



S.A.No.627 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.08.2022**

CORAM

THE HONOURABLE Ms. JUSTICE **P.T. ASHA**

S.A.No.627 of 2022

and

C.M.P.No.12473 of 2022

P.Ravichandran

... Appellant

Vs

1.Arulmighu Ekambareswarar Thirukkoil,
Rep. by its Executive Officer,
Having office at the Temple Premises,
Aminjikai, Chennai – 600 029.

2.Mani

3.Elumalai

4.The Commissioner,
Corporation of Chennai,
Chennai – 600 003.

... Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code 1908, against the judgment and decree dated 14.12.2021 in A.S.No.266 of 2018 on the file of IV Addl. City Civil Court at Chennai,

1/11



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confirming the judgment and decree passed in O.S.No.1469 of 2014 dated 12.04.2017 on the file of the VIII Asst. City Civil Court at Chennai.

For Appellant : M/s.M.Akkila

JUDGEMENT

The 3rd defendant is the appellant before this Court challenging the concurrent judgment and decree in the suit in O.S.No.1469 of 2014 on the file of the learned VIII Assistant Judge, City Civil Court, Chennai.

2.The facts which are necessary for disposing of the appeal is herein below set out and the parties are referred to in the same ranking as before the Trial Court.

3. The plaintiff/temple filed the above suit for the following relief :-

a) for a permanent injunction restraining the third defendant, his men, servants, agents or anyone acting on his behalf from in any way or in any manner meddle with, or assign or by putting up any new or additional construction or continue the construction in any portion of the land bearing



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No.306, P.H. Road, Aminjikarai, Chennai – 600 029, comprised in Block No.25, T.S.No.4, Survey No.70/2, measuring about 625 sq. feet or thereabouts and more fully described in the Schedule hereunder belonging to the Plaintiff temple, without the written permission from the temple and the sanctioned plan from the Corporation of Chennai and in violation of rules under Town and Country Planning Act,

b) for a mandatory injunction directing the defendants to remove the entire illegal construction put up by the third defendant or his predecessors and standing on the land, bearing No.306, P.H. Road, Aminjikarai, Chennai – 600 029, comprised in Block No.25, T.S.No.4, Survey No.70/2, measuring about 625 sq. feet or thereabouts and more fully described in the Schedule hereunder belonging to the Plaintiff temple, without the written permission from the temple and the sanctioned plan from the Corporation of Chennai and in contravention of the building rules.

4.It is the case of the plaintiff/temple that they are the owner of the suit property comprised in Block No.25, T.S.No.4, Survey No.70/2, bearing



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No.306, P.H. Road, Aminjikarai, Chennai – 600 029, measuring about 625 sq.ft. or thereabouts. Initially, 300 sq.ft. was let out to the 1st defendant on a monthly rent of Rs.820/- and he had put up temporary construction in the tenanted portion. The 2nd defendant leased out with the remaining extent of 325 sq.ft. on a monthly rent of Rs.889/-. The defendants 1 and 2 have also been paying the rents in respect of the tenanted portion accepting the right and title of the plaintiff/temple to the land.

5.It appears that the defendants 1 and 2 have assigned/sold the leasehold right and parted possession of their respective portions in favour of the 3rd defendant. The plaintiff/temple would submit that the defendants 1 and 2 have no right to sell the property without seeking the permission of the plaintiff/temple. The 3rd defendant is a tenant, who is not recognised by the plaintiff/temple and therefore, a rank trespasser. The plaintiff/temple had let out the land to the tenants on the specific condition that no permanent construction would be put up on the property without the written consent of the Devasthanam. During the inspection on 11.03.2014, the



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Inspector of the plaintiff Department found that the 3rd defendant was in occupation of the property and he had demolished the old building and had made arrangements to put up a new construction. Immediately, the Executive Officer warned the 3rd defendant not to put up any construction as permission has to be got from the H.R. & C.E. Department. It also come to the notice of the plaintiff that the defendant had not obtained any sanction from the Corporation of Chennai or the Chennai Metropolitan Development Authority for putting up the construction and neither did the 3rd defendant obtain the NOC from the plaintiff for putting up construction.

6. Thereafter, the Executive Officer had lodged a complaint with the K-3 Police Station, Aminjikarai regarding the illegal construction and a letter was also marked to the 4th defendant, the Commissioner, Corporation of Chennai. The 3rd defendant had attempted to rush through the construction and if they had so succeeded it would have been prejudicial to the interest of the plaintiff/temple, therefore, the plaintiff was constrained to file the suit in question. The suit property is situated in a prime locality.



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7.The defendants 1 and 4 had remained *ex-parte*. The other defendants were represented by their counsels.

8.The 3rd defendant in his written statement would submit that the 1st and 2nd defendant had no interest in the suit property as they have sold the same to the 3rd defendant. The plaintiff/temple which was aware of the same has deliberately impleaded them as parties to the proceedings. The 3rd defendant would submit that he had purchased the superstructure along with the leasehold right under two registered instruments from 1.Mr.V.A.S.Jahudar Jalaludeen under Document No.2418 of 1995 and 2.Mr.G.Bhagavan, under Document No.2419 of 1995 dated 28.08.1995 and registered on the file of the SRO, Anna Nagar. The 3rd defendant's case is that he had made necessary application to the plaintiff for putting the construction and permission was also granted by the plaintiff/temple vide letter dated 20.03.1995. The 3rd defendant would submit that the entire roof had collapsed in the year 1996 due to the heavy rain. He would further submit that the suit property is electrified and he had taken the initiative for



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the same and he had also put up drainage connection and water supply to the Board. Therefore, the 3rd defendant sought for dismissal of the suit contending that he is not an unauthorized occupant.

9.The learned VIII Assistant Judge, City Civil Court, Chennai has framed the following issues :-

- “1. Whether the plaintiff is entitled for permanent injunction against the 3rd defendant to assign or putting up any new or additional construction in the suit property ?*
- 2. Whether the plaintiff is entitled for to a relief of mandatory injunction directing the defendant to remove the illegal construction put up by 3rd defendant in the suit property ?*
- 3. To what other relief ?”*

10.The plaintiff is examined as P.W.1 on their side and Ex.A1 to A10 were marked and on the side of the defendant, the 3rd defendant had examined himself as D.W.1 and marked Ex.B1 to B7.



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11.Ultimately, the learned Judge held that the property belonged to the temple and no permission had been obtained from the plaintiff/temple. Though the 3rd defendant had put across the case that he had obtained permission of the plaintiff for putting up construction under Ex.B4 since he has not been able to prove the same, the suit was decreed as prayed for.

12.Challenging the same, the 3rd defendant has filed A.S.No.266 of 2018 on the file of the learned IV Additional District Judge, City Civil Court, Chennai.

13.The learned Judge by her judgment dated 14.12.2021 was pleased to dismiss the appeal and confirm the judgment and decree of the Trial Court.

14.Heard the learned counsel for the appellant and perused the materials available on record.



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15.The plaintiff/temple had come forward with a case that defendants 1 and 2 without the permission of the plaintiff/temple sold the suit property to the 3rd defendant, which was contrary to the terms of the lease entered into between the plaintiff and the defendants 1 and 2. Further, the 3rd defendant had demolished the existing construction, which is adjacent to the properties in which other tenants were in occupation and had arranged for the reconstruction. None of these are with the permission of the plaintiff or the H.R.&C.E. Department. The Courts below have therefore correctly come to the conclusion that no right flows to the 3rd defendant on the basis of the invalid sale agreement. The 3rd defendant has not examined the other defendants through whom he claims a right to the suit property. The 3rd defendant has not made out any case warranting the interference by this Court. No substantial question of law has been made out for consideration of the Court in the above Second Appeal. Therefore, the appeal fails.



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16. Accordingly, the Second Appeal is dismissed. No costs.

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Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Speaking order/non-speaking order

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To

- 1.The IV Additional District Judge, City Civil Court, Chennai.
- 2.The VIII Assistant Judge, City Civil Court, Chennai.
- 3.The Section Officer, V.R.Section, High Court, Madras.



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