



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2022

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)Nos.571 and 572 of 2010

S.A. (MD)No.571 of 2010:-

- 1.Nirmala
- 2.John Britto
- 3.W.Piyoh Selvaraj

... Appellants/Appellants/ Lrs. Of
the Defendants 3 to 5

Vs.

- 1.Hajee M.Mohammed Ansari
- 2.M.Mohammed Samsudeen
- 3.Hajee Akbar Ali @ G.Akbar Sahib

... Respondents/Respondents /
Plaintiffs1,2, 1st Defendant

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S.No.131 of 2006 on the file of the 2nd Additional Subordinate Judge, Trichirapalli, dated 15.09.2009, confirming the judgment and decree passed in O.S.No.2507 of 2004 on the file of the 2nd Additional District Munsif Court, Trichirapalli, dated 21.11.2005.

For Appellants : Mr.H.Lakshmi Sankar
For Mr.B.Prasanna Vinoth
For Respondents : Mrs.J.Maria Roseline for R1 & R2
R3 : died

S.A. (MD)No.572 of 2010:-

W.Piyoh Selvaraj

... Appellant/Appellants/2nd Plaintiff

Vs.

- 1.Hajee Akbar Ali @ G.Akbar Sahib
- 2.Kadhar Mosque and Kadhar Ka Janda Wakf,
Nelpettai Road,
Gandhi Market, Trichy-8,
Through its Trustee and Muthavalli,
G.Ahamed Hussian
- 3.Hajee M.Mohammed Ansari
- 4.M.Mohammed Samsudeen .

... Respondents/Respondents/Defendants

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S.No.130 of 2006 on the file of the 2nd Additional Subordinate Judge, Trichirapalli, dated 15.09.2009, confirming the judgment and decree passed in



O.S.No.2163 of 1984 on the file of the 2nd Additional District Munsif Court, Trichirappalli, dated 21.11.2005.

For Appellant : Mr.H.Lakshmi Sankar
For Mr.B.Prasanna Vinoth
For Respondents : Mr.R.Sundar for R2
Mrs.J.Maria Roseline for R3 & R4
R1 : died

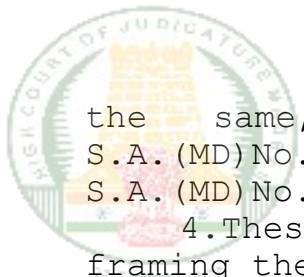
WEB COPY

COMMON JUDGMENT

The suit items are two shops bearing Door Nos.14 and 14/1, Nelpettai Road, Gandhi Market, Trichirappalli. There is no dispute that the land on which the shops are located is a wakf property. According to the plaintiff in O.S.No.2507 of 2004, the superstructures were put up by the first defendant namely, Hajee Akbar Ali @ G.Akbar Sahib. Mr.Williams, the husband of the first appellant and father of the second appellant in S.A.(MD)No.571 of 2010 was inducted as a tenant in respect of said two shops by the said Hajee Akbar Ali @ G.Akbar Sahib. The case of the plaintiff in O.S.No.2507 of 2004 is that the superstructure alone was sold in their favour under Ex.A1 dated 12.08.1984. After such purchase, when the said plaintiff called upon the tenants to vacate the property, they refused. Instead of complying with the request, Mr.Williams, the tenant filed O.S.No.2163 of 1984 before the II Additional District Munsif Court, Trichirappalli, for forbearing the defendants from dispossessing him except in the manner known to law. After O.S.No.2163 of 1984 was filed, O.S.No.2507 of 2004 was filed by Hajee M.Mohammed Ansari and M.Mohammed Samsudeen seeking the relief of declaration of their title over the superstructure, for directing the tenant to handover possession of the same, permanent injunction and for payment of damages for use and occupation of the shops. During pendency of the suit, Mr.Williams passed away and his wife and sons came on record as the defendants 3 to 5. Since both the suit were interconnected, they were tried together.

2.Based on the divergent pleadings, issues were also framed. Hajee M.Mohammed Ansari/first plaintiff examined himself as P.W.1 and Exs.A1 to A7 were marked. Piyoh Selvaraj and Haja Mohideen were examined as D.W.1 and D.W.2 and Exs.B1 to B28 were marked.

3.After consideration of the evidence on record, by the common judgment and decree dated 21.11.2005, O.S.No.2163 of 1984 was dismissed while O.S.No.2507 of 2004 was decreed as prayed for. Aggrieved by the same, Piyoh Sevlaraj filed A.S.No.130 of 2006 before the II Additional Sub Court, Trichirappalli. The contesting defendants in O.S.No.2507 of 2004 filed A.S.No.131 of 2006. Both the appeals were heard together and they were dismissed by the impugned common judgment and decree dated 15.09.2009. Challenging



the same, these two second appeals have been filed. S.A.(MD)No.571 of 2010 arises out of O.S.No.2507 of 2004 while S.A.(MD)No.572 of 2010 arises out of O.S.No.2163 of 1984.

4. These second appeals were admitted on 27.09.2018 after framing the following substantial questions of law:-

WEB COPY

"(i) Whether under Section 114 of the Transfer of Property Act, the respondent has a right as a transferee of a lease and under Section 111 of Transfer of Property Act can institute a suit for recovery of possession? and

(ii) Whether it has to be kept in mind and that the land is claimed to be wakf property site?"

5. The learned counsel for the appellants reiterated all the contentions set out in the memoranda of grounds. He pointed out that the suit property is admittedly a wakf property. The wakf concerned had filed O.S.No.974 of 1974 on the file of the Sub Court, Trichirappalli, for recovering the suit site from Hajee Akbar Ali @ G.Akbar Sahib and others. An interim order was also granted therein restraining the said Hajee Akbar Ali @ G.Akbar Sahib from alienating the suit property. However, said Hajee Akbar Ali @ G.Akbar Sahib executed Ex.A1 dated 12.08.1984 in favour of the plaintiffs in O.S.No.2507 of 2004. Of course, the muthavalli of the wakf had entered into a lease agreement for a period of 25 years. But then, the said period of 25 has since expired. Thus as on date, the decree holders in O.S.No.2507 of 2004 do not have any right to possess the property. He drew my attention to Section 108 (q) of the Transfer of Property Act, 1882, which mandates that the lessee is liable on determination of the lease to put the lessor into possession of the property. The learned counsel would also press into service Section 114 of the Transfer of Property Act, 1882. Admittedly, the appellants herein have been depositing the rent to the credit of the suit. Therefore, the appellants herein can very well be granted relief under the said provision. His foremost contention was that the suit itself was not maintainable. Even according to the decree holders in O.S.No.2507 of 2004, the appellants herein are tenants in respect of the suit shops. Therefore, they were obliged to file only a Rent Control Original Petition under the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. If according to the decree holders, the appellants herein have contested their title, even then, a suit for ejectment could be filed only after the rent controller gives a finding that there has been a bonafide denial of the land lord's title. The learned counsel drew my attention to second proviso to Section 10 (1) the said Act. He relied on quite a few rulings in support of his proposition. He called upon this Court to answer the substantial questions of law in favour of the appellants and set aside the impugned common judgment and decree and allow these second



appeals.

6.Per contra, the learned counsel for the contesting respondents submitted that the impugned common judgment and decree do not call for any interference.

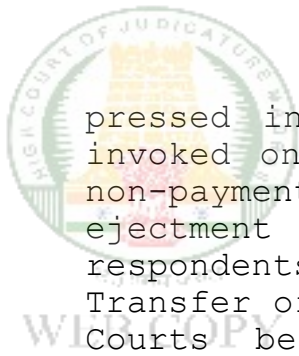
7.I carefully considered the rival contentions and went through the evidence on record. There is no dispute regarding the ownership of the site. It admittedly belongs to a wakf. It is true that the said wakf filed O.S.No.974 of 1974 on the file of the Sub Court, Trichirappalli to restrain the persons who had put up a superstructure from dealing with the property. It is obvious that when the said interim order was in operation, Hajee Akbar Ali @ G.Akbar Sahib sold the suit shops in favour of the contesting respondents under Ex.A1, dated 12.08.1984. Now the question is whether Ex.A1 can be questioned on this ground. It is seen from the pleadings that O.S.No.974 of 1974 was dismissed as settled out of Court. An interim order granted during the pendency of the suit cannot have life beyond the dismissal of the main suit. In any event, it was only for the plaintiff therein and not the appellants herein to question the validity of Ex.A1. The appellants have no *locus standi* to question the validity of Ex.A1 executed by Hajee Akbar Ali @ G.Akbar Sahib in favour of the contesting respondents.

8.The first question that calls for my determination is whether O.S.No.2507 of 2004 filed by the contesting respondents herein is maintainable. The question is whether they should have filed a Rent Control Original Petition in the first instance.

9.A reading of the pleadings would clearly show that the appellants herein have questioned the title of the contesting respondents. They have taken a categorical stand that Ex.A1 dated 12.08.1984 is void. This is a frontal challenge to the title claimed by the contesting respondents herein. Therefore, they were obliged to seek the relief of declaration that they have title over the suit property. The rent controller obviously cannot grant any declarative relief. Only the jurisdictional civil Court is competent and capable of granting such relief. Therefore, I hold that O.S.No.2507 of 2014 filed by the contesting respondents herein is very much maintainable and that they were not obliged to file a Rent Control Original Petition in the first instance.

10.It is true that the lease executed by the muthavalli for a period of 25 years appears to have come to an end. Again the appellants herein cannot take advantage of the expiry of the said lease. That dispute will have to be independently resolved between the wakf and the contesting respondents. The appellants herein cannot take advantage of the same.

<https://hcservices.courts.gov.in/hcservices> 114 of the Transfer of Property Act, 1886, cannot be



pressed into service. This is because the said provision can be invoked only if the sole ground for filing the ejectment suit is non-payment of rent. In this case, the ground on which, the ejectment suit was filed was denial of title of the contesting respondents by the appellants herein. Therefore, Section 114 of the Transfer of Property Act, 1886, has no application whatsoever. The Courts below have concurrently rendered findings against the appellants and no case has been made out for interference. The substantial questions of law answered against the appellants and the impugned common judgment and decree are confirmed and these second appeals are dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ias

To:

1.The II Additional Sub Court,
Trichirappalli.

2.The II Additional District Munsif Court,
Trichirappalli.

Copy to:

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.B.PRASANNA VINOTH, Advocate (SR-14087[F],14396 dated 24/03/2022)

+1CC to M/s.R.Sundar, Advocate, SR.No.14059 dated 24.03.2022

S.A.(MD)Nos.571 and 572 of 2010
23.03.2022

SS (CO)
KB(12.04.2022) 5P 8C