

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
30.01.2019	12.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A.No.1284 of 2007

Indira ... Appellant/Plaintiff

versus

1. Arulmighu Apparswami Kovil,
Rep. By the Hereditary Trustee,
Ratanangiammal,
No.170, Royapettah High Road,
Mylapore, Chennai - 4.
 2. The Commissioner,
Hindu Religious and Charitable
Endowment Board,
Mahatma Gandhi Road,
Chennai - 34.
 3. The Joint Commissioner,
Hindu Religious and
Charitable Endowment Board,
Mahatma Gandhi Road,
Chennai.
- ... Respondents/Defendants

Second Appeal filed under Section 100 of C.P.C. against the Judgment and Decree dated 18.12.2006 on the file of VI Additional Judge, City Civil Court, Chennai, in A.S.No.615 of 2005 reversing the Judgment and Decree dated 30.12.2004 in O.S.No.726 of 1993 on the file of learned XVI Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.K.V.Sundara Rajan

For Respondents : Mr.S.Arun Prasath
for Mr.K.Krishnamoorthy for R1
No appearance for R2 and R3

JUDGMENT

This Second Appeal has been filed by the plaintiff/appellant against the Judgment and Decree dated 18.12.2006 passed in A.S.No.615 of 2005 on the file of the learned VI Additional Judge, City Civil Court, Chennai.

2. The appellant herein is the plaintiff. She had filed a suit in O.S.No.726 of 1993 on the file of the learned XVI Assistant Judge, City Civil Court, Chennai, seeking the relief of permanent injunction, restraining the first defendant, namely, Arulmighu Apparswami Kovil, No.170, Royapettah High Road, Mylapore, Chennai - 4, represented by its Hereditary Trustee, Ratanangiammal, their servants, her son Rajkumar, relatives, agents, men, nominee(s) or anybody claiming through or under them from in any way interfering with the peaceful possession and enjoyment of the premises situated at No.173C, Royapeetah, High Road, Mylapore, Madras.

3. The learned XVI Assistant Judge, City Civil Court, Chennai, by Judgment and Decree dated 30.12.2004, allowed the suit.

4. Aggrieved over the same, the first defendant filed an appeal in A.S.No.615 of 2005 before the learned VI Additional Judge, City Civil Court, Chennai. The learned VI Additional Judge, City Civil Court, Chennai, by Judgment and Decree dated 18.12.2006, allowed the appeal and dismissed the suit.

5. Aggrieved over the same, the plaintiff herein has filed the present second appeal.

6. For the sake of convenience, the parties are referred to as per the ranking before the Trial Court.

7. The averments made in the plaint in brief are as follows:
The first defendant Devasthanam is administering the temple properties and as such, they are collecting rents for the said properties, which include the buildings, lands, plots, shops, etc. One Venkataramana Rao was the tenant in respect of the premises at No.173C Roayapettah High Road, Mylapore, Madras-4, on a monthly rent of Rs.250/-. The said Venkataramana Rao died in the month of July 1992. After the death of the said Venkataramana Rao, the building was under the lawful occupation of Andrew Jayachandran, who is the nephew of Venkataramana Rao and he paid rents to the Temple. The said Andrew Jayachandran, Mr.P.V.Rajkumar, son of the Fit person Ratanangiammal and one Kumar, the servant of Venkataramana Rao, all joined together, gave possession of the vacant premises to the plaintiff in the month of December 1992. Thus, the plaintiff claimed that she is

under the lawful occupation of the premises and she is the statutory tenant and hence, she is entitled to protection under the provisions of Tamil Nadu Buildings Lease and Rent Control Act and the Rules made thereunder. The plaintiff is paying the rent of Rs.350/- as agreed upon by the fit person and her son Rajkumar. The plaintiff also paid a sum of Rs.1,500/- out of which, Rs.1,400/- as advance, viz., four months advance and a sum of Rs.100/- towards documentation charges for lease agreement. The fit person has given the premises to the plaintiff as a lessee/tenant for a long lease period of 20 years. A sum of Rs.350/- was given by way of cheque for the rent of December 1992 payable in January 1993 has been received by the Temple and the same has been enhanced by the temple authorities. The defendant's son Mr.Rajkumar, in order to extract pagadi and fabulous sum apart from the advance of Rs.1,400/-, is giving trouble to the plaintiff and he is engaging rowdy elements to disturb the peaceful possession and enjoyment of the premises by the plaintiff. The said Rajkumar, by using the name of Ratanangiammal, gave a false complaint to the Crime Branch, Madras. The police officials unnecessarily called the plaintiff and enquired the matter and found that the complaint given by the said Rajkumar is false. Now, the said Rajkumar unnecessarily attempted to block the gate of the premises by parking lorries and other heavy vehicles. Hence, the suit.

8. The averments of the written statement filed by the 1st defendant, in brief, are as follows:

The action of the plaintiff is nothing but an act of criminal trespass of the temple property. The possession of the plaintiff is not at all lawful and hence, she is not a statutory tenant and she is not entitled to the protection of the Tamil Nadu Buildings (Lease and Rent Control) Act. The plaintiff is a trespasser. Initially, the premises in question was let out to Venkataramana Rao, who was a tenant for the past 30 years and the rent was paid by him at the rate of Rs.315/-. In the month of June 1992, the said Venkataramana Rao died in Bangalore and the fit person sent a condolence message to Sundarrajan in Bangalore with a request to arrange for handing over vacant possession of the premises. Andrew Jayachandran, who claims to be the nephew of Late Venkataramana rao, is indulged in correspondence with the Fit person in October 1992. The Fit person came to know that Mr.Andrew Jayachandran was planning to trade on the temple property by inducting third parties on receipt of huge sums of money. Hence, on behalf of the first respondent, on 22.12.1992, a counsel's notice was issued to the Andrew Jayachandran. Further, a letter was sent to the Department of Adi Dravidar And Tribal Welfare about the illegal activities of the said Andrew Jayachandran. Under such

circumstances, the plaintiff encroached the temple premises in active connivance and collusion with the said Andrew Jayachadran. After encroaching the said premises, the plaintiff remitted a sum of Rs.350/- as rent instead of Rs.315/-, which was the rent fixed with Mr.Venkataramana Rao. Since the first respondent refused to receive the rent paid by the plaintiff, she had come to the Court with false allegations. According to the first plaintiff, the suit has no merits and the same is liable to be dismissed as limini.

9. The averments made in the written statement of the second defendant which was adopted by the 3rd defendant are as follows:

The second defendant has got supervisory control over the public temples in Tamil Nadu. However, it is admitted that the first defendant, who happens to be the hereditary trustee of the temple is having direct administrative control over the suit property. As such, the plaintiff is not entitled for any protection under the provisions of Tamil Nadu HR & CE Act 22 of 1959. The plaintiff cannot seek shelter under the Rent Control Act. The second defendant is neither a necessary party nor proper party to the suit as there is no relief as against the HR&CE Department. Hence, an attempt was made by the plaintiff to implead the second respondent is vexatious. Therefore, the suit has to be dismissed.

10. In the additional written statement filed by the first defendant, it is averred that the suit property being managed by Dr.P.V.Rajkumar, who succeeded to the office of hereditary trusteeship and the succession was recorded under Section 54(1) of the Tamil Nadu HR&CE Department Act 22 of 1959 and as such, the competent person to the suit is only the hereditary trustee and not the fit person as mentioned in the plaint.

11. Based on the abovesaid pleadings, the learned XVI Assistant Judge, City Civil Court, Chennai, framed necessary issues and tried the suit.

12. During the trial, the plaintiff examined herself as P.W.1 and exhibited 23 documents as Exs.A1 to A23. On the side of the defendants, one witness was examined as D.W.1 and 8 documents were marked as Exs.B1 to B8.

13. The learned XVI Assistant Judge, City Civil Court, Chennai, after considering the materials placed before him, found that the documents exhibited on the side of the plaintiff proved her possession and as such, the plaintiff is in settled possession and therefore, granted the relief as prayed by the plaintiff.

14. Aggrieved over the same, the first defendant filed an appeal before the learned VI Additional Judge, City Civil Court, Chennai.

15. In the appeal filed by the first defendant, the learned VI Additional Judge, dismissed the appeal by holding that the documents exhibited on the side of the plaintiff did not prove that she is a lawful tenant under the first defendant and therefore, the possession is not a settled possession and she is only a trespasser and hence, she is not entitled for the relief of permanent injunction.

16. Aggrieved against the same, the plaintiff has come forward with the second appeal.

17. This Court, while admitting the Second Appeal, framed the following substantial questions of Law:

1. Whether the Exs.A11, A19, A20 and A23 were taken proper note of and properly interpreted by the Lower Appellate Court?
2. Whether the interpretation of settled possession by the Lower Appellate Court is correct?
3. Whether the Lower Appellate Court had properly appreciated and followed the principles laid down by the Apex Courts as well as by this Hon'ble Court in case of injunction pertaining to settled possession?

Question No.1

18. The plaintiff sought the relief of permanent injunction stating that she was inducted as a tenant in the suit schedule property and as such, she should be vacated only by due process of law. In order to prove the same, the plaintiff had exhibited Exs.A11, A19, A20 stating that those documents clearly proved her possession.

19. Now, on go through, Ex.A11 is the letter dated 20.12.1995 written by the first defendant to the plaintiff and three other tenants, wherein, it has been specifically stated that the water charges of Rs.5,220/- has to be paid by the addressee and hence, it is requested by the first defendant that the said arrear amount shall be paid in due course, failing which, the water connection will be disconnected. Ex.A19 is the letter dated 20th December 2001 written by the first respondent addressed to the plaintiff. In the said letter, it was informed to the plaintiff that the Fair Rent Fixation Committee of HR&CE Department, Chennai, will undertake a survey of all the houses belonging to the first defendant temple. Ex.A20 is nothing, but, a recommendation letter issued by the Minister of HR&CE Department, Chennai, dated 12.11.2002, directing the Joint

Commissioner, HR&CE Department, to make arrangements to initiate action for inducting the plaintiff as a tenant in the suit schedule property. Ex.A23 is an invitation of the Devasthanam dated 26.04.2004 addressed to the plaintiff by the first defendant.

20. The learned counsel appearing for the appellant/plaintiff submitted that the contents of those documents proved that the first defendant himself admitted that the plaintiff is a tenant under him. However, the First Appellate Court, without considering the said admission made by the first defendant as well as without properly interpreting the contents of the documents exhibited before the Court, held that documents produced by the plaintiff did not prove the tenancy between the plaintiff and the first defendant. Hence, the Judgment of the First Appellate Court warrants interference.

21. On the other hand, the learned counsel appearing for the first defendant/first respondent submitted that all the documents relied upon by the appellant/plaintiff had been created only after filing the suit. Furthermore, the said documents did not prove the possession of the plaintiff. Hence, the Judgment passed by the learned First Appellate Court is justifiable and no interference is required to be called for.

22. I have considered the arguments advanced by the learned counsel on either side.

23. It is true that all the documents referred to above have been created by the plaintiff only after filing the suit. Ex.A20 establishes that the Minister of HR&CE Department issued a direction to the Joint Commissioner, HR&CE Department for making arrangements for inducting the plaintiff as a tenant in the temple property. The said letter was issued by the Minister on 12.11.2002, but, the suit was filed in the year 1993. Therefore, it is proved that the plaintiff is in unlawful possession of the temple property till the year of 2002. Hence, the plaintiff is a trespasser and the findings of the First Appellate Court is correct and justifiable.

24. Furthermore, other documents, namely, Exs.A11, A19, A23, exhibited by the plaintiff, are the letters sent to the plaintiff by the temple authorities, for the reason that, from 1992 onwards, the plaintiff/appellant is in possession of the suit schedule property.

25. In fact, a dispute arose between the plaintiff and first defendant in the year 1993 itself. In such circumstances, sending letters to the plaintiff by the first defendant on subsequent dates establishes that the plaintiff is still in the

possession of suit schedule property. The First Appellate Court has considered all the facts perspectively and only thereafter held that those documents are not supported the case of the plaintiff. Accordingly, first substantial question of law is answered in favour of the first defendant.

Question Nos.2 and 3

26. The learned counsel appearing for the appellant/plaintiff submitted that during trial, the plaintiff marked 23 documents as Exs.A1 to A23, which disclose the fact that she is in settled possession of the suit schedule property. But, the First Appellate Court has wrongly held that the plaintiff is a trespasser, which is unjustifiable. Hence, the Judgment of the First Appellate Court has to be set aside.

27. In support of his contention, the learned counsel appearing for the appellant/plaintiff relied upon a decision of the Hon'ble Apex Court reported in 2004 (1) SCC 769 (Rame Gowda (dead) by LRs. vs.M.Varadappa Naidu (Dead) by LRs. and another).

28. In the decision relied upon by the learned counsel appearing for the appellant/plaintiff (cited supra), the Hon'ble Apex Court relied upon the following tests which may be adopted as a working rule for determining the attributes of "settled possession".

(i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;

(ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;

(iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

(iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner, has no right to destroy the crop grown by the trespasser and take forcible possession."

29. On the other hand, the learned counsel appearing for the first respondent submitted that the documents placed before the Trial Court have been created by the plaintiff only after filing the suit and those documents did not give any evidentiary value to prove the case of the plaintiff that she is in settled possession of the temple property.

30. In order to appreciate the contention raised by the learned counsel appearing for the first respondent that the plaintiff is a trespasser, it is necessary to look into the meaning of "trespass".

31. A "trespass" is an unlawful interference with one's person, property or rights. With reference to property, it is a wrongful invasion of another's possession.

32. If a person enters on the land of another under an authority given him by law, and while there, abuses the authority by an act which amounts to a trespass, he becomes a trespasser ab initio, and may be sued as if his original entry were unlawful. Instances of an entry under the authority of the law are the entry of a customer into a common inn, of a reversioner to see if waste has been done, or of a commoner to see his cattle.

33. It is an admitted fact that actual tenant, namely, Venkataramana Rao died in the year 1992. Subsequently, the nephew of Venkataramana Rao sent a letter dated 01.10.1992 to the temple authority stating that he is having the responsibility of handing over the property, after settling the servant boy. The said letter is marked as Ex.B1. Further, by letter dated 07.10.1992 and 11.11.1992, the Hereditary Trustee of the first defendant asked Andrew Jayachandran to handover the premises. Those documents are marked as Exs.B2 and B3. Thereafter, on 22.12.1992, one another notice was sent by the first defendant to the abovesaid Andrew Jayachandran, requesting him to hand over the premises, which was also marked as Ex.B4. But, no reply was received from Andrew Jayachandran. Thereafter, on 10.01.1993, the trustee wrote a letter to the Deputy Commissioner of Police (Crime) seeking action against the said Andrew Jeyachandran and restore the vacant possession of the premises. Those letters were marked as Exs.B6 and B7.

34. From the reading of the above documents, it shows that before 25.01.1993, the plaintiff had entered into the said premises, and on 12.11.1993, she deposited a sum of Rs.350/- in the accounts maintained by the temple as rent. So immediately after raising objection by the first respondent, the suit was filed before the City Civil Court, Chennai. Therefore, it cannot be held that the plaintiff is in actual peaceful possession over a sufficiently long period.

35. It is seen that in order to prove the tenancy between the plaintiff and the first defendant, there is no lease agreement between them. Further, in order to prove the possession, no evidence was adduced on the side of the plaintiff. If really, the plaintiff was inducted as a tenant in

the suit property, there is no necessity for the temple authority to lodge a complaint against the plaintiff on 09.01.1993 and 10.01.1993, which shows that after the demise of Venkatramana Rao, within a short span of time, the plaintiff had entered into the suit premises without getting any permission from the first defendant. So, the act of the plaintiff is nothing, but trespass.

36. The learned VI Additional Judge, Chennai, only after considering all the documents and evidence adduced before the Court in perspective manner, came to the correct conclusion that the plaintiff is a trespasser. Therefore, the said finding is absolutely correct and no interference is required to be called for.

37. In the light of the above discussion, the second appeal is dismissed, confirming the Judgment and Decree dated 18.12.2006 passed by the learned VI Additional Judge, City Civil Court, Chennai, in A.S.No.615 of 2005. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The VI Additional Judge,
City Civil Court,
Chennai.
2. The XVI Assistant Judge,
City Civil Court,
Chennai.

copy to: The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.K.Krishnamurthy, Advocate, S.R.No.13105

+2 ccs to Mr.K.V.Sundararajan, Advocate, S.R.No.12802, 13323

S.A.No.1284 of 2007

PA(CO)
SSM(21/06/2019)