

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition No.21322 of 2017 &
WMP.No.22263 of 2017 and
SA.No.796 of 2014 &
MP.No.1 of 2014

WP.No.21322 of 2017

K.Ashok Chakravarthy ... Petitioner

Vs

1.The Joint Commissioner,
Hindu Religious and Charitable Endowments
Madras 34.

2.The Executive Officer,
A/m Gangadeeswarar Koil, Purasawalkkam,
Chennai 84.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari to call for the records on the file of the 1st respondent in proceedings in Na.Ka.No.1960/ 2017/A3 dated 16.03.2017 and quash the same as illegal, incompetent and without jurisdiction.

AND

SA.No.796 of 2014

K.Shyamalaba (deceased)

1.Ashok Chakravarthy
2.K.Vikram Chakranath
3.K.Ramarao

4.K.Lakshmana Rao

... Appellants/Respondents 4,5, 7&8

Vs

1.Arulmighu Gangadeeswarar Temple,
Rep. by its Executive Officer,
Sri.M.Ramachandran
Temple Premises, Purasawalkkam, Chennai.

...1st Respondent/Plaintiff

3.Sathyendrakumar

4.K.Shyam Sundar Rao

5.K.Krishna Rao ... Respondents/Respondents 2,3,6 & 9

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, against the judgment and decree in A.S.34/2010, on the file of the V Additional City Civil Court, Chennai, dated 28.04.2014, in confirming the judgment and decree in O.S.3118/1988, on the file of the XI Assistant City Civil Court, Chennai, dated 01.12.2008.

(In Writ Petition)

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.M.Karthikeyan (for R1)

Special Government Pleader

Mr.A.K.Sriram (for R2)

for M/s.A.S.Kailasam & Associates

(In Second Appeal)

For Appellants :Mr. V.Raghavachari

For Respondents: Mr.A.K.Sriram (for R1)

R2 - Died

R3 - No Appearance

R4 & R5 - Unclaimed

COMMON ORDER

The petitioner is one Mr.Ashok Chakravarthy, son of late Appa Rao who passed away in 1991. The Second Appeal and Writ Petition have been clubbed together in view of the identity facts in both matters. The second appeal has been filed by Ashok Chakravarthy, petitioner in the writ petition, challenging the judgment of the V Additional City Civil Court, Chennai dated 28.04.2014, confirming the judgment and decree in O.S.No.3118 of 1988, on the file of the XI Assistant City Civil Court, Chennai dated 01.12.2008.

2. The suit had been filed by the Arulmighu Gangadeeswarar Temple (Temple) seeking possession of the property at Door No.94, Gangadeeswarar Koil, Purasawalkkam, Chennai-600 084 measuring about 3 ground 2105 sq. Ft (property/property in question). As far as the second appeal is concerned, it is an admitted position that though notice for possession had been issued by the temple to Appa Rao, the suit has been instituted arraying K.Shyamalaba (wife of Appa Rao) as the sole defendant on the erroneous assumption that Appa Rao was no more. No serious objection is put forth by the

learned counsel for the respondents to the position that in such circumstances, the suit has not been properly instituted and is not maintainable. The appellant is thus liable to succeed and the second appeal is allowed.

3. I now advert to Writ Petition No.21322 of 2017, Appa Rao is said to have entered into an arrangement with the temple in 1956 for lease of the property in question. No document has been placed either before the Civil Court or before me to evidence this arrangement. Be that as it may, rentals are being collected by the temple till date, even after the demise of Appa Rao.

4. At the outset, I may state that this arrangement is contrary to the provisions of Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowment Act (in short 'Act') which stipulates a veracity of parameters to be followed in regard to alienation of immovable property by way of exchange, sale, mortgage or lease including that the arrangement shall not exceed a period of five years.

5. The petitioner would claim that a superstructure has been constructed on the property by Appa Rao. There is absolutely no evidence in regard to this, as one is unaware of whether the superstructure was in existence even at the time when the arrangement commenced as between the parties. The impugned communication in the writ petition is a notice for eviction in terms of Section 78(2) calling upon the petitioner to furnish a response as to why he may not be evicted from the premises and proceedings have come to a halt on 20.08.2014 when an order of interim protection was obtained by the petitioner from this Court.

6. The petitioner may file a reply within a period of four (4) weeks from today to the impugned show cause notice. In deciding the issue, the temple shall take note of documentation, if any, that exists as between the parties and whether such documentation is strictly in line with the provisions of Section 34 of the Act. Assuming that no such documentation exists, proceedings for eviction shall be initiated in line with Section 78 and proceedings for the fair rent will be initiated and pursued separately. Let this exercise be completed within a period of six weeks from date of receipt of reply to the show cause notice.

7. The writ petition is dismissed and the Second Appeal is allowed. The order of interim stay granted on 20.08.2014 is vacated forthwith. Connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

vs/ska

To

1.The Joint Commissioner,
Hindu Religious and Charitable Endowments
Madras 34.

2.The Executive Officer,
A/m Gangadeeswarar Koil, Purasawalkkam,
Chennai 84.

3.The Vth Additional City Civil Court,
Chennai.

4.The Vith Assistant City Civil Court,
Chennai.

+4cc to Mr.V.Raghavachari, Advocate SR.2493, 2494

+2cc to Mr.A.S.Kailasan&Associates, Advocate SR.2630, 2631

+1cc to the Government Pleader SR.3432

Writ Petition No.21322 of 2017 &
WMP.No.22263 of 2017 and
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BS (CO)

CB(12/03/2021)



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