



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.06.2019
PRONOUNCED ON: 27.06.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. No. 683 of 2019
and
CMP No.12839 of 2019

S.Shanmugam .. Appellant / 9th Defendant

Vs.

1. R.Dhanraj .. Respondent / Plaintiff

Subramanian (Deceased)
Saroja balu (Deceased)

2. Ashokan
(Set ex parte in the suit on 18.09.2003)

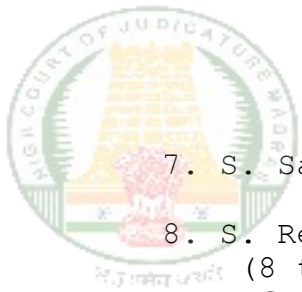
3. Rajan

4. The Tamilnadu Waqf board,
Represented by its Chief Executive Officer,
No.7, 9th cross street, Indira nagar,
Chennai -20.
(Set ex parte I.A.No.21224/2005 on 11.07.06)

5. The Executive Officer,
Aga Mohidden Mosque,
No.17, Venkateswara Naicken street,
Chepauk, Chennai - 600005. .. Respondents 2 to 5/
Defendants 3 to 6

6. Agai syed Muntazar Ale (died)
Managing trustee, Shia Trust,
25-L Mosque street,
Mylapore, Chennai - 600 004.

(Defendants 5 to 7 are impleaded as per order
in I.A.21224/2005 dated 09.01.2008)



7. S. Saradha

8. S. Revathi

(8 to 10 defendants are legal heirs
of 1st defendant deceased N.Subramanian)

9. Balakrishnan

10. J. Thamilarasi

11. J. Gowthaman

12. J. Nagalakshmi

13. J. Kotteswari

.. Respondents 6 to 13 /
Defendants 7, 8 and 10 to 15

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 31.01.2019 in A.S.No.313 of 2018 on the file of XVII additional city civil court at Chennai confirming the judgment and decree dated 20.03.2018 passed in O.S. No.1994 of 2003 on the file of the XV Assistant city civil court at Chennai.

For Appellant : Mr.K.Kalyan kumar

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 31.01.2019, passed in A.S.No.313 of 2018, on the file of XVII Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 20.03.2018, passed in O.S. No.1994 of 2003, on the file of the XV Assistant Judge, City Civil Court, Chennai.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. The suit has been laid by the plaintiff for possession and damages.

4. Briefly stated, according to the plaintiff, the suit property belongs to the Muslim Trust called the Shia Trust and the plaintiff's father Rajagopal Chettiar had taken the same for lease in the year 1948 and constructed a building in the suit property and enjoying the same by paying tax etc., Further, it is also stated that a fresh lease deed was executed in favour of the plaintiff by the abovesaid Trust on 29.01.1988 and it is the case of the plaintiff that the defendants 1 to 4 were the



tenants in respect of the suit property, however, failed to pay the rent to the plaintiff subsequent to his father's death and the defendants have also admitted that they have occupied the suit property only as tenants in O.S.Nos. 3950/1987, 1785/1993 and the rent control proceedings initiated for the eviction of the defendants were dismissed with the determination that the landlord and tenant relationship could not be decided in the abovesaid proceedings and hence, the plaintiff has been necessitated to lay the suit against the defendants for appropriate reliefs.

5. The defendants, particularly the 9th defendant, resisted the plaintiff's suit contending that the plaintiff's father, claiming himself to be the owner of the suit property, had been receiving rent and subsequently, the defendants came to know that the suit property only belongs to the Muslim Trust and not to the plaintiff's father and accordingly, the defendants also resisted the rent control proceedings initiated for evicting them from the suit property on the abovesaid lines, instead of proceeding further in the rent control proceedings, the present suit laid by the plaintiff is not maintainable and further contended that the suit property being the Waqf property, the lease for a period of 30 years is barred under the Waqf Act and therefore, contended that the plaintiff is not entitled to seek and obtain the reliefs as prayed for and the suit is liable to be dismissed.

6. In support of the plaintiff's case PW1 was examined, Exs.A1 to A6 were marked. On the side of the defendants, DWs 1 and 2 were examined, Exs.B1 to B14 were marked.

7. The Courts below were pleased to, on a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, decree the suit in favour of the plaintiff as prayed for. Aggrieved over the same, the present second appeal has been preferred by the 9th defendant.

8. It is not in dispute that the suit property belongs to the Shiya Trust and according to the plaintiff, his father obtained the suit property on lease and constructed a building thereon with his own funds and was enjoying the same and let out the same to the defendants 1 to 4 and inasmuch as the defendants had stopped paying the rent to the plaintiff, after the demise of the plaintiff's father, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs. In this connection, reliance is placed upon the lease deed, marked as Ex.A1, dated 29.01.1988, which according to the plaintiff had been executed in his favour by the Shiya Trust. The abovesaid lease deed is a registered instrument and it is also found that another deed of declaration has also been executed on 03.02.1990



by the son of the hereditary trustee empowering the plaintiff to receive rent with respect to the suit property and the same has come to be marked as Ex.A2 and thus, it is found that as projected by the plaintiff, the suit property had been enjoyed by the plaintiff and his father on the lease arrangement with the Shiya trust.

9. Inasmuch as the rent control proceedings initiated by the plaintiff with regard to the eviction of the defendants could not be carried on and as the issue could not be determined by the rent control authorities, it is found that the plaintiff has been necessitated to lay the present suit. As rightly determined by the Courts below, the rent control authorities would not have the powers to determine the ownership of the property. Insofar as this case is concerned, though the Waqf Board has been added as a party to the proceedings, the Waqf Board has not entered appearance to determine the position as regards the case projected by the respective parties.

10. The defendants would claim that they are paying rent to the Trust on coming to know of the ownership of the trust qua the suit property. However, as could be seen from the materials placed on record, it is found that as put forth by the plaintiff, the defendants' predecessor in interest had accepted that they were the tenants under the plaintiff's father and the same could be gathered from the plaint in O.S. Nos.3950/1987 & 1785/1993, which have come to be marked as Exs.A3 and A6 and in such view of the matter, when the defendants' predecessor in interest had admitted the landlord/tenant relationship between the plaintiff's father and them in the earlier proceedings, the defendants are not entitled to deny the title of the plaintiff with reference to the superstructure put up in the suit property by the plaintiff's father. When the abovesaid admission on the part of the plaintiff's predecessor in interest clearly discloses the landlord tenant relationship between the parties, merely because the plaintiff has not produced the rental agreement or the receipt for the rent, that alone, in any manner, would not disentitle the plaintiff to claim the relief against the defendants as prayed for.

11. The defendants would contend that they are now paying rent to the Trust after knowing the ownership of the Trust qua the suit property. However, there is no document on the part of the defendants that they had attorned the tenancy in favour of the Waqf Board/Trust as the case may be. The Courts below had assessed the rent receipts projected by the defendants marked as Exs.B1 and B2 and found that the truth and validity of the same had not been established by the defendants, particularly, whether the same had been issued by the person having authority



to issue the receipt on behalf of the Trust or the Waqf Board. Furthermore, the defendants have also not placed other receipts for establishing that they continue to pay the rent to the Trust. Accordingly, it is found that the defendants' case cannot be accepted based on Exs.B1 and B2 solely and the same has been rightly assessed and determined by the Courts below and found that the defendants are attempting to squat in the suit property in the guise of attornment in favour of Waqf Board without placing acceptable and reliable materials pointing to the same.

12. Contention has been put forth by the defendants that the lease cannot be made by the Trust beyond a period of 3 years considering the prohibition under Section 56 of the Waqf Act 1995 and the same has been considered by the Courts below and noting that the abovesaid amendment made in the Waqf Act being effected only on 01.11.13 and the lease deed in favour of the plaintiff having been executed in the year 1988, prior to the amendment, in such view of the matter, noting that the abovesaid amendment would not apply to the lease arrangement projected by the plaintiff, rightly held that the amendment relied upon by the defendants under Section 56 of the Waqf Act 1995 has no retrospective effect and rightly determined that the lease deed projected by the plaintiff cannot be held invalid in the light of Section 56 of the Waqf Act 1985.

13. In the light of the abovesaid discussions, when it is seen that the Courts below had assessed the materials placed on record, both oral and documentary, in the right perspective, both factual wise and legal wise and determined that the plaintiff is entitled to eject the defendants from the suit property as prayed for and accordingly, when there is no valid reason projected by the defendants, particularly, the 9th defendant/appellant warranting any interference with the abovesaid concurrent judgment and decree of the Courts below, it is found that no substantial question of law is involved in this second appeal and resultantly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

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

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

+1 cc to Mr.G.H.Vinobha Gandhi, Advocate, S.R.No.53123

Judgment made in
S.A. No. 683 of 2019
and
CMP No.12839 of 2019

VGI (CO)
SSM(24/10/2019) .