

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2017

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

Second Appeal Nos.1919 and 1920 of 2003

1.M/s.Karthikeya Traders
rep. by its Partner M.P.Palaniappan

2.M.P.Palaniappan

3.Nachimuthu ...Appellants in S.A.No.1919
of 2003/Defendants 1,2 & 5

1.M/s.Karthikeya Press Printers
and Book Binders, rep by its partner
Mr.P.Palaniappan

2.M.P.Palaniappan

3.Nachimuthu ..Appellants in S.A.No.1920
of 2003/Defendants 1,2 & 5

Vs

1.Madarasa Dawoodiya Arabic
College Trust rep. by its
President M.T.Sheik Alauddin

2.S.P.Damodaran

...Respondents in both the appeals
/Plaintiff & 4th Defendant

Second Appeals filed under Section 100 C.P.C. against the judgment and decree dated 20.03.2003 made in A.S.Nos.85 and 84 of 1991 on the file of the II Additional District Judge, Erode, confirming the judgment and decree passed in O.S.Nos.639 and 637 of 1987 dated 12.07.1991 by the Principal District Munsif, Erode.

For Appellants .. Mr.S.Jayaraman
in both the appeals

For Respondents .. Mr.V.Lakshminarayanan for R1
in both the appeals

COMMON JUDGMENT

The defendants, who suffered a decree at the hands of the Courts below, are the appellants herein and seeking to reverse the same, they have filed these second appeals.

2.The suits were originally laid in the year 1987. They have been filed seeking recovery of possession on the premise that the appellants being the defendants/tenants are not paying the rent and thus committed default. The trial Court decreed the suits as prayed for. The lower appellate Court has confirmed the judgment and decree of the trial Court. Aggrieved over the same, the appellants filed the second appeals in S.A.Nos.511 and 512 of 1992. By the judgment and decree dated 04.03.2002, the judgment and decree of the lower appellate Court have been set aside with a consequential direction to decide the jurisdictional issue of the suits being maintainable or not as against the availability of the forum for the aforesaid purpose under the Tamil Nadu Buildings (Lease and Rent Control) Act (for short 'the Act').

3.Thereafter, the plaintiff filed applications seeking reception of additional documents. These documents are nothing but a Government notifications to show that the plaintiffs along with the property owned by them would come under the purview of the Wakf and based upon the aforesaid documents, it was contended by the plaintiff that the exemption available under Section 29 of the Act would be applicable. The lower appellate Court accepted the contention of the plaintiff and decreed the suits by placing reliance upon Exs.A14 and A18 with respect to both appeals though the contents being the same. Challenging the same, the present appeals have been filed.

4.At the time of admission, the following substantial questions of law have been framed:

1.Whether the lower appellate Court was right in allowing the application in I.A.No.49 of 2003 filed by the respondent/plaintiff herein for receiving the additional documents Ex.A14 without giving any opportunity to the appellants and that too by passing a common order in the appeal and the petition?

2.Whether the lower appellate Court was right in admitting additional documents especially when this Court while remitting the matter back to the lower appellate Court has specifically directed the lower appellate Court to decide the issue of applicability of G.O.Ms.No.2000 Home dated 16.08.1976 on the basis of

evidence available on record?

3. Whether the lower appellate Court is right in entertaining the application in I.A.No.49 of 2003 which was filed by a totally stranger to the suit proceedings?

4. Whether the lower appellate Court is right in coming to the conclusion that the suit premises is a public Trust even when the additional document Ex.A16 does not show it to be so?

5. Whether the lower appellate Court is right in coming to the conclusion that the suit is maintainable and that the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Act 18/1960) is not applicable to the respondent on the alleged ground that it is a Public Trust as per Ex.A18?

6. Whether the Courts below are right in entertaining the suit when P.W.1 himself stated in the cross examination that the suit property belongs to the Wakf Board and the Board has not instituted any suit and whether it is open to the President of the Madarasa Dawoodiya Arabic College Trust to institute a suit particularly when there is no authorisation?

7. Whether the Courts below were right in decreeing the suit?

7. Learned counsel appearing for the appellants submits that the lower appellate Court has exceeded its jurisdiction in placing reliance upon Exs.A14 or A18 as the case may be. The order of remittal is based upon the evidence available on record. Thus the judgment and decree of the lower appellate Court in both the cases would require interference.

8. Learned counsel appearing for the first respondent/plaintiff submits that the remand is for the purpose of deciding the issue as to whether the plaintiff is entitled for exemption or not. What the Court has stated is to be understood in the context in which it has been said. A technical approach cannot be adopted. Therefore, no interference is required.

9. The order of remittal was made to decide the issue as to whether the plaintiff is entitled for exemption under Section 29 of the Act or not. There is no bar for filing the application to substantiate the issue for which the order of remittal was made.

What the plaintiff filed before the lower appellate Court was the Government Gazette Notification issued by the State of Tamil Nadu. Under the Indian Evidence Act, there is a presumption with respect to the said Notification. The appellants have not questioned the Notification but merely take up the plea which is nothing but a technical objection that an application filed under Order 41 Rule 27 C.P.C. ought not to have been taken on file. This Court is afraid that the said contention cannot be accepted. The object and intention behind the order of remittal is very clear that is to decide as to whether the plaintiff would come under the Public Charitable Institution and thus entitled for exemption under Section 29 of the Act. Once the document assumes the character of public document then there is no difficulty for a Court to rely upon it. In fact, the lower appellate Court itself ought to have called for such a document, if it has been brought to its knowledge, for the purpose of deciding the issue. The appellants have not even questioned the veracity of the said document.

10. In such view of the matter, this Court is of the view that there is no perversity in the finding rendered by the lower appellate Court. When once the issue is held against the appellants, then the concurrent findings rendered by the Courts below shall apply for granting the relief. After all, the suits have been filed in the year 1987. Now more than three decades have elapsed. This Court does not find any substantial question of law, warranting interference. Accordingly, the second appeals are dismissed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

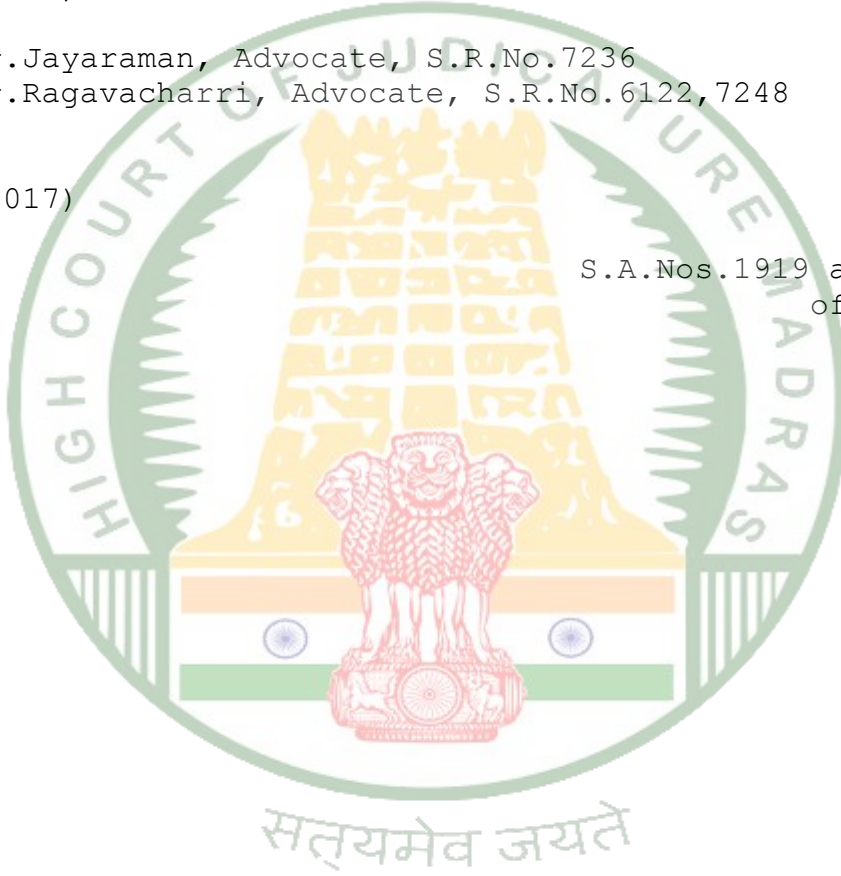
1. The II Additional District Judge,
Erode.
2. The Principal District Munsif,
Erode.
3. The Section Officer,
V.R.section,
High Court, Madras.

+1cc to Mr.Jayaraman, Advocate, S.R.No.7236

+2cc to Mr.Ragavacharri, Advocate, S.R.No.6122,7248

MSM(CO)
RS (28/02/2017)

S.A.Nos.1919 and 1920
of 2003



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