



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2021

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.531 of 2010

Arulmighu Sundara

Vinayagar Temple, Walajahpet

represented by its

Managing Trustee

V.S. Paramasivam

...Appellant /Plaintiff

Vs.

1. Sampoorname

2. Moorthy

3. Gunapushnam

4. Yogalakshmi

5. Yakkala

... Respondents/Defendants

Prayer : Second Appeal filed under Section 100 of CPC, 1908 against the decree and judgment dated 30.10.2009 passed in A.S. No.31 of 2009, on the file of the Subordinate Judge, Ranipet, Vellore District, reversing the decree and judgment dated 30.03.2009 passed in O.S. No.77 of 2002, on the file of the District Munsif cum Judicial Magistrate-I, Walajapet.

For Appellant : Mr. R. Ramakrishnan

Respondents : Mr. R. Gowthaman

JUDGMENT

The appellant, Arulmigu Sundara Vinayagar Temple represented by its Managing Trustee is the plaintiff in O.S.No.77 of 2002 on the file of the District Munsif cum Judicial Magistrate, Walajapet.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their ranking in the present appeal would also be indicated.

3. The case of the plaintiff in nutshell is as follows:
The suit property absolutely belongs to the plaintiff



temple. Originally one Duraisamy Naidu, husband of the first defendant and father of the defendants 2 to 5 was a tenant in the suit property under the plaintiff on a monthly rent of Rs.20/-. After the demise of Duraisamy Naidu, the first defendant was recognized as the tenant by the plaintiff and she had not only been residing in the suit property but also running a fire wood shop. Even during the lifetime of Duraisamy Naidu, he did not pay the rents regularly to the plaintiff and he was a chronic defaulter. The rent used to be paid by him only after filing suits for recovery of the arrears of rents and one such suit in O.S.No.550 of 1983 was filed before the District Munsif, Walajapet. The said suit was also decreed, as is seen from a certified copy of the decree Ex.A1. Subsequently, the rents due to the plaintiff were not paid by the defendants and therefore, the plaintiff issued a legal notice dated 04.04.2002, a copy of which is marked as Ex.A2, terminating the tenancy of the defendants. The first defendant sent a reply notice dated 29.04.2002 (Ex.A3), which according to the plaintiff contained false allegations. Therefore, the plaintiff filed a suit for ejectment against the defendants in O.S.No.77 of 2002.

4. The first defendant filed a written statement and the same was adopted by the other defendants. In the written statement the first defendant had contended that the second defendant was not a tenant in the suit property and that she along with the defendants 3, 4 and 5 were alone the tenants under the plaintiff. It is further contended that she is running a fire wood shop in a property adjacent to the suit property and the same belongs to the Tamil Nadu Highways Department. According to her, she is not aware of the suit in O.S.No.550 of 1983 against her late husband on the file of District Munsif cum Judicial Magistrate, Walajapet, and that though she has expressed her willingness to buy the suit property in her reply notice Ex.A3, the plaintiff did not respond properly. It is also her contention that the suit filed by the plaintiff is not maintainable since the Executive Officer of the plaintiff temple has not been impleaded as a proper and necessary party in the present suit.

5. The trial court, after framing appropriate issues and after full contest, decreed the suit in favour of the plaintiff vide its decree and judgment dated 30.03.2009 on the ground that the defendants has committed default in payment of rents to the plaintiff and that the plaintiff had also issued a valid notice under Section 106 of the Transfer of Property Act.

6. Aggrieved over the same, the defendants filed an



appeal in A.S.No.31 of 2009 before the Subordinate Court, Ranipet, Vellore District. The learned Subordinate Judge, Ranipet, vide his decree and judgment dated 30.10.2009 reversed the findings of the trial court and dismissed the suit filed by the plaintiff on the ground that since the plaintiff had not impleaded the Executive Officer, The Tamil Nadu Hindu Religious and Charitable Endowments Department, the suit is bad for non-joinder of necessary parties. It is further held that the managing trustee cannot file a suit for ejectment especially when the plaintiff temple comes under the purview of the Tamil Nadu Hindu Religious and Charitable Endowments Act. However, the appellate court did not record any findings as to whether the defendants have committed wilful default in payment of rents or that a valid notice was issued under Section 106 of the Transfer of Property Act.

7. Aggrieved over the same, the present second appeal is filed by the plaintiff. The substantial question of law in the instant case is whether there is any bar for a Managing Trustee of the temple to file a suit against a tenant.

8. A bare perusal of the judgment of the trial court shows that the defendants did not pay the rents since 1998 and a suit was also filed by the very same plaintiff in O.S.No.550 of 1983 for recovering the arrears of rents from the original tenant Duraisamy Naidu and the same was decreed as is evidenced by the certified copy of the decree Ex.A1. It is also in evidence that after the death of Duraisamy Naidu the defendants continued to occupy the suit property and according to the plaintiff they have also been recognized as tenants. The trial court had held that since the first defendant had paid rents for the period 1998 to 2002 through a cheque after receipt of the notice dated 04.04.2002 from the plaintiff, the defendants have committed wilful default in the payment of the rents. In fact this finding of the trial court is based on the oral and documentary evidence adduced on the side of the plaintiff and the defendants. Therefore, there is no difficulty in holding that the defendants have committed wilful default in payment of rents. The first appellate court dismissed the suit filed by the plaintiff only on the ground that the managing trustee of the plaintiff temple is not empowered to file a suit for ejectment especially when the temple comes under the purview of the Tamil Nadu Hindu Religious and Charitable Endowments Department. According to the first appellate court the Executive Officer is also a proper and necessary party to the present suit.

9. The Tamil Nadu Hindu Religious and Charitable



Endowments Act, 1959 (hereinafter referred to as "the Act") provides that the administration of all temples and specific endowments attached to it and all religious endowments shall be subject to the superintendence and general control of the commissioner for securing proper administration and to see that their income is duly appropriated for the purposes for which they were founded. Under Section 28 of the Act, the trustee of a religious institution shall administer its affairs and apply its funds and properties in accordance with the terms of the trust and the usages of the institution and all lawful directions issued by the competent authority. "Executive officer" has been defined under Section 6(9) of the Act. As per this, the Executive Officer is a person who is appointed to exercise such powers and discharge such duties appertaining to the administration of a religious institution as are assigned to him by or under this Act or the rules made thereunder. 'Trustee' has been defined under Section 6(22) of the Act as any person or body in whom the administration of a religious institution is vested. Section 45 of the Act deals with the appointment and duties of any Executive Officer and Section 45(2) says that an executive officer shall exercise such powers and discharge such duties as may be assigned to him by the commissioner of the Tamil Nadu Hindu Religious and Charitable Endowment Department. The proviso says that only such powers and duties as appertaining to the administration of the properties of the religious institution shall be assigned to the Executive Officer. The powers and duties of the Executive Officer shall be defined by the commissioner of the Tamil Nadu Hindu Religious and Charitable Endowment Department. Section 28 of the Act empowers the trustee of every religious institution to administer its affairs and to apply the funds and properties of the institution. He shall be entitled to exercise all powers incidental to the administration of the religious institution. Thus, it is seen that the Managing Trustee is empowered to file a suit for ejectment against the tenants. In fact the earlier suit filed by the Managing Trustee in O.S.No.550 of 1983 on the file of the District Munsif cum Judicial Magistrate, Walajahpet, was decreed as evidenced by the copy of the decree Ex.A1. Therefore, the first appellate court had wrongly held that the suit filed by the plaintiff is not maintainable. It is also seen from the records that a valid notice under Section 106 of the Transfer of the Property Act was issued to the defendants before filing the suit for ejectment.

10. In view of the reasons aforesaid, I answer the substantial question of law in favour of the appellant. Hence, the present appeal is allowed.



WEB COPY

11. In the result,
- i. the second appeal is allowed. No costs.
 - ii. the decree and judgment dated 30.10.2009 passed in A.S. No.31 of 2009, on the file of the Subordinate Judge, Ranipet, Vellore District, are set aside.
 - iii. the decree and judgment dated 30.03.2009 passed in O.S. No.77 of 2002, on the file of the District Munsif cum Judicial Magistrate-I, Walajapet, are upheld.
 - iv. the defendants/respondents are directed to vacate the premises within one month from the date of receipt of a copy of this order/uploading of the order.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

bga

To

1. The Subordinate Judge,
Ranipet, Vellore District,
2. The District Munsif cum Judicial Magistrate-I,
Walajapet.
3. The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.R.Ramakrishnan, Advocate SR.No.52162
+1cc to Mr.A.Gowthaman, , Advocate SR.No.52205

S.A.No .531 of 2010

SJ(CO)
GN(06/12/2021)