

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.269 of 2015

and

M.P.No.1 of 2015

H.Julian

.. Appellant /Tenant

- Vs -

Madarasa-E-Mohammedi Wakf,
Represented by its Secretary,
Mohammed Habibur Rahman,
No.150, Shanmugam Salai,
Chennai - 600 086.

.. Respondent/Landlord

Prayer:- Second Appeal filed under Section 100 of C.P.C., against the Decree and Judgment dated 03.09.2014 made in A.S.No.85 of 2013 on the file of the learned I Additional Judge, City Civil Court, Chennai confirming the Decree and Judgment dated 24.08.2011, made in O.S.No.5797 of 2007 on the file of the learned I Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.S.J.Jagadev

For Respondent : Mr.S.Kalavathy

J U D G M E N T

सत्यमेव जयते

The appellant herein is the defendant in O.S.No.5797 of 2007 on the file of the learned I Assistant Judge, City Civil Court, Chennai. The said suit was filed by the respondent for ejectment in order to recover possession of the suit property from the appellant. By decree and judgment dated 24.08.2011, the Trial Court decreed the suit as prayed for. As against the same, the appellant herein filed an appeal in A.S.No.85 of 2013 before the learned I Additional Judge, City Civil Court, Chennai. By decree and judgment dated 03.09.2014, the lower appellate Court 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.

2. This second appeal came up today for admission. I have heard the learned counsel appearing for the appellant, the learned counsel appearing for the respondent and I have also perused the records carefully.

3. The case of the plaintiff in brief is as follows:

(i) The plaintiff is a Public Religious Wakf and it is the absolute owner of the suit property. According to the plaintiff, the defendant is a tenant and he is a chronic defaulter in payment of rent. The plaintiff after following the legal formalities filed the present suit for ejectment so as to recover possession.

(ii) The defendant in the written statement took the stand that the plaintiff failed to discharge his duty to maintain the building properly. Therefore, the defendant had to incur expenditure for the maintenance of the building. Further, the defendant was regularly paying the rent but failed to pay rent for some time because the defendant had incurred sizable amount for changing the roof tiles and for carrying out minor repairs including white washing. Thus, according to the defendant, the plaintiff is not entitled for the decree as prayed for.

(iii) Based on the above pleadings, the trial Court framed appropriate issues and one of the issue was as to whether the suit is maintainable or not. The second issue was as to whether the plaintiff is entitled for a decree as prayed for. Before the trial Court, in order to prove his case, the plaintiff examined one witness on his side and marked four documents. On the side of the defendant, one witness were examined and no document was marked. Having considering all the above, the Trial Court decreed the suit and the same was confirmed by the lower Appellate Court.

4. In this second appeal, the learned counsel appearing for the appellant would submit that the civil Court has got no jurisdiction to entertain the suit. According to him, absolutely there is no evidence that the plaintiff is a Wakf in terms of Wakf Act. In the absence of proof of the same, according to the learned counsel, the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 should have been applied and in such event, the decree passed by the lower appellate Court is null and void. He would further submit that, at any rate, the Wakf Tribunal should have been approached to decide as to whether the suit property is a Wakf property or not.

5. The learned counsel appearing for the respondent would submit that the defendant had admitted in the written statement that the suit property is a Wakf property and therefore the Tamil Nadu Buildings (Lease and Rent Control) Act can be invoked for recovery of possession and Section 85 of the Wakf Act is not a bar.

6. Having heard the learned counsel on either side and on perusal of the records, the following substantial questions of law are framed :

"1. Whether the suit is maintainable before the Trial Court in the light of the fact that there is no evidence let in by the plaintiff to prove that the suit property is a Wakf property ?

2. Whether the suit is barred by Section 85 of the Wakf Act ?"

7. A perusal of the written statement filed by the defendant would go to show that in paragraph 3, he has tacitly admitted that the plaintiff is a Wakf and therefore, in my considered view, there is no need for the plaintiff to prove that it is a Wakf and the suit property is a Wakf property. It needs to be mentioned that there is not even any issue raised in this regard by the defendant in his written statement. Therefore, I hold that the plaintiff is a Wakf in terms of the Wakf Act and therefore the Tamil Nadu Buildings (Lease and Rent Control) Act is not applicable.

8. In respect of the second substantial question of law it needs to be stated that the Hon'ble Supreme Court in Bhanwar Lal and another Vs. Rajasthan Board of Muslim Wakf reported in AIR 2014 SC 758 has held that the exclusion of the Civil Court jurisdiction is not absolute and the suit for ejectment at the instance of the Wakf is maintainable. In view of the same, the second substantial question of law also needs to be answered only against the appellant. In the judgment of the trial Court, I do not find any perversity as the appellant/defendant has admitted during the cross examination that from January, 2007 onwards he has not paid the rent. No document has been produced to show that the defendant spent for maintenance of the building. Therefore, on facts, the decree and judgment of the trial Court and confirmed by the lower Appellate Court cannot be found fault with.

9. In view of the foregoing discussions, I do not find any merit in this second appeal, the second appeal fails and accordingly the same is dismissed. The decree and judgment of the lower appellate Court confirming the decree and judgment of the trial Court is confirmed. There shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The I Additional Judge,
City Civil Court,
Chennai.

2. The I Assistant Judge,
City Civil Court,
Chennai.

+1cc to Mr.S.J.Jagadev, Advocate, S.R.No.64657

+1cc to Mr.M/S.S.Kalavathy, Advocate, S.R.No.64699

S.A.No.269 of 2015
and M.P.No.1 of 2015

vsn(CO)
srg(06/01/2016)

सत्यमेव जयते

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