

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.10.2016

PRONOUNCED ON : 20.10.2016

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.487 of 2008

and

M.P.No.1 of 2008

1.Siddammal

2.K.Perumal

... Appellants

Vs

A/M Selliandiammal Thirukoil,
Rep. By its Executive Officer,
Bhavani, Erode District.

... Respondent

Prayer:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 30.11.2005 made in A.S.No.53 of 2004 on the file of the learned Subordinate Judge, Bhavani confirming the judgment and decree dated 03.02.2004 made in O.S.No.110 of 2003 on the file of the learned Principal District Munsif, Bhavani.

For Appellants : Mr.N.Manokaran

For Respondent : Mr.T.Murugamanickam

JUDGMENT

The appellants are the defendants in the suit filed for permanent injunction and mandatory injunction. For the sake of convenience, the parties are arrayed as per their status in the suit.

2.The brief facts, leading to the appeal, are as under:-

The suit property more fully described in the plaint belongs to the plaintiff temple viz., Arulmigu Selliandiamman Thirukoil, Bhavani, Erode District. One Mr.Kaveri was inducted as tenant by the plaintiff in respect of the suit property, 20 years prior to the date of filing of the suit. It is contended by the plaintiff that as per the terms of agreement, the land in question was

leased out to the said Mr.Kaveri, on a specific condition that, he shall be permitted to put a temporary hut for the purpose of residence and no permanent structure should be constructed on the land let out. The said Mr.Kaveri died on 23.08.1997 leaving behind the defendants, who are in possession and enjoyment of the suit property. During the month of March 2003, the authorities of the plaintiff temple came to know that the defendants are removing the old thatched hut and trying to put up permanent structure contrary to the terms of agreement. Hence, after issuance of notice, the suit for permanent injunction was filed along with the Interlocutory Applications for interim injunction and for appointment of Advocate Commissioner. While the trial Court granted interim injunction, restraining the defendants from putting up further construction, the defendants dis-regard to the said interim order had continued to construct a permanent structure on the suit premises and before conclusion of the trial, a packa permanent structure has come up in the suit land. The plaintiff with leave of the Court had amended the plaint by including the prayer of mandatory injunction to demolish and to remove the permanent structure built over the suit property.

3.The defendants in the written statement, has contended that there is no bar in the agreement to put up permanent structure on the ground owned by the plaintiff. They have completed construction of terraced house at the cost of Rs.3 lakhs with the knowledge and consent of the plaintiff and hence, there is no violation of any terms and conditions of the agreement. It is also contended in the written statement that, a similarly placed tenants also have put up permanent structure on the land leased out to them, with the hope that the plaintiff temple Authorities will get the consent of the Government to sell the vacant site to the respective tenants.

4.The trial Court after considering the pleadings framed the following issues:-

"(i)Whether the plaintiff is entitled for permanent injunction?

(ii)What the relief the plaintiff is entitled?"

The trial Court has also framed an issue "Whether the plaintiff is entitled for mandatory injunction?" as an additional issue.

5.In support of their case, the plaintiff has examined the Executive Officer of the plaintiff temple as P.W.1 and marked Exs.P.1 to P.7. On behalf of the defendants, one Mr.Perumal, the second defendant, has been examined as D.W.1 and Ex.D.1 is marked on their behalf. The Commissioner's report and sketch were marked as Exs.C.1 and C.2.

6. After considering the evidence let in by both parties, the trial Court decreed the suit as prayed for. Aggrieved by the decree of the trial Court, the defendants have preferred an appeal before the Subordinate Court, Bhavani, Erode District. However, the First Appellate Court has found no reason to interfere with the findings of the trial Court and dismissed the appeal thereby confirming the decree and judgment of the trial Court. Hence, the appellants/defendants are before this Court with this second appeal.

7. The learned counsel for the appellants/defendants contended that the suit is not maintainable, in view of Section 108 of the Hindu Religious & Charitable Endowment Act, (hereinafter refer to as "the Act"), which bars a civil suit against the Hindu Religious & Charitable Endowment. Further, it is contended by the appellants that the plaintiff has not filed the terms and conditions of the agreement entered into between Mr. Kaveri and the plaintiff temple. The Courts below have erroneously relied upon the terms and conditions found in Ex.A.1 which is only a 'model agreement' and not the 'actual agreement' entered into between the parties.

8. The Courts below have failed to consider the fact that the other tenants who have put up permanent construction were not disturbed by the plaintiff whereas, they have discriminated the appellants/defendants alone for putting up a permanent structure on the suit land and sought for injunction.

9. This Court, after considering the grounds of appeal, thought it fit to put notice to the respondent/plaintiff before admitting this second appeal. On receipt of notice, the respondent/plaintiff entered appearance through its counsel.

10. Heard the learned counsel for the appellants/defendants and the learned counsel for the respondent/ plaintiff.

11. The point for consideration is, "Whether there is any substantial question of law involved in this second appeal ?". As pointed out earlier, the learned counsel for the appellants/defendants submitted that Ex.A.1, the model form of agreement cannot be relied upon to arrive at a conclusion that there is a violation of terms and conditions of the agreement. Further, when there is a bar for civil suit under Section 108 of the Act, the present suit for permanent injunction and mandatory injunction, is not maintainable. Even assuming that there is violation of terms and conditions of the agreement, the temple authorities ought to have resorted to Section 79 of the Act.

12.It is strenuously contended by the learned counsel for the appellants/defendants that the Courts below have concluded that the appellants herein have breached the interim order granted by the trial Court on 09.04.2003, by putting up permanent construction on the suit land. Relying upon the commissioner's report, the Courts below have held against the appellants. Even assuming that the appellants have breached the interim injunction, the remedy left to the respondent temple is to invoke Order 39 Rule 2A C.P.C., which the respondent has not resorted to. Therefore, no adverse inference could be drawn against the appellants/defendants.

13.The learned counsel for the respondent submitted that a vacant site was let out to one Mr.Kaveri, on a specific condition that no permanent structure should be put up on the same and for the use and occupation of the said land, the tenant has to pay Rs.25/- per month to the plaintiff temple and which was later enhanced to Rs.91/- per month, as per the proceeding of the Joint Director Coimbatore, HR & CE dated 29.05.1998. The learned counsel further submitted that the appellants were put to notice not to put up permanent structure on the suit land through Ex.A.2 dated 03.04.2003. In spite of the said notice, the appellants/defendants continued to construct permanent structure on the site, contrary to the agreement which forced the plaintiff temple to file civil suit for permanent injunction and mandatory injunction against the appellants/defendants.

14.There is no bar under any law, more particularly, under the Hindu Religious & Charitable Endowment Act, for filing a civil suit seeking comprehensive remedy of permanent injunction and mandatory injunction, as in this case. Neither Section 108 nor Section 79 of the Act, is relevant to the facts of the present case since, the appellants/defendants are not trespassers. They were recognised as tenants. Since, they violated the terms and conditions of the agreement, the plaintiff temple has filed the suit to prevent the defendants from putting up the remedy to prevent permanent structure on the suit land and also to remove the permanent construction a remedy which could be granted only by a competent civil court. There is no alternate procedure under the Act for the relief sought for in the suit. In this regard, Section 9 of C.P.C., is relevant to refer hence, the same is extracted below:-

"9. Courts to try all civil suits unless barred.

The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."

15. In the light of Section 9 of C.P.C., if we look into the Sections 108 and 79 of the Act, it is palpable that the suit is maintainable and there is no legal impediment for the civil Courts for entertaining the present suit. Therefore, this Court finds that the ground in respect of maintainability of the present suit raised by the appellants is unsustainable.

16. The substantial questions of law as raised by the appellants is that, when there is no legal evidence to prove the factum of construction after the knowledge of interim injunction, both the Courts below erred in concluding that despite interim injunction, the appellants/defendants have continued to put up permanent construction on the suit land.

17. No question of law involved in this plea whereas, it is only a fact whether the appellants continued to put up permanent construction despite interim injunction granted against them by the trial Court on 09.04.2003. The Commissioner's report and sketch which are marked as Exs.C.1 & C.2 respectively, indicate that the Commissioner inspected the premises on 23.04.2003 wherein, he has found that the construction activity was under way in the suit premises.

18. It is contended by the learned counsel for the appellants/defendants that if at all, there is any breach of interim injunction, the respondent ought to have resorted to Order 39 Rule 2A of C.P.C. Failure on the part of the respondent, to file petition under Order 39 Rule 2A of C.P.C., it should naturally lead to the inference that there is no disobedience of interim order on the part of the appellants/defendants and the respondent have implicitly permitted the appellants/defendants to put up permanent construction.

19. Order 39 Rule 2A of C.P.C., is not a remedy for the party who has obtained an interim order but, it only provides penal action against the persons who have committed the breach of interim order. The respondent herein have rightly amended the prayer after the appellants/defendants violated the interim injunction granted by the trial Court restraining them from putting up permanent structure on the suit land, by including mandatory injunction. Hence, the plea of the appellants/defendants is unsustainable in the eye of law.

20. It is contended by the learned counsel for the appellants/defendants that the respondent temple has not proceeded against similarly placed tenants who have put up permanent structure but discriminated the appellants alone and proceeded against them by filing the suit thereby violated Article 14 of the Constitution of India.

21.For the above plea raised by the learned counsel for the appellants, the learned counsel for the respondent submits that legal actions have been taken against the other tenants who have violated the terms and conditions of the agreement and there is no selective discrimination as contended by the learned counsel for the appellants.

22.The issue is between the landlord and the tenant. It is the prerogative of the landlord to proceed against the tenants who have violated the terms and conditions of the agreement. If the landlord has not taken any action against some of the tenants, that cannot be a ground for the appellants herein to prevent the landlord/respondent from proceeding against them for violation of terms and conditions of agreement. Though, Ex.A.1 is a model form of agreement, in the cross examination of D.W.1, it is categorically admitted by them that initially, the site was let out to one Mr.Kaveri on a specific condition that no permanent structure will be put up on the same. Having admitted the terms of agreement, there is no force in the submission that the terms of agreement as found in Ex.A.1 is not binding on the appellant.

23.Having admitted the said term in an unequivocal term, it is too late for the appellants herein to question the action taken by the plaintiff/respondent temple on the ground that the terms and conditions of the original agreement was not filed before the Court.

24.In the light of the above findings, this Court finds no substantial question of law involved in this second appeal so as to admit the same. Hence the second appeal is liable to be dismissed.

25.In the result, the second appeal is dismissed and the judgments and decrees passed by the First Appellate Court and the trial Court are confirmed. There shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Subordinate Judge,
Bhavani.

2.The Principal District Munsif,
Bhavani.

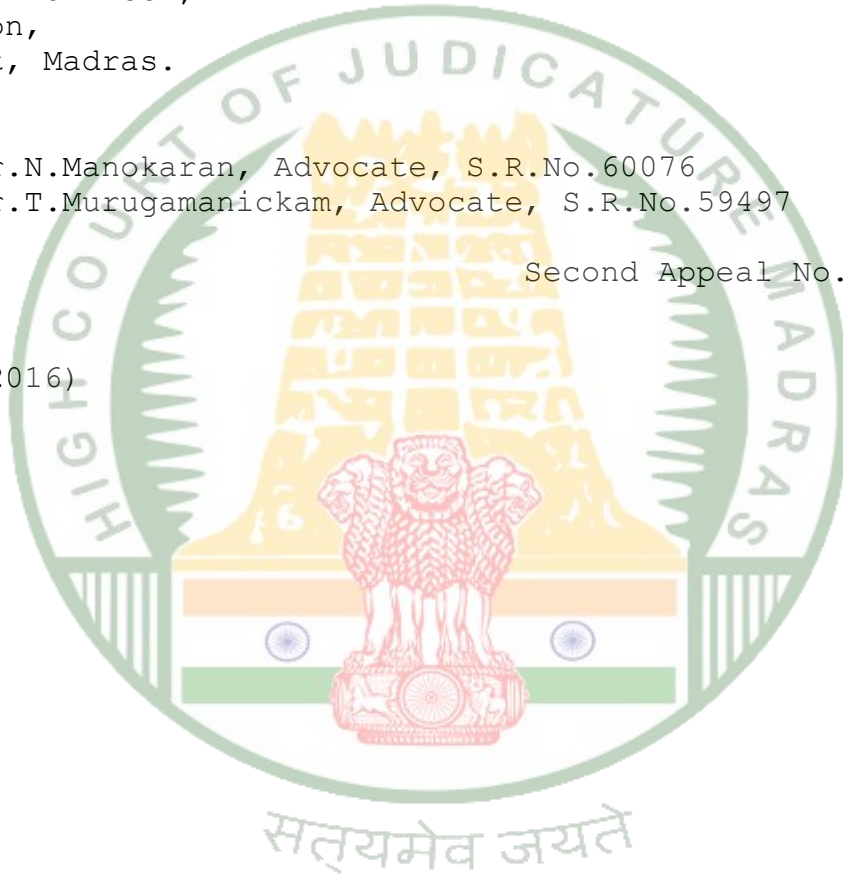
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The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.60076
+1cc to Mr.T.Murugamanickam, Advocate, S.R.No.59497

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