

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.No.494 of 2016

Yousuf

.. Appellant

Vs.

1.M/S.Sharfunnissa Begum
Sahiba Mosque Wakf
Represented by its Secretary
New No.460, Old No.592
Anna salai, Chennai-6.

2.A.S.Alamgir

3.The Chief Executive Officer
Tamil Nadu Wakf Board
No.7/4, 9th cross street,
Indira nagar, Chennai-
20.

.. Respondents

Second Appeal filed under Section 100 of C.P.C against the judgment and decree dated 07.11.2014 made in A.S.No.237 of 2007 on the file of VI Additional City Civil Court, Chennai, confirming the judgment and decree dated 08.08.2006 made in O.S.No.2694 of 2003 on the file of I Assistant City Civil Court, Chennai.

For Appellant : Mr.E.Omprakash, Senior Counsel
for Mr.S.Kumaradevan

For R1 : Mr.T.Velumani
For R2 : No appearance
For R3 : Ms.R.Sripriya for Mr.V.Raghavachari

JUDGMENT

The Second Appeal is filed against the judgment and decree dated 07.11.2014 made in A.S.No.237 of 2007 on the file of VI Additional City Civil Court, Chennai, confirming the judgment

and decree dated 08.08.2006 made in O.S.No.2694 of 2003 on the file of I Assistant City Civil Court, Chennai.

2.The appellant is the first defendant, first respondent is the plaintiff and respondents 2 & 3 are the defendants 2 & 3 in O.S.No.2694 of 2003 on the file of I Assistant City Civil Court, Chennai. The appellant is challenging the concurrent findings of the Courts below. First respondent filed said suit for declaration against the appellant and second respondent declaring that the sale deed dated 20.05.1998 between the appellant and second respondent registered as document No.392/1998 is not binding upon the first respondent, for permanent injunction restraining the appellant and second respondent from interfering with the first respondent's peaceful possession, occupation, enjoyment and right to let out the suit property and for a direction to the appellant and second respondent to pay the first respondent a sum of Rs.10,000/- towards damages.

3(i) According to the first respondent, they are owner of the suit land and they granted lease of the land on a monthly rent of Rs.200/- to the ancestors of second respondent. The ancestors of second respondent built a superstructure in the suit property and second respondent is residing in the said house. The second respondent has no right to sell the property to the third parties without obtaining permission from the first respondent and the superstructure can be sold to first respondent only. The purchase without permission of first respondent would not get any right over the land. The rules and regulations are printed behind the monthly rental receipt. The second respondent sold the superstructure together with the lease hold right to the appellant by the deed of sale dated 20.05.1998, registered as document No.392/1998. The second respondent did not obtain any permission and did not inform the sale to the first respondent. Even after the sale, second respondent is in possession and enjoyment of the suit property and was paying rent to the first respondent. The appellant has no right to enter the suit property, as the sale is unlawful, fraudulent and done with an ulterior motive to deprive the lawful title of the first respondent.

3(ii) The first respondent wrote a letter to the second respondent on 31.03.1998 and the second respondent received the same on 06.04.1998. The second respondent by his letter dated 25.07.1998 sought permission of the first respondent to sell the property. First respondent by its letters dated 19.08.1988 and 23.09.1998 informed the second respondent that he should not sell the property. First respondent has also effected publication in one issue of Malai Murasu on 25.02.2000 stating that the suit property should not be sold. The daughters of the second respondent by their letters dated 14.03.2001 informed the

first respondent that their father sold the property without their knowledge and the said sale is not a valid sale. The appellant by his letter dated 24.03.2001 informed the first respondent that the second respondent did not inform him about the condition while purchasing the property on 20.05.1998 and wanted the lease hold right to be transferred in the name of his minor son. First respondent issued notice dated 16.04.2001 to the appellant stating that the sale is not valid and warned the appellant not to interfere and take possession of the suit property. If the appellant takes possession, first respondent will initiate proceedings for damages and criminal prosecution. First respondent terminated the tenancy of the second respondent with effect from 31.05.2001. The appellant by his letter dated 14.08.2001 sought pardon and transfer of lease hold right.

3(iii) The second respondent attended the meeting of the first respondent on 28.04.2002 and informed the first respondent that he shifted his residence and handed over the possession of the suit property to the first respondent on the same day. The appellant sent a letter dated 10.03.2003 to the first respondent stating that he is the owner of the superstructure and sent Rs.3,000/- being the arrears of rent at Rs.200/- per month. First respondent returned the demand draft, as there is no landlord-tenant relationship between the appellant and first respondent. First respondent wrote to the third respondent/Wakf Board on 26.03.2003 to approve the lease agreement. The appellant locked the petition premises and the said act is illegal. The second respondent has no right over the suit property. The first respondent issued public notice. Without permission of the Wakf Board, second respondent fraudulently sold the property to the appellant. The said sale is not binding on the first respondent, by the said sale, first respondent has suffered heavy loss and appellant & second respondent cannot claim any right. First respondent is entitled to claim damages of Rs.10,000/- as the appellant and second respondent have unlawfully enjoyed the property of the first respondent.

4.The appellant filed written statement and contended that there is no condition that the suit property can be sold only with prior permission of the first respondent. The second respondent's father purchased the property by the deed of sale dated 24.05.1950 registered as document No.359/1950 in the office of Sub-Registrar, T.Nagar, Chennai and there is no such condition in the said sale deed. After the death of second respondent's father, second respondent has become absolute owner and sale by the second respondent on 20.05.1998 in favour of the appellant is valid. After such sale, second respondent has no right over the suit property and he has not paid any rent. He denied that the second respondent handed over possession of the suit property to the first respondent on 28.04.2002. The first respondent returned the demand draft for arrears of rent sent by

the appellant. The third respondent alone is the competent authority to give permission for transfer. First respondent wrote to the third respondent for permission. Without waiting for the reply from the third respondent, first respondent has filed suit. The suit filed by the first respondent is not maintainable. The appellant is bonafide purchaser and is not liable to pay any damages to the first respondent.

5.The third respondent filed written statement and contended that the suit has arisen, as the appellant has purchased the lease hold right of the land with superstructure without permission of the first respondent. If there is any sale and transfer of superstructure, without permission of the third respondent/Wakf Board, the third respondent has powers to take action against the appellant & second respondent and they can approach the Wakf Board, after disposal of the suit, if they so desire.

6.Based on the pleadings, the learned trial Judge framed necessary issues. Before the learned Judge, one Mohammed Obaidhur Rahman, the Secretary of the first respondent, was examined as P.W.1 and marked 29 documents as Exs.A1 to A29. The appellant examined himself as D.W.1, one Liyaqat Ali was examined as D.W.2 and marked four documents as Exs.B1 to B4.

7.The learned trial Judge considering the pleadings, oral and documentary evidence, decreed the suit against the appellant and second respondent, awarded damages of Rs.10,000/- and dismissed the suit against the third respondent.

8.Against the said judgment and decree dated 08.08.2006 made in O.S.No.2694 of 2003, the appellant has filed A.S.No.237 of 2007 on the file of VI Additional City Civil Court, Chennai.

9.The learned First Appellate Judge framed necessary points for consideration. The learned First Appellate Judge independently considering the materials available on record, judgment of the trial Court, evidence of the appellant and Section 51(1) of the Wakf Act, 1995, dismissed the First Appeal by confirming the judgment and decree passed by the trial Court.

10.Against the said judgment and decree dated 07.11.2014 made in A.S.No.237 of 2007, confirming the judgment and decree dated 08.08.2006 made in O.S.No.2649 of 2003, the present Second Appeal is filed by the appellant/first defendant.

10(i)The learned Senior Counsel appearing for the appellant contended that the Courts below have failed to see that the appellant is not disputing the right of the first respondent over the suit land. He is challenging the contention of the first respondent that the lease hold right and superstructure cannot be transferred without prior permission of the first

respondent. The father of the second respondent purchased the suit property by the deed of sale dated 24.05.1950 marked as Ex.B1 and there is no condition that the property can be sold only after obtaining prior permission from the first respondent. When there is no condition in Ex.B1, the conditions printed behind the rental receipt are not legally valid. Ex.A2/rental receipt does not relate to suit property. First respondent has not proved by any evidence that he is owner of the superstructure. The failure on the part of the first respondent to prove that they are the owner of the superstructure, they cannot dispute the sale deed dated 20.05.1998/Ex.B2. The first respondent is owner of land only. After execution of sale deed/Ex.B2, second respondent ceased to be owner of the suit property and handing over the keys of suit property by the second respondent to first respondent on 28.04.2002 is not valid. The second respondent is not the owner or occupant of the property on 28.04.2002. Payment of rent by appellant is in recognition of right of first respondent over the suit land. The third respondent is ultimate authority over the suit land and the same has been confirmed by Ex.A29/public notice issued by the third respondent. First respondent having forwarded the undertaking and request letters of the appellant to the third respondent, ought to have awaited for the outcome of the orders of the third respondent. In view of Ex.B4/letter of the third respondent to the appellant, suit filed by the first respondent is not maintainable.

10(ii) The learned Senior Counsel appearing for the appellant further contended that as per Section 109 of the Transfer of Property Act, the appellant has acquired the right of lease hold right from the lessee/second respondent herein. The Courts below failed to consider the said provision and erroneously held that the first respondent is owner of the suit land.

11. The learned counsel for the first respondent contended that the first respondent is owner of the land and it has right to lease out the property to any person or refuse to lease out the same. In view of such right, the condition imposed by the first respondent on the lessee that lessee should not sell the lease hold right to the third party is valid. Similarly, the condition that lessee should not sell the superstructure put up by him or by his predecessor is also valid. It is only a consequent condition. In the present case, second respondent without obtaining prior permission from the first respondent sold the lease hold right as well as superstructure to the appellant, which is invalid and illegal and the same is not binding on the first respondent. Even after the alleged sale, second respondent was only in possession and enjoyment of the suit land and superstructure. The second respondent did not pay the rent. He was put on notice that the sale by him to the appellant is illegal and not binding on the first respondent.

The lease period of second respondent expired and lease was terminated. Second respondent on 28.04.2002 surrendered the possession of the suit property to the first respondent. From that date onwards, first respondent is in possession. The payment of arrears of rent by appellant was not accepted by the first respondent as there is no landlord-tenant relationship between the appellant and first respondent. The appellant has illegally put a lock over lock put by the first respondent. The findings of the Courts below are findings of facts based on the valid reasons and prayed for dismissal of the Second Appeal.

12.The learned counsel for the third respondent/Wakf Board contended that if there is any failure in transferring the superstructure without permission of the third respondent/Wakf Board, the third respondent has ample powers to take action against the tenant and purchaser or to regularise the same. No relief is sought for against the third respondent. Both the appellant and first respondent will be at liberty to approach the Board for appropriate relief after the outcome of the legal proceedings.

13.Heard the learned Senior Counsel for the appellant as well as the learned counsel for the first and third respondents and perused the materials available on record. This Court ordered notice of motion on 08.06.2016 and respondents 1 & 3 are represented by counsel. Notice sent on the second respondent was returned with an endorsement as 'left'. The second respondent was set exparte before the Courts below and therefore, notice in respect of the second respondent is dispensed with.

14.The point for consideration in the Second Appeal is as follows:

"Whether the first respondent has power to impose condition that the lessee can sell the lease hold right and superstructure to third party only with prior permission of the first respondent and whether such condition is valid and legal?"

According to the first respondent, it is the owner of the suit land. The suit land was leased out to the ancestors of the second respondent, who have put up superstructure. According to the appellant, father of the second respondent purchased the lease hold right by Ex.B1 sale deed dated 24.05.1950. In the said sale deed, there is no condition that the lease hold right and superstructure can be sold only with prior permission of the first respondent. In the absence of any condition in Ex.B1, the conditions mentioned in the reverse of rental receipt are not valid. The said contention of the appellant is without merits. The first respondent has mentioned in the rental receipt that the lease hold right and superstructure can be sold only with prior permission of the first respondent. The said condition was accepted by second respondent, who was lessee of the first

respondent. The contract is between the lessor and lessee i.e. between the respondents 1 & 2 and appellant, who is third party is not entitled to challenge the same. As per Section 51(1) of the Wakf Act, a lease in respect of Wakf property can be granted only with permission of Wakf Board, third respondent herein. The third respondent has contended that without their permission, lease of the land or superstructure cannot be transferred.

15. From the materials available on record, it is seen that even after the sale, second respondent was in possession of the suit property. The daughters of second respondent by the letters dated 14.03.2001 marked as Exs.A12 to A15 addressed to the first respondent have stated that the second respondent sold the property without knowledge of the first respondent and that the sale is not valid and requested the first respondent not to transfer the property. Earlier, first respondent by its letter dated 21.07.1998 marked as Ex.A6, informed the second respondent not to sell the suit property. The second respondent by his letter dated 25.07.1998 marked as Ex.A7 informed the first respondent about his intention to sell the lease hold right and superstructure and requested permission of the first respondent to sell the property. First respondent refused to grant such permission. Further, the appellant by letter dated 24.03.2001 marked as Ex.A16, informed the first respondent that he has purchased the property without prior permission of the first respondent and appellant by his subsequent letter dated 14.08.2001 marked as Ex.A20 sought permission of the first respondent and requested the first respondent to transfer the lease hold right in favour of his minor son. These letters reveal that the appellant and second respondent were aware of the condition that without prior permission of the first respondent and approval of the third respondent, lease hold right and consequential superstructure cannot be sold to any third party. In spite of such knowledge, the appellant has purchased the said property without permission of the first respondent.

16. The learned First Appellate Court has referred to letter of second respondent, evidence of appellant, provisions of Section 51(1) of Wakf Act and held that sale is not valid. Further, the second respondent attended the meeting on 28.04.2002 called for by the first respondent. After the meeting, second respondent surrendered the possession of the suit property to the first respondent. First respondent has stated that appellant has illegally put lock over lock put up by the first respondent. This averment was not denied by the appellant. The contention of the learned Senior Counsel for the appellant that first respondent is owner of land only and has no right over the superstructure and lease hold right, is untenable. Lease hold right is given in respect of land with permission to put up superstructure. The first respondent has a

right either to grant or refuse to grant lease in favour of third party. Without lease hold right, a party has no right over the superstructure. In view of this position, the first respondent has power to restrict the sale of lease hold right and superstructure.

17.The Courts below have considered all the aspects in proper perspective, decreed the suit filed by the first respondent and dismissed the First Appeal filed by the appellant. The contention of the learned Senior Counsel appearing for the appellant that as per Section 109 of the Transfer of Property Act, he is entitled to all the right of lessee i.e. second respondent herein, has no merits. As per Section 109 of the Transfer of Property Act, only if there is no contract to the contrary, transferee will get right of lessee. In the present case, there is contract between lessor and lessee, first respondent & second respondent and second respondent lessee is not entitled to sell the lease hold right without prior permission of the first respondent. In view of the same, appellant is not entitled to the right of the second respondent lessee. Further, according to the first respondent, the lease in favour of second respondent came to an end on 31.05.2001 and first respondent has terminated the lease in favour of second respondent with effect from 01.06.2001. In view of the above facts, there is no error of law in the judgment and decree passed by both the Courts below and the same does not warrant any interference by this Court. The point for consideration is ordered accordingly.

18.In the result, the Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.VI Additional City Civil Court, Chennai.

2.I Assistant City Civil Court, Chennai.

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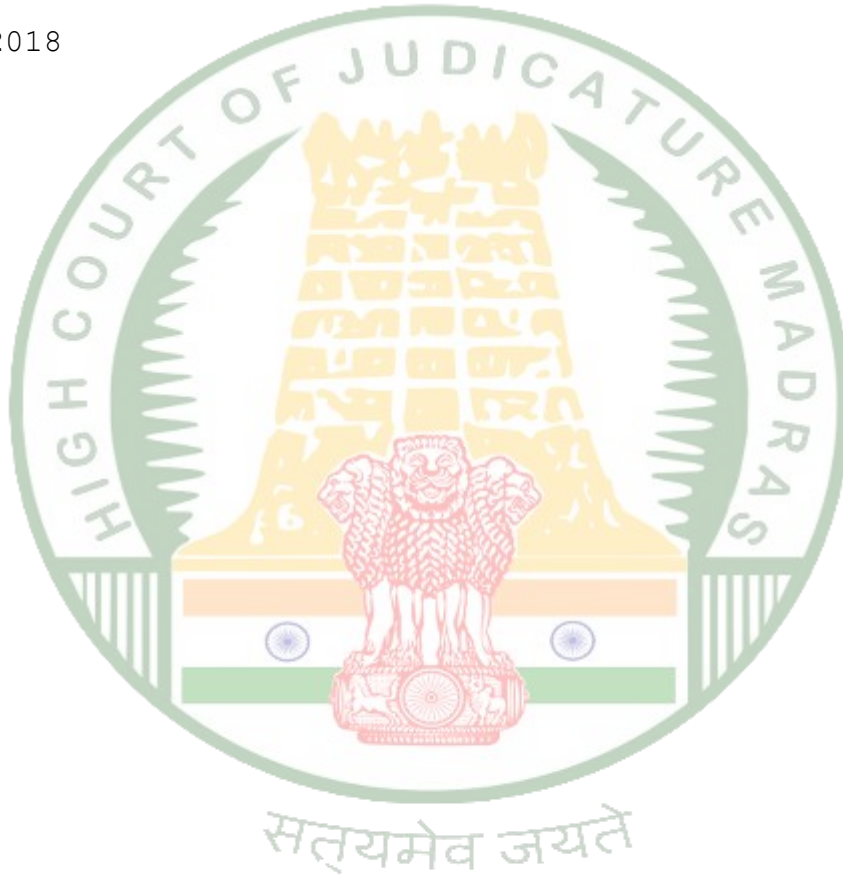
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VR Section,
High Court, Madras.

+1cc to Mr.S.Kumaradevan, Advocate sr.no.43944
+1cc to Mr.V.Raghavachari, Advocate sr.no.44275

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