



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON: 22.11.2019
PRONOUNCED ON: 30.06.2020
CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
SECOND APPEAL (MD) Nos.194 and 195 of 2005
AND

M.P.(MD). Nos.2 and 2 of 2015 in both appeals

1.Jayachandran

2.Gurusamy

3.Ullashkumar

4.G.Santha

5.Mareeswari

6.S.Ramesh Latcham

7.Subramaniam

8.Kalaiselvi

... Appellants/Respondents/
Defendants in
both the appeals /
Respondents /
L.Rs. of original defendant

Vs.

1.Kottaipatti Chinna Pallivasal,
Muslim Jamath,
Virudhunagar, rep. by its
M.Noorul Amin - President,
No.1, Chinna Pallivasal St.,
Virudhunagar Town,
Virudhunagar District.

2.M.Ahamed Basheer

3.A.Pakeer Mohammed

4.N.Meera Mohideen

5.S.Khaleel Rahman



6.A.Syed Mohammed

7.A.Ahamed Ibrahim

... Respondents /
Plaintiffs

(Respondents 1 to 7 are substituted in the place of R1 to R10, as per the order of the Court dated 20.06.2019 made in C.M.P.(MD). Nos.713 and 714 of 2019)

COMMON PRAYER: Second Appeals filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 29.07.2004, passed in A.S.Nos.24 and 25 of 2002 by the Additional District cum Fast Track Court, Virudhunagar, reversing the judgment and decree dated 27.10.1993 passed in O.S.Nos.436 of 1988 and 470 of 1989 by the District Munsif Court, Sattur.

For appellants in
both the appeals

... Mr.R.Devaraj

For respondents 1 to 7 in
both the appeals

... Mr.A.J.Taslim Arif

COMMON JUDGMENT

Both the second appeals have been filed by the appellants/Legal Heirs of the defendant against the judgment and decree passed by the first appellate Court in A.S.Nos.24 and 25 of 2002, whereby and whereunder the judgment and decree of the trial Court was reversed and thereby the suits were decreed as prayed for.

2. For better appreciation and understanding, the parties are referred to as per their rank in the suits.

3. The case of the plaintiffs is that the first plaintiff is a registered Public Wakf as Wakf No.194/RMD and the second plaintiff is a Managing Trustee and Secretary of the first plaintiff and he is authorised by the Board and Jamath to conduct the cases. The properties bearing Door Nos.334 to 345 which are lying in a row in Railway Feeder Road at Virudhunagar, belonged to the first plaintiff. All these buildings are very old buildings and they have been leased out to several tenants on monthly rents. The defendant has been running a business in Door Nos.334 and 343 and he has been paying monthly rent of Rs.319/- for both the building bearing Door No.334 and vacant site adjacent to it (totally measuring 2376 sq. ft.) and Rs.127/- to the building bearing Door No.343. The first plaintiff decided to demolish all the buildings and to construct new complex building with 20 shops in a row in



the ground floor and 20 lodging rooms and also to construct Marriage Hall in the first floor, for which necessary approval from Wakf Board and aid from the Central Wakf Council was sanctioned. In these circumstances, the tenancy in favour of the defendant and other tenants were terminated by registered notices dated 15.02.1988. After receipt of the notices, most of the tenants handed over vacant possession of the buildings. The defendant has sent replies with false allegations that he was a partner of Narayana Nadar, Chidambara Nadar and Co. and that he became the owner of the superstructure and he is the lessee of the site alone. The whole property is assessed under one assessment in the name of the first plaintiff and there is no separate assessment for superstructure in the name of the defendant. The defendant is not entitled to the benefit of the Tamil Nadu City Tenants Protection Act. The first plaintiff being a public Wakf and registered Wakf, Rent Control Act is not applicable and hence, the suit is filed. Though the first plaintiff is entitled to file suit through its Managing Trustee and Secretary, in order to avoid objections of the defendant, the suits are filed in a representative capacity also. Thus, the plaintiffs have filed the suit for permitting them to file the suits in a representative capacity also; for delivery of vacant possession of the suit properties to the first plaintiff and for damages for use and occupation for a further period from the date of plaint till delivery of possession.

4. The case of the defendant is that the first plaintiff is not a registered Public Wakf under Wakf Act and the first plaintiff is only the owner of the site. The same was leased out to one Narayana Nadar. Narayana Nadar was running a business in partnership with one Chidambara Nadar & Co. At that time, in the year 1950, he had constructed the superstructure in the vacant site and he had been paying ground rent to the first plaintiff. Tax was assessed in the name of the said Narayana Nadar for the superstructure. After the death of Narayana Nadar, the defendant has purchased the superstructure as well as entire business from the legal heirs of Narayana Nadar and as such the defendant became the owner of the superstructure. After termination of tenancy, the Jamath has received the rent and hence, a new tenancy has been created.

5. During the pendency of the suits, the defendant had filed City Tenants Original Petitions in C.T.O.P.Nos.1 of 1989 and 2 of 1991 for a direction to the first plaintiff to sell the properties to him at the rate to be fixed by the Court.

6. Before the trial Court, on the side of the plaintiffs, the 2nd plaintiff himself was examined as PW1 and Exs.A1 to A84 were marked and on the side of the defendant, the defendant himself was



examined as DW1 and DWs.2 to 3 were examined and Exs.B1 to B58 were marked. On the side of the Court, Exs.C1 to C6 - the Advocate Commissioner's reports and plans were marked.

7. The trial Court, after appreciating the oral and documentary evidence, has dismissed the suits and allowed CTOPs by a common judgment dated 27.10.1993. Aggrieved by the same, the plaintiffs have filed A.S.Nos.24 and 25 of 2002 and C.M.A.Nos.3 and 5 of 2002. During the pendency of the above appeal suits, the plaintiffs have impleaded the Executive Officer of the first plaintiff as 6th respondent and as the sole defendant died, his legal heirs were impleaded as respondents 2 to 9 in the appeal suits. The first appellate Court, after re-appreciating both the oral and documentary evidence, has allowed the appeal suits and dismissed the Civil Miscellaneous Appeals and thereby decreed the suits as prayed for, by a common judgment dated 29.07.2004. Challenging the judgment and decree passed by the first appellate Court in the appeal suits, the legal heirs of the original defendant ie., the respondents 2 to 9 in the appeal suits as appellants 1 to 8 have filed these second appeals.

8. During the pendency of these appeals, the Executive Officer of the first plaintiff had filed C.M.P.(MD).Nos.5190 and 5192 seeking for a direction to the legal heirs of the defendants to deposit a sum of Rs.67,309/- and Rs.26,797/- as arrears of rent, to the credit of the respective suit. This Court, by order dated 20.10.2005, has directed the legal heirs of the defendant i.e, the appellants to pay a sum of Rs.45,000/- and 15,000/- directly to the Executive Officer of the first plaintiff within a period of six weeks and to continue to pay the damages at the decreed rate. This Court has further held that the interim stay granted on 01.03.2005 is subject to the payment of the amount as directed above in C.M.P.Nos.5190 and 5192 of 2005 and that if the above said directions are not complied with, the interim stay granted will stand automatically vacated. Though this Court specifically directed the appellants to continue to pay the damages at the decreed rate, it is seen that the legal heirs of the defendant/appellants have been paying the rent intermittently and not continuously, which resulted in automatic vacation of the interim order.

9. Both the second appeals were admitted on the following substantial questions of law:

"1. Whether the suit filed by the respondents is maintainable when the first respondent is not the Managing Trustee of the Jamath?

2.Whether the lower appellate Court is right in allowing the respondents 2 to 5 to file the suit in representative capacity under Order 1 Rule 8 of



C.P.C.?

3. Whether the Lower Appellate Court is right in upholding the validity of the notice issued under Section 106 of the Transfer of Property Act?

4. Whether the lower appellate Court is right in allowing the suit filed by the unregistered Wakf and non-members of the Wakf contrary to Section 57 of the Wakf Act?"

10. Heard the learned counsel appearing for both sides and perused the records carefully.

11. Admittedly, it is not in dispute that the land of the suit properties belonged to the first plaintiff / Jamath. Both the plaintiffs as well as defendant have not produced any bills relating to the construction of the building in the suit properties. Both the Courts below have also concurrently held that the superstructure in the suit property was constructed by Narayana Nadar and the same was subsequently purchased by the defendant from the legal heirs of Narayana Nadar, based on the documents Exs.B1 - a copy of the Property Tax Register for the superstructure relating to the year 1962-63; Ex.B2 - a copy of the Property Tax Register for the superstructure relating to the year 1973-74 and Ex.B12 - an agreement executed by the legal heirs of Narayana Nadar in favour of the defendant and the evidence of DW2 - Junior Assistant, Virudhunagar Municipality, to the effect that Exs.A4 to A15 - Property Tax receipts are related to only land and not related to superstructure, and that as per the demand notice register of the Municipality relating to the years 1982-84 to 1990-92, the first plaintiff was imposed tax only for land and not the superstructure. This Court does not find any reason to interfere with the said finding of the Courts below.

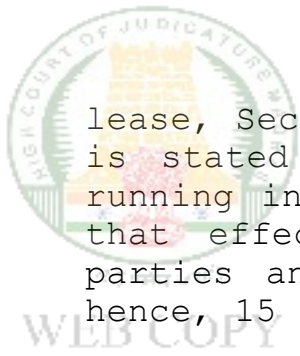
12. According to the defendant, the first plaintiff is not entitled to file the suit as it is not a registered Wakf and the 2nd plaintiff was not the Managing Trustee of the Wakf. Admittedly, the defendant has not produced any evidence to prove the above contention. In the plaint itself, the plaintiffs have stated that the first plaintiff is a registered Public Wakf in No.194/RMD under the Wakf Act. Ex.A55 - Pro-forma Report, dated 23.09.1955, shows that the first plaintiff / Wakf was created about a couple of centuries ago. Though the defendant has stated that the 2nd plaintiff is not the Managing Trustee of the first plaintiff, the defendant himself in the City Tenants Original Petitions has arrayed only the 2nd plaintiff as Managing Trustee of the first plaintiff. Further, a perusal of Exs.A1 - Letter of the Secretary of Tamil Nadu Wakf Board and A2 - Resolution of the Jamath show that the 2nd respondent was permitted by the Board as well as Jamath to conduct the case.



13. According to the defendant, the plaintiffs 2 to 5 are not the members of Jamath. As stated earlier, the defendant has not created any dint on such contention by producing any piece of document. It is stated that as it is a Public Wakf, the plaintiffs 2 to 5, who were members of the Wakf, also arrayed as parties in the suit, in order to avoid technicalities and they represented not only on behalf of them but also on behalf of the members of Jamath. Mere statement, without there being valid evidence, is not sufficient to contradict above version of the plaintiffs. More over, Order 1 Rule 8 of the Code of Civil Procedure enables one or more persons to sue on behalf of numerous persons having the same interest with the permission of the Court. In this case, they sought for permission in the plaint itself and the permission has been granted by the Court. This Court does not find any reason to interfere with the said finding of the first appellate Court.

14. As per Section 57 of the Wakf Act, in every suit or proceeding relating to title to the Wakf property, the Court shall issue notice to the Board at the cost of the party instituting such suit or proceeding. In the absence of a notice, any decree or order passed in the suit proceeding shall be declared as void, if the Board within one month of its coming to know of such suit or proceeding, applies to the Court in this behalf. In this case, as per Ex.A1, the first plaintiff was permitted to institute suits in respect of the suit properties by the Wakf Board. As the suit itself had been instituted with the permission of the Wakf and this issue has been raised at the first instance, this Court is of the view that non sending of notice need not be taken serious note of.

15. As per Section 106 of the Transfer of Property Act, if the lease is for manufacturing unit, the tenancy could be terminated by six months notice or otherwise, fifteen days notice is enough. In the decision in **Ram Kumar Das Vs. Jagadish Chandra Deo and others**, reported in **AIR 1952 SC 23**, the Hon'ble Supreme Court has held that Section 106 of the Transfer of Property Act is applicable when there is no period agreed upon between the parties and in such cases, duration has to be determined by reference to the object or purpose for which tenancy is created. In the case of **Samir Mukheerji Vs. Davinder K.Bajaj and others**, reported in **2001 (5) SCC 259**, the Hon'ble Supreme Court has also held that in case of lease for manufacturing purpose without obtaining registered instrument, issuance of 15 days notice for termination of the lease is proper. Therefore, the principles laid down in these cases are very clear that only valid contracts between the parties decide as to how the lease has to be terminated and if the contract is silent with regard to duration of termination of



lease, Section 106 of the Act will apply. In this case, though it is stated by the defendant that a manufacturing unit has been running in one of the properties, there is no record produced to that effect and there is also no valid contract between the parties and the tenancy is, therefore, from month to month and hence, 15 days notice for termination of tenancy is enough.

16. According to the defendant, the first plaintiff has lost his right to evict, as it has received rent even after issuance of termination notice and a new tenancy has been created by the act of Jamath receiving rent. This Court is of the view that mere acceptance of rent after termination of lease does not result in waiver of right to evict a tenant. It all depends on the intention of the landlord. Payment of rent is an obligation on the part of the tenant. In a suit for ejectment if the landlord is entitled to claim arrears of rent or damages for use and occupation, mere acceptance of rent after issuance of notice and during pendency of the suit, does not alter the right of landlord to evict his tenant.

17. As per Section 3 of the Tamil Nadu City Tenants' Protection (Amendment) Act, 1994, the defendant cannot be entitled to claim the benefits of Act on the footing that they are the owners of the superstructure. The first appellate Court has held that though it is decided that the superstructure belongs to the defendant, as the defendant has not prayed to fix the value of the property and not paid proper Court fee, he can separately file an application for such relief. This Court does not find any reason to interfere with the above finding of the first appellate Court. Thus, all the substantial questions of law are answered against the defendant / appellants.

18. In the result, both the Second Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gcg



To

1.The Additional District Judge,
Additional District cum Fast Track Court,
Virudhunagar.

2.The District Munsif, Sattur.

3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

COMMON JUDGMENT MADE IN
S.A. (MD) Nos.194 and 195 of 2005
30.06.2020

db (CO)
TR(10.07.2020) 8P 5C