



S.A.No.767 of 2008

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.767 of 2008

and

M.P.No.1 of 2008

T.Parthasarathy

...Appellant

Vs.

1.M/s.Arulmighu Parthasarathy Swamy Thirukoil,
Rep. By its Assistant Commissioner / Executive Officer,
Having its Office at Temple Premises, Triplicane,
Chennai – 600 005.

2.The Commissioner,
Corporation of Chennai,
Ribbon Buildings, Chennai – 600 003.

...Respondent

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 20.12.2007 made in A.S.No.573 of 207 on the file of the III-Additional City Civil Court, Chennai, confirming the judgment and decree dated 11.09.2006 made in O.S.No.7900 of 1998 on the file of the II-Assistant City Civil Court, Chennai.-



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For Appellant : Mr.S.Janarthanam
For Respondent : Mr.D.R.Shivakumar for

Mr.S.D.Ramalingam for R1

Ms.P.T.Ramadevi for R2

J U D G M E N T

The defendant appeals against the order of ejectment passed by the II-Assistant City Civil Court, Chennai in O.S.No.7900 of 1998 dated 11.09.2006, which was confirmed by the III-Additional City Civil Court at Chennai in A.S.No.573 of 2007 dated 20.12.2007.

2.The facts leading to the appeal are that the plaintiff / Arulmighu Parthasarathy Swamy Thirukoil represented by its Assistant Commissioner / Executive Officer is the owner of the suit schedule mentioned property. The tenancy was granted in favour of one G.G.Thiruvengdam Pillai for a monthly rent of Rs.12/-. The said Thiruvengadam Pillai passed away in the year 1980. Thereafter, the tenancy was not transferred in the name of his legal heirs. The appellant without permission of the landlord / Temple



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authorities started putting up construction over the existing ground and first floor. Immediately, the Temple authorities have proceeded against this unauthorized and illegal construction. It is unauthorized and illegal, because, according to the Temple, being the owner of the land, their permission should have been taken prior to putting up of the construction.

3.Despite a letter / Ex.B2 dated 01.04.1998, the appellant proceeded ahead and completed the construction. Consequently, the respondent / plaintiff issued notice to quit and deliver vacant possession on 03.07.1998. This was responded too by the appellant on 20.07.1998. Be on the safer side, as the first notice had been sent on certificate of posting, the second notice was sent through Registered Post with acknowledgment due on 21.07.1998. As the construction had been completed, the plaintiff filed a suit sought for the following reliefs:-

a) to deliver vacant possession.

b) to pay damages from the date of plaint till date of deliver of possession at the rate of Rs.1,000/- per month.



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- c) for permanent injunction restraining the defendant from putting up any further construction in and over the suit schedule property without the permission and sanctioned plan from the Corporation of Chennai and
- d) for mandatory injunction to remove the illegal, additional construction put up by the 1st defendant.

4.Detailed written statement was filed whereby, the fact that Thiruvengadam Pillai was the tenant under the Temple was admitted. The plea of the defendant was he had sought for transfer of lease and tenancy in his favour and it was the Temple, which had not transferred the tenancy. He further pleaded that the other legal heirs had not been impleaded and therefore, the suit is untenable.

5.It is pertinent to note here that in the reply given to the issuance of 106 notice was not denied by the tenant. He would take a plea that since constitutional validity of the amendment made to the Madras City Tenants Protection Act is pending before the Full Bench, the eviction petition is not maintainable. This position does not exist any more as the constitutional validity has been upheld subsequently.



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6. The Trial Court framed the following issues for consideration:

1.வழக்கு அவசியமான தரப்பினரை சேர்க்கவில்லை என்ற குறைக்கு உள்ளாகிறதா?

2.வாதிக்கு சுவாதீன ஒப்படைப்பு கிடைக்கக் கூடியதா?

3. வாதிக்கு உறுத்துக்கட்டளைகள் கிடைக்கக் கூடியதா?

4.வாதிக்கு என்ன பரிகாரம் கிடைக்கக் கூடியது?

7.Before the Trial Court, the plaintiff examined one C.Sellappa as P.W.1 and marked Exs.A1 to A12. The 1st defendant examined himself as D.W.1 and marked Exs.B1 to B3. After a detailed trial, the Trial Court found that the other legal heirs, even on the pleading of the defendant, had released their right in his favour. Therefore, the objection that the other legal heirs are not been impleaded was rejected. Consequently, the suit was held to be maintainable with the appellant / defendant as the sole defendant.

8.With respect to eviction, the Trial judge found that the construction was unauthorized and therefore, it applied provisions of



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Section 106 of the Transfer of Property Act and granted reliefs with respect to eviction as the notice issued under Section 106 was found to be proper.

The suit was decreed with respect to eviction.

9. Aggrieved by the same, the appellant preferred A.S.No.573 of 2007 on the file of the III-Additional City Civil Court, Chennai. The lower Appellate Court concurred with the findings of the Trial Court and dismissed the appeal. Against the concurrent findings, the appellant is before this Court. This Second Appeal was not admitted and only notice of motion was ordered on 21.05.2008.

10. I have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents.

11. The issue to be decided is whether the notice issued under Section 106 of the Transfer of Property Act is valid. The 2nd notice had been issued on 03.0.1998 and 21.07.1998. The notice had called upon the appellant to quit and deliver vacant possession. The notices have been



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served and reply was also issued to the same. No tenable defence has been taken by the defendant, apart from the fact that he has been in long occupation of the property and that the Temple authorities had permitted him to put up construction through letter dated 26.05.1986 (Ex.B1).

12.I have gone through Ex.B1 / the letter, it only says that the Temple authorities have no objection, if the tenant makes “improvements to the property”. Ex.B1 does not give a right to the appellant to put up additional construction. This comes directly within the mischief contemplated under Section 108(b) of the Transfer of Property Act. As per this Section, no tenant is entitled to put up permanent structure without the lessor's consent.

13.Admittedly, in this case, the construction put up by the appellant on the second floor, which is of permanent nature, was not with the consent or permission of the Temple authorities / owner of the property. Hence, it is a breach of Section 108(b), which is a negative in characters. Ex.B1 has already pointed out, it does not come to the rescue the defendant.



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Ex.B1 was issued on 26.05.1984 whereas the construction had commenced in March and April, 1998.

14. Interpreting this question, a Division Bench of this Court in **Doraikannu Ammal Vs. T.Ramaswami Mudaliar** reported in **50 LW Page 705** has held that by virtue of Clause “o” and “p” of 108 of the Transfer of Property Act, buildings cannot be allowed to be constructed by the Tenant without the express permission of the Landlord. The Court had also held, since Indian Law had crystalized the terms as per Section 108, the principles of law laid down by the English Courts are inapplicable. Apart from this, there is a judgment of the Kerela High Court in **Kurian and Another Vs. Job and Others** reported in **AIR 1975 Ker 175** wherein, the learned Single Judge of the Kerela High Court had held, in case of negative covenant or stipulation, the Court will in general enforce compliance by injunction with regard to the question of convenience or the amount of damage caused. One the fact is clear that the construction was without permission, therefore, the stipulations of law follows. Hence, the tenant cannot put up any construction.



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15.The learned counsel appearing for the appellant would invite the Court to frame the following substantial questions of law:-

“1.Whether the Lower Appellate Court is correct in law in confirming the judgment and decree of the II-Assistant City Civil Court in the light of the letter dated 26.05.1984 marked as Ex.B1 in which the 1st respondent has given “No Objection” for constructing a superstructure over the property?

2.Whether the Lower Appellate Court is correct in holding that the Appellant is only a Trespasser and not a tenant?

3.Whether the Lower Appellate Court ought to have considered Ex.B3, Construction Plan issued by the 1st respondent while granting mandatory injunction ?

4.Whether Lower Appellate Court is right in law in directing the Appellant herein to demolish the superstructure and handover vacant possession to the 1st respondent herein?”

The questions of law raised in the appeal, do not arise for consideration at all.



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16.I have gone through the questions of law suggested. In a clear case where 106 notice under the Transfer of Property Act has been issued, properly served, responded too and when there is a specific breach of 108(b) of the Transfer of Property Act, none of these questions of law arise for consideration. Therefore, I am not inclined to admit the Second Appeal. Hence, this Second Appeal is dismissed, the judgment in O.S.No.7900 of 1998 dated 11.09.2006 as confirmed by the judgment and decree in A.S.No.573 of 2007 dated 20.12.2007 are hereby, confirmed. The suit shall stand decreed as prayed for. No costs.

17.The learned counsel appearing for the appellant would request that since the appellant has been in occupation of the property for decades therefore, he wants some breathing time to quit and handover possession. He had sought for one year time, which I have not inclined to give. The appellant is granted six months time to quit and handover peaceful possession of the property. If he wants six months time to vacate, he shall file an affidavit of undertaking to vacate in six months. Such affidavit shall



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be filed on 31.03.2023. In case, he does not file an affidavit of undertaking on or before 31.03.2023, the respondent is free to execute the decree from 01.04.2023.

17.03.2023

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Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order

Nuetral Citation : Yes/No

To:-

1.The III-Additional City Civil Court,
Chennai.

2.The II-Assistant City Civil Court,
Chennai.



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V.LAKSHMINARAYANAN, J.

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