Hindustan Petroleum Corporation Ltd. Vs P.V. Subbiah

Court: MADRAS HIGH COURT (MADURAI BENCH)

Date of Decision: April 19, 2013

Citation: (2014) 1 MadWN(Civil) 685

Hon'ble Judges: Mr. B.Rajendran, J.

Bench: Single Bench

Advocate: Mr. M. Sridher, Advocate, for the Appellant

Final Decision: Dismissed

Judgement

Mr. B.Rajendran, J.â€"The fourth defendant in the suit in O.S. No. 870 of 1996 is the appellant in this second appeal. The suit was filed by the

plaintiff/first respondent herein praying for a decree directing the defendants to surrender vacant possession of the suit property and handover the

same to him without any let or hindrance by the defendants or their men and agents and directing the defendants to pay Rs.1,125/- to him as

arrears of rent from 01.07.1988 till 28.02.1989 with subsequent interest at 9% from the date of plaint till realisation and directing the defendants to

pay further damages for use and occupation of the suit property from 01.03.1989 onwards till the defendants vacate the suit property which may

be ordered to be determined under Order 20 Rule 12 of CPC as may be decreed at the rate of Rs.1,100/- per month as estimated by the plaintiffs

and also for cost of the suit.

2. (i) The Plaintiff filed the suit contending that the suit property, which originally remained as a vacant site, belonged to one Alamelu Ammal. The

said Alamelu Ammal leased out the suit property in favour of M/s. Caltex India Ltd., from 01.08.1950 onwards. On the demise of the said

Alamelu Ammal, her daughter Sellammal stepped into her shoes and permitted the lessee to continue the lease. As per the lease deed dated

12.07.1968, the lease was to commence from 01.08.1968 for ten years on an enhanced rent at Rs.125/- per month. Such rent was payable on or

before 10th of succeeding English Calander month. According to the plaintiff, the said Sellammal left a Will dated 05.11.1955 and on her death,

the Will came into force thereby the suit property devolved on Bhuvaneswari, the grand daughter of Sellammal.

(ii) The Plaintiff purchased the suit property and other properties from the said Bhuvaneswari by a registered sale deed dated 23.06.1975 and he

became owner of the suit property. While so, the said Caltex India Limited approached one Avana Nadar as their agent at Dindigul and put up an

office in the suit property. The rent in respect of the office premises was fixed at Rs.125/- even in 1968 whereas the rental value of the

superstructure will be very high. At this stage, M/s. Caltex India Limited was taken over by the Government of India as per Section 7 (1) of Act

12 of 1977 and the lease hold right of the suit property vested with the Government of India/Defendants 1 and 2 in the suit. Later, by a notification

in G.S.R.963 (F), the Central Government vested all the rights in respect of the suit property with Caltex (India) Oil Refining India Limited, a

Government of India Company, including the lease hold right of the suit property. According to the plaintiff, after he became the owner of the

property in the year 1975, he has not extended the lease. On 31.03.1978, the plaintiff sent a letter to M/s. Caltex Oil Refining India Limited

claiming rent of Rs.400/- per mensem for the suit property considering the locational advantages. Even though the 4th defendant company wrote

letters on 03.03.1978 and 17.05.1988 for renewal of lease for 10 years from 01.08.1978, the plaintiff did not incline to renew the lease. While so,

the plaintiff came to know that the former agency given to Avana Nadar was cancelled and the 5th defendant was appointed as agent of the

defendants 3 and 4 without any right. The Plaintiff also came to know that for the office room put up by the former agent Avana Nadar, the third

defendant has been paying rent to him and after his demise in the year 1986, rent is being paid to the defendants 6 to 11, who are legal heirs of

Avana Nadar. It is further contended that the office room put up in the suit property does not belong to any of the defendants and the same

belonged to Avana Nadar and his heirs, however, the plaintiff is not bound to pay any compensation to the office room. The defendants 3 and 4

have installed petrol and diesel filling instruments which are liable to be removed and the suit property has to be handed over to the plaintiff as a

vacant land. The plaintiff also issued a notice on 09.09.1988 terminating the tenancy in favour of the defendants with effect from March 1989 and

directed the defendants to quit and deliver vacant possession within six months giving option to the defendants to remove the superstructure while

so vacating and offering them to pay a compensation of Rs.5,000/-.

3. The suit was resisted by the defendants 4 and 13 by filing written statements. In the written statement, it was contended that the predecessor in

interest of the defendant company renewed the lease for five years from 01.08.1963/31.07.1968. As against the lease rent, Alamelu Ammal filed

HR COP No. 17 of 1964 before the learned Rent Controller cum District Munsif, Dindigul for fixation of fair rent which was dismissed on

13.07.1964. As against the same, her daughter T. Sellammal filed C.M.A. No. 19 of 1965 and it was allowed remanding the matter to the Rent

Controller for fresh disposal. As against that the predecessor in interest filed CRP No. 45 of 1967 before the District Judge, Madurai. Pending

revision, a compromise was arrived between the parties as per which the predecessor in interest of the defendant company agreed to grant lease

for 10 years period for enhanced rent. Hence, the allegation of the plaintiff that the lease rent fixed is very low is incorrect. In the meantime, the

lessor Sellammal died on 20.09.1973 and the property right devolved on Smt. Bhuvaneswari from whom the plaintiff has purchased the suit

property by an unregistered sale deed. The sale in favour of the plaintiff was made during the pendency of the lease in favour of the predecessor in

interest of the defendant. It is false to state that there was no lease executed between the parties after the plaintiff purchased the suit property

inasmuch as there is a subsisting lease agreement in favour of the defendants. The plaintiff purchased the suit property knowing fully well about the

subsistence of lease in favour of the defendants. By virtue of the statutory right conferred on the defendants 1 to 4, under Section 7 (3) of Act 17

of 1977, the lease has to be renewed for further period of 10 years from 02.08.1978 to 31.07.1988. The Plaintiff refused to renew the lease in

spite of exchange of communications between the plaintiff and the defendants 1 to 4. The payments are being tendered to the plaintiff regularly and

the rental cheques forwarded to the plaintiffs under registered post were being returned. The defendants expressed their willingness to renew the

lease at reasonably enhanced rate and also willing to pay compensation to the plaintiff. Even though the defendants attempted to renew the lease,

the plaintiff refused to renew the lease with ulterior motive. The defendants 3 and 4 deem it appropriate to continue their business in the suit

property as it is more convenient for carrying on their business, particularly to serve the general public in dealing with essential petroleum products.

The disruption of the service offered by the defendant is not in public good. The defendants 3 and 4 were lawful tenants till 31.07.1988 and

thereafter, they are in occupation of the suit property as statutory tenants. The defendants cannot be termed as trespassers and the plaintiff is not

entitled to damages, as claimed. The suit notice issued by the plaintiff is defective in law. There is no cause of action for filing the suit. The suit is

therefore liable to be dismissed.

4. The trial court framed as many as 7 issues for consideration in the suit. One of the issues framed was whether the pre-suit notice issued by the

plaintiff is valid in the eye of law.

5. Before the trial court, the Plaintiff examined himself as PW1 and marked Exs. A-1 to A-8. On behalf of the defendants, one S.S.

Sachithanantham was examined as DW1 and Ex.B1 was marked. The trial court, on analysing the oral and documentary evidence, decreed the

suit as prayed for and directed the defendants to surrender vacant possession of the suit property within a month; to pay Rs.1,125/- to the plaintiff

towards arrears of rent from 01.07.1988 till 28.02.1989 with subsequent interest at 9% from the date of plaint till realisation. The trial court also

granted liberty to the plaintiff to work out his claim for compensation and damages through a separate proceedings.

6. As against the judgment and decree passed by the trial court, the fourth defendant in the suit filed A.S. No. 43 of 2011 before the learned

Subordinate Judge, Dindigul. The first appellate Court, after framing necessary issues and on appreciation of the oral and documentary evidence,

modified the decree and judgment passed by the trial court to the effect that the 4th defendant/appellant shall handover the possession of the plaint

mentioned property to the plaintiff within two months and also to pay a sum of Rs.500/- per month towards rent from 01.07.1988 till the date of

handing over possession of the plaint mentioned property. The first appellate Court also observed that at the time of handing over possession, an

Engineer shall be appointed as per the choice of both sides, who shall estimate the value of the superstructure and such value shall be paid by the

plaintiff to the defendant. Aggrieved by the said judgment and decree passed by the first appellate Court, the present second appeal is filed by the

fourth defendant in the suit.

7. The learned counsel appearing for the appellant would contend that the first appellate Court ought to have directed the plaintiff to issue a notice

giving three months time for the appellant to vacate and handover possession of the suit property as per the provisions of Section 11 of City

Tenants Protection Act as well as Section 106 of The Transfer of Property Act. It is further argued that the notice issued by the plaintiff, Ex.A6 is

not in conformity with the provisions of Section 11 of City Tenants Protection Act. The appellant had put up the superstructure by incurring huge

amount and the first appellate Court failed to adequately compensate the appellant in this regard.

8. I heard the learned counsel for the appellant and perused the records. The only question of law arise for consideration in this case is whether the

notice issued by the plaintiff under Section 106 of The Transfer of Property Act is in accordance with law or not or a notice under Section 11 of

the City Tenant Protection Act is necessary?

9. According to the plaintiff, immediately on purchasing the suit property by a sale deed dated 23.06.1975, Ex.A2, they had put the defendant

Corporation on notice regarding such purchase in compliance with Section 106 of the Transfer of Property Act. After purchasing the suit property,

the vendor of the plaintiff herself has sent a letter dated 03.07.1975, Ex.A3 to M/s. Caltex India Limited to whom the property was leased out

intimating about the sale of the suit property to the plaintiff. It is also to be mentioned that the fourth defendant/appellant did not defend the suit

mainly on the ground that the notice under Section 106 of Transfer of Property Act is improper, but on the ground that the plaintiff did not come

forward to renew the lease in their favour especially when the fourth defendant/appellant is carrying out a petrol bunk and has been in possession

and enjoyment of the suit property for a long time. The suit was also defended on the ground that the fourth defendant/appellant is entitled to the

protection envisaged under Section 11 of The City Tenants Protection Act. Both the trial court as well as the first appellate Court rejected the

contention of the fourth defendant on the ground that there was compliance of Section 106 of Transfer of Property Act in this case besides that the

plaintiff has no legal right to seek for protection under The City Tenants Protection Act.

10. Even before this Court, the only point raised by the learned Counsel for the appellant is that the appellant is entitled to a notice under Section

11 of the City Tenants Protection Act inasmuch as only a vacant site was leased out to them and the superstructure raised in the suit property

belonged to them. Therefore, before issuing the notice under Section 106 of the Transfer of Property Act, they should have been called upon to

comply with conditions under Section 11 of the City Tenants Protection Act. On a careful consideration of the entire evidence and pleadings made

available, first of all, it is very clear that the petrol bunk is managed not by the appellant Corporation but by a dealer. Time and again, this Court

and the Hon''ble Supreme Court has held that a person who seeks the benefit under City Tenants Protection Act must be in actual physical

possession of the property in question to seek such relief. In this case, since the appellant is not directly in possession of the suit property, but

through a dealer, they are not entitled to claim any benefit under the Act. Furthermore, the appellant has not filed any application under Section 9

either during the pendency of the suit or after filing the suit calling upon the plaintiff to sell the property in question to them. It is only averred in the

written statement by the fourth defendant/appellant before the trial court that the plaintiff is not coming forward to renew the lease in their favour.

Further, by participating in the proceedings without filing an application under Section 9 of the City Tenants Protection Act, the Corporation has

waived the requirement of service of a notice under Section 11 of the City Tenants Protection Act even if they are in any way entitled to the relief

under the provisions of the City Tenants Protection Act. Admittedly, as discussed supra, the corporation is not in possession of the demised

premises and they have no right to claim the protection under the City Tenants Protection Act. While so, in the absence of any such application, I

am of the view that both the courts are right in coming to the conclusion that the appellant is not in possession of the property directly and therefore

the appellant is not entitled to the benefit of the City Tenants Protection Act. In this connection, I am fortified by the decision of this Court reported

in 2011 (5) CTC 437 (Bharat Petroleum Corporation Ltd. v. R.Ravikrishnan), wherein this Court has defined what is actual physical

possession and whether the oil companies come within the definition of "tenant" in terms of Section 2 (4) (ii) (a), 2 (4) (ii) (b) of the City Tenants

Protection Act and the applicability of the application under Section 9 of the said Act.

11. In this context, it is useful to refer to the decision of the Division Bench of this Court reported in 2011-4-L.W.937, M/s. Indian Oil

Corporation Ltd. and another v. Lakshmi Subrahmanyam and others, in which I am a party wherein paragraph 18 to 20 of the judgment

can usefully be extracted as under:

18. If that be so, it has to be seen as to whether the argument of the learned Senior counsel for the appellant that non-issuance of notice under

Section 11 of the Act by the plaintiff/respondents 1 to 4 is fatal to the suit or not. Section 11 notice is a notice to be issued by the land owners

calling upon the tenant to express their willingness for payment of compensation prior to their eviction. In this case, admittedly, a notice was issued

by the plaintiffs/respondents 1 to 4 to the defendants 1 and 2/appellants one year prior to the expiry of the lease, calling upon the defendants 1 and

2/appellants to vacate and deliver vacant possession of the suit property. In and by that notice, the plaintiffs/respondents 1 to 4 also categorically

indicated that they are not willing to sell the property to the defendants 1 and 2/appellants. Even though there were correspondences between the

parties after the notice, since there was no consensus-ad-item between the parties, the offer of the defendants 1 and 2/appellants was not accepted

by the plaintiffs/respondents 1 to 4 and they stood by their notice of eviction and did not seek for waiver of notice. As stated supra, first and

foremost, the question is whether the defendants 1 and 2/appellants comes within the definition and meaning of the tenant given in the Act and to

prove that they are the tenant, they have to remain possession of the property, but the possession was not proved, as required. Though the dealers

possession can be a lawful possession, as per the discussion of the Division Bench of this Court, such possession of the defendants 1 and

2/appellants cannot be termed as a tenant, as enumerated under Section 2 (4) of the Act to seek the benefits conferred under the Act. As rightly

pointed out by the learned single Judge, even prior notice issued by the land owner can be termed or deemed to be a notice under Section 11 of

the Act. In any view of the matter, in view of the finding that the defendants 1 and 2/appellants are not a tenant as per the Act and that the

agreement itself was of the year 1985, the question of invoking Section 11 of the Act does not apply. Therefore, the argument of the learned

Senior counsel for the defendants 1 and 2/appellants that non-issuance of notice under Section 11 of the Act by the plaintiffs/respondents 1 to 4

prior to filing of the suit is fatal to the suit is rejected.

19. The learned single Judge found that the appellant cannot be termed as a tenant continuing in actual physical possession of the suit property and

not entitled to the benefits of the Act is well founded and we do not find any reason to interfere with such a findings rendered by the learned single

Judge. The learned single Judge also found that under Exs. P8 and P13, the defendants 1 and 2 were directed by the plaintiffs/respondents 1 to 4

herein not to pay the rent after the termination notice and they have also not accepted the rent paid and therefore, it cannot be construed that the

plaintiffs/respondents 1 to 4 have waived their right to terminate the defendants 1 and 2/appellants.

20. We find it very disheartening to note that the defendants 1 and 2/appellants, a mighty and gigantic oil corporation are not following their own

contract/agreement. Under law, a party is expected to abide by the terms and conditions of the contract entered into by themselves. Here, the

defendants 1 and 2/appellants, knowing fully well that they are not entitled to the benefits under the Act, have contested the suit vociferously

thereby subjected the plaintiffs/landlords to harassment. Such an attitude on the part of the defendants 1 and 2/appellants is not appreciable. If

public Sector companies like the defendants 1 and 2/appellants do not follow the terms and conditions entered into by them with open eyes, other

cannot be expected to follow the Rule of Law. The defendants 1 and 2/appellants, under the pretext of seeking certain benefits under the Act,

which they are fully aware that it will not enure to their benefit have taken the landowners/plaintiffs/respondents 1 to 4 herein for a ride. We find

that this is a fit case warranting us to make such an observation.

12. In this case, even as admitted by the appellant, the appellant has not invoked the provisions of Section 9 of the City Tenants Protection Act by

filing appropriate application before the Court below and they are not in possession of the property directly. Above all, before the lower appellate

Court as well as this Court, the appellant only contended that the minimum requirement of three months notice has not been given to them to vacate

and handover vacant possession of the property. But from the averments contained in the notice itself, as extracted by the appellate Court, the

plaintiff had granted six months time. Therefore, rightly both the courts below have come to the conclusion that the notice under Section 106 of the

Transfer of Property Act is in accordance with law and the notice under Section 11 of the City Tenants Protection Act is not required in this case

as the appellant corporation is not in physical possession of the demised premises. Under those circumstance, the only question of law framed in

this second appeal is answered against the fourth defendant/appellant.

13. In the result, the second appeal is dismissed confirming the decree and judgment passed by the lower appellate Court. Consequently,

connected miscellaneous petition is also dismissed.