

under Section 106 of the 1882 Act was valid and that the petitioners were not entitled to protection under the Tamil Nadu City Tenants Protection Act. [Para 7-8]

Locus of Petitioners – Questions raised regarding the petitioners' locus to maintain the petitions based on a testamentary instrument – Court held against the petitioners on merit without delving into the locus issue. [Para 9]

Decision – Petitions dismissed, and any interim order vacated – No order as to costs. [Para 10-12]

Referred Cases: None.

J U D G M E N T

ANIRUDDHA BOSE, J.

Delay condoned.

2. The present petitions have been filed by two nephews of one Mohideen Abdul Khadar, who died on 14.06.2019. He had interest in two blocks of lands, adjacent to each other located in Thenkasi Taluk, Kadayanallurpet within the Kadayanallur municipal limits in the State of Tamil Nadu. The petitioners bring this action in the capacity of legatees of said Mohideen. The dispute relates to title of Mohideen in respect of one block out of the two, described as first scheduled property in his plaint which triggered off the suit giving rise to this proceeding. The other part of the dispute is over retention of his possession and tenancy right in respect of second scheduled property, as described in his plaint. The first scheduled property measures approximately 15x15 sq. feet over which Mohideen claimed title whereas the second scheduled property measures approximately 15x18 sq. feet. There is some dispute on its measurement, which we shall deal with later in this judgment. In respect of the latter block of land, one Rahmath Beevi sued for delivery of vacant possession whereas Mohideen asked for protection of his possession in his suit. The original owner of both these properties was one Ameenal Beevi (since deceased)

and she had conveyed the first scheduled property to Mohideen on 16.08.1989 through a deed of sale. So far as the second scheduled property is concerned, the case of the petitioners is that it was rented out to their predecessor by Ameenal Beevi only. Said Ameenal Beevi had conveyed this property to Rahmath Beevi (since deceased) on 30.05.1995 through another deed.

3. Original Suit No. 172 of 1995 was instituted by Mohideen in the Court of Principal District Munsif Judge, Thenkasi. In this suit Mohideen claimed benefit of Tamil Nadu City Tenants Protection Act, 1921. This Statute gives certain additional protection to a class of tenants beyond what is contained in the Transfer of Property Act, 1882 (hereinafter '1882 Act'). Mohideen along with one Sahul Hameed, who also appears to have had been in occupation of part of the land conveyed to Rahmath Beevi by Ameenal Beevi had been served with notices to quit by Rahmath Beevi in terms of Section 106 of the 1882 Act both dated 11.08.1995. Mohideen wanted declaration of title to the first scheduled land and permanent injunction restraining the defendants from disturbing his peaceful possession over the second scheduled property. So far as status of first scheduled property is concerned, Mohideen's title is not in much dispute. In their counter-affidavit, petitioners claiming to be the legal representatives of Rahmath Beevi (henceforth referred to as the respondents) have taken a plea that Mohideen himself had sold the first scheduled property on 06.12.2017 to his two nephews. They appear to be the petitioners before us.

4. Rahmath Beevi's (second defendant in O.S. No.172 of 1995, represented by her legal representatives before us) stand has been that she had become owner of the second scheduled property on the basis of the aforesaid registered sale deed. Rahmath Beevi, in the suit instituted by her

(O.S. No.464 of 1995) in the same Court claimed relief of mandatory injunction seeking removal of Mohideen and Sahul Hameed from the properties specified by her. They were the first and the second defendants respectively in Rahmat Beevi's suit. In this suit, she also claimed ground rent from the defendants in that suit. In her suit, she referred to four schedules to describe the suit property representing different interests. The first schedule in O.S. No.464 of 1995 matches with the first schedule of O.S. No.172 of 1995. As regards the second scheduled property, it was Rahmath Beevi's case that it involved an area of 15x18 sq. feet. The third scheduled property in her plaint comprised of an area of 6.2x6.9 sq. feet within second scheduled land. As recorded in the judgment of the Trial Court in respect of the third scheduled property, Sahul Hameed was the tenant thereof, but he did not contest the suit. It was held by the Trial Court that three-fourth portion of the third scheduled property was within the second scheduled land and the rest of the third scheduled property fell in the first scheduled land. Said Sahul Hameed, as it appears from the cause title of this petition, is the son of Rahmath Beevi. The fourth scheduled property in the plaint in O.S. No.464 of 1995 has been described as:-

"4th Schedule

In the said number said street, bounded on the east of the road and the 3rd schedule, south of Ameenal Beevi shop, north of the 3rd schedule and the 1st schedule of properties. West of Ameenal Beevi land. Within these east to west on the northern side 15 feet, southern side 8 feet, 10 inches, South to north on the western side 11 feet 3 inches, easter side 18 feet."

5. It was the case of Rahmath Beevi that Mohideen had taken on rent the fourth scheduled land from Ameenal Beevi and put up a "temporary shop" there. The pleading in the plaint gives an impression that it was a temporary structure. In her suit, Rahmath Beevi wanted vacant possession of the fourth scheduled property and removal of the construction set up thereon. The Trial

Court granted declaration in favour of Mohideen in respect of first scheduled property. His claim on second scheduled property was dismissed. The suit instituted by Rahmath Beevi was decreed in the following terms:-

“O.S.No.464/95 is allowed with costs, it is held that the plaintiff is entitled to get the delivery of vacant possession of the 4th suit schedule property from the 1st defendant and that the plaintiff is entitled to get the delivery of vacant possession of the 3rd suit schedule property from the 2nd defendant and that in default of delivery of possession by the two persons, the plaintiff shall get the delivery of possession through court, and the 1st defendant has to pay the sum of Rs.216/- towards the damages for use and occupation of the 4th suit schedule property till the date of suit, from the date of suit till the date of payment along with 6% further interest and that the 2nd defendant has to pay the sum of Rs.216/- towards damages for the use and occupation of the 2nd schedule of property till the date of suit, from the date of suit till the delivery of possession with further interest of 6% and from the date of filing of suit till the date of delivery of the 2nd schedule of property, by the defendants, the interim income of Rs.100/- to be paid by the 1st defendant to the plaintiff and Rs.50/- to be paid by the 2nd defendant to the plaintiff and the suit is decreed.”

6. Mohideen appealed against the judgment and decree in both the suits. The First Appellate Court sustained the Trial Court’s finding in O.S. No.172 of 1995 as regards first scheduled property, but the Trial Court’s judgment on second scheduled property was set aside. The judgment and decree of the Trial Court in O.S. No.464 of 1995 was set aside. Both the Trial Court and the First Appellate Court had dealt with the matters by a common judgment (of each Court). Rahmath Beevi had filed two appeals before the High Court under Section 100 of the Code of Civil Procedure, 1908 and the High Court also disposed of both the appeals by a common judgment delivered on 25.09.2018. It is this judgment which is assailed before us by the petitioners.

7. Disputes had arisen over dimension of the second scheduled property.

The High Court, on this count, has recorded in the judgment assailed before us:-

“17. It is pertinent to observe that the major portion of the third schedule property lies in the second schedule and the lesser area alone lies in the first schedule property, hence, the 3/4th portion of the third schedule property lies in the second schedule property. It is the evidence of the first defendant that he only constructed the permanent structure and the second defendant is paying rent to him. Further, it is also the evidence of the first defendant that the second schedule property was purchased by the plaintiff and the North South measurement is 18 feet and there were road lines on the Southern side of the first schedule

property and the first schedule property is also a vacant site and it has been shown as a area with bushes. The first defendant has also deposed that he has omitted to state that the 6 feet on North South property given to Sahul Ahmeed (second defendant) for rent. It is also the clear evidence of the first defendant that there is no written document for giving rent to Sahul Hameed. Further, the said Sahul Hameed who was the tenant under first defendant, was not examined by the first defendant. Further, it is also observed that for the legal notice issued by the plaintiff, the second defendant who claimed to be his tenant has not made any reply. Hence, it has to be presumed that the second defendant Sahul Hameed was originally a tenant under the Ameenal Beevi and was never a tenant of the second defendant.”

In his cross-examination (at page 42 of the photocopy of the counteraffidavit of respondent nos.3 to 9), Mohideen had specifically stated:-

“I bought the 1st schedule property as 15 feet South - North. I don't have more than that South - North 15 feet. It is correct to be said that I don't have more than 15 feet in South - North as per Sale Agreement. It is correct to be said that the 2nd schedule property is bought by Rahmath Beevi. It is correct to be said that she bought 18 feet South - North. It is correct to be said that the East - West road is on the South of the South Mall to the 1st schedule property.”

The deed of conveyance executed by Ameenal Beevi in favour of Rahmath Beevi, the copy of which has been annexed at page 38 of the same counter-affidavit also describes the schedule of the property sold to the latter as:-

“1st Schedule Sale Property

Tenkasi Reg. Dist, Kadayanallur Sub Regr., Kadayanallur village, 23rd Ward, Town Municipality, in the 1st, 11th No. Road Street, New Ward No. 11, Street No.1, the plot on the east side, the boundaries are:

East of 11th No. Main Road; West of my own plot; north of Abdul Khader Muhaideen's plot; South of my own site; within these 15 feet on the East-West side, 18 feet on the South- North, the plot of 270 sq.ft, in S.No. 59 to 61. The value is Rs.14,850/-”

Thus, we are of the opinion that the second scheduled property in Rahmath Beevi's plaint showing measurement of 15 feet (east-west) and 18 feet

(north-south) is the correct measurement thereof. Therefore, we do not find any reason not to accept this measurement.

8. The other points of law that we shall address now is on the question of validity of notice under Section 106 of the 1882 Act and whether the petitioners were entitled to protection of the Tamil Nadu City Tenants Protection Act or not. The High Court found both the points in favour of the predecessor of the respondents. It has been held by the High Court:-

“14....It is not in dispute that the first schedule property in both the suits are one and the same. The second schedule property is shown with the measurements 15x15 ft. in O.S.No.172 of 1995, whereas, according to the plaintiff in O.S.464 of 1995, it is 15x18. The first defendant claimed that he entered into a lease deed with Ameenal Beevi as regards second schedule property vide Ex.A2 on 20.03.1985 and he made permanent construction over it and that he has been paying rent to the in respect of the said property to the sons of Ameenal Beevi and therefore, according to him, he is entitled to the protection under City Tenants Protection Act. While so, it is pertinent to note that the plaintiff purchased the second schedule property from the original owner Ameenal Beevi by way of sale deed dated 30.05.1995 under Ex.A1 and after purchase, she issued quit notice dated 1.10.1995 under Section 106 of the Transfer of Property Act to the defendants 1 and 2. It is also pertinent to note that the first defendant has purchased the first schedule property from Ameenal Beevi, in respect of which, he claimed declaration of title, which was rightly granted by the trial Court. The first defendant only claims tenancy rights over the second schedule property and sought for protection under City Tenants Protection Act. According to the first defendant, the sale deed executed by the Ameenal Beevi in favour of the plaintiff under Ex.A1 dated 30.05.1995 in respect of second schedule property, is not legally valid and it is not binding upon him. However, in order to prove the same, the first defendant has not produced any documents nor he proved that the original owner Ameenal Beevi had not sold the property to the plaintiff. Therefore, after purchase the second schedule property from Ameenal Beevi, the plaintiff has rightly issued the quit notice under Section 106 of the Transfer of Property Act to the defendants 1 and 2 which, in the opinion of this Court, is valid since the plaintiff stepped into the shoes of Ameenal Beevi after having purchased the second schedule property and after issuing quit notice, she also terminated the tenancy. Hence, the first defendants is not entitled to the benefits under City Tenants Protection Act.

Accordingly, these issues are answered in favour of the plaintiff and against the defendants.”

We do not find any reason to interfere with the said finding returned by the High Court. The High Court, in substance, retained the decision of the Trial Court in Mohideen’s Suit (O.S. No.172 of 1995) in relation to second scheduled property. As regards Rahmath Beevi’s suit (O.S. No.464 of 1995), the High Court held:-

“19. In view of the above discussion, the plaintiff in O.S.No. 464 of 1995 is entitled for recovery of possession of fourth schedule of property which is also the second schedule property in O.S.No. 172 of 1995. Accordingly, the first defendant in O.S.No.464 of 1995 has to pay the rent at Rs.100/- towards fourth schedule property and the second defendant has to pay Rs.50/- and the plaintiff in O.S.No.464 of 1995 is entitled to mesne profits at Rs.150/- from the date of the suit till the date of judgment payable by the defendants 1 and 2.”

9. Before us, arguments were also advanced as regards locus of the petitioners to maintain these petitions. The second appeal by the High Court was decided on 25.09.2018 and the present petitions have been filed on 03.03.2020. The petitioners are staking their claim as legatees of deceased Mohideen, who passed away on 14.06.2019. The petitioners claim that the will had been executed on 18.04.2018 bequeathing the testator’s possession and enjoyment over the second scheduled property. On behalf of the respondents, it has been argued that without proving the said testamentary instrument, the petitioners could not challenge the judgment of the High Court in the capacity of legatees. It was further argued that tenancy could not be a subject of disposition under any testamentary instrument. So far as locus of the petitioners is concerned, this Court had allowed their plea for substitution by an order passed on 31.08.2021. Now by proceeding on the basis that the petitioners were substituted would not determine finally their locus to maintain the present petitions deriving their right from the said

testamentary instrument. But as we have held against the petitioners on merit, we do not need to examine these two issues. The present petitions accordingly stand dismissed.

- 10.** Interim order, if any, shall stand vacated in the above terms.
- 11.** Pending application(s), if any, shall stand disposed of.
- 12.** There shall be no order as to costs.

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