



S.A.No.759 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.759 of 2022

and

C.M.P.Nos.15526 & 15528 of 2022

Mrs. Saroja

... Appellant

Vs.

- 1.The Executive Office,
Arumighu Marundheeswarar Temple,
Thiruvanmiyur, Chennai - 600041.
- 2.The Joint Commissioner,
HR & CE, Administration Department,
No.119, Mahatma Gandhi Road,
Nungambakam, Chennai - 600034.
- 3.The Commissioner,
HR. & CE, Administration Department
No.119, Mahatma Gandhi Road,
Nungambakam, Chennai - 600034.

... Respondents



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PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree dated 29.06.2022, made in A.S.No.5 of 2017 on the file of the II Additional City Civil Court, Chennai, confirmed the judgement and decree dated 16.11.2016, in I.A.No.12338 of 2016 in O.S.No.4669 of 2016 on the file of the XIII Assistant City Civil Court, Chennai.

For Appellant : M/s.V.Umashankari

For Respondents : Mr.R.Siddharth, Govt. Advocate [R.1 to R.3]

JUDGMENT

The plaintiff is the appellant before this Court challenging the judgement and decree passed by the II Additional City Civil Court, Chennai in A.S.No.5 of 2017 in and by which the learned Judge has confirmed the rejection of the plaint in O.S.No.4669 of 2016 passed by the XIII Assistant judge, City Civil Court, Chennai in I.A.No.12238 of 2016. The brief facts which are essential for disposing of the above Second Appeal are as follows:-

2. The appellant herein had filed the suit O.S.No.4669 of 2016 on the file of the XIII Assistant judge, City Civil Court, Chennai for a declaration



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that the order passed by the 2nd defendant namely the Joint Commissioner HR & CE Department in Na.Ka.No.4365/2008/A2, dated 30.04.2015 confirming the order passed by the 3rd defendant, the Commissioner HR & CE, Administration Department in R.P.No.201/2016/D-2 dated 18.07.2016 as null and void and not binding on the plaintiff/appellant herein and for an injunction restraining the defendants or their men from in any way interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

3. The appellant herein would submit that she is running a small shop near the 1st defendant/respondent's temple measuring an extent of about 219 Sq.Ft. in Survey Field No.199/2. The appellant is also residing in the same premises with her sons since her husband had deserted her a long ago. This property was originally leased out to one T.K.Krishnan in the year 1992 under a lease agreement with the 1st Respondent herein. From the year 1992, it is the appellant who has been paying the rent to the temple authorities and receipts have been issued in the name of T.K.Krishnan. While so, in the month of December 2007, the staff of the 1st respondent



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temple along with a local politician had threatened the appellant and directed her to vacate the premises within a period of two months. Immediately, the plaintiff/appellant herein had filed a Suit O.S.No.694 of 2008 on the file of the IV Assistant City Civil Court Chennai, for a permanent injunction. By a Judgement and Decree dated 19.01.2009, the IV Assistant Judge City Civil Court had decreed the suit O.S.No.694 of 2008, but however had directed that only the 1st and the 2nd respondents could evict her by following the due process of law. Thereafter, the plaintiff/appellant herein had received a show cause notice from the 2nd respondent treating her to be an encroacher and asking her to show cause as to why she should not be evicted from the premises. In the said notice issued under Section 78(2) of the HR & CE Act, 1959 a date of hearing was fixed on 26.11.2014 at 2.30 pm for enquiry. It appears that the appellant's counsel did not appear on the said date and an ex parte order was passed by the 2nd respondent in and by which the appellant was declared as an encroacher and directed to be evicted under Section 78(2) of the HR & CE Act. Therefore by reason of the judgement in O.S.No.694 of 2008 the respondents were at liberty to evict the plaintiff/appellant herein from the as



they had followed the due process of law.

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4. The appellant would further submit that the 2nd respondent should have taken notice to the original lessee Mr.T.Krishnan but to date no action has been taken against the original lessee. Therefore, the order dated 30.04.2015 is flawed. Originally, the appellant was enjoying an extent of 319 Sq.Ft. of which 100 Sq.Ft. has been taken away by the temple for constructing a compound wall. Since the appellant was dependent on the temple for her livelihood she had not objected to the taking of the 100 sq.ft. In view of the threat by the respondents, the plaintiff/appellant herein has come forward with the above suit.

5. The 1st respondent on entering appearance had taken out an application under Order 7 Rule 11 of the CPC for rejecting the plaint on the ground that the order that is the subject matter of the suit is an order passed by the authority constituted under the Tamil Nadu Hindu Religious and Charitable Endowment Act. Section 79(3) of the HR & CE Act specifically bars the grant of an injunction against any proceeding taken or to be taken by the Joint Commissioner under Section 78 of the HR & CE Act. That



apart, Section 108 of the HR & CE Act would stipulate that no suit or other legal proceedings relating to the administration and management of religious institutions would be instituted before any other Court of law except in conformity with the provisions of the HR & CE Act. Therefore, the 1st respondent had sought to reject the plaint on these two grounds. The learned XIII Additional Judge by her judgment and decree dated 16.11.2016 had proceeded to allow the application. An argument was sought to be made that a portion of the property was Government Poromboke and that the appellant can only be evicted under the Land Encroachment Act. However, taking into account the relief that was sought for the learned Judge had proceeded to reject the plaint.

6. Challenging the same the appellant had filed AS.No.5 of 2017 on the file of the II Additional Judge, City Civil Court, Chennai. The learned Judge also agreed with the findings of the Trial Court and dismissed the appeal. Challenging the same the appellant is before this Court.

7. Heard the counsel for the appellant and respondents 2 and 3.



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8. A perusal of the judgement in A.S.No.5 of 2017 would show that against the order dated 30.04.2015 which is the subject matter of the present suit, the appellant had filed Writ in W.P.No.34127 of 2015 and by order dated 27.10.2015, this Court had directed the appellant to seek the remedy before the Statutory Authority within a period of two weeks from the date of the order. The appellant had not preferred the Statutory revision within the time stipulated but however approached the Statutory Authority namely the 3rd defendant/respondent with a delay of 113 days. The delay was condoned and the revision petition was numbered as R.P.No.201 and 2016 and after full inquiry, the same was dismissed vide order dated 18.07.2016. While the statutory revision was pending the plaintiff/appellant herein had filed the suit OS.No.2558 of 2016 on the file of the XVI Assistant Civil City Court, Chennai for a bare injunction restraining the 1st respondent to evict the appellant from the suit property. This suit was dismissed by Judgement and decree dated 09.08.2016 for default. However, liberty was granted to the appellant to reopen the same. However, instead of reopening the said suit, the plaintiff/appellant herein has filed a fresh suit in OS.No.4669 of 2016 which is the present suit. That apart, the appellant had filed an earlier suit



O.S.No.694 of 2008 before the IV Assistant City Civil Court, Chennai in which she had obtained an injunction that she should not be evicted except under due process of law. The authorities have therefore taken steps as contemplated. The suit filed is not only barred by the provisions of Section 78(2) and 108 of the HR & CE Act which provisions are extracted herein below :-

"[78.Encroachment by persons on land or building belonging to charitable or religious institution or endowment and the eviction of encroachers - (2) Where, on a perusal of the report received by him under sub-section (1), the Joint Commissioner finds that there is a prima facie case of encroachment, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling on him to show cause before a certain date why an order requiring him to remove the encroachment before the date specified on the notice should not made. A copy of the notice shall also be sent to the trustees of the religious institution or endowment concerned. "



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"108. Bar of suits in respect of administration or management of religious institutions, etc.—No suit or other legal proceeding in respect of the administration or management of a religious institution or any other matter or dispute for determining or deciding which provision is made in this Act shall be instituted in any Court of Law, except under, and in conformity with, the provisions of this Act."

but is also not maintainable since the appellant has already initiated proceedings against the order dated 30.04.2015 by filing the writ petition in which orders have been pronounced directing the appellant to approach the statutory authority which exercise has also been done by the appellant. In these circumstances, I see no reason to interfere with the judgment and decree of the Courts below and accordingly the Second Appeal is dismissed. The same also does not rise to any substantial question of law. No costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

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Index : Yes/No
Internet : Yes/No
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To
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- 1.The III Additional City Civil Court, Chennai.
- 2.The XVIII Assistant City Civil Court, Chennai.



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P.T. ASHA, J,

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