



IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED : 16.07.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

S.A.No.25 of 2009

and

S.A.No.1008 of 2008

S.A.No.25 of 2009

1.P.C.Kothandaraman (Died)

2.C.Mugundan

3.C.Ramanujam

..Appellants 1 to 3/ Respondents 4 to 6
Defendants 5 to 7

4.K.Sagunthala

5.K.Srikanth

6.K.Gopal

7.K.Jayashree

8.K.Jayanthi

... Appellants 4 to 8/LRs of the
Deceased 1st Appellant

(Appellants 4 to 8 brought on record as
legal representatives of the deceased
1st appellant viz., P.C.Kothandaraman
vide order of Court dated 25.06.2019
made in C.M.P.No.11119/2019 in
S.A.No.25/2009 (NSSJ)).

Vs.

1.Arulmighu Gangadeeswarar Temple

Represented by its Executive Officer,

Purasaiwalkam, Chennai-84.

..1st Respondent/Appellant/
Plaintiff

2.P.Nalini Ammal

3.P.Rajasri

4.P.Manivannan

..Respondents 2 to 4/Respondents 1 to 3/
Defendants 2 to 4

S.A.No.1008 of 2008

1.P.Nalini Ammal (died)

2.P.Rajasri



3.P.Manivannan

... Appellants/Respondents 1 to 3
Defendants 2 to 4

(2nd and 3rd appellants are recorded as legal representatives of the deceased 1st appellant viz., P.Nalini Ammal vide order of Court dated 04.06.2019 made in S.A.No.1008/2008 as per order of Court dated 04.06.2019).

Vs.

1.Arulmighu Gangadeeswarar Temple
Represented by its Executive Officer,
Purasaiwalkam,
Chennai-84.

..1st Respondent/Appellant/Plaintiff

2.P.C.Kothandaraman (Died)

3.C.Mugundan

4.C.Ramanujam

..Respondents 2 to 4/Respondents 4 to 6/
Defendants

5.K.Sagunthala

6.K.Srikanth

7.K.Gopal

8.K.Jayashree

9.K.Jayanthi

... Respondents 5 to 9/LRs of the Deceased
2nd Respondent

[Respondents 5 to 9 brought on record as legal representatives of the deceased 2nd respondent viz., P.C.Kothandaraman vide order of Court dated 25.06.2019 made in C.M.P.No.3469/2019 in S.A.No.1008/2008).

Common Prayer: Second Appeals are filed under Section 100 of code of Civil Procedure against the judgment and decree dated 25.04.2008 made in A.S.No.722 of 2006 on the file of VI Additional Judge, City Civil Court, Chennai, reversing the Judgment and Decree dated 31.03.2004 made in O.S.No.10092 of 1988 on the file of V Assistant Judge, City Civil Court, Chennai. In S.A.No.25/2009:

For Appellants : Mr.K.Narasimhan
For Respondents : Mr.S.Rajendra Kumar
for M/s.Norton & Grantu [R1]
Mr.D.Rajagopal [R2 to R4]

In S.A.No.1008/2008:

For Appellants : Mr.D.Rajagopal
For Respondents : Mr.S.Rajendra Kumar
for M/s.Norton & Grantu [R1]
Mr.K.Narasimhan[R3 & R4]



COMMON JUDGMENT

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A suit for ejectment of the lessee was filed, which came to be decreed. The lessee preferred the First Appeal and they lost it. Now, the lessees however, have approached this Court in two batches with two set of appeal to preserve their leasehold right.

2.1 Facts on either side to a substantial extent are not in dispute. They may be bullet-pointed:

- The suit property measuring about 2 grounds and 1599 sq.ft. belongs to the plaintiff temple. It was leased to certain Tiruvenkatachariar on 01.10.1908 as evidenced by Ext.B11. It was lease of a site. Subsequently, in or about 1910, Tiruvenkatachariar had put up some building in the property, and was enjoying the same. On 21.10.1921, under Ext.B12 sale deed, he sold the suit property along with the building to one Duraiswamy Iyengar.
- Duraiswamy Iyengar died in 1924, and he left behind him surviving his son Chakrapani Iyengar and Krishnaswamy Iyengar and three daughters. In 1931, Chakrapani Iyengar and Krishnaswamy Iyengar appeared to have partitioned their properties which included the suit property. In this partition, the suit property came to be allotted to Chakrapani Iyengar.
- In 1977, there was an oral partition/family arrangement between Chakrapani Iyengar and four of his sons. These four sons are defendants 1 and 5 to 7. Defendants 2 to 4 are the children of the 1st defendant. In this partition, the suit property came to be allotted to the aforesaid defendants. This partition was communicated to the Executive Officer of the plaintiff temple, vide Ext.B5 communication dated 17.06.1977.
- On 09.11.1978, Chakrapani Iyengar died and thereafter, the above mentioned partition came to be communicated to the Executive Officer Vide Ext.B4 dated 15.11.1979 and Ext.B2 dated 18.12.1979. Subsequently, the allottees of the building in the suit property had the property tax assessment register mutated in their names.
- There are other ancillary facts such as those pertain to certain Rent Control proceedings of the lessees of the building but they are not quite relevant for the on going dispute.



2.2 In this setting, the first defendant was issued Ext.A1 notice dated 10.02.1988 on the allegation of default in the payment of rent. Subsequently, the suit was laid for recovery of possession and for arrears of rent of Rs.8210.71 @ Rs.62.35 per month. The suit was resisted solely on the ground that the suit notice was issued only to the 1st defendant and not to defendants 5 to 7. Accepting the contentions of the defendants, the trial Court dismissed the suit but this came to be reversed in the First Appeal preferred by the plaintiff. Hence, the defendants have come before this Court.

3.1 The 1st defendant had died and the defendants 2 to 4 who are all the heirs of the 1st defendant have preferred S.A.No.1008 of 2008 whereas, the defendants 5 to 7 had filed S.A.No.25 of 2009. Of these two appeals, S.A.No.25 of 2009 alone came to be admitted and in S.A.No.1008 of 2008, only notice was ordered to respondents/plaintiffs.

3.2 The appeal in S.A.No.25 of 2009 came to be admitted on the following substantial questions of law:

'1. Whether the Judgment of the Lower Appellate Court is in conformity with the mandatory requirements under Order 41 Rule 31 of C.P.C?

2. Whether the contractual tenancy right is heritable right and whether on the death of a contractual tenant, the heirs and legal representatives step into the position of the contractual tenant?

3. Whether the legal heirs of the deceased tenant succeeds to the tenancy right as tenants in common and not as joint tenant?

4. Whether the notice under Section 106 of TP Act addressed and served upon one of the heirs of the deceased tenant is valid in law in so far as other heirs of the deceased tenant?

5. Whether the lease of immovable property be determined in the absence of notice under Section 106 of TP Act particularly not in conformity with the provisions of Section 111(h) of TP Act?

6. Whether the Court below has erred in law in granting the relief of recovery of possession without any amendment of the prayer in the plaint?



6. The submission of the learned counsel for the respondents would settle the issue in this case and this Court does not want to reiterate the same. They were candid, explicit and legally convincing.

7. In conclusion, this Court does not find merits in both the appeals and the substantial questions of law raised in S.A.No.25 of 2009 is decided against the appellants herein. The appellants are directed to demolish the structure and hand over the vacant possession within a period of three months from the date of receipt of a copy of this order. The judgment and decree dated 25.04.2008 made in A.S.No.722 of 2006 on the file of VI Additional Judge, City Civil Court, Chennai, is hereby confirmed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The VI Additional Judge,
City Civil Court,
Chennai.
2. The V Assistant Judge,
City Civil Court,
Chennai.
3. The Registrar,
City Civil Court, Chennai.

Copy to : The Section Officer, V.R.Section,
High Court, Madras.

+1cc to M/s.Norton & Grant, Advocate SR.No.61079

AKM/23.01.2020/6p-6c/

S.A.No.25 of 2009
and S.A.No.1008 of 2008