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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A.No.614 of 2008

Sekar

... Appellant/2<sup>nd</sup> Respondent / 2<sup>nd</sup> Defendant

versus

1. Thiruppanandhal Sri Kasi Mutt  
Religious Trust,  
Represented by its Proprietor-cum-Trusty  
Sri-la-Sri Kasivasi Muthukumaraswami  
Thambiran Avargal,  
Thiruvidaimaruthur Taluk,  
Kumbakonam District Munsif. ... 1<sup>st</sup> Respondent/Appellant/Plaintiff

2. M. Narayanasami ... Respondent/1<sup>st</sup> Respondent/1<sup>st</sup> Defendant

Second Appeal filed to set aside the judgment and decree passed in A.S.No.226 of 2006 dated 27.03.2007 on the file of Sub Court, Mannargudi reversing the judgment and decree passed in O.S.No.187 of 2003 dated 16.12.2005 on the file of District Munsif Court, Mannargudi.

For Appellant : M/s. P.T. Ramadevi

For Respondents : Mr. R. Vasudevan for R1  
R2- died

#### JUDGMENT

The second defendant in a suit for mandatory injunction and permanent injunction is the appellant before this Court. The appellant seeks to challenge the concurrent judgement of District Munsif Mannargudi in O.S.No.187 of 2003 which was confirmed by the Subordinate Judge, Mannarkudi in A.S.No.226 of 2006.



2. The brief facts which have culminated in the filing of the suit are as follows:

The parties are referred to in the same litigative status as shown in the suit.

2.1. The suit schedule property which belongs to the plaintiff was leased out by them to the first defendant. The suit was leased out for agricultural purposes just prior to the filing of the suit. It appears that the first defendant had converted the agricultural lands into a housing site and sub leased the property to the second defendant. This came to the knowledge of the plaintiff trust only when their power agent visited the suit property on 10.11.2003. The power agent also came to understand that the second defendant (the appellant herein) was making arrangements to raise a basement in the suit property. This attempt was successfully thwarted by the plaintiff trust and hence the suit.

### 3. Written Statement of the First Defendant:

3.1. The first defendant had filed written statement inter alia admitting the ownership of the plaintiff to the suit property and contends that there was no arrears of rent as the same has been paid into the Revenue Court. He would further submit that since he was ill, he had handed over a portion of the suit property, i.e., an extent measuring 100 kuzhi of land, to the second defendant under a sub lease. This fact was also was also informed to the plaintiff who has been receiving the Kuthagai, (the rent) from the second defendant. The second defendant is not in possession of the entire suit property . From the year 1991 the second respondent is residing in the suit property and the plaintiff has to evict him only as per the due process of law.

3.2. The second defendant would inter alia contend that no arrangements for raising the basement had been undertaken by him and he had constructed a house in the poramboku land which is adjacent to the suit property. He would also contend that lease in his favour was known to the plaintiff and that he is not in possession of the entire suit property. However he would contend that from 1991 he is residing in the suit property.

### 4. Trial Court:

4.1. The learned District Munsif, Mannargudi had framed the following questions of law



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"1. Whether the plaintiff is entitled to mandatory injunction as prayed for?

2. Whether the plaintiff is entitled to permanent injunction as prayed for ?

3. To what relief ? "

4.2. The plaintiff had examined two witnesses on their side and had marked Exs. A1 to A6. The defendants had also examined two witnesses and marked Exs.B1 to B3. The Learned District Munsif had dismissed the suit by contending that the plaintiff had not proved their cause of action, this despite the fact that the learned Judge had held that the second defendant had not proved the sub lease and was therefore was a trespasser. The said judgment and decree was challenged by the plaintiff in A.S.No.226 of 2006 before the Subordinate Court, Mannargudi. The learned Subordinate Judge on considering the evidence on record allowed the appeal. It is challenging this judgment and decree that the second defendant is before this court.

5. Questions of law:

5.1. The above Second Appeal has been admitted on the following substantial questions of law.

"1. Whether the finding of the First Appellate Court is perverse which is against the pleadings and evidences?

2. Whether the First Appellate Court is right in reversing the judgement and decree passed by the trial Court without framing necessary issues and giving reasons for reversing the same in violation of Order 41 Rule 31 of C.P.C ?"

6. Heard the counsels and perused the records.

7. Discussion:

7.1. The plaintiff has filed the suit stating that the first defendant has sub leased the property without their consent and the property which was leased out for agricultural purposes was being converted into a house site by the second defendant which came to the knowledge of the plaintiff when their power agent had visited the property. Both the defendants had taken out a plea that the sub lease in favour of the second defendant was with the consent of the plaintiff and that the second



defendant has been remitting the lease rentals to the plaintiff. It is however admitted that the property that was leased in favour of the first defendant was only an agricultural land and not a residential property. There is no evidence on the side of the defendants to show that they had got prior permission of the landlord namely the plaintiff for sub-leasing the property and for converting the property for a use other than for it was leased out. However, it is the case of the defendants that they had obtained the permission of the plaintiff for putting up a construction on the suit property. The said act is violative of the provisions of Section 108 (p) of the Transfer of property Act. That apart, the receipts filed on the side of the second defendant is all in the name of the first defendant and therefore it is clear that the sub lease was not with the consent of the plaintiff. The second defendant as D.W.1 has admitted that construction put up by him was only in the poromboke land and not in the suit property. The Poromboke land is situate to the south of the suit property. However the Advocate Commissioner report Exs. C1 and C2 would show that the construction has been put up in the suit property. Therefore, terms of the lease have been breached. Further the second defendant has also not been able to establish the fact that his possession of the property has been with the consent of the plaintiff. Considering the fact that the second defendant has been inducted as sub lessee without the consent of the appellant and the defendants have also breached the terms of the lease the Appellate Court has rightly allowed the appeal. The Appellate Court had given sound reason for setting aside the judgment and decree of the Trial Court. Therefore, the substantial questions of law are answered against the appellant and the Second Appeal stand dismissed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mrn

To

1.The Sub Court, Mannargudi



2. The District Munsif Court,  
Mannargudi.

Copy To:

The Section Officer,  
V.R.Section,  
High Court, Madras-104.

+1cc to M/s.T.Susindran, Advocate, S.R.No.28465

+1cc to M/s.P.T.Ramadevi, Advocate, S.R.No.28329

S.A.No.614 of 2008

VSN-II(CO)  
SB(20/09/2021)