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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

S.A.No.772 of 2021

B.Sukumar

... Appellant/Plaintiff

Vs.

1. Jayaprakash Narayanan
The Executive Officer,
Siddhi Buddi Sundaravinayagar Koil
Pattalam, Chennai-600 012.
Presently having office at Arulmighu Angala
Parameshwari & Kasi Viswanathat Thirukoil
Choolai, Chennai-600 012.

2. K.G.Gopi

3. L. Kalyani

4. L.Vasanth

5. L.Nivetha

... Respondents/Defendants

PRAYER: Second Appeal is filed under Section 100 of CPC to set aside the judgment and decree dated 08.02.2021 passed in A.S.No.229 of 2019 by the Learned XVI Additional City Civil Court, Chennai confirming the judgment and decree passed by the III Assistant Judge City Civil Court, Chennai in O.S.No.4245 of 2016 dated 18.07.2019.

For Appellant : M/s.Pavithra
for M/s.S.Natarajan

For Respondents : Mr.R.Mahalingam for R3 to R5



JUDGMENT

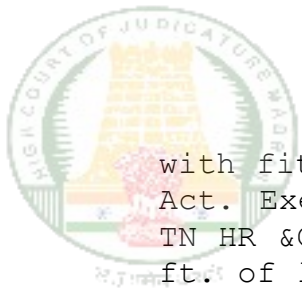
This Second Appeal is directed against the judgment of the learned XVI Additional Judge, City Civil Court, Chennai in A.S.No.229 of 2019, confirming the judgment and decree of the learned III Assistant Judge, City Civil Court, Chennai in O.S.No.4245 of 2016.

2. Appellant/Plaintiff filed a suit in O.S.No.4245 of 2016 against the respondents seeking the relief of declaration that defendants 2 to 5 are liable to be evicted by the 1st defendant from the schedule mentioned property and for Mandatory Injunction directing the 1st defendant to initiate eviction proceedings against the defendants 2 to 5 and let the portion to any other person to see that the temple receives rental income and for costs.

3. The case of the appellant, in brief, is as follows:

Appellant's father late Mr.Balasundaram Chettiar constructed the Siddi Buddi Sundara Vinayagar temple and maintained its properties. There are totally 6 shops located in the premises. Rents collected from all these shops were utilised for maintaining the temple. After the demise of Mr.Balasundaram Chettiar, appellant has become the trustee of Siddi Buddi Sundara Vinayagar and Sri Lakshmi Amman temple. 1st respondent is the Executive Officer of Arulmigu Angala Parameswari temple and Kasi Viswanathan temple at Choolai, Chennai and administered Siddi Buddi Sundara Vinayagar temple and Sri Lakshmi Amman temple. The properties of these temples are misused by 2nd and 3rd respondents. 3rd respondent's husband is no more. 1st respondent inducted the 3rd respondent as a tenant and it is alleged that 2nd respondent sublet the portion to Mr.Loganathan. Prior to the death of the Mr.Loganathan, 1st respondent issued legal notice dated 22.04.2013 to the 2nd respondent and the deceased Loganathan directing them to vacate the premises. 1st respondent is not collecting rents either from 2nd respondent or 3rd respondent. Since 1st respondent has not discharged his duties as an Executive Officer and acted adverse to the interest of the temple, appellant questioned his conduct. Therefore, this suit is filed for the reliefs aforesaid.

4. It is seen from the case of the 1st respondent that Arulmigu Siddi Buddi Sundara Vinayagar temple and Sri Lakshmi Amman temple are non-listed temple. Under Section 46 of Tamil Nadu Hindu Religious and Charitable Endowments Act (hereinafter referred as "TN HR & CE Act"), immediate administration is vested



with fit person appointed under Section 49 (1) of the TN HR & CE Act. Executive Officer was appointed under Section 45(1) of the TN HR & CE Act as a fit person. Temple is situated in 471.71 Sq. ft. of land. Temple owns 823 sq. ft. in Survey No.2227. There is also an extent of 248 sq. ft. available in Survey No.2228. Remaining area was rented to 6 persons by the temple authorities and 146.3 sq. ft. of land was leased out to 2nd respondent for a monthly rent of Rs.820/-. It was revised to Rs.1,100/- per month from 01.11.2001. After periodical enhancement, the present rent is Rs.1,924/- per month. Loganathan, the husband of 3rd respondent approached the temple to regularize him as a tenant in the place of 2nd respondent. The recommendations for this regularisation is still pending. At this stage, this suit is filed. As per Section 78 of TN HR & CE Act, the Assistant Commissioner alone is the authority to initiate proceedings under the TN HR & CE Act. HR & CE authorities are not impleaded as proper and necessary parties in the suit. Therefore, this suit is bad for non-joinder of the proper and necessary parties. That apart, this suit is barred under Section 108 of TNHR & CE Act.

5. It is the case of the 3rd respondent that originally 2nd respondent was inducted as a tenant in the suit property and he handed over possession to the husband of 3rd respondent Loganathan. 2nd respondent filed a suit in O.S.No.399 of 2000 against Loganathan and the suit was dismissed as withdrawn. 3rd respondent approached 1st respondent for recognizing his tenancy. 2nd respondent informed during the course of enquiry that he had withdrawn his objection for transferring the tenancy to Loganathan's name. That proceeding is pending for passing final orders. This suit has no merits and liable to be dismissed.

6. On the basis of above pleadings, the Trial Court framed the following issues:

1. Whether the said suit is bad for non-joinder of proper and necessary parties?
2. Whether the suit is bad for want of Sec.80 CPC Notice?
3. Whether the suit is barred u/s.108 of TN HR & CE Act?
4. Whether the Plaintiff is entitled for the relief of declaration as prayed for?
5. Whether the Plaintiff is entitled for the relief of Mandatory Injunction?
6. To what other reliefs the parties are entitled for?

7. During the course of Trial, PW1 was examined and Exs.A1 to A7 were marked on the side of the appellant/plaintiff. DW1 was examined and Exs.B1 to B6 were marked on the side of the respondents/defendants.



8. On considering the oral and documentary evidence, the learned Trial Court Judge found that appellant has not established his locus standi and legal right to file the suit. It is also found that the authorities under TN HR & CE Act namely Commissioner or Joint Commissioner or Assistant Commissioner was not impleaded as parties to the suit. They are the proper and necessary parties for the disposal of the suit and this suit is bad for non-joinder of proper and necessary parties. Yet the another reason for dismissing the suit is that the suit is barred by Section 108 TN HR & CE Act. For the reasons state above, the learned Trial Judge dismissed the suit. Having dissatisfied with the judgment and decree of the Trial Court, appellant filed appeal in A.S.No.229 of 2019. The learned Appellate judge, after perusing the oral and documentary evidence, submissions of parties and the judgment of the Trial Court found that there is no reason for interfering with the judgment of the Trial Court and confirming the judgment and decree, dismissed the appeal. Aggrieved by the dismissal of the appeal, the appellant has preferred this Second Appeal.

9. The learned counsel for the appellant submitted that he produced materials to show that appellant's father was the trustee to the Arulmigu Siddi Buddi Sundara Vinayagar temple and after his death appellant is continuing as a trustee. 1st respondent enjoined upon the duty to collect the rents from tenants occupying temple property. However, first respondent has not discharged his duty in accordance with law. Therefore, the suit was filed. From the evidence of DW1, the First Appellate Court found that the 2nd respondent Gopi died. It is submitted by the learned counsel for the appellant that 2nd respondent Gopi is not dead and he is alive. Finally he submitted that appellant has produced sufficient material to show the non-payment of rents by respondents 2 to 5. Without appreciating the evidence properly, the Courts below wrongly dismissed the suit. Therefore, he prayed for setting aside the judgment and decree of the Appellate Court and for dismissal of suit by allowing this Second Appeal.

10. Considered the submissions of the learned counsel for the appellant and pursued the records.

11. It is seen from the pleadings that appellant's main contention is that 1st respondent has not taken proper action to collect the rents from respondents 2 to 5. 2nd respondent is not entitled to sub-lease the property to Loganathan or Loganathan's legal heirs. Appellant filed this suit in his capacity as son of former trustee and he claims that his father Balasundaram



Chettiar alone constructed the temple and was managing the property. Contrary to the averments made in the plaint, it seen from his evidence that he admitted that he has not produced any document to show that his father Balasundaram Chettiar built the temple. He also admitted that he has not produced any document to show that he is the trustee of the suit temple. He clearly and candidly admitted that the temple is under the control of TN HR & CE Department from 1979 to 1980 onwards. It is evident from his evidence that he has not produced any material to show that temple was constructed by his father; he was a trustee and therefore, he is entitled to file the suit.

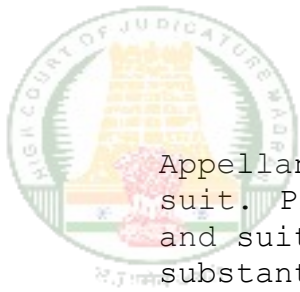
12. The next important thing is that the suit temple is under the control of TN HR & CE Department from 1978 to 1980 onwards. Thus, this Court finds that the suit is obviously barred by the principle of non-joinder of proper and necessary parties for not impleading competent authorities of TN HR & CE Department.

13. It is seen from Section 108 of TN HR & CE Act that the Civil Court has no Jurisdiction to entertain suit like this. TN HR & CE Act has in built provisions for leasing the temple property, fixing rent, enhancing rent, eviction of tenants etc., Section 108 of TN HR & CE Act is extracted hereunder:

"108. Bar of suits in respect of administration or management of religious institutions, etc.—No suit or other legal proceeding in respect of the administration or management of a religious institution or any other matter or dispute for determining or deciding which provision is made in this Act shall be instituted in any Court of Law, except under, and in conformity with, the provisions of this Act."

When there are provisions for leasing the temple property, fixing rent, enhancing the rent, eviction of tenants etc in TN HR & CE Act, the appellant should approach only the authorities under the act to adjudicate the issue. Civil courts jurisdiction is barred to entertain cases like this.

14. The suit was dismissed on the grounds that appellant has not established his locus standi, legal right to file the suit; the proper and necessary party i.e. competent authorities of HR & CE Department were not impleaded; suit is barred under Section 108 of TN HR & CE Act against the suit. The First Appellate Court concurred with the findings of the Trial Court. This Court is also of the considered view that there is no reason to interfere with the views taken by the Courts below.



Appellant has not established his legal right to institute the suit. Proper and necessary party was not impleaded as defendant and suit is barred under Section 108 TN HR & CE Act. There is no substantial question(s) of law involved in this Second Appeal.

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15. For the reasons stated above, this Court confirms the judgment of the learned XVI Additional Judge City Civil Court in A.S.No.229 of 2019, confirming the judgment of the learned III Assistant Judge, City Civil Court, Chennai in O.S.No.4245 of 2016 and dismisses this Second Appeal. No costs.

Sd/-

Assistant Registrar(I)

// True Copy //

Sub Assistant Registrar

jai

To

1. The XVI Additional Judge,
City Civil Court,
Chennai.

2. The III Assistant Judge,
City Civil Court,
Chennai.

+2cc to Mr.R.Mahalingan, Advocate SR.No.65894

+2cc to Mr.S.Natarajan, Advocate SR.No.65947

S.A.No.772 of 2021

RSI (CO)

CB(08/03/2022)