



S.A.(MD) Nos.206 of 2011
and 132 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) Nos.206 of 2011 & 132 of 2012

S.A.(MD) No.206 of 2011:

Best Hardwares,
Rep., by its Proprietor,
No.2, Nageswaran West Street,
Kumbakonam Town and Munsifi

... Appellant/Appellant/
2nd Defendant

Vs

1.Sri Nageswarasamy Temple,
Kumbakonam Town,
Rep., by its Executive Officer.

... 1st Respondent/
1st Respondent/Plaintiff

2.Rajendran

... 2nd Respondent/
2nd Respondent/1st Defendant

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 30.09.2010 made in A.S.No.99 of 2008 on the file of the Principal Sub Court, Kumbakonam confirming the judgment and decree dated 20.12.2007 made in O.S.No.7 of 2003 on the file of the II-Additional District Munsif cum Judicial Magistrate Court, Kumbakonam.



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For Appellant : Mr.M.Jothi Basu
For Respondents : Mr.R.Velmurugan for R1
: No appearance for R2

S.A.(MD) No.132 of 2012:

Rajendran

... Appellant/Appellant/
1st Defendant

Vs

1.Sri Nageswarasamy Koil,
Kumbakonam,
Rep., by its Executive Officer.

... 1st Respondent/
1st Respondent/Plaintiff

2.Best Hardware Shop,
Rep., by its Proprietor,
No.2, Nageswaran West Street,
Kumbakonam Town and Munsifi.

... 2nd Respondent/
2nd Respondent/2nd Defendant

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 30.09.2010 made in A.S.No.77 of 2008 on the file of the Principal Sub Court, Kumbakonam confirming the judgment and decree dated 20.12.2007 made in O.S.No.7 of 2003 on the file of the II-Additional District Munsif cum Judicial Magistrate Court, Kumbakonam.



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For Appellant : No appearance
For Respondents : Mr.R.Velmurugan for R1
: Mr.M.Jothi Basu for R2

COMMON JUDGMENT

The suit in O.S.No.7 of 2003 was laid by the first respondent for eviction of its tenant, the first defendant in the suit. For narrative convenience, parties are referred to by their rank before the trial Court.

2. The first defendant is a lessee of the suit property, on which the first defendant had put up a commercial building. The first defendant had leased out the property to the second defendant. *Vis-a-vis* the ground lease granted by the plaintiff to the first defendant, it amounted to sub-lease of the site. Alleging that the first defendant had sublet the property to the second defendant, which is not permitted in terms of the lease granted, the suit was laid.



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3. The learned counsel for the first defendant submits that he has no instruction in the matter, despite his efforts to take notice on the first defendant and has also produced a memo, wherein he had indicated that he had sent RPAD on the first defendant, which was returned 'unserved'.

4. Necessarily, this Court has to proceed against the first defendant as ex-parte. In his written statement, the first defendant claimed that he is a partner along with the second defendant and is doing a business in hardwares. This is also the line of defence taken by the second defendant.

5. The dispute went to trial and before the trial Court both sides adduced oral and documentary evidences. Interestingly enough, the Executive Officer of the temple, did not examine himself. He had produced some documents, but not the lease agreement between the parties. On appreciation of evidence, the trial Court decreed the suit. Both the first defendant and the second defendant have filed separate appeals in



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A.S.Nos.77 of 2008 and 99 of 2008 respectively and both came to be dismissed. Challenging the same, the first defendant filed S.A.(MD) No. 132 of 2012 and the second defendant filed S.A.(MD) No.206 of 2011 respectively.

6. The learned counsel for the first defendant/appellant in S.A.(MD) No.132 of 2012 reports no instruction. This Court is, therefore, constrained to dismiss S.A.(MD) No.132 of 2012 for default. Accordingly, the same is dismissed for default. No costs.

7. Turning to S.A.(MD) No.206 of 2011 is concerned, the following substantial questions of law have been framed for consideration of this Court:

“(i) Whether the notice issued by the plaintiff is valid under Section 106 of the Transfer of Property Act? and

(ii) Whether the first Appellate Court was right in dismissing I.A.No.94 of 2010 without following the procedure contemplated under Order 41 Rule 27 of C.P.C.?”



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8. The learned counsel for the 2nd defendant/appellant in S.A.(MD) No.206 of 2011 submitted that the lease deed has not been marked before the Court, but it has been produced by the plaintiff. He added that without it being marked, the trial Court proceeded to discuss the contents thereof. He further added that the lease involved in the case is a ground lease, and the first defendant is the owner of the commercial building therein. The first defendant has every right to lease out the building that he had put up. This, therefore, stands at a slightly different footing, which both the Courts below have failed to consider the same.

9. Per contra, the learned counsel for the plaintiff/first respondent in S.A. (MD) No.206 of 2011 submitted that the lease deed though was not marked, has not stipulated any specific term and it almost has created a perpetual lease unlimited point of time, which will go counter to the letter and tenor of Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as “the Act” for brevity).



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10. There are two aspects that require to be considered: (a) firstly, it is unfortunate that the Courts below have helped themselves with the luxury of acting in a document that was not marked; and (b) secondly, it appeared to have overlooked the effect of Section 34 of the Act. If the lease to the first defendant for some reason is void for contravention with Section 34 of the Act, then that has to be dealt with differently. But then, what would feed a point for consideration on the aforesaid aspect is the very document of lease and that has to be marked.

11. This Court, therefore, considers it appropriate to set aside the impugned judgments and decrees. Accordingly, S.A.(MD) No.206 of 2011 is allowed, the judgment and decree dated 30.09.2010 made in A.S.No.99 and 2008 and the judgment and decree dated 20.12.2007 made in O.S.No.7 of 2003 are set aside and the matter is remanded back to the Principal Sub Court, Kumbakonam. The first appellate Court is required to mark the lease deed. Opportunity is given to both the plaintiff and the second defendant to



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adduce oral evidences to support and discredit the lease deed now directed to be marked. The first appellate Court is required to dispose of the appeal within a period of three months from today (19.09.2022) and while so doing, it is also required to focus its attention to the implications of Section 34 of the Act. The parties are directed to appear before the Principal Sub Court, Kumbakonam on 30.09.2022. No costs.

19.09.2022

Internet: Yes
Index: Yes/No

Note: Issue order copy on 21.09.2022.

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To

- 1.The Principal Sub Judge, Kumbakonam.
- 2.The II-Additional District Munsif cum
Judicial Magistrate, Kumbakonam.
- 3.The Executive Officer,
Sri Nageswarasamy Temple,
Kumbakonam Town, Kumbakonam.
- 4.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SESHASAYEE, J.

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