



S.A.No.489 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:25.08.2023

Delivered on: 10.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

S.A.No.489 of 2007

&

M.P.No.1 of 2014

1. V.S.Panchanadeesan (deceased)

2.V.P.Jayalakshmi (died)

3.V.P.Durairaj

4.V.P.Sundari

5.B.S.Gayathri

6.V.S.Raghunathan

7.V.S.Rajamani

8.V.S.Ravichandran

9.V.S.Bhanumathi (died)

10.R.Krishnamurthi

11.K.Sairam

12.G.Radha Gopalakrishnan

1/30



S.A.No.489 of 2007

WEB COPY

2nd appellant died
appellants 10 to 12 brought on record
as Lrs of the deceased 2nd appellant vide
order of court dated 09.09.2022 made in
C.M.P.No.16253 of 2021

13.J.Ramkumar

14.R.Manikandan
9th appellant died, appellants 13 and 14
brought on record as Lrs of the deceased
9th appellant viz., V.S.Bhanumanthi
vide order of Court dated 09.09.2022
made in C.M.P.Nos.14459 to 14462 of 2021

... Appellants

Vs.

1.Nawab Sadthullah Khan mosque
managed by committee of management
rep by its Secretary
Mr.S.J.Wahab Khan
43, Mosque street,Chennai-15

2.The Tamilnadu Wakf Board
Chennai-4

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C against the
judgment and decree dated 10.04.2006 made in A.S.No.174 of 2003 on the
file of the Fast Track Court No.II, Chennai confirming the judgment and
decree dated 26.11.2002 made in O.S.No.578 of 1999 on the file of I



S.A.No.489 of 2007

Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.K.Ravi, Senior Counsel
for
M/s.Rugan and Arya

For Respondents : Mr.S.M.Hameed Mohideen for R1
Mr.A.S.Kaizer for R2

JUDGMENT

The unsuccessful defendants are the appellants.

2. The suit was filed by the first respondent seeking the reliefs of recovery of possession of the suit property from the defendants; arrears of rent payable by defendants 1 and 2 for the period 01.02.1996 to 30.06.1998; damages for use and occupation at Rs.3,500/- for the period 01.07.1998 to 31.01.1999; future damages for use and occupation at Rs 500/- per month from the date of suit till the date of delivery of position; permanent injunction to restrain defendants 1 and 2 from encroaching on to the areas surrounding the superstructure under their occupation. It was the case of the plaintiff that the



S.A.No.489 of 2007

WEB COPY

land measuring 22'x75' upon which building bearing door No.50, Old No.36, Mosque Street, Saidapet, Chennai-600 015 comprised in R.S.No.57/1 of Saidapet Village, then Mambalam-Guindy Taulk belongs to the plaintiff. The plaintiff was a religious institution and it was in the nature of a public Waqf. One Mrs.Rukmani Ammal was a tenant under the plaintiff in respect of the said land measuring 22'x75'. O.S.No.1015 of 1954 was filed by the plaintiff against the said Mrs.Rukmani Ammal on the file of the I Assistant City Civil Court, Madras for recovery of possession of the said property and other reliefs. In the said suit, a compromise was entered into and a decree came to be passed in and where by the said Rukmani Ammal was permitted to occupy the land on condition that she would be paying a rent of Rs.3/- per month. The plaintiff also states that after the death of Rukmani Ammal, her son, the 1st defendant has been paying rent to the plaintiff at the same rate of Rs.3/- per month and he defaulted in the payment of rents from June 1995 onwards. The plaintiff therefore sent a lawyer's notice to the 1st defendant on 08.05.1998, terminating his tenancy in respect of the site and requiring him to deliver possession of the suit land to the plaintiff. Demand is also made for



S.A.No.489 of 2007

payment of arrears of rent and a claim for damages for use occupation at Rs.500/- per month, commencing from 01.07.1998 was also made in the said notice.

3. The 1st defendant sent a reply notice on 20.05.1998, where, it was contended that land and building belongs to the defendants and the defendants viz., the sons of Rukmani Ammal were also issued patta in March 1998 on the strength of the purchase of the land and super structure by Rukmani Ammal from one Subadra Ammal in the year 1948. The plaintiff, contending that the said patta issued to the defendants 1 and 2 is not valid and defendants were making clandestine attempts to encroach into adjoining lands and also attempting to dispose of super structure, instituted the suit.

4. The 1st defendant filed a written statement which is adopted by his brother 2nd defendant. In the said written statement, it was contended that the suit was not maintainable and it was bad for misjoinder of parties as well as cause of action. The suit as against the 2nd defendant was not maintainable,



S.A.No.489 of 2007

more specifically when the termination notice was issued only to the 1st defendant. It is also contented by the defendants that their mother, Rukmani Ammal purchased both the super structure and the site from one Subadra Ammal, in and by a sale deed dated 09.08.1948 and that the predecessors in interest of Rukmani Ammal their mother had also been in possession in their own right and in such circumstances, the plaintiff had no title to the suit property. It is also contented by the defendants that their mother had agreed to pay the rent and compromised the suit in ignorance of a right in the property. Further, according to the defendants, the plaintiff's right, if any in respect of the site got extinguished on 09.02.1965, then the notification was made under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act 1963. It was also contented that payment of Rs.3/- per month is only for use of path way and not for the suit land.

5. The plaintiff filed a reply statement to the said written statement refuting the allegations made in the said written statement. Pending the suit, an application was also taken out by the plaintiff to implead to the Tamil



S.A.No.489 of 2007

WEB COPY

Nadu Waqf Board and in and by an order of the Trial court on 16.04.1999, the Tamil Nadu Waqf Board was impleaded as 3rd defendant in the suit. The 3rd defendant there upon filed the written statement, supporting the cause of the plaintiff.

6. The Trial court framed eight issues for consideration. On the side of the plaintiff, two witnesses, P.W.1 and P.W.2. were examined, P.W.1 being the Vice president of the committee in management of the plaintiff mosque and P.W.2 being the Sub-Inspector, Land Survey from the office of the Tahsildar, Tambaram-Guindy Taluk. Exs.A1 to A6 were marked through P.W.1 and exhibit A7 was marked during cross examination of the defendants. Defendants examined themselves as D.W.1 and D.W.2 and through D.W.1, Exs.B1 to B3 were marked and through D.W.2, Exs.B4 to Exs.B8 were marked.

7. The Trial court, after analysing the oral and documentary evidence as well as pleadings in the suit, decreed the suit.



S.A.No.489 of 2007

WEB COPY

8. The defendants filed A.S.No.174 of 2003 and the First Appellate Court in and by judgment and decree dated 10.04.2006 confirmed the findings of the Trial court and dismissed the appeal filed by defendants.

9. Aggrieved by the said concurrent findings of the Courts below, that the present Second Appeal came to be filed by defendants 1 and 2.

10. At the time of admission of the Second Appeal the following substantial questions of law have been framed:

“ The Second Appeal is admitted on the following substantial questions of law:

i) Whether the Courts below are right in granting a decree at the instance of the plaintiff for eviction of the defendants from a land that had vested in the Government long ago by virtue of Sec.3(1) of the Abolition Act and for which the



WEB COPY



S.A.No.489 of 2007

Government had issued ground rent patta in favour of the defendants?

ii) Whether the Courts below are right in relying upon the alleged Joint patta said to have been issued by the Settlement Tahsildar in favour of the plaintiff and the defendants, while the said Tahsildar has not jurisdiction to issue any patta for Building Sites as held by a Division Bench of this Court in 1981(1) MLJ 192 (DB)?

iii) Whether Wakf Act, 1995 will apply to any land that had already vested in the Government in 1965 itself on the coming into force of the Tamilnadu Minor Inams (Abolition and conversion into Ryotwari) Act, 1963, all minor inams stood transferred to the Government and vested in the Government, by virtue of Section 3(b) of the said Act?

(iv) Whether the Civil Court has jurisdiction to try any dispute, question or other matter relating wakf property, which is expressly barred under S.85 of the Wakf Act 1995, when the contention of the 1st respondent/plaintiff that the suit property is a wakf property?"



S.A.No.489 of 2007

WEB COPY

11. I have heard Mr.K.Ravi, Senior counsel for M/s. Rugan and Arya counsel for the appellants. Mr.S.M.Hameed Mohideen for the 1st respondent and Mr.A.S.Kaizer for 2nd respondent Tamil Nadu Waqf Board. I have carefully perused and analysed the entire pleadings of the parties, oral and documentary evidence adduced by them before the Trial Court as well as the judgments of the Trial Court as well as the First Appellate Court.

12. The first and foremost discussion is with regard to the fourth substantial question of law pertaining to jurisdiction of the Civil Court to try any disputed question or other matter relating to a Waqf property which is expressly barred U/s.85 of The Waqf Act. Admittedly, the suit has been filed in 1999 when the Waqf Act had already come into force in 1995 on 22.11.1995. Sec.85 of the Waqf Act is extracted for easy reference:

“ 85. Bar of jurisdiction of civil courts.—No suit or other legal proceeding shall lie in any civil court in respect of any dispute, question or other matter relating to any waqf, waqf property or



WEB COPY



S.A.No.489 of 2007

*other matter which is required by or under this Act
to be determined by a Tribunal.”*

13. The bar of jurisdiction of a Civil Court is only to try disputes, questions or other matters relating to a Waqf or Waqf property or any other matter that is required by or under the Waqf Act, to be determined by a Tribunal. Thus, there is no absolute bar for a Civil Court to entertain a suit.

14. In this connection, learned Senior counsel for the appellants would invite my attention to various sections in the said Waqf Act, 1995 to drive home his contention that the suit filed by the plaintiff at the very first instance was itself not maintainable. None of the sections in the Waqf Act deal with action or proceedings being taken against tenants under a mosque or a Waqf. Under Section 54, the Chief Executive Officer has been vested with power to take action in respect of encroachments on Waqf properties and such proceedings cannot be maintained as a Civil Suit and can be only before the Tribunal. Under section 56 of the Act, there is a restriction on the power to grant lease of Waqf property, but the said Section does not deal with recovery of possession from the lessees. Therefore, I do not find that the issue



S.A.No.489 of 2007

WEB COPY

raised in the suit is one that requires to be decided only by the Tribunal constituted under the Waqf Act, 1995. The bar of jurisdiction of a Civil Court under Section 85 does not in anyway impede the maintainability of suit for recovery of possession from a tenant/lessee. Infact, the learned counsel for the 1st respondent / plaintiff also states that despite the Act coming to force in 1995, the Waqf Tribunal was not constituted when the suit was filed and only pursuant to G.O.(Ms) No.15 (Backward Classes and Most Backward Classes and Minorities Welfare) vide notification No.(1) of 2018, the Waqf Tribunal was constituted for the city of Chennai and till such time matters were only posted before the First Assistant, City Civil Court, Chennai and decided by the said Court. Accordingly, the present suit filed by the plaintiff was also tried only by the First Assistant City Civil Court, Chennai.

15. The learned counsel for the 1st respondent would also invite my attention to the amendment Act 27 of 2013, which came into force on 01.11.2013. In and by the said amendment Sec.85 was amended to clarify that the Tribunal would not have jurisdiction to determine any matter which is



S.A.No.489 of 2007

WEB COPY

subject matter of any suit or proceeding, instituted or commenced in a Civil Court under Sub-Section (1) of Sec.6, before the commencement of the Act or which is a subject matter of any appeal from a decree passed before such commencement of any such suit or proceeding. Therefore, even viewed from this angle, there is no merit in the objection taken by the defendants that the suit filed before the Civil Court is not maintainable and that the suit ought to have been filed only before the Tribunal constituted under the Act. Thus, I answer the said substantial question of law against the appellants and hold that the suit as framed and instituted before the City Civil Court was maintainable and in order.

16. In so far as the contention of the learned Senior counsel for the appellant that by virtue of Sec.3(1) of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 and the defendants having been issued ground rent patta subsequently, the plaintiff did not have any right in the suit property. This is the first substantial question of law framed in the Second Appeal. In this connection, I have carefully gone



S.A.No.489 of 2007

through the respective submissions advanced by the counsel for the appellants and the counsel for the respondents.

17. The learned Senior counsel for the appellants would invite my attention to the case of the plaintiff that the land was a Minor Inam and thus with the coming into force Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 on 15.02.1965, all Minor Inams stood transferred and vested with the Government, free of all encumbrances.

18. Placing heavy reliance on the judgment of the Division Bench of this Court in ***K.Vellappa Gounder and Sons Vs. K.S.Thirugnana sambandam Chettiar and others*** reported in ***1981 (1) MLJ 192 (DB)***, the learned Senior counsel for the appellants would state that unless a person who owns both the building and the site, the person would not become entitled to ground rent patta U/s.13. In the case on hand, the site would vest only with the Government and not the land holder. He would also further state that Ryotwari patta cannot be granted U/s. 8(1) and 8(2) of the Act for a site on



S.A.No.489 of 2007

which building has been erected and therefore the patta issued by the Settlement Thasildar in the joined names of “ Sri Anjuman Devastanam and Tmt. Rukmani Ammal ” was without jurisdiction and even otherwise according to the learned Senior counsel for the appellants, the name of the pattadhar was Sri Anjuman Devastanam and nothing to do with the plaintiff Mosque. He would also contend that there is also no whisper about the said patta in the plaint and therefore the said patta cannot be looked into by the Court.

19. For this proposition, he would place reliance on the judgment of the Hon'ble Supreme Court in *Bachhaj Nahar Vs. Nilima Mandal & Ors*, reported in *(2008) 17 SCC 491*. He also states that the appellants were granted patta pending the suit and they had also find an application before the First Appellate Court in C.M.P.No.190 of 2005 to receive the said patta as an additional document. But however, the First Appellate Court dismissed the Appeal Suit without passing any orders in the C.M.P, which has necessitated the appellants to take out M.P.No.1 of 2014 to call for the original patta filed



S.A.No.489 of 2007

along with C.M.P.No.190 of 2005 in A.S.No.174 of 2005.

WEB COPY

20. The Hon'ble Division Bench of this Court in ***Vellapa Gounder's*** case held that unless the site on which a building stands and both the site and building are owned by one and same person, vesting U/s. 13 of Act 1963 does not take effect and the decree of the Civil Court cannot be nullified by any order of the authorities constituted under the Act.

21. Per contra, addressing this issue, the counsel for the 1st respondent would invite my attention to the judgment of the Hon'ble Supreme Court in ***Manica Naicker & Ors Vs. E.Elumalai Naicker*** reported in ***1995 (3) SCR 217***, where the ratio laid down in the ***Vellapa Gounder's*** case has been **virtually** over ruled, though impliedly. The Honb'le Supreme Court has referred to decision of this court in ***Sri Kumarakattalai Subrahmanyaswami Devasthanam Vs. K.S.Sunderarajulu Chettiar***, reported in ***ILR (1975) 1 Madras 501*** and approved the view of this court in paragraph 4 of the judgment.



S.A.No.489 of 2007

WEB COPY

22. He would also place reliance on the judgement of the Hon'ble Supreme Court in ***Sayyed Ali and Ors Vs. A.P.Wakf Board, Hyderabad and Ors***, reported in ***(1998) 2 SCC 642*** where the Hon'ble Supreme Court held that grants by way of service inams for the purposes recognized by Muslim law as pious, religious and charitable would constitute the property as a Waqf and that a Waqf being a permanent dedication, a grant of patta under the Inam Act would not nullify it. The Supreme Court also held that the Settlement Thasildhar had no jurisdiction to give a finding with regard to character of a Waqf property under Act 30 of 1963.

23. Rebutting the submission of the 1st respondent, the learned Senior counsel for the appellants would state that the Hon'ble Supreme Court in ***Board of Muslims Wakfs, Rajasthan Vs. Radha Kishan and Ors***, reported in ***(1979) 2 SCC 468***, held that when a person who is a non Muslim and if he is in possession of certain property, then his right, title and interest cannot be put in jeopardy simply because the property is included in the list published



S.A.No.489 of 2007

under Sub-section 2 of Sec.5 of the Wakf Act and that the legislature could not have meant that he should be driven to file a suit in a Civil Court for declaration of his title, simply because the property in his possession is included in the list.

24. He would also place reliance on ***Punjab Wakf Board Vs. Gram Panchayat Alias Gram Sabha***, reported in (2000) 2 SCC 121, where the Hon'ble Supreme Court held that when the dispute is not one between Wakf and mutawalli or persons claiming under him but with Panchayat, the decision in ***Sayyed Ali Vs.A.P.Wakf Board***, reported in (1998) 2 SCC 642, cannot be applied.

25. Having carefully considered the submissions advanced by the learned counsel on either side, I would revert back to the plaint, the basis on which the respondents approached the Court seeking various reliefs. In the plaint all that is said is that the plaintiff is a Waqf and owning the suit property and that the mother of the defendants was a tenant



S.A.No.489 of 2007

under the plaintiff and further that O.S.No.1015 of 1954 came to be filed for recovery of possession and that in the said suit, a compromise was entered into on 07.03.1957 in and whereby the said Rukmani Ammal, mother of defendants continued to occupy the property of the plaintiff, paying a rent of Rs.3/- per month.

26. It is the further case of the plaintiff that even after May 1995, subsequent to the demise of Rukmani Ammal also, the 1st defendant one of her sons was paying rent recognising the plaintiff's right. Consequently a termination notice was issued to the 1st defendant and the suit came to be filed. It is to be remembered that the suit is not one for declaration of right or title of the plaintiff. The plaintiff approached the Court with a simplicitor suit seeking recovery of possession and arrears of rent, past and future.

27. In defence to the said suit, the defendants 1 and 2 have setup a case that they were the owners of the suit property and that their mother had purchased the land as well as building from one Subadra Ammal and that the



S.A.No.489 of 2007

plaintiff had no right to seek recovery and possession. In short, the defendants 1 and 2 denied the tenancy as claimed by the plaintiff. Unfortunately, the Courts below seemed to have been carried away by the various references to the Inam Abolition Act and other proceedings pertaining to issuance of patta etc and proceeded to discuss such issues at great length.

28. The Courts have failed to see that it was not the case of plaintiff that the plaintiff's right had to be declared and consequent to such declaration, the plaintiff was entitled to reliefs of recovery of possession, arrears of rent and damages for use and occupation.

29. In this connection, I would refer to the necessary portions of the evidence adduced by the parties. Before that, even in the written statements, the defendants 1 and 2 do not dispute the comprise decree dated 07.05.1957. They only claim that their mother agreed to pay a rent of Rs.3/- per month by mistake and in ignorance of her rights and that the same would not confer any right on the plaintiff.



S.A.No.489 of 2007

WEB COPY

30. Unfortunately, it is seen that even subsequent to the demise of their mother, the 1st defendant has been paying rent to the plaintiff at the same rate of Rs.3/- per month, though he claims that the said payment was in respect of the right to use the passage adjoining the land and not the suit land. In this regard, I have perused the decree in O.S.No.1015 of 1954 dated 07.03.1957. The endorsement reads as follows:

“ By consent, the defendant will occupy the plot of land (on which Superstructure No.36, Mosque Street, Saidapet, Madras) measuring 22'x75' as tenant of the plaintiff mosque on a monthly ground rent of Rs.3/-(Rupees Three only). Scavenger will be allowed to pass through the common way to the defendant backyard. The defendant will have right to the Madras City Tenants Protection Act. Subject to these conditions, the suit is withdrawn without costs.”

31. The above endorsement and decree passed in the said suit is not



S.A.No.489 of 2007

WEB COPY

disputed by the defendants 1 and 2. However, a feeble attempt is made by the learned Senior counsel for the appellants that the rent agreed to paid appears to be only for the right to use the passage and not the suit land. Unfortunately, the endorsement is very specific and clear that the land measuring 22'x75' would be occupied by the defendants 1 and 2's mother on monthly ground rent of Rs.3/- as a tenant and additionally it has only been mentioned that the scavenger would be allowed to pass through the common way to the defendant's backyard. I am unable to accept the submission of the learned Senior counsel for the appellants that the rent of Rs.3/- per month is only for the right to use the common way for scavenging purposes.

32. Exs.B2 is the settlement deed executed by Rukmani Ammal on 31.07.1965 in favour of the defendants and their another brother, one, Ranganathan. In Ex.B3 deed of partition dated 12.09.1971, the suit property was allotted to the defendants 1 and 2. Both these deeds contain a statement to the effect that the suit land belongs only to the plaintiff Mosque and that it was only the lease hold right which was the subject matter of the said two



S.A.No.489 of 2007

documents.

WEB COPY

33. If really, the case of the defendants that their mother had purchased the property, both land and building in 1948, then there would have been no necessity in the first place to compromise the suit filed by the plaintiff seeking recovery of possession, agreeing to pay rent of Rs.3/- per month. The explanation offered by the defendants to the said endorsement and the compromise decree in the suit are unacceptable and beyond comprehension.

34. Infact D.W.1, the 1st defendant has even admitted that he was paying rent at Rs.3/- per month and the plaintiff was issuing receipts mentioning that the payment was for ground rent. He also has admitted that he did not object to such receipts being issued by the plaintiff and that he made payment of rents till May 1995 and thereafter he stopped paying rent only because no body turned up for collecting the rents.



S.A.No.489 of 2007

WEB COPY

35. The principle of estoppel would clearly stare at the face of the defendants. Firstly, their mother admitted the fact that she was a tenant under the plaintiff and thereafter subsequent to her demise, the 1st defendant has admittedly paid rents to the plaintiff. The pleas of ignorance of right and payment of rent for use of pathway for scavenging are wholly unacceptable and unjustified. The defendants are therefore clearly estopped from taking a contrary stand denying the tenancy between their mother Rukmani Ammal and the plaintiff and subsequently, between the plaintiff and the 1st defendant.

36. Though in view of the above discussion, there need not be any real necessity to dwell into other issues with regard to the title of plaintiff Mosque and issuance of patta to the defendants which was admittedly without notice to the plaintiff and behind the back of the plaintiff, the evidence of D.W.1 actually seals the issue against the appellants. The 1st defendant who examined himself as D.W.1 admitted to the description of property in the Exs.B2 and B3 settlement to be the house and leasehold right. He further admitted that order of Settlement Tahsildar dated 25.03.1971 in T.D.No.756 refers to Nawab Sadathullah Khan Mosque, Saidapet. He also categorically



S.A.No.489 of 2007

admitted that reference in Ex.X1 was only referring to the plaintiff Mosque owning the suit land.

37. D.W.2 ,the 2nd defendant stated that the superstructure alone belong to his brother and himself and that the site belong to the mosque. He would further admit that Ex.B2 and B3 dealt with only superstructure and leasehold rights since the site belongs to the plaintiff Mosque. Even the exhibits filed on the side of the plaintiffs, especially Exs.A1 and A4 clearly evidence the fact that defendants' mother Rukmani Ammal recognised the right of the plaintiff as a lessor and had paid rent from July 1993 to April 1994. Even in Ex.A5, letter to Tamil Nadu Waqf Board, it is stated that the 1st defendant has been paying rent regularly to the plaintiff. With regard to the name Sri Anjuman Devasthanam mentioned in the patta also, D.W.2 in cross examination has stated that Sri Anjuman Devasthanam refers only to the plaintiff Mosque.

38. In view of the above, I am of the opinion that there is no necessity to go into the first three substantial questions of law framed at the time of admission of the Second Appeal for the simple reason that the appellants are



S.A.No.489 of 2007

WEB COPY

clearly estopped from denying the title of the plaintiff Mosque, not only by their implied conduct, but also their express acts and the issues of vesting or divesting of right under the Act 30 of 1963 are not at all required to be gone into. The defendants having categorically admitted their tenancy and in view of the decree passed against their mother in the earlier suit as well as the covenants in the settlement deed executed by her in Ex.B2, there is no doubt that the 1st defendant is a tenant under the plaintiff Mosque and the plaintiff's suit for recovery of possession has to be entertained and decreed.

39. In so far as the 2nd defendant, he has taken a plea that he is not a tenant even according to the plaintiff and therefore the suit is bad for misjoinder. However, it is to be noted that both the defendants 1 and 2 claim under Ex.B3 -Partition deed to be owners of the suit property and therefore in such view of the matter, I do not find it improper or irregular for the plaintiff to have impleaded the 2nd defendant. Yet another contention taken by the learned Senior counsel for the appellants is that the termination notice was issued only as against the 1st defendant and not against the 2nd defendant and



S.A.No.489 of 2007

therefore even from this angle the Second Appeal is liable to be dismissed.

WEB COPY

40. In so far as this contention is concerned, the learned counsel for the 1st respondent has placed reliance on ***Kanji Manji Vs. The Trustees of the Port of Bombay***, reported in ***AIR 1963 SC 468*** and in ***H.C.Pandey Vs. G.C.Paul***, reported in ***(1989) 3 SCC 77***, where the Hon'ble Supreme Court in similar circumstances has held that notice of termination issued to one of the tenants is valid.

41. In any event, I am of the opinion that the contention taken with regard to non-issuance of termination notice to the 2nd defendant is only a hyper technical plea by the occupants of the property. Admittedly, in the suit the 2nd defendant has been arrayed as a party defendant and full opportunity was afforded to him to defend the action for recovery of possession, arrears of rent and damages for use and occupation and merely because it was the plaintiff's case that originally the mother of the defendants was a tenant and subsequently the 1st defendant was a tenant under the plaintiff, the 2nd defendant was not a proper and necessary party cannot be countenanced in



S.A.No.489 of 2007

view of the defence put forth by the 1st defendant that both the defendants were the owners of the suit property and the plaintiff on the contrary had no right over the same. Thus, in view of the said position, I am unable to hold that the suit is liable to be dismissed on the ground of misjoinder of parties viz., the impleadment of the 2nd defendant.

42. Resultantly, I answer all the substantial questions of law against the appellants. In fine, the Second Appeal is dismissed. The appellants shall vacate and handover vacant possession of the suit property within a period of three months from the date of receipt of a copy of this judgment, subject to complying / satisfying the mandatory clauses in the decree of the trial Court within a period of thirty days. There shall be no order as to costs.

M.P.No.1 of 2014:

43. In view of the findings arrived at the Second Appeal, I do not find it necessary to call for the patta said to have been issued by the Tahsildar in favour of the appellants. Moreover, it is an admitted fact the said patta was issued without any enquiry and behind the back of the plaintiff and moreover in view of the findings that the appellants are tenants and they are estopped



S.A.No.489 of 2007

from denying the jural relationship of landlord and tenant with the plaintiff, I do not find any requirement or necessity to receive the patta granted to the appellants, which in any event is not a document or title. Accordingly, M.P.No.1 of 2014 is closed.

44. After pronouncing judgment, the learned counsel for the appellant would state that considering that the defendants have been in possession and enjoyment of the suit property for several years, a longer time may be given to vacate the premises. Considering the said request, the appellants are given six months time, instead of three months. In all other aspects, the judgment and decree holds good.

10.11.2023.

Internet:Yes
Index:Yes/No
Neutral Citation:Yes/No
Speaking/Non-speaking order
kpr

P.B.BALAJI, J.,

kpr



S.A.No.489 of 2007

WEB COPY

1. The Judge, Fast Track Court No.II, Chennai
2. The I Assistant Judge, City Civil Court, Chennai

Judgment in
S.A.No.489 of 2007
& M.P.No.1 of 2014

10.11.2023