

## **P.A. Thomas And Anr. vs M. Mohammed Tajuddin And Anr. on 26 May, 1989**

**Equivalent citations: AIR1989SC1658, 1989(1)SCALE1564, (1989)3SCC240, 1989(2)UJ239(SC), AIR 1989 SUPREME COURT 1658, 1989 (3) SCC 240**

**Author: M.H. Kania**

**Bench: R.S. Pathak, L.M. Sharma, M.H. Kania**

### **JUDGMENT**

M.H. Kania, J.

1 This is an Appeal from the judgment of a learned Single Judge of the Madras High Court in Second Appeal No. 1706 of 1985 and C.R.P. (Civil Revision Petition) No. 3135 of 1985 which were heard together. For the sake of convenience we propose to refer to the parties by their original descriptions in the suit.

2 The plaintiffs are the owners of the suit land, including a vacant site in Elappan Road in Cumbum in Madras. This site was learned out by the plaintiffs (Respondents before us), to defendant No. 1 (who is Appellant No 1 before us) for conducting a timber shop, at a rent of Rs. 70/- per month. In a family partition, the first plaintiff (who is Respondent No. 1 before us) got as his share the northern portion of the land belonging to the plaintiffs which included the suit land. The plaintiffs filed a suit to evict the defendants on various grounds including the ground that they wanted to build their own house on the suit land and hence bona fide need the suit land for their own use Thereafter the defendants filed an application under Section 9 of the Tamil Nadu City Tenants' Protection Act, 1921 (referred to hereinafter as "the said Act"). On 28th April, 1979, the plaintiffs sent a notice dated 97th April 1979 to the defendants terminating the tenancy and calling upon them to surrender the suit land by 31st May, 1979, failing which a suit for ejectment would be filed. It may be noticed here that during the subsistence of the lease, the defendants put up certain superstructures on the suit land. The plaintiffs filed a suit in the Trial Court for eviction of the defendants. The defendants, on the other hand filed an application under Section 9 of the said Act within 30 days of the receipt of the summons in the said suit, praying for a direction to the plaintiffs to sell the vacant land to the defendants, and basing their claim on the ground that they were entitled to the protection of the said Act. The Trial Court decreed the suit of the plaintiffs for eviction and for possession and dismissed the application filed by the defendants under Section 9 of the said Act on the ground that the defendants were not tenants as contemplated under Section 2(4)(i) of the said Act Being aggrieved by this decision in the suit as well as their application the defendants filed an appeal against the same in the Sub Court of Periyakulam. The Appellate Court allowed the appeal of the defendants

against the decree in the suit, holding that no proper statutory notice under Section 11 of the said Act had been issued by the plaintiffs as the landlords before filing the suit, but they dismissed the application of the defendants under Section 9 of the said Act on the ground that the defendants were not the tenants as contemplated under Section 2(4)(i) of the said Act. Being aggrieved by the dismissal of their suit in appeal, the plaintiffs preferred a Second Appeal to the Madras High Court and the defendants, being aggrieved by the dismissal of their application under Section 9 of the said Act, preferred a Civil Revision Petition against that order, Both these matters were disposed of by the learned Single Judge of the Madras High Court by the judgment impugned before us. The appeal of the plaintiffs was allowed and the C.R.P. preferred by the defendants was dismissed. The present appeal has been preferred by the defendants against the said judgment.

3. The first submission of Mrs. Chidambaram, learned Counsel for the Appellants is that Appellant No. 1 is a tenant in relation to the suit land as contemplated in Clause (i) of Sub-section (4) of Section 2, the definition section, of the said Act. In the alternative, it was submitted by her that even assuming that he was not a tenant within the meaning of Section 2(4)(i) of the said Act, he was still covered by the inclusive definition of the term "tenant" given in Sub-clauses (a) and (b) of Clause (ii) of Sub-section (4) of Section 2 of the said Act. The opening part of Section 2 states : "In this Act unless there is anything repugnant in the subject or context". Sub-section (4) of Section 2 defines the term "tenant" in relation to any land. Clause (i) of Section 2(4) runs as follows :

(i) means a person liable to pay rent in respect of such land, under a tenancy agreement express or implied.

Sub-clause (a) of Clause (ii) of Sub-section (4) of Section 2 of the said Act runs as follows :

(a) any such person as is referred to in Sub-clause (1) who continues in possession of the land after the determination of the tenancy agreement.

The relevant part of Sub-clause (b) of the said clause runs as follows :

(b) any person who was a tenant in respect of such land under a tenancy agreement to which this Act is applicable under Sub-section (3) of Section 1 and who or any of his predecessors in interest had erected any building on such land and who continues in actual physical possession of such land and building, notwithstanding that..."

4. It was submitted by her that as Appellant No. 1 was a tenant in relation to the suit land within the meaning of the said Act, the notice dated 27th April, 1979 to terminate his tenancy and hand over the possession was not valid in law, as it did not comply with the provisions of Section 11 of the said Act. It was further submitted by her that Appellant No. 1 against whom a suit for ejectment had been instituted was entitled under Section 9 of the said Act, to apply to the court for an order directing the Respondent-landlord to sell to him the minimum extent of the land which was necessary for the convenient enjoyment by the tenant of the superstructure put up by him on the said land. In order to appreciate these submissions, it is necessary to consider certain provisions of the said Act in

addition to those we have set out earlier. The portion of Section 3 relevant for the purpose of this Appeal provides that on ejectment the tenant shall be entitled to be paid compensation for the value of any building which may have been erected by him or by his predecessor-in-interest on the land for which compensation has not already been paid. The relevant portion of Section 9 runs as follow :

9. Application to 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 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 land specified in the application. x x x

(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 of 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 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.

5 Before expressing any opinion on any of the contentions raised by either party and entering upon the task of construction of the afore-stated provisions and their true legal effect we cannot fail to notice that the evidence on record discloses that although Appellant No. 1 sublet the entire premises to a partnership of which he was a partner, as appears to be the admitted position on record, it has been urged by Mrs Chidambaram that Appellant No. 1 was the managing partner in the said partnership and in effective control of the possession of the premises in question. In this connection, it has been averred in the Special Leave Petition that although Appellant No. 1 converted his proprietary concern into a partnership firm to which he sublet the premises he appointed himself as the managing partner and that the said partnership firm was merely a compendious name, presumably for the newly formed concern to take over his proprietary business. It is further averred that it was Appellant No. 1 who retained the legal possession of the said premises. It is also averred in paragraph 2 of the Special Leave Petition that in the said partnership firm Appellant No. 1 was the managing partner and the other partners were his son, his son-in-law and ex-employee and that it was Appellant No. 1 who retained the controlling interest in the said partnership firm. We do not find from the judgment any categorical evidence in this connection nor does the evidence in this connection appear to be included in the record sent to this Court. We, therefore, direct the case to be

remanded to the High Court with a direction that the High Court will give a finding as to whether Appellant No. 1 retained the effective control over the affairs of the said partnership firm. For that purpose, the High Court will, of course, have to take into account the partnership deed which, we are informed, is on the record and all other evidence which is already on the record. If the High Court finds that the evidence on the record is not adequate for giving any finding in this regard, it will be open to the High Court, if it so thinks fit and considers the same to be within its jurisdiction, to take the necessary evidence itself or direct the lower appellate court to take it. The High Court is requested to complete the matter and send its finding to this Court as early as possible and preferably within eight months of this order being transmitted to the High Court. In the meantime and till further orders eviction proceedings are stayed.

6. We may mention that we have resorted to this course because we find that if it is found that Appellant No. 1 retained effective control over the affairs of the said partnership firm to which the premises were sublet, it could well be said that he retained the possession of the premises in question even after the termination of his tenancy and hence, is covered within the wider definition of the term 'tenant' given in Sub-clause (a) of Clause (ii) of Sub-section (4) of Section 2 of the aforesaid Act.

7. The Appeal to be placed on board before a Bench of three learned Judges of this Court after the finding pursuant to this order is received from the High Court. Directions as to costs and further directions are reserved.