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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Second Appeal No.297 of 2016
and CMP No.5480 of 2016

M.S.Balamurugan ... Appellant/Respondent/Defendant
Vs.

A/M.Dhandeeswarr Thirukoil
Hindu Religious & Charitable
Endowments Department having its
office at Velachery,
Chennai 600 042. ... Respondent/Appellant/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 04.11.2015 in AS No.124 of 2014 on the file of the I Additional City Civil Court Chennai and reversing the judgment and decree dated 3.1.2014 in OS.No.14535/2010 on the file of the XIV Assistant City Civil Court at Chennai.

For Appellant : Mr.K.P.Gopalakrishnan

For Respondent : Mrs.E.Indumathi
Government Advocate

JUDGMENT

The defendant is the appellant in the Second Appeal.

2. The plaintiff temple filed the suit seeking for the relief of recovery of possession, permanent injunction and mandatory injunction against the defendant.

3. The case of the plaintiff is that they are the owner of the suit property and the defendant is the tenant in the said property on a monthly rent. According to the plaintiff, the defendant was attempting to put up illegal construction in the property without getting the permission from the plaintiff.



Complaints were also given against the defendant in this regard. Ultimately a notice was issued on 04.11.2010 which was marked as Ex.A5 under Section 106 of the Transfer of Property Act, terminating the tenancy and calling upon the defendant to vacate and hand over possession. The defendant gave a reply on 19.11.2010, marked as Ex.A6 and took a defence that no additional construction has been put up by the defendant and he is not in arrears of rent. The plaintiff thereafter proceeded to file the suit and sought for the reliefs as stated supra.

4. Both the Courts concurrently found that the allegation made by the plaintiff temple as if the defendant had put up an unauthorised construction has not been proved. The Trial Court held that even though a notice of termination was issued by the plaintiff under Section 106 of the Transfer of Property Act, the suit was filed by making certain allegations against the defendant and the cause of action was on the ground that the defendant was making unauthorised construction in the property. Hence the Trial Court found that the plaintiff is not entitled for the reliefs sought for in the suit. Accordingly, the suit was dismissed through a judgment and decree dated 03.01.2014.

5. Aggrieved by the same, the plaintiff temple filed an Appeal in AS No.124 of 2014 before the I Additional City Civil Court, Chennai. The First Appellate Court found that the Trial Court went wrong in not granting the relief sought for by the plaintiff temple by taking into account the termination notice issued under Section 106 of the Transfer of Property Act. The Lower Appellate Court held that once the termination notice has been issued in accordance with law, the Court need not go into any of the other allegations and counter allegations and the eviction can be ordered merely based on the termination notice if it is in accordance with Section 106 of the Transfer of Property Act. The Lower Appellate Court relied upon various judgments to substantiate this ground.

6. The above finding of the Lower Appellate Court is perfectly in accordance with law. This is more so since the regular Rent Control Act does not apply to the plaintiff temple and the plaintiff temple will have to resort to the issuance of notice under Section 106 of the Transfer of Property Act, for terminating the tenancy and seeking for the eviction of the tenant. While doing so, there is absolutely no requirement to give any reason for terminating the tenancy. The substantial questions of law are accordingly answered against the appellant.



7. In view of the above discussion, this Court sustains the judgment and decree of the Lower Appellate Court and accordingly, the Second Appeal is dismissed. Considering the fact that the appellant has been in possession and enjoyment of the property for years together, the appellant is granted three months time to vacate and handover the possession of the property to the respondent temple. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently the connected miscellaneous petitions are closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

jv
To

1. The I Additional Judge,
City Civil Court,
Chennai.
2. The XIV Assistant Judge,
City Civil Court,
Chennai.
3. The Section Officer,
VR Section,
High Court Madras.

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