



S.A. No. 940 of 2013

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No. 940 of 2013

Sri Karivaratharaja Perumal Temple,
rep. by its Executive Officer

... Appellant

Vs.

C.Kither Mohamed,
S/o. Cinnappa Rowther

... Respondent

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 26.02.2013 in A.S.No.105 of 2011 on the file of Hon'ble Principal Subordinate Judge at Coimbatore against the judgment and decree dated 24.09.2007 in O.S.No.1272 of 2004 on the file of Hon'ble District Munsif Court, Coimbatore.



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For Appellant : Mrs.V.S.Usha Rani

For Respondent : Mr.I.Abrar Md. Abdulla

JUDGMENT

The appellant herein is the plaintiff filed the suit in O.S.No. 1272 of 2004 on the file of District Munsif Court, Coimbatore against the respondent/defendant contending that as per the lease, the defendant is the tenant of the suit property, not agreed for the fair rent fixed by the temple authority. Hence, a notice was issued terminating the tenancy, which was replied with false allegations and also not paid the enhanced rent. Hence, the suit.

2. The defendant admits that he entered into a lease with the plaintiff temple, but contended that no notice of demand prior to fixation of fair rent was served on him and also not given any opportunity to the defendant as required under Sec.34-A and 34-B of the Tamil Nadu Hindu Religious and Charitable Endowment Act (hereinafter called as 'Act') and the notice as such issued by the plaintiff also not maintainable under law.



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3. For the sake of convenience, the parties are referred as per the ranking in the suit.

4. Before the trial court, evidences were adduced on both sides along with documents and on framing separate issues, the trial court held that fair rent proposal was not intimated to the defendant as per Sec.34-A and 34-B of the Act and the notice issued by the plaintiff seeking eviction of defendant by terminating the tenancy by invoking Sec.106 of Transfer of Property Act (hereinafter called as 'T.P. Act'), as such it is not maintainable in law. Accordingly, the suit was dismissed. Aggrieved over that, the plaintiff preferred an appeal in A.S.No.105 of 2011, wherein the appellate judge analysed the facts and evidence held that fair rent was not fixed by complying the provisions under Sec.34-A and 34-B of the Act, and proper procedure was also not followed, besides, the notice of termination of lease issued under Sec.106 of T.P. Act also not maintainable. Accordingly, the first appellate court confirmed the findings of the trial court by dismissing the appeal.



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5. Challenging the concurrent findings of the courts below, the plaintiff temple preferred this appeal contending that both the courts below miserably failed to note that Secs.34-A to 34-D had been inserted by way of Amendment Act 25 of 2003 and the same came into force only on 10.05.2003, but the suit was filed in the month of January 2003 before the said amendment. But, without appreciating those legal aspects, both the courts below erroneously dismissed the plaintiff's claim, as such, it is perverse in nature. Accordingly, the plaintiff temple prayed to set aside the findings and filed this Second Appeal. This Second Appeal is admitted on the following question of law :-

“i) Whether the courts below were right in holding that the suit for eviction filed contrary to Sec.34-A of the Tamil Nadu Hindu Religious and Charitable Endowment Act is not maintainable, without appreciating the fact that the suit was filed on 23.04.2003 and Sec.34-A introduced by amendment Act, 25 of 2003, came into effect only on 10.05.2003.



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ii) Whether the courts below were right in holding that notice issued under Sec.106 of the Transfer of Property Act is not valid, when the Rent Control Act is not applicable to the properties belonging to the Public Religious Institution, and eviction can be sought for, only by issuing notice under Sec.106 of the Transfer of Property Act.”

6. The case of the plaintiff is that the suit property as prescribed in the plaint schedule with an extent of 4500 sq.ft. with the superstructure bearing Door No.20/83, New Door No.211 in T.S.No.2/977 (T.S.No.2/13A) of Coimbatore Town belongs to temple and the same was leased out to the defendant for a monthly rent of Rs.750/- per month from 21.11.1985. Before that, he was a sub-tenant under one P.V.Rangasamy, but it was denied by the defendant. The suit property is comprised of a building and vacant space. So, a Fair Rent Committee was constituted by the Hindu Religious and Charitable Endowment department and a fair rent for the suit property was fixed at Rs.7083/- per month and the said proposal was intimated to the defendant, but he has not accepted. Hence,

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no other go, the plaintiff temple issued an eviction notice on 02.04.2002 by terminating the tenancy and the defendant gave a reply with false allegations on 03.06.2002. In that reply, he has not accepted the increased rent and also claimed that construction portions are belong to him, which is totally against the terms of lease. Hence, the suit filed for recovery of possession and other consequential relief.

7. The defendant admits that the suit mentioned property absolutely belong to the plaintiff temple, but denied other allegations. He also admits the tenancy with the plaintiff temple for a monthly rent of Rs.750/- per month, but with regard to the enhancement of rent of Rs.7083/-, the defendant stated that neither there was any demand for enhancement nor it was agreed by the defendant. Further, there is no proof for the demand. Hence, he is not entitled to pay the enhanced rent.

8. To prove their case, they adduced the evidence before the trial court and on the side of plaintiff temple, lease agreement, exchange of notice between the parties are marked as Ex.A1 to A3. On the side of



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defendant, he was examined as P.W.1 and Ex.B1 to B7 documents are marked.

9. On analysing the evidence as well as documents, the trial court held that the plaintiff temple has not complied the procedures laid down as per Sec.34-A and 34-B of the Act before terminating the lease and also the notice issued under Sec.106 of T.P.Act is not maintainable in law. Accordingly, the suit was dismissed. The first appellate court, though analysed the facts, but agreed with the findings rendered by the trial court and accordingly, the appeal was dismissed.

10. The learned counsel appearing for plaintiff temple argued that Sec.34-A to 34-D was inserted in the Act only on 10.05.2003 as per new Amendment, but the present case was filed much earlier in the month of January 2003. Hence, the said provisions are not applicable to the case in hand. But, without appreciating those legal aspects, both the courts below erroneously dismissed and prayed to set aside the same.



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11. By way of reply, the learned counsel for defendant submits that before fixing the fair rent, no notice was issued and without his audience, the fair rent was fixed by the authority as such it is not maintainable in law. Further, as per Sec.34-A, if the fair rent is fixed, then he is entitled to prefer an appeal within 90 days before the Commissioner, but no such opportunity was given to him. So, both the courts below rightly appreciated this aspect and declined to grant relief in favour of the plaintiff.

12. Now, the point to be considered is whether both the courts below correct in holding that the plaintiff temple not complied the provisions of Sec.34-A and 34-B of the Act with regard to fixation of fair rent as well as termination of lease. As rightly pointed out by the plaintiff's counsel that Sec.34-A to 34-D has been inserted by Tamil Nadu Act 25/2003, which came into force only on 30.05.2003 in the Tamil Nadu Hindu Religious and Charitable Endowment Act. Therefore, Sec.34-A and 34-B applies to the cases, which are filed after 10.05.2003, because no reference about retrospective effect was given for that



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provisions. Admittedly, the case in hand was filed in the month of January 2003, five months prior to the said amendment. Hence, Sec.34-A and 34-B of the Act are not applicable to the case in hand. But, both the courts below failed to appreciate those legal aspects and erroneously held that the plaintiff not complied the provisions of Sec.34-A and 34-B of the Act before terminating the tenancy and the same is liable to be set aside.

13. Furthermore, another objection raised on the side of defendant is that the suit for ejectment filed by the temple, as such, it is not maintainable in law, so also, issuance of notice under Sec.106 of T.P. Act. But, the learned counsel for appellant submitted that as per G.O.Ms. No.353, a fair rent was fixed by the temple authority and the same was intimated, but he has not accepted. Thereafter, the termination notice was issued under Sec. 106 of T.P. Act and the said notice was received by the defendant and gave a reply stating that he has not accepted the new rent. Hence, the plaintiff temple filed a suit for recovery of possession.



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14. As discussed above, Secs.34-A to 34-D was inserted only on 10.05.2003 and at the time of fixing the fair rent by the authorities, no such provision was in force. Therefore, as per G.O. Ms. No.353, the fair rent was fixed by the temple authority and it was intimated to the defendant. As he has not accepted the same, the plaintiff temple issued a notice of terminating the tenancy under Sec.106 of T.P. Act. At this juncture, the learned counsel for defendant submitted that even the suit as such is not maintainable for the reason that as per Secs.78 and 79 of the Act, the Commissioner of H.R. & C.E. Department alone having power to evict the persons including the tenants under lease.

15. By encountering the same, the learned counsel for plaintiff/appellant submitted that the civil suit as such is maintainable by relying the ratio laid down in the following authority:-

In the case of *A.N. Kumar vs. Arulmighu Arunachaleswarar Devasthanam, Thiruvannamalai, rep. by its Executive Officer*, reported in *2011 SCC Online Mad. 330* this Court held as follows :-

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“Since no express provision is made to recover possession from tenants, licensees, lessees or mortgagees the bar under Sec.108 is not attracted by filing ejectment suit by the temple.

When the temple has not chosen to go under the purview of the Act, then it cannot be said that the suit is barred – It is for the temple to choose either the common law remedy by way of filing a regular suit or invoke the provisions of the Act by approaching the authorities concerned – When such an action is taken against an encroacher, it cannot be questioned on the ground of lack of jurisdiction.

36. The crucial question in these appeals is, whether for ejectment suit filed by the temple, jurisdiction of the Civil Court is expressly barred.

37. The normal rule of law is that Civil Courts have jurisdiction to try all suits of civil nature except those of which cognizance by them is either expressly or impliedly excluded as provided under Section 9 of the Code of Civil Procedure but such exclusions are not readily inferred and the presumption to be drawn must be in favour of the existence rather than exclusion of jurisdiction of the Civil Courts to try civil suit. The test adopted in examining such



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*a question is (i) whether the legislature's intention to exclude arises explicitly or by necessary implication, and (ii) whether the statute in question provides for adequate and satisfactory alternative remedy to a party aggrieved by an order made under it. However, where a statute gives finality to the orders of the special tribunals, jurisdiction of the Civil Courts must be held to be excluded, if there is adequate remedy to do what the civil courts must be held to be excluded, if there is adequate remedy to do what the civil courts would normally do in a suit and such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure (vide **State of Andhra Pradesh v. Manjeti Laxmi Kantha Rao**, AIR 2000 SC 2220 : (2000) 3 SCC 689).*

Furthermore, the ratio laid down in **2022 SCC Online Mad. 1108** in the case of **M.Selvaraj vs. Arulmighu Arunachaleswarar Thirukkoil, Thiruvannamalai, rep. by its Assistant Commissioner/Executive Officer**, this Court held as follows :-



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“35. In the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, no express provision is made to recover possession from tenant, licensee, lessee or mortgagee, which the temple intends to take possession after terminating the lease. Since no express provision is made to recover possession from tenants, licensees or mortgagees the bar under Sec.108 is not attracted by filing ejectment suit by the temple.

36. The crucial question in these appeals is, whether for ejectment suit filed by the temple, jurisdiction of the Civil Court is expressly barred.

37. The normal rule of law is that Civil Courts have jurisdiction to try all suits of civil nature except those of which cognizance by them is either expressly or impliedly excluded as provided under Section 9 of the Code of Civil Procedure but such exclusions are not readily inferred and the presumption to be drawn must be in favour of the existence rather than exclusion of jurisdiction of the Civil Courts to try civil suit. The test adopted in examining such a question is (i) whether the legislature's intention to exclude arises explicitly or by necessary implication, and (ii) whether the statute in question provides for adequate



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*and satisfactory alternative remedy to a party aggrieved by an order made under it. However, where a statute gives finality to the orders of the special tribunals, jurisdiction of the Civil Courts must be held to be excluded, if there is adequate remedy to do what the civil courts must be held to be excluded, if there is adequate remedy to do what the civil courts would normally do in a suit and such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure (vide **State of Andhra Pradesh v. Manjeti Laxmi Kantha Rao, AIR 2000 SC 2220 : (2000) 3 SCC 689**).*

16. It is an admitted fact that the defendant is the tenant under the lease occupying 4500 sq.ft. for a monthly rent in the mid town of Coimbatore and as per G.O. Ms. No.353, the temple authority enhanced the rent and the same was intimated to him. Though it is denied by the defendant, but in the termination notice Ex.A2, the enhancement of rent was mentioned, however, in the reply Ex.A3, the defendant not accepted the fair rent. Hence, the plaintiff filed a suit for ejectment. Moreover, it is



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the option of the temple to approach the appropriate forum and accordingly, a civil suit was filed. The ratio laid down in the above authorities is supported to the case of the appellant. Hence, the civil suit as such is maintainable in law. Therefore, the objection raised by the defendant is that the suit as such is not maintainable, which is unsustainable one, but both the courts below, without appreciating this legal aspect, erroneously held that the suit is not maintainable and the findings rendered by the courts below is liable to be set aside. One more objection raised by the defendant is that before fixing the fair rent, he was not given opportunity, but as per G.O. Ms.No.353, the authority based upon the guideline value prevailed at that time, fixing the fair rent. Therefore, the objection raised by the defendant to that effect as such is not maintainable. Hence, the findings rendered by the courts below is set aside and this second appeal is allowed. Already the temple terminated the tenancy, to that effect, a notice was issued by invoking Sec.106 of T.P. Act and at the time of filing of the suit, there is only one month rent arrears, for which the plaintiff is entitled to and with regard to damages, the plaintiff is advised to initiate separate proceedings. Hence, the suit is



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allowed and with regard to delivery of vacant possession, the defendant is directed to deliver the property within a period of three months. With regard to arrears of rent, the plaintiff is entitled to as they prayed for. With regard to damages, the plaintiff is advised to initiate separate proceedings. Having occupied the premises without paying fair rent from the year of 2003 onwards by enjoying 4500 sq.ft. in the town of Coimbatore by obtaining interim order and enjoying the property for commercial purpose, the defendant is liable to pay cost. Hence, the suit is decreed with cost. However, no relief for damages. Accordingly, the question of law (i) and (ii) are answered and thus, Second Appeal is allowed. No costs.

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Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To

Principal Sub-Judge,
Coimbatore.

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Pre-delivery judgment in
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