

(1964) 03 MAD CK 0034

Madras High Court

Case No: Appeal Against Appellate Order No. 183 of 1961

Alagirisami Nayudu

APPELLANT

Vs

M.R.S. Manickavelu Chettiar and
Others

RESPONDENT

Date of Decision: March 27, 1964

Acts Referred:

- Madras City Tenants Protection Act, 1922 - Section 10, 2(4), 9

Citation: (1965) ILR (Mad) 304

Hon'ble Judges: Venkatadri, J

Bench: Single Bench

Advocate: V. Ramaswami, for A. Subramaniam Ayyar, for the Appellant; R. Gopalaswami Ayyangar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Venkatadri, J.

This appeal arises out of execution proceedings in Original Suit No. 31 of 1952, on the file of the District Munsif's Court,

Devakottai. The suit was filed by the husband of the eighth Respondent herein one Lakshmana Chettiar for directing the Appellant herein to vacate

the suit property and give peaceful possession of the same along with the permanent structure standing thereon without any compensation therefore

to the Plaintiff (Lakshmana Chettiar and for payment of Rs. 756 by way of damages for use and occupation of such portion of the premises

belonging to the Plaintiff (based on the agreement of tenancy for payment of rent at the rate of Rs. 21 per month) and in the alternative for a

division of the property into three shares and the allotment of two such shares to the Plaintiff with separate possession free from the obstruction of the Defendants.

2. The Appellant, who is the first Defendant in the suit, contended that he obtained a sale of the site from Ratnaveluswamy Chettiar, the other co--

sharer, for a sum of rupees one thousand and paid rupees one hundred as advance and took possession of the site, that the balance of the sale

price was to be paid in instalments, that the said Ratnavelu Chettiar permitted the Appellant to put up buildings on the site sold and that the

agreement was reduced to writing on 6th September 1937. The Appellant subsequently constructed a pucca tiled building at a cost of rupees three

thousand five hundred. The Plaintiff was aware of the arrangement and he never objected to the same till he filed the present suit. The Appellant

further contended that he has been in continuous, open and uninterrupted enjoyment of the suit property for over twelve years in his own right as

absolute owner to the knowledge of the Plaintiff and adverse to all.

3. The questions that arose for consideration in the suit was whether the agreement of tenancy between the Plaintiff and the Appellant was true and

whether the alleged sale by Ratnaveluswami Chettiar in favour of the Appellant is binding on the Plaintiff or Defendants 2 to 7. The trial Court

found that the Plaintiff is entitled to a two-third share in the suit property, that the agreement of tenancy set up by the Plaintiff is true, that the alleged

sale by Ratnaveluswamy Chettiar is not true and supported by consideration and that the Appellant has not acquired title to the suit property and

perfected it by adverse possession for more than 12 years. On those findings, the trial Court gave a decree for ejectment of the Appellant from the

property. On appeal the learned Subordinate Judge of Devakottai held that the plaint had to be construed as one filed on the basis of title and not

on the basis of tenancy. He also found that the Plaintiff is entitled to a two-third share in the suit property and that the sale arrangement pleaded by

the Appellant is clearly false. In the end, he dismissed the appeal but he gave a decree for recovery of possession not only in favour of the Plaintiff

but also Defendants 2 to 8. On further appeal to the High Court in Second Appeal No. 1538 of 1954, Ramaswami Goundar J. came to the

conclusion that the Plaintiff and Defendants 2 to 8 are together entitled to the suit property. The learned Judge also agreed with the concurrent finding of the lower Courts that the sale in favour of the Appellant by Ratnaveluswamy Chettiar was not genuine. He, however, did not give any finding on the question whether the tenancy arrangement set up by the Plaintiff was true or not, but expressed his view that it was not necessary to call for a definite finding on that issue from the lower appellate Court, as the Appellant himself admitted the title of the Plaintiff and Defendants 2 to 8 and pleaded only permissive occupation from one of the co-sharers (Ratnaveluswami Chettiar) and as the suit itself has been filed within twelve years. In the result the decree for possession passed in favour of the Plaintiff and Defendants 2 to 8 was confirmed. But in regard to the decree for damages, it was limited to a period of three years and the quantum was reduced to rupees seven per month.

4. In pursuance of the decree granted to them the Respondents herein filed execution proceedings for recovery of possession of the suit property.

In those proceedings the Appellant filed the application out of which the present appeal arises under the Madras City Tenants' Protection Act

contending that he is entitled to get the benefits of the Act and praying that the property may be directed to be sold to him by the Respondents at

the value to be fixed. This application was resisted by the Respondents on two grounds, namely, that the Appellant is not a tenant and as such he is

not entitled to get the benefits of the Act and that the application itself is barred by limitation. Both the District Munsif and the Subordinate Judge of

Devakottai, while negating the contentions of the Respondents that the application is barred by limitation, held that the Appellant is not a tenant as

defined in Section 2(4) of the Act and hence not entitled to the benefits of the Act. On that view, the application of the Appellant was dismissed. It

is against the order dismissing his application that the Appellant has preferred this appeal.

5. The question that I have to consider in this appeal is whether the Appellant is a tenant u/s 2(4) of the Act. It is true that the Plaintiff came with a

definite case that there was a tenancy agreement. But the Appellant himself pleaded that he was not a tenant. On the other hand, he contended that

he purchased the property from another co-owner and entered into possession of the property and put up a superstructure with the knowledge of

all the co-sharers. When he himself pleaded that he was not a tenant, the lower Courts were right in holding that he was not entitled to the benefits

of the Act. u/s 2(4) of the Act a tenant of land is a person liable to pay rent in respect of such land under a tenancy agreement express or implied.

Here the Appellant has not proved whether he paid rent either to the Plaintiff or to the other co-sharers. I agree with the finding of the lower Court

that the Appellant is not a tenant.

6. In regard to the contention of the Respondents that the application is barred by limitation, I am inclined to agree with the same. Section 9 of the

City Tenants' Protection Act clearly says that any person who is entitled to get the benefits of the Act should apply to the Court for directing the

land-lord to sell the land within thirty days from the date with effect from which the Act is extended to the municipal town or village in which the

land is situate. In the instant case, the Amending Act XIX of 1955, extending the Act to the Karaikudi municipal town came into force on 7th

December 1955, while the second appeal was pending in the High Court. The Appellant should have filed an application in the High Court where

the second appeal was pending within thirty days from the date of the Act was extended to Karaikudi municipal town. But the learned Counsel for

the Appellant contended that since the application filed by the Respondent for execution was pending at the time, it was not necessary for the

Appellant to file the application u/s 9 in the High Court and that it was only when the Respondents began to execute the decree after the disposal

of the second appeal, he could file the application for exercising his right to purchase the property. I do not agree with him. Section 9 applies to all

pending proceedings, whether they are in a suit or appeal. The decision of a Bench of this Court in P. Kanniappa Chettiar and Others Vs. K.

Ramachandraiyyar and Another, also supports, in my view, the contention of the Respondents. In that case the lessee from the trustees of a temple

obtained a decree in ejectment against the tenants in the City Civil Court, Madras. The tenants appealed to the High Court and during the

pendency of the appeal the Madras City Tenants Protection Act (III of 1922) came into force and the tenants applied to the High Court within

fifteen days thereof for orders directing the landlord to sell the land to them. The learned Judges held that Section 9 of the Act is intended to apply

to cases in which suits are pending and where suits have resulted in decrees but such decrees have not been executed and that as an appeal is

really a continuation of the proceedings in the suit and stage in the same, the application of the tenants for purchasing the landlord's interest was

properly made to the High Court. Applying the principle laid down in the above case, I am of opinion that the Appellant herein should have filed

the application u/s 9 of the Act in the High Court when the second appeal was pending. He could not take advantage of Section 10 and claim the

benefits of the Act by filing an application in the executing Court simply on the ground that the Respondents attempted to execute the decree after

the disposal of the second appeal. The Appellant has not proved that he is a tenant and his application is also barred by limitation.

7. The appeal is accordingly dismissed. No costs.