

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE R. SUBRAMANIAN

A.S.No.867/2008

and

CMP.NO.780/2017

1.Estate of K.Rukmani
Rep.by E.Ekambaram

2.K.Damodaran

3.K.Sundaram

4.K.Arumugam

5.Estate of K.Arjun

Rep.by A.Sumathi

6.K.Moorthy

7.K.Ekambaram

8.K.Padmavathi

9.K.Jayalakshmi

10.K.Lakshmi

11.K.Saraswathi

12.Mrs.Sumathi

13.Ms.A.Durgadevi

... Appellants/Defendants

(Cause title accepted vide Order of Court
dt.16.10.2008 made in M.P.No.1/2008).

Versus

Arulmighu Arunachaleswarar Devasthanam,

Thiruvannamalai,

Rep.by its

Executive Officer/Asst.Commissioner,

Thiruvannamalai.

... Respondent /Plaintiff

Appeal Suit is filed under Section 96, r/w Order XLI Rule 2 of the Civil Procedure Code, 1908, to set aside the Judgement and Decree dated 08.08.2007 made in O.S.No.5356/1996 on the file of the VII Additional Judge, City Civil Court, Chennai.

For Appellants : Mr.R.Thiagarajan
For Respondent : Mr.A.K.Sriram
for M/s.A.S.Kailasam & Associates

JUDGEMENT

This appeal is by the tenants, who have suffered a decree for eviction in O.S.Nos.5356/1996.

2. The facts reading to the filing of the suit are as follows:

3. The predecessor in interest of the appellants viz., K.Krishnan, became a lessee in respect of 5½ ground of the land situated in Urur Village, Saidapet Taluk, then Chengleput District belonging to the respondent/Deevasthanam. The lease was for a period of 50 years. A lease deed was executed on 09.02.1937. The rent was fixed at Rs.3.70 per month. The plaintiff Temple determined the lease by issuing a notice on 12.06.1987 after expiry of 50 years period. The defendants sent a reply claiming that they are entitled for renewal of lease and that they had also exercised their right of renewal under Ex.B-1, letter dated 12.11.1986. In view of the said reply, the plaintiff Temple has filed the suit for ejectment and for damages.

4. The said suit was resisted by the defendants, who are the legal representatives of the deceased original lessee K.Krishnan, claiming that they are entitled to the renewal of the lease. They would also contend that the Executive Officer of the plaintiff Temple has no right to institute the suit.

5. On the above pleadings, the learned trial Judge framed the following issues:-

1. Whether the lease has been determined, as claimed in the plaint?
2. Whether the defendants are entitled to the benefits conferred under the Tamil Nadu City Tenants Protection Act, 1945?
3. Whether the plaintiff is entitled to damages, if so what is the quantum?
4. Whether the plaintiff is entitled to recover the possession of suit property?
5. Whether the suit as framed, is maintainable?
6. To what other relief the plaintiff is entitled to?

6. On the side of the plaintiff, the Executive Officer of the plaintiff Temple was examined as P.W-1, Inspector of HR & CE Department was examined as P.W-2 and Exs. A-1 to A-5 were marked. On the side of the defendants, the 7th defendant Ekambaram was examined as D.W-1 and Exs. B-1 to B-28 were marked.

7. On consideration of the oral and documentary evidence, the learned trial Judge concluded that the lease was validly terminated by the plaintiff by issuing the notice dated 12.06.1987, Ex.A-2. The learned Judge further concluded that as per the proceedings of the Commissioner of HR & CE marked as Ex.A-5, the Executive Officer is empowered to institute the suit for recovery of possession of immovable properties of the Temple. It was also concluded that the defendants have no right of renewal of the lease and accordingly proceeded to decree the suit for possession. Insofar as the relief of damages is concerned, the plaintiff was given liberty to initiate separate proceedings if so advised. Aggrieved by the above decree and judgement of the trial Court, the defendants are on appeal.

8. I have heard Mr.R.Thiagarajan, learned counsel appearing for the appellants and Mr. A.K.Sriram, for M/s.A.S.Kailasam & Associates, learned counsel appearing for the respondent-Temple.

9. Pending this appeal, the appellants have filed C.M.P.No.780/2017, seeking to produce certain documents which came into being during the pendency of the suit. The documents include the Government orders dated 04.06.1999, 06.08.20017, 09.11.2007, & 20.07.2010, the proceedings of the Commissioner for Hindu Religious and Charitable Endowments dated 02.03.2012, legal opinion rendered by the counsel for the plaintiff dated 27.06.2012 and receipts for payment of lease rent issued by the plaintiff-Devasthanam and the paper publication effected on 20.07.2013 by the HR & CE Department. In the affidavit filed in support of the application, it is claimed by the plaintiffs that though the appeal was referred to mediation, the Plaintiff Temple expressed its inability to agree for a settlement out side the Court in view of the bar under Section 34 of the Hindu Religious and Charitable Endowment Act, 1959, which required permission of the Commissioner H.R. & C.E. for entering into compromise. It is also claimed that the defendants have offered to pay enhanced rent and they had also paid huge sums towards enhanced rent and therefore, the plaintiff Temple is bound to take note of the situation and extend the lease in their favour.

10. The said application is resisted by the learned counsel appearing for the respondent contending that the proceedings for fixation of fair rent is pending and after

completion of the proceedings, the actual rent payable could be modified. He would also express the inability of the Temple to renew the lease in favour of the appellants.

11. Mr.R.Thiagarajan, learned counsel appearing for the appellants would contend that the Executive Officer has no power to institute the suit. By placing reliance on Section 45 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959, he would contend that initiation of legal proceedings is beyond the powers of Executive Officers. He would also rely upon the judgement of the Division Bench of this Court reported in 2003 (1) LWP 386 in Sri Arthanareeswarar Koil of Thiruchengode represented by its Executive Officer -Vs-T.M.Muthuswamy Padayachi etc. and Others. Therefore, it is contended that the appellants are entitled for renewal of lease in their favour for a further period of 50 years by renewing the lease executed in their favour under Ex.A1 dated 09.02.1937.

12. Per contra, Mr.A.K.Sriram, learned counsel appearing for the respondent-Temple contended that under Ex.A-5, the proceedings of the Commissioner, the Executive Officer of the respondent Temple was specifically authorised to institute the legal proceedings. The proceedings of the Commissioner for Hindu Religious and Charitable Endowment in R.Dis.No.35812/60 dated 11.08.1961 reads as follows:

Rule-11: "The Executive Officer shall be the person entitled to sue or be sued on behalf of the temple. It shall be the duty of the Executive Officer to see that all legal proceedings on behalf of or against the institution are instituted in due time and properly prosecuted and that all such proceedings against the institution are properly defended. He should act in accordance with resolutions of the trustees and also obtain prior sanction of the competent authority wherever necessary".

13. In view of the above said specific authority, the learned counsel for the respondent would submit that the decision of the Division Bench, relied on by the learned counsel for the appellants, will not apply to the present case. In the decision rendered by the Division Bench reported in 2003 (1) LW 386 in Sri Arthanareeswarar Koil of Thiruchengode represented by its Executive Officer -Vs- T.M.Muthuswamy Padayachi etc. and Others it was held by the Hon'ble Division Bench that the Executive Officer cannot maintain a suit in the absence of specific power. Therefore, the contention of Mr.R.Thiagarajan, learned counsel for appellants that the Executive Officer has no power to institute the suit cannot be countenanced in view of Rule 11 which authorises the Executive Officer to file the suit. As regards the right of renewal claimed by the learned counsel

for the appellants, Mr.A.K.Sriram, learned counsel for the respondent would contend that the lease deed dated 09.02.1937, which has been marked as Ex.A-1 does not confer any such right of renewal on the appellants.

14. The further contention of counsel for the appellants is that the Commissioner for H.R. & C.E. had approved proposals for renewal of the lease on payment of the enhanced rent with regard to other tenants in the same locality, and therefore, the appellants cannot be treated differently. In the present case, the original lease was executed for a period of fifty years and for renewal of such lease, there is a bar under Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959. Therefore, unless, the Commissioner permits a compromise or alienation, the Executive Officer cannot either undertake to compromise a dispute before a Court of law or enter into a lease deed for over a period of five years. Therefore, in the absence of a express permission granted by the Commissioner either under Section 34 or under Section 43 of the above said Act, the claim of equality cannot be put against a landlord, who has instituted a suit filed for eviction.

15. On the above rival contentions, the following points arise for determination in this appeal:-

- 1)Whether there has been proper determination of lease?
- 2)Whether the Executive Officer has authority to institute the suit on behalf of the respondent Temple ?
- 3)Whether the defendants are entitled for renewal of the lease?
- 4)Whether the Plaintiffs are entitled for renewal of the lease upon payment of enhanced lease rent as has been claimed under Ex.B1, letter dated 12.11.1986?

POINT No.1:- The lease has been determined by the respondent by issuing a notice under Ex.A-2 dated 12.06.1987. It is not the contention of the appellants that such notice is not in conformity with the requirements of Section 106 of the Transfer of Property Act. Except the claim that they have right of renewal, the defendants have not disputed the validity of the said notice even in their reply dated 05.08.1987. It is claimed that the defendants are entitled to the benefit of the provisions contained under the Tamil Nadu City Tenants Protection Act. In view of the amendment to the Tamil Nadu City Tenants Protection Act, brought about in the year 1999, it is needless to mention that the said Act would not apply to properties belonging to Religious Institutions. Therefore, the question of appellants invoking the benefits of the said Act

will not arise. Therefore, the claim that the appellants are entitled to the benefits of the above said Act cannot be countenanced.

POINT No.2:- The next contention of Mr.R.Thiagarajan, learned counsel is based on Section 45 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959, and the judgement of the Division Bench of this Court reported in 2003 (1) LW 386 in Sri Arthanareeswarar Koil of Thiruchengode represented by its Executive Officer ..Vs.. T.M.Muthuswamy Padayachi etc. and Others. No doubt, the Division Bench has held that the Executive Officer will not have the power to institute the suit, unless the order of appointment specifically authorises him to do so. In the case on hand, the plaintiff has produced Ex.A-5, the proceedings of Commissioner which categorically empowers the Executive Officer to file suits on behalf of the Temple. Therefore, the contention that the Executive Officer of the respondent Temple has no authority to institute legal proceedings on behalf of the Temple cannot be sustained.

POINT No.3:- A reading of Ex.A-1, lease deed executed in the year 1937 shows that there is no provision for renewal of the lease. The claim of the defendants that they are entitled to renew the lease for a further period of 50 years cannot therefore be sustained. Hence, the said point is also answered against the appellants.

POINT No.4 :- It is next contended by Mr.R.Thiagarajan, learned counsel for plaintiffs that the plaintiffs have agreed for payment of enhanced rent as well as rental advance, in such event, the notice of termination issued by the respondent, without considering the same, is invalid. Therefore, the termination of the lease based on the notice dated 12.06.1987 cannot be sustained. Further, it is contended that the respondent has been receiving the rent paid by the appellants even during the pendency of suit and thereafter also and therefore the termination of lease is invalid. For this purpose, he would rely upon the documents sought to be produced as additional evidence in the appeal. It would go to show whatever amount paid by the appellants has been received by the respondent only towards damages for use and occupation and it is also very clearly stated therein that the receipt of the amount is without prejudice to the rights of the Temple. Therefore, the said contention of the learned counsel for the appellants does not also merit acceptance.

C.M.P.No.780/2016

The documents sought to be produced as additional evidence in the appeal are in the nature of receipts issued by the respondent for having received the lease rent without prejudice to their right. The other documents that are sought to be

produced are Government orders and proceedings of the Commissioner relating to renewal of lease of immovable properties based on which the appellants claim that similar benefit of extension of lease has to be conferred on them. These documents, in my considered opinion are not relevant for the disposal of the appeal. The documents sought to be produced in Serial Nos. 1,2 and 6 cannot be admitted in evidence as they are not in any manner relevant to substantiate the case of the appellants. The other documents are admittedly receipts issued by the respondent for having received damages for use and occupation subsequent to filing of the suit. As mentioned above, the said amounts were received without prejudice to the right of the respondent. The amount was received not as rent but towards damages for use and occupation. A perusal of the receipts would indicate that it is clearly stated that the amount is received towards damages for use and occupation of the property in question and is without prejudice to the pending Court proceedings. Therefore, these documents do not lend support to the case of the appellants or in any manner assist this Court in deciding the dispute in controversy in this appeal. I do not see any reason to allow the application seeking reception of additional evidence in this appeal. Hence CMP. No.780/2016 is dismissed.

16. In fine, the appeal is dismissed confirming the judgement and decree dated 08.08.2007 made in O.S. No.5356 of 1996 on the file of the VII Additional Judge, City Civil Court, Chennai. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

KP
To

1. The VII Additional Judge,
City Civil Court,
Chennai

+1 cc to M/s.A.S.Kailasam & Associates Advocate sr 63579
A.S.No.867 of 2008

mp(co)
aa16/11/2017