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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

SA.No.268/2022 and CMP.No.5587/2022

P.Thiagarajan

... Appellant /Defendant

Vs.

Pacha Kandasamy Madam,
Tiruvarur,
By its Hereditary Trustee,
Baby Ammal,
W/o.Subramaniyan,
East Main Street, Tiruvarur.

...Respondent/Plaintiff

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree in A.S.No.50/2018 dated 04.10.2021 on the file of the Sub Court, Tiruvarur, confirming the judgment and decree in O.S.No.122/2015 dated 14.11.2018 on the file of the learned District Munsif, Tiruvarur.

For Appellant : Mr.G.Krishna Kumar

For Respondent : Mr.G.Govarthanam

JUDGMENT

- (1) The 2nd defendant in the suit in O.S.No.122/2015 before the learned District Munsif, Tiruvarur is the appellant in the above second appeal.
- (2) The respondent is a Religious Institution represented by its Hereditary Trustee. Though the hereditary right of the person representing the Religious Institution is in dispute, the suit was filed by the respondent in O.S.No.122/2015 for ejectment of the appellant from the suit property and for consequential reliefs.



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- (3) It is the case of the respondent/plaintiff in the suit that Pacha Kandasamy Madam, Tiruvarur is a Religious Institution represented by its hereditary trustee. The person who filed the suit representing the trust is one Baby ammal who is the daughter of one Rathinasamy Pacha Kandasamy. It is stated that the father of present trustee, by virtue of a registered Will dated 05.07.1978, conveyed the right of hereditary trusteeship in favour of the present trustee. It is stated that the right of the Hereditary Trustee was upheld in the suit in O.S.No.100/86 and the said judgment was also upheld in the appeal in A.S.No.71/89 on the file of the District Court, Nagapattinam.
- (4) It is stated in the plaint that the suit property measuring to an extent of 1482 sqft of vacant land was originally leased out to the 1st defendant's father by name K.S.Nagaraja Rao as a manai pagudi for ground rent. Though it is admitted that the 1st defendant's father and thereafter the 1st defendant was in enjoyment of the suit property, the case of the plaintiff is that the 1st defendant and the 2nd defendant were in possession and enjoyment of the suit property only as lessees. It is the case of the plaintiff that the defendants have not paid the ground rent since January 2010 and the notice sent to the 1st defendant on 12.10.2012 to pay the rent was acknowledged. It is further contended that the 1st defendant sent a cheque for Rs.300/- dated 25.10.2012 with a covering letter admitting the rent and tenancy. The allegation in the plaint is that the defendants demolished the thatched shed and started constructing a RCC building without the consent of the plaintiff. It is stated that the plaintiff issued a notice terminating the tenancy and was constrained to file the suit for ejection.
- (5) The suit was resisted by the defendants 1 and 2. The 2nd defendant disputed the status of the trustee as a Hereditary Trustee of the temple who filed the suit on behalf of the Religious Institution. Stating that the defendants are in enjoyment of more than 100 years by paying ground rent, it is contended that they are entitled to put up new building after demolishing the existing building which is not conducive for their habitation. Though there is no other specific defence, the 2nd defendant contended that the suit is not valued properly and court fee is not paid. Accordingly, it is also contended that the plaintiff has filed the suit to enrich himself by leasing out the same to some third parties for better rent. The



defendants also claimed protection under the Tamil Nadu City Tenants Protection Act.

- (6) The Trial Court, after considering the evidence held that the trustee who had filed the suit representing the Religious Institution is the Hereditary Trustee and that the defendants themselves have admitted the right of the present trustee to administer the property, cannot dispute his status for the purpose of the suit. Since, the tenancy is admitted and the plaintiff had issued notice terminating the tenancy, the Trial Court found that the defendants have no valid defence to resist the suit for ejectment especially when the defendants have no independent right except their possession as a lessee under a Religious Institution. Since, the ownership over the property is not an issue the Trial Court held that the defendants are liable to be evicted. Therefore, by directing ejectment, the suit was decreed. A further direction was also issued to the defendants to pay a sum of Rs.300/- towards arrears of ground rent and to hand over the possession within two months. Aggrieved by the judgment and decree of the Trial Court, the 2nd defendant preferred an appeal in A.S.No.50/2018 before the Sub Court, Tiruvarur.
- (7) The Lower Appellate Court also confirmed the findings of the Trial Court and dismissed the appeal. Aggrieved by the concurrent judgments and decrees of the Courts below, the present Second Appeal is filed by the 2nd defendant/appellant.
- (8) The appellant has raised following substantial questions of law in the Memorandum of Grounds of Second Appeal.
- a. Whether admittedly, the respondent-mutt being a public mutt coming within the purview of the Tamil Nadu Hindu Religious and Charitable Endowments Act, administered by the trustees appointed by the T.N.H.R. & C.E. Admn. Dept., without a valid order of appointment, whether the alleged trustee is competent to maintain a suit?
 - b. Whether the Learned Judge is right in ignoring the law laid down by the Hon'ble Supreme Court of India reported in AIR 1971 Supreme Court page 2018 and the dictum followed by the Division Bench reported in 2003 (1) Law



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Weekly 386 with regard to competency to maintain a suit?

c. When the law has been settled that competency to maintain a suit is a question of law, whether the Learned Judge is inferring that it is only a question of fact, and rely on some previous proceedings where the HR & CE Department or the appellant is not a party?

d. Whether the Learned Judge is right in decreeing the suit which was filed without issuing proper notice under Section 11 of the Tamil Nadu City Tenants Protection Act when Section 11 imposes an unqualified obligation upon the Court not to entertain a suit in ejectment in the absence of compliance with its provisions; and

e. Whether the suit has been competently filed when three months notice has not been issued terminating the tenancy as contemplated under Section 11 of the Tamil Nadu City Tenants Protection Act?

f. Whether the suit has been competently filed when copy of notice under Section 11 of the Tamil Nadu City Tenants Protection Act has not been sent to the Municipal authority as prescribed under Section 11 of the Tamil Nadu City Tenants Protection Act?

- (9) Learned counsel appearing for the appellant submitted that the suit was filed by a person claiming hereditary trustee even though there is no order passed by HR & CE Department declaring the right of the present trustee. Hence, it is submitted by the learned counsel that the suit itself is not maintainable. Learned counsel submitted that the Courts below have rendered findings with regard to the status of the present trustee even though the HR & CE Department is not a party to the proceedings in the previous suit. Relying upon the provisions of the Tamil Nadu City Tenants Protection Act, it is contended by the counsel that the suit, without issuing a notice under Section 11 of the Tamil Nadu City Tenants Protection Act, is not maintainable. It is also contended that there was no notice



terminating the tenancy as contemplated under Section 11 of the Tamil Nadu City Tenants Protection Act. This Court is unable to find any substance in any of the substantial questions of law raised by the appellant.

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(10) First of all, the Courts below have concurrently held that the suit has been filed by the hereditary trustee whose right as such has been declared by the Civil Court. The status of the person as a hereditary trustee by assumption of office can be a fact even without a declaration by the HR & CE Department contemplated under the provisions of the HR & CE Act. Therefore the contention that the suit can be maintained only by the person who has been declared as a hereditary trustee has no relevance. It is to be noted that the appellant/1st defendant has recognized the present trustee by handing over a cheque towards arrears of rent. As such, the appellants are estopped from raising an issue disputing the status of present trustee as a person entitled to administer the property by collecting rent. Hence, the suit representing the religion institution as such cannot be challenged on the ground of maintainability. The provisions of the Tamil Nadu City Tenants Protection Act are not applicable to any religious institution as there is a specific exclusion of applicability of the Act to properties owned or controlled by the Religious Institution. Merely because the appellant was in possession for more than three decades, that is not a ground to resist the suit for ejectment which is validly instituted. The appellant has not pleaded any independent right under any other person as a tenant in respect of the vacant land. In view of the reasons stated above, this Court does not find any merits or valid reason to interfere with the concurrent findings of the Courts below.

(11) In the result, the Second Appeal is devoid of merits and hence, dismissed. Consequently connected Civil Miscellaneous Petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR



cda
To

1.The Subordinate Judge,
Tiruvarur.

2.The District Munsif,
Tiruvarur.

+2cc to Mr.G.Krishnakumar, Advocate Sr.22566

SA.No.268/2022
and CMP.No.5587/2022

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srg 07/06/2022