

PETITIONER:  
S.A. RAMACHANDRAN

Vs.

RESPONDENT:  
S. NEELAVATHY

DATE OF JUDGMENT: 20/12/1996

BENCH:  
KULDIP SINGH, S. SAGHIR AHMAD

ACT:

HEADNOTE:

JUDGMENT:

#### J U D G M E N T

S. SAGHIR AHMAD.J.

The appellant who is the tenant of a vacant plot of land owned by the respondent has approached this court against the judgment dated 5.4.1994 passed by the Madras High Court by which the respondent's second appeal was allowed and the appellant was directed to be evicted from that plot.

2. The suit (O.S. No. 110 of 1981) which was filed by the respondent in the court of the District Munsif, Poonamalle for the eviction of the appellant was dismissed by that court on 5.5.1988 on the ground that the suit was instituted without first issuing notice to the appellant under Section 11 of the Tamil Nadu City Tenants' Protection Act, 1921 (for short, the Act). The Sub-ordinate Judge, Poonamalle before who first appeal (A.S.No.26 of 1988) was filed by the respondent, dismissed the appeal on 20.9.1989 and upheld the judgment of the trial court. The respondent, thereafter, filed second appeal (25 of 1990) in the High Court which, as pointed out above, was allowed by the High Court. by a judgment dated 5.4.1994 on the ground that the appellant had invoked the provisions of Section 9 of the Act by marking an application that the property in dispute may be directed to object to the institution of the suit without issuing a notice under section 11 of the act.

3. It may be pointed out the appellant had filed an application under section 9 of the Act for a direction to the respondent to sell the property in question on a price to be fixed by the court. The application was filed beyond time prescribed under the Act and consequently, he had filed a separate application for condonation of 20 day's delay in filing that application. The application for condonation of delay was rejected by the District Munsif by his order dated 12.7.1982 against which the appellant filed a Civil Revision (C.R.P. No. 1349 of 1983) in the High court of Madras which by its order dated 9.9.83 dismissed the Revision with the result that the appellant could not invoke the provisions of Section 9 of the Act. Thereafter, the appellant who had already filed a written statement in the suit, sought permission of the District Munsif to file an additional

written statement in O.S. No. 110 of 1991 which was allowed and the appellant filed the additional written statement in which he raised the plea that the suit instituted by the respondent was not maintainable for want of notice under Section 11 of the Act. This plea, as pointed out earlier, was accepted by the trial court as well as by the first appellate court. But the High Court in second appeal reversed the judgment and held that the appellant having waived his right to object to the maintainability of the suit for want of notice under Section 11 of the Act was liable to be evicted from the plot in question over which he had, admittedly, raised super-structures.

4. The learned counsel for the appellant has contended that the judgment passed by High Court is erroneous as the appellant was not permitted by the court itself to invoke the provision Section 9 as his application for condonation of delay was rejected by the trial court and the trial court's judgment was upheld by the High Court. The High Court was, therefore, in error in invoking the principles of waiver and decreeing the suit of the respondent for his eviction. The respondent's counsel, on the contrary, contended that the appellant had preferred to take advantage of the Institution of the suit and had made an application under Section 9 of the Act (though beyond time) for a direction for the sale of the property in his favour and, therefore, he could not invoke the provisions of Section 11 and contend that the suit was not maintainable for want of notice under that Section was not given to him. Section 3 of the Act provides as under:

"3. Payment of compensation on ejection" - Every tenant shall on ejection be entitled to be 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 ejection who derived title from either of them and for which compensation has not already been paid. A tenant who is entitled to compensation for the value of any building shall also be paid the value of trees which may have been planted by him on the land Land of any improvements which may have been made by him.]"

5. section 9 provides as under:

"Application of Court for directing the landlord to sell land-

[(1) (a) (i) Any tenant who is entitled to compensation under Section 3 and against whom a suit in ejection has been instituted or proceeding under Section 41 of the Presidency Small Causes Courts Act, 1982, taken by the landlord may, (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 land specified in the application.]

(ii) Notwithstanding anything contained in clause (a) (i) of this sub-section, any such tenant as is referred to in sub-clause (ii) (b) of clause (4) sub-section 2 or his heirs, may within a period of two months from the date of the publication of the Madras city Tenants' Protection (Amendment) Act, 1973 apply to the court (whether or not a suit for ejectment has been instituted or proceeding under section 41 of the Presidency Small Cause Courts Act, 1882 (Central Act XV of 1882) has been taken by the landlord of whether or not such suit or proceeding is pending having jurisdiction to entertain a suit for ejectment or in the city of Madras either to such Court or to the Presidency Small cause Court, for an order that the landlord under the tenancy agreement shall be directed to sell for a price of the fixed by the Court the whole or part of the extent of land specified in the application].

[(b) On such application, the Court shall first decide the minimum extent of the land which 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 order that within a period to be determined by the Court, not being less 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 sub-Section (1) shall stand dismissed. Provided that on sufficient cause being shown, the Court may excuse the delay and pass

such orders as it may think fit, but not so as to extend the time for payment beyond 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 re-paid to him without any interest.

[(3) (a) On payment of the price fixed under Clause (b) of sub-section (1) 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.]

6. Section 11 provides as under :

"Notice before institution of suits or application against tenants- No suits in ejectment or applications under Section 41 of the Presidency small causes Courts Act, 1882, shall be instituted or presented against a tenant until the expiration of three months next after notice in writing has been giving 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 officer of the panchayat, as the case may be or any other authority as may be notified by the Government."

7. The appellant is the tenant of a plot of land over which he raised super-structures and consequently, he is entitled to compensation. Section 9 which has been reproduced above indicates that a tenant who is entitled to compensation under Section 3 and against whom suit for ejectment is filed may apply to the court for an order that the landlord be directed to sell, for a price to be fixed by

the court, the whole or part of the land specified in the application. The court shall, then, fix the price and direct the tenant to pay the price in one or more instalments with or without interest. If however, the tenant commits any default in payment of any of the instalments, his application for sale of the property shall stand dismissed. Otherwise the court would direct the landlord to execute the conveyance in favour of the tenant.

8. Section 11 contains the prohibition to the institution of the suit for ejectment. It specifically provides that no suit for ejectment shall be instituted against the tenant without first giving him a notice, in writing, requiring him to surrender possession of the land and building and offering to pay compensation for the building and trees and stating clearly the amount offered therefor. Another prohibition that the suit shall not be instituted until the expiration of three months next after notice in writing has been given to the tenant.

9. It is obvious that if a suit is instituted without giving notice or if a notice is given but the suit is filed therefore the expiry of three months, it would be in violation of the prohibitions set out in Section 11. Such a suit cannot, proceed. Even the cause of action, which consists of a bundle of facts, apart from other facts would opened upon giving a notice to the tenant and waiting for a period of three months before instituting the suit. From the tenor of Section 11, it appears that in every suit instituted under Section 11 of the Act, it will have to be mentioned in the plaint that the plaintiff had given a notice (contemplated by that Section) in writing to the tenant and that the suit was being instituted after the expiry of three months from the notice.

10. The prohibitions set out in the Section work against the plaintiff. They also create a right in favour of the tenant so that he may directly drawn into litigation before a court. If an opportunity is given to him to surrender possession with offer that he would be duly compensated for the building and the trees and the amount of compensation is also disclosed to him, he may, during the period of three months, before the expiry of which the suit cannot be instituted, consider the offer and decide whether to litigate with the landlord or to quit.

11. If he decides to contest the suit instituted against him, he gets another opportunity under Section 5 of the Act by making an application to the court for a direction to the landlord to sell the property in how favour for a price which may be fixed by the court.

12. The High Court after having come to the conclusion that the provisions of Section 11 were mandatory has held that the notice contemplated by Section 11 of the Act which is required to be given to the tenant can be waived expressly or impliedly by the tenant by his conduct and it is on the ground of waiver that the High Court has, in the instant case, interfered and decreed the suit of the respondent for the appellant's eviction from the premises in question as the High Court was of the opinion that the appellant having made an application under Section 9, waived his right to object to the institution of suit which, admittedly, was filed without giving notice contemplated by Section 11 of the Act.

13. The High Court has relied upon its earlier decision in *Vedachala Naicker vs. Duraiswami Mudalair*, (1950) 1 M.L.J. 732 to come to the conclusion that by invoking the provisions of Section 9, the appellant waived his right to object for want to notice under Section 11. In that case,

the High Court has relied upon the Privacy Council decision in Vellayan Chettiar vs. The Government of Madras, 74 I.A. 223 = AIR 1947 PC 197 in which it was held that the requirement of a notice under Section 80 C.P.C. before instituting a suit against the Government can be waived by the Government. A similar view was also taken by the Madras High Court in Mohamed Hussain Rowther vs. Tirupathi Chettiar, (1966) 1 M.L.J. 206. In Ranganatham vs. Mariappa, (1942) 1 M.L.J. 92 = AIR 1942 Madras 334, it was held by Patanjali Sastri, J. (as he then was) that section 11 was mandatory and imposed an unqualified obligation upon the not to entertain a suit for ejectment in absence of compliance with its provisions. These decisions as also a few others were considered by a Division bench of the Madras High Court in Sri Agatheeswarar Prasanna Venkatesu Perumal Devasthanam by its hereditary Trustee P.Valliammal vs. M. Narsimhan, (1982) 2 M.L.J. 70 and it was laid down that although the provisions of Section 11 were mandatory and the suit for ejectment of the tenant could not be instituted without a prior notice, the requirement of notice could be waived by the tenant expressly or impliedly by his conduct.

14. We are of the view that since the requirements under Section 11 are in the nature of conditions precedent which had to be complied with before instituting a suit in a court, the non-compliance would be fatal and such suit would be liable to be dismissed at the threshold. The requirements under Section 11 cannot be compared with the requirements under Section 80 C.P.C. The right of a tenant who may, if not always, be a poor tenant, cannot be compared with the mighty Governments regarding whom it has been observed times out of number by the courts that they should not litigate with their citizens on technicalities and should not endeavour to defeat the suit by pleading the technical questions, as for example, want of notice under Section 80 C.P.C. or limitation in cases which are eminently just, proper and equitable. The Act essentially is for the protection for the tenants whereas no such protection for the Government is contemplated by Section 80 of the code of Civil Procedure. But without entering into this controversy any further and leaving the question of waiver open, we may, in this case, observe that on facts there is no waiver.

15. The appellants in the instant case, at no stage, was allowed to invoke the provisions of section 9 of the Act as he had filed an application under that Section beyond time. His application for condonation of delay was rejected not only by the trial court but also by the High Court in Revision. The occasion to invoke the provisions of Section 9 therefore, did not come. In the meantime, the appellant filed the additional written statement and pleaded that the suit was liable to be dismissed for want of notice under Section 11 of the Act. Since the application filed by the appellant was beyond time and was rejected, the appellant cannot be said to have taken advantage of Section 9 of the Act and consequently, it cannot be said that by filing an application under Section 9, he waived his right to object to the irregularity or illegality in the institution of the suit.

16. For the reasons stated above, the appeal is allowed and the judgment and order dated 5.4.1994 passed in the Second appeal by the High Court is set aside and those of the trial court and the Sub-ordinate judge (Appellate Court) are restored and the suit of the respondent is dismissed with costs which are quantified at Rs. 15,000/-

JUDIS