

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.1087 of 2014  
and  
M.P.No.1 of 2014

Nandhakumar

.. Appellant/Appellant/Defendant

- Vs -

Arulmighu Kachaleeshwarar Devasthanam,  
Rep. by its Executive Officer,  
No.77, Armenien Street,  
Chennai - 600 001.

.. Respondent/Respondent/Plaintiff

Prayer:- Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 09.06.2014, made in A.S.No.109 of 2012 on the file of the learned III-Additional Judge, City Civil Court, Chennai confirming the Judgment and Decree dated 23.08.2010, made in O.S.No.6667 of 2001 on the file of the learned V-Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.Anand Venkatesh

- - - - -

J U D G M E N T

The defendant in O.S.No.6667 of 2001 on the file of the learned V Assistant Judge, City Civil Court, Chennai is the appellant herein. The respondent is the sole plaintiff in the suit. The said suit was filed by the respondent herein for a decree for recovery of possession, decree for payment of arrears of rent, for damages and for future damages for use and occupation of the suit property.

2. The Trial Court decreed the suit in part granting decree only for recovery of possession and the other reliefs sought for were all denied. As against the said decree and judgment of the Trial Court dated 23.08.2010, the appellant filed an appeal in A.S.No.109 of 2012 before the learned III-Additional Judge, City Civil Court, Chennai. The lower appellate Court by decree and judgment dated 09.06.2014, dismissed the said appeal thereby confirmed the decree and judgment of the Trial Court. Challenging the same, the appellant is before this Court with this second appeal.

3. This second appeal has come up today for admission. I have heard the learned counsel appearing for the appellant and also perused the records carefully.

4. The learned counsel appearing for the appellant would submit that admittedly the suit property was leased out to the mother of the appellant herein and after the demise of his mother, the appellant is in possession and enjoyment of the suit property as a lessee under the temple. The learned counsel further submitted that rent was paid promptly but there was no formal order passed by the Temple recognizing the appellant as a tenant on the demise of his mother. The said order should have been passed by the Commissioner of H.R.&C.E. Since such an order could not be passed, according to the learned counsel for the appellant rent has all along been paid by the appellant herein but eviction has been ordered because the appellant has not been recognized as a tenant in the place of his mother by a formal order of the Commissioner. Thus, according to the learned counsel for the appellant the Courts below were not right in decreeing the suit as stated above.

5. The learned counsel for the appellant would further submit that the suit filed by the respondent temple before the lower Court is not maintainable in view of Sections 78, 79 and 108 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The learned counsel would further bring to the notice of this Court two judgments of this Court one by a learned Single Judge in B.Shaji Vs. Sree Pravaraswamy Devasthanam reported in (2010) 6 MLJ 341 and a Division Bench judgment in A.N.Kumar Vs. Arulmighu Arunachaleswarar Devasthanam, Thiruvannamalai reported in (2011) 3 MLJ 230.

6. I have considered the above submissions.

7. So far as the legal position is concerned, though the learned Single Judge had taken the view in B.Shaji's case referred to above that a suit by the temple for recovery of possession is not maintainable in view of Sections 78, 79 and 108 of the Act, the same has been overruled by the Division Bench in A.N.Kumar's case (cited supra).

8. In the said case, the Division Bench has held that there is neither express bar nor implied bar under Section 108 of the Act for a temple to approach the Civil Court for ejectment of a trespasser. According to Section 78 of the Act, a tenant on the order of termination of tenancy is treated as an encroacher. In view of the said settled position of law, I have to hold that there is no substantial questions of law, as of now, on this issue because it has already been held by the Division Bench that suit is maintainable.

9. So far as the other issues are concerned, the Courts below have answered the same in favour of the Temple and all the issues are on facts. Admittedly, there is no formal order passed by the Commissioner of H.R. & C.E. recognizing the appellant as a tenant of the suit property.

10. The learned counsel for the appellant would further submit that the proceedings is pending before the Commissioner of H.R. & C.E. for recognizing him as a tenant of the suit property. If that is so, the decree and judgment in the present suit will not be a bar for the Commissioner of H.R. & C.E. to consider the request of the appellant to recognize him as a tenant. Except making the said clarification, in my considered opinion, I do not find any substantial questions of law involved in this matter to admit the appeal.

11. In the result, the appeal fails and the same is accordingly dismissed. Consequently, the connected miscellaneous petition is closed.

kk

-s/d-

Assistant Registrar(CS-II)

Dt:29/1/2015

True Copy

Sub-Assistant Registrar

To

1. The III-Additional Judge,  
City Civil Court, Chennai.
2. The V-Assistant Judge,  
City Civil Court, Chennai.

Copy to:

The Registrar,  
City Civil Court,  
Chennai.

+ 1 cc to M/s.N.Anand Venkatesh, Advocate SR 2575

S.A.No.1087 of 2014  
and M.P.No.1 of 2014