



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2018

CORAM:

THE HON'BLE MRS.JUSTICE R. HEMALATHA

S.A.No.1795 1999
and
CMP.No.19255 of 1999

Arulmigu Venkatachalapathy
Perumal Koil, Pulivalam by its
Executive Officer.

.. Appellant/Plaintiff

/Vs/

Vaithiyalingam

.. Respondent/Defendant

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the decree and judgment of the Subordinate Judge, Nagapattinam in A.S.No.121 of 1998 dated 19.03.1999, setting aside the decree and judgment passed by the District Munsif Court, Tiruvarur in O.S.No.123 of 1998 dated 11.09.1998.

For Appellant : Mr.Srinath Sridevan

For Respondent; (Sole respondent)-Exparte
Vide Court order dated 09/8/2018

O R D E R

The un-successful Plaintiff in A.S.No.121/1998 on the file of Subordinate Judge, Nagapattinam has filed the present Second Appeal.

2. For the sake of convenience, the parties are called as mentioned in the suit in O.S.No.123/1998. The plaintiff is Arulmigu Venkatachalapathy Perumal Temple, Pulivalam, represented by its Executive Officer. He filed a suit in O.S.No.123/1998 before the District Munsif Court, Thiruvarur, for a permanent injunction restraining the defendant Mr.Vaithiyalingam, from putting up any construction in the suit property situate in S.No.148/2 of Pulivalam Village measuring 0.02 cents.

3. The case of the plaintiff/appellant is that the suit property was leased out to the respondent/defendant on an annual rent of Rs.72/- during the year 1963 and that the defendant is



now attempting to construct a full fledged R.C.C building in the suit property without getting any prior permission from the temple. He had therefore, prayed for restraining the respondent/defendant from putting up any construction in the suit property. The suit was decreed by the District Munsif Court, Thiruvavarur on 11.09.1998 as prayed for by the plaintiff.

4. Aggrieved over the decree and judgment passed by the District Munsif Court, Thiruvavarur on 11.09.1998, the respondent/defendant filed in A.S.No.121/98 before the Subordinate Judge, Nagapattinam and the appeal was allowed on 19.03.1999 and the decree and judgment dated 11.09.1998 passed by the learned District Munsif, Thiruvavarur was set aside. Now, the present appeal is filed by the plaintiff Arulmigu Venkatachalapathy Perumal Temple, Pullivalam represented by its Executive Officer.

5. It is submitted by both the parties that the suit property belongs to the plaintiff temple and that the same was leased out to the respondent/defendant. The suit property is also described as punja land. The trial Court has dismissed the suit mainly on the basis that the respondent/defendant did not file the lease deed that was executed between the plaintiff and the defendant and also that the defendant cannot erect a permanent super structure in the suit property.

6. On the contrary, the first Appellate Court had allowed the appeal on the following grounds:-

1. The Executive Officer of the Plaintiff temple had admitted in his oral evidence that there was no specific agreement between the plaintiff and the defendant that the defendant should not construct any building in the suit property.

2. When the Executive Officer of the plaintiff temple had admitted that the other lessees have constructed super structure in their respective lease hold properties the Executive Officer cannot prevent the present defendant alone from constructing any super structure in the suit.

3. The Executive Officer did not also adduce any evidence to show that other lessees put up construction in their properties only after obtaining prior permission from the temple.



7. The Executive Officer is preventing the respondent/defendant from constructing any super structure in the suit property. The respondent/defendant in the Second Appeal remained absent and was set ex-parte.

8. In the appeal, the following substantial questions of law are raised:-

"1. Whether a tenant is entitled to erect permanent R.C.C. Building in the leased out property if there is no prohibition for construction by the landlord?

2. Whether Section 108(p) of Transfer of Property Act requires a positive consent of the landlord to enable the tenant to put up a permanent R.C.C. building in the leased out property?

3. Whether the conduct of the plaintiff in not taking action to prevent other tenants in respect of other lands of the plaintiff from putting up construction in other lands will entitle the defendant to put up permanent building in the suit property?

4. Whether the tenant has got a burden of proving his entitlement to erect the building in the demised property especially when the defendant has admitted that the defendant took the suit property on lease for building purposes and for raising punja product ?"

9. At the outset, it may be observed that the respondent/defendant is only a lessee in the suit property as admitted by both the parties. A perusal of Section 108(p), Transfer of Property Act, clearly shows that a lessee without the lessors consent should not erect on the property any permanent structures except for agricultural purpose.

10. Mr.Srinath Sridevan, the learned counsel appearing for the appellant relied on the decision in Kurian and Anr. Vs. Job and Ors, in SA.No.507 of 1972 of Kerala High Court, and contended that since there is no permission to construct a building in the suit property, the first Appellate Court should not have dismissed the suit in O.S.No.123/1998 especially when even though Section 108(p), Transfer of Property Act, prohibits erection of permanent structures in the leasehold property without the consent of the landlord.



11. The first Appellate Court had held that since the Executive Officer of the plaintiff's temple had permitted other lessees to put up a super structure, he cannot prevent the present respondent/defendant alone from constructing any building in the suit property. Such a finding given by the first Appellate Court is totally not based on sound principles of law. The first Appellate Court has further held that the Executive Officer did not adduce any evidence to show that other lessees, constructed permanent super structure in their leasehold properties only after obtaining prior permission from the plaintiff temple. It is trite law that the defendant cannot claim any equality among illegality and as per the Section 108 (p) Transfer Property Act, the defendant cannot without the lessor's consent, erect on the property any permanent structure except for agricultural purpose. Therefore, I hold that the first Appellate Court has committed a gross error in dismissing the suit in O.S.No.123/1998 and the entire decision of the first Appellate Court is also perverse.

i) In the result the appeal is allowed.

ii) The suit in O.S.No.123/1998 on the file of the District Munsif Court, Tiruvarur is decreed as prayed for by the plaintiff, with costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge,
Nagapattinam.

2. The District Munsif,
Tiruvarur.

+1cc to Mr.Srinath Sridevan, Advocate Sr.57600

S.A.No.1795 1999

and

CMP.No.19255 of 1999

vd[co]

srg 08/02/2019