

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 469 of 2014

1.B.S.Manian (Died) ..1st Appellant/Defendant
2.B.Vijayalakshmi
3.B.Balasathish
4.B.Karthikadevi ..Appellants 2 to 4/LRS of the sole defendant
(Appellants 2 to 4 Brought on records as
Lrs of the Deceased Sole Appellant vide
order dated 23.10.2019 made in CMP No.22290,
22294 and 22295/19 in SA.No.469/14)

Vs.

Arulmigu Yoganarasimhaswami Tirukoil ..Respondent/Plaintiff

Prayer: Memorandum of Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree dated 28.11.2013 in A.S.No.111 of 2010 on the file of the VI-Additional Judge, City Civil Court, Chennai confirming the judgment and decree dated 10.12.2009 in O.S.No. 7061 of 2006 on the file of the VII - Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.A.R.L.Sundaresan, Senior Counsel
for Mrs.A.L.Ganthimathi

For Respondent : Mr.A.K.Sriram for
Mr.A.K.Kailasam & Associates

J U D G M E N T

The defendant in O.S.No. 7061 of 2006 has come up with this second appeal having suffered a decree for eviction in a suit instituted by the plaintiff claiming that the defendant is a tenant in respect of 2,205 sq.ft. of land in Survey No.438 at Velachery Village.

2. According to the plaintiff, the defendant became a tenant under the plaintiff as per the lease deed dated 27.06.1994. It is also claimed that the tenancy was terminated by issuance of a valid notice under Section 106 of the Transfer of Property Act.

3. The suit was resisted by the defendant contending that the suit property does not belong to the plaintiff temple, since it is classified as Grama Natham in the village records. The defendant would also claim that he has been in possession of the property in his own right for several years and there is no relationship of landlord tenant between the temple and the defendant. The defendant would also claim that he had taken a small portion of land belonging to the temple on lease while he was constructing the building situate in the Grama Natham land. On completion of the building, the defendant had vacated the land belonging to the temple. On the above contentions, the defendant sought for dismissal of the suit. The Trial Court, upon a consideration of the evidence on record concluded that the tenancy has been proved and granted a decree for eviction. Aggrieved, the defendant preferred an appeal in A.S.No. 111 of 2010. The lower Appellate Court also agreed with the Trial Court and concluded that the defendant is a tenant under the temple and is liable to vacate and handover possession of the suit property. Aggrieved, the defendant is on appeal.

4. I have heard Mr.A.R.L.Sundaresan, learned Senior Counsel appearing for the appellants and Mr.A.K.Sriram, learned counsel appearing for the respondent.

5. Pending appeal, the sole appellant died and his legal representatives were brought on record as appellants 2, 3 and 4. The following questions of law were framed at the time of admission:-

"a) Whether the Courts below erred in granting a decree for recovery of possession when the plaintiff temple has not proved its title and specifically when the defendant has denied the title of the temple?

b) Whether the Courts below erred in not considering the fact that the suit property has been classified as gramathan only in the revenue records and the same does not belong to the temple and under such circumstances, granting a decree for recovery of possession ?"

6. Upon hearing the arguments of the counsels on either side, the following 3rd question of law was framed:-

i) Whether the suit filed by the Executive Officer without proper authorization from the Commissioner (HR & CE) is maintainable ?

7. I have heard the counsels on the additional question of law also. I shall take up the additional question of law framed first for disposal, since it would have an effect on the other questions of law framed. The law relating to institution of suits by Executive Officers of temples is well settled. A

Division Bench of this Court in Sri Arthanareeswarar of Tiruchengode Vs. T.M.Muthuswamy Padayachi reported in 2003 (1) LW 386 has held that an Executive Officer is not empowered to institute suit without express authority conferred on him by the Commissioner (HR & CE). This plea was not raised in the written statement. It appears in cross-examination of D.W.1 a question was put to him regarding the authority required for filing the suit and a copy of the order of the Commissioner (HR & CE) addressed to all Joint Commissioners stating that specific authority is required for institution of suit was marked as Ex.B1. However, the Trial Court had not framed an issue with reference to the maintainability of the suit or the authority of the Executive Officer, who filed suit on behalf of the temple. The lower Appellate Court also has not framed any issue regarding the maintainability of the suit. However, this issue being a strictly legal issue which goes to the root of the matter, I do not think that the appellant should be prevented from raising the issue.

8. The Fact that an Executive Officer of the temple cannot maintain a suit without express authority or permission of the Commissioner (HR & CE) is disputable. This has been acknowledged by the Commissioner (HR & CE) under Ex.B1 dated 11.01.2005 issued pursuant to the judgment of this Court in A.S.No.55 of 1986 (Sri Arthanareeswarar of Tiruchengode Vs. T.M.Muthuswamy Padayachi reported in 2003 (1) LW 386 dated 05.08.2002. It appears that Special Leave Petition filed against the said judgment is also dismissed by the Hon'ble Supreme Court and review petition filed was also dismissed. No such permission is placed on record. Mr.A.K.Sriram, learned counsel for the respondent temple would fairly state that it does not appear from the records that such authority / permission was obtained from the Commissioner before the institution of the suit.

9. Therefore, in view of the categorical pronouncement of the Division Bench of this Court, the suit filed by the Executive Officer suffers for want of authority hence, the additional question of law framed is answered in favour of the appellant. Once it is found that the suit itself is not maintainable, I do not think I can go into the other questions raised in the appeal. Therefore, this second appeal is allowed, the suit in O.S.No. 7061/2006 will stand dismissed as not competent. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

kkn

To:-

1. The VI Additional Judge,
City Civil Court, Chennai.
2. The VII Assistant Judge,
City Civil Court, Chennai.

+lcc to Mrs.A.L.Ganthimathi, Advocate SR.No.96980

S.A.No. 469 of 2014

RSI (CO)
GMY (20/02/2020)



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