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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

**S.A.(MD).No.786 of 2012
and
M.P.(MD) No.1 of 2012**

M.S.Gurunathan

..Appellant

Vs.

Arulmigu Meenakshi Sundareswarar
Devasthanam,
Madurai,
through its Executive Officer

...Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C., setting aside the judgment and decree dated 12.03.2010 passed in the appeal in A.S.No.202 of 2009 on the file of the Principal Subordinate Judge, Madurai, reversing the judgment and decree dated 30.09.2009 passed in O.S.No.406 of 2004 on the file of the District Munsif, Madurai.

For Appellant

: Mr.J.Barathan for
Mr.T.R.Jeyapalam

For Respondent

: Mr.S.Manohar

JUDGMENT

The defendant in O.S.No.406 of 2004 on the file of the learned District Munsif, Madurai Taluk, Madurai is the appellant in this appeal.



2.The respondent temple filed the said suit for directing the appellant herein to vacate and hand over peaceful possession of the suit property after removing the unauthorised constructions put up by him. The appellant filed written statement controverting the plaint averments. Based on the divergent pleadings, the trial Court framed the necessary issues.

3.On behalf of the plaintiff, an official was examined as P.W1 and Exs.A1 to A9 were marked. The appellant herein examined himself as D.W1 and Exs.B1 to B18 were marked.

4.After consideration of the evidence on record, the trial Court by judgment and decree dated 30.09.2009 dismissed the suit. Aggrieved by the same, the respondent temple filed A.S.No.202 of 2009 before the Principal Subordinate Court, Madurai. By the impugned judgment and decree dated 12.03.2010, the 1st appellate Court set aside the decision of the trial Court and allowed the appeal and decreed the suit as prayed for. Challenging the same, this Second Appeal came to be filed. The Second Appeal was admitted on the following substantial questions of law.

“1.Whether the lease hold right of the statutory tenant, Malli Subburamier on his death, devolves on all his legal heirs under Section 105 of the Transfer of Property Act, 1882?



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2. Whether the suit for ejectment filed by the respondent is maintainable without impleading all the legal heirs of the statutory tenant as the appellant has specifically raised the plea of non-joinder of necessary parties at the earliest possible opportunity under Order 1 Rule 13 of the Civil Procedure Code?

3. Whether the suit filed by the respondent/plaintiff is maintainable when the respondent/plaintiff is not a juristic or legal person in the eye of law?”

5. The learned counsel appearing for the appellant submitted that his efforts to contact his client have not borne fruit. He had sent a registered letter to the appellant. But the same was returned with the postal endorsement “refused”. The appellant’s counsel also submitted that when he tried to contact the appellant on the mobile number given to him, the call was not attended.

6. I was not sure, if the appellant had passed away and whether the appeal may have to be dismissed as abated. I therefore called upon the learned Standing Counsel for the respondent temple to make a local enquiry and confirm if the appellant is alive.

7. The learned Standing Counsel on instructions stated that the appellant is very much alive. Therefore, I called upon the learned counsel for the appellant to argue the matter, since his Vakalat has not been revoked.



8. The learned counsel for the appellant reiterated all the contentions set out in the memorandum of grounds. His foremost argument is that the temple had let out the suit property in favour of the father of the appellant, namely, Malli Subburamier. Malli Subburamier had admittedly passed away. He had left behind not only the appellant but also three other sons, namely, M.S.Sivanath, M.S.Jambunath and M.S.Somanath and three daughters, namely, P.V.Rathinamani, T.D.M.Vairamani and T.K.Jothi as his legal heirs. The tenancy had thus jointly devolved on all the legal heirs. Therefore, the temple ought to have impleaded all the legal heirs as defendants and erred in seeking the relief of recovery of possession from the appellant alone. His contention is that the termination notice issued under Section 105 of the Transfer of Property Act, 1882 to the appellant alone is not valid. That is why, the trial Court rightly came to the conclusion that the suit for recovery of possession without impleading all the legal heirs of the original tenant is not maintainable. He submitted that the 1st appellate Court erroneously reversed the well considered decision of the trial Court. He called upon this Court to answer the substantial questions of law in favour of the appellant and restore the decision of the trial Court.

9. *Per contra*, the learned Standing Counsel for the respondent submitted that the impugned judgment and decree passed by the 1st appellate Court do not call for any interference.



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10.I carefully considered the rival contentions and went through the evidence on record.

11. There is no dispute that the suit property belongs to the plaintiff temple, namely Arulmigu Meenakshi Sundareswarar Devasthanam, Madurai. The defendant had conceded that the property was leased out in favour of his father, late. Malli Subburamier. The rent payable by the defendant was Rs.10/- per month. The suit property measures an extent of 671 sq.ft., in South Maasi Street, Madurai. I can take judicial notice of the fact that South Masi Street is in the heart of the Madurai City and is one of the busiest localities. The rent fixed for the said property is ridiculously low to say the least. The first question that arises for my consideration whether the suit is liable to be dismissed for non-joinder of other legal heirs of the deceased tenant. The issue is no longer *res integra*.

12. The Hon'ble Supreme Court in ***Suresh Kumar Kholi Vs. Rakesh Jain*** reported in (2018 (6) SCC 708) had held that when the original tenant dies, the legal heirs inherit the tenancy as joint tenants and occupation of one of the tenant is occupation of all the joint tenants. It is not necessary for the landlord to implead all legal heirs of the deceased tenant, whether they are occupying the property or not. An eviction petition against one of the joint tenants is sufficient against all the joint tenants and all the joint tenants are bound by the order of the



Rent Controller as joint tenancy is one tenancy and is not a tenancy split into different legal heirs. In view of the authoritative ruling of the Hon'ble Supreme Court, the first and second substantial questions of law are answered against the appellant.

13. The other issue is regarding the maintainability of the suit. Though the plaintiff has been described as “Arulmigu Meenakshi Sundareswarar Devasthanam, Madurai, through its Executive Officer”, it is by and in fact for the presiding deity. An idol is very much a juristic person. As early as in the year 1922, the Privy Council in *Vidya Varuthi, Thirtha Swamigal V. Balusami Ayyar (AIR 1922 PC 123)* held that under the Hindu Law, the image of a deity of the Hindu Pantheon is a juristic entity vested with the capacity of receiving its and holding property. It is settled law that the Courts and Judges have to exercise parens patriae jurisdiction and protect the interests of idols. Of course, the idol must have the rights which deserve protection. In this case, the property belongs to the idol. The appellant and his family have been squatting over the property for ages for a pittance. The time has come to throw out the appellant and take possession. The respondents shall file execution petition immediately and the same will be disposed of and possession will be given to the temple as expeditiously as possible. The third substantial question of law is also answered against the appellant. The Second Appeal fails and the judgment and decree



passed by the 1st appellate Court is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

18.08.2021

Index : Yes/No

Internet : Yes/No

MM / PMU

To

- 1.The Principal Subordinate Judge,
Madurai.
- 2.The District Munsif,
Madurai.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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G.R.SWAMINATHAN, J.

MM / PMU

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