

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.06.2018

Pronounced on : 06.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.854 of 2013

1. The City Glass Ware Co.,
Rep. By its Partner A.M.Zarook
No.41, Broadway,
Chennai - 108.
 2. City Raja Transport Co.,
Rep. By its Proprietor A.M.Zarook
No.41, Broadway, Chennai 600 018. ... Appellants/
Defendants 1 & 2
- Vs-
1. Anjuman-E-Khair-Kha-Gourba-E-Ahle Islam,
Rep. By its Secretary,
Mr.M.Avais Musvee
No.7, VIII Street,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 4.
 2. Tamil Nad Wakf Board,
Represented by its Chief Executive Officer,
Having Office at
No.1, Jaffar Sarang Street,
George Town, Chennai - 1. ... Respondents/Plaintiff &
3rd Defendant

PRAYER: Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 22.04.2013 passed by the learned VI Additional Judge, City Civil Court, Chennai, in A.S.No.201 of 2010 confirming the judgment and decree dated 26.08.2009 in O.S.No.4343 of 2007 passed by the learned I Assistant City Civil Judge at Chennai.

For Appellant :Mr.G.Sugumaran

For Respondents:Mr.Asif Ali for R1

Mrs.Sripriya for Mr.V.Ragavachari for R2

J U D G M E N T

This Second Appeal has been filed against the judgment and decree dated 22.04.2013 passed by the learned VI Additional Judge, City Civil Court, Chennai, in A.S.No.201 of 2010 confirming the judgment and decree dated 26.08.2009 in O.S.No.4343 of 2007 passed by the learned I Assistant City Civil Judge at Chennai.

2 The appellats are defendants 1 and 2, 1st respondent is plaintiff and 2nd respondent is 3rd defendant. For the sake of convenience, the parties are referred to as per their rank in the original suit.

3 The plaintiff filed a suit in O.S.No.4343 of 2007 for the relief of recovery of vacant possession and for future damages.

4 The case of the plaintiff is that the suit property belongs to the plaintiff and was let out for rent to the first defendant for monthly rent of Rs.8000/-. The rent was increased from Rs.6000/- to Rs.8000/-. The defendants failed to pay the arrears of rent from September 2005 to April 2007 to the tune of Rs.1,68,000/- and distress application in D.A.No.34 of 2006 was filed for recovery of rent subsequently it was withdrawn by the plaintiff. On 09.05.2007 the plaintiff sent a notice to the first defendant terminating his tenancy and since the defendants raised untenable disputes, the suit came to be filed by the plaintiff seeking recovery of vacant possession and for future damages.

5 The defendants stoutly denied the averments made in the plaint by filing written statement stating that the plaintiff let out the premises to the first defendant for commercial as well as for residential purpose in the year 1965 on monthly rent by occupying entire first floor for residential purpose measuring 1200 sq.ft. And 600 sq.ft.in the ground floor for non-residential. The remaining 600 sq.ft. In the ground floor was under the occupation of the father of M.Avia Musvee, the Secretary of the plaintiff. Later, the remaining portion of 600 sq.ft also given to the first defendant for rent in the year 1970. Hence the first defendant became the tenant for two shops in the ground floor and also residential in the first floor. The first defendant paid the monthly rent regularly without any default. In due course the plaintiff has enhanced the rent at Rs.1500/- for each shop and 1500/- for the first floor also. Since the firm runs by the first defendant is partnership in nature, he and along with his partners and their family members residing at the first floor. The plaintiff subsequently enhanced

monthly rent of Rs.4500/- and thereafter from Rs.4500/- to Rs.6000/- w.e.f. 01.09.2004. Again the plaintiff demanded monthly rent of Rs.8000/- from 01.09.2005, for which the first defendant did not agree. Hence the defendant is not liable to pay any arrears for the period from the month of September, 2005 to May, 2007. Further the suit filed by the plaintiff is not maintainable, since the plaintiff Wakf is not registered with Tamil Nadu Wakf Board, under Section 87 of Wakf Act, 1995 (herein after referred to as "the Act"), and the suit filed by one M.Avais Musvee, is only a Secretary, who is not competent to file a suit, that too without sanction from the Tamil Nadu Wakf Board. It is mandatory to give statutory notice under Section 89 of Wakf Act before instituting the suit. For the foregoing reasons, the suit filed by the plaintiff is not maintainable.

6 Based on the pleadings put forth by both the counsel, the trial court has framed the following issues:

1. Is it true that the defendant is in actual physical lawful possession of suit property as tenant?
2. Whether the plaintiff is entitled for the decree?
3. To what other relief?

7 Before the trial Court in order to prove the case of the first respondent/plaintiff, on the side of the plaintiff, P.W.1 was examined and Ex.A1 to A12 were marked and on the side of the appellants/defendants one A.M.Zarik, the Managing Partner of the 1st defendant was examined as D.W.1 and one Khaja Mohideen, Wakf Inspector of the 2nd respondent/3rd defendant was examined as D.W.2 and Ex.B1 to B9 were marked.

8 The trial Court after considering both side pleadings and oral and documentary evidences adduced by both the parties, decreed the suit in favour of the first respondent/plaintiff by judgment and decree dated 26.08.2009 and given time to the appellants for vacating the premises.

9 Aggrieved against above judgment and decree dated 26.08.2009, the defendants 1 & 2 filed an appeal in A.S.No.201 of 2010 before the VI Additional Judge, City Civil Court, Chennai.

10 After hearing the arguments of both the learned counsel on either side and considering the above said facts, as the first appellate court a fact finding court, it re-appreciated the entire evidence on records and arrived at a finding independently and dismissed the appeal by judgment and decree dated 22.04.2013 and confirmed the judgment and decree of the trial Court.

11 Aggrieved against the judgment and decree dated 22.04.2013 made by the first appellate court in A.S.No.201 of 2010, the defendants 1 & 2 have come forward with the present second appeal. At the time of admitting the second appeal, this Court framed the following substantial questions of law for consideration:

- (1) Whether the suit filed by the plaintiff unregistered Wakf is maintainable in view of violation of Section 87 of Wakf Act?
- (2) Is it not mandatory to give Statutory notice under Section 89 of Wakf Act before the plaintiff institutes suit?
- (3) Is P.W.1 in the capacity of Honorary Secretary cum Treasurer empowered to institute

12 The learned counsel appearing for the appellants/defendants 1 & 2 submitted that on the date of filing of the suit, the first respondent/plaintiff Wakf was not registered with the Tamil Nadu Wakf Board under the Wakf Act. Hence the plaintiff is not entitled to institute a suit, in view of the Section 87 of the Tamil Nadu Wakf Act. It is mandatory under Section 89 of the Act to send notice before 60 days, if any suit is instituted by Wakf, without issuing notice, under Section 89 of the Act, the suit filed by the first respondent/plaintiff is not maintainable. Further, the suit instituted by one M.Avais Musvee, who is only the Honorary Secretary-cum-Treasurer, and not a Muthavalli, and hence he has no right to institute a suit. Further it is seen that the suit had been instituted, without even obtaining sanction from the Tamil Nadu Wakf Board, which is contrary to the Act. Hence the suit filed by the first respondent/plaintiff is not maintainable. In support of their contention, the learned counsel cited the judgments reported in 2010 4 CTC 516 and AIR 1986 KARNATAKA 12.

13 The first appellate Court has failed to consider the above aspects and also the fact that the appellants/defendants are tenants in the suit property since 1965. The first respondent/plaintiff had enhanced the rent exorbitantly at Rs.8000/- p.m., which could not agreeable for the defendants. The 2nd appellant/2nd defendant is only a partner of the 1st appellant/1st defendant firm and not a sub-tenant as pleaded by the first respondent/plaintiff. Both the courts have erroneously come to the conclusion that the defendants are in arrears of rent, even there is no piece of document to prove the same.

14 The learned counsel appearing for the first respondent contended that the defendant being a defaulter, is not entitled to question the competency of the plaintiff. Even though, the Walkf was not registered on the date of filing of suit, subsequently it was registered with Tamil Nadu Walkf Board. Ex.A11 dated 03.06.2008 is registration particulars and Ex.A12 dated 10.07.2008 is proceedings of the Chairman, Tamil Nadu Wakf Board. Section 89 of the Act is very clear that when the suit is instituted against the Wakf only 60 days notice is mandatory, in this case suit has been instituted by the Wakf against the individual, where notice is not mandatory as pleaded by the appellants/defendants. Hence the plaintiff has every right to institute the suit. In support of his contentions, the learned counsel referred various decisions of this Court as well as the other Courts reported in (1) AIR 1986 GUJARAT 1, (2) AIR 1986 KARNATAKA 12 (3) 2001 3 LW 540, (4) 2013 (3) MWN (Civil) 20, (5) AIR 2004 Kerala 311.

15 Heard the learned counsel appearing on either side and perused the materials available on record.

16 The landlord and tenant relationship has not been disputed. Admittedly the first respondent/plaintiff is the owner of the suit property. Even though, as stated by the appellants/defendants 1 & 2 the first respondent/plaintiff was not registered with Tamil Nadu Wakf Board on the date of filing of suit, subsequently it was registered and Tamil Nadu Walkf Board. Ex.A11 dated 03.06.2008 is particulars of registration and Ex.A12 dated 10.07.2008 is proceedings of the Chairman, Tamil Nadu Wakf Board, which shows that the plaintiff Wakf was registered. Hence there is no violation of Section 87 of the Act. and the question of law No.1 is answered accordingly.

17 Any suit filed against the Wakf, then only 60 days notice is mandatory under Section 89 of the Act. In the present case, the suit has been instituted against the individual, especially against the tenant, who is in default in payment of rent, which is in the interest of Wakf property and not against the interest of Wakf or Wakf property, where Section 89 does not arise and notice is not mandatory. Accordingly the question of law No.2 is answered against the appellants.

18 As far as substantial question of law No.3 is concerned, P.W.1 was shown as Muthavalli in Ex.P.11, who has every right to institute a suit. Either Wakf or Walkf Board has not questioned the competency of the plaintiff in the suit and as already stated the tenant, who is in default in payment of rent, cannot question the competency of the plaintiff, when he already paid rent to them and accepted his role in the Wakf.

Accordingly this substantial question of law is also answered against the appellants.

19 In the result, the second appeal is dismissed, since all the substantial questions of law are answered against the appellants. The judgment and decree of the first appellate Court in A.S.No.201 of 2010 is hereby confirmed and the appellants are directed to vacate the suit properties and hand over the same to the first respondent/plaintiff within a period of two months from the date of receipt of a copy of this judgment. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

cgi

To

1. The I Assistant City Civil Judge at Chennai.
 2. The VI Additional Judge, City Civil Court, Chennai
- +2cc to Mr.Asif Ali, Advocate SR.NO.44300
+1cc to Mr.G.Sugumaran, Advocate SR.NO.43953
+1cc to M/s.V.Raghavachari Advocate SR.NO.43770

RSI (CO)
sm:17.9.2018

S.A.No.854 of 2013

सत्यमेव जयते

WEB COPY