

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.06.2019
CORAM
THE HONOURABLE Ms. JUSTICE P.T. ASHA
S.A.No.203 of 2013

1.D.Leela

2.D.Sridhar

3.D.Vijayakumari

4.D.Latha

5.D.Sabitha

6.V.Parimala

7.V.Chandramouli

8.V.Ramachandran

9.V.Indira

10.V.Ravichandran

: Appellants/Appellants
Defendnts 2 to 6 & 8 to 12

Vs

1.Arulmigu Ekambareswarar Temple

Amijikarai

Chennai - 600 029.

Rep by its

Executive Officer

: Respondents/Respondents
Plaintiff

2.I.Srinivasa Sharma (Deceased)

: 2nd Respondent/2nd Respondent
7th Defendant

3.Veena Sharma

4.Kavana Sharma

5.Prateen Sharma

(Respondents 3 to 5 brought on record as Lrs of the deceased R2
Vide order of the Court dated 12.03.2019 made in C.M.P.No.4346,
4347 and 4351 of 2019 in S.A.No.203 of 2013.

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree dated 20.09.2011 in A.S.No.240 of 2009 on the file of the V Additional Judge, City Civil Court Chennai confirming the Judgement and Decree dated 05.09.2008 in O.S.No.5995 of 2000 on the file of the III Assistant City Civil Court, Chennai.

For Appellants : Mr.J.R.K.Bhavananthan for
Mr.P.B.Balaji

For Respondent 1 : Mr.S.D.Ramalingam

For Respondent 2 : Died

For Respondents 3 to 5 : Not Ready in Notice

J U D G E M E N T

The above Second Appeal emanates from the suit in O.S.No.5995 of 2000 on the file of the III Assistant City Civil Court, Chennai, which is a suit filed by the respondent temple for a recovering possession of the suit property and damages from the defendants. The parties are referred to in the same array as in the suit.

Plaintiff's Case:

2.The plaintiff temple would submit that the land belonged to the plaintiff temple and the same was leased out to one Devadoss and Govindoss on a monthly rental of Rs.40/-. After the death of Devadoss and Govindoss their legal heirs started treating the property as their own and had leased out the property to the 7th defendant. In view of this sublease, on 30.06.1999, the plaintiff temple had issued a legal notice terminating the lease in favour of the defendants and directing them to handover vacant possession of the same.

3.The plaintiff would submit that despite receiving the said legal notice the defendants had come forward with a reply dated 02.09.1999 putting forward a totally false case. Meanwhile the 7th defendant, vide letter dated 24.02.1999, requested the plaintiff temple to consider leasing out the property directly to him. This request was not acceded to and the suit came to be filed.

Defendant's case:

4.The defendants 1 to 6 had filed a written statement inter alia setting up a separate title to the suit property. It was their case that the suit property and other properties were their ancestral properties and in possession of their family for

well over 100 years. The defendants would contend that on the death of the Paternal Grandfather V.Subba Reddy, his sons had partitioned the property and the suit property fell to the share of V.Narasimha Reddy. Narasimha Reddy had executed a Will and on his death proceedings was initiated to probate the said Will in O.P.No.181/68.

5.Since Narasimha Reddy's wife objected, the probate O.P was converted into a testamentary suit bearing T.O.S.No.64 of 1968. In the said T.O.S a compromise memo was recorded in and by which the property measuring an extent of 951 Sq.ft. bearing Door No.137, Present Door No.235, Poonamalle High Road, Aminjikarai, was allotted to the share of the 1st defendant and the property measuring an extent of 1251 Sq.ft. bearing Door No.137, Poonamalle High Road, Aminjikarai, Chennai - 29 (Present Door No.235/1) was allotted to the share of Devadoss and Govindoss.

6.In the year 1975 they had partitioned the property and the suit property was allotted to the share of Devadoss. After his demise the property devolved on defendants 2 to 6. It would clearly demonstrate that the property did not belong to the plaintiff temple. Therefore they sought for the dismissal of the suit.

Trial Court:

7.The learned Trial Judge had originally framed five issues and thereafter recast them as follows:

"1)Whether the plaintiff is entitled for delivery of vacant possession of the suit property?

2)Whether the plaintiff is entitled for damages at Rs.2000/- per month from the date of plaint till the date of delivery of possession?

3)Whether the suit as framed is not maintainable?

4)To what relief is the plaintiff entitled?"

8.The plaintiff had examined one T.Palani on their side and marked exhibits, Ex.A.1 to Ex.A.6. The defendants on their side had examined the 3rd defendant as D.W.1 and marked exhibits, Ex.B.1 to Ex.B.15. The learned III Assistant Judge, City Civil Court, Chennai, had held that, in view of Ex.A.5, Ex.A.6 and Ex.B.1, it was clear that the suit property belonged to the plaintiff temple and was leased out to Devadoss and Govindoss. The learned III Assistant Judge, City Civil Court, Chennai, had further held that the defendants were trying to set up a claim on the property without getting the approval of the owner of the property in their favour.

9.The learned Judge as held in Ex.B.1, the plaintiff temple was shown as registered holder and Narasimha Reddy and the defendants have shown as tenants. That apart, the defendants had not filed any documents whatsoever to prove their right, title and interest to the property concerned. There is also admission by the D.W.1 that he has not retained receipts for having paid the tax. Ultimately, the learned Judge returned a finding in respect of issues 1 to 3 against the defendants and the defendants was directed to deliver vacant possession.

10.Challenging the said order the defendants had filed A.S.No.240 of 2009 and the 7th defendant had independently filed A.S.No.12 of 2010 before the Appellate Court, namely, the learned V Additional Judge, City Civil Court, Chennai. However, the learned V Additional Judge, City Civil Court, Chennai, had dismissed the appeals. Challenging the concurrent Judgement and Decree defendants are once again before this Court.

Second Appeal:

11.At the time of admission the following Substantial Questions of law was raised.

"1.Whether the Courts below were right in decreeing the suit for recovery of possession when the title is under dispute and when the plaintiff has not chosen to amend the suit so as to include the relief for a decree for declaration of title?

2.Whether the Courts below were right in acting on Ex.A.5, which is, after all, a letter written by the Tahsildar in respect of the title for the property in the absence of production of original revenue records or without examining the Tahsildar?

3.Whether the courts below were right in presuming the title in favour of the plaintiff though there was no documentary evidence produced and though there is no oral evidence in respect of the same?

4.Whether the Courts below were right in accepting the evidence of P.W.1 though he has admitted during cross examination that there is no document available with the temple to show that the rent was ever collected from the defendants 1 to 6 by the temple for the suit property?"

12.However, the arguments were advanced with reference to maintainability of the suit under Section 79 of the Hindu Religious and Charitable Endowments Act, 1959. The maintainability of the eviction proceedings by the temple authorities against the tenants had been called in question and this Court by its order reported in CDJ 211 KHC 1412 - A.N.Kumar Vs. Arulmighu Arunachaleswarar Devasthanam Thiruvannamalai, held that the suits filed by the temple for eviction of

tenants/lessees/mortgagees are not barred and would not attract the exception provided under Section 79 of the Hindu Religious and Charitable Endowments Act, 1959. Even on the merits the defendants who have come forward to set up an independent title to the suit property has failed to prove the same and on the contrary Ex.A.5, Ex.A.6 and Ex.B.1 would clearly show that the temple is the owner and the defendants are only tenants therein.

13.That apart, the counsel for the appellants had only canvassed the issue of maintainability of the suit which clearly holds that the suit for ejectment has not barred as there is no procedure contemplated under the Act. In the light of the above this Court holds that the appellants have not made out any question of law.

This Court answer the question of law against the defendants and consequently, the concurrent Judgement and Decree of the Courts below is confirmed. The Second Appeal stands dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

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To

1.The V Additional Judge,
City Civil Court, Chennai.

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

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

+1cc to Mr.P.B.Ramanujam, Advocate, SR.No.52187.

S.A.No.203 of 2013

MR(CO)

CSR: 17/02.2020