

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2019

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

S.A.Nos.636 & 637 of 2008
and MP.Nos.1 & 1 of 2008

S.A.No.636 of 2008:

T.Narayani Ammal ... Appellant / Appellant / Defendant

Vs

Arulmighu Sree Selliamman Koil Devasthanam

Represented by its Executive Officer

Old No.27, New No.483

Kilpauk Garden Road

Kilpauk, Chennai - 10. ... Respondent / Respondent / Plaintiff

S.A.No.637 of 2008:

1.Leela (Died)

2.T.V.Rathi (Died)

3.T.V.Ramesh

4.Sheega Lalchan

5.T.V.Smitha

.... Appellants / Appellants / Defendants 1,3 to 6

6.T.V.Leena Appellant

(6th Appellant brought on record as legal heir of the deceased
1st appellant Vide Order of Court dated 04.01.2019 made in
CMP.Nos.20133, 20137 & 20138/2018 in S.A.No.637/2008)

(2nd Appellant died. Appellants 3 to 5 are legal heirs of the
deceased 2nd appellant viz., T.V.Rathi, as per memo dated
27.08.2018 Vide Court Order dated 05.07.2019 made in S.A.637/08]

Vs

1.Arulmighu Sree Selliamman Koil Devasthanam

Represented by its Executive Officer

Old No.27, New No.483

Kilpauk Garden Road

Kilpauk, Chennai - 10.

... Respondent / Respondent / Plaintiff

2. T.V.Anil Kumar

3. T.V.Geetha

4. T.V.Beena

5. T.V.Sheela

6. T.V.Sreeja

7. Haridas

8. Avinash
9. Ajoth
10. Jyothi
11. Neeraj
12. Nithasha

.... Respondents

(Respondents 2 to 12 are brought on record as legal heirs of the deceased 1st appellant viz., Leela Vide Order of Court dated 01.07.2019 made in CMP.No.5,10 and 11/2019 in S.A.No.637/2008)

Prayer in S.A.No.636 of 2008:- Second Appeal filed under Section 100 of the Civil Procedure Code, preferred against the judgment and decree dated 31.12.2007 made in A.S.No.459/2005 passed by the learned Additional District and Sessions Judge (Fast Track No.2), Chennai, confirming the judgment and decree dated 18.03.2005 made in O.S.No.7626 of 1993 by the learned V Assistant Judge, City Civil Court, Chennai.

Prayer in S.A.No.637 of 2008:- Second Appeal filed under Section 100 of the Civil Procedure Code, preferred against the judgment and decree dated 31.12.2007 made in A.S.No.460/2005 passed by the learned Additional District and Sessions Judge (Fast Track No.2), Chennai, confirming the judgment and decree dated 18.03.2005 made in O.S.No.7627 of 1993 by the learned V Assistant Judge, City Civil Court, Chennai.

For Appellant/Appellants : Mr.J.Franklin
(in both Second Appeals)

For Respondent/Respondents : Mr.T.Seshian
(in both Second Appeals) for Ms.R.Meenal

COMMON JUDGMENT

These two appeals arise from two separate suits laid by the respondent-Temple for eviction of their respective tenants. Both the suits were decreed by the trial Court and both the appeals preferred by the tenants were dismissed. Hence, the tenants have come before this Court with these second appeals.

2. The appeals are not yet admitted. The details of the two suits may now be provided :

A) Suit in O.S.No.7626 of 1993 :

- The first suit is O.S.No.7626 of 1993. Vide registered lease deed dated 10.05.1966, the defendant was granted a lease of site for a term of 25 years on a ground rent of Rs.30/- per mensem, with a permission to put up construction in the vacant site. The lease also provided that on expiry of the lease term, the lessee shall hand over possession of the suit property along with the building without any claim

of compensation.

- This was resisted by the defendant, who inter alia pleaded that in view of the Judgment of Division Bench of this Court in Sri Arthanareeswarar of Tiruchengode Vs. T.M.Muthuswamy Padayachi, etc., & others reported in [2003-1-L.W. 386], the suit filed by the Executive Officer is not maintainable. Secondly, the defendant is entitled to protection under Section 9 of the Chennai City Tenancy Protection Act, 1921.

A) Suit in O.S.No.7627 of 1993:

- The second suit is O.S.No.7627 of 1993. Here, the defendants 1 and 2 were granted lease of 1,767 sq.ft. vacant site, out of 4 grounds and another 2,156 sq.ft. of land. The lease terms are identical as in the earlier suit, in that, the lease was for a period of 25 years with a permission to the defendants to put up construction in the leasehold properties coupled with a condition that on expiry of the lease term, the defendants shall hand over the possession of the suit property along with the building without claiming right of compensation.
- This suit was also resisted along with identical lines as in the earlier suit. One additional ground taken up was that, the Executive Officer was not authorised to institute a suit, and that only after the institution of the suit and only during its pendency, the Executive Officer's action to file the suit was ratified by the Joint Commissioner.

3. In both the suits, there is another common factor that forms part of the defense, taken up by the defendant/defendants. After the expiry of the lease term, the plaintiff did not receive the rent, and therefore, the defendants sent the rents through their counsels. This was replied to by the plaintiff. In its reply, it terminated the lease and directed the defendant/defendants to hand over possession on 01.4.1993. This notice was addressed not to the defendants, but to their counsels. Both the defendants would now contend that the lease was not properly terminated in terms of Sec. 106 of the Transfer of Property Act, since the notice contemplated therein was sent only to their counsels and not to the defendants themselves.

4.1 The matter went before the trial Court, and both sides adduced necessary documentary evidences. The lease deed in O.S.No.7626 of 1993 was marked as Ext.A1 and Ext.A2. It may be mentioned here, the need to execute Ext.A2, lease deed has arisen only because in the course of working the lease created under Ext.A1, the lessee is stated to have encroached into some additional portion, and had put up construction, and this came to be regularized through Ext.A2. So far as the suit in O.S.No.7627 of 1993 is concerned, the lease deed is marked as Ext.A1.

4.2. The reply notice sent by the plaintiff's counsel to its

lessees counsel, in which, it terminated the lessee to hand over vacant possession is marked as Ext.A-4 in O.S.No.7626/1993 and Ext.A-3 in O.S.No.7627/1993.

4.3. After appreciating all the evidences in both the suits, the trial Court decreed the suit, which came to be confirmed by the first appellate Court.

5. It may be mentioned now that even though the substantial part of the defense in the written statement relates to an assertion of right of the lessee/appellants under Section 9 of the Tamil Nadu City Tenant's Protection Act, during the pendency of the suit, the application of the said Act to temple properties came to be exempted Vide T.N.Act 2 of 1996. Therefore, the need to consider this aspect has lost its significance.

6. The learned counsel for the appellants would argue :

- a) Issuance of notice on the counsel of the lessees did not satisfy the requirements of Section 106 of the Transfer of Property Act, since the counsel for the lessee cannot be considered as their agent for all purposes.
- b) That the Executive Officer is not competent to institute a suit and this is covered by the judgment of the Division Bench in Sri Arthanareeswarar of Tiruchengode Vs. T.M.Muthuswamy Padayachi, etc., & others [2003-1-L.W. 386]. This apart in O.S.No.7627/1993, out of which S.A.No.637 of 2008 arises, the ratification of the Joint Commissioner itself came during the pendency of the suit, which implies as on the date of the institution of the suit, he had no competency.
- c) Thirdly, he argued that the lease for a period of 25 years has to be construed only as a permanent lease as decided by the Hon'ble Supreme Court. Reliance was placed on the ratio of the Hon'ble Supreme Court in Sivayogeswara Cotton Press V.Panchakharappa [AIR 1962 SC 413 - verify].
- d) Fourthly, during the pendency of these appeals, the HR&CE Department, though not a party to this proceedings, has issued orders, based on which the plaintiff-Temple has issued a common proceeding, fixing a fair rent for these buildings, which implies that the Department, which is entrusted with the administration of the temple, is keen to maintain the jural relationship between the Temple and the lessees.

7. Refuting the arguments of the learned counsel, Mr.T.Seshian, learned counsel appearing for the respondent-Temple argued that :

- The lease is admittedly a term lease, and it expires automatically on the expiry of the term fixed in the lease. It implies, there is no need for fresh termination of the lease, and whatever that is required to be done upon of

expiry of the lease-term is delivery of possession by the lessees.

- While the defendants/lessees object to the Executive Officer instituting the suit, they did not mention in their respective written statements filed in their respective suits the authority who according to them was competent to institute a suit on the day, the suit was laid. The plaintiff claims that the Executive Officer has the authority to institute the suit, but then, he cannot prove the negative that the Executive Officer is not competent to institute the suit.
- Thirdly, the authorisation to institute the suit, issued by the Joint Commissioner is more administrative in character, but it does not go to affect the authority of the Executive Officer to institute the suit.
- Fourthly, so far as the fixation of rent is concerned, since the date of termination of lease term the lessee stayed over the property, they are liable to pay damages. Since, the temple properties are exploited, the Government has come out with a Government Order for fixation of rent, which in the instant case has to be understood as damages payable by the defendants for over staying in the property.

8. The learned counsel for the appellant would now reiterate that the proceedings which have been issued by the authorities, pending these appeals, did not term the amount as damages, but as fair rent fixed. But, for fixation of such fair rent, there are statutory provisions under Section 34(A) to 34(D) of the Hindu Religious and Charitable Endowments Act.

9. There are two aspects : One pertains to the cause of action and other pertains to the events or the developments that have arisen during the pendency of these appeals. So far as the cause of action for laying of the suit is concerned, this Court is not impressed with the submissions of the learned counsel for the appellants. As rightly, argued by the learned counsel for the plaintiff/respondent, in a term lease, the termination notice is not required and the lease expires when the term expires. However, if the notice

10.1 So far as the authority of the Executive Officer to institute the suit is concerned, this issue was raised only in the additional written statement, that too was founded solely on the authority reported in [2003-1-L.W. 386]. This authority has been relied on even before the trial Court, and the trial Court has clarified the same. Now, if the Executive Officer of the temple was not authorised, who then was so authorised to institute the suit. This was not spelt out by the defendants. After all, the plaintiff cannot be required to prove the negative, and here the burden is on them to plead and negate the

assertion of the plaintiff, which they failed to do.

10.2 Turning to the authorisation letter, this Court is not in agreement with the submissions of the counsel for the plaintiff. So, based on the cause of action, nothing can survive in these appeals. So far as the arguments founded on permanent tenancy is concerned, this is raised for the first time only in the first appeal and this Court is not inclined to consider the same at this stage.

13. Is there any intent on the part of the department to continue the jural relationship between the parties? This is alien to the cause of action, and inasmuch as there is no consensus between the parties on it, the notice fixing fair rent for the properties cannot be construed as signifying an intent to continue the lease. At the best such notices of the Department can be construed only as an offer for grant of lease for a rent, stated therein, and till it is accepted by the lessee, no inference of continuity of lease can be made.

14. In conclusion, both these appeals have to be dismissed, as this Court find not merit in them. Therefore, these appeals are dismissed and the judgments and decrees dated 31.12.2007 made in A.S.No.459/2005 and A.S.No.460/2005 passed by the learned Additional District and Sessions Judge (Fast Track No.2), are hereby confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To:

1.The Additional District and Sessions Judge
(Fast Track No.2), Chennai.

2.The V Assistant Judge,
City Civil Court, Chennai.

3.The Section Officer
VR Section, High Court, Madras.

+2ccs to Mr.J.Franklin , Advocate SR.No. 68989,62990

+2ccs to M/s.R.Meenal, Advocate SR.No. 63085,63086

S.A.Nos.636 & 637 of 2008

rr

A.SK(18/03/2020)