

THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.12.2016
PRONOUNCED ON : 04.01.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.640 of 2011
and
M.P.Nos.1 of 2011 & 1 of 2015

N.Ramathilagam Appellant/Defendant

Vs.

Arul Mighu Arunachaleeswarer
Thirukkoil,
Represented by its Assistant
Commissioner/
Executive Officer,
Thiruvannamalai. Respondent/Plaintiff

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 29.07.2010 in A.S.No.247 of 2008 on the file of the III Fast Track Court, Chennai confirming the appeal on 02.11.2006 in O.S.No.3341 of 2001 on the file of the V Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.L.J.Krishnamurthy

For Respondent : Mr.A.K.Sriram
for M/s A.S.Kailasam Associates

JUDGMENT

Challenge in this second appeal is made by the defendant against the Judgment and decree dated 29.07.2010 passed in A.S.No.247 of 2008 on the file of the III Fast Track Court, Chennai, confirming the judgment and decree dated 02.11.2006 passed in O.S.No.3341 of 2001 on the file of the V Assistant City Civil Court, Chennai.

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

3. The second appeal has been admitted and the following substantial question of law is formulated for consideration in this second appeal.

"Whether the Executive Officer has locus standi to institute the suit on behalf of the plaintiff's Temple?

4. The plaintiff temple is the owner of the suit property. Admittedly, the defendant is a tenant under the plaintiff temple in respect of the suit property. Alleging that the defendant is in arrears of rent and thereby, determining the tenancy of the defendant by issuing the statutory notice, the plaintiff has come forward with the suit seeking the appropriate reliefs.

5. The defendant, inter alia, has taken the main plea that the suit filed by the Executive Officer representing the temple is not maintainable. According to the defendant, the Executive Officer has no locus standi to maintain the suit on behalf of the plaintiff temple. The above plea has been raised in the written statement and even argued before the courts below. However, the contention put forth by the defendant, with reference to the above aspect, was negated by the Courts below.

6. The Counsel for the defendant contended that the Commissioner has not authorised the Executive Officer to lay the suit on behalf of the plaintiff temple and therefore, according to him, the courts below, without following the principles of law laid down in 2003-1-L.W.386 (Sri Arthanareeswarar of Tiruchengode by its present Executive Officer, Sri Sabapathy V. T.M.Muthuswamy Padayachi, etc. & others), has erroneously held that the Executive Officer is competent to institute the suit on behalf of the plaintiff temple and hence, challenging the same, according to him, the second appeal has been preferred.

7. As regards the entitlement of the Executive Officer to lay the suit on behalf of the temple, the plaintiff has marked the proceedings of the commissioner as Ex.A4 dated 11.08.1961. A perusal of the contents of Ex.A4, particularly, Rule 11 mention therein would go to show that the Commissioner had authorised the Executive Officer to sue or be sued on behalf of the temple and further, he has authorised the Executive Officer to see that all the 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. Therefore, it could be seen that vide Ex.A4 proceedings, the Commissioner has detailed the powers of Executive Officer and in addition to them, also conferred on him the authority to sue or be sued on behalf of the temple. In

such view of the matter, the contention put forth by the defendant that the Executive Officer has not been granted the power to prefer the suit on behalf of the temple by the Commissioner as provided under the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 as such cannot be accepted.

8. It is argued by the defendant's counsel that the Executive Officer has not been specifically authorised by the Commissioner or the trustees to issue notice under Section 106 of the Transfer of the Property Act and therefore, the lease determination notice issued by the Executive Officer is invalid and accordingly, the suit laid by the Executive Officer is also not maintainable. However, the above contention does not merit acceptance.

9. As adverted to earlier, the Executive Officer has been directed to ensure that all the legal proceedings taken on behalf of the institution are properly prosecuted and in such view of the matter, it could be seen that accordingly, the Executive Officer has duly determined the tenancy of the defendant and armed with the authorisation given by the Commissioner, it could be seen that he has instituted the suit on behalf of the temple against the defendant seek appropriate reliefs. Therefore, the courts below have also rightly found that the Executive Officer has all the competency as per law to prefer the suit on behalf of the temple against the defendant. Under Ex.A4, the commissioner has also directed the Executive Officer to act in accordance with the resolution of the trustees and also obtain prior sanction of the competent authority wherever necessary. Placing reliance upon the above said direction, the contention has been put forth that the Executive Officer has not obtained the prior sanction of the trustees or the commissioner, as the case may be, before laying the suit. However, the above direction should be read in consonance with the power already conferred on the Executive Officer to lay the suit on behalf of the plaintiff temple by the commissioner. As rightly put forth by the respondent's counsel, a harmonious reading of the terms contained in the proceedings of the commissioner marked as Ex.A4, particularly, Rule 11 would go to show that the Executive Officer has been authorised by the commissioner to institute the suit on behalf of the plaintiff temple and in addition to that, he has been directed that in case, for further acts the direction of the commissioner is necessary, he should seek the required sanction for the same. In such view of the matter, the argument put forth by the defendant counsel that the Executive Officer has not been conferred with the power to lay the suit on behalf of the temple cannot be accepted in any manner.

10. The decision relied on by the defendant's counsel, no doubt, lay down the proposition of law that the Executive Officer has to have the authorisation from the commissioner to prefer the suit on behalf of the temple. However, as seen from the discussion made above, as far as this case is concerned, the Executive Officer has been conferred with the power under Ex.A4 proceedings by the commissioner to institute the suit on behalf of the temple.

11. In the light of the above discussions, the substantial question of law formulated for consideration in this second appeal is answered in favour of the plaintiff and against the defendant.

In conclusion, the second appeal fails and the same is dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sms
To

1. The Additional District & Sessions Judge,
[Fast Track Court], No.III,
Chennai - 600 001.
2. The V Assistant Judge,
City Civil Court at Chennai.

Copy to

The Section Officer,
VR Section, High Court, Madras.-104.

+1cc to M/S.L.J.Krishnamurthy, Advocate Sr.590
+1cc to M/S.A.S.Kailasam Associates, Sr.459

S. A.No.640 of 2011
and

M.P.Nos.1 of 2011 & 1 of 2015

ppa[col]
srg 3/2/2017