

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2018

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.493 of 2008

and

M.P.No.1 of 2008 & CMP.No.4324 of 2018

- 1.P.Thangaswamy (Died)
- 2.T.Susila
- 3.T.Thilagavathy
- 4.T.Kanaga
- 5.T.Navaraj

[Appellants 2 to 5 are brought on record as legal representatives of the deceased sole appellant vide order of Court dated 21.02.2014 made in MP.No. 1 of 2013 in SA.No.493 of 2008.]

...Appellants

Vs.

Sri Sandhana Vinayagar Devasthanam
Saidapet, Chennai by its Trustees,

- 1.K.Murugesu Mudaliar
- 2.K.Panchatcharam
- 3.R.Thirugnanasambandam

...Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree in AS.No.178 of 2006 dated 13.03.2007 on the file of the Additional District Judge/ Fast Track Court - II, Chennai confirming the judgment and decree in OS.No.7956 of 1980 dated 10.10.2005 on the file of XVIII Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.P.Gopalan

For Respondents: Mr.Agilesh

for Mr.T.Dhanasekaran

J U D G M E N T

The sole defendant in OS.No.7956 of 1980 who suffered a decree for eviction has come forward with this Second Appeal.

2. Since he died pending appeal his legal representatives have been brought on record as appellants 2 to 5. The suit in OS.No.7956 of 1980 was filed by the respondent temple seeking ejectment. The tenancy as well as the termination of it are not in dispute.

3. The tenant/ 1st appellant resisted the suit contending that he is entitled to the benefits of Section 9 of the Tamil Nadu City Tenants Protection Act, 1921. In view of the amendment of the said Act during the pendency of the Suit, the protection afforded to the tenant of religious institutions was withdrawn, therefore the application under Section 9 filed by the appellant stood abated.

4. The trial Court therefore decreed the suit directing the defendants to deliver possession. Aggrieved the defendants filed an appeal in AS.No.178 of 2006. Before the Appellate Court a new factual plea was raised by the appellant to the effect that the persons who had filed the suit claiming to be the Trustees of the plaintiff temple are not infact the Trustees of the temple and they have no right to maintain the suit.

5. The lower appellate Court considering the said plea framed an issue as to whether the persons named as Trustees are in fact the trustees of the plaintiff temple. The learned appellate Judge concluded that the issue being a question of fact should have been raised in the written statement and in the absence of such plea the plaintiff cannot be allowed to raise the same. The lower appellate Court also found that even in the application filed under Section 9 of the City Tenants Protection Act in IA.No.11118 of 1981 the defendant/ appellant himself had shown the temple represented by the very same three persons who had filed the suit. On the said conclusion the lower

appellate Court rejected the said contention of the defendant and dismissed the appeal. Aggrieved the 1st defendant had come forward with this above Second Appeal.

6. The sole defendant/ appellant died pending the appeal and his legal representatives have been impleaded as appellants 2 to 5.

7. I have heard Mr.P.Gopalan, learned counsel appearing for the appellants and Mr.R.Agilesh, learned counsel appearing for the respondent temple.

8. The only contention raised by Mr.P.Gopalan is that the lower appellate Court was not right in rejecting the contention of the 1st defendant that the three persons who had filed the suit as trustees of temple are not in fact the trustees.

9. Notice of admission was ordered on 16.04.2008. I have considered the submission made on behalf of Mr.P.Gopalan. Relying upon the reply notice dated 07.05.1979 which was marked as Ex.A2 Mr.P.Gopalan would contend that the defendants had in fact raised the locus standi of the persons who had filed

the suit claiming to be trustees even in the reply notice therefore the lower appellate Court was not right in rejecting the claim of the defendant that these three persons are not the trustees of the plaintiff temple.

10. I do not think the said contention of the learned counsel for the appellant could be countenanced. The suit was laid by the Temple represented by five individuals claiming that they are the trustees of the temple. In the written statement filed in the suit, the status of the persons who were described as trustees was not denied and hence no issue was framed regarding their status. In the application filed by the deceased 1st appellant in IA.No.11118 of 1981 he had shown the temple to be represented by the very same three persons, therefore, there was in fact an admission that the three individuals who had initiated the suit as trustees of the plaintiff temple are the trustees of the plaintiff temple. It is therefore too late in the day for the defendant to contend that the plaintiff is not represented by proper persons as its trustee.

11. In fine, I find that the lower appellate Court has rightly rejected the said contention and confirmed the decree of the trial Court. I do not find any question of law much less a substantial question of law to entertain the Second Appeal. Hence, the Second Appeal is dismissed without being admitted. No costs. Consequently, the connected Miscellaneous Petitions are also closed.

Sd/-

सत्यमेव जयते Assistant Registrar (CS-IV)

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Sub Assistant Registrar

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To

1. The Additional District Judge/
Fast Track Court - II, Chennai

2. The XVIII Assistant Judge,
City Civil Court, Chennai.

+lcc to Mr.P.Gopalan, Advocate, S.R.No. 67628
+lcc to Mr.T.DhanaSekaran, Advocate, S.R.No. 67947

S.A.No.493 of 2008

KS (CO)
GN(25/10/2018)



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