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S.A.Nos.1010 to 1012 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.12.2022

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THE HONOURABLE MR. **JUSTICE G.K.ILANTHIRAIYAN**

S.A.Nos.1010 to 1012 of 2022

SA.No.1010 of 2022

Selvaraj

...Appellant

Vs.

1.M/s.Indian Christian Association,
Represented by its General Secretary,
J.Anand Manohar,
No.5, Gandhi Irwin Road,
Egmore, Chennai 600 008
G.Krishnasamy(died)
2.Pasupathi
3.Govindaraj
4.A.Ponraj Israel

...Respondents

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the judgment and decree passed in AS.No.77 of 2020 on the file of the VI Additional City Civil Judge, Chennai dated 18.08.2022 by confirming the judgment and decree passed in OS.No.5039 of 2013 on the file of the IV Assistant City Civil Judge, Chennai dated 26.09.2019 by allowing the above second appeal.

For Appellant : Mr.V.Manohar

For Respondents : Mr.Praveen Alexander



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SA.No.1011 of 2022

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T.Unnikrishnan

...Appellant

Vs.

1.M/s.Indian Christian Association,
Represented by its General Secretary,
J.Anand Manohar,
No.5, Gandhi Irwin Road,
Egmore, Chennai 600 008
2.A.Ponraj Israel

...Respondents

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the judgment and decree passed in AS.No.78 of 2020 on the file of the VI Additional City Civil Judge, Chennai dated 18.08.2022 by confirming the judgment and decree passed in OS.No.5040 of 2013 on the file of the IV Assistant City Civil Judge, Chennai dated 26.09.2019 by allowing the above second appeal.

For Appellant : Mr.V.Manohar

For Respondents : Mr.Praveen Alexander

SA.No.1012 of 2022

Shantha

...Appellant

Vs.

1.M/s.Indian Christian Association,
Represented by its General Secretary,
J.Anand Manohar,
No.5, Gandhi Irwin Road,
Egmore, Chennai 600 008
2.A.Ponraj Israel

...Respondents



S.A.Nos.1010 to 1012 of 2022

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the judgment and decree passed in AS.No.79 of 2020 on the file of the VI Additional City Civil Judge, Chennai dated 18.08.2022 by confirming the judgment and decree passed in OS.No.5041 of 2013 on the file of the IV Assistant City Civil Judge, Chennai dated 26.09.2019 by allowing the above second appeal.

For Appellant : Mr.V.Manohar

For Respondents : Mr.Praveen Alexander

COMMON JUDGMENT

The second appeals are directed as against the judgment and decree passed in AS.Nos.77 to 79 of 2020 on the file of the VI Additional City Civil Judge, Chennai dated 18.08.2022 by confirming the judgment and decree passed in OS.Nos.5039 to 5041 of 2013 on the file of the IV Assistant City Civil Judge, Chennai dated 26.09.2019, thereby allowed the suit filed for ejectment.

2. The first respondent filed suit for ejectment to vacate / quit and deliver vacant possession of the suit premises. The case of the first respondent is that the appellant in all the appeals are tenants with respect to the suit property situated at No.5, Gandhi Irwin Road, Egmore, Chennai. The tenancy is commercial in nature for running their respective shops. The



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age of the building is more than 50 years and it is in dilapidated condition.

Therefore, the first respondent decided to demolish the existing superstructure and to put up new construction in the suit property. The first respondent also applied for sanction plan and the same was sanctioned by the Corporation of Chennai. In fact, the first respondent demolished the backyard building of the suit property and constructed a new building. Even at the request of the first respondent, the appellants failed to vacate the premises and as such, the first respondent was constrained to file petition to evict the appellants before the Rent Controller by way of Rent Control Original Proceedings. However, the appellants filed petition for rejection of RCOP's on the ground that the first respondent is a public charitable organisation. Therefore, the first respondent had withdrawn all the RCOP's with liberty to file a fresh suit before the City Civil Court, Chennai.

2.1 Thereafter, the first respondent caused legal notice to the appellants and filed suit for delivery of vacant possession and also damages at the rate of Rs.5,000/- per month. The appellants filed their respective written statements and stated that they are protected under Rent Control Act and eviction can be initiated only under Section 10 of Tamilnadu Building (Lease and Rent Control) Act. The first respondent has to prove the



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character of the trust by producing trust deeds. The first respondent is not the absolute owner of the suit property since as per the sale deed dated 17.04.2009, he had sold out the property through his power agent. Therefore, without adding the co-owner, the suit is not maintainable.

3. The first respondent had examined PW1 in all the suits and marked Ex.A1 to Ex.A8. On the side of the appellants, the respective tenants was examined as DW1 and marked Ex.B1 and B2. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court allowed the suit and directed the appellants to vacate the suit property and also ordered to pay damages at the rate of Rs.5,000/- per month from the date of the suit till the date of handing over the possession. Aggrieved over the judgment and decree of the trial Court, the appellants preferred appeal suit in AS.Nos.77 to 79 of 2020 before the VI Additional City Civil Judge, Chennai. The first appellate Court on appreciating the materials placed on records, dismissed the appeal by confirming the judgement and decree passed by the trial Court. Challenging the same, the present second appeals have been filed.



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4. The learned counsel for the appellant in all the second appeals submitted that the first respondent is not a charitable institution and as such, it is not exempted under Tamilnadu Buildings (Lease and Rent Control) Act. Therefore, the suit itself is not maintainable for ejectment and the first respondent ought to have filed petition for eviction under the Tamilnadu Buildings (Lease and Rent Control) Act. Admittedly, the first respondent is a religious institution and it cannot be considered as that of charitable institution so as to confer the civil jurisdiction in respect of the suit property. The courts below also ordered damages of Rs.5,000/- per month without even assessing the real damages and the concept of awarding damages to that extent there should be loss to the extent at the hands of the appellants. It needs to be proved under the law and the failure only disentitled the first respondent. The trial court ordered damages without any basis or evidence or material to show that the appellants are liable to pay compensation. In fact, the rent is only Rs.500/- and as such, there is absolutely no basis for fixation of damages of Rs.5,000/-.

5. Heard, Mr.V.Manohar, the learned counsel for the appellants and Mr.Praveen Alexander, the learned counsel for the respondents.



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6. The following substantial questions of law have been raised by

the appellants:

- a) Whether the courts below are empowered to assume the plaintiff institution is the charitable institution exempted under the Tamilnadu Building (lease and rent control) Act without any evidence on record?
- b) Whether the religious institution can be considered isopofacto as that of charitable institution so as to confer the civil jurisdiction in the subject matter property?
- c) Whether the private sale by the institution without intervention of the courts authority leads the institution is only a religious private institution or not and also expose the plaintiffs constitution nature get exposes thereby or not?
- d) Whether the courts below empower to award the damages without any proof or material to assess the damages and in the absence of any statutory demand to that effect?
- e) Whether the courts below are correct in concluding the jurisdiction and compliance of rule of law based on mere notice under Section 106 of TP Act?



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7. On perusal of records, initially the first respondent filed rent control original proceedings as against all the appellants. They filed petition for rejection of all the petitions on the ground that the first respondent is a public charitable organisation. Therefore, the first respondent had withdrawn all the rent control original proceedings with liberty to file the present suits. Thereafter, the suits were decreed in favour of the first respondent. In fact, on the very same ground, one of the appellants filed an application under Order 7 Rule 11 of CPC to reject the plaint in OS.No.5040 of 2013 and it was dismissed with cost of Rs.25,000/- payable to the first respondent herein. Again, the appellants have taken the same question of law before this Court. Insofar as the damages, DW1 had deposed in common for all the suits. He categorically admitted that the tenants had paid their last rent in the year 2009 at Rs.500/- per month for their respective suit properties. Thereafter, the appellants failed to pay any rent and also did not take any steps to deposit the same. Though they are ready and willing to pay monthly rent, thereafter they did not pay any single paise to the first respondent. Thus, it is clear that all the appellants have been squatting on the suit premises even from the year 2009 till now without paying any single paise as rent. Therefore, the courts below rightly ordered damages of Rs.5,000/- per month for use and occupation of the suit property.



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8. It is also seen that the first respondent even before instituting the suits, issued legal notice which was marked as Ex.A5 as required under Section 106 of Transfer of Property Act, thereby terminated the tenancy. The same was duly acknowledged by the appellants on 13.08.2013. Therefore, the first respondent is entitled for damages for the illegal occupation and possession of the respective suit properties. Hence, this Court finds no substantial questions of law involved in these appeals and all the second appeals are liable to be dismissed.

9. Accordingly, all the Second Appeals are dismissed and the judgment and decree passed in AS.Nos.77 to 79 of 2020 on the file of the VI Additional City Civil Judge, Chennai dated 18.08.2022 by confirming the judgment and decree passed in OS.Nos.5039 to 5041 of 2013 on the file of the IV Assistant City Civil Judge, Chennai dated 26.09.2019 are confirmed. There shall be no order as to costs.

15.12.2022

Index : Yes/No
Internet : Yes/No
Speaking order/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

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

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