



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**RESERVED ON : 22.01.2020**

**PRONOUNCED ON : 28.01.2020**

**CORAM:**

**THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

**S.A. (MD)No.588 of 2009**

WEB COPY

Arulmigu Vellam Matrum Paralayam

Katha Vinayagar Koil,

Andiyappar Street, Kumbakonam,

Represented by its Executive Officer,

having office at, A/M.Ramasamy Koil Street,

Kumbakonam.

... Appellant / Respondent / Plaintiff

Vs.

Natarajan

... Respondent / Appellant / Defendant

**PRAYER:** This Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 05.07.2007 in A.S.No.33 of 2006 on the file of the Principal Sub Court, Kumbakonam, reversing the decree and judgment passed in O.S.No.126 of 2002, dated 13.10.2003 on the file of the 1<sup>st</sup> Additional District Munsif Court, Kumbakonam.

For Appellant : Mr.V.K.Vijayaraghavan

For Respondent : Mr.R.Vijayakumar

**JUDGMENT**

Aggrieved over the judgment of the First Appellate Court, reversing the judgment of the trial Court, decreeing the suit for eviction and for arrears of rent, the present Second Appeal is filed.

2.The parties are referred to as per their rank before the trial Court.

3.The brief fact, leading to file this Second Appeal, reads as follows:-

The suit property belongs to the plaintiff Temple and the defendant was a tenant under the Temple and executed a paguthi chit in favour of Temple on 01.11.1981. The rent according to the plaintiff is Rs.10/- per month. The defendant has sub-let the suit site unauthorisedly and was in arrears of rent. Till 1406 fasali year, the defendant has to pay a sum of Rs.960/- and after due intimation to the defendant, the Joint Commissioner of H.R. & C.E. Department has fixed the fair rent at Rs.390/- per month.



The fair rent is under H.R. & C.E., Rules and the defendant was in arrears of enhanced rent from 1407 fasali year. The defendant was in wilful default and hence, the plaintiff Temple sent legal notice, terminating the tenancy of the defendant as on 31.10.2000. The notice was duly served and the defendant neither paid the enhanced rental arrears nor removed the superstructure and handed over the vacant site. The defendant after receiving notice sent a sum of Rs.690/-, leaving the arrears of Rs.17,568/-. Hence, the suit has been filed for arrears of rent and eviction.

4.Admitting the tenancy, it is the contention of the defendant that he has not defaulted and not sub-let the property to anyone. There was no mutual consent for enhancing the rent and there were no arrears as stated by the plaintiff. There is no intimation to the defendant with regard to the fair rent of Rs.390/- per month and nobody has intimated about the same to him. There was no default on the side of the defendant. Since the defendant has not accepted the enhanced rent, the same will not bind the defendant. The defendant is a legitimate paguthithar of the suit site and there is no necessity for him to remove the superstructure and hand over the possession. Hence, he resisted the suit.

5.Based on the above pleadings, the trial Court has framed five issues. On the side of the plaintiff, P.W.1 was examined and Exs.A.1 to A.7 were marked. On the side of the defendant, D.W.1 was examined and Exs.B.1 to B.7 were marked. The trial Court, after analyzing the evidence, has decreed the suit. Whereas before the First Appellate Court, it was argued by the defendant that the suit is not maintainable before the Civil Court. Only under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, (hereinafter referred to as 'the Act'), the Joint Commissioner has power to evict the tenants. The First Appellate Court has accepted the said contentions and held that the suit is not maintainable before the Civil Court and also observed that the Temple is entitled to enhance the rent and directed the defendant to pay a sum of Rs.1000/- towards enhanced rent and set aside the decree and judgment of the trial Court. Against which, the present Second Appeal has been filed.

6.While admitting the Second Appeal, the following substantial questions of law have been framed:-

*"1.Whether the finding of the lower Appellate Court that the Civil Court is having jurisdiction to entertain suit for possession of the suit property has been ousted by reason of Section 79 of HR & CE Act sustainable in law?;*

*2.Whether the finding of the lower Appellate Court is right, when the plaintiff is not entitled for enhancement*



of rent thought it has observed that the plaintiff is entitled for enhancement of rent and even ordered for a sum of Rs.1,000/- towards rent without any basis?."

7. In the Second Appeal stage, applications in C.M.P.(MD) No.2205 of 2019 and M.P.(MD)No.1 of 2014 have been filed for reception of additional evidence by the appellant under Order 41 Rule 27 of C.P.C. This Court, by its order dated 04.12.2019, has allowed the applications and recorded the evidence before this Court itself. The documents in Exs.A.8 to A.14 were marked. This additional evidence was recorded to prove the competency of the Executive Officer to file a suit. The main objection of the respondent before this Court is that the suit filed by the Executive Officer for recovery of possession, is not maintainable. To prove that the Executive Officer was authorized, besides, he was appointed as fit person of the Temple, this additional evidence was allowed by this Court. Though two substantial questions of law were framed at the time of admission by this Court, an additional substantial question of law has now been framed, which reads as follows:-

*"3. Whether the Executive Officer is competent to file a suit on behalf of the Temple?."*

8. The learned counsel appearing for the appellant vehemently contended that the finding of the First Appellate Court that the Civil Suit is not maintainable, only the Joint Commissioner has power to evict the encroacher, is not sustainable in law. It is the contention that such issue is no longer res integra. The Division Bench of this Court in similar circumstances has already held that there is no bar for the Temple to file a suit for eviction of tenants before the Civil Court. Hence, such finding is also not valid in the eye of law. It is the further contention that the First Appellate Court having observed that the Temple has power to enhance the rent, has directed the defendant to pay only Rs.1000/- towards enhanced rent. Such finding is also without any evidence, whereas the trial Court has clearly analyzed all the evidences and decreed the suit. Further, it is the contention that the additional evidence adduced before this Court clearly shows that the Executive Officer was authorized to file a suit, besides, he was appointed as fit person. The document now filed before this Court clearly indicates that the Temple was managed by the fit person, the Executive Officer is only acting as fit person. Such being the position, the suit filed by the Executive Officer cum fit person is maintainable. This is also held by the Division Bench of the Principal Seat of this Court in the judgment reported in **2003-1-L.W.386 (Sri Arthanareeswarar of Tiruchengode Vs. T.M.Muthuswamy Padayachi, etc and others)**. Hence, he submitted that this appeal has to be allowed.



9. Whereas, the only contention urged by the learned counsel appearing for the respondent is that the suit filed by the Executive Officer is not maintainable before the Civil Court. Unless he was authorized by the Commissioner, he cannot maintain the suit. The suit has not been filed in the name of fit person, whereas, the suit has been filed in the name of Executive Officer, even the appeal was also filed only in the capacity of Executive Officer. Therefore, without any authorization, the suit has been filed by the Executive Officer, which is not maintainable. The person, who has issued Ex.A.13, certificate has not been examined. Hence, it is the contention that the certificate cannot be given much importance, it was filed to fill up the lacuna at the later point of time. Hence, it is the contention that the Division Bench of the Principal Seat of this Court in the judgment reported in 2003-1L.W. 386 referred to above, has clearly held that the Executive Officer is not a competent person to file a suit. It is the further contention that unless the power is conferred to the Executive Officer under Section 45 of the Act, he is not a competent person to file a suit and since there is no evidence to show that he was assigned power to file a suit, the suit filed by the Executive Officer is not maintainable, hence, prayed for dismissal of the appeal.

10. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and perused the entire materials available on record.

11. It is not in dispute that the defendant is the tenant under the plaintiff Temple. He was inducted as tenant for monthly rent of Rs.10/-. It is the case of the Temple that the rent has been increased from time to time and for 1406 fasali year, rent has been increased by the Joint Commissioner. As the defendant had failed to pay the amount, his tenancy was terminated. The landlord and tenant relationship has not been disputed by the defendant. His only contention that the defendant has only paid a sum of Rs.10/- per month and he is not aware of the enhanced rent. Therefore, there is no arrears according to him. Whereas, the trial Court has analyzed the entire evidence and factually found that the defendant has defaulted the arrears of rent and accordingly, has passed eviction order. In the appeal filed against the judgment before the First Appellate Court, the defendant has not questioned the enhancement of rent. The main focus of the argument is about the maintainability of the suit before the Civil Court. It was contended before the First Appellate Court that the suit for eviction of the tenant is not maintainable before the Civil Court. On that ground alone, the First Appellate Court has set aside the entire judgment of the trial Court. Before this Court, it is the main contention of the respondent that the suit filed by the Executive Officer is not



maintainable. It is to be noted that such defence has not been taken before the trial Court. First time, such plea has taken in the Second Appeal as question of law. Be that as it may, it is the contention of the Temple that in fact, the Temple in question is non-listed Temple. Therefore, the Executive Officer is acting as a fit person. Being the fit person, the Executive Officer is competent to file a suit. Therefore, the suit has been filed in the name of Executive Officer. To prove the above contention, additional evidence was filed before this Court and P.W.2 and P.W.3 were examined in this regard.

12.The learned counsel appearing for the respondent was also permitted to cross-examine the witnesses. Even in the cross-examination, no substantial material was brought on record to disbelieve the evidence of P.W.2 and P.W.3, who were examined before this Court.

13.P.W.2 has stated in his evidence before this Court that the Temple is a non-listed Temple, which has neither hereditary trustee nor non-hereditary trustee nor trust board to manage its affairs till date. The Temple is under the control of H.R. & C.E. Department and the Executive Officer of A/m.Anumar Temple, Periyakadai Street, Kumbakonam, is appointed as fit person for the appellant Temple. Therefore, he is the fit person and having power to file a suit. To prove that the Temple is a non-listed Temple, Exs.A.9 and A.10 have been filed. Exs.A.9 the proceedings of the Executive Officer sent to the Joint Commissioner dated 04.06.2012, indicates the taking and handing over the charges of the Temple by the Executive Officer. Ex.A.10 is the similar communication dated 09.09.2013. Ex.A.11 shows that the Executive Officer was appointed as fit person in the Temple. Ex.A.12 is also proved taking and handing over the charges of the Temple. Ex.A.13 was issued by the then Assistant Commissioner, stating that the Temple is managed by the fit person / Executive Officer. Though the author of the certificate i.e., the Assistant Commissioner was not examined, P.W.3 in his evidence has clearly stated that the Assistant Commissioner retired from service and he has filed the certificate from the office files. Ex.A.14 is the authorization given by P.W.3 Assistant Commissioner to the Executive Officer / fit person to maintain the suit. P.W.3 is the author of Ex.A.14. He has spoken before this Court.

14.A perusal of the above documents makes it clear that the Temple is non-listed Temple and managed by fit person. There is no hereditary trustee nor the non-hereditary trustee nor trust board. Only fit person has managed the property and the suit has been filed by the Executive Officer. When it is established on record that the Temple was managed by the fit person and the



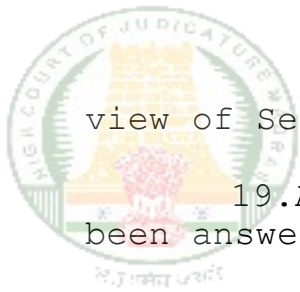
Executive Officer is alone fit person, merely the suit has been filed in the name of the Executive Officer, instead of fit person, it cannot be said that the suit is not maintainable. Though there was a defect in the cause title, that itself cannot be a ground to throw out the entire suit. When the facts have been clearly established that as far as the Temple is concerned, the Executive Officer was appointed as fit person, now, it cannot be said that the suit filed in the name of the Executive Officer for the Temple is not maintainable before this Court. Though the Executive Officer was appointed, he was acting also as fit person to the non-listed Temple.

15. In the judgment reported in 2003-1-L.W. 386 referred to above, in paragraph No.50, this Court has held that the Executive Officer is not the competent person to file a suit. But in the above judgment, this Court has held that the board of trustees or fit person are the competent persons to initiate legal proceedings. The above judgment was relied upon in S.A.No.765 of 2008, wherein, in similar circumstances, this Court has held that the board of trustees or fit persons are competent to initiate legal proceedings. The additional evidence adduced before this Court clearly proves that the Executive Officer was given in charge of the Temple. Such being the position, the suit filed by the Executive Officer, who is acting as fit person, is well maintainable. Therefore, merely in the cause title fit person's name is not referred, it cannot be said that the suit is not maintainable.

16. The Division Bench of this Court in the judgment reported in **2011-2-L.W.1 (A.N.Kumar Vs. Arulmigu Arunachaleswarar Devasthanama Thiruvannamalai and others)** has held that the suits filed by the Temple for eviction of the tenants, licensees, mortgages for filing of the ejectment suit, the Civil Court's jurisdiction is not barred. The decision to approach the Civil Court or invoke the provisions of H.R. & C.E., Act vests with the Temple. In cases of encroachers, the Temple authorities can either resort to the provisions under Sections 78, 79, 79A, 79B of the Act or to approach the Civil Court. The decision to elect a particular procedure lies with the owner of the property, being the Temple.

17. In the judgment reported in **2011 (2) MWN (Civil) 801 (Thomas Educational & Charitable Trust, Vs. Arulmigu Ekambaranathar Thirukovil)**, the Division Bench of this Court has held that the suit filed by the Temple represented by the Executive Officer is maintainable in law.

18. Therefore, considering the above judgment, the finding of the first Appellate Court that the suit is not maintainable, in



view of Section 79 of the Act, is liable to be interfered.

19. Accordingly, all the substantial questions of law have been answered in favour of the appellant Temple.

20. In the result, this Second Appeal is allowed and the judgment of the First Appellate Court is set aside and the decree of the trial Court is restored. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

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To

1. The Principal Subordinate Judge,  
Kumbakonam.

2. The 1<sup>st</sup> Additional District Munsif,  
Kumbakonam.

Copy to

The Section Officer, -2 copies  
Vernacular Records,  
Madurai Bench of Madras High Court,  
Madurai.

+1 CC to Mr. R. VIJAYAKUMAR, Advocate ( SR-3441[F] dated  
28/01/2020 )

+1 CC to Mr. V. K. VIJAYARAGAVAN, Advocate ( SR-3462[F] dated  
28/01/2020 )

**Judgment made in  
S.A. (MD) No. 588 of 2009  
28.01.2020**

KM/ (17.02.2020) 7P 7C