

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:14.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

SA.No.788 of 2005

Sunny George

.. Appellant/Defendant

Vs.

Arul Mighu Rathna Vinayagar
and Durgai Amman Koil,
by its Executive Officer,
Whites Road, Chennai-14.

..Respondent/Plaintiff

Prayer:

Second Appeal filed under section 100 of the Code of Civil Procedure against the decree and judgment dated 07.12.2004 passed by learned Principal Judge, City Civil Court, Chennai in A.S.No.296 of 2004 confirming the decree and judgment passed on 14.10.2003 in O.S.No.8323 of 1988 by the learned VIII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.S.Balasubramanian

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

JUDGMENT

The present Second Appeal on hand is filed against the judgment and decree passed in A.S.No.296 of 2004 confirming the judgment and decree passed in O.S.No.8323 of 1988.

2. The ranking given in the Trial Court is followed as the ranking in the present judgment. The suit is for recovery of possession. The suit land bearing Door No.5, Whites Road, 2nd lane, Chennai-600 014 to an extent of 5372 square feet in Survey.No.328/4 is absolutely belonged to the plaintiff temple and the same was let out to one Durairajan on monthly rent of Rs.7.50/- payable on the first week of every month. The said lessee has put up a construction over the leased land and he was in enjoyment. The said Mr.Durairajan has sold away the superstructure along with the lease hold right to the defendant by virtue of a registered Sale Deed. Though the said assignment was recognised by the Executive Officer, it was not recognised

subsequently. The defendant appears to be in lawful possession. The Temple has required site for its own use and occupation. The plaintiff Temple has sent lawyer notice to the defendant on 25.04.1988 and the same was delivered in person. The defendant on receipt of the notice had not responded nor issued any reply. Thus, the temple was constrained to file the suit for recovery of vacant possession of the suit schedule property.

3. The defendant filed written statement by stating that the property was purchased by the defendant with lease hold right from Mr.Durairajan under two different Sale Deeds on 26.05.1986 and took possession of the suit schedule property on the same day. The subsisting tenancy over the land at Rs.7.50/- per month was paid in favour of the plaintiff and the defendant was paying rent for the land. The defendant had decided to put up further construction over the land and requested the Temple authorities to grant permission for developing construction in the land belongs to the Temple. The planning permission was given by the Corporation of Chennai and the defendant was doing tyre retrading business in the suit schedule property. The defendant further proceeds by stating that by virtue of the Sale Deeds dated 26.05.1986, he became the absolute owner of the premises in possession and enjoyment. Thus, he is entitled to the benefits under the City Tenants Protection Act. The plaintiff having recognised the defendant and granted permission for constructing the permanent structure, was estopped from denying the existence of jural relationship between the Temple and the defendants.

4. The trail Court formulated the issues as to whether the possession of the suit property by the defendant is lawful or not?, Whether the plaintiff is entitled for recovery of possession of the suit property as prayed for in the Civil Suit?

5. In respect of the issues, the Trial Court considered the No objection letter given by the Executive Officer of the Temple, which is marked as Ex.B2. Electricity connections were provided in respect of the superstructure constructed by the defendant. The defendant had obtained planning permission which was marked as a document Ex.B3 dated 25.03.1987, issued by the Corporation of Chennai. At that stage, more specifically, during the pendency of the original suit, the defendant filed I.A.No.2445 of 1989 under Section 9 of the City Tenants Protection Act and the same was allowed by the Court on 23.10.1992. The Commissioner was appointed for ascertaining the extent of land required by the defendant to carryout the business in the suit property.

6. Aggrieved by the said order passed by the Trail Court, the plaintiff filed C.M.A.No.14 of 1994 on the file of the IV

Additional Judge, City Civil Court. The Appellate Court allowed the appeal vide judgment dated 08.02.1996 by holding that the defendant is not a tenant in respect of the suit schedule property under the plaintiff Temple and the defendant is not entitled for any benefit under Section 8 of the City Tenants Protection Act. The Civil Revision Petition in C.R.P.No.1709 of 1997 filed by the defendant before the High Court was also dismissed confirming the order passed in C.M.A.No.14 of 1994 and it was concluded that the defendant had not produced any valid documents showing that he was a lawful tenant under the plaintiff Temple. There is no document to establish that the payment of rent, being paid by the defendant to the Temple in the Temple Accounts. A mere No objection letter given by the Executive Officer which is marked as Exs.B1 & B2 cannot be construed as a proof of attornment of tenancy nor Will operate as promissory or equitable estoppel. Thus, the Trial Court made a categorical finding that the possession of the defendant in respect of the suit schedule property is to be treated as unlawful and he is liable to be evicted from the property belongs to the Temple.

7. By answering the issues in the said manner, the Trial Court decreed the suit in favour of the plaintiff Temple.

8. Challenging the said judgment and decree dated 14.10.2003, the defendant filed A.S.No.296 of 2004 before the learned Principal Judge, City Civil Court at Chennai. The First Appellate Court also considered the issues and found that the No objection letter given by the Executive Officer of the Plaintiff Temple cannot be construed as a valid document to conclude that the defendant is a lawful tenant under the Temple. This apart, the defendant had not established that he is the lawful tenant under the Temple and therefore, the benefit of the provisions of the City Tenant Protection Act cannot be extended in favour of the defendant. In this regard, Civil Miscellaneous Appeal filed by the defendant was dismissed and the Civil Revision Petition filed before the High Court was also dismissed and accordingly, the Trial Court as well as the First Appellate Court came to the conclusion that the defendant cannot be considered as a lawful tenant under the plaintiff Temple.

9. The First Appellate Court further considered the deposition of P.W.1, the Executive Officer of the plaintiff Temple. P.W.1, the Executive Officer in his evidence categorically stated that the suit schedule land is required for the use and occupation of the temple and therefore, the defendant is liable to be evicted from the suit schedule property belongs to the plaintiff Temple. The said deposition made by the Executive Officer of the Temple was not rebutted nor cross examined by the defendant during the examination of D.W.1.

Thus, it is made clear that the plaintiff Temple is in need of the suit schedule property for the usage of the temple and for the welfare of the devotees, who are all coming for worship in the Temple. The evidence of P.W.1 remain unchallenged. Thus, the First Appellate Court also concluded that the possession of the defendant over the suit scheduled property is to be treated as unlawful and therefore, the defendant is liable to be evicted from the suit schedule property. Accordingly, the First Appellate Court confirmed the judgment and decree passed by the Trial Court in O.S.No.8323 of 1998.

10. At the time of admission of the present Second Appeal, the following Substantial questions of law are framed:

1. Whether the decree and judgment of Courts below in holding that the possession of the appellant is unlawful is legally sustainable in view of the No objection Certificate issued by the respondent to the appellant to repair the suit property under Ex.B-1 and also consent letter given by the respondent to the appellant by Ex.B-2 to get the electricity service connection to the suit property by the appellant?

2. Whether the judgment and decree of the Courts below is legally sustainable in as much as they have failed to note that the respondent is estopped in disputing the status of appellant as tenant in view of Exhibit B1 and B2?

3. Whether the judgment and decree of the Courts below are legally sustainable in as much as they have taken into consideration the dismissal of the petition filed by the appellant to purchase the property under Section 9 of the City Tenant Protection Act to decree the suit for possession?

11. The First question of law raised is that whether the defendant is entitled to get the benefit of the documents filed in Exs.B1&B2 which are the no objection certificate issued by the Executive Officer.

12. This Court is of an opinion that the Executive Officer is incompetent to issue any such No objection certificate under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowment Act (herein after referred as ''HR & CE Act''). The Act contemplates certain procedures to be followed for the purpose of leasing out the properties belong to the Temple. Even the maximum period of lease contemplated under Section 34 of the Act is five years. Therefore, the lease cannot be extended beyond five years. The renewal of lease is to be granted,

considering the facts and circumstances and also by fixing the fair rent for the welfare and benefit of the Temple. Thus, any Executive Officer acts contrary to the provisions of the said Act then, the No objection letter granted by such incompetent authority cannot be considered as legally valid one and therefore, the very no objection certificate will not confer any right on the person, who is in illegal occupation of the premises belonging to the Temple.

13. Thus, the very No objection certificate issued by the Executive Officer cannot be relied upon for the purpose of establishing the fact that the defendant is the lawful occupant of the premises belongs to the Temple. Under these circumstances, this Court is of an opinion that the findings of the Trial Court as well as the Lower Appellate Court in this regard is in accord with the provisions of the HR & CE Act and there is no infirmity as such. The lease is to be established by producing the documents and by adducing evidences. In the present case on hand, the defendant had produced only No objection certificate issued by the Executive Officer. Such a No objection certificate can never be construed as a valid lease document under the provisions of law.

14. Thus, the findings recorded in this regard by both the Courts are in accord with law.

15. The Second question of law is also consequential to the first question of law and therefore, no separate discussion is required in respect of the second question of law. It relates to the validity of the Exs.B1&B2, which is the No objection certificate issued by the Executive Officer.

16. The Third question of law is in relation to the benefit of Section 9 of the City Tenant Protection Act to be extended in favour of the defendant. In this regard, the fact remains that the plaintiff preferred C.M.A.No.14 of 1984 on the file of the IV Additional Judge, City Civil Court, Chennai. The First Appellate Court allowed the appeal vide judgment dated 08.02.1996 by holding that the defendant is not a tenant in respect of the suit schedule property under the plaintiff Temple and accordingly, the First Appellate Court concluded that the defendant is not entitled for any benefit under the provisions of the City Tenants protection Act. The Civil Revision Petition in C.R.P.No.1709 of 1997 filed by the defendant before the High Court of Madras was also dismissed. Thus, the issues in respect of availing benefit of the Tamil Nadu City Tenant Protection Act was rejected in respect of the claim of the defendant. Thus, the question of law raised in this regard in the present Second Appeal deserves no further consideration.

17. The concluded facts by both the Courts are that the defendant was not a original lessee. He acquired lease hold right from the original lessee one Mr.Durairajan. The defendant constructed superstructure without obtaining appropriate permission from the competent authority under the provisions of the HR & CE Act. As of now, the defendant is not a leaseholder in respect of the suit schedule property belongs to the plaintiff Temple.

18. This being the factum basically established, this Court is of an opinion that the findings arrived by the Trial Court as well as the First Appellate Court is in accordance with the established principles of law and there is no perversity or infirmity as such and the questions of law raised has no substance and accordingly, this Court is of an opinion that the Second Appeal deserves no merit consideration. Accordingly, the judgment and decree passed in O.S.No.8323 of 1988 dated 14.10.2003 and the judgment and decree dated 07.12.2004 passed in A.S.No.296 of 2004 are confirmed and consequently, the Second Appeal stands dismissed. However, there shall be no order at costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sk

To

1. VIII Assistant Judge,
City Civil Court, Chennai.

2. The Principal Judge,
City Civil Court, Chennai

Copy To:-

The Section Officer
VR Section, High Court
Madras (2 Copies)

+1cc to Mr.S.Balasubramanian, Advocate, S.R.No.77584

+1cc to M/s.A.S.Kailasam Associates, Advocate, S.R.No.78134

SA.No.788 of 2005

BR(Co)
CS/21/01/2019