

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.07.2019

CORAM: The Hon'ble Mr.Justice N.Seshasayee

S.A.No.738 of 2009

Sri Dharmapuram Adheenam,
Rep. by its Adheenakartha,
Sri-La-Sri Shanmuga Desiga
Gnanasambanda Paramacharya Swamikal
Dharmapuram,
Mayiladuthurai,
Nagapattinam District.Appellant/Plaintiff

Vs.

Jayaraman Pillai (died)
2.Goukulakrishnan
3.NarmathaRespondents/Defendants
[RR2 and 3 brought on record as LRS
of the deceased sole Respondent viz.,
Jayaraman Pillai Vide order of Court
dated 11/07/2019 made in M.P.No.1/2014
in S.A.No.738/2009(NSSJ)]

Prayer:- Second Appeals filed under Section 100 of Civil
Procedure Code against the Judgement and Decree of Sub Court,
Chidambaram, dated 29-12-2008 made in A.S.No.62/2007 reversing
Judgement and decree of Principal District Munsif Court,
Chidambaram dated 22-3-2007 made in O.S.No.229/2006.

For Appellant : Mr.S.Sounthar

For Respondents : No appearance

JUDGMENT

The plaintiff who has laid a suit for ejecting its tenant,
having succeeded before the trial Court but, suffered a defeat
before the first Appellate Court, has now come forward with this
appeal. Parties would be referred to by their rank before the
trial Court.

2.This appeal involves a short point. The suit property, a non-
residential building, was let out to the first defendant for
running a restaurant. After due notice, the lease was

terminated, and a suit was laid. The primary allegation was that there was a default in payment of rent, and that the first defendant had sublet the property. Rejecting the said allegation, the first defendant had filed his written statement.

3.The dispute went for trial and both sides adduced oral and documentary evidence before the trial Court. On appreciating the evidence before it, the trial Court decreed the suit. The matter was taken in appeal by the first defendant and the first Appellate Court has allowed the appeal. The first appellate Court has held that the suit property is located in a Municipality area, to which the Tamil Nadu Buildings(Lease and Rent Control) Act, 1960 would apply. This appeal is preferred against it.

4.The appeal is admitted on the following substantial questions of law;

"(i)Whether the lower appellate Court erred in holding that the suit is not maintainable and the plaintiff has to file rent control eviction petition when the plaintiff is a public trust entitled to benefit of G.O.2000?

(ii)Whether the lower appellate Court justified in law in considering a new plea raised by the respondent at the time of arguments of first appeal without any pleading that too without affording an opportunity to the appellant herein?"

5.The learned counsel for the appellant submitted that the plaintiff is a Mutt, and is engaged in considerable religious and charitable activity. It is therefore, squarely covered under G.O.Ms.No.2000, dated 16.08.1976 and therefore, the suit property falls within the exempted class of buildings under Section 29 of the Tamil Nadu Buildings(Lease and Rent Control) Act, 1960. He also added that during the pendency of this appeal, the Tamil Nadu Buildings(Lease and Rent Control) Act, 1960 itself has been repealed and replaced by the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017. Therefore, the bar of Civil Court jurisdiction, even if any, has been eliminated now. He proceeded to add that under Section 21(1) of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, the only limitation on landlord's right to evict is that, a tenant should not be evicted during the continuation of tenancy agreement. Inasmuch as both the Courts below have found that notice terminating the lease was valid within the meaning of

Section 106 of the Transfer of Property Act, the tenancy has come to an end on the date of service of the notice. At any rate, even under the present Act, the defendant has no right to continue. Citing the authority of His Lordship Justice Srinivasan(as His Lordship was then), in the case of S.Ramiah Vs.Ariyakudi Kalyana Krishna [(1988) 1 MLJ 237], the learned counsel argued that the bar of jurisdiction under the Tamil Nadu Buildings (Lease & Rent Control) Act was only against the execution of a decree.

6. This Court finds very little reasons to travel beyond the application of G.O.Ms.No.2000, Home dated 16.08.1976, according to which the buildings belonging to religious and charitable institutions are exempted in terms of Sec.29 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 which applies to the facts of the present case, and since the building in question is exempted from the operation of the Act, it does not matter whether the building is situated in a Municipality-area or not. Apparently, the first appellate court has overlooked G.O.Ms.No.2000, Home dated 16.08.1976, and when this point was addressed as above, necessarily the substantial question of law raised has to be held in favour of the appellant.

7. In the result, the second appeal is allowed and the Judgement and Decree of Sub Court, Chidambaram, dated 29.12.2008 made in A.S.No.62/2007 reversing the Judgement and decree of Principal District Munsif Court, Chidambaram dated 22.3.2007 made in O.S.No.229/2006 is set aside. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To:

- 1.The Sub Court,
Chidambaram.
- 2.The Principal District Munsif Court,
Chidambaram.

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

+1cc to M/s.S.Sounthar, Advocate Sr.62033

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cp[co]
srg 09/06/2020



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