

A. Ranganatham Chetti and others - - - - *Appellants*
v.
M. Ethirajulu Nayudu - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 31ST OCTOBER, 1939

Present at the Hearing :

LORD THANKERTON
LORD ROMER
SIR GEORGE RANKIN

[*Delivered by* LORD THANKERTON]

This is an appeal from a judgment and decree of the High Court of Judicature at Madras, in its civil appellate jurisdiction, dated the 31st March, 1937, which affirmed a judgment and decree of that Court, in its ordinary original civil jurisdiction, dated the 8th October, 1936.

In the suit, which was filed on the 25th January, 1933, the respondent, as plaintiff, seeks delivery of possession by the appellants of a plot of land in Muthiappan Street, Georgetown, Madras, and the superstructure thereon, mesne profits, and a declaration as to the amount payable to the appellants as the market value of the superstructure, in terms of a lease by the respondent to the appellants' father and predecessor in title for a term of ten years, which expired on the 30th September, 1932.

The only question in the appeal is whether the appellants' claim that the Madras City Tenants' Protection Act, 1921 (Act III of 1922) is applicable in the present case is well-founded. Both Courts below have rejected this contention.

The respondent and his undivided brother, by lease dated the 18th October, 1912, leased the plot of land in suit to the appellants' father, for a period of ten years from the 1st October, 1912, the tenant being at liberty to erect a superstructure on the land. In fact there was already a superstructure thereon, erected by the previous lessee, from whom the appellants' father had bought it shortly before obtaining his own lease. The appellants' father improved the superstructure during his tenancy, and shortly before its expiry on the 30th September, 1922, there were negotiations which resulted in an agreement by the respondent, who had become sole owner under a partition with his brother in 1917, to give a fresh lease at an increased rent, in order that further building operations should go on.

On the 1st February, 1923, the formal lease was executed, under which the plot of land was leased to the appellants' father for a term of ten years from the 1st October, 1922, at an increased rent of Rs.100 per month, on the following recital:—

“Whereas sometime prior to the expiry of the said lease the lessor agreed to grant the lessee a new lease of the said plot of land for a period of ten years commencing from the 1st October, 1922, upon terms and conditions hereinafter appearing, and whereas the lessee has built on the said plot of land a substantial superstructure on the strength of the said agreement.”

It was provided that the lessee should always and in any event be entitled to be paid the price of the superstructure built on the said plot of land before he surrendered possession of the land, either on the expiry of the lease thereby granted or any other future lease or at any time, and that the price should be fixed according to the market value of the buildings as at the time of ascertainment and payment. It appears that, on the strength of this agreement, the appellants' father had demolished the existing building and erected a substantial structure.

The appellants' father died in 1930, and the appellants became the tenants under the lease, which expired according to its terms on the 30th September, 1932. On the 9th October, 1932, the respondent sent a notice to the appellants claiming surrender of possession and offering the present value of the superstructure as it existed at the commencement of the lease, which was put by him at Rs.3000. On the 7th November the appellants replied claiming the benefit of the Madras City Tenants' Protection Act, and disputing the valuation and the claim, and the present suit was thereafter filed by the respondent. It may be mentioned that the Trial Judge held, against the respondent, that under the lease the respondent was bound to pay the value of the superstructure as it existed at the expiry of the lease, and that the respondent accepted that decision.

The Madras City Tenants' Protection Act came into force on the 21st February, 1922, and by section 1 (3) it is provided that the Act shall apply only to tenancies created before the commencement of the Act. Under section 2 (4) “Tenant” is defined as meaning a tenant of land liable to pay rent on it, every other person deriving title from him, and includes persons who continue in possession after the termination of the tenancy. The leading provision of the Act is to be found in section 3, which provides:—

“3. Every tenant shall on ejection be entitled to be paid 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.”

Under section 6 (1) a tenant who is entitled to compensation under section 3 and against whom a suit in ejection has been instituted, may apply to the Court for an order that the

landlord shall be directed to sell the land for a price to be fixed by the Court. The appellants made an application under this section. By section 12 it is provided that nothing in any contract made by a tenant shall take away or limit his rights under this Act, provided that nothing contained in the Act should affect any stipulations made by the tenant in writing registered as to the erection of buildings, in so far as they related to buildings erected after the date of the contract.

Their Lordships are of opinion that the latter part of the definition of "tenant" in section 2 (4) refers to persons who without a tenancy title continue in possession after the termination of the tenancy, and that the benefit of the remaining sections including section 12, on which the appellants sought to rely, cannot be of avail to the appellants unless and until they have shown that the tenancy here in question was created before the commencement of the Act within the meaning of section 1 (3).

The appellants maintain that the tenancy which terminated on the 30th September, 1932, was created by the lease of 1912, the lease of 1923 being merely a continuation of the earlier lease, and they refer to the verbal agreement made before the expiry of the 1912 lease in support of this argument. But their Lordships are clearly of opinion that, though the physical possession was continuous, the possession from the 1st October, 1922, was attributable to a new tenancy, which was formally embodied in the lease dated the 1st February, 1923, the increased rent thereby provided having been paid by them from the 1st October, 1922, in terms of the verbal agreement for a lease. Their Lordships, accordingly, concur in the view of both the Courts below, that the tenancy here in question was not created before the commencement of the Act, and that the Act does not apply.

Their Lordships will humbly advise His Majesty that the appeal should be dismissed with costs, and that the judgments appealed from should be affirmed.

In the Privy Council

A. RANGANATHAM CHETTI AND
OTHERS

v.

M. ETHIRAJULU NAYUDU

DELIVERED BY LORD THANKERTON

Printed by His Majesty's STATIONERY OFFICE PRESS,
POCOCK STREET, S. E. I.

1939