

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.08.2019

PRONOUNCED ON: 13.09.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

A.S.No. 1007 of 2009
and M.P.No.1 of 2009

1. Saraswathi Ammal
V. Ramachandran (deceased)
 2. V.Shantha
Leela Nagarajan (deceased)
 3. Shyamala Narayanan
 4. Revathi Muralidhar
 5. V.S.Annapoorna
 6. V.S.Rajani Kantham
 7. K.Nagarajan
Lalitha (Deceased)
 8. Guruprasad
 9. Ramesh
 10. Geetha
 11. Lakshmi
- ..Appellants/Defendants

Vs.

1. A/m Arunachaleswarer Devasthanam,
Thiruvannamalai,
Rep. By its Executive Officer,
(Assistant Commissioner).
 2. C.S.Vijayalakshmi
- ..Respondents/Plaintiff
and Defendant

Prayer: First Appeal filed under Section 96 of C.P.C., against the judgment and Decree dated 27.01.2009 made in O.S.No.5262 of 1996 on the file of the VI Additional Judge, City Civil Court, Chennai.

For Appellants : Mr.Srinath Sridevan

For RR1 : Mr.A.K.Sriram
for M/s. A.S.Kailasam Associates

For RR2 : No appearance
Set exparte
vide order dated 06.08.2019

JUDGMENT

1. Aggrieved over the judgment and decree dated 27.01.2009 passed in O.S.No.5262 of 1996 on the file of the VI Additional Judge, City Civil Court, Chennai, the defendants have come forward with this First Appeal.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. Suit for possession, damages and mense profits.

4. The case of the plaintiff in brief is that the plaintiff is the owner of the plaint A schedule property and the same was leased out to Late. V. Subramania Iyer by way of a lease deed dated 04.01.1937 for a period of 50 years on a monthly rent of Rs.8.12 Anas payable on or before the 10th of every English Calendar month and as per the terms of the lease, the lessee was permitted to erect buildings and other superstructures on the demised portion and the lessee Subramania Iyer had assigned the portions of the leasehold properties to the third parties and thereby putting an end to the lease in respect of those portions so assigned and thereby forfeited his leasehold rights over the said portions. The original lessee V.Subramania Iyer died leaving behind his legal representatives, the defendants and the defendants are in the possession and enjoyment of the plaint B schedule property, the lessee had put up the superstructure in a portion of the plaint B schedule property, the period of lease had expired on 03.01.1987 and the lease has come to an end due to efflux of time. The defendants had not surrendered the possession of the leasehold property even after the determination of the lease and the plaintiff being a public religious institution noting that the continuation of the tenancy is not beneficial to the institution, had chosen not to renew the lease and accordingly the plaintiff issued a notice dated 12.06.1987 terminating tenancy in favour of the defendants and demanded them to surrender the vacant possession along with the superstructure and to the same, the defendant sent a reply dated 08.07.1987 raising untenable grounds inter alia that they are entitled to renewal of the lease for a further period of 50 years and hence, according to the plaintiff, it has been necessitated to institute the suit against the defendants for appropriate reliefs.

5. The defendants resisted the plaintiff's case contending that the land of 4 grounds and 1230 sq.ft had been leased out to the deceased V.Subramania Iyer by the plaintiff for a period of 50 years and the lease deed provided for renewal

of the lease for a further period of 50 years and after the execution of the lease deed, Subramania Iyer had put up the pacca construction in the plaint B schedule property and the same had been assessed in his name and accordingly he and the defendants are in the possession and enjoyment of the plaint B schedule property by paying the ground rent to the plaintiff without any default and improved the building and the value of the building is more than Rs.5,00,000/- and the defendants have right to purchase the land U/s. 9 of the Madras City Tenants Protection Act. After the demise of Subramania Iyer, the defendants continue to pay the ground rent and the option for renewal being given to the defendants and when the option had been exercised by the defendants by way of a notice dated 07.07.1986, it is not open to the plaintiff to terminate the tenancy and any such purported termination of the tenancy on the part of the plaintiff is invalid and on that basis, the plaintiff is not entitled to claim any relief from the defendants. The value of the superstructure put up by the defendants is not less than Rs.5,00,000/-. The defendants are neither liable to hand over the possession of the suit property nor pay any damages or mense profits to the plaintiff as claimed. The defendants have right to compel the plaintiff to sell the site to them and accordingly prayed for the dismissal of the plaintiff's suit.

6. On the basis of the pleas put forth by the respective parties, the following issues were framed by the trial court for determination.

i. Whether the lessee V.Subramania Iyer assigned portion of the leasehold property to third parties putting an end to the lease?

ii. Whether the defendants are entitled to the benefits of City Tenants Protection Act?

Iii. Whether the plaintiff is entitled to vacant possession of B schedule property?

iv. Whether the plaintiff is entitled to Rs.954480 as damages?

v. Whether the plaintiff is entitled to future mense profits?

vi. To what relief, if any, the parties are entitled to?

7. In support of the plaintiff's case, P.W.1 was examined. Exs.A1 to A5 were marked. On the side of the defendants, D.W.1 was examined. Ex.B1 was marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to hold that the plaintiff is

entitled get the vacant possession of the plaint B schedule property from the defendants and fixed the time for delivery of possession as three months and accordingly further held that if the defendants accepted the delivery of the possession with the building thereon, the value of the building should be determined by appointment of the Advocate Commissioner with expert engineer at the time of the delivery and as regards the claim of mense profits relegated the matter to a separate proceeding under Order 20 Rule 12 C.P.C., and accordingly decreed the suit in favour of the plaintiff as above. Impugning the same, the present First Appeal has been preferred.

9. The following main points arise for determination in this First Appeal.

i. Whether the defendants are entitled to seek the renewal of the lease of the plaint B schedule property on the basis of the lease deed dated 04.01.1937?

ii. Whether the plaintiff is entitled to recover the possession of the plaint B schedule property from the defendants as prayed for?

iii. Whether the plaintiff is entitled to claim mense profits as putforth in the plaint?

iv. To what relief the plaintiff is entitled to ?

v. To what relief, the defendants/appellants are entitled to?

Point Nos.1 to 3:

10. It is not dispute that the plaint B schedule property belongs to the plaintiff's temple. From the materials placed on record, it is found that the plaint A schedule property which comprises of the plaint B schedule property was originally leased out by the plaintiff's temple in favour of V.Subramania Iyer by way of a lease deed dated 04.01.1937, the copy of which has been marked as Ex.A2. Now, according to the plaintiff, as at present, the defendants are in the possession and enjoyment of the plaint B schedule property and it is found that a large extent of land had been leased out to Subramania Iyer by way of Ex.A2 lease deed and the period of lease is found to be for a period of 50 years. The lease deed provides for renewal of the lease for a further period of 50 years. The same is not in dispute. Now according to the plaintiff, after the demise of Subramania Iyer, the original lessee, his legal representatives namely the defendants continue to occupy the suit property. Now according to the plaintiff, the continuation of the lease was found to be not beneficial to the plaintiff's institution and accordingly chosen not to renew the lease and after determining the tenancy of the defendants has come forward with the suit seeking for the recovery of possession of the

plaint B schedule property as well as the other reliefs as prayed for.

11. Per contra, it is mainly contended by the defendants that the defendants have the option of obtaining the renewal of the lease for a further period of 50 years as per the renewal clause of the lease deed dated 04.01.1937 marked as Ex.A2 and accordingly it is their further case that they had exercised that option and therefore according to them, the plaintiff is bound to renew the lease in their favour for a period of 50 years and therefore according to the defendants, the plaintiff is not entitled to terminate their tenancy and seek the recovery of the possession of the plaint B schedule property from them and accordingly prayed for the rejection of the plaintiff's case.

12. As rightly determined by the trial court, though it has been putforth by the defendants that they had not violated the terms of the lease, considering the fact that the lease had been originally granted for a vast extent of property and the present suit having been laid only for the plaint B schedule property and when the defendants have failed to establish their predecessors' title, entitlement to assign the leasehold rights to the third parties, which fact has not been controverted by D.W.1, in such view of the matter, it cannot be held that the defendants have not violated the terms and conditions of the lease deed Ex.A2.

13. No doubt, the lease deed Ex.A2 provides for the clause of the renewal of the same for a further period of 50 years. However though the defendants would claim that they had exercised the said option, with reference to their said claim, absolutely there is no convincing material forthcoming. The defendants would claim that they had chosen to exercise the renewal of the lease by way of the notice dated 07.07.1986. However, whether the alleged notice said to have been sent by the defendants for the renewal of lease on 07.07.1986 had been actually sent to the plaintiff and in that connection, the defendants having failed to place any convincing and reliable materials other than marking the copy of the alleged notice as Ex.B1, when the plaintiff has disputed the same, in such view of the matter, the trial court is found to be wholly justified in holding that the defendants have failed to establish that they had validly and rightly exercised the option for renewal provided to them under Ex.A2 lease deed in the manner known to law. In any event, when the plaintiff has decided it to determine and hold that the continuation of the lease in favour of the defendants is not beneficial to the interest of the

plaintiff's institution and furthermore, when the defendants have failed to establish that they had been adhering to the terms and conditions of the lease deed without any violation, in such view of the matter, it is found that the argument of the defendants' counsel that the defendants had exercised the option of the renewal of the lease by sending a valid notice to the plaintiff, as such, cannot be accepted in any manner. In this connection, the defendants' counsel would rely upon the evidence of P.W.1, contending that he had admitted the letter sent by the defendants exercising the option to the renewal of the lease. On a reading of the evidence of P.W.1, it is found that he would only state that the Commissioner had held and determined that the continuation of the lease deed would not be beneficial to the interest of the plaintiff's institution and he would categorically state that he had not seen any letter sent by the defendants exercising the option of the renewal of the lease in the file and the above, being the evidence of P.W.1, on that score it cannot be held that P.W.1 has admitted the defendants had exercised the option of the renewal of lease as put forth by them. In any event, when the plaintiff's temple had validly held that the continuation of the lease is not beneficial to the interest of the plaintiff's institution, in such view of the matter, the defendants cannot be allowed to contend that they are entitled to seek the renewal as a matter of right as put forth by them.

14. The defendants' counsel during the course of arguments would put forth that the suit laid by the plaintiff through its Executive Officer is not maintainable and on that score alone, the plaintiff's suit is liable to be rejected. The defendants have put forth no such plea in the written statement. However, in this connection, the defendants' counsel placed reliance upon the decision of this Court dated 05.08.2002 rendered in the case of Sri Arthanareeswarar of - Vs. T.M.Muthuswamy Padayachi]. However considering the materials placed on record, particularly Ex.A5, when the powers and duties of the Executive Officer have been outlined therein and accordingly the Executive Officer is found to be entitled to represent the plaintiff's temple and accordingly the suit having been laid by the plaintiff's temple represented by the Executive Officer, in such view of the matter, as rightly contended by the plaintiff's counsel, the abovesaid ground raised by the defendants' counsel at the time of arguments cannot at all be countenanced in any manner and in such view of the matter, I hold that the suit laid by the plaintiff represented by Executive Officer is perfectly valid and sustainable in law and therefore the abovesaid contention of the defendants' counsel as regards the maintainability of the suit deserves rejection.

15. For the reasons aforesaid, the defendants are found to have not exercised the option of the renewal of the lease by sending a valid notice to the plaintiff as per law and furthermore, the defendants have failed to establish that they are entitled to have the renewal of the lease as a matter of right and the plaintiff is found to be entitled in not renewing the lease as the same has been rightly considered and held to be not beneficial to the plaintiff, therefore I hold that the plaintiff is entitled to recover the possession of the paint B schedule property from the defendants. I further hold that the plaintiff is entitled to recover the mense profits from the defendants and the trial court has rightly relegated the same by way of separate proceeding under Order 20 Rule 12 C.P.C. Accordingly the point Nos.1 to 3 are answered in favour of the plaintiff and against the defendants.

Point Nos.4 and 5:

16. In the light of the abovesaid discussions, judgment and decree dated 27.01.2009 passed in O.S.No.5262 of 1996 on the file of the VI Additional Judge, City Civil Court, Chennai are confirmed and resultantly the First Appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The VI Additional Judge,
City Civil Court, Chennai.

Copy to : The Section Officer, VR Section,
High Court, Chennai.

+1 cc to M/s.Srinath Sridevan, Advocate Sr.No. 78782

+1 cc to M/s.A.S.Kailasam and Associates, SR.No.79728

AKM/04.03.2020/7P-5C /

judgment made in
A.S.No. 1007 of 2009
and M.P.No.1 of 2009