

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.04.2019

PRONOUNCED ON : 03.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1599 of 2002

and

CMP.Nos.1757 of 2008 & 16795 of 2018

1.Kaliyaperumal (died)

2.K.Banumathi ...Appellants/Defendant

(2nd Appellant brought on record as LR of the deceased sole appellant vide order of Court dated 31.01.2011 made in CMP.No.342 of 2009)

Vs.

1.His Holiness Sri-la-Sri
Kasivasi Muthukumaraswamy
Tambiran Swamigal Avargal
Head of Sri Kasi Mutt,
Thirupanandal
rep.by its Power Agent
Sri Madam Kumarasamy
Thambiran Swamigal Avargal

2.M.Mani ...Respondents/Plaintiff

(2nd respondent substituted in the place of 1st respondent vide order of Court dated 15.09.2005 made in CMP.No.2206 of 2005)

Prayer :- Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 06.08.2001 passed in A.S.No.23 of 1999 on the file of the Subordinate Court, Chidambaram, reversing the judgement and decree dated 30.07.1999 passed in O.S.No.603 of 1985 on the file of the District Munsif Court, Chidambaram.

For Appellants : Mr.A.Nilapher
for Ms.R.Meenal

For Respondent : Mr.Srinath Sridevan

JUDGMENT

In this second appeal, challenge is made to the Judgement and Decree dated 06.08.2001 passed in A.S.No.23 of 1999 on the file of the Subordinate Court, Chidambaram, reversing the judgement and decree dated 30.07.1999 passed in O.S.No.603 of 1985 on the file of the District Munsif Court, Chidambaram.

2.The second appeal has been admitted on the following substantial questions of law:

"(i).Whether the lower appellate Court did not err in overlooking that unless the mandatory notice under Sec.106 of the Transfer of Property Act was issued in proper form, the Respondent could not seek eviction of the tenant?

(ii).Whether in law the lower appellate Court was right in failing to see that as a tenant holding over under Section 116 of the Transfer of Property Act the appellant was entitled to notice as held in AIR 1984 SC 143?"

3.Considering the scope of the issues involved 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.

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

5.Suffice to state that the suit has been laid by the plaintiff against the defendant (since deceased) for recovery of possession.

6.It is found that the defendant had resisted the abovesaid plaintiff's suit on various grounds. Furthermore, it is also seen that claiming the benefits of Section 9 of the Madras City Tenants' Protection Act, 1921, the defendant is found to have preferred O.P.No.1 of 1986 and the abovesaid application is found to have been resisted by the plaintiff on various grounds and it is further seen that before the abovesaid OP could be disposed of on merits, the Tamil Nadu Amendment Act, 2 of

1996 having come into force and by virtue of Section 3 of the abovesaid Amendment Act, the proceeding instituted by the

defendant in respect of any land owned by a religious institution shall cease to operate and would not be enforceable and inasmuch as the plaintiff is a religious institution, accordingly, it is found that the abovesaid OP preferred by the defendant got dismissed on 30.07.1999 as not maintainable under law. Thereafter, it is found that the suit laid by the plaintiff for ejectment was taken up for consideration and based on the evidence adduced by the respective parties, both oral and documentary, the trial Court was pleased to dismiss the plaintiff's suit. The appeal filed by the plaintiff was allowed as prayed for. Impugning the same, the present second appeal has been preferred by the defendant.

7. Pending the second appeal, the defendant having died, his LR is brought on record.

8. As could be seen from the materials placed on record, during the pendency of the second appeal, it is found that an application had been preferred by the plaintiff in CMP No.2206 of 2005 for substituting the second respondent herein as the respondent in the second appeal, so as to continue the second appeal as against the second respondent alone and the abovesaid application has been laid on the basis that pending the

second appeal, the plaintiff's Mutt had sold the suit property to the second respondent by way of a registered sale deed dated 12.07.2000 and the abovesaid sale deed had been registered on 26.05.2004 and as the second respondent had purchased the property, it is he, who is entitled to defend the second appeal instead of the first respondent, the plaintiff's Mutt and accordingly, prayed for the substitution of the second respondent as the respondent in the second appeal. The abovesaid application had come to be entertained by this Court on 15.09.2005 by granting leave without prejudice to the rights of the defendant in the second appeal.

9. The defendant is found to have preferred CMP.No.1757 of 2008 to raise additional grounds and substantial questions of law in the second appeal on account of the abovesaid subsequent developments and according to the defendant, inasmuch as the second respondent has come to be impleaded as a party to the second appeal by way of the substitution as per the order passed in CMP.No.2206 of 2005 dated 15.09.2005 and as the plaintiff's Mutt had suppressed the sale of the suit property to the second respondent during the pendency of the first appeal and the defendant's application under Section 9 of the Madras City Tenants Protection Act in O.P.No.1 of 1986 got dismissed only on the footing that the plaintiff's Mutt is a religious institution by invoking the Amendment Act, 2 of 1996, accordingly, put forth that in the light of the purchase of the suit property by the second respondent from the plaintiff's Mutt, according to the defendant, he is entitled

to renew his original claim of the purchase of the property as provided under Section 9 of the Madras City Tenants Protection Act and accordingly, prayed for the inclusion of the new grounds and the new substantial questions of law pertaining to the same in the second appeal.

10.It is now found that the defendant has preferred the application in CMP.No.16795 of 2018 under Section 9 of the Madras City Tenants Protection Act read with Section 151 C.P.C seeking a direction to the second respondent to sell the property in favour of the defendant for the price to be fixed by the Court and the abovesaid application has come to be laid on the reasoning that inasmuch as the earlier application preferred by the defendant seeking the benefit of Section 9 of the Madras City Tenants Protection Act had come to be dismissed by virtue of the exemption given to the plaintiff's Mutt as per the Amendment Act, 2 of 1996 and as the second respondent had now purchased the property involved in the matter from the plaintiff's Mutt and also got himself substituted in the proceedings, it is stated that the exemption given to the religious institution would not be available to the second respondent and accordingly, the defendant would be entitled to purchase the property for the price fixed by the Court as provided under Section 9 of the Madras City Tenants Protection Act and accordingly, the abovesaid right of the defendant having been revived on the sale of the subject matter by the plaintiff's Mutt to the second respondent and as the defendant had been given the right to purchase the property under law and as the second appeal is a continuation of the suit, accordingly also put forth that the present application is a continuation of the earlier application, as such, is not barred by limitation and resultantly, prayed for the sale of the subject matter to the defendant for the price fixed by the Court.

11.The second respondent opposed the abovesaid application on various grounds, particularly, on the point of limitation contending that the defendant is aware of the sale of the subject matter of the second appeal by the plaintiff's Mutt much earlier and the same could be gathered from the judgment passed in O.S.No.294 of 2000 on the file of the Principal District Munsif Court, Chidambaram, which suit had been laid by the defendant against the plaintiff's Mutt and the second respondent for the relief of permanent injunction and the abovesaid suit had been dismissed and the appeal preferred against the same was also dismissed and the defendant is well aware of the sale deed dated 12.07.2000 in the abovesaid proceedings itself and had not come forward to purchase the property within the time allowed under law and even had not come forward with the application in time, after the substitution application in

CMP.No.2206 of 2005 had been ordered and on the other hand, had laid the application only in the year 2018 and in such view of the matter, when the application under Section 9 of

the Madras City Tenants Protection Act is to be laid within a specific time limit as provided therein, accordingly, prayed for the dismissal of the application.

12.Claiming the benefit of Section 9 of the Madras City Tenants Protection Act, it is found that the defendant had preferred the application in O.P.No.1 of 1986 in the suit laid by the plaintiff against the defendant. Though the abovesaid application was contested on merits by the plaintiff's Mutt by filing a counter, it is found that by virtue of the Amendment Act, 2 of 1996 granting exemption to the religious institution, the abovesaid application had come to be dismissed as not maintainable under law on 30.07.1999. As regards the abovesaid position, there is no dispute between the parties.

13.It is now found that the plaintiff's Mutt had sold the property to the second respondent by way of a sale deed dated 12.07.2000. It is further found that challenging the judgment and decree of the trial Court dated 30.07.1999, the plaintiff's Mutt had preferred the first appeal and the first appeal is found to have been laid on 30.09.1999. Now, according to the second respondent, the plaintiff's Mutt had alienated the property to him on 12.07.2000. The first appeal had come to be disposed of on 06.08.2001. It is thus found that pending the first appeal, the subject matter involved in the lis has been alienated by the plaintiff's Mutt to the second respondent on 12.07.2000. Despite the same, the plaintiff's Mutt is found to have prosecuted the first appeal, as if it has title to the subject matter and it is evident that the alienation of the suit property to the second respondent had been not disclosed before the first appellate Court. The first appellate Court on the available materials had entertained the appeal preferred by the plaintiff's Mutt as abovenoted. Impugning the same, the present second appeal has been preferred.

14.Only during the pendency of the second appeal, the application for substitution had been taken out by the plaintiff's Mutt for impleading the second respondent in its place to continue the second appeal against him further. Resultantly, the same had necessitated the defendant to prefer the application in CMP.No.1757 of 2008 for raising the additional grounds and substantial questions of law qua the abovesaid developments in the matter.

15.It is mainly contended by the defendant's counsel that the defendant's application under Section 9 of the Madras City Tenants Protection Act had not come to be dismissed on merits and on the other hand, the same had come to be dismissed as not maintainable under Law by virtue of the exemption granted to the religious institution as per the Amendment Act, 2 of 1996. The same is not disputed by the second respondent. In such view of the

matter, it is found that the defendant had no opportunity or would not have been entitled to prefer any appeal challenging the dismissal of his abovesaid application. Pending lis, it is now seen that the subject matter had been alienated to the second respondent by the plaintiff's Mutt. The second respondent is not a religious institution, he is a private individual. In such view of the matter, according to the defendant's counsel, the exemption granted to the religious institution would not be applicable to the second respondent and in such view of the matter, according to her, the right to purchase the property provided under Section 9 of the Madras City Tenants Protection Act, gets revived and accordingly, it is contended that the defendant would be entitled to renew the application either by seeking for an order of reversal of the dismissal order of the earlier application preferred by him or by filing a fresh application incorporating the above events which had occurred since the dismissal of the earlier application. It is further put forth by her that the second appeal pending now is only to be construed as a continuation of the suit proceedings, accordingly, it is urged that the dismissal of the application under Section 9 of the Madras City Tenants Protection Act is only an interlocutory order and the defendant would be entitled to canvass the correctness of the same even in the second appeal by virtue of the application of section 105 of the CPC and the defendant is not required to prefer any independent appeal against the order of dismissal of his application and the defendant is entitled to challenge the correctness of the said order in the second appeal also independently. It is thus contended that the present application preferred by the defendant should be taken or construed as a renewal of the earlier application, in view of the subsequent developments and accordingly, prayed for appropriate orders.

16.No doubt, as abovenoted, the second respondent resisted the application preferred by the defendant under Section 9 of the Madras City Tenants Protection Act mainly on the point of limitation.

17.In this connection, the defendant's counsel placed strong reliance upon the decision of the Apex Court reported in 1992 (2) LW 595 (SC) (Thailammal and others Vs. Janardhan Raju and others), wherein, it has been held that the application under Section 9 of the abovesaid Act is only an interlocutory application and the defendant has the right to challenge the correctness of the order passed in such an interlocutory application without filing an appeal therefrom in an appeal against the decree of the trial Court and the position of law with reference to the same has been outlined by the apex Court in the abovesaid decision as follows:

"Tamil Nadu City Tenants Protection Act, SS,9, 11 and 3 (as amended by Act 2 of 1980), and C.P.C., S.105 -

Application under S.9, nature of, held, is interlocutory - Right of defendant to challenge correctness of an order on any interlocutory petition without filing appeal therefrom, in an appeal against the decree of trial Court.

C.P.C., S.105 - See T.N.City Tenants Protection Act, Ss.9, 11 and 3, etc.

According to S.9 of the T.N.City Tenants Protection Act it is open to a defendant to file an application thereunder in a suit for ejectment filed by the landlord against him. Such an application would be in the nature of an interlocutory application in the suit. In such a situation, it follows that once an appeal is filed by the defendant against the decree of the trial Court, he is entitled to challenge the correctness of any interlocutory order passed in the suit, in such appeal, by virtue of S.105 of the C.P.C. It is not necessary in such a case that he should prefer an independent appeal against the order dismissing an interlocutory application, even if it is appealable. This principle is of equal application herein even though the interlocutory application is one under S.9 of the Act. Accordingly, it must be held that in the appeal/second appeal against the decree of the trial court, it was open to the defendants to challenge the correctness of the order dismissing their application under S.9. The High Court was, therefore, not right in holding that the said application having been dismissed by trial Court and no fresh application having been filed, it must be held that there was no application under S.9. The application filed by the defendants in the trial Court must be deemed to be pending during the pendency of the appeal/Second appeal.

1976-1-MLJ 220 = 89 L.!108
(N.S.Ramaswami,J.) referred to."

18.On the point of limitation, the Counsel appearing for the second respondent placed reliance upon the decisions (2001) 8 Supreme Court Cases 397 (Ambalal Sarabhai Enterprises Ltd., vs. Amrit Lal & Co. and another), (1987) 4 Supreme Court

Cases 382 (Nand Kishore Marwah and others Vs. Samundri Devi) and (1976) 2 MLJ 80 (P.S.Angaiya Raja a firm represented by its partner Subramania Raja and K.S.Solaimalai Raja Vs.A.K.D.Alagaraja Hugdar of the Rajapalayam Chatram Charities, Ist Schedule properties and Ors.). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

19.Considering the factual matrix involved, when it is admittedly noted that the application preferred by the defendant in O.P.No.1 of 1986 filed under Section 9 of the Madras City Tenants Protection Act, 1921 had not been disposed of on merits and on the other hand, has been disposed of as not maintainable in law by virtue of the exemption granted to the plaintiff's Mutt under the Amendment Act, 2 of 1996, in such view of the matter, it is found that the defendant could not have preferred any challenge to the correctness of the said order as provided under Section 9 -A of the Madras City Tenants Protection Act, 1921. As against the judgment and decree passed in the main suit, the lis, at present, is at the stage of the second appeal before the High Court. Only during the course of the proceedings in the second appeal, it has been disclosed that the subject matter involved in the lis had been alienated in favour of the second respondent. The second respondent has been brought on record by way of substitution as per the order dated 15.09.2005 in CMP No.2206 of 2005. Seeking permission to raise additional grounds and additional substantial questions of law with reference to the same, the defendant has preferred the application in CMP.No.1757 of 2008. As a corollary to the abovesaid developments, the defendant is found to have preferred the application in CMP.No.16795 of 2018 seeking a direction to the second respondent to sell the suit property to him for the price to be fixed by the Court by invoking Section 9 of the Madras City Tenants Protection Act.

20.In the light of the abovesaid developments, as rightly put forth by the defendant's counsel, when the defendant is entitled to purchase the property as provided under Section 9 of the abovesaid Act, the right which had been conferred on him under the said Act cannot be denied, the same had got infructuous or deprived only by virtue of the Amendment Act, 2 of 1996, by virtue of the grant of the exemption to the religious institution. However, as at present, when the suit property is now found to have been alienated in favour of an independent person viz., the second respondent, in such view of the matter, the right to purchase the property from the second respondent by invoking the provision of Section 9 of the abovesaid Act on the part of the defendant cannot be rejected outright as it is evident that the exemption granted to the religious institution by virtue of the Amendment Act 2 of 1996 would not be applicable to the second respondent as such. Even it is not the case of the second respondent in the counter that he is entitled to invoke

which, the exemption had been only granted to the religious Institution viz., the plaintiff's Mutt. The only point that has been urged by the second respondent for resisting the application preferred by the defendant is on the point of limitation, as according to the second respondent, much earlier, the defendant was aware of the alienation of the subject matter by the plaintiff's Mutt in favour of the second respondent. Per contra, according to the defendant, the present application should be only construed as the renewal of the earlier application preferred by the defendant and the exemption granted to the religious institution under the Amendment Act 2 of 1996 would not be applicable to the second respondent, in such view of the matter. In the light of the abovesaid developments, when the defendant is entitled to as per law to purchase the property from the second respondent as conferred under the abovesaid Act and as abovenoted, when the second appeal is deemed to be a continuation of the suit proceedings, in such view of the matter, when as abovenoted, the earlier application preferred by the defendant has not been disposed of on merits and only dismissed as not maintainable under law by virtue of the Amendment Act, 2 of 1996, in such view of the matter, the contention has been urged by the defendant's counsel that the application preferred earlier should be held to be and deemed to be pending during the pendency of the second appeal or the present application should be held to be a continuation of the renewal of the earlier application preferred by the defendant and on that ground, the application should be held to be not barred by limitation, an such, cannot be easily brushed aside.

21. In the light of the abovesaid position, when it is found that during the pendency of the first appeal, the plaintiff's Mutt had alienated the subject matter to the second respondent and despite the same, suppressed the alienation from the knowledge of the first appellate Court and even thereafter found to have continued the first appeal without having any entitlement to the subject matter and invited an order from the first appellate court in its favour, one way or the other, as rightly put forth by the defendant's counsel, the abovesaid approach of the plaintiff's Mutt, is found to be not in accordance with law and the plaintiff's mutt should have been fair to disclose the alienation made during the pendency of the first appeal and endeavoured to ensure that the second respondent had been substituted in its place for prosecuting further in the matter. On the other hand, suppressing the materials facts, the decree had come to be obtained by the plaintiff's Mutt in the first appellate Court. On that ground alone, in my considered opinion, the judgment and decree obtained by the plaintiff's mutt in the first appeal are liable to be set aside.

22. As regards the entitlement of the defendant to purchase the property from the second respondent as provided under Section 9 of the abovesaid Act, in my considered

opinion, the same is to be determined based on the evidence to be adduced by the respective parties with reference to their claims and the matter needs adduction of evidence by both the parties and when the defendant is found to have exercised the said right at the earliest point of time in O.P.No.1 of 1986 and the same got dismissed only by virtue of the Amendment Act, 2 of 1996 and whether the present application as put forth by the defendant's counsel, is to be construed as the continuation of the earlier application or renewal of the earlier application or a fresh application would all depend upon the evidence to be adduced by the respective parties one way or the other, as according to the second respondent, the plaintiff is aware of the alienation even during the pendency of O.S.No.294 of 2000 on the file of the Principal District Munsif Court, Chidambaram and also the question of limitation projected by the second respondent being not purely confined only to question of law but also involving question of facts also, in such view of the matter, I deem it fit and necessary to remit the application preferred by the defendant filed under Section 9 of the abovesaid Act in C.M.P. No. 16795 of 2018 to the trial Court for disposal on merits after taking into consideration the various defence versions projected by the second respondent with reference to the same. In the light of the abovesaid factors, as the application preferred under Section 9 of the abovesaid Act should be considered and determined during the pendency of the suit for ejection, in such view of the matter, and for the reasons aforestated, as a corollary, the judgment and decree of the Courts below are liable to be set aside and accordingly, the matter is remitted back to the trial Court by setting aside the judgment and decree of both the first appellate Court as well as the trial Court and the trial Court is directed to take up the application preferred by the defendant filed under Section 9 of the abovesaid Act on file and after issuing notice to both parties and after enabling the parties to file additional pleas with reference to their respective cases and also after providing opportunity to both parties to adduce evidence in respect of their claims with reference to the same, is directed to dispose of the application and consequentially, dispose of the suit afresh as per law, on merits.

Accordingly, the second appeal and the connected CMP. Nos.1757 of 2008 are disposed of. No Costs.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

To

1.The Subordinate Court, Chidambaram.

2.The District Munsif Court, Chidambaram.

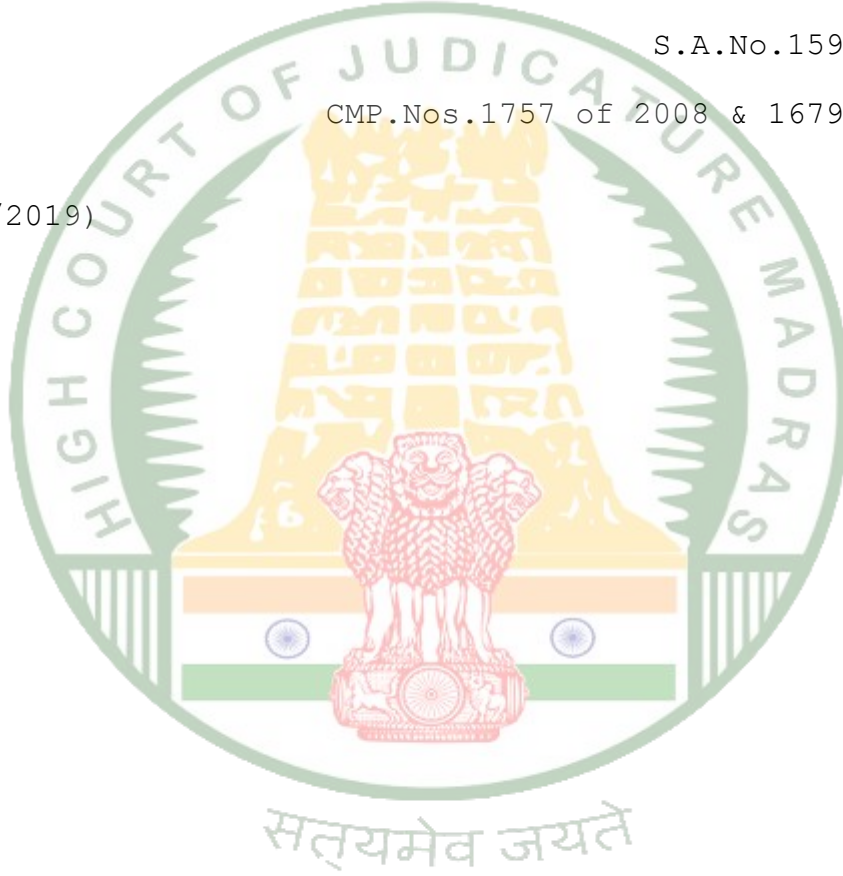
3.The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Ms.R.Meenal, Advocate SR.No.44819

S.A.No.1599 of 2002
and

CMP.Nos.1757 of 2008 & 16795 of 2018

CA (CO)
GMY (29/11/2019)



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