

CASE NO.:
Appeal (civil) 1811-13 of 1997

PETITIONER:
S.R. Radhakrishnan & Ors.

RESPONDENT:
Vs.
Neelamegam

DATE OF JUDGMENT: 31/07/2003

BENCH:
Brijesh Kumar & Arun Kumar.

JUDGMENT:

J U D G M E N T

ARUN KUMAR, J.

These appeals are directed against the judgment dated 18.10.1996 by a learned Single Judge of the High Court disposing of three interconnected matters between the parties.

Briefly the facts are that the appellant Radhakrishnan had taken on lease a property (hereinafter referred as the "suit property") on rent from one Thanakachalam vide registered lease deed dated 2.2.1970. The lease was for a period of one year and the monthly rent was Rs.35/-. It is stated in the lease deed that the building constructed in the premises did not have a roof and the tenant had to put up a roof as well as such other construction as was required for running a printing press in the premises. The cost of providing electricity and water connection in the premises and of improvements in the building had to be calculated and it was to be paid by the landlord to the tenant at the time of handing back vacant possession of the premises by the tenant to the landlord. It appears that after taking the premises on lease tenant carried out certain improvements therein and started the business of running a printing press there. The tenant took along with him in the business his two younger brothers.

The property was purchased by the respondent-plaintiff vide registered Sale Deed dated 16.6.1979. The purchaser served a notice(Ex.B1) on the tenant on 26.11.1979 calling upon him to deliver vacant possession of the suit premises. The tenant sent a reply dated 7.12.1979 (Ex.B2) to the notice stating that he had nothing to do with the property as Defendants No.2 and 3 were in possession thereof. The landlord was asked to approach defendant Nos.2 and 3 for rent as well as for possession. The landlord sent another notice dated 22.12.1979 (Ex.A3) to all the defendants calling upon them to deliver possession of the suit premises. Ultimately the landlord filed a suit for ejectment on 19.6.1980 impleading all the three brothers as defendants. One fact which needs to be mentioned here is that on 30.5.1977 defendant No1, the tenant executed a release deed in favour of his younger brothers i.e. Defendants No. 2 and 3 relinquishing his entire interest in the business of the printing press which was carried on in the suit premises in their favour.

Section 9 of the Tamil Nadu City Tenants Protection Act, 1921 (hereinafter referred to as the "Act") gives a right to a tenant who has put up super structure in the tenanted premises to purchase the same at a price to be fixed by the Court. This application is to be made

within one month after the service of summons in the eviction suit instituted by the landlord against such a tenant. Relevant portion of Section 9 is reproduced as below:

"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 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 and specified in the application."

From the above provision it will be seen that the following conditions are to be satisfied before a tenant is entitled to relief:

- (i) He should be a tenant in possession of the land;
- (ii) He should have erected a super structure on the land in respect of which he would be entitled to claim compensation under Section 3;
- (iii) A suit or proceeding for eviction should have been taken by the landlord against him;
- (iv) He should have applied to the court for direction in that regard within one month from the date of service of summons in such suit.

Although the above quoted provisions of the Act do not specifically mention that a tenant should be in possession of the tenanted premises before he can move such an application, yet it refers to Section 3 of the Act i.e., a tenant who is entitled to compensation under Section 3. A reference to Section 3 makes it clear that compensation is with respect to building erected by the tenant on the tenanted premises and the compensation that he gets is only for what he hands over to the landlord on ejectment.

It is the stand of the plaintiff-landlord that the tenant never paid any rent for the suit premises. It is further clear from the pleadings of the parties that the plaintiff never recognized defendants 2 and 3 as tenants. In order to make out a case of tenancy defendant No.2 (who alone filed a written statement) tried to plead firstly, that defendant No.1 had taken the premises on behalf of joint Hindu family and therefore, defendants 2 and 3 were entitled to enjoy the tenancy rights in the absence of defendant No.1; secondly, a plea was sought to be taken that defendant No.1 had relinquished the tenancy rights in favour of the defendants 2 and 3 and after relinquishment defendants 2 and 3 started paying rent to the landlord. It is however, admitted that there are no rent receipts regarding payment of rent nor there is any proof of payment of rent coming forth on the record. Both the pleas which have been raised in order to establish tenancy in favour of defendants 2 and 3 are inconsistent and mutually destructive. We find no substance in either of the pleas. It has been meekly suggested in the written statement that the premises was taken on rent by the first defendant who is the joint family manager. This statement alone does not make out a plea that the tenancy was on behalf of the joint family. Secondly, this plea cannot stand scrutiny in view of the admitted fact that the father of the defendants was alive at the time of tenancy and if at all the tenancy was to be in favour of the joint Hindu family, it was the father of the defendants who could have taken the premises on rent as

manager/karta of the Joint Hindu Family. Thirdly, a reference to the lease deed shows that the name of the tenant is mentioned in his individual capacity and not as a member/karta of Joint Hindu family. To test the veracity of such a plea it is also worth mentioning that in his reply to the notice of eviction served on him by the plaintiff, the defendant never made any such suggestion. Therefore, we find no merit in the plea that the tenancy was taken for purpose of joint Hindu family.

Next we examine the question as to whether defendants 2 and 3 became tenants by virtue of alleged assignment of tenancy rights by defendant No.1 in their favour. There is nothing on record to support this contention. The release deed which is relied upon by the defendants for this purpose has no mention whatsoever about the tenancy rights released by defendant No.1 in favour of defendants No.2 and 3. The release deed only talks about business of printing press. After the release deed, defendant No.1 ceased to have any interest in the business of the printing press. There is no proof of payment of rent by defendants 2 and 3 with respect to the suit premises to the landlord. There is no rent receipt in their favour. The landlord is not a party to the release deed. He is not bound by any recitals contained in the release deed. Further it is settled law that one does not become tenant by mere payment of rent even if that be so. Simply because defendants 2 and 3 continued to be in possession of the suit premises, it does not follow that they were in occupation thereof as tenants. They had no right whatsoever with respect to the suit premises.

Alternatively defendants 2 and 3 claimed to be tenants by holding over. This argument is totally misconceived. We have found that defendants 2 and 3 never became tenants in the suit premises. Question of their becoming tenants by holding over does not arise.

The defendants filed an application under Section 9 of the Act for purchase of the suit property. The said application was dismissed by the trial Court. The lower appellate court however by a strange process of reasoning came to the conclusion that defendants 2 and 3 had become tenants in the suit premises and therefore, their right to purchase the property under Section 9 of the Act was upheld. However, the High Court set aside that finding and rejected the application. The High Court came to a definite finding that defendants 2 and 3 were not tenants of the suit premises, and therefore, they could not maintain an application under Section 9. We have already quoted the relevant portion of Section 9. As noticed earlier it is mandatory for an application under Section 9 that the applicant should be a tenant in possession of the suit premises. In view of our upholding the finding that defendants 2 and 3 never became tenants in the suit premises, they could not maintain an application under Section 9 and such application on their behalf was therefore, rightly rejected by the High Court. At this stage we may note it was pleaded by defendants 1 to 3 in their application under Section 9 that only defendants 2 and 3 were in possession and enjoyment of suit property. It was also pleaded that defendants 2 and 3 were tenants and were paying rent. The application further states that defendant No.1 was impleaded only to avoid technical objections. Thus relief was sought really by defendants 2 and 3. Said defendants have been found by us to be not entitled to any relief. Section 9 is of no help to them.

Whether defendant No.1 could maintain such an application? Defendant No.1 was admittedly not in possession of the suit premises and he had also ceased to be a tenant of the premises. Therefore, he had no right to file an application under Section 9 of the Act.

The learned counsel for the appellants finally argued that The

Tamil Nadu City Tenants Protection Act, 1921 is a socially beneficial piece of legislation meant for protection of the interests of tenants and its provisions should be liberally construed so as to advance the object of the Act. This argument in the context of facts on record is totally misconceived. Liberal interpretation does not mean that benefit can be given contrary to the basic provisions of the Act or in violation of the statutory provision. It has been pointed out above that the appellants did not satisfy the basic ingredients of Section 9 and therefore, they are not entitled to invoke the said provision for their benefit.

Learned counsel for the appellant contended that actual physical possession of the premises is not essential for exercising the privilege conferred on a tenant by Section 9 of the Act. In support of his contention he relied on Gummalapura Taggina Matada Kotturuswami v. Setra Veeravva and others [1958 (1) SCR 968]. This was a case under the Hindu Succession Act, 1956. Section 14 (1) of the Act provides "any property by a joint Hindu family, whether acquired before or after the commencement of this Act shall be held by her as full owner thereof and not as a limited owner." In the context of this provision it was held that the word "possession" occurring in Section 14 (1) is used with widest connotation and it may be either actual or constructive or in any form recognized by law. We are afraid that the wide meaning given to the word possession in Section 14 in the Act cannot have any relevance for purposes of provision of Section 9 of the Tamil Nadu Act under consideration. As already noted Section 9 read with Section 3 of the Act makes it imperative that the tenants should be in possession of the premises with respect to which the right to purchase is sought to be exercised. If a tenant is not to hand over possession of the suit premises to the landlord at the time of ejectment, there is no question of payment of any compensation to him under Section 3 of the Act. If he is not entitled to compensation under Section 3 of the Act he cannot invoke Section 9 of the Act. Actual physical possession is essential in the context of relevant provisions of the Act. In fact in P. Ananthakrishnan Nair and another v. Dr. G. Ramakrishnan and another 1987 (2) SCC 429 (though cited by the learned counsel for the appellant), it was held by this Court that the premises must be in personal occupation of the tenant before he could exercise the right under Section 9 of the Act. It was also observed by this Court that "Section 9 confers an additional statutory right on a tenant against whom suit for ejectment is filed to exercise an option to purchase the demised land through the medium of court on fulfillment of conditions specified therein. It is not an absolute right, as the court has discretion to grant or refuse the relief for the purchase of the land. The tenant has no vested right in the property, instead it is a privilege granted to him by the statute which is equitable in nature. The policy underlying Section 9 is directed to safeguard the eviction of those tenants who may have constructed super structure on the demised land, so that they may continue to occupy the same for the purposes of their residence or business." From these observations it follows that actual physical possession of the demised premises of the tenant is sine qua non of an application under Section 9. In P. Ananthakrishnan's case (supra) as per concurrent findings of fact on record the tenant had discontinued its business in the suit premises and only a small portion thereof had been retained by them for keeping the accounts books etc. of the erstwhile business. Rest of the land and the superstructure standing thereon had been in occupation of sub-tenants since long. Thus the tenant was not in actual occupation of most part of the demised premises. Therefore, it was held that it would be unreasonable to direct the landlord to sell the land to the tenants.

Our attention was invited to various decisions of the Madras High Court taking the same view i.e. actual physical possession of the demised premises is essential to maintain an application under

Section 9 of the Act. As a matter of fact the learned counsel for the appellant cited the case in Estate of T.P. Ramaswami Pillai v. A. Mohd. Yousuf and others Madras Law Journal 1983 (2) which takes the same view. We fail to understand how this authority helps the appellant. In our view it fully supports the case of the respondents.

We find no merit in these appeals. The same are dismissed with costs. Counsel's fee Rs.10,000/-.

JUDIS