

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

S.A.Nos.773 & 774 of 2005
and
C.M.P.Nos.10849 & 10850 of 2005

A/m.Aladi Mariamman Temple
Rep.by its Hereditary Managing
Trustee, A.K.C.Ganesa Thevar
S/o.Chidambara Thevar
Vaimedu Keezhakkadu
Vaimedu Post,
Vedaranyam Taluk

..Appellant in both S.A's/Plaintiff

Vs.

1.Govindasamy Chettiar

..Respondent in S.A.No.773/2005/Defendant

2.S.Subramaniam

..Respondent in S.A.No.774/2005/Defendant

Common Prayer:Second Appeals filed under section 100 of the Code of Civil Procedure against the judgments and decrees dated 12.01.2005, made in A.S.Nos.31 & 32 of 2004 on the file of the Additional Sub Court at Nagapattinam, confirming the Judgments and decrees dated 19.11.2003 made in O.S.Nos.354 & 355 of 2000 on the file of the District Munsiff at Nagapattinam.

For Appellants : M/s.Aishwarya.S.Nathan
for M/s.Srinath Sridevan
(in both S.A's)

For Respondents : No appearance
(in both S.A's)

COMMON JUDGMENT

The present Second Appeals on hand are preferred against the judgments and decrees passed by the Additional Sub Court, Nagapattinam in A.S.Nos.31 & 32 of 2004, confirming the judgments and decrees passed by the District Munsiff at Nagapattinam in O.S.Nos.354 & 355 of 2000 dated 19.11.2003.

2.The parties are referred as per the ranking in the Trial Court.

3.The plaintiff is the appellant in the present Second Appeals. The plaintiff filed the Civil Suits in O.S.Nos.354 & 355 of 2000 for recovery of possession. The plaintiff is the owner of the property to an extent of three cents dry land in R.S.No.243/17 in No.106, Vaimedu Village, Vedaranyam Taluk. The property belongs to the plaintiff Temple was initially leased to the defendants for the annual rent of Rs.20/-(Rupees Twenty only). The defendants were the chronic defaulters even in respect of the meagre amount of annual rent fixed by the plaintiff Temple. On account of the fact that the defendants failed to pay the annual rent as agreed in the lease agreement, the plaintiff issued a notice to the defendants and subsequently filed O.S.Nos.354 & 355 of 2000 before the District Munsiff Court, Nagapattinam for recovery of possession, damages and past and future profits.

4.The defendants contested the suits on the ground that they were in possession of Kudiyiruppu Patta in their favour issued by the Appellate Authority. In this regard, the defendants filed Ex.A4 to establish that they are not produced any documents to establish that they have no right to continue in the property belongs to the plaintiff. Contrarily, the defendants filed Ex.A4 to establish that there was no valid Kudiyiruppu Patta at all.

5.At the outset, the learned counsel appearing on behalf of the appellant brought to the notice of this Court that the defendants had not established any legal right for their continuance in the property belongs to the Temple. Contrarily, the plaintiff Temple filed documents to show that the defendants were the leaseholders and the lease already got expired and the defendants were not in possession of any patta or valid document to establish for their continuance in the Temple properties. In spite of the fact that the plaintiff Temple established the title of the property and the lease, which was expired, the Trial Court dismissed both the suits. Challenging the judgments and decrees passed by the Trial Court, the plaintiff preferred the First Appeal before the Additional Sub Court, Nagapattinam.

6.The First Appellate Court also confirmed the judgments and decrees passed by the Trial Court in O.S.Nos.354 & 355 of 2000. Challenging the above two decrees and judgments, the present Second Appeals have been filed. The Trial Court formulated the following issues:-

1. Whether the plaintiff is entitled for the relief as such

sought for in the plaint?

2. Whether under Section 106 of Property Act, the notice issued to the defendants was in accordance with law or not?

7. Further, the issues were framed by stating that whether the defendants are not entitled to get the benefit of the Tamil Nadu Tenant Protection Act? and whether the defendants have established the Kudiyiruppu Patta, so as to continue in the Temple property?

8. In respect of the issues, the Trial Court found that the property belongs to the Temple was under the Kudiyiruppu Patta, and was in possession and enjoyment of the defendants. Thus, the defendants are entitled to get the benefit of the Kudiyiruppu Patta and therefore, the plaintiff is not entitled to get the relief as such sought for in the suits. The Trial Court came to such a conclusion only on the ground that the plaintiff had not produced any document to show that actions were initiated for vacating the premises in accordance with law. On that ground, the issue in relation to the continuance of the defendants was decided against the plaintiff. In respect of the issues 2 and 3 also, the Trial Court came to the conclusion that, the period of lease had not been established. In the absence of establishing the period of lease, the defendants are entitled to continue in the suit schedule property. The lease was cancelled on 30.11.1986 only with a view to file the present suits and to secure recovery of possession from the defendants. In the absence of any document to show that the lease was given for a particular period, then the defendants are entitled to continue in the suit schedule property as they were in continuous possession. Accordingly, the said issues were also decided against the plaintiff. The Trial Court had proceeded the entire suits on the footing that the defendants were in continuous possession of the suit schedule property for many years. Therefore, they are entitled to get the benefit of Kudiyiruppu patta and accordingly, the suits filed by the plaintiff Temple have no merit consideration. This apart, the Trial Court was of an opinion that the defendants are entitled to get the benefit of the Tamil Nadu Protection of Tenants Act and accordingly, the said issue was also held in favour of the defendants and the claim of the plaintiff was rejected. The First Appellate Court also proceeded on the same footing by holding that the defendants are entitled to get the benefit of Kudiyiruppu patta as well as the benefit of Tamil Nadu Tenant Protection Act. In view of the fact that they were in continuous possession and enjoyment of the suit schedule property, the First Appellate Court though formulated the same issues, which were framed by the Trial Court dealt with the matter on the same lines. At the outset, both the Sub-Ordinate Courts were of the opinion that the suit schedule property was in continuous and long possession

of the defendants and therefore, the defendants are entitled to get the benefit of the Tamil Nadu Tenant Protection Act and as well as the Kudiyiruppu Patta.

9.Challenging the judgments and decrees of the Trial Court as well as the First Appellate Court, the present Second Appeals have been filed with the following question of law and the same is extracted hereunder:

“Whether the Civil Court does not have jurisdiction to incidentally go into the question of whether the defendant is entitled to the benefit of the Act 40/71”.

10.The Second Appeals were admitted based on the above substantial question of law.

11.The learned counsel appearing on behalf of the appellant made her submissions on the ground that there is no dispute in respect of the title of the suit schedule property. The title was not disputed by the defendants both before the Trail Court as well as before the First Appellate Court. Thus, the plaintiff Temple is the absolute owner of the suit schedule property. Further, the defendants had not disputed the fact that they were the lessees and the property belongs to the Temple was leased to them. The defendants admitted the fact that they were initially paying the annual rent of Rs.20/- (Rupees Twenty only) as agreed in the lease agreement. Thus, the admitted facts between the parties are that the plaintiff Temple is the absolute owner of the suit schedule property and the defendants were the lessees and was paying the annual rent of Rs.20/- (Rupees Twenty only) initially.

12.The learned counsel for the appellant further brought to the notice of this Court that either before the Trial Court or before the First Appellate Court, the defendants had not established that they were paying the annual rent promptly and punctually. When the plaintiff has set out a pleading that the defendants were the chronic defaulters of payment of rent, the same was neither adjudicated nor established by the defendants during the course of Trial. The Trial Court proceeded only on the ground that the lease period has not been mentioned in the lease agreement and therefore, the long continuance of the defendants will be a ground to reject the claim of the plaintiff for recovery of possession in respect of the suit schedule property.

13.The respondents disputed the contentions by stating that admittedly, the defendants were the lessees under the Temple. The Temple property was leased out to the defendants. However, the defendants were in long possession and was continuing in the premises for many years. This apart, the lease agreement did not

specify any period of lease and therefore, the said benefit is to be extended to the defendants for the purpose of their continuance in the suit schedule property.

14.Both the Trial Court as well as the First Appellate Court proceeded with the matter mainly on the ground that the defendants were in continuous possession of the suit schedule property for long years and therefore, the benefit of the Tamil Nadu Tenant Protection Act is to be extended to them. However, in respect of Kudiyiruppu patta, no document had been filed by the defendants. Thus, the said benefit cannot be extended in favour of the defendants. At the outset, the Sub-Ordinate Courts were under the impression that in the absence of specifying any period of lease, the lessees are eligible to continue in the suit schedule property.

15.First of all, this Court has to consider the very vision adopted by the Trial Court as well as before the First Appellate Court.

16.A lessee has got a limited right over the property. Owner cannot be compared with the lessee. Mere continuance in a property cannot confer any right on the lessee to continue in the very same property for an unspecified period. Non-coding of period will not provide a sanction for the lessee to continue in the property indefinitely.

17.In this regard, this Court has to examine the provisions of the Tamil Nadu Hindu Religious and Charitable Endowment Act [hereinafter referred to as "HR & CE" Act] in view of the fact that the suit schedule property is a property belongs to the Religious institutions. Section 34 of the "HR & CE" Act provides Alienation of immovable trust property belongs to the religious institutions. The above provision stipulates that "Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution". Thus, lease or permission cannot be granted beyond the period of five years in respect of the Temple properties. Even in the absence of any specification of period of lease, it is to be construed that the same must be for five years and not beyond that in view of the statutory prescriptions under the "HR & CE" Act. It is admitted by the parties to the lis that the lease was not renewed by the plaintiff Temple. In the absence of any renewal of lease, it is to be construed that the lease expired long back and accordingly, the defendants were not in lawful occupation of the suit schedule property.

18. In respect of the benefit of the Tamil Nadu Tenants Protection Act, this Court is of an opinion that the property belongs to the Temple and already governed under the provisions of the "HR & CE" Act. When the properties belong to the Religious institutions are governed under the Act, which is a Special Act, the benefit of the general Act cannot be extended in favour of the defendant or any other lessee.

19. The legal principles in this regard is that the Special Act will prevail over the general Acts and in the present cases on hand, the plaintiff Temple is the absolute owner of the property and therefore the provisions of the "HR & CE" Act, alone will prevail and the benefit of general Act cannot be extended in favour of the lessees in respect of the Temple properties.

20. With reference to the period of lease as stated supra, Section 34 of the "HR & CE" Act stipulates that the maximum period of lease is five years. In the absence of any renewal, a person, who is in possession of the Temple properties are to be construed as unlawful occupants/encroachers. In respect of unlawful occupation and encroachment, Section 78 of the "HR & CE" Act denotes "Encroachment by persons on land or building belonging to charitable or religious institution or endowment and the eviction of encroachers". Section 78, Sub Clause 1(b) stipulates that "any person who continues to remain in the property after the expiry or termination or cancellation of the lease, mortgage or licence granted to him, to be construed as an encroacher". For the purpose of Section 78, any person, who continues to remain in the property after the expiry or termination or cancellation of the lease is to be treated as an encroacher and all such occupiers are liable to be evicted by the competent authorities by invoking the provisions of Section 78 of the "HR & CE" Act.

21. When the competent authorities under the "HR & CE" Act are empowered to invoke the provisions for the purpose of eviction of unlawful occupants, and it is a growing trend in the Department that they are approaching the Civil Courts without understanding the spirit of the provisions of the "HR & CE" Act, this Court is of an opinion that when there is no dispute in respect of the title of the property and the title of the properties stand in the name of the Temple, then the authorities competent are bound to invoke the provisions of the "HR & CE" Act at the first instance instead of resorting to approach the Civil Court, which will take long time.

22. Filing a Civil Suit will take long time and the person, who is in advantageous possession, will try to prolong and protract the suit for years together. Such a delay will cause

great loss to the Temple and its monetary benefits. In respect of the present cases, the suits were filed in the year 2000. The First Appeals were decided in the year 2004. Now, the Second Appeals are taken up by this Court in the year 2018. Even after cancellation of the lease and even after issuance of notice to hand over the vacant possession by the Temple authorities, they are unable to evict the unlawful occupants for the past about eighteen years. The defendants are continuing in possession of the Temple properties for the past 18 years without paying any rent and by utilizing the property for his personal gains. Such a situation is to be averted by the authorities competent and therefore, as far as possible, the authorities are bound to invoke the provisions of the "HR & CE" Act for the purpose of eviction of all such encroachers and unlawful occupants.

23. The learned counsel for the appellant brought to the notice of this Court that there is no express bar of the jurisdiction of the Civil Court for institution of a suit. For the purpose of establishing the legal proposition, the learned counsel for the appellant cited the judgment of the Hon'ble Division Bench in the case of A.N. Kumar v. Arulmighu Arunachaleswarar Devasthanam Thiruvannamalai, reported in 2011 2 L.W. Page 1 and the relevant paragraphs 35 and 42 are extracted hereunder:

"35. In the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, no express provision is made to recover possession from tenant, licensee, lessee or mortgagee, which the temple intends to take possession after terminating the lease. Since no express provision is made to recover possession from tenants, licensees, lessees or mortgagees the bar under Section 108 is not attracted by filing ejectment suit by the temple.

42. It is a settled position of law that until and unless the jurisdiction of the Civil Court is ousted either expressly or impliedly, an affected party cannot be prevented from approaching it. As observed above, Sections 78 and 79 which deal with encroachment, merely embark upon a procedure for removing an en-croacher of a temple property. They do not put any fetters on the power of the authority acting as a guardian of the temple property to have recourse to the Civil Court. The jurisdiction of the Civil Court is plenary in nature. Hence, unless the suit is barred either expressly or by necessary implication, it cannot be non-suited. (see Nahar Industrial Enterprises Ltd. v. Hong Kong And Shanghai Banking Corporation, ((2009) 8 SCC 646) and Rajasthan SRTC v. Bal Mukund Bairwa (2) ((2009) 4 SCC 299))."

24. Undoubtedly, there is no express bar in respect of filing of the suits for recovery of possession and claiming damages. Though there is no express bar of Civil suits, this Court is of an opinion that the competent authorities are bound to act swiftly in the interest of the Temple. Therefore, the authorities, at the first instance, are bound to initiate actions under the provisions of the "HR & CE" Act, then filing a Civil Suit and waiting for several decades for the eviction of the encroachers and unlawful occupants. When the said Act namely, "HR & CE" Act is comprehensive in nature and providing provisions for eviction of unlawful occupants and encroachers, then the authorities competent are bound to invoke the provisions of the "HR & CE" Act for the purpose of evicting the unlawful occupants and encroachers. In the present cases on hand, the defendants were not holding any valid documents that they have having any right to continue in the suit schedule property, which belongs to the plaintiff Temple. Such being the established facts both before the Trial Court as well as before the First Appellate Court, this Court is of an opinion that the authorities ought to have invoked the provisions of the "HR & CE" Act at the first instance by following the summary proceedings as contemplated under the Act.

25. However, in these cases, this Court cannot again permit the plaintiff authorities to invoke the provisions of the Act in view of the fact that they have already instituted the suits and now, the Second Appeals are before this Court.

26. In respect of the findings of the Trial Court as well as the First Appellate Court, this Court is of an opinion that the defendants had not established the fact that they were the lawful leaseholders. The defendants had failed to establish that they were promptly paying the annual rent as per the lease agreement. The defendants had not established that the lease between the plaintiff Temple and the defendants were renewed with reference to Section 34 of the "HR & CE" Act. In the absence of any such renewal of lease in accordance with law, it is to be construed that the defendants are the unlawful occupants and therefore, they are liable to be evicted by following the procedures as contemplated. It was established before the Trial Court that a notice was caused upon the defendants for the purpose of vacating the premises and handed over the vacant possession. However, the Trial Court proceeded only on the ground that the defendants were in continuous and long possession of the suit schedule property and therefore, their right to continue in the suit schedule property is to be protected. Such a proposition adopted by the Trial Court as well as by the First Appellate Court is not in consonance with the established legal principles of law.

27.A lessee cannot be allowed to continue for an unspecified period, which is contrary to the lease agreement as well as in violation of the provisions of the "HR & CE" Act. This being the legal principles to be followed, this Court has no hesitation to hold that the Trial Court as well as the First Appellate Court has miserably failed to adopt the legal principles to be followed in the matter of tenancy, more specifically, in respect of the properties belong to the plaintiff Temple.

28.In this view of the matter, the present Second Appeals deserve to be considered. Accordingly, the judgments and decrees dated 12.01.2005 in A.S.Nos.31 & 32 of 2004 on the file of the Additional Sub Court, Nagapattinam, confirming the judgments and decrees dated 19.11.2003 in O.S.Nos.354 & 355 of 2000 on the file of the District Munsiff, Nagapattinam are both set aside and the second appeals stand allowed. No costs. Consequently, connected miscellaneous petitions are closed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

1.The Additional Sub Court,
Nagapattinam.

2.The District Munsiff,
Nagapattinam.

Copy To:-

The Section Officer
VR Section, High Court
Madras.

+1cc to Mr.Srinath Sridevan, Advocate SR.No.79661

S.A.Nos.773 & 774 of 2005

RSI (CO)
GMY (29/07/2019)