

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.01.2016

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.421 of 2015
and M.P.No.1 of 2015

G.Vijayaraghavan

... Appellant/Defendant

-Vs-

Ameerunnissa Begum Sahiba Endowment
rep. by its President Mr.Jalal Ammenur Rahman,
S/o.Late Janab Jalal Mohamed Ibrahim Sahib
having its office at No.76, Pycrofts Road
(Bharathi Salai), Triplicane, Chennai-5.

... Respondent/Plaintiff

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the common judgment and decree in A.S.No.356 of 2013 dated 19.11.2014 on the file of the III Additional Judge, City Civil Court, Chennai confirming the judgment and decree dated 29.04.2013 in O.S.No.8362 of 2010 on the file of the learned I Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.V.Rameshvel

For Respondent : Mr.Asif Ali

J U D G M E N T

The defendant in O.S.No.8362 of 2010 on the file of the learned I Assistant Judge, City Civil Court, Chennai is the appellant herein. The respondent is the plaintiff in the suit. The respondent filed the said suit for recovery of possession of the suit property and for damages, both past and future, at the rate of Rs.1,500/- p.m. for use and occupation of the suit property by the defendant. By decree and judgment dated 29.04.2013, the trial court decreed the suit as prayed for. As against the same, the defendant filed an appeal in A.S.No.356 of 2013 on the file of the learned III Additional Judge, City Civil

Court, Chennai. By decree and judgment dated 19.11.2014, the lower appellate court dismissed the appeal thereby confirming the decree and judgment of the trial court. Challenging the same, the defendant is before this Court with this Second Appeal.

2. This Second Appeal has come up before me today for admission. I have heard the learned Counsel on either side and I have also perused the records carefully.

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

The suit property is owned by an Endowment known as 'Ameerunnissa Begum Sahiba Endowment' which is a Muslim Religious Charitable Endowment. The defendant is a tenant. The monthly rent agreed upon was Rs.772/-. For own reasons, the plaintiff wanted to terminate the lease. Accordingly, the plaintiff Endowment issued a notice of termination on 06.05.2010. After the statutory period was over, since the defendant did not hand over the vacant possession, the plaintiff filed the present suit and the plaintiff also claimed a sum of Rs.1,500/- p.m. towards damages for use and occupation by the defendant.

4. The defendant took a plea that the suit is not maintainable since G.O.Ms.No.2000, Home Department, dated 16.08.1976 is not applicable to the plaintiff and the defendant is protected by the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. Various other formal disputes have also been raised. However, there is no denial of statutory notice issued under Section 106 of the Transfer of Property Act.

5. Based on the above pleadings, the trial court has framed appropriate issues. In order to prove the case, on the side of the plaintiff, one Mr.M.Mohamed Ashfakh was examined as P.W.1 and as many as 12 documents have been exhibited. On the side of the defendant, he was examined as D.W.1 and the rental receipt dated 01.03.2011 was marked as Ex.B.1. Having considered all the above, the trial court decreed the suit which was confirmed by the lower appellate court. That is how the appellant is before this Court with this Second Appeal.

6. In the Second Appeal, the learned Counsel for the appellant would submit that the G.O.Ms.No.2000 dated 16.08.1976 is not applicable to the suit property at all because the suit property has not been registered as a Muslim Religious Trust and the same is not administered under the Wakf Act, 1954. That has been considered by the courts below. Now the question is as to whether the Tamil Nadu Buildings (Lease and Rent Control) Act is applicable to the suit property or not. Section 29 of the Act empowers the Government to exempt any property from the purview

of the said Act. In exercise of the said power conferred under Section 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, the Government has issued the G.O.Ms.No.2000, Home, dated the 16th August 1976 which reads as follows:

'No.II(2)/HO/4520/76- In exercise of the powers conferred by Section 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Tamil Nadu Act 18 of 1960), and in supersession of the Home Department Notification No.II(2)/HO/3811/74, dated the 12th August 1974 published at page 444 of Part II-Section 2 of the Tamil Nadu Government Gazette, dated the 21st August 1974, the Governor of Tamil Nadu hereby exempts all the buildings owned by the Hindu, Christian and Muslim religious public trusts and public charitable trusts from all the provisions of the said Act.

Explanation : Muslim religious Public Trusts Registered and administered under the Wakf Act, 1954 (Central Act 22 of 1954)''.

A close reading of the above Government Order would go to show that the properties belonging to Muslim Religious Public Trust and Public Charitable Trust are exempted from the purview of the said Act.

7. However, the learned Counsel for the appellant would submit that as per the explanation, such Muslim Religious Public Trusts should have been registered and administered under the Wakf Act, 1954.

8. This argument does not persuade me at all because the explanation is only to clarify as to whether the Muslim Religious Public Trusts registered and administered under Wakf Act, 1954 are also exempted or not because they are covered by Wakf Act, 1954. The G.O.Ms.No.2000 does not specify that the exemption would be applicable only in respect of registered Wakfs. This has also been so held by the courts below rightly.

9. Apart from the above grounds, the learned Counsel for the appellant is not able to make any other question of law warranting admission of the Second Appeal. There is no dispute regarding the issuance of the statutory notice under Section 106 of the Transfer of Property Act.

10. In view of all the above, I do not find any merit in the Second Appeal. To repeat, I should say that there is no question of law much less a substantial question of law warranting admission of the Second Appeal.

11. In the result, the Second Appeal fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

tsi

To

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

2.The III Additional Judge,
City Civil Court,
Chennai.

+lcc to Mr.Asif Ali, Advocate, S.R.No.2760

+lcc to Mr.V.Rameshvel, Advocate, S.R.No.3223

S.A.No.421 OF 2015

TEJ(CO)
CA(08/02/2016)



WEB COPY