

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.10.2016

PRONOUNCED ON : 10.11.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No. 144 of 2011

and

M.P.No.1 of 2011

1.K.Viswanathan
2.K.Subramanian
3.K.Ganesan
4.K.Chandran
5.P.Krishnakumar

...

Appellants

Vs.

Arulmighu Aadhi Solaiammal
Thirukoil
rep.by its Executive Officer,
Office at Arulmighu
Gangadeeshwarar Thirukoil
Purasawalkam,
Chennai - 600 084.

...

Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 11.12.2008 made in A.S.No.343 of 2008 and passed by the Hon'ble IV Additional Judge, City Civil Court, Chennai in so far it relates to granting the relief of recovery of possession and damages by confirming the judgement and decree dated 19.09.2007 made in O.S.No.5819 of 2003 and passed by the Hon'ble I Asst. City Civil Court, Chennai.

For Appellants : Mrs.Sarojini Govindan

For Respondent : Mr. A.K.Sriram
For. A.S.Kailasam Associates

JUDGMENT

The defendants have preferred this second appeal impugning the judgment and decree dated 11.12.2008 made in A.S.No.343 of 2008 on the file of the IV Additional City Civil Court, Chennai, in so far as it relates to granting the relief of recovery of possession and damages, confirming the judgment and decree dated 19.09.2007 made in O.S.No.5819 of 2003 on the file of the First Assistant City Civil Court, Chennai.

2. The suit has been laid for possession, arrears of rent and for damages.

3. The avernments in brief of the plaint are as follows:

The plaintiff is the owner of the suit property and the defendants are tenants under the plaintiff in respect of the suit property on a monthly rent of Rs.2,265/-, the tenancy being computed according to English Calendar Month. The defendants were very irregular in the payment of rents and were due a sum of Rs.48,495/- as on 30.09.2003 and the defendants also demolished the building put up on the land leased out and attempted to put up fresh construction and despite police complaint given by the plaintiff, the defendants proceeded with the illegal construction, hence, the

plaintiff issued a notice dated 09.10.2003 terminating the tenancy of the defendants by the end of October, 2003 and calling upon them to quit and deliver vacant possession and the defendants are liable to pay Rs.5,000/- per month as damages to the plaintiff. The defendants sent a false reply making untenable pleas. In view of the stand of the defendants, the plaintiff has been necessitated to file the suit.

4. The averments in brief of the written statement are as follows:

The plaintiff is the owner of the suit property and the defendants are the tenants under the plaintiff in respect of the same. That the monthly rent of Rs.2,265/- is denied. That the defendants are irregular in payment of rent and Rs.48,495/- is due as on 30.09.2003 also disputed. The monthly rent is only Rs.150/- and the defendants have been paying the rent regularly. As the plaintiff refused to receive the rent, the defendants have taken steps to send the rent through money order. The plaintiff never demanded the rent at Rs.2,265/- from the defendants. The suit land originally belonged to Solaiappa Naicker, who was the founder of the temple, who, under his last Will dated 08.05.1920, appointed his wife Pattammal, as the sole executor of the Will and the Will was probated in O.P.No.24 of 1925 in T.O.S No.4/1925 on the file of High Court and the High Court

passed a Decree in C.S.No.663/1921 dated 02.02.1926 in favour of Palaniappan S/o Solaiappa Naicker and Pattammal W/o.Solaiappa Naicker. They got permanent lease hold building right over the land on which the said superstructure was put up and they sold the superstructure with permanent lease hold building right to the defendants father C.V.Krishna Iyer under the registered sale deed dated 27.10.1944 and C.V.Krishna Iyer settled the said property on his sons under the settlement deed dated 28.11.1984 and from that date, the defendants are enjoying the suit property by paying all taxes etc., The Chairman of the Board of the Trustees of the temple V.S.Padmanathan had given permission to the defendants to put up construction in the suit property, after demolishing the building, which was in a dilapidated condition. The plaintiff with malafide intention filed a suit in O.S.No.5201 of 2003 for permanent injunction against the defendants and further, the plaintiff has filed W.P.No.36762 of 2003 restraining the defendants from putting up construction in the suit property and subsequently, it was dismissed on 19.02.2004. The plaintiff with malafide intention disconnected the electricity supply to the suit property and the defendants filed W.P.No.1253 of 2004 against the plaintiff for restoration of the electricity supply and the writ petition was allowed by this Court on 30.01.2004. The defendants are not liable to pay any rent as claimed by the plaintiff. The defendants have permanent lease hold right over the suit

property and the plaintiff has no right to terminate the lease of the defendants. The plaintiff is not entitled to claim damages for use and occupation from the defendants from 01.11.2003 at the rate of Rs.5,000/-. Hence, the suit is liable to be dismissed.

5. In support of the plaintiff's case, PW1 has been examined and Exs.A1 to 4 were marked. On the side of the defendants, DW1 has been examined and Exs.B1 to 15 were marked.

6. On a consideration of the oral and documentary evidence adduced by the parties, the trial Court was pleased to decree the suit as prayed for. The defendants preferred the first appeal and the first appellate court has confirmed the judgement and decree of the trial Court with regard to the relief of recovery of possession and damages and set aside the judgement and decree of the trial Court with reference to the relief of arrears of rent, granting liberty to the plaintiff to proceed under Order 20 Rule 12 CPC. As against the judgement and decree of the first appellate court, the defendants have preferred this second appeal.

7. The suit has been laid by the plaintiff's temple against the defendants for recovery of possession, arrears of rent and damages. That the suit land belongs to the plaintiff's temple is not an issue.

Similarly, the defendants are the tenants under the plaintiff in respect of the suit land is also not an issue. According to the plaintiff, the defendants are in arrears of rent as on 30.09.2003 in a sum of Rs.48,495/- and also, the defendants have unauthorisedly erected superstructure in the suit property and therefore, according to the plaintiff, by notice dated 09.10.2003, it had terminated the tenancy of the defendants by the end of October, 2003 and calling upon them to quit and deliver vacant possession and inasmuch as the defendants have resisted the demand of the plaintiff by making untenable pleas, the plaintiff has come forward with the suit.

8. The appellants at the foremost contended that the suit laid by the plaintiff's temple through its Executive Officer is not maintainable. In other words, according to the appellants' counsel, the plaintiff has no locus standi to institute the suit through its executive officer. With reference to the same, the defendants relied on the decision reported in **2003-1-L.W.386 (Sri Arthanareeswarar of Tiruchengode by its present Executive Officer, Sri Sabapathy Vs. T.M.Muthuswamy Padayachi, etc and others)**. The same has already been projected before the first appellate court. Resisting the same, it is argued by the plaintiff that as per the proceedings of the Commissioner of HR & CE marked as Ex.A4 dated 09.08.1989, the Commissioner of HR & CE has assigned the powers and duties of the

Executive Officer and Rule 9 of the said proceedings makes it clear that the Executive Officer has got legal right to institute the suit and therefore, it is argued that the above plea of the defendants is unsustainable.

9. As rightly found by the first appellate Court as well as the trial Court, a perusal of the Ex.A4 would go to disclose that the Commissioner, under Ex.A4, had authorised the Executive Officer to institute the suit and accordingly, it could be seen that the Executive Officer has all the authority and power to lay the suit against the defendants for recovery of possession and other reliefs. Hence, the contention of the defendants that the Executive Officer has no *locus standi* to lay the suit against the defendants is rejected.

10. The second contention put forth by the appellants' counsel is that the notice of termination under Section 106 of the Transfer of Property Act is bad in the eyes of law and the plaintiff at the most should have taken steps to issue notice under Section 34-b of the HR & CE Act and therefore, the failure of the plaintiff's temple in not having issued the notice as contemplated under Section 34-b of the HR & CE Act would render the suit bad. In this connection, it is contended that as per section 106 of the Transfer of Property Act, in the absence of a contract or local law or usage to the contrary of law,

lease of immovable property could be terminated under the provisions of law. It is stated, inasmuch as the provisions of the HR & CE Act would prevail over the Transfer of Property Act, the failure of the plaintiff to issue the termination notice under Section 34-b of the above said Act would be sufficient to non suit the plaintiff.

11. Controverting the above contention of the appellants' counsel, it is argued by the respondent's counsel that as per the interpretation of Section 106 of the Transfer of Property Act, the tenancy of the defendants could be terminated by giving 15 days notice as contemplated under Section 106 of the Transfer of Property Act and the plaintiff's temple has option either to give the notice under Section 34-b of the HR & CE Act or Section 106 of the Transfer of Property Act and the plaintiff's temple having taken the option of terminating the tenancy under Section 106 of the Transfer of Property Act and as the invocation of the same does not contradict the lease in question or any legal provision of HR & CE Act or any usage, it is contended that the notice issued under Section 106 of the Transfer of Property Act and marked as Ex.A2 is valid in law. The above argument of the plaintiff's counsel seems acceptable. It is not the case of the appellants that their lease can be terminated only by giving a period of more than what is contemplated under Section 106 of the Transfer of Property Act and HR & CE Act also does not

contemplate such a practice to the contrary. It could be seen that the plaintiff had rightly terminated the tenancy by giving 15 days notice as required by law and therefore, no exception could be taken to the same. Therefore, it could be seen that the Courts below have also rightly found that the termination notice given by the plaintiff under Section 106 of the Transfer of Property Act is valid in law and no interference is called for against the same.

12. It is further contended by the appellants' counsel that the reasons given by the respondent for claiming possession, recovering arrears of rent and its case of putting up the illegal construction by the defendants having not been prima facie established or established altogether, the notice of termination issued by the plaintiff is bad in law. Opposing the same, the plaintiff's counsel contended that while terminating the tenancy, it is not required to give any reason for terminating the tenancy. Further, it is also argued by him that even assuming, for the sake of arguments, that the reasons put forth in the notice are false, the termination of the tenancy will stand and it cannot be construed that there is no valid notice of termination of tenancy and in this connection, the plaintiff's counsel placed strong reliance upon the decision reported in **1995 AI HC 3210 (S.Venkatasamy Vs. S.Rajaram)**. The contention of the respondent's counsel merits acceptance. It could therefore be seen

that Courts below also had correctly approached the above issue in the right perspective and come to the conclusion that the notice of termination issued by the plaintiff is valid and law and the same could not be faulted in any manner.

13. Further the appellant's counsel contended that the superstructure belongs to the appellants, the same having been gifted to them under the settlement deed dated 28.11.1984 by their father and in turn, their father C.V.Krishna Iyer had purchased the permanent lease hold right with the building on the suit land under the registered sale deed dated 27.10.1944 and therefore, it is contended that the appellants have permanent lease hold right and also, the superstructure on the suit land absolutely belongs to them. The above contention has been negatived by the Courts below. It could be seen that with reference to the above plea, as rightly put forth by the respondent's counsel, the appellants have not placed any material before the Courts below as to how come the vendor of the sale deed dated 27.10.1944 had a right to alienate the superstructure with the permanent lease hold to the appellants' father. Though the appellants claimed certain rights under the Will alleged to have been probated by Solaiappa Naicker in TOS No. 4 of 1925 proceedings on the file of High Court and decree passed in C.S.No.663 of 1921 dated 02.02.1926 etc., with reference to the same, no document whatsoever

has been placed by them to substantiate their case.

14. Be that as it may, it could also be seen that with reference to the above said sale deed and settlement deed marked as Ex.B10 and 11, those transactions should have been sanctioned or approved by the Commissioner as contemplated under Section 34 of the HR & CE Act. No material has been placed by the appellants to show that such permission was obtained by C.V.Krishna Iyer before executing the settlement deed in favour of the appellants. Therefore, it could be seen that as rightly found by the Courts below the settlement deed marked as Ex.B11 is null and void and no right whatsoever could be claimed by the appellants over the superstructure or to the permanent lease hold right in respect of the suit property and therefore, I hold that the appellants have failed to establish that the superstructure standing on the suit land belongs to them and that they are entitled to claim permanent lease hold right in respect of the suit land. In this connection, the respondent's counsel relied upon the decision reported in **(2006) 3 M.L.J.437 (K.V.Pushpavalli Vs. Arulmighu Theerthabaleeswarar Devasthanam, represented by its Executive Officer, Komaleeswaranpet, Chennai - 5 and Another)**

15. As regards the quantum of rental arrears put forth by the plaintiff in the plaint etc., it could be seen that the first appellate

Court has relegated the matter to a separate proceedings under Order 20 Rule 12 CPC. Therefore, it could be seen that merely because the respondent has failed to establish the quantum of rent to be paid by the appellants and also arrears of rent by placing acceptable material, that would not be a ground to non-suit the plaintiff. In the light of the above discussion, it could be seen that the authorities relied upon by the appellants' counsel reported in **2016 (5) CTC 465 (TCR Selvam (JV), rep. by its Partner, R.Selvaraj Vs. Union of India, rep.by the General Manager, Southern Railway, Head Quarters Office, Park Town Chennai - 600 003 and two others) and 1993 (1) L.W.356 (Ramalingam Pillai (died) and 7 others Vs. Murugesan and another)**, as rightly put forth by the respondent's counsel would not be applicable to the facts and circumstances of the case at hand.

At the end, I hold that no substantial question of law is involved in the second appeal and consequently, the second appeal is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

10.11.2016

Index : Yes/No
Internet: Yes/No
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To

1. IV Additional Judge,
City Civil Court, Chennai.
2. The I Assistant City Civil Court,
Chennai.

T.RAVINDRAN,J.

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Pre-delivery order in
S. A.No. 144 of 2011and
M.P.No.1 of 2011

10.11.2016

