

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-12-2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.102 of 2014

And

M.P.No.1 of 2014

A.Ponmani .. Appellant/Defendant

vs.

Arulmighu Dharmaraja Thirukoil,
Kilpauk,
Chennai-600 010, represented
by its Executive Officer,
Having Office at
Athikesava Perumal Devasthanam,
No.30, Agraharam Street,
Chintadripet,
Chennai-600 002.

.. Respondent/Plaintiff

Appeal Suit preferred under Section 96 of the Code of Civil Procedure against the judgment and decree dated 11.07.2013 made in O.S. No.13807 of 2010 (C.S.No.951 of 1999, High Court, Madras) on the file of the V Additional Judge, City Civil Court, Chennai.

For Appellant : Mr.M.Balasubramanian

For Respondent : Mr.A.K.Sri Ram for
M/s.A.S.Kailasam Associates.

J U D G M E N T

The lis on hand is filed against the judgment and decree dated 11.07.2013 passed by the learned V Additional Judge, City Civil Court, Chennai in O.S.No.13807 of 2010.

2. The original suit was instituted by the respondent, who is the plaintiff in the suit and the appellant in the appeal suit is the defendant in the original suit.

3. The suit was instituted to direct the defendant to quit and deliver vacant possession of the schedule land, for mandatory injunction, directing the defendant to remove the superstructure illegally put up in the temple schedule land and restore to its original position, to pay Rs.960/- per month being damage and mesne profits from March 1996 to February 1997 and to pay future damages and mesne profits at the rate of Rs.80/- from the date of plaint till the date of possession and for the costs.

4. The respondent/plaintiff instituted the suit with a contention that the plaintiff is the Hindu Public Religious Institution under the control of Hindu Religious and Charitable Endowments (Administration) Department. The land measuring about 2202 sq.ft. (2025 sq.ft. actual measurement) bearing Door No.33, Halls Road, Kilpauk, Madras-10, particularly described in the plaint schedule absolutely belongs to the respondent/plaintiff temple, originally, the scheduled land was leased out to one Mr.S.A.Appadurai Nadar on a monthly rent of Rs.80/-. The said Mr.S.A.Appadurai Nadar was paying land rent only as he had put up a zinc sheet roofed shed measuring about 640 sq.ft. in the leased temple land. Mr.S.A.Appadurai Nadar died and consequently his legal heirs have not been recognised as tenants nor did they apply to the respondent/plaintiff for name transfer, the appellant/defendant claims to be the purchaser of the superstructure with leasehold right of the land from the legal heirs of the deceased Mr.S.A.Appadurai Nadar under Sale Deed dated 21.04.1993. The Sale Deed was executed without the knowledge and consent of the temple.

5. On 30.08.1993, the appellant/defendant wrote a letter to the respondent/plaintiff, requesting the respondent/plaintiff to recognise her as tenant in respect of the schedule land, but the respondent/plaintiff has not so far recognised the appellant/defendant as tenant. Therefore, the possession after purchase of the superstructure with leasehold right of the schedule land in so far as the appellant/defendant is concerned, is illegal and unauthorised and amounts to trespass.

6. The appellant/defendant is only an assignee purchaser without tenancy rights and she is not entitled to any rights of tenancy under any Act much less under the City Tenants Protection Act. The appellant/defendant has no right to be in possession in as much as she is a rank trespasser. During March, 1996, after encroaching upon the schedule land, illegally cut off the sacred Arasamaram tree and began to put up new construction after demolishing the existing structure in the

temple vacant land in spite of objection and issue of complaint to the police on 19.03.1996 by the respondent/plaintiff and lawyer's notice dated 30.03.1996. Under these circumstances, the respondent/ plaintiff was constrained to institute the present suit.

7. The appellant/defendant filed the written statement stating that it is true that the respondent/plaintiff temple let out the land to one Mr.S.V.Appadurai Nadar 35 years back. He constructed a building as a lawful lessee and is in occupation of the same. Later on due to old age, he sublet the premises to one Mr.P.Mohan to run a automobile workshop in that land. However, the said Mr.Appadurai Nadar, during his life time, being a distant relative of the appellant/ defendant's husband, borrowed money and liable to repay the said borrowings and later on sold the superstructure put up in the said property along with the leasehold rights.

8. In the meantime, the said Mr.Appadurai Nadar died. However, the subtenant let out by Mr.S.V.Appadurai Nadar filed suit in C.S.No.15 of 1994 before this Court for a specific performance of the alleged agreement of sale against the legal heirs of the deceased Mr.S.V.Appadurai Nadar as well as the appellant/defendant. However, thereafter the appellant/defendant paid some reasonable amount by way of compensation to the tenant Mr.P.Mohan and later on, he withdrew the suit on 23.08.1994 as settled out of Court and the respondent/plaintiff temple also aware of the said fact.

9. The appellant/defendant paid rent to the respondent/ plaintiff regularly and after sometime, the Executive Officer of the respondent/plaintiff temple refused to receive the rent. Thereafter, the appellant/defendant applied for the HR&CE authorities to transfer the lease in respect of the land in her favour. During pendency of the application, the Executive Officer of the respondent/plaintiff temple initiated action against the appellant/defendant.

10. At the outset, it is contended that the appellant/defendant constructed the superstructure and is paying all the taxes, including property tax, water tax, electricity supply bill etc., and therefore, he has got a right in respect of superstructure and the suit is liable to be dismissed.

11. The Trial Court framed the following issues for consideration:-

"1. Whether the Executive Officer of the plaintiff temple has no right or authority to sue the present suit ?

2. Whether the leasehold rights claimed by the defendant over the suit property is true ?

3. Whether the plaintiff is entitled for recovery of possession of the suit property from the defendant ?

4. Whether the plaintiff is entitled for mandatory injunction against the defendant to remove the superstructure put up in the suit schedule property ?

5. Whether the plaintiff is entitled for damages, mesne profits and future damages as prayed for ?

6. To what relief the plaintiff is entitled to ?"

12. The Executive Officer of the respondent/plaintiff temple was examined as PW-1 and Exs.A-1 to A-4 were marked as documents on the side of the respondent/plaintiff. On the side of the appellant/ defendant, the husband of the appellant/defendant Mr.Abraham was examined as DW-1 and Exs.B-1 to B-24 were marked as documents.

13. With reference to the maintainability of the suit, the Trial Court made a finding that the word 'Executive Officer' has been defined under Section 6(2) of the Hindu Religious and Charitable Endowments Act (HR&CE Act). The 'Trustee' has been defined under Section 6(22) of the HR&CE Act, as any person or body in whom the administration of a Religious Institution is vested. Section 45 of the Act, deals with the appointment and the duties of an Executive Officer. Sub-section (2) to Section 45 says that the Executive Officer shall exercise such powers and discharge such duties as may be assigned to him by the Commissioner. The proviso says that only such powers and duties regarding the administration of the properties of the Religious Institution shall be assigned to the Executive Officer. The powers and duties of the Executive Officer shall be defined by the Commissioner. Section 28 of the Act, empowers the Trustee of every Religious Institution to administer its affairs and to apply the funds and properties to the institution. He shall be entitled to exercise all powers incidental to the provident and beneficial administration of the Religious Institution.

14. It is made clear that the Executive Officer is not the authority competent to initiate legal proceedings and that

he had not been assigned with the power of filing a suit. It is only the Board of Trustees in existence at that time, which was competent to initiate the legal proceedings. The above contention raised by the appellant/defendant was also considered by the Trial Court and as per Ex.A-4, the Executive Officer was authorised to institute the suit. In support of his argument, the document marked as Ex.A-4 was relied upon. Ex.A-4 was the copy of the proceedings issued by the Commissioner dated 22.04.1973.

15. Perusal of Ex.A-4 establishes that the Executive Officer of the respondent/plaintiff temple was specifically authorised under Section 45 of the HR&CE Act, to institute a suit on behalf of the Arulmighu Dharmaraja Thirukoil, Kilpauk, Madras. Therefore, there is no doubt that the then Executive Officer of Arulmighu Dharmaraja Thirukoil, Kilpauk, Madras was empowered to institute the suit as per the orders of the HR&CE Commissioner. In view of the said document, the Trial Court arrived a conclusion that the Executive Officer of the respondent/plaintiff temple was authorised under the provisions of the Act, to institute the suit and therefore, the suit is maintainable.

16. In respect of issue No.2, the Trial Court arrived a conclusion that the appellant/defendant is not having any leasehold rights in respect of the land described in the schedule mentioned suit property.

17. The contention of the learned counsel for the appellant/defendant is that late Mr.Appadurai Nadar was a original lessor and he was in continuous possession of the suit schedule mentioned properties for more than 35 years and he sublet the premises to one Mr.P.Mohan to run a automobile workshop in that suit property, who instituted the civil suit and by way of settlement, the suit filed by him was withdrawn by him on 23.08.1994 as settled out of Court and thereafter, the appellant/defendant purchased the leasehold rights from the legal heirs of late Mr.Appadurai Nadar and accordingly, acquired the leasehold right of the suit schedule mentioned property.

18. The Trial Court considered the nature of the transactions and arrived a conclusion that the original lessee died and the leasehold right was transferred by the legal heirs of the original lessee late Mr.S.A.Appadurai Nadar. The very transaction itself is in violation of the provisions of the HR&CE Act. There is no provision to transfer the leasehold right by the legal heirs of the original lessee of the temple. Even otherwise, the temple authorities themselves are not having any

authority to extend the lease beyond the period of five years. Normally, three years period is fixed and the same can be extended for another two years and thereby, totally five years the lease period can be extended. Thus, in total, five years lease alone is permissible under the provisions of the HR&CE Act.

19. Admittedly, after the demise of the original lessee of the suit property Mr.S.A.Appadurai Nadar, no lease was granted in favour of any person on behalf of the respondent/plaintiff temple. Admittedly, the temple authorities had not granted any leasehold right with reference to the Act in favour of the appellant/defendant. In the absence of any such valid transactions under the provisions of the HR&CE Act, the findings of the Trial Court that the transfer of leasehold right by the legal heirs of deceased Mr.Appadurai Nadar is an invalid transaction and the same is unsustainable in the eye of law.

20. This Court is of the considered opinion that these kind of transactions are being done across the State of Tamil Nadu, with an idea to grab the temple properties. The Courts cannot encourage such transactions in view of the fact that the authorities competent under the provisions of the Act, is empowered to exercise the powers in the manner known to Statutes and not otherwise. Any such illegal transactions or conferment of any leasehold right or tenancy right, if it is found illegal or in violation of the provisions under the HR&CE Act, such contracts or agreements are to be declared as null and void and the same cannot be construed as a valid contract or agreement under the provisions of the Indian Contract Act. When there is an implied prohibition under the Act, which is a Special Act, as far as HR&CE Act, the contracts or agreements against the temples across the State of Tamil Nadu are considered, then such contracts or agreements, cannot be validated in any manner and therefore, the very transaction made between the appellant/defendant as well as the legal heirs of the erstwhile leaseholder is invalid and is null and void.

21. This Court is of the considered opinion that the cogent findings of the Trial Court, in this regard, is crystal clear that the entire transactions, even as per the appellant/defendant established would show that all such transactions are made in an illegal manner and probably on certain extraneous considerations and undoubtedly not in consonance with the provisions of the HR&CE Act.

22. The practice of grabbing the temple properties are growing more and more and the authorities, who all are

competent, are bound to implement the law and if not doing so, in the manner known to law, the lapses, negligence or dereliction of duty on the part of the authorities are also to be viewed seriously in these issues. When the Act contemplates that extension of lease or grant of lease beyond the period of five years are impermissible and the authorities are not initiating any actions, then they must be held accountable and answerable for all such lapses and dereliction of duty or negligence.

23. Considering the nature of the transaction entered into between the parties as admitted by the parties before the Trial Court, there is no iota of doubt that the entire transaction is opposed to the policy laid down in the HR&CE Act as well as the violations of the provisions of the Act. When the lease was granted in favour of one Mr.Appadurai Nadar, several decades before and he died and, thereafter, the temple authorities had not extended the lease in favour of his legal heirs or in favour of any other person, then there is no question of leasehold right at all. There is a specific averment, which was established before the Trial Court by the respondent/plaintiff that the leasehold rights are not transferred to any other person after the death of Mr.Appadurai Nadar.

24. This being the factum established through the documents before the Trial Court, the very payment of certain amount of rent or charges to the temple would not confer any legal right on the appellant/defendant to claim property right, which belongs to the temple. Such superstructures are considered as illegal constructions and based on such illegal constructions, no rights regarding the property can be claimed before the Court of Law.

25. The learned counsel appearing on behalf of the respondent/plaintiff temple, cited a judgment of this Court in the case of K.V.Pushpavalli vs. Arulmighu Theerthabaleeswarar Devasthanam, rep. by its Executive Officer, No. 3, Koil Street, Komaleeswaranpet, Chennai - 600 005 and another [(2006) 3 LW 66 (Mad.)], wherein in paragraphs-19, 33 and 35, this Court observed as under:-

"19. The above contention has no merits. Though rent had been received under Exs.B.6 and B.7, the same was received only "without prejudice". The omission to make an endorsement "without prejudice" in Ex.B.4 would not in any way advance the case of the Appellant. In any event, mere receipt of the

rent would not in any way amount to assent recognition of the status of the Second Defendant as the Tenant under the Plaintiff - Devasthanam. Placing reliance upon the decision reported in 2005 (3) T.L.N.J 142 (Civil), learned Counsel for the Plaintiff has submitted that even if the rent had been paid and received in the absence of express or implied recognition of the Second Defendant as the Tenant, the receipt of rent would not help the Appellant. Referring to number of decisions reported in 1975 (II) M.L.J 204, 2003 (3) C.T.C. 488, 1996 (6) S.C.C. 399, in the decision reported in Lease And Company and others v. M.S.A. Mohammed Farook (2005 (3) T.L.N.J. 142 (Civil)) Prabha Sridevan, J. has held that the Petitioner must prove that there was express or implied recognition as Tenants. In the decision reported in Shanti Prasad Devi v. Shankar Mahto (2005 (5) S.C.C. 543 = 2005 3 L.W. 716) it was held that mere acceptance of rent will not signify assent to tenancy, nor could be the tenant claim that he was "holding over". The leasehold right of vacant site was given to the First Defendant by the Plaintiff - Devasthanam. Without the knowledge of the lessor - Devasthanam, there cannot be transaction between the First Defendant and Second Defendant. Rent receipts were issued only with endorsement "without prejudice". The Second Defendant cannot take advantage of omission to make an endorsement "without prejudice" in Ex.B.4.

33. Learned Senior Counsel has contended that what was sold under the document is only super structure and the leasehold right is not transferred and the First Defendant continued to be recognised as the Tenant. This contention has no force in view of Section 34 of the H.R. & C.E. Act and in view of the conduct of the Second Defendant claiming tenancy for herself. Section 108 (j) of the T.P. Act being the general law, cannot prevail against the Special Law.

35. Learned Senior Counsel for the Appellant contended that Section 34 of the

H.R. & C.E. Act is only in the hands of those who is administering the temple properties. It is further contended that Section 34 of the Act is intended to bring only for exchange, sale, mortgage and the lease which are created or effected by those who are administering the temple properties and Section 34 cannot be invoked to the case in hand where the First Defendant had assigned his leasehold right to the Second Defendant. If this contention is to be accepted, it would lead to dangerous consequences. If such interpretation is to be adopted, what cannot be done under Section 34 of the Act could be done in an indirect way. For instance, if the Devasthanam wants to create lease for ten years or wants to sell or exchange the property, it may create lease in favour of Tenant and thereafter, the Tenant might either sell, exchange or create the lease for a period of more than five years, which is prohibited under Section 34 of H.R. & C.E. Act."

26. This Court in unambiguous terms reiterated that mere receipt of the rent would not in any way amount to assent recognition of the status of the Second Defendant as the Tenant under the Plaintiff temple - Devasthanam. It is further observed that selling of the superstructure by the legal heirs of the original lessee, cannot be treated as a transfer of leasehold rights. In paragraph-35 of the judgment of this Court, cited supra, it is emphasised that Section 34 of the HR&CE Act, is only in the hands of those who is administering the temple properties. It is further contended that Section 34 of the Act is intended to bring only for exchange, sale, mortgage and the lease which are created or effected by those who are administering the temple properties and Section 34 cannot be invoked to the case in hand where the First Defendant had assigned his leasehold right to the Second Defendant. If this contention is to be accepted, it would lead to dangerous consequences.

27. This Court is of the considered opinion that the nature of the transactions between various parties established in respect of the lis on hand are concerned, admittedly, the original lessee was Mr.Appadurai Nadar and after his death one Mr.Mohan sub-tenant claimed rights over the Temple property and instituted a civil suit. The legal heirs of the

original lessee Mr.Appadurai Nadar entered into a compromise with Mr.Mohan sub-tenant in the civil suit and accordingly, the suit was withdrawn. Subsequently, the legal heirs of the deceased Mr.Appadurai Nadar, sold the superstructure in favour of the appellant / defendant. Looking into the transactions, none of these parties have any legal right to alienate the property or to deal with the property. Admittedly, the suit schedule property belongs to the Deity of Arulmighu Dharmaraja Thirukoil, Kilpauk, Chennai and the Executive Officer, in clear terms, established that the lease period was not extended even during the lifetime of Mr.Appadurai Nadar and after his death, the Temple has not entered let out the property to anybody. Thus, the sub-tenant Mr.Mohan was an illegal occupant and an encroacher. The legal heirs of Mr.Appadurai Nadar has no right at all to deal with the Temple property.

28. Under these circumstances, all the above parties have intended to grab the Temple property through illegal means and all such transactions are undoubtedly in violation of the provisions of the Hindu Religious and Charitable Endowments Act. This apart, all such agreements and contracts entered into between these parties are void contracts and unenforceable in the eye of law.

29. Large scale such illegalities in the matter of deal with the Temple properties are in limelight and the Hindu Religious and Charitable Endowments department, who is the custodian of these properties under the provisions of the Act are undoubtedly answerable and accountable and they must be prosecuted, if such illegal transactions are not stopped or no actions are initiated even after knowing such illegal transactions. Many of such unauthorised occupants, encroachers are still continuing in Temple properties, worth in crores and provisions are made available in the statute to evict those encroachers, it is duty mandatory on the part of the competent authorities to ensure that prompt and speedy actions are taken to restore these properties in favour of the Temple, so as to utilize the same for the purpose, for which, the great souls have gifted these properties in favour of the Deity of the respective Temples. Inaction in this regard by the Department is to be construed not only as lapse, negligence and dereliction of duty, but is to be construed as a conspiracy, abetting, warranting criminal prosecution under the Criminal law. If any officials of the Hindu Religious and Charitable Endowments Department intentionally made omissions or commissions or failed to initiate actions, then such attitude or performance of public duties are to be construed as an intentional act, warranting a criminal prosecution. Thus, beyond departmental actions wherever

such intentional abatement, conspiracy or offences are committed, then criminal prosecutions are to be initiated.

30. This Court has prompted to made such serious observations in view of the fact that several crores, worth of immovable properties belongs to the Temple are being looted and grabbed by such greedy people and the department officials, who all are the custodian, are also failing in their duties to initiate speedy, quick and efficient actions.

31. The present case is one such case, where the parties could able to prolong and protract the litigations and enjoyed the prime properties situated within the Chennai city for many years and thereby deprived the Temple to utilize the mean profits from and out of the suit schedule property for the welfare and benefit of the Temple.

32. Thus, the respondent authorities are bound to act promptly and punctually. This being the factum established, this Court has no hesitation in coming to the conclusion that the appellant / defendant has not established any acceptable ground for the purpose of interfering with the findings of the trial Court in its judgment.

33. Accordingly, the judgment and decree dated 11.07.2013 passed by the learned V Additional Judge, City Civil Court, Chennai in O.S.No.13807 of 2010 is confirmed and consequently, the appeal suit is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Svn

To

The V Additional Judge,
City Civil Court,
Chennai.

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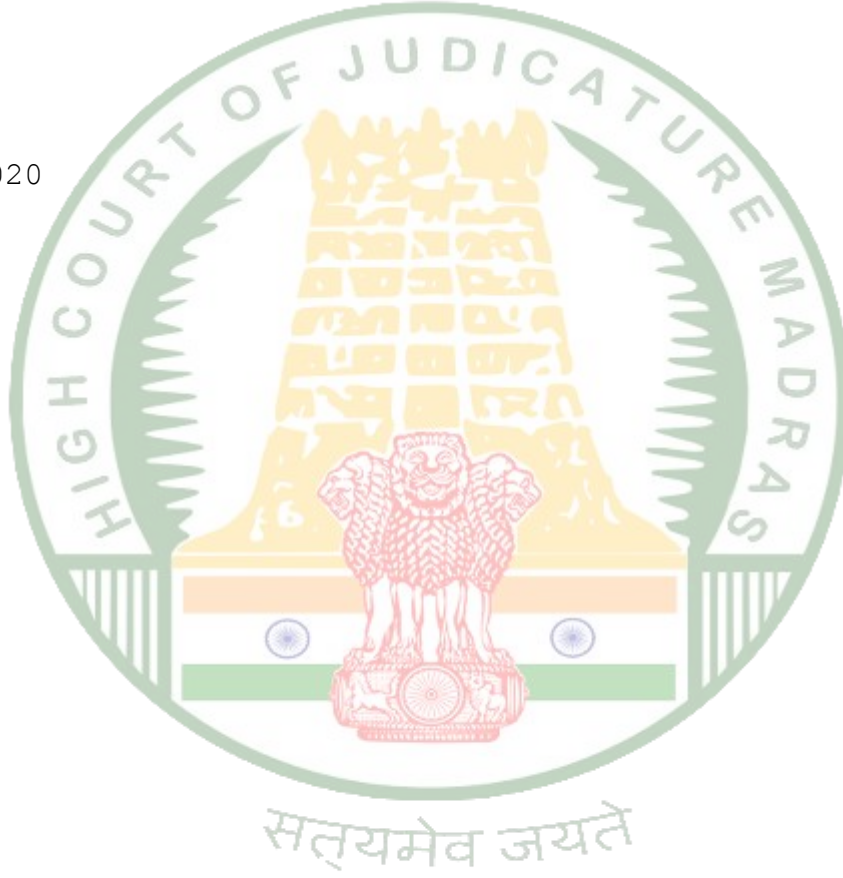
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