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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :30.07.2021

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.1315 of 2010

&

M.P.No.1 of 2010

Sri Mariamman
Annadhanapatti
Salem rep. by its
Present Executive Officer H.R. & C.E.
Mr.Aravazhi ...Appellant/ Appellant/Plaintiff

Vs.

Commissioner
Salem Municipal Corporation
Salem ...Respondent/ Respondent/ Defendant

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 07.12.2009 made in A.S.No.153 of 2007 on the file of the II Additional Subordinate Judge, Salem, confirming the Judgement and Decree dated 12.03.2007 made in O.S.No.216 of 2003 on the file of the I Additional District Munsif Court, Salem.

For Appellant : M/s.Sathyasatheesh
for Ms.Zeenath Begum

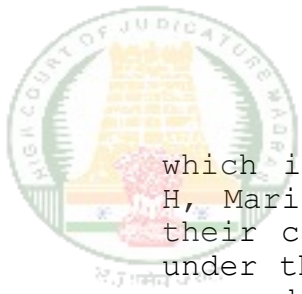
For Respondent : Mr.K.Sridhar
for M/s.K.Sridhar Associates

JUDGMENT

The unsuccessful plaintiff before the Courts below is the appellant before this Court. The appeal is filed challenging the Judgment in A.S.No.153 of 2007, II Additional Subordinate Court, Salem, in and by which the learned Judge had confirmed the Judgment and Decree in O.S.No.216 of 2003, I Additional District Munsif, Salem.

2. The facts in brief necessary for disposing of the above Second Appeal is herein below narrated and the parties are referred to in the same array as in the suit.

3. The plaintiff would claim a right to the suit property



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which is an extent of 8642 Sq.ft comprised in S.No.3/2, Ward - H, Mariamman Koil Street, Annathanapatti Village, Salem. It is their case that the property belongs to the temple, which comes under the administration of the H.R. & C.E department and is now managed by the Executive Officer appointed by the H.R. & C.E department.

4. The case of the plaintiff is that the property had been leased out to the Corporation, the defendant for running the School and that the defendant has been paying rents to the plaintiff. In the year 2001, the Joint Commissioner, H.R. & C.E had enhanced the rents and the resolution so passed was also communicated to the defendant who had received the same on 03.02.2003. Apart from the suit property there were two other properties which were leased out to the corporation.

5. The case of the plaintiff is that the defendant had not paid the enhanced rent which left an arrears of a sum of Rs.79,815/-. In addition to that the corporation had proceeded to demolish a portion of the compound wall which was immediately countered by the plaintiff. However, the plaintiff later came to know from a public notice that the defendant is putting up a new construction and that the foundation laying function was to be held. The plaintiff also came to know that tender has been floated inviting bids for putting up construction. Therefore, the plaintiff has rushed to the Court seeking order of permanent injunction restraining the defendant, their men and servants from demolishing and putting up any construction.

6. The defendant had entered appearance and filed a written statement contending that the suit property is a Government porambockku land and that the defendant had not taken the same on rent from the plaintiff. They admitted that the property comprised in S.No.3/1 had been rented out by the plaintiff and that the defendant had been paying rent for the same to the plaintiff. The further case of the defendant is that the School building was in highly dilapidated state and there is a high risk of collapsing at any moment. Therefore, considering the safety of the students, the corporation had decided to put up a new construction. The work was allotted to the highest bidder, the School building has also been completed and the School had also started functioning.

7. The learned I Additional District Munsif, Salem had framed an issue as to whether the plaintiff was entitled to permanent injunction? The learned Judge had returned a finding that the defendant had proved that the property in question was Government porambockku, in which they were in possession. The plaintiff who had come forward with the case that the property was leased out to the defendant had not produced any document to substantiate the same. Therefore, the suit was dismissed.



After the dismissal of the suit, it appears that the construction had been completed.

8. The plaintiff challenged the Judgement before the II Additional Subordinate Judge, Salem in A.S.No.153 of 2007. The learned Judge concurred with the finding of the Trial Court and dismissed, thereby confirming the Judgement and Decree of the Trial Court.

9. Challenging the said Judgement and Decree, the appellant is before this Court.

10. The Second Appeal was admitted on the following Substantial Questions of Law:

"(i)Whether the Courts below are right in negating the plaintiffs claim that the suit building is belonging to the school temple by overlooking the admission made on the part of the defendant and without considering the available evidence?

(ii)Whether the Courts below are right in negating the relief of permanent injunction restraining the construction of additional building in the suit property by the tenant without the permission or consent of the land owner?"

11. M/s.Sathyasatheesh, learned counsel appearing on behalf of the plaintiff / appellant would submit that after the suit was dismissed the construction of the building is completed and the School is functioning. In fact this School is in existence since the year 1886.

12. Considering the fact that the building has been completed after the dismissal of the suit the prayer in the suit has become infructuous. The plaintiff has not sought to amend the prayer even before the Appellate Court. That apart, the plaintiff has not let in any evidence to show that the suit property had been leased out by them to the defendant except for filing a legal notice that had been issued by them. Even the resolution which is said to have been passed by the Joint Commissioner, H.R. & C.E and communicated to the defendant is not filed before the Court.

13. Therefore, considering that the construction has been completed and the plaintiff has not been able to prove their right to the suit property and the fact that they had leased out the property to the defendant, the substantial questions of law are answered against the plaintiff. The Second Appeal is dismissed. Consequently, connected Miscellaneous Petition is also closed. No costs.

14. After the pronouncement of the Judgement, the learned



counsel for the plaintiff / appellant would submit that the defendant may be directed to pay the rents with reference to the property taken on lease from the plaintiff temple. Mr.K.Sridhar, learned counsel appearing for the defendant / respondent assures the Court that the rents are being paid and if there is any arrears the same would be regularised.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional Subordinate Judge,
Salem
2. The I Additional District Munsif Court,
Salem.

+1CC to M/s.V.Rajesh, Advocate, Sr.No.37220

S.A.No.1315 of 2010

RSV(CO)
SB(17/11/2021)