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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.12.2021
PRONOUNCED ON : 11.01.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A. No.1360 of 2010
and M.P. No.1 of 2010

P.Thambi (deceased)

1.Vasanth

2.S.Geetha

3.T.Mahesh

4.T.Madhan

5.T.Vijayan

... Appellants/Appellants
Defendants

versus

The Official Trustee of Tamilnadu,
Rep. by the Trust Estate of
Kadappakkam Charities,
Having its Office at
Additional City Civil Court Buildings,
High Court Campus,
Chennai - 600 104.

...Respondent/Respondent/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 17.08.2010 made in A.S.No.179 of 2007 on the file of the learned V Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 27.09.2006 made in O.S.No.8888 of 1986 on the file of the learned XIV Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.A.V.Arun
for Mr.R.Sugumaran

For Respondent : Mr.K.Seetharam



J U D G M E N T

This appeal is focused as against the judgment and decree dated 17.08.2010 made in A.S.No.179 of 2007 on the file of the learned V Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 27.09.2006 made in O.S.No.8888 of 1986 on the file of the learned XIV Assistant Judge, City Civil Court, Chennai.

2.For the sake of convenience, hereinafter the parties are referred to, as per their litigative status before the trial Court.

3.The laconic averments made in the plaint, are as follows:

(i) The property bearing No.98, Greenways Road, Mandaveli, Madras - 600 028, belongs to the Estate of Kadappakkam Charities. In a scheme, by an order dated 03.01.1964 made in C.S.No.200 of 1930 on the file of the High Court of Madras, the said property was vested with the plaintiff / respondent and he is administering the Trust Estate including the suit property. The defendant is the tenant under the plaintiff in respect of the suit property on a monthly rent of Rs.50/-. The tenancy being for non-residential purpose and computed from first to last according to the English Calender month and the rent is payable on or before 10th of every succeeding calender month.

(ii) The defendant failed and neglected to pay the rent from 01.11.1985 to 30.11.1986, totalling Rs.650/- as arrears of rent. Therefore, the plaintiff has terminated the tenancy by issuing the Advocate notice dated 28.08.1986. A copy of the notice was also served on the Commissioner, Corporation of Madras. The plaintiff has offered to pay a sum of Rs.5,000/- towards compensation for the superstructure put up by the defendant on the leased land. The defendant sent a reply notice dated 12.09.1986 and the plaintiff sent a rejoinder dated 25.09.1986.

(iii) The defendant is a trespasser and the tenancy has been duly terminated and he is liable to pay damages for use and occupation from 01.12.1986 till the date of delivery of vacant possession, at Rs.500/- per month. The plaintiff's Trust is a Public Charitable Trust and is therefore exempted from the purview of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 as amended by the Act 23 of 1973. Hence, the suit.

4. The case of the defendant, as averred in the written statement, is as follows:



(i) It is denied that the defendant has failed and neglected to pay the rent from November 1985 and that he did not pay the arrears of rent. The defendant regrets to note the false allegations from a responsible and esteemed person, occupying a high office. He tendered the rents regularly but the same was refused. By his lawyer's notice dated 12.09.1986, the defendant enclosed a cheque for a sum of Rs.350/- and the same was returned with a covering letter, intimating the contemplation of eviction proceedings. The defendant appeared before the Official Trustee, in pursuance of the letter dated 17.07.1986 wherein he demanded the enhanced rent for the site @ Rs.250/- per month. The defendant refused to pay the enhanced rent, he is entitled to avail the protection under the Tamil Nadu City Tenants' Protection Act, as amended from time to time.

(ii) The defendant was a tenant in respect of the suit site, even prior to the year 1955. In pursuance of the oral tenancy, the defendant was authorised to put up a superstructure and he built a superstructure. He has been in enjoyment of the site, admeasuring 5818 sq.ft. The superstructure put up by the defendant, is worth about Rs.10 lakhs. Unless and until, rights of the defendant to purchase the site, is extinguished by application of law, the plaintiff, is not entitled to purchase the superstructure.

(iii) The notice of termination is not valid and inconformity under the provisions of the Tamil Nadu City Tenants' Protection Act. There is no provision in the Act, to enable the tenant to deposit the rents into the Court. The plaintiff is not entitled to receive the damages for use and occupation. It is not correct to state that the suit site, will fetch monthly rent of Rs.500/- and more.

(iv) The defendant is ready and willing to pay the market value of the site in installments, in accordance with law. The defendant brings to the notice of this Court about the fixation of the market value of the land at Rs.6,000/- per ground, by an order dated 19.07.1974 made in Application No.143 of 1974 in C.S.No.200 of 1930 moved by 'Kudisai Vazvor Podu Nala Sangam'.

(v) The father of the defendant took on oral lease of the site, reclaimed the grounds and raised it to street level and incurred a huge expenditure, to make it suitable for the construction. The father of the defendant was a tenant under one Sambanda Mudaliar. Later, the suit site was vested with the plaintiff. The tenancy was attorned in favour of the plaintiff. The suit site will not fetch more than Rs.15,000/- per ground. There is no cause of action for the suit. Hence, the suit filed by the plaintiff is liable for dismissal with costs.



5. From the above averments, the learned XIV Assistant Judge, City Civil Court, Chennai, framed necessary issues and tried the suit. On the side of the plaintiff, one Sivaprakasam was examined as P.W.1 and marked 4 exhibits as Ex.A.1 to Ex.A.4. Similarly, on the side of the defendant, he himself examined as D.W.1 and marked 1 exhibit, as Ex.B.1.

6. Having considered the materials placed before him, the learned XIV Assistant Judge, City Civil Court, Chennai, by judgment and decree dated 27.09.2006, came to the conclusion that the plaintiff has proved his case and as a result of which, granted decree as prayed for. In the appeal preferred by the defendant in A.S.No.179 of 2007, the learned V Additional Judge, City Civil Court, Chennai, had confirmed the findings arrived at by the trial Court and dismissed the appeal.

7. Feeling aggrieved over the findings arrived at by the lower appellate Court, the appellants / defendants, are before this Court with the present Second Appeal. The Second Appeal was admitted on file after formulating the following substantial questions of law;

"(i) Whether the Court below are right in holding that the Madras City Tenants Protection Amendment Act 2 of 1996 is applicable to the respondent trust, being a public charitable trust ?

(ii) Whether the Courts below committed wrong in not considering that the plaintiff trust is neither a "Religious Charity" as defined under Section 6(16) or a "Religious Institution" under Section 6(18) of the Hindu Religious and Charitable Endowments Act ?

(iii) Whether the Courts below are wrong in not considering that the Madras City Tenants Protection Act shall not apply to the tenancies of the land owned by the religious institutions or religious charities belonging to the Hindu, Muslim, Christian or other religion and not to public charitable Trust like the respondent?

(iv) Whether the Courts below failed to consider Section 78 of the Hindu Religious and Charitable Endowments Act for eviction of the tenants for non-payment of rents, if the public charity is also brought within the religious charity after Amending Act, 39 of 1996 ?

(v) Whether the Courts below erred in considering the entitlement of the appellants under Section 9 of the Madras City Tenants Protection Act ?



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1. Whether the Courts below have erred in not considering the defence raised by the appellants that the plaintiff has not complied with the provisions of Madras City Tenants' Protection Act, 1921 ?

2. Whether the suit filed by the respondent is in conformity with Section 11 of Madras City Tenants' Protection Act, 1921 ?"

8. Heard Mr.A.V.Arun, learned counsel for Mr.R.Sugumaran appearing for the appellants and Mr.K.Seetharam, learned counsel appearing for the respondent and also perused the materials available on record.

9. The first and foremost contention raised by the learned counsel for the appellants / defendants is that, the plaintiff Trust, is neither a 'religious charity' as defined under Section 6 (16) nor a 'religious institution' under Section 6 (18) of the Hindu Religious and Charitable Endowments Act. In this aspect, the Court below, without considering the eligibility having by the plaintiff entertained the suit filed by the plaintiff as if the same is maintainable. Accordingly, on that score alone, the findings rendered by the Court below is erroneous one.

10. Now, on considering the said submission made by the learned counsel for the appellants / defendants, it is the case of the plaintiff that the suit schedule property belongs to the Estate of Kadappakkam Charities and by a scheme made by an order dated 03.01.1964 in C.S.No.200 of 1930 by the High Court of Madras, the said property was vested with the plaintiff and he is administering the Trust Estate including the suit property.

11. In the said circumstances, since the relief claimed by the plaintiff is under the provisions of the Chennai City Tenants' Protection Act, 1921, it would necessary to see whether the plaintiff Trust is eligible for instituting the suit. In this aspect, Section 1(3)(f) of the Chennai City Tenant's Protection Act, the Government of Tamil Nadu, amended the said Act in Act 2 of 1996, which came into force on 11th January 1996. In the said amendment proviso, Section 1(3)(f) of the said Act, the following provision is incorporated;

"1.(3)(f) by any religious institution or religious charity belonging to Hindu, Muslim,



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Christian or other religion.

Explanation.- For the purpose of this clause,-

(A) "religious institution" means any-

(i) temple;

(ii) math;

(iii) mosque;

(iv) church; or

(v) other place by whatever name known,

which is dedicated to, or for the benefit of, or used as of right by, any community or section thereof as a place of public religious worship;

(B) "religious charity" means a public charity associated with a religious festival or observance of religious character (including a wakf associated with a religious festival or observance of religious character), whether it be connected with any religious institution or not:"

12. Accordingly, the "religious charity" belongs to Hindu also included within the provisions of the Chennai City Tenants' Protection Act, 1921.

13. In the said occasion, as rightly pointed out by the learned counsel for the respondent / plaintiff that in C.S.No.200 of 1930, a scheme has been formulated for the following purposes;

"V. The Trustee shall spend the trust monies and conduct the objects of the Trust to the extent and in the manner set forth below:-

1) Rs.75/- shall be spent on the Gurupooja including the feeding of the poor on the occasion the performance of the pooja and the performance of the abhishekam for Dakshinamurthi Swami at the Srikapaleswar Temple at Mylapore on that day.

2) Rs.180/- shall be spent for the supply of water and butter-milk by a Brahmin who shall reside at the on item 1 for that purpose. Out of this Rs.10/- shall be paid monthly as salary for the Brahmin and Rs.5/- shall be spent monthly for purchasing the necessary butter-milk, salt lime etc.

3) Rs.75/- shall be spent for the performance of the 4th day Vasanthotsavam festival of Srikapaleswar at Mylapore.



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4) Rs.50/- shall be spent for the performance of the Angampoompavai festival on the 8th day of the Brahmotsavam festival of Srikapaleswarar.

5) Rs.120/- shall be spent annually for the one kalam pooja of the Ayathurai Vigneswarar.

6) Rs.6/- shall be paid monthly to the Trustee of the Sri-Kapaleswarar Temple at Mylapore for the daily feeding of two Desanthtris at the temple.

VI. The Trustee shall obtain proper vouchers and maintain regular accounts for all income and expenses relating to the Trust.

VII. The trustees shall open a current account in their name as Trustees of "Kadapakam Charities" in any recognised Bank, and all collection in respect of the trust estate shall be paid into the said account without any delay.

VIII. The Trustees shall be entitled to charge the Trust a sum of Rs.5/- per mensem as and for clerical and conveyance charges incidental to the management.

IX. The Trustees or the Plaintiffs or any member of the Public interested in the trust may apply to the court from time to time for direction for properly carrying out the Provisions of this scheme."

14. Therefore, it is apparent that the suit schedule property being vested with the 'Kadapakam Charity' which comes under the 'religious institution' and therefore, it cannot be held that the City Civil Court, is not having any jurisdiction to try the suit filed by the plaintiff.

15. In fact, in respect to the maintainability, particularly, in respect to the incompetence in filing the suit by the plaintiff, the defendant has not taken any plea before the Courts below. Even in the written statement, the maintainability of the suit has not been challenged. It is trite law that without pleadings, the evidence or submissions at any level cannot be looked into. Therefore, the first submission made by the learned counsel for the appellants / defendants, is not having any merits and therefore, the same is answered in favour of the plaintiff.

16. The second submission made by the learned counsel for the appellants would be that, in order to prove that



the plaintiff issued a termination notice vide Ex.A.1 dated 28.08.1986, no relevant acknowledgment has been produced and therefore, it cannot be said that before instituting the suit, the plaintiff has sent a termination notice under Section 11 of Chennai City Tenants' Protection Act 1921. On considering the said submission, it is true before the trial Court the plaintiff has not produced the served acknowledgment as if the termination notice sent to the defendant under Section 11 of the Act was duly served to him. In this regard, the learned counsel for the respondent would contend that though the plaintiff has not produced the served acknowledgment, the reply notice sent by the defendant would be sufficient to hold that he received the notice, which was issued under Section 11 of the Chennai City Tenants' Protection Act.

17. Now, on considering the said submissions with the relevant records, before the trial Court, a notice dated 28.08.1986 issued by the plaintiff to the defendant for terminating the tenancy was marked as Ex.A.1. Further, the reply notice dated 12.09.1986 sent by the defendant was marked as Ex.A.2. Now, on going through the contents of Ex.A.2, in the said notice, the defendant admitted that the notice dated 28.08.1986 was received by him. Therefore, it is obvious after acknowledging the receipt of the notice sent by the plaintiff, once again to see the served acknowledgment, is not necessary. The Courts below have also come to the same conclusion that the notice sent by the plaintiff for terminating the tenancy was duly proved and decided the issue in favour of the plaintiff.

18. A cursory perusal of Ex.A.1 would clearly establish that the respondent issued quit notice under Section 11 of the Chennai City Tenants' Protection Act and thereby, they express their intention to purchase the superstructure constructed on the schedule mentioned land for a sum of Rs.5,000/- as compensation. As such, the respondent called upon the appellants to surrender possession of the superstructure and land to the respondent on receipt of Rs.5,000/- as compensation for the superstructure and if the appellants failed to surrender possession as required, they express their intention to take proper action after expiry of three months from the date of receipt of notice. After sending the notice on 28.08.1986, the plaintiff has filed the suit only on 01.12.1986 under Section 11 of the Chennai City Tenants' Protection Act.

19. On the other hand, through Ex.A.1 to Ex.A.4 notices, the plaintiff has clearly established his case that, the payments are in arrears of rent from November 1985 to



May 1986 and thereby termination of tenancy by 31.07.1986 and required, the appellants possession is well in accordance with law. Accordingly, in view of Ex.A.1 and Ex.A.4, the plaintiff terminated the tenancy promptly.

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20. Ofcourse, the appellants / defendants are having the remedy under Section 9 of the Chennai City Tenants' Protection Act, therefore, they prayed for a direction to direct the landlord to sell the land to them. But here it is a case, the application filed by the defendants under Section 9 of the Chennai City Tenants' Protection Act was dismissed by the trial Court and afterwards, no revision has been preferred by the appellants herein. As such, the appellants are not entitled to raise any objection once again either before the First Appellate Court or before this Court. Though, in view of the orders passed by the learned Principal Judge, the appellants / defendants had deposited the arrears of rent at Rs.60,000/-. In view of the fact that the Chennai City Tenants' Protection Act, is not having any provision for deposit of rents in the City Civil Court, the same is no way helpful to the appellants' case. The First Appellate Court has also decided the issue in the same line and concluded the appeal filed by the appellants that they are not entitled to the benefit under Section 9 of the Chennai City Tenants' Protection Act.

21. Accordingly, in the light of the discussions stated supra, the substantial questions of law framed are all answered in favour of the plaintiff and thereby, the Second Appeal filed by the appellants / defendants is dismissed, as the findings arrived at by the Court below is within law already settled by various Courts. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

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To

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



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

Copy to:
The Section Officer,
VR Section,
High Court, Madras.

+lcc to Mr.K.Seetharam, Advocate SR.No.2320
+lcc to Mr.R.Sugumaran, Advocate SR.No.2902

S.A. No.1360 of 2010
and M.P. No.1 of 2010

VGII (CO)
CB(25/02/2022)