



WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20.12.2023
Pronounced on	21.12.2023

CORAM

THE HONOURABLE MRS. JUSTICE K. GOVINDARAJAN THILAKAVADI

Second Appeal. No.652 of 2007
and M.P.Nos.1 & 2 of 2007

Basheerunnissa Begum Sahibas Wakf also

known as Raza Baugh Endowment

rep. By its Muthavalli

Md.Jalaluddin Akbar

....Appellant/plaintiff

Vs.

1.Faud Moosavee

2.Munavar Basha

3.H.M.Sheriff (deceased)

4.Kalyani Radhakrishnan

5.Kheerunnissa

6.Begum January

7.Afsar Jahan

8.Faizajahan

9.Nishath Jahan

...Respondents/Defendants



Prayer: Second Appeal has been filed under Section 100 of CPC, against the Judgement and Decree dated 30.11.2005 made in A.S.No.248 of 2004 on the file of the 2nd fast track cum Additional District Court, Chennai-600 001, confirming the decree and judgment dated 20.11.2003 in O.S.No.2222/98 on the file of the Wakf Tribunal/I Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.P.Haribabu

for Mr.H.Nazirudeen

For R1 : Mr.N.A.Nassir Hussain

For R2 to R8 : No appearance

J U D G M E N T

This second appeal is preferred against order dated dated 30.11.2005 made in A.S.No.248 of 2004 on the file of the 2nd fast track cum Additional District Court, Chennai-600 001, confirming the decree and judgment dated 20.11.2003 in O.S.No.2222/98 on the file of the Wakf Tribunal/I Assistant Judge, City Civil Court, Chennai.

2.The suit in O.S.No.2222 of 98 was filed by the appellant/plaintiff to evict the defendants from the plaint schedule and to deliver vacant possession of the land belonging to the Basheerunnisa Begam Sahiba's



wakf also known as Raza Baugh Endowment.

WEB COPY 3. The case of the plaintiff in brief.

The Plaintiff is a surveyed and notified Wakf. The object of the wakf is to perform the annual ceremonies in respect of wakf ancestors and other religious ceremonies. The plaintiff wakf owns land measuring 3540 sq.ft. Bearing Door No.78, Besant Road, Chennai – 600 014. One Salihuddin, father of the plaintiff was the Muthvalli Jalalluddin Akbar became the hereditary Muthavalli of the plaintiff wakf on 19.11.95. The first defendant became the tenant of the suit land for a monthly rent of Rs.100/-. The first defendant did not pay the rent from January, 1996 and a sum of Rs,7400/- is due till the date of filing of the suit. The first defendant has let out the suit property to the defendants 2 to 5 and they have no right to continue in possession of the suit property. The first defendant is the Muthavalli of Bayanbai's Wakf, Mysore. It is improper to have wakf within wakf. On 23.12.95 the plaintiff issued a notice to the first defendant and the first defendant sent a reply on 31.12.97 denying that he was the tenant under the plaintiff in respect of the land and superstructure in the suit property and claiming that he is the tenant in respect of the land only. The first defendant has put up the construction



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on the wakf land without the permission of the plaintiff. The first defendant has falsely stated that the rent was withheld since the plaintiff demanded higher rent. The rent payable was only Rs.10/-. From January 1992 to December 1997, the rent payable was Rs.720/- and he sent a Demand Draft for Rs.720/-. The Plaintiff returned it to the defendant, since the entire rent was not paid. The fourth defendant sent a letter to the plaintiff that she was paying the rent regularly to the wakf Board. Except the fourth defendant, the other defendants 2,3 and 5 were paying the rent at Rs.2000/- to the first defendant in violation of the lease agreement. Hence the above suit was filed for eviction of the defendants and for vacant possession of the suit property.

3.The first defendant filed a written statement denying all the allegations in the plaint and resisting it. The suit against the first defendant has been filed in his personal capacity and not as the Muthavalli of Bayan Bais wakf which is the tenant of the land belong to the plaintiff and not the tenant for the superstructure. As the suit has been filed against the first defendant, the suit is not maintainable. The notice to quit issued by the plaintiff is not valid. Bayan wakf is the tenant in respect of the suit land



and the superstructure belongs to it. It is a statutory tenant and therefore entitled to protection under the City Tenants Protection Act. The Suit is not maintainable since no notice under section 11 of the city Tenants Protection Act has been given to Bayan Bais Wakf. The rent payable for the suit land is Rs.10/- per month and not Rs.100/- as alleged by the plaintiff. From the inception of the tenancy the plaintiff's predecessor Muthavalli had permitted the first defendant to induct tenants in the premises and as such the plaintiff is estopped from questioning the tenancy of the defendants 1 to 5. The first defendant is entitled to the suit land under the City Tenants Protection Act and therefore the petition has been filed under section 9 of the City Tenants Protection Act. The suit is wholly devoid of merits and therefore the suit may be dismissed with costs.

4.The second defendant filed a written statement resisting the suit. The Plaintiff is not the owner of the suit land or the superstructure on it. Therefore the suit is not maintainable. There is no nexus or jural relationship of land lord and tenant between the plaintiff and the second defendant. The plaintiff has no right to institute a suit for eviction against



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the second defendant. The survey Number and boundary furnished in the plaintiff are not correct. Even if the land belongs to the plaintiff, the first defendant alone is the owner of the superstructure on it. Neither the second defendant nor other defendants pay the rent to the plaintiff. They are paying the rent to the first defendant. The second defendant is in occupation of about 1900 to 2100 sq.ft. His father was the tenant under the first defendant and not under the plaintiff. After the death of his father the second defendant is the tenant in respect of the suit property and is paying the rent to the first defendant. The second defendant was not aware of the real owner of the suit land. Therefore the termination notice issued by the plaintiff is not valid in law. No notice has been served to the defendants 2 to 5. Therefore the suit may be dismissed with cost.

5.The third defendant filed a written statement opposing the suit and denying the allegations in the plaint that the plaintiff is not the owner of the land or the superstructure. There is no nexus or jural relationship between the plaintiff and the third defendant. Therefore the plaintiff is not entitled to file a suit for eviction of the third defendant. The survey number and the boundary of the suit land furnished in the



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plaint are not correct. Without claiming a direction for demolishing the superstructure, the plaintiff cannot seek vacant possession of the suit land.

Neither the third defendant nor defendant 2,4 and 5 paid any rent to the plaintiff at any time. The third defendant is in occupation of about 1990 to 2100 sq.ft. And the area furnished in the plaint is not correct. Late Mahrunnisa, the mother of the third defendant was the tenant under the first defendant and they have been paying the rent to the first defendant. It is not known anything about the real owner of the suit land. There are some other tenants in the suit property and the plaintiff has not included them and therefore the suit is bad for non joinder of parties. The notice of terminating the tenancy issued by the plaintiff is not valid in law. The third defendant is in occupation of the suit property for more than 30 years. The plaintiff is not entitled to any relief. Therefore the suit may be dismissed with costs.

6.The fourth defendant filed a written statement resisting the suit denying the allegations in the plaint. The fourth defendant entered into a lease agreement with the first defendant in the year 1965 and continuously paying the rent. The fourth defendant is not aware of the fact



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that the plaintiff is the owner of the suit land. The fourth defendant is not aware of issue of publication of notice in one Tamil Daily. The fourth defendant never attempted to repudiate the title of the plaintiff. The fourth defendant is paying the rent to the first defendant. The plaintiff has no cause of action against the defendant. Therefore the suit may be dismissed with costs.

7. On the basis of pleadings the following issues and additional issues were framed by the trial Court

- 1. Whether the plaintiff is entitled to vacant possession of the suit property?*
- 2. Whether the termination of tenancy by the plaintiff is valid?*
- 3. To what relief the plaintiff is entitled to?*

Additional issue:

- 1. Whether the defendants are entitled to compensation under Section 3 of the City Tenants Protection Act?*

8. The trial Court upon considering the pleadings and the materials on record and the arguments advanced by the respective counsel for the



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parties, dismissed the suit giving liberty to the plaintiffs to comply with

Section 11 of the City Tenants Protection Act and to file a fresh suit for eviction of the tenants if the plaintiffs so chooses. Aggrieved by this, the plaintiffs preferred the appeal in A.S.No.248 of 2004 and the 1st appellate Court vide its judgment dated 30.11.2005 dismissed the appeal by confirming the judgment and decree passed by the trial Court. Aggrieved by this, the plaintiff has come forward with the present second appeal. For narrative convenience, the parties would be referred by their rank before the trial Court in O.S.No.2222 of 1998 which is the subject matter of the present appeal.

9.The facts of the case are summarised as below:

- (i) The plaintiff is a surveyed and notified wakf.
- (ii) The 1st defendant was the tenant in respect of the suit land and superstructure under the plaintiff and he defaulted in payment of rent from January 1992 onwards.
- (ii) The contention of the 1st defendant that he is not a tenant in respect of the superstructure and the same belongs to him is false.
- (iv) In spite of the legal notice issued to the 1st defendant, the 1st



defendant failed to pay the rents and vacate the suit property.

WEB COPY (v) The plaintiff received a letter from the 2nd defendant stating that

he is a tenant under the 1st defendant for the past 45 years.

(vi) The conduct of the 1st defendant tantamount to violation, endanger the rights of the Wakf administration.

(vii) Hence the plaintiff was constrained to file the above suit for recovery of possession. Since the tenancy in favour of the 1st defendant was terminated as set out in the legal notice dated 23.12.1997.

10. On the other hand, the contention of the 1st defendant is that the suit against the 1st defendant has been filed in his personal capacity and not as the Muthavalli of Bayan Bais Wakf which is a tenant of the land belonging to the plaintiff and not the tenant for the superstructure. Hence, the suit is not maintainable. Since it is a statutory tenant, entitled to protection under the City Tenant Protection Act. The suit is not maintainable since no notice under Section 11 of the City Tenant Protection Act has been given to Bais Wakf. The rent payable for the suit land is Rs.10 per month not Rs.100/- as alleged by the plaintiff. From the inception of the tenancy the plaintiff predecessor Muthavalli had



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permitted the first defendant to induct tenancy in the premises and as such the plaintiff is estopped from questioning the tenancy of the defendants 1 to 5. The 1st defendant is entitled to buy the suit land under the City Tenant Protection Act and therefore, the petition has been filed under Section 9 of the City Tenants Protection Act. The suit is wholly devoid of merits and liable to be dismissed.

11. The contention of the defendants 2, 3 & 4 is that the plaintiff is neither the owner of the suit land or the superstructure on it. There is no jural relationship of landlord and tenant between the plaintiff and the above defendants. The plaintiff has no right to institute a suit for eviction against the above defendants. The 1st defendant is alone the owner of the superstructure. The above defendants never paid the rents to the plaintiff. They are paying the rent only to the 1st defendant. Therefore, the termination notice issued by the plaintiff is not valid in law. Hence, the suit is liable to be dismissed.

12. During pendency of the appeal, the 1st respondent herein who is the 1st defendant in the suit filed an affidavit on 20.12.2022 stating that he



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has surrendered tenancy to the appellant/Wakf on the date of signing the affidavit. The 1st respondent had also made it clear in the affidavit that he is surrendering the tenancy in favour of the appellant/wakf and he waives all claim over the superstructure in the suit property, subject to, the 1st respondent being absolved of any claim that may be made against him. The learned Counsel for the appellant on instructions submitted that the 1st respondent is absolved of any claim that may be made against him. It is also informed that respondents 3 to 8 have surrendered possession and it is only the 2nd respondent/2nd defendant yet to surrender possession. The 1st respondent/1st defendant had initiated proceeding for evicting the 2nd respondent/2nd defendant from the suit premises.

13. In view of the above facts, that the 1st respondent/1st defendant submits to the decree in the present appeal and the eviction proceedings initiated by the 1st respondent/ 1st defendant against the 2nd respondent/2nd defendant before the rent authority and the Wakf tribunal which have culminated in C.R.P.No.1710/10, 2165, 2166/13 becomes infructuous and accordingly, the above revision petitions were dismissed as infructuous by the order of this Court dated 13.06.2023. The 2nd respondent/ 2nd



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defendant remained absent in the appeal suit. The arguments put-forth by the learned counsel for the appellant that the Courts below erroneously held that the 1st respondent/1st defendant is the absolute owner of the superstructure and erroneously directed the plaintiff to pay compensation to the 1st respondent/1st defendant under the provision of City Tenants Protection Act. By virtue of the affidavit filed by the 1st respondent/1st defendant surrendering the tenancy to the plaintiff and claiming no right over the superstructure, it is made clear that the plaintiff is the owner of the suit premises along with the superstructure. Moreover, it is not established that the 1st respondent/1st defendant had any right or authority to sublet various portions in favour of the other respondents/defendants. Therefore, it has to be assumed that other defendants are in occupation of the suit premises without any authority. The Courts below in the absence of any legal sanction erroneously directed the plaintiff to pay the compensation to the 1st respondent/1st defendant. In the absence of any contra submissions, the aforesaid arguments put-forth by the learned counsel appearing for the appellant/plaintiff is acceptable. The Courts below having accepted the landlord and tenant relationship between the plaintiff and the 1st respondent/1st defendant committed manifest error in



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holding that the superstructure existing in the suit property belong to the 1st respondent/1st defendant. The Courts below ought to have seen whether the superstructure constructed in the suit property is contravening the provisions of Wakf Act 1995. The Courts below failed to consider the default in payment of rent committed by the 1st respondent/1st defendant. The Courts below failed to consider that Section 11 of City Tenant Protection Act is not applicable to the properties owned by any religious and charitable endowment. Since the 2nd respondent/2nd defendant failed to establish that the 1st respondent/1st defendant had authority to induct the 2nd respondent/2nd defendant as tenant in the suit premises, it has to be presumed that the 2nd respondent/2nd defendant is only in wrongful occupation of the suit premises. Hence, the 2nd respondent/2nd defendant is liable to vacate the suit premises. Accordingly, the judgment and decree passed in O.S.No.2222/98 and in A.S.No.248/2004 is set aside. The 2nd respondent/2nd defendant is directed to vacate from the portion of the suit property occupied by him within a period of one month from the date of receipt of copy of the order failing which, the plaintiff is at liberty to take delivery of the property in the manner known to law.



14. In the result, this Second Appeal is allowed. No cost.

Consequently connected miscellaneous petitions are closed.

21.12.2023

vsn

Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order



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K.GOVINDARAJAN THILAKAVADI, J.

vsn

PRE- DELIVERY JUDGEMENT MADE IN

Second Appeal.No.652 of 2007

M.P.Nos.1 &2 of 2007

21.12.2023