

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.07.2018

PRONOUNCED ON : 20.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.Nos.2000 & 2001 of 2004

Sri Padaleeswarar Dhevasthanam
through its Executive Officer,
Thiruppapuliyur, Cuddalore. Appellant/Appellant/
Plaintiff both SA's

Vs.

Bala Velayutham Respondent/Respondent/
Defendant both SA's

Prayer :-

Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 29.12.2003 passed in A.S.No.104 of 2003 & 110 of 2003 on the file of the Principal District Court, Cuddalore, confirming the Judgment and Decree dated 27.06.2003 passed in O.S.No.232 of 1996 & 14 of 2000 respectively on the file of the Principal Subordinate Court, Cuddalore.

For Appellant in : Mr.K.Chandrasekaran
both second appeals

For Respondent in : Mr.V.Raghavachari
both second appeals

COMMON JUDGMENT

Second appeal No.2000 of 2004 is directed against the Judgement and Decree dated 29.12.2003 passed in A.S.No.104 of 2003 on the file of the Principal District Court, Cuddalore, confirming the Judgment and Decree dated 27.06.2003 passed in O.S.No.232 of 1996 on the file of the Principal Subordinate Court, Cuddalore.

2. Second appeal No.2001 of 2004 is directed against the Judgement and Decree dated 29.12.2003 passed in A.S.No.110 of 2003 on the file of the Principal District Court, Cuddalore, confirming the Judgment and Decree dated 27.06.2003 passed in O.S.No.14 of 2000 on the file of the Principal Subordinate Court, Cuddalore.

3. The above second appeals had been admitted on the following substantial questions of law:

" (i). The Courts below having come to the conclusion on admitted fact that by efflux of time, the tenancy of the respondent has come to an end, in right in dismissing the suit solely on the ground that recommendation of the commissioner is still pending?

(ii). Is the lower court right in dismissing the suit on assumption of happening of a future even in favour of the respondent, when actually the respondent is not a tenant at all on the date when the suit was decided?

(iii). Is the lower Court right in dismissing the suit on the ground that no new construction is attempted when in fact the commissioner has noted construction of a new building?"

4. Considering the scope of the issues between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

5. It is not in dispute that the suit property belongs to the appellant Devasthanam. It is found that the respondent's father had taken the suit property on lease from the appellant and after his death, the respondent continued to be the tenant of the suit property and paying the rent.

6. Alleging that the respondent, without obtaining the written consent of the appellant, is attempting to put up additional construction in the suit property, it is seen that the appellant has chosen to lay the suit against the respondent in O.S.No.232 of 1996 for permanent injunction.

7. Further alleging that the respondent has not been regular in the payment of rent for several months, despite the repeated

demands and registered notice and committed wilful default in the payment of rent and also alleging that the respondent had demolished the old construction and put up a new construction in the suit property without the written consent of the appellant, it is the case of the appellant that the tenancy arrangement of the respondent had been terminated by issuing a notice and as the had been not responded favourably by the respondent, the appellant has laid the suit against the respondent in O.S.No.14 of 2000 for recovery of possession and arrears of rent.

8. The Courts below had rejected the case of the appellant and accordingly, dismissed both the suits laid by the appellant. Aggrieved over the same, the present second appeals have come to be laid.

9. As seen from the materials placed on record, there is no dispute that the suit property belongs to the appellant Devasthanam. It is found that the respondent's father was the original tenant in respect of the suit property and after his death, the respondent continued to be the tenant of the suit property. It is also seen from the materials placed on record that even as per the case of the appellant, it had permitted the respondent's father to put up a construction in the suit property and run the business therein. Accordingly, it is seen that the respondent's father had put up the construction and running the business in the suit property. Alleging that the respondent, without obtaining the written consent of the appellant, is attempting to put up additional construction upon the suit property, the appellant had chosen to lay the suit seeking the relief of permanent injunction against the respondent in O.S.No.232 of 1996. It is found that the case of the respondent is that inasmuch as the construction already put up in the suit property had become old and got demolished, he had put up RCC construction thereon and it is thus pleaded by the respondent that he has not raised any new construction in the suit property as put forth by the appellant and therefore, it is his contention that the relief of permanent injunction sought for by the appellant against him does not lie. When as seen from the materials placed on record that the respondent has not put up any new construction in the suit property and on the other hand, it is found that he had only demolished the existing Madras Terrace construction and put up a new RCC roofing, when there is no prohibition on the part of the respondent for reconstructing the original structure put up by him or renovate the same and when it is further seen that the re-construction put up by the respondent in the place of the old construction had been completed, it is seen that as rightly determined by the Courts below, there is no violation of any of the terms of the tenancy arrangement between the appellant and the respondent as such and in such view of the matter, the Courts below are

justified in not granting the relief of permanent injunction as prayed for by the appellant. No acceptable reason is projected in the second appeals to interfere with the abovesaid determination of the Courts below, negating the relief of permanent injunction prayed for by the appellant.

10. Now, according to the appellant, the respondent has not been regular in the payment of rent and kept the same in arrears, despite the repeated demands to pay the same. Per contra, it is the case of the respondent that he is regular in the payment of rent and it is his case that in view of the suit preferred by the appellant in O.S.No.232 of 1996, the appellant had refused to receive the rent from him and therefore, he was unable to pay the rent and further, it is his case that he has subsequently paid the arrears of rent and there is no arrears of rent as such by the respondent. It is found that no doubt, the appellant had determined the tenancy of the respondent by the issuance of a quit notice. On the other hand, as determined by the Courts below and from the materials placed on record, it is found that the executive officer of the appellant Devasthanam had submitted a proposal to the Commissioner of HR & CE for the enhancement of the rent and the collection of donation from the respondent in respect of the suit property and the said proposal was accepted by the Joint Commissioner, HR & CE, Mayiladuthurai and it is also seen that he had addressed the Special Commissioner and the Commissioner of HR & CE, Chennai for recommending the proposal sent by the executive officer on 31.03.2002 and the said letter has come to be marked as Ex.B3. Accordingly, it is found that the rent had been enhanced at Rs.5,390/- per month with effect from 01.07.1997 and the collection of donation had been fixed at Rs.43,120/-. It is thus found that even though the tenancy of the respondent had been determined, when it is seen that the respondent had continued to be the tenant and paying the rent which had been accepted by the appellant and there is no arrears pending as such and that apart, when the proposal had emanated from the appellant Devasthanam itself for collecting the enhanced rent from the respondent and the said proposal is now under the consideration of the Commissioner of HR & CE, it is found that as rightly determined by the Courts below, the further determination of the controversy between the parties at this stage of the matter would only precipitate the issue and cause prejudice to the respondent in the event of the acceptance of the case of the appellant as put forth in O.S.No.14 of 2000. In such view of the matter, as rightly determined by the Courts below, when it is found that as on date, there is no arrears of rent and simultaneously, when it is also seen that the proposal for enhancement of rent and for collection of donation is pending with the higher authority, in such view of the matter, it would not be in the interest of justice to grant the relief

of possession as prayed for by the appellant and accordingly, it is seen that the Courts below are justified in negating the suit laid by the appellant for the recovery of possession.

11. For the reasons aforesaid, I do not find any reason to interfere with the judgment and decree of the Courts below. The substantial questions of law formulated in the second appeal are accordingly answered against the appellant and in favour of the respondent. Accordingly, both the second appeals are dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sms

To

1. The Principal District Court, Cuddalore.
2. The Principal Subordinate Court, Cuddalore.
3. The Section Officer, V.R.Section,
High Court, Madras. (2 Copies)

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.48318

+1cc to Mr.K.Chandrasekaran, Advocate, S.R.No.49265

S.A.Nos.2000 & 2001 of 2004

VGII(CO)
CS/07/08/18

सत्यमेव जयते

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