



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-07-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

**SA No. 759 of 2014
and M.P. No.1 of 2014**

1. M.Ramachandran
S/o Murugesha Mudaliar Res At 22a, Azwar
Murugappa Mudali St, Gudiyattam Town ,
Vellore Dist
2. M.Rajaram S/o Murugesha Mudaliar
Res At 22a, Azwar Murugappa Mudali St,
Gudiyattam Town , Vellore Dist

..Appellant(s)

Vs

1. A.T.Thulasivaman(died)
S/o Dakshinamurthy, No. 82, Arjuna Mudali St,
Gudiyattam Town, Vellore Dist
2. A.T.Loganathan,
S/o A.T.Thulasivaman Gudiyattam-632602.
3. A.T.Anandan,
S/o A.T.Thulasivaman,
4. M.Dhanalakshmi,
W/o M.Mani,
5. S.Hemalatha,
W/o T.Saravanan, Rr 2 To 5 Res. At No.81
Rajendra Singh Street, Sunnambupet,
Gudiyattam-632602, Vellore District.
[The respondents 2 to 5 brought on record
as legal representatives of the deceased 1st
respondent vide order dated 17.03.2020 made in
C.M.P. No. 16162/2018]

..Respondent(s)



Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, as against the Judgment and Decree of the learned Subordinate Judge, Gudiyatham, Vellore in A.S.No.29 of 2013 dated 24.03.2014 confirming the Judgment and Decree of the learned District Munsif, Gudiyattam in O.S.No.166 of 2011 dated 20.06.2013.

For Appellant(s): M/s. K.A. Ravindran=

For Respondent(s): No appearance

JUDGMENT

The Second appeal has been preferred as against the decree and judgment passed by the Sub Court, Gudiyatham in A.S. No.29 of 2013 dated 24.03.2014, wherein the respondents herein filed the said appeal as against the decree and judgment passed by the trial Court in O.S. No.166 of 2011 dated 20.06.2013.

2. In fact, the appellants herein, being the Plaintiffs, have filed the said Suit in O.S. No.166 of 2011 before the trial Court for directing the defendants to vacate the schedule property and to handover the possession of the property after removal of superstructure put up by the 1st defendant and for costs. The said Suit was decreed by the trial Court and the First Appellate Court, in appeal, reversed the judgment of the trial Court and dismissed the Suit. Aggrieved by the said decree and judgment passed by the First Appellate Court, the present second appeal has been filed by the Plaintiffs.

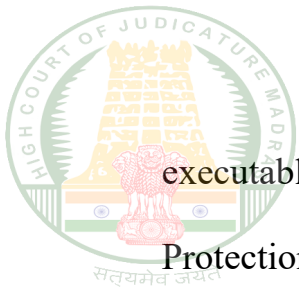


3. The *case of the Plaintiffs* before the trial Court is that the Suit property is the ancestral property of the Plaintiffs. Through a registered Family Partition Deed dated 07.02.1913, the predecessors and family members of the Plaintiffs, dedicated the above said property to Sri Radha Rukmani Sametha Agilandakodi Brammanda Nayagar Sri Krishnamoorthy Samy Bajanai Koil and the same was maintained by their family and the same was entrusted to Narayanasamy Mudaliar, who is the grandfather of Plaintiffs. From the income derived through the said property, the said temple was maintained and managed by the Plaintiffs' forefathers. The said Narayanasamy died leaving behind his three sons namely Vajjiravelu, Venkatachalam and Murugessa Mudaliyar, who were maintaining the temple and the schedule property. While so, on 02.03.1972, they executed a registered Lease Deed leasing the schedule property, vacant site, to the 1st defendant and his deceased brother Krishnamoorthy on a monthly rent of Rs.90/-. Pursuant to the Lease Deed, the defendant had put up constructions and enjoyed the schedule property. Since they had committed default in paying rent from March 1980, the Plaintiffs' father Murugesu Mudaliyar and his two brothers caused a notice to the defendant on 04.12.1983 terminating the tenancy and called upon them to hand over the possession of the schedule property. Thereafter, the Plaintiffs' father and his two brothers had filed a Suit for eviction in O.S. No.117 of 1984 on the file of District Munsif, Gudiyattam. In the said Suit, the 1st defendant and his brother filed an interlocutory application in I.A. No.828 of 1984 claiming



benefits under the provisions of City Tenant Protection Act and the said petition was allowed on 12.08.1994. The said Suit was dismissed for default on 25.09.2022.

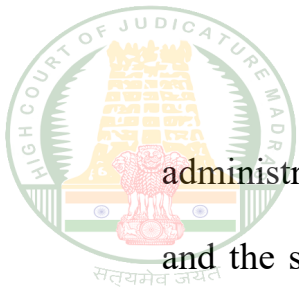
3.1. The said Murugesu Mudaliar died leaving the Plaintiffs as his legal heirs. The said Vajjiravelu Mudaliar left to Madras a long ago and settled therein permanently and he died leaving behind his son Gnanaprakasam, who also died 15 years ago. Further, the said Venkatachalam Mudaliar went to Arcot Town 20 years ago and settled therein permanently and he died in the year 2000 leaving behind his only son Krishnaraj. After the departure, the said Vajjiravelu Mudaliar and Venkatachalam Mudaliar, the Plaintiff's father Vajjiravelu Mudaliar had managed the said temple. After the death of Murugesu Mudaliar, the Plaintiffs are in management of the temple. After the termination of tenancy, the 1st defendant was in illegal occupation and enjoyment of the Suit schedule property. The Suit property is situated in the middle of Gudiyattam Town and hence the 1st defendant is liable to pay a sum of Rs.1,000/- per month towards use and occupation of the Suit schedule property. The District Munsif, Gudiyattam, vide order passed in O.S. No.70 of 1999 dated 22.03.2011, granted permanent injunction against the Plaintiffs from alienating the schedule property either to the defendant or to any one, thereby, the order passed in I.A. No.828 of 1984 in O.S. No.117 of 1984 has become in-



executable due to the amendment made by the Government in the City Tenants Protection Act. Therefore, the Plaintiffs filed the Suit.

WEB COPY

4. The *case of the defendants* before the trial Court is that it is true that the property belongs to the Plaintiffs and the 1st defendant entered into lease through a Lease Deed dated 02.03.1972 for a sum of Rs.90/- per month. It is denied that there was default of rent, thereby the Plaintiffs issued a notice. The filing of the Suit and the order passed in I.A. No.828 of 1984 are admitted. In fact, the 1st defendant and his brother constructed a superstructure in the building and they were in possession and enjoyment of the property and they had also paid monthly rent without default. There was a dispute between the father of the Plaintiffs and his two brothers, thereby, a Suit in O.S. No.337 of 1984 had been filed by the father of the Plaintiffs and his two brothers as against the 1st defendant. In that Suit, an I.A. No.828 of 1984 was filed and the same was allowed. As per the order, when the 1st defendant was ready to purchase the suit property, the family members of the Plaintiffs and the villagers raised objection, thereby, the 1st defendant paid rent to the villagers. Further, as per the order passed in E.P. No.531 of 1994 in O.S. No.345 of 1990, the 1st defendant paid rent and he also expended for temple festivals. The defendants are paying rent without any delay. The said Suit in O.S. No.337 of 1984 was dismissed for default. The Suit in O.S. No.70 of 1999 was filed by the

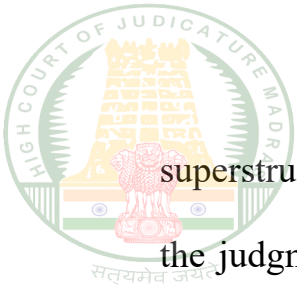


administrators of the temple. For the above said Suit, no cause of action arose and the said Suit hits by *res judicata*. The Plaintiffs have no right to file the Suit. The other sharers of the property are also proper and necessary parties to the Suit. Thereby, the Suit is bad for non-joinder of necessary parties. The plaintiffs have no right or title over the property. In order to vacate the defendants, the present Suit has been filed with false allegations. Therefore, the Suit is liable to be dismissed.

5. Based on the above said pleadings and after hearing both sides, the trial court has framed the following **issues** for trial:-

1. *Whether the Suit is hit by res judicata?*
2. *Whether the Suit is bad for jon-joinder of necessary parties?*
3. *Whether the Plaintiffs entitled to possession as prayed for?*
4. *To what reliefs, the plaintiff is entitled to”*

6. Before the trial court, on the side of the plaintiffs, witness P.W.1 was examined and marked exhibits, Exs.A.1 to A.3. On the side of the defendants, witness D.W.1 and DW2 were examined and marked exhibits, Exs.B.1 to B.2. The trial court after considering the evidences adduced on both sides and perusing the records, decreed the Suit and directed the defendants to vacate the Suit property and to handover the same to the Plaintiffs after removal of



superstructure put up by the 1st defendant within two months from the date of the judgment. Aggrieved by the said decree and judgment passed by the trial Court, the 1st defendant had preferred an appeal before the First Appellate Court in A.S. No.29 of 2013 on the file of the Subordinate Judge, Gudiyattam, Vellore District on various grounds.

7. The First Appellate Court has framed the following *points for determination*:

1. Whether the decree and judgment passed by the trial Court in O.S. No.166 of 2011 are liable to be set aside?

2. Whether the appeal has to be allowed or not?

8. After hearing both sides and perusing the records, the First Appellate Court reversed the judgment passed by the trial Court and dismissed the Suit. Aggrieved by the said Decree and Judgment passed by the First Appellate Court, the present Second Appeal has been filed by the Plaintiffs. This Court, at the time of admitting the second appeal, formulated the following Substantial Question of Law:-



1. *Whether the Temple is being maintained with the income derived from the Suit property, whether the Lower Appellate Court is right in dismissing the Suit for recovery of possession from the respondent / defendant, who is admittedly a wilful defaulter?*

2. *When the Lower Appellate Court has given a finding that the respondent / defendant is a defaulter and he is not having good intention to pay the rent over 30 years, whether the Lower Appellate Court is right in dismissing the Suit by reversing the judgment of the trial Court?*

3. *When the lease is fixed for a specific period of 10 years, which expired as early as on 02.03.1982 and the respondent / defendant is not having any right to continue in possession, whether the Lower Appellate Court is right in dismissing the Suit for want of notice under Section 106 of Transfer of Property Act, 1882?*

9. For the sake of convenience and brevity, the parties herein are referred as plaintiffs and defendants, as referred before the trial Court.

10. The learned counsel appearing for the appellants would submit that originally the Suit property belonged to the Plaintiffs' family by ancestrally. The property was dedicated to Sri Radha Rukmani Sametha Agilandakodi Brammanda Nayagar Sri Krishnamoorthy Samy Bajanai Koil and the management of the said temple was entrusted to one Narayanasamy Mudaliar, who is the grandfather of Plaintiffs. The said Narayanasamy Mudaliar died leaving behind his three sons namely Vajjiravelu, Venkatachalam and



Murugessa Mudaliyar. On 02.03.1972, they executed a registered Lease Deed leasing the schedule property vacant site to the 1st defendant and his deceased brother Krishnamoorthy for a monthly rent of Rs.90/-. Based on the said lease deed, the 1st defendant and his deceased brother had put up superstructure in the said property and thereafter, they had not paid rent properly. Thereby, the above said Vajjiravelu, Venkatachalam and Murugessa Mudaliyar terminated the lease granted to the defendants through a notice dated 04.12.1983 and thereafter, they had filed a Suit in O.S. No.337 of 1984. In the said Suit, the 1st defendant and his brother filed an interlocutory application in I.A. No.828 of 1984 claiming benefits under the provisions of City Tenant Protection Act and the said petition was allowed on 12.08.1994. In pursuant to the order passed in the said I.A. No.828 of 1984, the defendants had not paid the rent regularly and no steps were not taken to vacate them. The defendants without paying rent, refused to handover the possession of the property to the Plaintiffs. The property is not in use and it is in dilapidated condition. The Plaintiffs have filed the Suit in O.S. No.166 of 2011 as against the defendants before the trial Court. In this case, before the trial Court, the Plaintiffs examined P.W.1 and marked exhibits, Exs.A.1 to A.3. On the side of the defendants, witness D.W.1 and DW2 were examined and marked exhibits, Exs.B.1 to B.2. Based on the oral and documentary evidences adduced on either side, the trial Court decreed the Suit by holding that the defendants have no any right to remain in possession of the property without paying the rent.



10.1. Whereas the First Appellate Court, without considering the evidences in a proper perspective manner, dismissed the Suit on the ground that the Suit has been filed without impleading other legal heirs of the family members of the Plaintiffs and no notice under Section 106 of Transfer of Property Act has been issued. In fact, the Suit has been filed for recovery of possession. For maintaining the Suit for recovery of possession, all sharers are not necessary and as far as the notice under Section 106 of Transfer of Property Act is concerned, the period of lease was fixed for 10 years and after expiry of lease period, the possession of the defendants is illegal and thereby, notice under Section 106 of the Transfer of Property Act is not required, as already the lease was terminated. Without considering the same, the First Appellate Court has allowed the appeal by dismissing the Suit and thereby, the decree and judgment passed by the First Appellate Court are liable to be set aside by restoring the decree and judgment passed by the trial Court.

11. There is no representation for the respondents. Already ample chances were given to them, despite they have not argued the matter.

12. Therefore, this Court heard the appellant side, perused the entire materials available on record and passed the order.



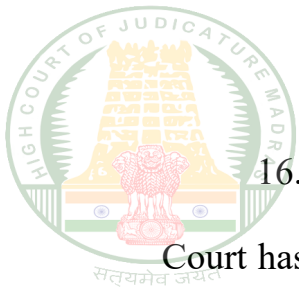
13. In this case, there is no dispute that the Suit property is the ancestral property of the Plaintiffs and the 1st defendant and his deceased brother were tenants. The period of tenancy was from 02.03.1972 to 02.03.1982. Already the father of the Plaintiffs along with his two brothers, had filed a Suit for evicting the 1st defendant and his brother and in the said Suit, the 1st defendant and his brother, had filed a petition under the City Tenant Protection Act and the same was allowed. Thereafter, the defendants had not taken any step to purchase the property. According to the Appellants / Plaintiffs, as per the amendment in City Tenant Protection Act, the respondents / defendants are not entitled to get sale deed. Since the lease has been ended on 02.03.1982, the defendants have to surrender the possession of the property. Though the defendants have put up superstructure after entering into the lease agreement, they bound to evict the premises immediately after completion of lease period, unless there is an extension of lease period or a fresh agreement for lease. It is an admitted fact that no lease period has been extended or a fresh lease agreement has been entered into between the parties.

14. Before the trial Court, on the side of the plaintiff, witness P.W.1 was examined and marked exhibits, Exs.A.1 to A.3. On the side of the defendants, witness D.W.1 and DW2 were examined and marked exhibits, Exs.B.1 to B.2. The trial court after considering the evidences adduced on both sides and

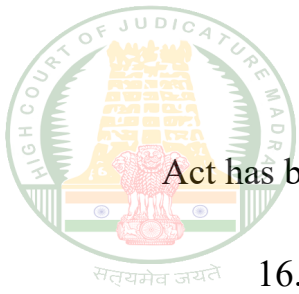


perusing the records, decreed the Suit by holding that the Suit is only for eviction and not for declaration or partition, thereby the co-sharer can file the Suit as against the third party for recovery of possession. The co-owners are entitled to file the Suit for injunction as against the third party and the co-owner has every right to file the Suit against the defendants for evicting from the Suit property and securing rights of the other co-owners.

15. Though the previous Suit has been filed in O.S. No.337 of 1984, the present Suit has been filed for different cause of action and the defendants themselves admitted that till 1998, they paid the rent and thereafter, rent was not paid, thereby, the trial Court directed the defendants to evict the Suit property and handover the same to the Plaintiffs after removal of superstructure put up by the 1st defendant and his brother, within a period of two months from the date of judgment. The First Appellate Court, in the appeal, held that the Suit has been filed by the Plaintiffs on their individual capacity and not on behalf of the temple and the Suit is barred by the principle of *res judicata*, as the earlier Suit in O.S. No.337 of 1984 was dismissed for default and the defendants also deposited the rent before the Court and there is no notice under Section 106 of Transfer of Property Act, has been issued to evict the premises. Therefore, the First Appellate Court allowed the appeal by setting aside the decree and judgment passed by the trial Court and dismissed the Suit.



16. This Court perused the entire records available on record. The trial Court has come to a fair conclusion that the Suit can be filed by any one of the co-owners on behalf of the other co-owners. From the income derived from the Suit property, the temple has been maintained, thereby, the Plaintiffs can maintain the Suit and the earlier Suit in O.S. No.337 of 1984 was dismissed for default. That suit had been filed on different cause of action and this Suit has been filed on different cause of action. As the cause of action is a continuous cause of action, the defendants also admitted the non-payment of rent through cross examination, the dismissal of previous Suit, no way affects the present Suit, thereby, the trial Court has correctly decreed the Suit. However, the First Appellate Court has rendered findings that the previous Suit in O.S. No.337 of 1984 has been filed for the same relief and the same was dismissed for default and the present Suit has been filed for the same relief by the same parties, thereby the Suit is barred by *res judicata*. As far as recovery of possession is concerned, the defendants are in illegal possession after a lapse of tenancy period and thereby as long as they are in possession, the cause of action arises and the cause of action is a continuous cause of action and thereby, the findings of the First Appellate Court that the Suit is barred by *res judicata* are perverse. The First Appellate Court failed to consider that the Plaintiffs, who are one of the co-owners, filed the Suit on behalf of the other co-owners, thereby, the Suit is maintainable and also the First Appellate Court has erroneously held that the Suit is not maintainable as no notice under Section 106 of Transfer of Property



Act has been issued.

WEB COPY

16.1. It is well settled law that after termination of lease period, no notice under Section 106 of Transfer of Property Act is warranted. In this context, the learned counsel appearing for the appellants has relied upon the judgment of Hon'ble Supreme Court in ***K.M. Manjunath v. Erappa G. (Dead) through L.R.s reported in 2022 (2) MWN (Civil) 697***, wherein the Hon'ble Supreme Court in Para Nos.9 and 10, held as follows:-

*“9. In the decision in **Shanti Devi v. Amal Kumar Banerjee, AIR 1981 SC 1550**, this Court held that before deciding the validity of notice under Section 106 of the TP Act the Court should first decide whether Section 106 is applicable or not. Further it was held that where a lease was for a fixed term the Court could not take the pleadings of the parties for determining the nature of the lease and that the parties could not by their pleadings alter intrinsic character of lease. In the case on hand, the obligation to decide on the aforesaid question unfailingly, was discharged by the Trial Court. This has resulted in perverse appreciation of evidence which led to a conclusion against the weight of evidence further leading to error of law. In such circumstances, we have no hesitation to hold that the High Court was right and justified in re-appreciating the evidence in exercise of its revisional power.*

10. To consider the question whether the issue as to the requirement or otherwise of issuance of a notice in terms of Section 106 of the TP Act was available for consideration by the High Court indisputable facts obtained from the evidence on record are worthy of reference. As noticed hereinbefore initially the petitioner herein and taken up the contention that no jural relationship of Landlord-Tenant exists between himself and the Plaintiff viz., the predecessor of the Respondents herein. The fact is that, he himself belied the said contention by setting up Ext.D1 to D7 Lease Agreements. Ex.D.1 to D7 agreements are of the years 1989, 1990, 1991, 1992, 1994 & 1995”.



On a careful perusal of the above said judgment, it is clear that the lease was fixed for a term and on expiry of the term fixed by the parties, the issuance of notice under Section 106 of the Transfer of Property Act is not warranted and mere acceptance of rent by the Landlord after the expiry of the period of lease would not amount to waiver of the termination of lease. Therefore, in view of the above said judgment, after a period of lease, entered between the parties, no statutory notice under Section 106 of the Transfer of Property Act is required.

16.2. Further, the learned counsel appearing for the appellants has relied upon a judgment passed by this Court in ***D. Akkamma (died) & others v. P. Kannamma & others reported in 1976 Supreme (Mad) 103***, wherein this Court held that the co-owner has right to recover possession of the property from the trespasser and that any one of the co-owners may claim to be entitled to the entirety of the property as against the trespasser.

16.3. In view of the above said judgment, it is clear that the Plaintiffs, being one of the co-owners, may claim the possession of the property and the First Appellate Court, without considering the said aspects, has rendered perverse findings. Therefore, the decree and judgment passed by the First Appellate Court are liable to be set aside.



17. As far as the *1st substantial question of law that Whether the Temple is being maintained with the income derived from the Suit property, whether the Lower Appellate Court is right in dismissing the Suit for recovery of possession from the respondent / defendant, who is admittedly a wilful defaulter?* is concerned, it is an admitted fact that the temple is being maintained with the income derived from the Suit property. The defendants also admitted that they have not paid rent to the Suit property. While so, the First Appellate Court cannot dismiss the Suit for recovery of possession from the respondents, who are admittedly willful defaulters. The trial Court failed to consider that the co-owner has a right to recover possession of the property from the trespasser and the defendants are in illegal possession even after the lapse of lease period. Further, the trial Court failed to consider that after termination of lease period, no notice under Section 106 of the Transfer of Property Act is required. Therefore, the finding of the First Appellate Court, by dismissing the Suit, is perverse. Thus, the *1st substantial question of law is answered.*

18. As far as the *2nd substantial question of law that When the Lower Appellate Court has given a finding that the respondent / defendant is a defaulter and he is not having good intention to pay the rent over 30 years, whether the Lower Appellate Court is right in dismissing the Suit by reversing*



the judgment of the trial Court? is concerned, the First Appellate Court has given findings that the respondents / defendants are defaulters and they are not having good intention to pay the rent over 30 days, while so, the First Appellate court ought not to have allowed the appeal by reversing the judgment and decree passed by the trial Court by overlooking that the Suit is maintainable by the Plaintiffs as co-owners to protect the possession of the property from third party trespassers. The First Appellate Court has also given findings that the respondents / defendants are defaulters and not having good intention in paying the rent over 30 years. After recording the said findings, the First Appellate Court is not right in dismissing the Suit by reversing the judgment of the trial Court. Thus, the ***2nd substantial question of law*** is answered.

19. As far as the ***3rd substantial question of law that When the lease is fixed for a specific period of 10 years, which expired as early as on 02.03.1982 and the respondent / defendant is not having any right to continue in possession, whether the Lower Appellate Court is right in dismissing the Suit for want of notice under Section 106 of Transfer of Property Act, 1882?*** is concerned, it is well settled law that after termination of lease period, no notice under Section 106 of Transfer of Property Act is warranted. In this case, the lease period was expired on 02.03.1982 and thereafter the lease has not been extended or no fresh lease agreement has been entered into between the parties



and thereby, notice under Section 106 of Transfer of Property Act is not required. The First Appellate Court has wrongly held that notice under Section

106 of Transfer of Property Act is necessary and thereby, the First Appellate Court is wrong in dismissing the Suit for want of issuance of notice under the Transfer of Property Act. Thus, the **3rd substantial question of law is answered.**

20. In view of the above said discussions and answers to the substantial questions of law, this Court is of the opinion that the decree and judgment passed by the First Appellate Court are liable to be set aside and the decree and judgment passed by the trial Court are to be restored.

21. Accordingly, this ***Second Appeal stands allowed. The judgment and decree passed by the learned Subordinate Judge, Gudiyatham, Vellore in A.S.No.29 of 2013 dated 24.03.2014 is set aside and the Judgment and Decree of the learned District Munsif, Gudiyattam in O.S.No.166 of 2011 dated 20.06.2013 is restored. Time for handing over the possession is two (2) months from the date of this judgment.*** No costs. Consequently, the connected miscellaneous petition is closed.

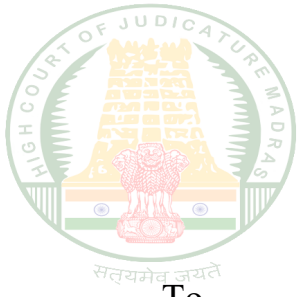
20-07-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

MJS

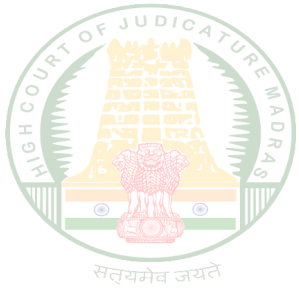


SA No. 759 of 2



To
WEB COPY

1. The Subordinate Judge, Gudiyattam, Vellore.
2. The District Munsif, Gudiyattam, Vellore.



WEB COPY

SA No. 759 of 2



P.DHANABAL, J.

MJS

SA No. 759 of 2014

20-07-2026