

(2009) 10 MAD CK 0298

Madras High Court

Case No: SA (MD) No. 106 of 2005

M/s. Hindustan Petroleum
Corporation Limited, 8, Gandhi
Irwin Road, Post Box No.3045
Egmore, Chennai - 600 008

APPELLANT

Vs

Gnanamani Ammal Chatram

RESPONDENT

Date of Decision: Oct. 14, 2009

Acts Referred:

- Evidence Act, 1872 - Section 114

Citation: (2010) 1 MLJ 1076

Hon'ble Judges: A. Selvam, J

Bench: Single Bench

Advocate: M.N. Sankaran, for the Appellant; M. Vallinayagam, For R - 1 and Mr. S. Meenakshi Sundaram, For R - 5, No appearance RR - 2 to 4, for the Respondent

Final Decision: Dismissed

Judgement

A. Selvam, J.

Challenge in this second appeal is to the concurrent Judgments and decrees passed Original Suit No.446 of 1994 by the Second Additional District Munsif Court, Tirunelveli and in Appeal Suit No.32 of 2004 by the Principal Sub Court, Tirunelveli. The respondents 1 to 4 herein as plaintiffs have instituted Original Suit No.446 of 1994 on the file of the trial Court for the reliefs of recovery of possession, past and future mesne profits, wherein the present appellant and respondents 5 and 6 have been shown as defendants.

2. The epitome of the amended plaint is that the suit property absolutely belongs to Gnanamani Ammal Chatram and the same has been created by forefathers of K. Ayya Thaiyalnayagi Ammal and the said Chatram owns several properties and the same have been managed by sole hereditary trustee. One Devasenambal in the

capacity of sole hereditary trustee has leased out the suit property to erstwhile ESSO with effect from 01.01.1969 as per registered lease agreement dated 18.02.1969. After the demise of Devasenambal, on 14.07.1972, the first plaintiff viz., K. Ayya Thaiyalnayagi Ammal has become sole hereditary trustee of all the properties of Gnanamani Ammal Chatram. The first plaintiff has not executed any fresh agreement in favour of the first defendant. The erstwhile ESSO has paid annual rent of Rs. 1,440/- to the first plaintiff. In the lease agreement dated 18.02.1969 there is a clause to increase rent. The first defendant is entitled to enjoy the suit property from 01.01.1969 to 31.12.1988 and even after 31.12.1988, the first defendant has been enjoying the suit property and failed to hand over possession of the same to the plaintiffs. On 01.01.1994 the first plaintiff has issued a notice and thereby terminated the tenancy right of the first defendant and directed to hand over possession of the suit property on first May 1994. The suit property situates in a busy locality and it will fetch a minimum monthly rent of Rs.1,500/-. Under the said circumstances the present suit has been instituted for the reliefs sought for therein.

3. The nub of the written statement filed on the side of the first defendant is that the first defendant has been enjoying the suit property as successor-in-interest. No necessity has arisen for having independent lease agreement, since the predecessor-in-interest of the first defendant viz., ESSO has already entered into a lease agreement. The first plaintiff has never demanded the first defendant to hand over vacant possession of the suit property. The first defendant has been enjoying the suit property through its dealer. There is no merit in the suit and the same deserves to be dismissed.

4. In the additional written statement filed by the first defendant, it is stated like thus:

The plaintiffs have not complied with the statutory notice contemplated u/s 11 of the City Tenants' Protection Act, 1921 and therefore, the present suit is not legally maintainable and further it is false to contend that the first plaintiff is a trust and there is no merit in the suit and the same deserves to be dismissed.

5. On the basis of the divergent pleadings raised on either side, the trial Court has framed necessary issues and after poring the rival evidence adduced on either side has decreed the suit as prayed for. Against the Judgment and decree passed by the trial Court, the first defendant as appellant has preferred Appeal Suit No.32 of 2004 on the file of the first appellate Court.

6. The first appellate Court after hearing both sides and upon reappraising the evidence available on record has dismissed the appeal whereby and whereunder confirmed the Judgment and decree passed by the trial Court. Against the concurrent Judgments and decrees passed by the Courts below, the present second appeal has been preferred at the instance of the first defendant as appellant.

7. At the time of admitting the present second appeal, the following substantial questions of law have been formulated for consideration:

(i) Whether the lower appellate Court is right in holding that the appellant is not entitled to the benefits of section 9 of the Tamil Nadu City Tenants Protection Act?

(ii) Whether the lower trial Court is correct in holding that by not sending any reply to the notice Ex.A2, the appellant is not entitled to question and plea the validity of the notice Ex.A2 u/s 11 of the Tamil Nadu City Tenants Protection Act?

(iii) Whether the Courts below are wrong in holding that the suit site is a trust property?"

8. The sum and substance of the case of the plaintiffs is that the first plaintiff is a Chatram and it owns various properties including suit property and the same has been leased out by the first plaintiff in favour of erstwhile ESSO under a registered lease deed dated 01.01.1969 and as per registered lease deed dated 01.01.1969 the first defendant who is successor-in-interest of the erstwhile ESSO is entitled to enjoy the suit property upto 31.12.1988 and the first defendant has failed to hand over vacant possession of the suit property to the first plaintiff and on 01.01.1994 the first plaintiff has issued a legal notice to the first defendant and thereby terminated its tenancy right. Under the said circumstances, the present suit has been instituted for the reliefs sought for in the plaint.

9. On the side of the first defendant it has been contended that the first defendant is entitled to get protection of the Tamil Nadu City Tenants' Protection Act, 1921 and before instituting the present suit, a notice u/s 11 of the said Act has not been given and therefore, the present suit is not legally maintainable and further the first plaintiff is not at all a trust. On that score also the present suit deserves to be dismissed.

10. As explicated earlier, the Courts below have concurrently rejected the contentions urged on the side of the first defendant and ultimately upheld the contention put forth on the side of the plaintiffs.

11. The learned counsel appearing for the appellant/first defendant has taken much pain so as to supplant the concurrent judgments passed by the Courts below on the following grounds:

(i) The brunt is that the suit property comes within the purview of the Chennai City Tenants' Protection Act, 1921 and as per section 11 of the said Act, before instituting a suit for ejectment a notice is mandatory. But the same has not been given in the present case and therefore, the present suit is not at all maintainable.

(ii) The second attack made by the learned counsel appearing for the appellant/first defendant is that the first plaintiff is not at all a trust and therefore, the averments made in the plaint to that effect are not factually sustainable.

(iii) The third and final attack made by the learned counsel appearing for the appellant/first defendant is that even though initial lease agreement has been made for a period of 20 years and after expiry of the said period, a fresh lease agreement has come into existence on 09.08.1977 and the same has become expired in the year 1982 and even after 1982, the first defendant has been enjoying the suit property and the first plaintiff has been accepting the rent and therefore, the first defendant is a tenant by holding over. Under the said circumstances, the first defendant cannot be evicted from the suit property.

12. In order to repel the argument advanced by the learned counsel appearing for the appellant/first defendant, the learned counsel appearing for the contesting defendants have uniformly contended that the suit property is the absolute property of Gnanamani Ammal Chatram and the said Chatram has been doing charities and therefore, the suit property would not come within the contour of the Chennai City Tenants' Protection Act, 1921 and since the said Act is not having application to the suit property, question of giving notice u/s 11 of the said Act does not arise and further the tenancy right of the first defendant has been terminated by giving a valid notice by the first plaintiff. Under the said circumstances the argument advanced by the learned counsel appearing for the appellant/first defendant is incorrect and the same is liable to be rejected.

13. On the basis of the divergent submissions made by either counsel, the Court has to look into as to whether the suit property is a trust property which absolutely belongs to Gnanamani Ammal Chatram and also as to whether the Chennai City Tenants' Protection Act, 1921 is having application to the suit property.

14. In the plaint it has been clinchingly stated that the suit property is the absolute property of the first plaintiff which is known as Gnanamani Ammal Chatram. The learned counsel appearing for the appellant/first defendant has made faint attempt to the effect that in the plaint, act of charities of the first plaintiff has not been mentioned and the same has been mentioned only in oral evidence and therefore, the suit property cannot be treated as a trust property.

15. It is an admitted fact that before instituting the present suit, the first plaintiff has issued a legal notice on 01.01.1994 to the first defendant and a copy of the same has been marked as Ex.A2, wherein it has been clinchingly stated that the suit property is the absolute property of Gnanamani Ammal Chatram. The first defendant has received the same. But failed to give any reply notice. At this juncture, it would be more useful to look into the decision reported in Jaga Industries, rep. by its Managing Partner M. Jeganathan, Tirupur Taluk and another Vs. Sulochana Cotton Spinning Mills Pvt. Ltd., rep. by its Managing Director S. Krishnakumar, Tirupur, (2009) 1 MLJ 1067, wherein this Court has held that "as per Section 114 of the Indian Evidence Act (1 of 1872) failure to give reply notice can be a basis for drawing adverse inference". As stated earlier, reply notice has not been given by the first defendant, even though received the notice dated 01.01.1994 and therefore as per

the dictum rendered by this Court, the Court can very well take adverse inference against the first defendant to that effect.

16. Baring Ex.A2, on the side of the plaintiffs Ex.A4 has been filed. Ex.A4 is a certified copy of resettlement register, wherein it has been clearly mentioned that the suit property is the absolute property of Gnanamani Ammal Chatram. Therefore, it is quite clear that the suit property is a trust property and the same belongs to first plaintiff.

17. It has already been discussed and decided that the suit property is a trust property and the same absolutely belongs to the first plaintiff viz., Gnanamani Ammal Chatram. At this juncture a nice legal question arises as to whether the Chennai City Tenants' Protection Act, 1921 is applicable to the suit property.

18. In N. Sreedharan Nair and others Vs. Mottaipatti Chinna Pallivasal Muslim Jamath, Virudhunagar and others, 2003-3-L.W.291, the Full Bench of this Court has held as follows:

"From the statement of objects and reasons, it is clear that the amendment Act 2 of 1996 was enacted with an avowed object of excluding the tenancies of lands owned by the religious institutions and religious charities belonging to Hindu, Muslim, Christian and other religious institutions from the purview of the Madras City Tenants Protection Act, 1922 so that the landlord is not forced to make a sale of the land leased out to the tenant and thereby enabling the religious institutions and the religious charities to retain the land endowed by the devotees to subserve the object of endowment and at the same time to enable the religious institutions and religious charities to get reasonable income from the urban properties".

19. A cursory perusal of the dictum rendered by the Full Bench of this Court would reveal that the erstwhile Madras City Tenants Protection Act, 1922 has no application in respect of properties owned by religious institutions and religious charities belonging to Hindu, Muslim, Christian and other religious institutions.

20. The decision rendered by the Full Bench of this Court has been upheld by the Larger Bench of the Honourable Apex Court and the decision rendered by the Larger Bench of the Honourable Apex Court is reported in AIR 2006 Supreme Court 523 (Mylapore Club Vs. State of Tamil Nadu & Anr.) The Honourable Apex Court has also held that

"Amendment of S. 1 of Act exempting tenancies of lands owned by religious institutions and religious charities belonging to Hindu, Muslim, Christians and other religious has rational nexus to objects sought to be achieved by Act. It cannot be said that the object of the Parent Act was to ensure that the expectation of a tenant, who has put up a superstructure, that he would not be evicted is not belied, and that pulling down of the superstructure which was the only option available to a lessee if the lease did not contain a contract to the contrary, would result in congestion

causing serious detriment to public health. This object would not be sub served by exempting leases of lands belonging to religious institutions or religious charities. It is a matter for the legislature to balance the object of the parent Act with the object of protecting the rights of religious institutions and religious charities and on the basis of the material available to the legislature, the decision to exempt the buildings of such religious institutions and religious charities has been taken. The power of legislate is a plenary power vested in the legislature and unless those who challenge the legislation clearly establish that their fundamental rights under the Constitution are affected or that the legislature lacked legislative competence, they would not succeed in their challenge to the enactment brought forward in the wisdom of the legislature. Conferment of a right to claim the benefit of a statute, being not a vested right, the same could be withdrawn by the legislature which made the enactment. It could not be said that the Amendment Act lacked either legislative competence or that it is unconstitutional."

21. In the instant case, it has already been decided that the suit property is the absolute property of the first plaintiff, which is none other than a Chatram and its main object is to perform charities. Under the said circumstances, there is no incertitude in coming to a conclusion that as per the decision rendered by the Full Bench of this Court, upheld by the Larger Bench of Honourable Apex Court, the provisions of the erstwhile Madras City Tenants Protection Act, 1922 are not applicable to the suit property.

22. As stated earlier, the first attack made on the side of the appellant/first defendant is that the suit property comes within the contour of the said Act and as per provision of section 11 of the said Act a notice is mandatory. It has already been pointed out that the provisions of the said Act have no application to the suit property and therefore, question of giving a notice u/s 11 of the said Act does not arise and therefore, the first and second attacks made by the learned counsel appearing for the appellant/first defendant are not legally and factually correct and the same are liable to be eschewed.

23. Even assuming without conceding that the suit property is not a trust property and the provisions of the Chennai City Tenants" Protection Act, 1921 are applicable to the suit property, the Court has to look into as to whether the present suit is not legally maintainable in view of not giving notice u/s 11 of the said Act.

24. The learned counsel appearing for the contesting respondents has accentuated the Court to look into the decision reported in [Hamsa Patel and Others Vs. S. Balakrishnan and Another](#), wherein the Division Bench of this Court has held that

"since the concerned tenant has filed an application u/s 9 of the Tamil Nadu City Tenants Protection Act, 1921, he is estopped from raising issuance of notice u/s 11".

25. The learned counsel appearing for the appellant/first defendant has also relied upon the decision reported in AIR 1997 Supreme Court 1735 (S.A. Ramachandran Vs.

S. Neelavathy), wherein the Honourable Apex Court has held that "if the tenant has filed a petition u/s 9 of the Tamil Nadu City Tenants' Protection Act, 1921 and the same has been rejected on the ground of limitation, the tenant cannot be said to have waived prior notice contemplated u/s 11 of the said Act". In the instant case, it is an admitted fact that the appellant/first defendant has filed I.A.No.183 of 1996 u/s 9 of the said Act and the same has been closed on 09.11.2000 by the trial Court to the effect that the result of the petition would depend upon result of the suit. Therefore, it is quite clear that already the appellant/first defendant has filed the petition in question u/s 9 of the said Act and the same has been closed. As per the decision reported in [Hamsa Patel and Others Vs. S. Balakrishnan and Another](#), if the tenant has filed an application u/s 9 of the said Act, he is estopped from raising issuance of notice u/s 11. In the decision reported in AIR 1997 Supreme Court 1735 (S.A. Ramachandran Vs. S. Neelavathy), the application filed u/s 9 has been rejected on the ground of limitation. Under the said circumstances the Honourable Apex Court has held that the rejection of application filed u/s 9 would not be a bar to raise the plea to the effect that a notice u/s 11 is necessary. Therefore, viewing from any angle as per the decision reported in [Hamsa Patel and Others Vs. S. Balakrishnan and Another](#), this Court is of the view that in the present case, the appellant/first defendant is totally estopped from raising issuance of notice u/s 11 of the said Act.

26. The learned counsel appearing for the appellant/first defendant has also relied upon the following decisions:

(a) In AIR 1980 Supreme Court 226 (Biswabani Pvt. Ltd Vs. Santosh Kumar Dutta and others) the Honourable Apex Court has held that "even renewal of lease is found void, a tenant can be treated as a statutory tenant".

(b) In 2001 (1) CTC 708 (Valliammal Vs. S. Arumugha Goundar and another), this Court has held that "a petition u/s 11 of the Tamil Nadu City Tenants Protection Act, 1955 is mandatory".

(c) In [V.M. Subramania Mudaliar and Sons and others Vs. Bhavasarakshriya Seva Samaj](#), this Court has held that "application filed u/s 9 of Tamil Nadu City Tenants' Protection Act, 1922 has to be disposed of prior to disposal of main suit".

(d) In (2008) 8 MLJ 1181 (Ramaswamy Vs. Palaniandi (died) and others), it has been held that "in order to constitute a tenant holding over there should be express or implied consent from the lessor".

(e) In (1972) 1 SCC (Beawanji Lakhamshi and others Vs. Himatlal Jamnadas Dani and others) the Honourable Apex Court has held "that if a tenant remains in possession after the determination of the lease, the common law rule is that he is a tenant on sufferance. A distinction should be drawn between a tenant continuing in possession after the determination of the term with the consent of the landlord and a tenant doing so without his consent. The former is a tenant at sufferance in English Law and the latter a tenant holding over or a tenant at will".

27. In the instant case, even at the risk of jarring repetition this Court would like to point out that the suit property belongs to the first plaintiff Chatram and the first plaintiff is doing charities. As per the decision rendered by the Full Bench of this Court in N. Sreedharan Nair and others Vs. Mottaipatti Chinna Pallivasal Muslim Jamath, Virudhunagar and others, 2003-3-L.W.291, upheld by the Larger Bench of the Honourable Apex Court reported in AIR 2006 Supreme Court 523 (Mylapore Club Vs. State of Tamil Nadu & Anr.) it is needless to say that the suit property is exempted from the purview of the erstwhile Madras City Tenants' Protection Act (3 of 1922). On that ground alone the entire contention raised on the side of the appellant/first defendant cannot be accepted.

28. It has already been pointed out that the third attack made on the side of the appellant/defendant is that on 09.08.1977 the first defendant has entered into a fresh agreement and the same has become expired in the year 1982 and even after 1982, the first defendant has been enjoying the suit property and the first plaintiff has been accepting the rent and therefore, the first defendant is a tenant by holding over and therefore, the first defendant cannot be evicted from the suit property.

29. The alleged lease agreement dated 09.08.1977 has been marked as Ex.B3. Ex.B3 has come into existence on 09.08.1977 and it has come to an end in the year 1982. In fact, there is no pleading in the written statements filed by the first defendant to that effect. Even assuming without conceding that Ex.B3 is a valid document and even assuming that the first defendant has been enjoying the suit property as a tenant by holding over, it is the duty of the Court to look into as to whether the plaintiffs are entitled to get the reliefs sought for in the plaint.

30. The first plaintiff has issued a notice on 01.01.1994 to the first defendant and a copy of the same has been marked as Ex.A2, wherein the alleged tenancy right of the first defendant has been terminated. Since the suit property does not come within the purview of the Chennai City Tenants' Protection Act, 1921, it is needless to say that Ex.A2 is a valid notice. Since Ex.A2 is a valid notice, the alleged tenancy right of the first defendant has come to an end. Under the said circumstances it is very clear that the plaintiffs are entitled to get the reliefs sought for in the plaint. Therefore viewing from any angle, the entire arguments advanced by the learned counsel appearing for the appellant/first defendant are not having substance at all and further, all the substantial questions of law formulated in the present second appeal are not factually and legally sustainable and altogether the present second appeal deserves dismissal. In fine, this second appeal deserves dismissal and accordingly is dismissed without cost. The Judgment and decree passed Original Suit No.446 of 1994 by the Second Additional District Munsif Court, Tirunelveli, upheld in Appeal Suit No.32 of 2004 by the Principal Sub Court, Tirunelveli are confirmed. The appellant/first defendant is directed to hand over vacant possession of the suit property within three months from today.