

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M. SUNDAR

S.A.No.630 of 1999

1. Dhanapal
2. Palaniammal
3. Manimekalai
4. Minor Malathi
5. Minor Lakshmi
(Minor appellants 4 & 5 rep. By their mother
& guardian the 3rd appellant ... Appellants/Plaintiffs

Vs

Arulmigu Adhi Saktheeswarar
Devasthanam (Gopurapuram)
rep. By its Executive Officer,
(A/M Vridhachalam Temple
E.O.I.C.) Sannathy Street,
Vridhachalam ... Respondent/Defendants

PRAYER: Second Appeal is filed under Section 100 of Code of Civil Procedure against the judgment and decree of the learned Subordinate Judge, Vridhachalam, passed in A.S.No.41/1997 dated 04.01.1999 reversing the judgment and decree of the learned Principal District Munsif, Virudhachalam, passed in O.S.No.588/1989 dated 21.04.1997.

For Appellants : Mr.J.Antony Jesus

For Respondents : Mr.G.Janakiraman
for Mr.K.V.Sundararajan

J U D G M E N T

Mr.J.Antony Jesus, learned counsel is present on behalf of all the appellants (appellants are 5 in number).

2. Mr.G.Janakiraman, representing Mr.K.V.Sundarajan, learned counsel on record for the sole respondent, is present.

3. The sole respondent is a temple. It is admittedly under the control, management and administration of the Tamil Nadu Hindu Religious and Charitable Endowment Department (herein after referred as "TN HR & CE Department" for the sake of brevity).

4. There is no dispute between the parties that the sole

respondent Temple is governed by Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Section 22 of 1959). (Further referred to as "TN HR & CE Act" for the sake of brevity).

5. As it is evident from the undisputed facts between the parties, the appellants were land lessees under the respondent temple (The parties are referred to by their ranks in the instant second appeal).

6. The suit was filed by the appellants herein with a prayer for bare injunction restraining the respondent temple from in anyway interfering with the appellants' possession and enjoyment of the suit property and letting out the demised land to anyone without following the due process of law. Demised land is suit land. Demised land is in two parcels comprised in R.S.Nos.53/1 and 52/6 admeasuring of 1.33 acres each. Therefore, the demised land admeasures 2.66 acres in all and is comprised in two RS. Nos.

7. It is not in dispute that they are comprised in two S.R.Nos., and they are in two parcels and that two parcels of land are contiguous.

8. After full contest, the trial court decreed the suit as prayed for vide judgment and decree in O.S.No.588/1989 dated 21.04.1997 on the file of the Principal District Munsif Court, Virudachalam.

9. Aggrieved, the temple, which is the respondent before me, preferred a regular first appeal u/s 96 of the Code of Civil Procedure, 1908 (hereinafter referred as CPC for the sake of brevity). The regular first appeal filed under Sec.96 of CPC was taken on file as A.S.No.41/1997 on the file of the Sub-Court, Virudhachalam.

10. After full contest, after examining the exhibits, depositions and hearing the learned counsel on both sides, the first appellate court reversed the judgment and decree of the trial court and dismissed the suit. Aggrieved, the lessees have preferred the instant second appeal before this court.

11. On 26.04.1999, the instant second appeal was admitted, by this court on two substantial questions of law and the two substantial questions of law on which this Second Appeal was admitted, by this court are as follows:

" 1. Whether the findings of the lower appellate court that the lease in favour of appellants for a fixed period in the absence of any evidence?

2. Whether the lower appellate court is right in not granting the relief of injunction especially when the appellant is "cultivating tenants" as defined under the Tamil Nadu Public

Trust(Regulation of Administration of Agricultural Lands) Act and he shall not be evicted except as provided for under Sec.19 of the said Act” .

12. It is not in dispute that vide CMP.No.7071/1999 dated 03.09.2003, this court granted an interim order protecting the possession of the appellants before this court.

13. Subsequently, as the appellants/land lessees continued to be in arrears of rent and continued to default in payment of rents, this court vide order dated 01.04.2005, vacated the interim order, thereby, permitting the temple to proceed with auction of the demised suit land for further lease.

14. Under the above said circumstances, it is now brought to the notice of this court that vacating the interim order by this court on 01.04.2005, vide CMP.No.7071/1999, has become final and has been given legal quietus.

15. It is also brought to the notice of this court that in pursuance of the interim order being vacated, respondent temple before this court, issued an auction notice and held public auction on 10.06.2015. In the public auction, several other parcels of lands belonging to the said temple were also put up for auction.

16. However, as far as the demised suit land is concerned, it is in two parcels comprised in SR.No.53/1 and 52/6 admeasures 1.33 acres each.

17. One K.Ravikuamr was successful in auction and he had been put in possession of the said land (S.No.53/1). The other land is comprised in SR.No.52/06 and it also admeasures 1.33 acres. One K. Kannan was successful in auction and he has been put in possession.

18. Under the stated circumstances, for all practical purposes, the second appeal has become infructuous. However, as the second appeal has been admitted by this court, on 26.04.1999 on two substantial questions of law, as stated supra, I deem it relevant to examine and answer the substantial question of law. Also it is seen that the whole matter falls within a narrow and short compass.

19. Learned counsel for the appellants would contend that the substantial question of law (ii) which depends upon Section 19 of Tamil Nadu Public Trust (Regulation of Administration of Agricultural Lands) Act would only fall for consideration and he would submit that there is not much to submit in terms of the first substantial question of law.

20. In examining the substantial questions of law, as set

out supra, elsewhere in this judgment, it is not in dispute that the demised suit land belongs to the respondent temple, which is under the direct management and administration of the TN HR & CE Dept., Government of Tamil Nadu and is governed by the TN HR & CE Act.

21. TN HR & CE Act is admittedly a Special Statute and Section 34 - B of TN HR & CE Act deals with lands belonging to temples and lease of the same. Besides Section 34-B, Section 34 lays down the procedure for leasing out lands for a period exceeding 5 years. However, in the instant case, we are not concerned with the lands leased for a period exceeding 5 years.

22. Therefore, the short point on which the matter turns is that the demised suit land is governed by a special statute and therefore, this court is of the view that the first question of law does not subsist to be answered.

23. As stated supra, learned counsel for the appellants would say that the second question of law alone might fall for consideration.

24. Be that as it may, as far as facts are concerned, there is no dispute between the parties.

25. Therefore, the second substantial question of law, on which the second appeal was admitted, is answered in favour of the respondent temple.

26. The second appeal is dismissed.

Considering the nature of the matter and the trajectory which the litigation has taken in reaching this court, the parties are left to bear their respective costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To
1.The Subordinate Judge, Vridhachalam.

2. The Principal District Munsif, Vridhachalam.

+1 cc to Mr.K.V.Sundararajan, advocate,sr.18548.

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krd 12/4

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