

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 30.01.2019

DATED: 15.02.2019

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A. No. 1804 of 2000

1. Krishnaveni
2. M.Bhanumathi
3. Yoganthimala
4. Premavathi ..Appellants/Defendants

Vs.

1. Arulmighu Sri Komaleeswarar
Devasthanam, rep. by its
Executive Officer
5, Temple Street,
Komaleeswaranpet,
Chennai-2.
2. R.Srinivasan .. Respondent/Plaintiff

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree in A.S.No. 143 of 1994 on the file of the II Additional Judge, City Civil Court, Madras, dated 23.11.1995 confirming that of the Judgement and Decree in O.S.No. 7903 of 1974 dated 10.03.1992 on the file of XIV Assistant Judge, City Civil Court, Madras.

For Appellants : Mr.P.Gopalan

For 1st Respondent : Mr. E.Ganesh

JUDGMENT

The legal representatives of the deceased second defendant in O.S.No. 7903 of 1974 on the file of the 14th Assistant Judge, City Civil Court, Chennai, are the appellants herein.

2. O.S.No. 7903 of 1974 had been filed by the plaintiff Arulmighu Sri Komaleeswarar Devasthanam, represented by its Executive Officer, originally against one defendant R.Srinivasan and subsequently against the second defendant K.Govindan, who had been impleaded by order of Court, seeking a Judgment and Decree directing the defendants to quit and deliver vacant possession of the suit property and also to pay the costs of the suit. By Judgment and Decree dated 10.03.1992, the suit was decreed.

3. The second defendant K.Govindan, then filed A.S.No. 143 of 1994. This came up for consideration before the Second Additional District Judge, City Civil Court, Chennai, who took up the First Appeal along with C.M.A.No. 67 of 1994 which also related to the same suit property and between the same parties. By Judgment dated 23.11.1995, the learned Second Additional District Judge, City Civil Court, Chennai, dismissed the First Appeal and also the Civil Miscellaneous Appeal. It must be mentioned that pending the appeal, the appellant/second defendant died and his legal representatives were brought on record as appellants.

4. As stated above, the said legal representatives filed the present Second Appeal challenging the Judgment in A.S.No. 143 of 1994. The Second Appeal had been admitted on the following four substantial questions of law:-

"(a) Whether the learned Judge is right in interfering Ex.B-1 for rejecting the claim of the appellants, when admittedly the tenancy in favour of the second defendant has been recognized?;

(b) Whether the learned Judge is right in not considering the documents Exs. B-2 to B-6 to show that the second defendant was paying the rent to the plaintiff-Temple?;

(c) Whether the learned Judge has framed the points for determination in the first appeal as contemplated under Order 41 Rule 31 Criminal Procedure Code and as held in 1997(1) CTC 26?; and

(d) On the available facts, whether the plaintiff is entitled to a decree as prayed for in the suit."

O.S.No. 7903 of 1974 - 14th Assistant City Civil Court, Chennai:

5. The plaintiff Arulmighu Sri Komaleeswarar Devasthanam represented by its Executive Officer, had filed the suit for possession. It was claimed that the first defendant was a tenant in respect of the land bearing Door No. 6, Venkatachalam Naicken Street, Chennai - 600 002 on a monthly rent of Rs.5/-. He had put up a superstructure in the front portion of the land. The tenancy was terminated by notice dated 15.02.1974. The tenant was directed to quit and vacate possession of the land and the superstructure after receiving compensation of Rs.8,000/- for superstructure. Since the defendants failed to deliver vacant possession, the suit was filed.

6. The first defendant did not file any written statement.

7. The second defendant filed a written statement claiming that he had purchased the superstructure by sale deed dated 18.09.1974 along with lease hold rights. It was stated that this sale was with the consent and knowledge of the plaintiff. It was also stated that he was paying the monthly rent to the plaintiff. He disclaimed knowledge about the notice. He claimed that he was entitled for protection under the Tamil Nadu City Tenants Protection Act. He stated that the suit should be dismissed.

8. On the basis of the above pleadings, the following issues were framed:-

"(i) Whether the lease deed had been cancelled in manner known to law?;

(ii) Whether the second defendant was entitled for protection under the Tamil Nadu City Tenants Protection Act?;

(iii) Whether the suit is bade for non issuing of notice prior to three months before the date of institution of the suit?; and

(iv) To what other reliefs is the plaintiff entitled to?"

9. During trial M.Natarajan representing the plaintiff temple was examined as PW-1. The second defendant Govindan was examined as DW-1. The plaintiff marked Ex.A-1, notice dated 15.02.1974; Ex.A-2 the acknowledgment card; Ex.A-3 the order in I.A.No. 2119 of 1975 in O.S.No. 900 of 1974. On the side of the defendants, Ex.B-1 letter of the plaintiff dated 18.09.1974; Ex.B-2 certified copy of sale deed dated 26.10.1974; Ex.B-3 to

B-6 receipts for payment of rent; Ex.B-7 certified copy of sale deed dated 18.09.1974; Ex.B-8 certified copy of sale deed dated 17.04.1957; Ex.B-9 certified copy of sale deed dated 29.03.1950; Exs. B-10 and B-11 rental receipts; and Ex.B-12 receipt for payment of property tax were marked.

10. On the basis of the oral and documentary evidence, by Judgment dated 10.03.1992, the learned 14th Assistant Judge, City Civil Court, Chennai, observed that the second defendant had not produced any document to show actual physical possession of the suit property. It was also observed that the second defendant had not produced any document to show that he had purchased the superstructure or taken the property on lease from the plaintiff. It was found that the documents reveal that the second defendant had purchased the superstructure by Ex.B-7 dated 18.09.1974. Rathinam Pillai had obtained lease hold rights by Ex.B-8. Salab, wife of Sayed Meera had purchased the superstructure by Ex.B-9 in the year 1950. It was therefore seen that the second defendant had not purchased any right directly from the plaintiff. It was specifically observed that the second defendant had not established possession. It was also observed that it had been admitted by the second defendant that the plaintiff was the owner of the land. Consequently, the suit was decreed.

A.S.No. 143 of 1994 - Second Additional Judge, City Civil Court, Chennai:

11. The second defendant then filed the above Appeal. This Appeal was heard along with C.M.A.No. 67 of 1994 which had also been filed by the second defendant seeking protection under the Tamil Nadu City Tenants Protection Act. Pending the Appeal, the second defendant/appellant died and his legal representatives were brought on record as appellants. The learned Second Additional District Judge, City Civil Court, Chennai, by Common Judgment dated 23.11.1995 in both A.S.No. 143 of 1994 and C.M.A.No. 67 of 1994 also found as a fact that the second defendant had not established possession. It was specifically found that he was not entitled to protection under the Tamil Nadu City Tenants Protection Act. The Learned First Appellate Judge had also examined Ex.B-1, by which the second defendant claimed that the plaintiff had recognized his tenancy. However, the wordings in Ex.B-1 clearly showed that the purchase by the second defendant had been recognized only subject to the eviction notice issued to the first defendant in Ex.A-1. Consequently, the Appeals were also dismissed.

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12. The legal representatives of the deceased second defendant had filed the present Second Appeal. It had not been informed to this Court whether any further Appeal had been preferred against the Judgment in C.M.A.No. 67 of 1994. This

Second Appeal had been admitted on the following four substantial questions of law:-

"(a) Whether the learned Judge is right in interfering Ex.B-1 for rejecting the claim of the appellants, when admittedly the tenancy in favour of the second defendant has been recognized?;

(b) Whether the learned Judge is right in not considering the documents Exs. B-2 to B-6 to show that the second defendant was paying the rent to the plaintiff-Temple?;

(c) Whether the learned Judge has framed the points for determination in the first appeal as contemplated under Order 41 Rule 31 Criminal Procedure Code and as held in 1997(1) CTC 26?; and

(d) On the available facts, whether the plaintiff is entitled to a decree as prayed for in the suit."

13. The first substantial question of law related to the interpretation of Ex.B-1. Ex.B-1 dated 18.09.1974 had very clearly mentioned that the second defendant's rights were subject to the notice already issued to N.Rathinam Pillai. It is therefore seen that the second defendant had not obtained any unconditional right title or interest over the suit property. He cannot claim any such right. Consequently, I hold that the learned First Appellate Court had correctly interpreted Ex.B-1. The plaintiff never recognised the second defendant as their lessee or as owner of the superstructure.

14. The second substantial question of law should actually relate to Exs. B-3 to B-6 which are the rental receipts. Exs. B-3 to B-6 cannot confer any title to the second defendant. As stated, Ex.B-1 had been issued only subject to the notice of eviction already issued. Consequently, Exs.B-2 to B-6 have to be read in conjunction with Ex.B-1 and the notice Ex.A-1. I hold that the Courts below have correctly interpreted Exs. B-3 to B-6.

15. The third substantial question of law was with respect to framing of points for determination under Order 41 Rule 31 Criminal Procedure Code. It must be kept in mind that the learned Second Additional District Judge, City Civil Court, Chennai, had passed a common Judgment in both A.s.No. 143 of

1994 and C.M.A.No. 67 of 1994. A reading of the Judgment reveals that the entire pleadings have been extracted and the evidence has been discussed in length. Moreover, the points for consideration had also been framed and the second point for consideration was whether the appellant was entitled to purchase the property. This had been framed in view of the discussion relating to the issues raised in C.M.A.no. 67 of 1994. Consequently, I hold that the Judgment under Appeal does not suffer from any infirmity.

16. The fourth substantial question of law was whether the plaintiff was entitled for a decree. Since both the Courts have concurrently held on facts that the second defendant had not established possession and that he had not obtained rights over the property directly from the plaintiff and that Ex.B-1 had been issued only subject to the notice under Ex.A-1, I hold that the plaintiff was entitled to a decree.

17. During the course of hearing, the learned counsel for the appellant had raised another issue which was also put to the learned counsel for the respondent/plaintiff. The learned counsel for the appellant relied the Judgment of this Court in Sri Arthanareeswarar of Tiruchengode Vs. T.M.Muthuswamy reported in 2003-1-L.W. 386 wherein a Division Bench of this Court had held that a suit instituted by an Executive Officer on behalf of the temple without specific permission from the Commissioner is not maintainable.

18. Reliance was placed under Section 45(2) of the Hindu Religious and Charitable Endowments Act, 1959.

19. The said provision is extracted below:-

"45. Appointment and duties of Executive Officers.-

(1)

(2) The Executive Officer shall exercise such powers and discharge such duties as may be assigned to him by the Commissioner:

Provided that only such powers and duties as appertain to the administration of the properties of the religious institution referred to in sub-section(1) shall be assigned to the Executive Officer.

3. ----- "

20. With due respects to the finding in the Judgment cited,

I must hold that the facts in the present case are totally different from the facts as stated in the said Judgment. It was held that the Executive Officer was therefore not the authority competent to initiate legal proceedings and it was only the Board of Trustees which was in existence at that time, which was competent to initiate the legal proceedings. In the present case, examining whether the Executive Officer had instructions to file the suit is an issue on fact. This fact should have been raised at the time of trial. Even though a point of law can be raised at the time of Second Appeal, it is trite to point out that law follows facts. The fact whether in the present case there was a body of trustee with respect to the plaintiff trust and whether the Executive Officer had been instructed to initiate the suit has never been dealt with by the Courts below. The issue was not raised. Since there is no finding on fact on that basis, it would be inappropriate on the part of this Court to non suit the plaintiff on this narrow ground. Consequently, I hold that the suit is maintainable as framed.

21. The Judgment reported in 2003-1-L.W. 386 [Sri Arthanareeswarar of Tiruchengode Vs. T.M.Muthuswamy] is distinguishable with respect to the facts of the present case.

22. For the reasons stated above, I hold that the Second Appeal has no merits and accordingly, it is dismissed with costs. The Judgment and Decree of the trial Court and the First Appellate Court are both confirmed.

Sd/-

Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

vsg

To

1. II Additional Judge, City Civil Court, Madras.
2. XIV Assistant Judge, City Civil Court, Madras.
3. VR Section, High Court, Madras.

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CNR(CO)
GMY(03/06/2019)