



S.A.(MD)No.126 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.06.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

S.A.(MD)No.126 of 2023

and

C.M.P.(MD)No.3635 of 2023

Pitchai

... Appellant

/Vs./

1.Arulmigu Shri Pethanareeshwarar
Pethanayagiamman Thirukovil,
Represented through its Haqdars,
V.K.Palanirajan @ Radha.

V.Subbiah (died)
(Amended as per order in I.A.No.3 / 2021 dated 21.09.2021.)

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the Judgment and Decree dated 11.10.2022 made in Appeal No.51 of 2016 on the file of the Sub Court, Sankarankovil, reversing the judgment and decree dated 15.02.2016 made in O.S.No.234 of 2010 on the file of the Judicial Magistrate cum District Munsif Court, Sivagiri, Tirunelveli District.



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For Appellant : Mr.P.S.Sundaram

For Respondent : Mr.K.Jeyamohan

JUDGMENT

This second appeal has been filed challenging the concurrent findings of the Courts below. The appellant is the defendant in the suit in O.S.No.234 of 2010 on the file of the Judicial Magistrate cum District Munsif Court, Sivagiri, Tirunelveli District. The respondents are the plaintiffs in the suit, in which, the plaintiffs 2 and 3 were representing the first plaintiff temple. The suit was filed for recovery of possession as well as for damages for unlawful use and occupation of the suit schedule property by the appellant / defendant. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

2. The case of the plaintiffs is that the defendant is their tenant, who had committed willful default in payment of rent for several years. In such circumstances, they have filed a suit for recovery of possession and for damages for unlawful use or occupation of the suit schedule property by the defendant.



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3. Before the trial Court, the plaintiffs filed 14 documents, which were marked as Exs.A1 to A14. On the side of the plaintiffs, the authorised representative cum trustee of the temple, namely, Palanirajan @ Radha was examined as P.W.1. On the side of the defendant, the defendant himself was examined as D.W.1 and three documents were filed, which were marked as Exs.B1 to B3 and the details are as follows:

வாத் தர்ப்பு சான்றாவணங்கள்

வ.எண்	தேதி	சான்றாவணங்கள்
1		அஞ்சல் ஒப்புக்கை அட்டை
2	07.09.2010	வாதிகள் பிரதிவாதிக்கு அனுப்பிய அறிவிப்பு நகல் அஞ்சலக ரசீதுடன்.
3	24.04.2010	அ.வ.எண்.97/2005 வழக்கில் பிறப்பிக்கப்பட்ட சமாதான உடன்படிக்கையுடன் கூடிய லோக் அதாலத் தீர்ப்பாணை சான்றிட்ட நகல்
4	21.09.2010	பிரதிவாதி வாதிகளுக்கு அனுப்பிய பதிலறிவிப்பு
5		வாதிகள் கோவில் அத்தார்கள் கொடுத்த நாளிதழ் விளம்பரம்
6	03.10.2013	மதுரை மெட்ராஸ் உயர்நீதிமன்ற மதுரை கிளையில் W.P. (MD)Nos.13573/10, 14162/10, 14286/10-ல் பிறப்பிக்கப்பட்ட உத்தரவின் சான்றிட்ட நகல்.
7	05.02.2013	இந்நீதிமன்ற அ.வ.எண்.245/10 வழக்கின் தீர்ப்புரை சான்றிட்ட நகல்.
8	27.01.2014	சங்கரன்கோவில் சார்பு நீதிமன்ற மே.மு.வ.எண்.8/2013 வழக்கில் பிறப்பிக்கப்பட்ட தீர்ப்புரை சான்றிட்ட நகல்.
9	05.02.2013	இந்நீதிமன்ற அ.வ.எண்.245/10 வழக்கின் தீர்ப்புரை சான்றிட்ட நகல்.
10	10.07.2009	திருநெல்வேலி முதன்மை மாவட்ட நீதிமன்ற Transfer P.P.No.80/2008-ல் பிறப்பிக்கப்பட்ட உத்தரவு சான்றிட்ட நகல்.



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11	17.09.2009	திருநெல்வேலி முதலாவது கூடுதல் மாவட்ட நீதிமன்ற Trust O.P.190/2007-ல் பிறப்பிக்கப்பட்ட தீர்ப்பாணை கட்டளையின் சான்றிட்ட நகல்.
12	10.06.2010	மதுரை மெட்ராஸ் உயர்நீதிமன்ற மதுரை கிளையில் W.P. (MD)No.6216/09-ல் பிறப்பிக்கப்பட்ட உத்தரவின் சான்றிட்ட நகல்.
13	10.07.2015	மதுரை மெட்ராஸ் உயர்நீதிமன்ற மதுரை கிளையில் S.A. (MD)No.880/14-ல் பிறப்பிக்கப்பட்ட உத்தரவின் சான்றிட்ட நகல்.
14	10.07.2015	மதுரை மெட்ராஸ் உயர்நீதிமன்ற மதுரை கிளையில் S.A. (MD)No.880/14-ல் பிறப்பிக்கப்பட்ட உத்தரவின் சான்றிட்ட நகல்.

பிரதிவாதி தரப்பு சான்றாவணங்கள்

வ.எண்	தேதி	சான்றாவணங்கள்
1	27.11.2005	வாடகை ரசீது
2		தொழில் வரி ரசீதுகள் எண்ணம் – 7
3		சங்கரன்கோவில் முத்திரை ஆய்வாளர் வழங்கிய ரசீதுகள் எண்ணம் – 6

4. The defendant contested the suit by filing written statement. He had contended that the suit is not maintainable in view of Section 92 of CPC. The trial Court rejected the said contention by holding that the said provision will not apply to the present case, as it is the suit filed by the plaintiffs against a third party insofar as the recovery of possession of the temple premises is concerned, which is a private trust. The trial Court



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also held that being a private trust, the suit filed by the plaintiff temple is maintainable and Section 92 of CPC does not get attracted.

5. The defendant, in his written statement, has admitted that he is a tenant under the plaintiff temple. He has also admitted that he has not paid rent to the plaintiffs on time. Based on the oral and documentary evidence available on record and by holding the lok adalat award dated 24.04.2010 passed in O.S.No.97 of 2005 on the file of the Sub Court, Sankarankovil, the trial Court held that the representatives of the plaintiffs (trustees) are authorised to file the suit and the contention of the defendant that without proper authorisation the suit was filed, came to be rejected by the trial Court.

6. As seen from the written statement filed by the defendant, a specific stand was taken by the defendant that without proper authorisation, the suit was filed and therefore, the suit was not maintainable. The lok adalat award dated 24.04.2010 (Ex.A3) makes it clear that Mr.Palanirajan @ Radha and one Chokkalingam, the trustees of the plaintiff temple are authorised to initiate legal action against the



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defendant for either non payment of rent or for recovery of possession.

Only in accordance with the said lok adalat award dated 24.04.2010 (Ex.A3), Mr.Palanirajan @ Radha and Chokkalingam on behalf of the plaintiff temple have filed the suit against the defendant seeking for recovery of possession and for damages for unlawful use and occupation.

7. The defendant had produced rental receipt of the year 2005, which was marked as one of the exhibits and after giving due consideration to the same, the trial Court held that the plaintiffs are not entitled for damages for unlawful use and occupation, as defendant is not an encroacher. However, in view of the admitted fact that the defendant is a willful defaulter in payment of rent to the plaintiff temple for a long number of years, the trial Court partly decreed the suit in favour of the plaintiffs by granting the relief of recovery of possession, but, however rejected the relief of damages by its judgment and decree dated 15.02.2016 in O.S.No.234 of 2010 on the file of the Judicial Magistrate cum District Munsif Court, Sivagiri, Tirunelveli District.



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8. This Court is of the considered view that the trial Court has rightly passed the judgment and decree dated 15.02.2016 in O.S.No.234 of 2010 and it does not find infirmity in the findings rendered therein, as the defendant has not produced any contra evidence to disprove the claim of the plaintiffs for recovery of possession. The plaintiffs have proved beyond doubt that the defendant is a willful defaulter on payment of rent and has been in arrears for a long number of years.

9. Aggrieved by the judgment and decree dated 15.02.2016 passed by the Judicial Magistrate cum District Munsif, Sivagiri, Tirunelveli District, the defendant in the suit filed the first appeal before the Sub Court, Sankarankovil in A.S.No.51 of 2016. The lower appellate Court namely Sub Court, Sankarankovil, also confirmed the findings of the trial Court by its judgment and decree dated 11.10.2022 in A.S.No.51 of 2018.

10. This Court also perused and examined the judgment and decree of the lower appellate Court dated 11.10.2022 in A.S.No.51 of 2016. This Court is of the considered view that the lower appellate Court has rightly confirmed the findings of the trial Court and has rightly



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dismissed the first appeal filed by the defendant in the suit. Aggrieved by the concurrent findings of the Courts below, this second appeal has been filed by the defendant in the suit.

11. The only substantial question of law raised by the appellant in the grounds of this appeal is that the plaintiff temple has filed the suit without proper authorisation. According to the learned counsel appearing for the appellant, all the trustees of the plaintiff trust have not signed the plaint and therefore, the suit is not maintainable for lack of proper authorisation.

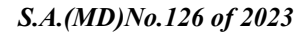
12. However as seen from the lok adalat award dated 24.04.2010 (Ex.A3), it is clear that all the trustees of the plaintiff temple in an earlier dispute among themselves had resolved the same through the lok adalat award by agreeing that the plaintiff temple's representatives, Mr.Palanirajan @ Radha and Chokkalingam are authorised to initiate legal action against the defendant. Only based on the said authorisation, the suit has been filed by Mr.Palanirajan @ Radha and Chokkalingam acting on behalf of the plaintiff trust.



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13. Admittedly, lok adalat award dated 24.04.2010 (Ex.A3) has attained finality. The defendant has also not challenged the lok adalat award dated 24.04.2010 (Ex.A3), even though the learned counsel appearing for the appellant would state that he is not a party to the lok adalat award. When a specific stand is taken that the plaintiff temple's representatives are not authorised to file the suit and that too when as seen from the lok adalat award dated 24.04.2010 (Ex.A3), all the trustees have resolved the dispute among themselves through the said lok adalat award dated 24.04.2010 (Ex.A3), necessarily if the defendant is aggrieved by the improper filing of the suit by the representatives of the plaintiff temple, Mr.Palanirajan @ Radha and Chokkalingam, the defendant ought to have challenged the lok adalat award dated 24.04.2010 (Ex.A3). Having not done so, the question of raising such an issue in this second appeal under Section 100 of CPC and the question of interference by this Court with the findings at this stage will not arise, that too when both the Courts below have concurrently held based on the oral and documentary evidence available on record and based on the lok adalat award dated 24.04.2010 (Ex.A3) that the plaintiffs' representatives are authorised to file the suit.



15. For the foregoing reasons, there is no merit in this second appeal and accordingly, this Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

19.06.2023

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TO:

- 1.The Sub Court, Sankarankovil.
- 2.The Judicial Magistrate cum District Munsif Court,
Sivagiri, Tirunelveli District.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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ABDUL QUDDHOSE, J.

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Judgment made in
S.A.(MD)No.126 of 2023

Dated:
19.06.2023