



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

SA(MD).No.44 of 2013

and

M.P(MD).No. 1 of 2013

WEB COPY

1.S.Manoharan

2.S.Murugesan : Appellants/Appellants/Defendants 1 & 3
Vs

1.Arulmigu Perumalsamy Deity
rep. by its Trustee,
Board Chairman S. Chandraraj,

2.S.Chandraraj

3.Ganesh Bhaskar

4.R.S.Sundar ... Respondents 1 to 4/ Respondents 1 to 4/Plaintiffs

5.Gopal Nadar ... 5th Respondent/ 5th Respondent/2nd Defendant

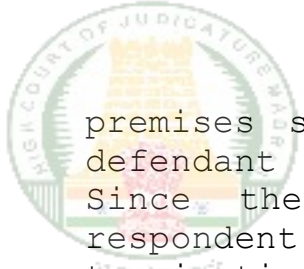
Prayer: This Second Appeal is filed under Section 100 CPC to set aside the decree and Judgment dated 10.12.2011 rendered in A.S.No.68 of 2011 on the file of the Additional District Judge - Cum - Fast Track Court No.I, Thoothukudi, confirming the decree and the Judgment dated 29.06.2010 rendered in O.S.No.59 of 2007 on the file of the District Munsif, Sathankulam.

For appellants	: Mr. J. Bharathan for Mr.N.Subramanian
For R1 to R4	: Mr. R. Balakrishnan
For R5	: No appearance

JUDGMENT

This Second Appeal is filed against the Judgment and decree, dated 10.12.2011, passed in A.S.No.68 of 2011 on the file of the Additional District Judge - Cum - Fast Track Court No.I, Thoothukudi, confirming the decree and the Judgment, dated 29.06.2010 rendered in O.S.No.59 of 2007, on the file of the District Munsif, Sathankulam.

2. The appellants, who are the defendant Nos. 1 and 3 in the suit in O.S.No.59 of 2007, on the file of the District Munsif Court, Sathankulam, have filed the present Second Appeal. The respondents Nos. 1 to 4 / plaintiffs have filed the suit for eviction of the appellants. The suit has been filed by the Board of Trustees of Arulmigu Perumalsamy Deity through the Trustees. The case of the plaintiffs is that the suit property belongs to the temple known as Arulmigu Perumalsamy Deity and that the plaintiff Nos. 2 to 4 are the Trustees. It is stated that the



premises stated in the suit property was let out to the first defendant and that the premises is required for temple usage. Since the property is required for bonafide purposes, the respondent Nos. 1 to 4 / plaintiffs after issuing notice terminating the tenancy, have filed the suit. It is stated in the written statement that the temple is under the control of HR&CE Department and that a suit can be filed only by the Executive Officer of the temple. Since the temple authority, who is the owner of the property is not being properly represented, the suit is not maintainable. Further, it is also stated that new Trustees have been appointed by the Department and that the suit filed by the erstwhile Trustees cannot be prosecuted further. The Trial Court decreed the suit holding that the suit has been filed for bonafide purposes and that the suit is maintainable even if the newly appointed Trustees are not added as parties to the suit. The Appellate Court has also concurred with the Judgment of the Trial Court and dismissed the appeal, which was filed by the defendants 1 and 3 in A.S.No.68 of 2011, on the file of the Additional District and Sessions Judge, Fast Track Court No.I, Thoothukudi. Against which, the present Second Appeal is filed by the appellants / defendant Nos.1 and 3.

3. The learned counsel appearing for the appellants / defendant Nos. 1 and 3 states that the suit is not maintainable when it is admitted that the Trustees, who filed a suit have been replaced in the sense that, new Trustees have been appointed in the place of erstwhile Trustees, who instituted the suit. It is submitted that the suit cannot be prosecuted by the present respondent Nos. 1 to 4 / plaintiffs. The maintainability of suit as on the date of filing of suit is not in dispute. At the instance of the then Trustees of the temple, the suit was filed and it is decreed. The appeal is filed by the defendant Nos. 1 and 3. Even assuming that the Trustees who filed the suit are not in office, now, in their representative capacity they can always protect the interest of temple as trustees and prosecute or defend even after their term is over. For the purpose of prosecuting the suit and to defend the case in Appeal as well as the subsequent proceedings, before the Court, the present Trustees are also competent. The proceedings initiated will not abate.

4. It is open to the newly appointed Trustees to come on record and even in case, if they failed to come on record, the Judgment and decree passed in the suit will be binding on them. Having regard to the above position, the said submission made by the learned counsel appearing for the appellants is untenable and no other substantial question of law is advanced before this Court.

5. Hence, the Second Appeal is dismissed as devoid of merits confirming the decree and Judgment, passed by the Courts below. No costs. Consequently, the connected Miscellaneous Petition is closed.



6. The learned counsel appearing for the appellants seeks indulgence of this Court to give three months time to vacate the premises. He further states that the defendant Nos. 1 and 3 are carrying on business in the premises let out to them and hence, three months time is necessary for vacating the premises.

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7. Taking into consideration the fact that the appellants are doing their business to eke out their livelihood, it is reasonable to grant three months time to vacate the premises and accordingly, the appellants are given three months time to vacate the premises, which is the subject matter of suit.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Additional District Judge
- Cum - Fast Track Court No.I,
Thoothukudi,
2. The District Munsif, Sathankulam.
3. The Record Keeper, (2 copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.N.Subramanian, Advocate Sr.No.60117

+1cc to Mr.R. Balakrishnan, Advocate Sr.No.60185

TRP

VB/SV/MMS/SAR2/12.06.2018/3P/7C

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