

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :01.08.2018
PRONOUNCED ON:27.08.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1469 of 2004
and
C.M.P.No.11454 of 2004

Karuppanna Udayar ... Appellant/Defendant

Vs.

Arulmigu Venkataramanasamy @
Krishnaswami Thirukoil,
Gandhipuram,
Sendamangalam,
rep. by its Executive Officer,
Namakkal Taluk,
Namakkal District. ... Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C.,
against the judgment and Decree rendered in A.S.No.79 of 1999
dated 30.07.2003 on the file of the Sub Court, Namakkal,
Namakkal District confirming the judgment and decree rendered in
O.S.No.75 of 1998 dated 30.06.1999 on the file of the Principal
District Munsif Court, Namakkal, Namakkal District.

For Appellant : Mr.R.Nalliappan

For Respondent : Mr.T.Dhanyakumar

J U D G M E N T

Challenge in this Second Appeal is made to the
judgment and decree dated 30.07.2003 passed in A.S.No.79 of 1999
on the file of the Subordinate Court, Namakkal confirming the
judgment and decree dated 30.06.1999 passed in O.S.No.75 of 1998
on the file of the Principal District Munsif Court, Namakkal.

2. The Second Appeal has been admitted on the following
substantial questions of law.

(i) Whether the lease of land given for construction of building for business and residential purpose is intended for the terms contrary to the lease of terms defined under Section 106 of the Transfer of Property Act?

(ii) Whether the suit for removal of building and hand over of possession of land given for lease is maintainable without payment of cost of the construction on equitable grounds?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is not necessary to dwell into the facts of the case in detail.

4. It is not in dispute that the suit property belongs to the plaintiff's temple. It is found that the defendant took the suit site on lease from the plaintiff's temple and put up a temporary shop and accordingly being a lessee in respect of the suit property under the plaintiff's temple, the monthly rent for the site fixed at Rs.60/-, it is seen demanding the increased rent, the plaintiff's temple had issued the notice. Subsequent thereto, the defendant had laid a suit against the plaintiff's temple in O.S.No.309 of 1997 for the relief of permanent injunction. Following the same, it is found that the plaintiff's temple had determined the tenancy arrangement of the defendant, issued a notice to the defendant on 05.01.1998, determining his tenancy ending with 31.01.1998 and despite the receipt of the said notice, inasmuch as the defendant had failed to surrender the possession of the suit property, it is found that the plaintiff's temple had laid the suit for possession and mense profits from the defendant.

5. The defendant challenged the plaintiff's suit contending that the demand of enhanced rent by the plaintiff's temple is on the higher side and cannot be sustained and according to the defendant, only by running the shop in the suit premises, he is eking out the livelihood and therefore it is contended that if the rent is enhanced exorbitantly, he would be put to irreparable hardship and further according to the defendant, he is willing to the increase of the rent as agreed to be paid by the other tenants of the plaintiff's temple and contended that the plaintiff is not entitled to seek the possession of the suit property from the defendant and prayed for the dismissal of the plaintiff's suit.

6. Based on the materials placed by the respective parties, the Courts below were pleased to accept the plaintiff's case and accordingly decreed the suit in favour of the

plaintiff. Impugning the same, the present Second Appeal has been laid.

7. The suit property belongs to the plaintiff's temple. The defendant is the tenant under the temple in respect of the suit property on a monthly rent of Rs.60/-. The materials placed on record go to show that the plaintiff made a demand of increased rent from the defendant. It is also noted that the defendant had laid a suit against the plaintiff's temple for the relief of permanent injunction in O.S.No.309 of 1997. In the light of the developments, it is found that the plaintiff's temple had determined the tenancy of the defendant by sending the quit notice dated 05.01.1998 determining the tenancy ending with 31.01.1998 and thereby called upon the defendant to surrender the possession of the suit property after removing the superstructure put up by him therein.

8. The receipt of the quit notice issued by the plaintiff's temple marked as Ex.A1 has not been repudiated by the defendant. The acknowledgment card received from the defendant has also come to be marked as Ex.A2. Thus, it is found that inasmuch as the plaintiff had lawfully determined the tenancy of the defendant in respect of the said site, unable to challenge the same, the defendant had not sent any reply to the same. Even in the written statement, the defendant has not challenged the validity of the quit notice marked as Ex.A1.

9. The only contention put forth by the defendant is that the demand of increased rent by the plaintiff's temple is on the higher side and therefore the defendant is unable to pay the same and on that footing that the plaintiff's temple is not entitled to vacate him from the suit property. However the defendant has not placed any acceptable and reliable material to hold that the demand of increased rent by the plaintiff's temple is unreasonable. Considering the lie of the suit property and the rental income would only be utilized for the requirements of the plaintiff's temple in conducting its affairs, it is found that the plaintiff's temple is justified in seeking an increase in the rent. Be that as it may, without any basis, it is found that the defendant had laid the suit against the plaintiff for the relief of permanent injunction. When there is no move on the part of the plaintiff's temple to disturb the defendant's possession of the suit property except in accordance with law, despite the same, the defendant without any basis, had instituted the suit against the plaintiff's temple for the relief of permanent injunction.

10. In the light of the abovesaid developments, it is found that the left with no other alternative, the plaintiff's temple after determining the tenancy of the defendant validly

under Ex.A1 had laid the suit seeking the possession of the suit property. When the quit notice issued by the plaintiff's temple has not been shown to be suffering from any any legal infirmity or the requirements of law and when the plaintiff's temple is entitled to terminate the tenancy of the defendant and seek the possession of the suit property, it is found that accordingly, the Courts below are justified in upholding the plaintiff's case for seeking the recovery of possession of the suit property from the defendant. The defendant other than putting forth the defence that the demand of increase in rent made by the plaintiff's is on the higher side, no other valid material has been placed by the defendant to reject the plaintiff's case. In such view of the matter, it is found that the Courts below are justified in upholding the plaintiff's case and no interference is called for with reference to the same.

11. In the light of the above discussions, as determined by the Courts below, the quit notice issued by the plaintiff marked as Ex.A1 is found to be satisfying all the requirements of law and accordingly held to be a valid notice.

12. Accordingly, it is found that the plaintiff is entitled to recover the possession of the suit property from the defendant by seeking the removal of superstructure put up by him in the suit property. The substantial questions of law formulated in the second appeal are accordingly answered against the defendant and in favour of the plaintiff's temple.

13. Resultantly, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

mfa

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

1. The Subordinate Judge,
Sub Court,
Namakkal,
Namakkal District.

2.The Principal District Munsif,
Principal District Munsif Court,
Namakkal,
Namakkal District.

Copy to

The Section Officer,
VR Section,
High Court,
Chennai.

+1cc to Mr.R.Nalliyappan, Advocate SR.NO.58470

NMI (CO)
sm:5.10.2018

S.A.No.1469 of 2004



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