitled to compensation under S. 3 and against whom a suit in ejection has been instituted or proceedings under S. 41 of the Presidency Small Cause Courts Act, 1882, taken by the landlord may, within one month from the date of the Madras City Tenants Protection (Amendment) Act, 1955, coming into force, or the date with effect from which this Act is extended to the municipal town or village in which the land is situated, 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, as set out in the said section. It may be mentioned that the land which the tenant is entitled to require to be sold to him is the minimum land required for the beneficial enjoyment of the building. S. 10 of the said Act makes the provisions under S. 9 applicable to cases where decree for ejection has not been executed before the date from which the provisions of the Act are extended to the area in question. Thus, although the decree for ejection was passed against the respondent,- as he had continued to remain in possession of the property and the decree had remained unexecuted till the date on which the provisions of the said Act had been extended to the area in question, the right of the respondent under S. 9 was not lost.

5. As far as the superstructure is concerned, the said superstructure was put up by Swamy Mudaliar from whom the respondent had purchased it as pointed out earlier. Thus, as far as the building or superstructure is concerned, the High Court was entitled to take the view that it was put up by a predecessor in interest of the respondent. In these circumstances, the respondent was certainly a tenant entitled to compensation under S. 3 of the said Act and was entitled to make an application

under S.9 of the said Act. The submissions of Mr. Krishnamurthy Iyer to the contrary cannot be accepted.

6. It was next submitted by Mr. Krishnamurthy Iyer that, as averred in the special leave petition, although the respondent might have been in possession at the relevant time yet he has lost possession thereafter and hence, he has lost his right under S. 9. This fact has not been pleaded in or considered in any of the courts below and hence, we decline to permit Mr. Krishnamurthy Iyer to raise this contention before us.

7. In the result, the appeal fails and is dismissed. There will be no order as to costs. The application of the respondent under S. 9 will be disposed of on merits and according to law. The amount of compensation which will have to be paid by the respondent to the appellant will be determined as provided under the said Act. Appeal dismissed.

</html