

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2019

CORAM

THE HONOURABLE Mr.JUSTICE N. SATHISH KUMAR

Second Appeal No.464 of 2012

S. Mani .. Appellant /2nd Appellant/LRs of the Defendant

- Vs -

1.Enuru Ellavari Dharma Baliya Kula Chathiram

rep.by The Secretary M. Jayaraman

Muthialpet Village, Kancheepuram

.. 1st Respondent / Respondent / Plaintiff

2.S. Anbalagan

3.S. Karunanidhi .. Respondents 2 and 3/Appellants 3 & 4/
LRs of the Defendant

PRAYER: Appeal filed under Section 100 C.P.C., against the Judgment and Decree passed in A.S.No.48 of 2009 dated 19.10.2011 on the file of the Sub-Court, Kancheepuram confirming the Judgment and Decree passed in O.S.No.1083 of 1998 dated 27.06.2006 on the file of the District Munsif Court, Kancheepuram by allowing the Second Appeal.

For Appellants : Mr. R. Singaravelan

For Respondents: Mr. M.K. Kabir,
Senior Counsel for
M/s.T. Jayaraman [for R1]

R2 and R3 Given up

JUDGMENT

This Second Appeal has been filed challenging the Decree and Judgment of the Sub-Judge, Kancheepuram confirming the Decree and Judgment of the District Munsif, Kancheepuram.

2. The brief facts leading to file this appeal is as follows:

2.(a) The Plaintiff is Trust and the Defendant is the tenant in Door No.13 of the Plaintiff's building. The building is more than 300 years old. The Defendant is running a bunk shop in the western side of the building for a monthly rent of Rs.40/-. Immediate demolition or construction is required.

Hence, the Plaintiff filed suit for recovery of possession.

3. It is the case of the Defendant that the building is in good condition. The Plaintiff is a Private Trust and hence the suit is not maintainable.

4. The trial Court framed the following three issues:

1. Whether the suit is filed by Mr. Jayaraman in the capacity of Secretary is maintainable?
2. Whether the Plaintiff is entitled to get the recovery of possession as prayed for?
3. To what other relief?

5. On the side of the Plaintiff P.W.1 was examined and Ex.P.1 to P.3 were marked. D.W.1 was examined and Ex.D1 to D6 were marked on the side of the Defendant. The trial Court after analysing the materials and evidence, decreed the suit in favour of the Plaintiff. The First Appellate Court also confirmed the findings of the trial Court, against which the present Second Appeal came to be filed.

6. The suit was resisted mainly on the ground that the Plaintiff cannot file suit since it is not a Public Trust. Further the building is not in dilapidated condition. The learned counsel appearing for the Appellant vehemently contended that the courts below have not considered the fact that the Defendant is a tenant in the veranda portion of the building. Further, the Plaintiff Trust is a private trust and therefore, the suit is not maintainable. Hence, he submitted that the Judgment of the trial Court and First Appellate Court are liable to be set aside.

7. The learned counsel appearing for the Respondent submitted that the Plaintiff is a Public Trust. It has been clearly established that other tenants were evicted and the matter reached finality. Hence submitted that there is no substantial question of law involved in this appeal.

8. I have perused the entire materials. The main ground taken by the Defendant is that the Plaintiff is not a Public Trust. To ascertain whether it is a public or private Trust, is to look into the dominant purpose of the settlor in creating the Trust. The Honourable Apex Court and this Court have repeatedly held that if a Trust is created for the benefit of section of public, it can be said that it is a public trust. In the given case, it is admitted by the Defendant that the Plaintiff Trust is a landlord and the Defendant is a tenant and the Plaintiff Trust is an Endowment Trust. Since the Trust is endowment Trust, it can only be deemed to be a Public Trust and the same got power to institute a suit for eviction. Further the trial

Curt also considered the evidence of the parties and found that the building is required immediate demolition, therefore, eviction is necessary. The Defendant has not produced any oral or documentary evidence to substantiate that the building does not require any demolition or reconstruction. In the considered view of this Court, the suit has been decreed based on the factual aspects. Therefore, there is no substantial questions of law in this case. Accordingly, this Court is of the view that the findings of the both the courts do not suffer any infirmity.

9. At this juncture, the learned Senior Counsel appearing for the Appellant submitted that the appellant may be given some time to vacate the premises. According to him, the Appellant has to make some arrangements to vacate the premises and requires time till 31.08.2019, before which, he will vacate the premises and handed over the vacant possession. His submission has been recorded. The learned counsel for the Respondent has no objection for granting such time. In view of the same, the Appellant is granted time to vacate the suit property on or before 31.08.2019. Since specific undertaking has been given before this Court, if the Appellant does not comply with the undertaking given before this Court through his counsel, he will proceeded for contempt of Court.

10. In view of the above, the Second Appeal is dismissed. No costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

ggs
To

1. The Subordinate Court
Kancheepuram.
2. The District Munsif Court
Kancheepuram

+1 CC to Ms.M.Srividhya, Advocate sr 3566.
+1 CC to Mr.T.Jayaraman, Advocate sr 4079.

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SP(02/05/2019)