

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 16.02.2017

Coram

The Hon'ble Dr.Justice G.Jayachandran

Second Appeal No.1362 of 1999

Sri Padaleeswaraswamy Devasthanam
by its Executive Officer having
his Office at 40, Reddy Chowltry Street,
Tirupapuliyur. ... Plaintiff/Appellant/Appellant

/versus/

Koteeswaran Defendant/Respondent/Respondent

Prayer: Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree in A.S.No.27 of 1997, dated 02.01.1998 on the file of District Judge, Cuddalore confirming the judgment and decree dated 11.03.1997 in O.S.No.47 of 1995 on the file of the Sub Court, Cuddalore. '

For Appellants :No appearance
For Respondent :Mr.Kingston Jerold for
Mr.S.K.Rakhunathan

J U D G M E N T

The plaintiff in the suit for recovery of money is the appellant before this Court.

2. The brief facts of the case is that the appellant, who is the owner of the land, rented out the premises to the respondent and thereafter, terminated the tenancy for default of rent. The suit for possession and recovery of rental arrears was filed. The trial Court granted the relief of possession as well as partly allowed the recovery of money towards rental arrears and rejected the claim for a period beyond three years and the same was confirmed by the first appellate Court.

3. Aggrieved by that, the present Second Appeal is filed against the disallowed amount of Rs.37,955/- towards arrears of rent as barred by limitation on the ground that the said finding is contra to Second 109 of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and also the Courts below ought to have taken note of Ex.A2-acknowledgement of debt, dated

11.08.1994 by way of part payment made by the defendant and the limitation commenced from that day.

4. On perusal of the judgments of the Courts below as well as the documents relied by the parties, this Court finds that the alleged receipt Ex.A2 dated 11.08.1994 itself beyond three years period, since the specific case of the plaintiff is that the monthly rent for the suit premises was fixed at Rs.1350/- per month. As on 30.11.1994 the arrears of rent was Rs.86,555/-. The defendant paid Rs.500/- on 11.08.1994 as against due of Rs.86,555/- and therefore, tenancy was terminated after passing statutory notice. If the monthly rent is Rs.1350/- then to accrue Rs.86,555/- has arrears, apparently, the tenant has not paid rent for more than five years. Therefore, any amount paid after three years can be construed only as acknowledgment of time barred debt. Therefore, the Courts below have rightly restricted the claim of rental arrears for three years and rejected the claim beyond three years.

5. Section 109 of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, as it stood prior to the amendment in the year 2003 was:

"Section 109- Nothing contained in any law of limitation for the time being in force shall be deemed to vest in any person the property or funds of any religious institution which had not vested in such person or his predecessor-in-title before the 30th September 1951."

6. This was subsequently repealed by the amendment in the year 2003, which reads as follows:

"Central Act 36 of 1963 not to apply for recovery of properties of religious institution: Nothing contained in the Limitation act, 1963 (Central Act 36 of 1963) shall apply to any suit for possession of immovable property belonging to any religious institution or for possession of any interest in such property"

7. Since the subject matter of the suit happened before 2003, repealed Section alone is applicable.

8. Under the repealed Section, for any "fund of religious institution" vested in a person after 30.09.1951, limitation Act does not apply. The rent payable to temple does not fall within the category of "funds of religious institution". Precisely, that is the reason why, this Section has been repealed by a new provision by way of amendment in the year 2003.

9. In the light of the above finding, neither the

acknowledgment of time barred debt or Section 109 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 save the limitation.

10.In the above said circumstances, this Court finds no substantial Question of Law involved in this case. Hence, the Second Appeal is dismissed. No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1The District Court, Cuddalore.

2 The Subordinate Court, Cuddalore.

3 The Section Officer,

VR Section, High Court, Chennai

cnr (CO)

md(14/03/2017)

S.A.No.1362 of 1999

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