

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.No.250 of 2018

Arulmigu Nageswaraswamy Thirukovil
Kundrathur Sriperumbudur Taluk
represented by its Executive Officer ... Appellant

Vs.

1.Begum Be Mustafa (died)
2.Althaff
3.Ferrose
4.Fathima
5.Ramesh
(R2 to R4 are LR of the deceased R1 viz.,
Begum Be Mustafa, as per memo dated
25.06.2018, vide Court order dated
02.07.2018) ... Respondents

PRAYER: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 11.08.2017 made in A.S.No.43 of 2017 on the file of Sub Court, Kancheepuram confirming the judgment and decree dated 24.07.2014 made in O.S.No.495 of 2008 on the file of District Munsif-cum-Judicial Magistrate Court, Sriperumbudur.

For Appellant : Mr.P.Mohan Kumar

For Respondent: R1 - died
Mr.G.Dilip Kumar

For R2 to R4
R5 Exparte (given up)

J U D G M E N T

This Second Appeal is filed against the judgment and decree dated 11.08.2017 made in A.S.No.43 of 2017 on the file of Sub Court, Kancheepuram confirming the judgment and decree dated 24.07.2014 made in O.S.No.495 of 2008 on the file of District Munsif-cum-Judicial Magistrate Court, Sriperumbudur.

2. The appellant is second defendant and the respondents 1 to 4 are plaintiffs 2 to 5 and 5th respondent is 1st defendant in O.S.No.495 of 2008 on the file of District Munsif-cum-Judicial Magistrate Court, Sriperumbudur. The parties are referred to as per their rank in the suit. The deceased first plaintiff filed suit for permanent injunction restraining the 2nd defendant and one Ramesh who was then Executive Officer as 1st Defendant from evicting the deceased first plaintiff from the suit property, except by due process of law and for permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the property and from auctioning the lease hold rights of the suit schedule property till the deceased first plaintiff is evicted by due process of law. Pending suit, the first plaintiff died, the plaintiffs 2 to 5 were brought on record as legal heirs of the deceased first plaintiff.

3. According to the deceased plaintiff he is a lessee of the suit property which belongs to the 2nd defendant on a monthly rent of Rs.3,410/- per month. The lease can be terminated by issuing 15 days notice. The first defendant demanded Rs.20,000/- for not interfering with the deceased first plaintiff's possession. The deceased first plaintiff refused to pay the said amount. In view of the same the first defendant sent a notice dated 29.07.2003 stating that the plaintiff's lease period has expired and called upon the plaintiff to hand over the possession to the temple. The first plaintiff sent reply denying the claim of the temple. The 2nd defendant published notice for auctioning of lease hold right. In the circumstances, the sole deceased plaintiff has filed the present suit for the reliefs stated above.

4.The first defendant remained ex-parte. The second defendant filed written statement and denied all the averments in the plaint and contended that there is no landlord-tenant relationship between the defendant and plaintiff, only license was granted to the first plaintiff and the same is not a lease. The first defendant did not demand Rs.20,000/- as alleged by the first plaintiff. The 2nd defendant has right to auction the license for running business in the suit property.

5.Based on the pleadings, the learned Trial Judge framed necessary issues and additional issues. Before the learned Trial Judge, the third plaintiff examined himself as P.W.1 and eleven documents were marked as Ex.A1 to A11. On behalf of defendants one Valluvan was examined as D.W.1 and one document was marked as Ex.B1 - rent receipt (series).

6.The learned Trial Judge considering the pleadings, oral and documentary evidence, decreed the suit holding that the 2nd

defendant can evict the plaintiffs only by initiating legal proceedings through Court.

7. Against the said judgment and decree dated 24.07.2014 made in O.S.No.495 of 2008, the 2nd defendant filed A.S.No.43 of 2017 on the file of Sub Court, Kancheepuram. The learned First Appellate Judge framed necessary points for consideration. The learned First Appellate Judge considering the materials available on record, the judgment of the Trial Court and arguments of the counsel for the parties, dismissed the appeal confirming the judgment and decree of the Trial Court.

8. Against the said judgment and decree dated 11.08.2017 made in A.S.No.43 of 2014, the 2nd defendant has come out with the present Second Appeal.

9. The learned counsel for the appellant/2nd defendant contended that they are the owner of the suit property. The license was granted to the first plaintiff to run the business and the license period expired. On expiry of license period, the 2nd defendant is entitled to auction the license for running the business in the suit property. The Courts below erred in holding that the plaintiffs can be evicted only after obtaining orders from the competent Civil Court.

10. Per contra, the learned counsel for the respondents/plaintiffs contended that the first plaintiff was a lessee in the suit property and he was continuously carrying on the business in the suit property and paid the monthly rent to the 2nd defendant/temple. After the death of the first plaintiff, the plaintiffs 2 to 5 are continuously carrying on the business and they are in possession and enjoyment of the suit property as a lessee. The first plaintiff was the lessee and after his death, the plaintiffs 2 to 4 who are the legal heirs of the first plaintiff are entitled to be in possession and carry on the business. The 2nd defendant can evict the plaintiffs only by due process of law, i.e., by obtaining order from the competent Civil Court. Even after expiry of lease period, the 2nd defendant is not entitled to auction the lease hold right without evicting the plaintiffs.

11. Heard the learned counsel for the appellant/2nd defendant and perused the materials available on record.

12. The point for consideration, in the Second Appeal is whether the 2nd defendant is entitled to bring the right to run the business in the suit property by public auction before evicting the plaintiffs 2 to 4, who are the legal heirs of the original lessee/licensee.

13.It is an admitted fact that the property is owned by 2nd defendant/temple. According to the first plaintiff he is a lessee whereas according to the 2nd defendant in the written statement, first plaintiff is only a licensee and there is no landlord-tenant relationship between the 2nd defendant and the first plaintiff. The issue, whether the properties of the 2nd defendant can be brought for public auction after expiry of the lease period was considered by the Division Bench of this Court in the judgment reported in 2014(5) MLJ 129 [P.Muthusamy Vs. State of Tamil Nadu and another], wherein it was held that even if a right granted to a person to run business is termed as lease, it is only a license and provisions of Rent Control Act do not apply to the property belonging to the local body. The said judgment applies to the properties belonging to the temple which comes under the control of The Commissioner of Hindu Religious and Charitable Endowment department. As per Section 78 of the Hindu Religious and Charitable Endowment Act, any person who continues to remain in the property of the temple after expiry or termination or cancellation of lease, mortgage or license granted to him is an encroacher. As per Section 79 of the Act, the Commissioner has jurisdiction to order eviction and can remove the encroachment. As per the above provisions, the judgment of the Courts below that plaintiffs can be evicted only after obtaining orders from the Civil Court is erroneous. The appellant/2nd defendant has the right to auction license to run the business in the property belonging to the temple, even without evicting the earlier licensee after license period expired, as held by the Division Bench of this Court.

14.The appellant/2nd defendant is entitled to conduct the public auction to grant the license to run the business in the suit property and handover the possession of the suit property to the highest bidder to run the business after taking possession from the respondents/plaintiffs.

15.In the result, Second Appeal is allowed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The District Munsif-cum-Judicial Magistrate Court,
Sriperumbudur.

2.The Sub Court,
Kancheepuram.

+lcc to Mr.A.Palaniappan, Advocate Sr.43806

+lcc to Mr.G.Dilipkumar, Advocate Sr.43730

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srg 29/08/2018



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