Palani Ammal

Vs

Viswanatha Chettiar (Dead) & Ors.

(S. B. Majumdar, M. Jagannadha Rao JJ)

06.03.1998

JUDGMENT

S.B. MAJUMDAR J

1. Leave granted in these three Special Leave Petitions.

2. By consent of learned counsel for the contesting parties the appeals were taken up for final hearing and are being disposed of by this common judgment.

3. These three appeals moved by the common appellant, who will be referred to as the defendant in the latter part of this judgment for the sake of convenience, seek to challenge a common judgment rendered by learned Single Judge of the High Court of Judicature at Madras in two Second Appeals and one Civil Revision Application which were disposed of on 17th December, 1996. These second appeals and the revision application were moved by the heirs of original plaintiff no. 1 Ramanatha Chettiar as well as by the heirs of original no. 2 Vishwanatha Chettiar and also by original plaintiff no. 3 Madheswaran. All of them are common respondents in these three appeals and as they have a common case against the appellant-defendant they will be referred to as original plaintiff nos. 1, 2 and 3 respectively for the sake of convenience in the latter part of this judgment.

4. In order to highlight the grievance of the defendant in these appeals it will be necessary to note a few background facts leading to these proceedings. Introductory Facts.

5. Original plaintiff no. 1 Ramanatha Chettiar and original plaintiff no.2 Vishwanatha Chettiar, both of whom are since deceased and are being represented by their heirs who are the contesting respondents in these appeals, owned a vacant piece of land situated at Village Attur in Salem District of State of Tamil Nadu. They leased out this open piece of land to the defendant by a lease deed styled as Rental Deed dated 01st June, 1968. As per the said Rental Deed the defendant was permitted to put up construction for running a firewood and fuel depot and a paan shop. The monthly rent was fixed at Rs. 40/- with Rs. 200/- as advance deposit. That the said vacant site of land was also having in a part thereof a granite stone foundation. On the said foundation the defendant put up a thatched building. It was agreed between the contracting parties that the defendant would remove the structure at the time of vacating the suit property. The defendant obtained licence from Attur Municipality for running a firewood depot and paan shop in the demied land. The defendant accordingly remained in possession of the suit land. It is the case of the defendant that on her request plaintiff nos. 1 and 2 agreed to sell the suit property to her in August

1980 of market rate and received a sun of Rs. 2000/- as advance. Her case is that as she was in possession of the suit land for more than 16 years she did not insist upon receipt for payment of advance money. The case of the defendant further is that plaintiff nos. 1and 2 sold the suit land to plaintiff no. 3 for a sum of Rs. 5,600/- on 29th August, 1981 by a registered Sale Deed. The defendant further submitted that all of a sudden on 30th August, 1981, that is, the next day of the purchase of the said property by plaintiff no.3 from plaintiff nos. 1 and 2, plaintiffs came with a number of men and tried to forcibly evict the defendant from the suit property. Under these circumstances, the defendant filed a civil suit in July 1981 being O.S. No. 984 of 1981 in the court of District Munsiff, Attur praying for a permanent injunction restraining the plaintiffs from forcibly taking away the possession of the suit property from her. It is the further case of the defendant that pending that suit the plaintiff as a counter-blast filed a civil suit being O.S. No. 453 of 1982 on 02nd September 1982 in the same court at Attur for eviction of the defendant and for a direction to the defendant to hand over vacant possession of the suit property and also for payment of Rs. 1,000/- by way of arrears of rent. Pending the said suit defendant filed written statement on 08th April, 1983 and an additional written statement on 03rd December, 1983 contending that there was an agreement to sell executed by plaintiff nos. 1 and 2 in favour of the defendant and that by passing the said agreement the plaintiff nos. 1 and 2 had illegally tried to sell the property to plaintiff no.3. The said Deed in favour of plaintiff no. 3 was a null and void and the plaintiff no. 3 had no title to the suit land. Along with the additional written statement dated 03rd December 1983 the defendant also filed an application under Section 9 of the Madras City Tenants' Protection Act, 1921, hereinafter referred to as the 'Protection Act', for the sake of brevity, invoking the said provision it was contended by the defendant that she was entitled to purchase the suit land over which her structure stood. The said application was registered in the same court as I.A.No. 17 of 1985 in O.S. No. 453 of 1982 which was filed by the aforesaid three plaintiffs.

6. As all of these disputes between the parties centered round the possession for the very same property being suit land the plaintiffs' suit being O.S. No. 453 of 1982, the defendant's suit being O.S. No. 984 of 1981 and the defendant's application being I.A. No. 17 of 1985 under Section 9 of the Protection Act then were clubbed and were tried together. The learned Trial Judge after hearing the parties disposed of all these proceedings by a common judgment dated 01st August, 1988. The learned Trial Judge took the view that the plaintiffs' suit was required to be decreed while the defendant's suit was required to be dismissed and defendant's application under Section 9 of the Protection Act was also to be dismissed. The learned Trial Judge held that defendant's I.A. No. 17 of 1985 under Section 9 of the Protection Act could not be sustained as the defendant had denied the title of the plaintiffs especially plaintiff no. 3. It was also held that the Sale Deed dated 29th August, 1981, executed by plaintiff nos. 1 and 2 in favour of plaintiff no.3, was legal and valid and on the issue of maintainability of the suit filed by the plaintiffs it was held that notice under Section 106 of the Transfer of Property Act, 1882 ['T.P. Act, for short] was not required to be served on the defendant, it is pertinent to note that though the contention of the defendant in her application under Section 9 of the Protection Act was to the effect that the plaintiffs' suit was not maintainable against her as notice under Section 11 of the Protection Act was not served on her the said contention does not appear to have been canvassed before the learned Trial Judge at the stage of arguments. In any case there is no reference to this contention in the Trial Court's judgment.

7. Being aggrieved by the aforesaid common judgment of the Trial Court the defendant preferred two first appeals before the Sub-Court, Salem, challenging the decrees passed by the Trial Court in two cognate suits, one filed by the plaintiff against the defendant and another filed by the defendant against the plaintiffs. She also filed a Miscellaneous Appeal No. 8 of 1990 before the Appellate Court being aggrieved by the order of the Trial Court by which her Interlocutory Application under

Section 9 of the Protection Act was dismissed. These two first appeals as well as the Miscellaneous Appeal were heard together and were deposed of by a common judgment dated 21st December, 1990 by the Appellate Court. The Appellate Court took the view that the Sale Deed executed by plaintiff nos. 1 and 2 in favour of plaintiff no. 3 was a valid and a legal one. However, it held that the suit filed by the plaintiffs against the defendant was not maintainable under the provisions of Section 11 of the Protection Act. It was also held that the defendant had not denied the title of plaintiff nos. 1 and 2 and, therefore, the application of the defendant under Section 9 of the Protection Act was maintainable and was required to be allowed. Consequently the plaintiffs' suit was dismissed defendant's suit was decreed and defendant's application under Section 9 was also granted.

8. Against the aforesaid common judgment dated 21st December, 1990 of the First Appellate Court the aggrieved plaintiffs approached the High Court of Madras in two second appeals and also by filling a revision application, as mentioned earlier. All these three proceedings were heard together by a learned Single Judge of the High Court who took the view, agreeing with the findings of the courts below, that the Sale Deed executed by plaintiff nos. 1 and 2 in favour of plaintiff no. 3 was a valid one. It was also held that as the defendant had denied title of plaintiff no.3 her application under Section 9 of the Protection Act was not maintainable. Submission on behalf of the defendant that the suit of the plaintiff was barred by Section 11 of the Protection Act was repelled by holding that once the defendant denied the title of the plaintiff especially plaintiff no. 3 there was no occasion for plaintiff no. 3 to serve any notice to her under Section 11 of the Protection Act and on such a stand taken by the defendant the entire Protection Act was not available to the defendant. Consequently the judgments and decrees passed by the Trial Court were found to be legal and valid. Accordingly both the second appeals and the revision application filed by the plaintiffs were allowed. The common judgment and order of the First Appellate Court were set aside and the Trial Court's judgment, decrees and orders were restored. That is how the aggrieved defendant, as noted earlier, is before us in these appeals having obtained special leave to appeal under Article 136 of the Constitution of India. Rival Contentions

9. Learned senior counsel for the common defendant Shri R. Sundravaradhan vehemently contended that the learned Single Judge of the Madras High Court had committed a patent error of law in allowing the second appeals and the civil revision application. It was submitted that the defendant had not denied the title of plaintiff nos. 1 and 2 though she had certainly denied the derivative title of plaintiff no. 3. However, it was submitted that at the highest because of such a denial of title defendant could be said to have forfeited her tenancy rights which she had qua the plaintiffs especially plaintiff no. 3 who had derived his title from plaintiff nos. 1 and 2 but even in such an eventuality in view of Section 2 sub-section (4) (ii) (a) of the Protection Act the defendant could be said to be a statutory tenant on the determination of tenancy agreement by forfeiture vis-a-vis the plaintiff, especially plaintiff no. 3. Hence, plaintiff no. 3 who squarely fell within the definition of the term 'landlord' as found in Section 2 sub-section (3) of the Protection Act could be validly proceeded against by the defendant under Section 9 of the Act. In this connection reliance was placed on Section 111(g) of the T.P. Act dealing with determination of lease by forfeiture it was also contended that even assuming that there was such a forfeiture of leasehold rights incurred by the defendant the said forfeiture was waived by the plaintiff especially plaintiff no. 3 as laid down by Section 112 of the T.P. Act by filing suit O.S. No. 453 of 1982 on 2nd September, 1982 where in the plaintiff treated the defendant as a tenant and sought eviction by paying appropriate court fee by valuing the suit in the light of the rent payable by the defendant-tenant to the plaintiff. Learned senior counsel for the defendant, however, fairly submitted that so far as the applicability of Section 112 of the T.P. Act was concerned no reliance was placed on the said provision in the courts below

including the High Court. However, this being a pure question of law based on the very averments of the plaintiffs themselves in their plaint in O.S. No. 453 of 1982 such a plea be considered in the interest of justice. It was also contended that even assuming that the said forfeiture was not waived by the plaintiffs the defendant being a statutory tenant had no longer remained one having only a personal right to occupy. That her statutory tenancy right was a heritable one and was an interest in the leased premises even after determination of the lease. In support of that contention reliance was placed on judgments of learned Single Judges of the Madras High Court to which we will make a reference hereafter and also on two judgments of this Court, namely Damadilal and others Vs. Parashram and others [(1976) Suppl. SCR 645 = AIR 1976 SC 2229]: and Smt. Gian Devi Anand Vs. Jeevan Kumar and Others [AIR 1985 SC 796]. It was also contended, placing reliance on a decision of a Bench of two learned Judges of this Court in the case of S.A. Ramachandran Vs. S. Neelavathy [(1997) 1 SCC 767], that Section 11 of the Protection Act was of a mandatory nature and if it was not complied with the suit would be clearly barred and had to be dismissed as such. It was also contended that merely because the defendant had filed an application under Section 9 of the Protection Act it could not be said that she had waived her contention regarding non-compliance of Section 11 of the Protection Act and that the High Court had patently erred in holding that Section 11 of the Protection Act was not attracted on the facts of the present case. Learned senior counsel for the defendant also referred to a decision of the Division Bench of the Madras High Court in the case of Bhargavakula Nainargal Sangam, Thiruvannamalai and others Vs. Arunachala Udayar [(1990) 1 M.L.J. 4] and tried to distinguish it by submitting that it had proceeded on a wrong assumption that decision of this Court in the case of Damadilal (supra) was contrary to the decision of a larger Bench of this Court rendered in the case of Jai Singh Murarji and others Vs. M/s. Sivani (P) Ltd. and others [AIR 1973 SC 772]. In this connection it was submitted that the Constitution Bench judgment of this Court in Gian Devi Anand's case (supra) which was referred to by the Division Bench of the High Court in Bhargavakula's case (supra) was not at all considered by the said Division Bench. It was also contended that in the impugned judgment learned Single Judge of the High Court had wrongly held that the lease in favour of the defendant was not only of the land but also of the superstructure, namely, the foundation over which the defendant had put up a further construction and, therefore, the building belonged a partly to plaintiff nos. 1 and 2 and also partly to the defendant. That such a question was never argued before the courts below and for the first time in second appeal such a question could not have been framed by treating it to be a substantial question of law arising from the judgments of the courts below. It was lastly submitted in the alternative that even if it is held that application under Section 9 of the Protection Act was not maintainable at least appropriate compensation should have been given to the defendant under Section 3 of the Protection Act while confirming the decree for eviction as passed in favour of the plaintiff especially plaintiff no. 3 against the defendant.

10. Repelling these contentions learned senior counsel for the respondent-plaintiffs, Shri S. Sivasubramanian, submitted that once it was held that plaintiff nos. 1 and 2 had validly sold the suit land to plaintiff no. 3 and the Sale Deed dated 29th August, 1981 in favour of plaintiff no. 3 was required to be upheld, it has to be held that the defendant consistently denied the title of the real owner of the property, namely, plaintiff no. 3. That the said stand was taken by the defendant not only in her first written statement dated 08th April, 1983 but also in the additional written statment dated 03rd December 1983 and even in her application under Section 9 of the Protection Act. Once such a stand was taken and which was persisted in all throughout before the first Appellate Court as well as before the High Court it has to beheld that the defendant had denied the title of the real owner of the property, namely, plaintiff no. 3 and as his titile was denied there was no occasion for plaintiff no.3 to serve any notice on the defendant under Section 11 of the Protection Act as rightly

held by the High Court. It was further submitted that there was no question of waiver of the forfeiture on the part of the defendant by the plaintiffs as the plaint itself proceeded on the basis that defendant had lost the character as a lessee of the land on account of denial of title of the plaintiff especially plaintiff no. 3 and merely because the arrears of rent were prayed for or that the court fees were computed accordingly in the plaint it could not be said that the plaintiff had waived the forfeiture on the part of the defendant it was further submitted that on a true construction of Section 2 sub-section (4) of the Protection Act it could not be said that the defendant had continued to be a statutory tenant despite the determination of the tenancy agreement as the said phrase found in Section 2 sub-section (4)(ii)(a) would not take in its sweep determination of lease under Section 11(g) of the T.P. Act. That once Section 111(g) of the T.P. Act is found not to have any nexus with Section 2 sub-section (4)(ii)(a) of the Protection Act there would be no occasion for the defendant to claim to be treated as a statutory tenant covered by the protective umbrella of the Protection Act. In fact her case would go out of the four corners of the Protection Act. Consequently neither Section 9 of the Protection Act applied nor Section 11 thereof can be invoked by the defendant as rightly held by the High Court. Alternatively it was contended placing reliance on various judgments of the Madras High Court, that the defendant could be said to have waived her contention regarding applicability of Section 11 of the Protection Act by filing application under Section 9 of the Protection Act and by getting the delay in filing such application condoned and by pressing such application on merits and even getting it granted at least once by the Appellate Court. Learned senior counsel for the plaintiffs also contended placing reliance on three Division Bench judgments of the Madras High Court, that once the tenant denied the title of the landlord no benefit under Section 9 of the Protection Act could be available to such a tenant nor can Section 11 be pressed in service by such a tenant. We will refer to these judgments at an appropriate place in the latter part of this judgment. Referring to the decision of a Bench of two learned Judges of this Court in the case of S.A. Ramachandran (supra), it was contended that in the said decision there was no denial of title of the landlord by the tenant and that as in the present case title of plaintiff no. 3 denied there would remain no occasion for such a tenant to find fault with the filing of the suit by plaintiff no. 3 for eviction against such a defendant by submitting that the suit was hit by Section 11 of the Protection Act. So far as the alternative claim for compensation was concerned it was submitted that once the defendant by her unequivocal conduct of denying the title of plaintiff no. 3 who is the real owner of the property had forfeited the protection of the Protection Act there would remain no occasion for her to get the benefit of even Section 3 of the very same Act. That under these circumstances as per the general principles of Transfer of Property Act when suit for eviction is decreed against her all that she can get is the right to remove the superstructure put up by her on the plaintiffs land as provided by Section 108(h) of the T.P. Act read with Section 109 thereof. It was, therefore, contended that the common decision of the High Court impugned in these appeals calls for no interference. Points for consideration

11. In view of the aforesaid rival contentions the following points arise for our consideration:

> 1. Whether the defendant is entitled to the benefit of the Protection Act by invoking Section 2 Sub-section 4(ii) (a) of the said Act.
>
> 2. If yes, whether the suit filed by the plaintiff being O.S. No. 453 of 1982 was barred by Section 11 of the Protection Act and therefore was required to be dismissed and the suit filed by the defendant being O.S. No. 984 of 1981 was required to be decreed.
>
> 3. Similarly if Point No. 1 is answered in the affirmative whether defendant's

application under Section 9 of the Protection Act being I.A. No.17 of 1985 in O.S.S. 453 of 1982 was required to be allowed.

4. Whether the lease could be said to be not only of the open land but also partially of a building as held by the High Court.

5. Whether the defendant is entitled at least to be given compensation under Section 3 of the Protection Act by the plaintiffs especially plaintiff no. 3 if the decree for eviction of defendant from the suit land is to be confirmed. We shall deal with these points seriatim. Point No. 1

12. So far as this point is concerned before going to the decisions of the High Court as well as this Court to which our attention was invited by learned senior counsel for the respective parties, it would be appropriate to have a quick glance at the relevant statutory provisions of the Protection Act. This Act of 1921, as enacted by the then Madras Legislature in 1922 being Tamil Nadu Act No. III of 1922. It was enacted with an avowed object of giving protection to certain classes of tenants in municipal towns and townships and adjoining areas in the State of Tamil Nadu. The Preamble thereto recited that, 'whereas it is necessary to give protection against eviction to tenants, who in municipal towns and adjoining areas in the State of Tamil Nadu have constructed buildings on others' lands, so long as they pay a fair rent for the land;' and with that view this Act was enacted. It is not in dispute between the parties that the suit land is situated in an area where the aforesaid Act applies. Section 2 of the Protection Act defines a 'Building' as per sub-section (1) thereof to mean, 'any building, but or other structure, whether of masonry, bricks, wood, mud or metal or any other material whatsoever used - (1) for residential or non-residential purposes in the City of Madras, in the municipal towns of Coimbatore, Madurai, Salem and Tiruchirappalli, in the townships of Kodaikanal, Avadi, Kathiwakkan, Ambattur, Madhavaram, Bhavanisagar, Courtallam and Mettur, or in such other municipal town or township as the Government may, by notification, specify, and in any village within eight kilometres of the City of Madras or of the municipal towns or township aforesaid'. It is also not in dispute that the aforesaid definition could be pressed in service for considering the question whether there was any building on the suit land as defined by the said provision. The term 'land' is defined by Section 2 sub-section (2) as not including buildings. Thus the Protection Act would apply to lands which are not having any building thereon. In other words the Protection Act is to give protection to the tenants of open lands situated within the areas covered by the sweep of the Protection Act and who might have put up their own structures on such open lands. The term 'Landlord' is defined by sub-section (3) of Section 2 of the Protection Act to mean, 'any person owning any land, and includes every person entitled to collect the rent of the whole or any portion of the land, whether on his own account or on behalf of or for the benefit of any other person, or by virtue of any transfer from the owner or his predecessor in title or of any order of a competent court or of any provision of law'. Then comes the definition of the words 'Tenant' as found in sub-section (4) of Section 2 of the Protection Act. It is necessary to reproduce the relevant provisions thereof as under:

"2(4) 'Tenant' in relation to any land-

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

(ii) includes-

(iii) 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."

Sub-clause (b) is not relevant. And then follows sub-clause (c) thereof which reads as under:

"2(4)(ii)(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."

Section 3 of the Act deals with 'Payment of compensation on ejectment'. It provides that 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. Section 4 sub-section (1) deals with the procedure to be followed in suits for ejectment against such tenants when the landlord succeeds and it lays down that, "in a suit for ejectment against a tenant in which the landlord succeeds, the court shall ascertain the mount of compensation, if any, payable under section 3 and the decree in the suit shall declare the amount so found due and direct that, on payment by the landlord into court, within three months from the date of the decree, of the amount so found due, the tenant shall put the landlord into possession of the land with the building and trees thereon'. Section 9 deals with 'Application of Court for directing the landlord to sell land'. The said Section with its relevant sub-sections read as under:

"9.(1)(a)(i) 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 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 cuort 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.

(ii).....

(b) On such application, the court shall first decide the minimum extent of the land may be necessary for the convenient enjoyment by the tenant. The court shall then fix the price of the minimum extent of the land decided as aforesaid, or of the extent of the land specified in the application under clause (a), whichever is less. The price aforesaid shall be the average market value of the three years immediately preceding the date of the order. The court shall or that within a period to be determined by the court, not being less than three months and not more than three years from the date of the order, the tenant shall pay into court or otherwise as directed the price so fixed in one or more instalments with or without interest.

(2) In default of payment by the tenant of any one instalment, the application under

clause (a) of the sub-section (1) shall stand dismissed, provided that on sufficient cause being shown, the court may excuse the delay and pass such order as it may think fit but not so as to extend the time for payment beyond the three years above mentioned. On the application being dismissed, the court shall order the amount of the instalment or instalments, if any, paid by the tenant to be repaid to him without any interest.

(3)(a) On payment of the place fixed under clause (b) of sub-section (i), the court shall pass an order directing the conveyance by the landlord to the tenant of the extent of land for which the said price was fixed. The court shall by the same order direct the tenant to put the landlord into possession of the remaining extent of the land, if any. The stamp duty and registration fee in respect of such conveyance shall be borne by the tenant.

(b) On the order referred to in clause (a) being made, the suit or proceeding shall stand dismissed, and any decree or order in ejectment that may have been passed therein but which has not been executed shall be vacated.

Explanation:- 'Land' means the interest of the landlord in the land and all other interests which he can convey under the power and includes also the full interest which a trustee can convey under the power possessed by him to convey trust property when necessity exists for the same or the alienation of the property is for the benefit of the estate or trust."

13. The next Section which is relevant for our present purpose is Section 11 which reads as under:

"11. Notice before institution of suits or applications against tenants. No suits in ejectment or applications under section 41 of the Presidency Small Cause Courts Act, 1882, shall be instituted or presented against a tenant until the explanation of three months next after notice in writing has been given to him requiring him to surrender possession of the land and building, and offering to pay compensation for the building and trees, if any and stating the amount thereof. A copy of such notice shall at the same time be sent, in the case of property situated in the City of Madras, to the Commissioner of the Corporation of Madras, or, in the case of property situated in any municipal town, township or village to which this Act is extended, to the executive authority of the municipality or township or the executive officer of the panchayat, as the case may be or any other authority as may be notified by the Government."

It is also necessary to refer to Section 13 of the Protection Act which lays down as under:

"13. Restriction on the application of the Transfer of Property Act. In its application to the City of Madras, and to any municipal town, township or village to which this Act is extended the Transfer of Property Act, 1882, shall, to the extent necessary to give effect to the provision of this Act, be deemed to have been repealed or modified." The aforesaid relevant provisions of the Protection Act clearly indicate that lessees of open lands situated in areas governed by the Protection Act, who might have put their structures on the open lands are conferred certain statutory

rights against their landlords by this Act. When such lessees of open lands are sought to be evicted in proceedings filed by their landlords in any competent court, the Protection Act has given them two statutory rights: - (i) either they get the demised lands covered by their structures sold to them under Section 9 of the Protection Act; or (ii) if Section 9 of the Protection Act is not available at least they would be entitled to get compensation under Section 3 regarding value of the structure which may, on execution of the decree for eviction from open lands, get vested in the landlords. Thus in either case the Protection Act gives them the right to purchase the demised lands or alternatively to get their structures sold to the landlord-decree holders. These statutory rights represent a scheme of shield of protection made available to such tenants vis-a-vis their landlords and once this shield is available the other statutory protection contemplated by Sections 11 and 13 of the Protection Act also would be available to them.

14. It has, therefore, to be seen whether the defendant who claims the benefit of the Protection Act falls within the definition of the term 'tenant' as found in Section 2 sub-section (4) of the Protection Act. As the defendant's tenancy was terminated at the relevant time when the suit was filed by the plaintiff against her, Section 2 sub-section (4)(i) did not apply in her case. On this aspect there is no dispute between the parties. However, learned senior counsel for the defendant heavily relied upon the second part of the said definition of the term 'tenant', namely, that it would include 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. In this connection it was submitted that the tenancy agreement, stood determined quo her in view of Section 111(g) of the T.P. Act by forfeiture as it is alleged that the lessee defendant had renounced her character by setting up a title in third persons like the State Government of plaintiff nos.1 and 2 who had become total strangers quo the suit land after the Sale Deed dated 29th August 1981. She had incurred forfeiture of tenancy rights as she denied the title of plaintiff no.3 and had also claimed that she was entitled to remain in possession pursuant to an agreement to sell entered into by plaintiff nos. 1 and 2 with her. Once that happened the contractual lease got determined by forfeiture and as she continued in possession of the land thereafter she could be said to be a statutory tenant entitled to the benefit of the definition of 'tenant' as found in Section 2(4) of the Protection Act.

15. The aforesaid submission prima facie appeared to be attractive but on a closer scrutiny is found to be failing through as we will presently see. The scheme of the Protection Act as seen above furnishes an umbrella of statutory protection to the tenants of open lands who might have put up construction by incurring substantial costs. When they are sought to be evicted from these leased open lands, amongst others, two basic statutory protection are made available - they can either enforce their statutory rights of pre-emption of purchasing the land below their structure; or can enforce the statutory right of compesation to be padi to them in connection with the structure which may travel with the deemed land of the decree-holder landlord in case the suit gets decreed against them. These alternative statutory rights of protection are made available by the legislature to the contractual tenants and/or to the statutory tenants who by themselves have behaved as tenants and who on determined of contractual tenancy continue to remain in possession. In either case if the landlord determines the tenancy agreement such tenants cannot be said to have lost the statutory protection of the Act. Consequently, on the express language of Section 2 sub-section (4)(ii)(a) of the Protection Act it must be held that the determination of tenancy agreement as envisaged by the said provision would be such determination as is referable to the unilateral act or ommission on the part of the landlord which results in determination of the lease agreement for no fault of the lessee-tenant. It is under these circumstances that the statutory benefit available to such tenants either

contractual or statutory would stand guaranteed by the legislative scheme envisaged by the Protection Act. In this connection when we turn to Section 111 of the T.P. Act on which reliance was placed by learned senior counsel for the defendant we find that the said provision deals with various modes of determination of lease. They are found from clause (a) to (h) as under:

> "111. Determination of lease. - A lease of immovable property determines.
>
> (a) by efflux of the time limited thereby;
>
> (b) where such time is limited conditionally on the happening of some event by the happening of such event;
>
> (c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only, to the happening of any event by the happening of such event;
>
> (d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right;
>
> (e) by express surrender that is to say, in case the lessee yields up his interest under the lessor by mutual agreement between them;
>
> (f) by implied surrender;
>
> (g) by forfeiturer that is to say, - (1) in case the lessee breaks an express condition which provies that, on breach thereof, the lessor may re-enter; or (2) in case the lessee renounce his character as such by setting up a title in a third person or by claiming title himself; or (3) the lessee is adjudicated an in solvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease.
>
> (h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other."

These diverse modes of determination of lease as found in Section 111 show that the landlord's act or volition which results into determination of lease can be ascribed to modoes (a) and (h) of Section 111 of the T.P. Act A landlord who enters into a contractual lease with tenant of open land may allow the lease period to peter out and get exhausted and may not renew the lease. Thus by omission on the part of the landlord the lease get determined by efflux of time as per Section 111(a) of the T.P. Act. Similarly as per Section 111(h) by an express act of giving notice to determine the lease or to quit on the part of the landlord of such open land, the lease would get detemined. It is of course true that Section 111(h) of the T.P. Act contemplates determination of lease by notice to determine or to quit that may be given either by the landlord or by the tenant but in the context of Section 2(4) of the Protection Act such determination of lease of open land under Section 111(h) of the T.P. Act would necessarily be limited to the notice to quit given by the landlord of such open land and not by his tenant as if the tenant gives notice to determine the lease or to quite there would remain no occasion for him to claim any protection under the Protection Act by submitting that he remains a statutory tenant as he will not be continued in possession thereafter by his own act. It must, therefore, be held that an erstwhile tenant of a contractual lease of land who can be said to be

covered by the inclusive part of the definition of the term 'tenant' as found under Section 4(ii) of the Protection Act is one who has continued in possession of the land after his tenancy agreement is determined either under Section 111(a) of the T.P. Act by the omission of the landlord to renew the lease and therefore, it gets determined by effluc of time or on the expiry of notice to quit given by the landlord to the tenant as per Section 111(h) of the T.P. Act Save and except these two modes of determination of tenancy agreement as envisaged by Section 111 of the T.P. Act no other modes found in clauses (b) to (g) of Section 111 can ever be said to be contemplated as attracted for getting telescoped in Section 2 sub-section (4)(ii)(a) of the Protection Act for consideration of the scope of the phrase 'determination of tenancy agreement' as employed therein. Consequently it must be held that the mode of determination of lease agreement by forfeiture as envisaged by Section 111(g) of the T.P. Act is foreign to the scope of the definition of the term 'tenant' as found in Section 2(4) of the Protection Act.

16. This conclusion on the statutory scheme of the Protection Act in the light of the definition of them 'tenant' as found in sub-section (4) of Section 2 of the Protection Act gets further buttressed by the combined operation of Section 9 and 13 of the Protection Act. Section 9 of the Protection Act enables the tenant of the open land to enforce his statutory right of compulsory purchases of the leased land his structure. Once the tenant incurs forfeiture of the lease under Section 111(g) of the T.P. Act by renouncing his character as tenant of the landlord by setting up a title in third person or in himself there would be no occasion for such a tenant to invoke Section 9 as Section 9 by itself pre-supposes that the tenant must accept the owner of the land as landlord and against whom he can claim appropriate relief by offering to purchase the land over which his structure stands on payments of price fixed by the court to such landlord who then has to convey his right, title and interest in the land in favour of such tenant owning the structure. Consequently it must be held that for operation of Section 9 an admitted relationship of landlord and tenant must exist. If the tenant alleges that landlord is not the real owner of the property but somebody else is the owner or he himself is the owner there would be remain no occasion for him to offer any price of such land to such landlord whom he treats as a stranger to that land. On such a stand taken by the tenant of the open land there would also remain to occasion for the so-called landlord to accept the price of the land and to convey his right, title and interest in the land pursuant to the order of the court to such tenant. In this connection Section 13 of the Protection Act is also required to be noted. If Section 9 can apply only when there is admitted relationship of landlord and tenant, contractual or statutory between the parties, once such relationship is contra-indicated by denial of title of landlord by the tenant and consequently mode of determination of tenancy under Section 111(g) is attracted, its applicability by itself will nullify and make Section 9 inoperative in such a case. In that eventuality as per Section 13 of the Protection Act, such a proviso of Section 111(g) of the T.P. Act, has to be treated as repealed. Section 9 and 13 of the Protection Act leave no room for doubt that to the extent to which the provisions have to be treated to be repeasled or modified so as to make the privosions of the Transfer of Property Act cut across the operation of Section 9 the said provisions have to be treated to be repealed or modified so as to make the provisions of Section 9 fully effective. Therefore, on a conjoint reading of Section 2(4), Section 9, and Section 13 of the Protection Act it has to be held that determination of tenancy as envisaged under Section 111(g) of the T.P. Act by forfeiture cannot get telescoped into Section 2 sub-section (4) of the Protection Act and must be deemed to have been repealed or modified by the express provisions of Sections 9 and 13. In this connection one more contention of learned senior counsel for the respondents deserves to be noted. Section 111(g) of the T.P. Act also contains a mode of forfeiture of tenancy by insolvency of tenant. In such a case an insolvent tenant can never by himself seek protection of Section 9 of the Protection Act as his estate is represented by receiver in insolvency operating under the orders of the

Court. If learned senior counsel for the defendant is right in his submission that Section 111(g) of the T.P. Act has to be read with Section 2(4)(ii)(a) of the Protection Act, then in such a case of insolvency of tenant, which results into determination of lease by forfeiture, Section 9 can never be pressed in service by such an insolvent tenant. This is an additional reason for rulling out the applicability of Section 111(g) of the T.P. Act to the provisions of Section 2(4)(ii)(a) of the Protection Act. Once that conclusion is reached, it is obvious that the defendant in the present case who has admittedly and consistently denied the title of plaintiff no. 3 cannot get any protection of statutory tenancy as envisaged by Section 2 sub-section (4)(ii)(a) of the Protection Act. In other words she gets out of the protective umbrella of the Protection Act meaning thereby she can neither claim benefit of Section 9 against plaintiff no. 3 nor can she enforce Section 3 thereof against plaintiff no.3. It has also to be noted at this stage that there are two concurrent findings of all the courts below that plaintiff nos. 1 and 2 have validly entered into a sale transaction of the suit land in favour of plaintiff no. 3 and their Sale Deed dated 29th August 1981 is valid and operative in law. Once that conclusion stares in the face of the defendant it must be held that the Protection Act can be enforced if at all by the defendant only against no. 3 and once she consistently says that plaintiff no. 3 is a total stranger to this land there would remain no occasion for her to get the protection of any of the provisions of the Protection Act. Qua plaintiff no. 3 she could not be said to be statutory tenant. Learned senior counsel for the defendant however, was right when he contended that the definition of the term 'and lord' as found in Section 2(3) of the Protection Act would include even a transferee of the original landlords who were the lessors, namely, plaintiff nos. 1 and 2. However, that by itself would not advance the case of the defendant as even if plaintiff no. 3 is treated to be the landlord of the land qua defendant he cannot be the landlord of the demised land for the purpose of the Protection Act as the defendant does not accept him to be so and treats him consistently as a stranger and a non-entity. It must, therefore, be held that on account of the forfeiture of tenancy incurred by defendant vis-a-vis plaintiff no. 3 by denying his title she had walked out of the protective umbrella of the Protection Act and the tenancy agreement in her favour which was executed by the erstwhile owners/landlords plaintiff nos. 1 and 2 cannot be said to have been determined by the plaintiff no. 3 so as to enable the defendant to claim the benefit of the said determination quo the former.

17. Once it is held that determination of tenancy agreement as envisaged by Section 2 sub-section (4)(ii)(a) of the Protection Act does contemplate determination of lease under Section 111(g) of the T.P. Act there would remain no occasion to even invoke Section 112 of the T.P. Act as tried to be pressed in service by learned senior counsel for the defendant. The reason for the said conclusion is obvious. Section 112 of the T.P. Act was never pressed in service by the defendant before the Trial Court, the Appellate Court or the High Court. Even that apart Section 112 clearly refers to forfeiture under Section 111(g). Once that provision does not get attracted under the scheme of the Protection Act, as seen above, it has to be held that Section 112 as a corollary to Section 111(g) also would not get attracted to the facts of the present case. But even otherwise on a mere reading of the plaint filed by the plaintiffs against the defendant and to which our attention was invited by the learned senior counsel for the defendant it could not be said that the plaintiff especially plaintiff no. 3 had waived the forfeiture on the part of the defendant. In the plaint of O.S. No. 453 of 1982 filed by the plaintiffs against the defendant it has been averred in paragraph 7 as under:

> "VII. The lease period was over on 1-6-1969 and the continuation of the lease was with the consent of Plaintiffs 1 and 2. But the defendant did not act as per terms and conditions of the lease agreement. The defendant had agreed to obtain Municipal and other Licences in the name of the plaintiffs only but acred contra later. She paid Municipal taxes in her name as against the term of Agreement. Further in her notice

she had denied the Plaintiff of Plaintiff 1 and 2 by saying that the vacant site belonged to the Government and hence a road Poramboke. Hence the defendant had clearly denied the title of the Plaintiffs. For the above said reasons the defendants had forfeited her right to continue as tenant nor she is entitled to continue in possession of the suit property. The plaintiff also sent a second notice dated 7-7-82 by narrating the facts and later developments which was acknowledged by the defendant on 17.7.82 demanding the arrears of rent accrued upto date and also for vacant possession but the same complied with so far. Hence this suit." Consequently even if arrears of rent are prayed for at the rate of Rs. 50/- per month from 01st April, 1981 to 1st September 1982 amounting to Rs. 1,000/- and even if court fees are paid under Section 22 of the Court Fees Act on the basis of the monthly rent it could not be said that the plaintiffs had waived the forfeiture incurred by the defendant so as to attract Section 112 of the T.P. Act even independently of the moot question whether Section 112 could ever be invoked when Section 111(g) itself is not attracted on the facts of the present case as seen earlier.

18. As a result of the aforesaid conclusion of ours, it becomes obvious that Section 9 of the Protection Act cannot be of any assistance to the defendant. It is interesting to note that in the first written statement dated 08th April 1983 filed by the defendant in plaintiffs' Suit no. 453 of 1982 the following pertinent averments were made in paragraphs 2,3,4 and 5 as under:

"2. The allegation in para 3 of the plaint that this suit property at present belong to the Plaintiff No.3 is absolutely false, though it may be true that it belonged to Plaintiff 1 and 2 earlier. The further allegation that this defendant has become the tenant in respect of the suit property while it was a vacant site on a monthly rent of Rs. 40/- from 1.6.68 under plaintiff 1 and 2 are true and further allegation that the suit properties was leased out to the defendant for dealing with firewood and a fuel depot and true and further allegation that the monthly rent was enhanced to Rs. 50/- per month. The allegation of reckoned and payment are also true. The further allegation that this defendant had defaulted from 1.4.81 and was giving evasive replies are absolutely false.

3. The allegation in para 4 of the plaint that this third Plaintiff had purchased the suit properties on 24.8.81 for true and valid consideration and was put in symbolical possession are absolutely false and the alleged demand of rent by the third defendant is also false. This alleged purchase on the third defendant was only sham and nominal and this third defendant has no sufficient means to purchase this properties.

4. The allegation in para 5 of the Plaint about the filing of the suit against the Plaintiffs 1 to 3 in O.S. 984/81 on the file of this Hon'ble Court and of obtaining as order of ad interim injunction in L.A. 1311/81 restraining the plaintiff from any way interfering with the peaceful possession and enjoyment of this defendant are all true. It is false to allege that the pendency of the above suit is not an impediment to the institution of this suit. This suit is unsustainable in law and has been maliciously filed in order and to detract the proceedings. This plaintiff has chosen the wrong from instead of filing the suit in rent control proceedings. The alleged arrears of rent from 1.4.81 to 1.9.82 are absolutely false. The alleged notice dated 11.6.82 by the Plaintiff has been suits by replied on 17.6.82 with true and correct particulars.

5. The Plaintiffs 1 and 2 have entered into an agreement with this defendant to sell away the suit property to this defendant for Rupees five thousand and has received an advance of Rs. 2000/- and the balance of Rs. 3000/- is to be paid to the Plaintiffs 1 and 2 on the date of the execution of sale deed by them."

Similarly even in the additional written statement filed on 03rd December 1983 the very same contentions were repeated in paragraph 4 as under:

"4. In August 1980 the plaintiffs 1 and 2 agreed to sell th suit house site of defendant for Rs. 5000/- orally and received from her an advance of Rs. 2000/- as part purchase payment without giving any receipt for the same and assured her that they would execute registered sale deed on her paying the balance of Rs. 3000/-. But, later they seemed to have brought about a fraudulent, sham and normal sale deed in favour of their agent and friend the 3rd plaintiff without the knowledge and intimation to the defendant."

And thereafter in para 6 of the said additional written statement Section 9 of the Protection Act was also invoked only against plaintiff nos. 1 and 2 in the following terms:

"6. As per the provisions of the Madras City Tenant's Protection Act, particularly Section 9, and as per the defendant's Oral Agreement with the plaintiffs 1 and 2, the defendant is willing and ready to purchase the suit land by paying them the balance of Rs. 3000/-, having paid the advance part purchase price of Rs. 2000/- to them in August 1980. However, the defendant is prepared to pay such price as this Honorable Court may be pleased to fix taking into account the alleged sale deed dated 29.8.81 for Rs. 5600/- by the plaintiffs 1 and 2 to the 3rd plaintiff. Without prejudice to the above averments, the defendant is taking steps to deposit into State Bank or Court the balance amount to be fixed by the Honouarable Court, tentatively Rs. 3600/-." The said written statement dated 03rd December 1983 was accompanied by an application under Section 9 of the Protection Act being I.A. No. 17 of 1985 of even date moved by the defendant. Therein also similar stand was adopted denying the title of plaintiff no. 3 and claiming statutory right of pre-emption and compulsory purchase of the suit land only from plaintiff nos. 1 and 2. Paragraphs 7 and 8 of the said application moved under Section 9 also deserve to be noted at this stage:

"7. In August 1980 the respondents 1 and 2 agreed to sell the suit house site to me for Rs. 5,000/- orally and received an advance of Rs. 2,000/- from me without giving any receipt for the same assured me that they would execute registered sale good on my paying the balance of Rs. 3000/-. But, later they seemed to have brought about a fraudulent, sham and nominal sale deed in favour of their agent and friend the 3rd respondent without my knowledge and any intimation to me by them. As stated in para 4 above the respondent have filed this suit without giving the and the Attur Municipal Commissioner 3 months notice for eviction and without offering compensation for the superstructure on the suit land as per the provisions of Section 11 of the Madras City Tenants Protection Act, the sale of the suit and their suit are against the mandatory provisions of law and are unsustainable in law.

8. As per the provisions of the City Tenant Protection Act, particularly section 9 and

> as per my oral agreement with the respondents 1 and 2 noted in para 7 above, I am ready and willing to purchase the suit land by paying the balance of Rs. 3000/- having paid the advance of Rs. 2000/- to their in August, 1980. However, I am prepared to pay such price as this Honourable Court may be pleased to fix taking into account the sale deed dated 29.8.81 for Rs. 5600/- by the respondents 1 and 2 in favour of the 3rd respondent. Without prejudice to the above averments, I have deposited Rs. 3,600/- for the balance of sale price in the State Bank. Hence, the Honourable Court should be pleased to order the respondents to sell the suit land to me for the price to be fixed by the Honourable Court." It therefore, becomes clear that consistently the defendant's stand was that plaintiff no. 3 is a non-entity and she claimed statutory right to purchase under Section 9 of the Act only against plaintiff nos. 1 and 2. Once plaintiff nos. 1 and 2 are found to have validly sold the suit land to plaintiff no.3 it must obviously be held that application moved by defendant under Section 9 against total strangers like plaintiff nos. 1 and 2 was liable to be dismissed as totality incompetent and uncalled for. Once the defendant refused to admit the ownership of plaintiff no. 3 who might have become the landlord of the land as per Section 2 sub-section (3) of the Protection Act as a legal transferee of the suit land from plaintiff nos. 1 and 2 the conclusion becomes inevitable that the defendant's application under Section 9 against the strangers like plaintiff nos. 1 and 2 would be rendered totally incompetent as the defendant did not want any statutory right of compulsory purchase against the real owner of the suit land, namely, plaintiff no. 3

19. It is now time for us to have a look at the decisions of this Court and of the Madras High Court to which our attention was invited by learned counsel for the contesting parties.

20. In the case of Bhargavakula Nainargal (supra), a Division Bench of the High Court referring to two earlier Division Bench judgments of the same High Court in the case of V. Madhava Rao Naidu Vs. Sri Gangadeswarar Temple by Trustee Sabapathi Pillai and others [(1946) 2 M.L.J. 285] as well as in the case of Veeraswamy Naicker and another Vs. Algmelu Ammal and others [(1965) 2 M.L.J. 188] and other decisions of the Court, took the view that the definition of 'tenant' found in Section 2(4) of the Protection Act is an inclusive definition couched in wide language and a combined reading of sub-clauses (i) and (ii) of sub-section 2(4) makes it clear that only the person liable to pay rent in respect of the land in his occupation would be entitled to the benefit under that provision. The liability to pay rent must be made out and agreed to between the parties. To put it in other words Section 2 applied to a case there was a relationship of landlord and tenant up to the point of determination of tenancy. It is only in such cases, the Statute comes to the rescue of such tenant and confers on him the benefits of the Act. By no stretch of imagination it will apply to a case where the tenant denies the very agreement itself and claims title in himself. It has been further held in the said decision that the language of sub-clause (ii)(a) of sub-section (4) of Section 2 makes it amply clearly that a person who does not claim that there was an agreement of tenancy at the relevant point of time is not entitled to claim any benefit under this provision. It is also observed in this connection that the Act in question is intended to give protection against the eviction of tenants who have constructed buildings on other's land so long as they pay fair rent for their lands. Therefore, the basic requirement for invoking the provisions of the Act is that the ownership and tenancy rights must vest in different persons. Once a person claims ownership in himself, the question of tenancy does not arise for consideration. The aforesaid Division Bench judgment also in this connection relied upon the two earlier Division Bench judgments of the same High Court, as mentioned above. In our view, on the scheme of the Protection Act which we have considered the aforesaid conclusion to which the Division Bench reached is quite justified and well sustained.

However learned senior counsel for the defendant vehemently contended that certain observations made by the Division Bench in para 25 of the Report in connection with the principle enunciated by this Court in Damadilal's case (supra) are not justified. To that extent learned senior counsel for the appellant-defendant is right. The Division Bench in the aforesaid decision has observed that it is doubtful whether the principle anunciated in the Damadilal's case (supra) would apply in view of the decision of a larger Bench of this Court in Jai Singh Murarji (supra) which was a Bench of four learned Judges. Learned senior counsel for the defendant is this connection invited our attention to a decision of the Constitution Bench of this Court in the case of Gian Devi Anand (supra) which had taken the view that heirs of a statutory tenant are also entitled to the protection of the Rent Act and they cannot be said to have no interest in the leased premises. But even if it is held that to that extent the observations of the Division Bench in Bhargavakula Nainargal (supra) may not be strictly accurate or well borne out it would not affect the ratio of the judgment of the Division Bench in that case in the light of the statutory scheme examined by them and which has been found by us to be well sustained. In this connection it has to be kept in view that the decision of this Court in the case of Damadilal (supra) and also the decision of the Constitution Bench of this court in the case of Gain Devi Anand (supra) which had taken the view that statutory tenant has not a mere personal right to occupy the premises and the heirs of such statutory tenant have a statutory interest in the premises in the light of the statutory scheme which protects them cannot strictly be of any relevance for deciding the controversy in the present case. The Act with which we are concerned clearly affords protection to the heirs of the statutory tenant covered by sub-clauses (ii)(a) and (b) of sub-section (4) of Section 2 of the Protection Act defining 'tenant' as seen from the express provisions of sub-clause (c) thereof. Under these circumstances, therefore, the judgment rendered by a learned Single Judge of the Madras High Court Ratnam, J., in the case of P. Nachimuthu Mudaliar Vs. M. Ponnuswamy [93 Law Weekly 874] was rightly not accepted as laying down correct law, by the Division Bench of the Madras High Court in Bhargavakula Nainargal (supra). The reason is obvious. Justice Ratnam took the view that because a statutory tenant has not a mere personal right to occupy and his heirs also can get the statutory protection as per the relevant provisions of the Rent Acts as laid down by this Court in Damadilal's case (supra) even though such a tenant incurs forfeiture by denying the title of the landlord he would still be covered by the sweep of Section 2 sub-section (4) of the Protection Act. This view is clearly contra-indicated by the scheme of the Protection Act as seen by us earlier. It is difficult to appreciate how Ratnam, J. could persuade himself to hold that even if the tenant forfeits the leasehold rights by denying the title of the landlord he could still get the benefit of Section 9 of the Protection Act. Such a conclusion on the scheme of the Protection Act, as we have seen above, cannot be sustained. Consequently, reliance placed by the learned senior counsel for the appellant-defendant on the decision of Ratnam, J., in the case of P. Nachimuthu (supra) cannot be of any avail to him. Our attention was also invited by the learned senior counsel for the defendant to two decisions of learned Single Judges of the same High Court, namely, V. Ramaswami, J. in the case of R. Govindaswamy Vs. Bhoopalan and others [1977] 2 M.L.J. 206] as well as that of Sethuraman, J., in the case of Kandaswami Gounder Vs. Kandasamy Gounder son of Subbiah Gounder reported in 1979 L.W. 510. The said decisions also cannot be of any assistance to him as the learned Judges in those two cases were dealing within any situation within the tenant had denied the titles of the landlord and still sought protection of the Protection Act. Such a situation did arise for consideration before Rantam, J. whose decision as we have seen above, cannot be said to be laying down good law in the light of the statutory scheme considered and discussed by us earlier. On the other hand earlier two decisions of the two Division Benches of the Madras High Court which are referred to by the latter Division Bench in the case of Bhargavakula Nainargal (supra) correctly interpret the scheme of the Protection Act in the light of the moot question whether a tenant who denies the title of the landlord can ever get the benefit of

the protective umbrella of the Protection Act enacted by the legislature as a shield for the tenants of open lands. On the other hand learned senior counsel for the plaintiffs invited our attention to two decisions of Srinivasan, J. (as he then was), in the case of Subbaroyan and another Vs. Devodas Nadar [1991 (2) L.W. 355] and in the case of Bhargavakuta Nainaragal Sangam, Tiruvanamalai, rep. by its present President Dandapani Vs. Chakravarthi [1992 (2) L.W. 254]. The learned Judge in those cases had taken the view that a tenant who denies the title of the landlord would not be entitled to get the benefit of the provisions of the Protection Act. In our view, the said decisions of the learned Single Judge of the High Court also are well sustained on the statutory scheme of the Protection Act as discussed by us earlier. The first point for determination therefore, has to be answered in the negative against the appellant-defendant and in favour of the respondent-plaintiff. Point No. 2

21. So far as this point is concerned once the conclusion on the first point is in the negative necessarily follows that there was no occasion for plaintiff no. 3 who is the real owner and landlord of the suit land to issue notice under Section 11 of the Protection Act to the defendant who did not accept him as the owner of the property. As we have seen earlier Section 11 contemplates three months' notice to be given to the tenant requiring him to surrender possession of the land and building, and offering to pay compensation for the building and trees, if any, and standing the amount thereof. We fail to appreciate how plaintiff no. 3 can ever offer any compensation for the building to the defendant calling upon her to surrender possession, of the land and building put up by the defendant, to him when the defendant does not accept plaintiff no. 3 to be the owner of the land. It would be a sheer exercise in futility for plaintiff no. 3 to give such a notice to the defendant who does not accept him to be the landlord. On the scheme of the Protection Act, therefore, it must be held that Section 11 can be pressed in service only when the tenant accepts the plaintiff as his landlord and against whom he claims protection and benefit both under Section 9 as well as under Section 3 of the Protection Act. The High Court, therefore, was right when it took the view that once the defendant denied the title of plaintiff no. 3 who is the real owner of the property she would get out of the Protection Act and none of the provisions of the said Act can ever be pressed in service by the defendant as a thread of protection against the real owner of the property, namely, plaintiff no. 3. In other words defendant by her own act has given up the shield of protection envisaged by the legislature for such tenants of open lands. Thus none of the provisions of that Act could be invoked by defendant against plaintiff no. 3. As the defendant was not a tenant covered by the definition of the said term under Section 2 sub-section (4) of the Protection Act, neither Section 9 nor Section 3 or Section 11 could be pressed in service by her against plaintiff no. 3 for non-suiting the latter. On this conclusion of ours there would arise no question of applying the ratio of the decision of a Bench of two learned Judges of this Court in the case of S.A. Ramachandran (supra). In that case the tenant had not denied the title of the landlord. In that suit filed by the landlord against the tenant of the open land when there was admitted relationship of landlord and tenant between the parties the tenant had alleged that the suit was bad on account of non-compliance of Section 11 of the Act. It was found that the application under Section 9 of the Protection Act moved by the tenant was barred by time resulting into a situation in which it could be held that the tenant had never filed such an application for decision on merits. On these facts it was held by this Court that Section 11 was mandatory in nature and hence the suit filed by the landlord against the tenant who had not denied the title of the landlord, in the absence of such notice, was clearly incompetent. It is true that in that case this court kept the question of waiver of such notice under Section 11 open but as the relationship of landlord and tenant was not denied in that case Section 11 got squarely attracted on the facts at that case. We fail to appreciate how the said decision can be of any assistance to the learned senior counsel for the defendant on the facts of the present case. As the

defendant in the present case had consistently denied the title of plaintiff no. 3 who is the real owner of the property there would remain no occasion for plaintiff no. 3 to give any notice under Section 11 to such a recalcitrant tenant. Under these circumstances, therefore, the ratio of the aforesaid decision of this Court is no avail to the defendant. Consequently it is not necessary for us to examine the wider question whether the defendant can be said to have waived the requirement of statutory notice under Section 11 of the Protection Act. It is equally not necessary for us to examine the further question whether the defendant by moving an application under Section 9 and getting delay in filing such application condoned could be said to have waived the requirement of statutory notice under Section 11 of the Protection Act when such a contention was raised in the additional written statement filed by her before the Trial Court and was also on the anvil of scrutiny before the High Court. Question of waiver would have arisen for serious consideration in the present case if it was found that Section 11 was applicable to the fact of the present case but as we have found that the defendant by her own act by denying the title of plaintiff no. 3 who is the real owner had walked out of the protective umbrella of the protection of Act none of the provisions of the said Act could be effectivly pressed in service by her including Section 11 as rightly held by the High Court. Point No. 2, therefore, has to be answered in the negative by holding that the suit filed by the plaintiffs especially plaintiff no. 3 against the defendant was not barred by Section 11 of the Protection Act as the said Section did not apply to such a suit and consequently the suit filed by the defendant was also not required to be decreed. Point No. 3

22. So far as this point is concerned, as seen earlier, the application under Section 9 of the Protection Act itself was ex facie incompetent. That application was not moved by the defendant against the real owner of the property, namely, plaintiff no. 3. In fact as noticed by us earlier the relevant averments in the said application show that the defendant was not claiming any right of statutory purchase of the land vis-a-vis plaintiff no. 3 who was the real owner of the land. She was claiming such rights against plaintiff nos. 1 and 2 who were total strangers to the land having sold the land to plaintiff no. 3 as the sale deed in favour of plaintiff no. 3 is found to be legal and valid by all the courts below. Therefore, it must be held that the defendant moved an application under Section 9 of the Protection Act for compulsory purchase of the land against total stranger, plaintiff nos. 1 and 2 and did not file such application against the real owner and landlord, plaintiff no. 3. Such an application, therefore, must be held to be still-born and totally incompetent. It was required to be dismissed and was rightly dismissed by the Trial Court as well as by the High Court and was wrongly allowed by the First Appellate Court which almost granted in the guise of allowing Section 9 of application a decree for specific performance of the agreement to sell said to have been executed by the plaintiff nos. 1 and 2 in favour of the defendant and which agreement was held by the lower appellate court itself to be not established on the record of the case. As Point No. 1 is answered in the negative and even otherwise as application of defendant under Section 9 is found to be incompetent and misconceived it must be held that it was rightly rejected. The decision of the High Court in that connection has to be upheld. Point NO. 3 is accordingly held against the appellant-defendant and in favour of the respondents. Point No. 4

23. So far as this point is concerned learned senior counsel for the appellant-defendant is an a stronger footing. The Rental Deed to which we have made a reference earlier clearly refers to the lease of open land granted to the defendant by plaintiff nos.1 and 2, original owners. Of course there was some granite foundation in a part of the open land leased under the Rental Deed but that foundation would not attract the definition of the term 'building' as defined by Section 2 sub-section (1) of the Protection Act for the simple reason that the said structure was not shown to have been used for residential or non-residential purpose. It is nobody's care that the granite foundation by itself was being used by anyone for residential or non-residential purpose. Of the contrary on that

foundation the defendant is found to have put a structure and it was that structure over the foundation that was being used for non-residential purpose of running a fuel depot. Consequently the lease cannot be said to be partly of open land and partly of a building as held by the High Court. To that extent the decision of the High Court is found to be erroneous. That finding of the High Court hash to be set aside. Point No. 4 is therefore, answered in the negative in favour of the appellant and against the respondents. Point No. 5

24. So far as this point is concerned once it is found that the defendant by denying the title of plaintiff no. 3 had forfeited the benefit of the Protection Act and she got out of the sweep of the said Act, Section 3 could obviously not be applicable in her case. Section 3 would have applied if it was shown that there was an admitted relationship of landlord and tenant between the parties and when the landlord's suit for eviction was being decreed against such admitted tenant. In such a case only question of granting compensation to the tenant in lieu of her right to purchase under Section 9 could have fallen for consideration. Once it is held that none of the provisions of the Act can apply and one there is no admitted relationship of landlord and tenant between the parties we fail to appreciate how Section 3 can be pressed in service by learned senior counsel for the defendant. He, however, invited our attention to a decision of this Court in the case of P. Ananthakrishana Nair and Others Vs. Dr. G. Ramakrishanan and Others [(1987) 2 SCC 429] and especially observations found at page 438 of the Report. In that case there was an admitted relationship of landlord and tenant between the parties and the tenant was covered by the definition of Section 2 Sub-section (4) of the Protection Act. Only the sub-tenant was not so covered. It was therefore, held by this Court that Section 9 could not be made available to such a tenant who had no use of the property and under these circumstances was observed that it decree for possession is to be passed then compensation for the structure belonging to the tenant could have made available. On the facts of the present case the ratio of the aforesaid case cannot be pressed in service by the learned senior counsel for the appellant-defendant as the defendant by denying the title of the landlord plaintiff no. 3 had walked out of the vary scheme of the Protection Act. Section 3 obviously, therefore was out of picture for her. Consequently, under general provisions of the Transfer Property Act especially Section 108(h) read with Section 109 the only right available to such a tenant was to get her structure removed by her so that the possession of the decretal land could be handed over to the decree-holder plaintiff. But the question of awarding compensation for such structure would remain totally out of consideration. Point No. 5 is, therefore, also answered in the negative against the defendant and in favour of the respondents.

25. These were the only contentions canvassed in support of the appeals and as these main contention stand answered against the appellant-defendant and consequently point nos. 1 to 3 and 5 are answered against the appellant, the appeal fail and are dismissed with no order as to costs in the facts and circumstances of the case.