



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.No.523 of 2016
and C.M.P.No.9174 of 2016

1. S.Karunakaran
2. E.Sai Krishna
3. E.Sai Varun

...Appellants/Appellants/Defendants

Vs.

All India Sai Samaj,
A Registered Society,
Represented by its President,
K.Thangaraj,
No.50-A, Alamelu Mangapuram,
Mylapore, Chennai - 600 004.

...Respondent/Respondent/Plaintiff

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 16.02.2016 in A.S. No. 96/2015, passed by the Learned XV Additional Judge, City Civil Court, Chennai confirming the Judgment and Decree dated 28.01.2015 made in O.S. No. 4374/2013 passed by the Learned XVII Assistant Judge, City Civil Court, Chennai.

For Appellants	:	Mr.V.Ramana Reddy
For Respondent	:	Mr. J.Balagopal

J U D G M E N T

Aggrieved over the concurrent findings of the Courts below, the defendants have preferred this Second Appeal.

2. During the pendency of the appeal, the first appellant died and the Second Appeal survives through the second and third appellants. The respondent is the temple run by a Society and it owns ten shops. One shop was leased out in favour of the father of the second and third appellants by the then administration. After his demise, it is contended that the



first appellant was running the shop on behalf of his grand children, the second and third appellants. Thereafter, the respondent issued a termination notice under Section 106 under the Transfer of Property Act and called upon the appellants to vacate and deliver the possession. It is admitted by the appellants/defendants that the notice under Section 106 of the Transfer of Property Act was correctly issued. Therefore considering the compliance of the legal requirements, the trial Court has ordered eviction and that the claim of the plaintiffs regarding past and future damages shall be relegated in a separate proceeding.

3. Aggrieved over the same, the appeal was preferred. After going through the materials that the property was originally leased out to Ezhilraj, the father of the second and third appellants and that the respondent refused to attorn the tenancy in favour of the second and third appellants and refused to receive the rent and relying on the admission made by DW1, order passed by the trial Court was confirmed and the appeal was dismissed.

4. Before this Court, the learned counsel for the appellants contended that the trial Court has not considered the hardship caused to the tenants and the location of the shop inside the temple does not cause any hindrance to the devotees and the trial Court has also failed to consider that the delivery of possession and the claim for future damages have to be conducted by way of two separate proceedings and granting a decree for both in one and the same proceedings is illegal. Therefore, on the ground of hardship, it is contended that eviction should not be ordered. Admittedly, the shop was leased out to the father of the second and third appellants and that their father died in a very young age. The second and third appellants were in tender age and were not in a position to run the shop after the demise of their father. The grand father of the second and third appellants run the shop. Now that he is also no more. The second and third appellants are not running the shop anymore and their pastures are elsewhere.

5. In so far as the present appeal is concerned, the eviction proceedings were legally initiated by the respondent and the notice under Section 106 of the Transfer of Property Act was properly served. It is also submitted that the respondents have not paid the rental arrears as directed by the Courts below nor continue to pay the current rentals. The appellants could not point out any legal infirmity in the decree and judgment passed by the Courts below. I do not find any merits and there



is no question of law much less substantial question of law arise for consideration for admitting the Second Appeal. Accordingly, the Second Appeal is dismissed.

6. It is submitted by the learned counsel for the respondent that both the parties are not in possession of the shop and that they are not running the shop after the demise of their grand father and some strangers are in possession of the property. Considering the fact that the appellants themselves committed default and some strangers are squatting in the property, one month time is granted for vacating and delivering the possession. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sli

To

1. The XVII Assistant Judge, City Civil Court, Chennai

2. The XV Additional Judge, City Civil Court, Chennai

Copy to

The Section Officer

VR Section

High Court, Madras 104.

+1 CC to Mr.J.Balagopal, Advocate sr 62444.

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SR II (CO)
SP(19/01/2022)