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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2020

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

A.S.No.133 of 2005

Arulmighu Selliamman Temple,
Kamatchiamman Koil Street,
Chidambaram rep. by its
Worshippers Trustee Board
President

1.P.T.Arumugham
2.Sabsean
3.Natarajan
4.Dhandapani
5.Ganesan

... Appellants/Plaintiffs

Vs.

1. Durai Balasubramanian
2. Raja
3. Mani
4. Ramanujam
5. Ambujam
6. Rajendran
7. Mariammal
8. Kuppusamy
9. Panidan
10.Arumugham
11.Indirani
12.Devendiran
13.Santhosh Kumar
14.Padmavathy
15.Sumathi
16.Kasuturi
17.Seenivasan

18.Tamilnadu Electricity Board,
Chidambaram,
rep. By its Executive Engineer,
(Operation and Maintenance)



19. The Commissioner,
Chidambaram Municipality,
Chidambaram.

[Respondents 2,5,13,14,15,17,18 & 19
set exparte in the Lower Court]

... Respondents

Appeal Suit filed under Section 96 of Civil Procedure Code against the judgment and decree of the Additional District Judge cum Fast Track Court No.1, Chidambaram passed in O.S. No.12 of 2003 dated 19.09.2003.

For Appellants	:	Mr. S.Sounthar
For Respondents 3,4,6&16	:	Ms. Usha Raman
1,7 to 12	:	Not ready in notice
2,5,13 to 15 and 17 to 19:	:	Set Exparte before the Lower Court

J U D G M E N T

The plaintiffs in the suit in O.S. No.12 of 2003 on the file of Additional District Court, Chidambaram (Fast Track Court I) are the appellants before this Court.

2. The appellants filed a suit for recovery of possession of suit property from defendants 1 to 17 and for compensation for the loss of income from defendants 1 to 17. In the plaint, it is admitted that the first defendant was the previous trustee of the trust board which was in charge of administration and management of the temple. It is stated that the first defendant has allowed defendants 2 to 17 to encroach into the suit properties by putting up sheds in the suit property. The suit was contested by the first defendant by contending that the appellants are not competent to represent the temple as they are not the trustees of the temple. It is stated that the first defendant was duly elected as the manager of the temple and that in his capacity as the Managing trustee of temple he had leased out the property to defendants 2 to 17. It is also the specific case that the defendants 2 to 17 have colluded with the plaintiffs and that the lawful trust board is unable to collect the rent from the defendants 2 to 17. It is also contended that the suit framed as such is not maintainable and that the suit is



barred for misjoinder of cause of action.

3. Defendants 3,4,6 to 12 and 16 filed a written statement admitting that the first defendant is the managing trustee and that the defendants are in possession of portions of suit property as tenants. These defendants specifically denied the statements that they were allowed to trespass into the suit property by putting up superstructure. It is their specific contention that during the course of management of property by the first defendant, he leased out portions of suit property to these defendants and therefore, they are in possession as lawful tenants. It is further stated that the lease was for a period of five years as per the lease deed that was executed in the year 2000. After specific reference to the lease deed, the defendants contended that the suit is barred for misjoinder of parties and cause of action. Since the defendants came into possession of specified extent of properties as tenants and that they are in possession of definite portions of the suit property, the suit framed without specifying the specific extent and area occupied by each occupant is not maintainable. Stating that the defendants are in lawful possession as tenants, it was further contended that the suit without terminating the tenancy is not maintainable and that the suit is not framed properly. The trial Court after framing necessary issues found that the suit framed is not maintainable as the plaintiffs admit that they are not aware of the specific portion in respect of which each defendants are in possession as tenants. The trial Court also found that the plaintiffs are not competent to file the suit as the plaintiffs failed to prove that they were elected as lawful trustees of the temple.

4. Though the trial Court relied upon the judgment of the Hon'ble Supreme Court reported in AIR 1967 SC 1044 that a worshiper of a temple can maintain a suit for recovery of possession against strangers / encroachers, the trial Court found that the said judgment cannot be relied upon by the appellants as they are categorically admitted in their evidence that the suit is filed only to collect rent and advance from defendants 2 to 17. Having filed the suit for recovery of possession on the ground that the defendants had encroached the suit property, the trial Court found that the relief claimed by the plaintiffs is not bonafide and that the suit for recovery of possession is not maintainable as the plaintiffs have not proved their position as lawful trustees of the temple or trust board.

5. The trial Court also found that the lease deeds in favour of the defendants 2 to 17 are not valid as they have not



proved that the lease deed was executed in their favour after getting permission from the authorities under Section 34 of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, (hereinafter referred as 'the Act'). Further the trial Court also found that the lease deeds produced by the tenants were not registered and therefore, they are not admissible in evidence. Having found that the some of the tenants have admitted that they have not paid rent to any one for the demised premises, the lower Court rendered a finding that the defendants 2 to 17 have not proved their possession as lawful tenant. However, having regard to the previous findings of the trial Court with regard to the competency of plaintiffs and maintainability of the suit by the plaintiff to recover the possession from defendants 2 to 17, the suit was ultimately dismissed by the trial Court. Aggrieved by the judgment and decree of the trial Court, the above appeal is preferred by the plaintiffs.

6. Learned counsel for the appellants has raised several grounds on the basis of findings rendered by the trial Court. When the trial Court has found that defendants are encroachers, it is contended that the lower Court ought to have granted relief as it is well settled that a worshiper is entitled to file a suit against the encroachers. The learned counsel further submitted that the lower Court failed to see that the trustee and the worshipers are very much interested in getting the money and that the suit ought not to have been dismissed. Though the learned counsel for appellant raised several other grounds, the prime issue arise in the case is whether the plaintiff is entitled to file a suit for recovery of possession. In this case, the plaintiffs have filed a suit as a trustee of the temple for recovery of possession as against the trespassers.

7. It is to be noted that the trial Court has rendered specific finding that the plaintiffs have not proved their position as lawful trustees of the temple or the trust board to represent the temple. It is to be seen that the suit is filed as if it is filed by Arulmighu Selliyanman Temple at Chidambaram Town Kamatchi Amman Temple street, represented by the managing trustee of the temple and other trustees who are plaintiffs 2 to 5. The suit is not by a stranger but by the temple represented by a committee or Board of trustees. Since the suit is for recovery of possession from strangers, unless the plaintiffs prove that they are the lawful trustees, it is not possible for them to file a suit representing themselves as trustees of trust board.

8. It is true that a stranger is entitled to seek recovery of possession on behalf of the temple even if there is a trust



board in office and they failed to take action against the encroacher. However, the present suit is not by worshiper but by persons who claimed to be in office as the elected trustees of the trust board. All the persons who are in office as trustees are not impleaded as defendants. However, the first defendant was impleaded as a person who was the then trustee of the trust board. In the course of evidence, it is admitted that the first defendant is the lawful trustee of the erstwhile trust board, executed lease deeds and that independent tenancies were created in favour of defendants 2 to 17. Though the trial Court found that the lease deeds executed by the then trustee was not valid and were not proved that they were executed in compliance of Section 34 of the Act, the fact remains that the tenancy is indirectly admitted by the plaintiff and that the object of filing suit was stated to be for collecting rent from defendants 2 to 17. When the plaintiff admit in the course of evidence that the lease was created in favour of defendants 2 to 17 and that the defendants are liable to pay rent to the plaintiffs, the suit for recovery of possession by treating defendants 2 to 17 as trespassers lacks bonafide and therefore, the trial Court is right in its conclusion that the plaintiff cannot maintain a suit for recovery of possession and that the suit is not maintainable for misjoinder of cause of action in the sense that the plaintiff is not entitled to maintain a suit against defendants collectively without disclosing the portion of the property which is in enjoyment of each individual defendant. Hence, this Court is unable to interfere that the decision of the trial Court dismissing the suit for recovery of possession. However, this Court is inclined to make some further observation to protect the interest of the temple and its properties.

9. In this case, the ownership of the property in favour of the temple is not in dispute. It is always open to the lawful trustee of the temple to terminate the tenancy. The temple or the trustees representing the temple are entitled to take action under the provisions of the Act if the tenancy was created in favour of defendants 2 to 17 contrary to the provisions of the Act. It is open to the lawful trustee to terminate the tenancy in the manner known to law and then proceed to take action against the defendants 2 to 17. The lease deeds executed in the year 2000 is over and the present status of the defendants is not known to the learned counsel.

10. Since the present suit is filed by persons who claimed to be the managing trustee and trustees elected by the trust board and entitled to administer the temple but failed to prove their status and locus standi, this Court though confirmed the judgment and decree of the trial Court, record that any lawful



trustee elected or entitled to administer the temple in accordance with the provisions of the Act can initiate any action either to terminate the tenancy or to recover possession from the defendants 2 to 17 or anyone claiming under them in the manner known to law after following the procedure known to law.

The Appeal Suit is dismissed. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

bkn

To

1. The Additional District Judge,
Fast Track Court No.1,
Chidambaram.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.Usha Ramman, Advocate, S.R.No.41117

+1cc to Mr.S.Sounthar, Advocate, S.R.No.41074

A.S.No.133 of 2005

RSI (CO)
SU (29/09/2021)