



S.A.No.33



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2023

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CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

**S.A.No.337 of 2005
and C.M.P.Nos.5297 & 5298 of 2005**

T.Maheswari

... Appellant

Vs.

1. Arulmighu Agatheeswara Swamy Temple
Represented by its Executive Officer
Vellipalayam
Nagapattinam.

2.Arulmighu Varadarajaperumal Temple
Represented by its Executive Officer
Vellipalayam, Nagapattinam.

... Respondents

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 03.08.2004 in A.S.No.5 of 2004 on the file of the Principal Sub Court, Nagapattinam, reversing the judgment and decree dated 19.07.1995 in O.S.No.233 of 1992 on the file of the District Munsif Court, Nagapattinam.

For Appellant : Mrs.R.T.Shyamala

For Respondents : Mr.G.Sugumaran



ORDER

I heard Mrs.R.T.Shyamala, learned counsel for the appellant/defendant and Mr.G.Sugumaran, learned counsel appearing for the religious institutions/respondents/plaintiffs.

2. The present Second Appeal arises out of a suit for ejectment filed by the respondents/plaintiffs as against the appellant/defendant.

3. For the convenience, the parties will be arrayed as given in the suit.

4. O.S.No.233 of 1992 was filed by the plaintiffs seeking for ejectment of the defendant. The plaintiffs are religious institutions represented by their Executive Officer. The said suit was dismissed on the ground that the application in I.A.No.691 of 1993 filed by the defendant under the Tamil Nadu City Tenants Protection Act (hereinafter referred to as “the Act”) had been allowed. Consequent to this decree in I.A.No.691 of 1993, O.S.No.233 of 1992 was dismissed.

5. The plaintiffs preferred an appeal in C.M.A.No.1 of 2004 against the order and decretal order in I.A.No.691 of 1993. The said C.M.A. was allowed on 03.08.2004 thereby dismissing the application filed by the defendant under Section 9



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of the Act. Since the application under Section 9 of the Act was dismissed, consequently, the appeal suit in A.S.No.5 of 2004 was allowed and the suit was decreed as prayed for on 03.08.2004.

6. Aggrieved by the judgment and decree in A.S.No.5 of 2004, the present Second Appeal has come to be presented by the defendant.

7. The question of law that has been presented for consideration is whether the First Appellate Court was right in holding that the Act 2 of 1996, which had come into force on 10.11.1994 applies, when the assent by the President of India had been given only on 11.01.1996.

8. The plea of the defendant is that since the entire amount has been deposited, her case comes within the exception under Section 3 of the amending Act 2 of 1996. Today, I have dismissed C.R.P.(NPD)No.689 of 2005 holding that the proceedings will not abate till sale deed had been finally executed by the Court or by the landlord. The Supreme Court had held that the execution of the sale deed should be before 11.01.1996. In other words, settled matters will not be unsettled is the dictum of the Supreme Court. Unfortunately for the defendant, the amounts were deposited after 11.01.1996 and therefore, she does not get the protection of proviso to Section 3 of the amending Act 2 of 1996. Since her application under Section 9 of the Act has been



dismissed, the consequent order that I have to pass is dismissing the second appeal.

The substantial question of law framed has already been answered in the case of

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S.Bagirathi Ammal vs. Palani Roman Catholic Mission reported in **2007 (5) CTC 881.**

9. Mrs.R.T.Shyamala, learned counsel for the appellant/defendant will bring to my notice that pending the proceedings, the entire amount that had been fixed under Section 9 of the Act had been deposited into the Court.

10. Mr.G.Sugumaran, learned counsel for the respondents/plaintiffs would state that the said amount had been transferred from the Court to the interest bearing deposit. The second appeal and the C.R.P. having been dismissed, the defendant is entitled for refund of the entire amount including the accrued interest, if any.

11. Learned counsel for the respondents/plaintiffs states that if a cheque application is filed for refund of the amount deposited, the plaintiffs will not have any objection for the Court ordering refund to the defendant. The said submission is recorded. The defendant is permitted to withdraw the amount deposited by her pursuant to the order in I.A.No.691 of 1993, dated 19.07.1995.



12. In the light of the above,

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(i) The Second Appeal is dismissed with the above liberty regarding the payment.

(ii) The judgment and decree of the learned Principal Subordinate Judge, Nagapattinam, in A.S.No.5 of 2004 dated 03.08.2004 in reversing the judgment and decree in O.S.No.233 of 1992 on the file of the District Munsif Court, Nagapattinam, dated 19.07.1995, is confirmed. The suit is decreed as prayed for.

(iii) Six months time is granted to the defendant to vacate and handover the possession to the plaintiffs. No costs. Consequently, connected Miscellaneous Petitions are closed.

06.07.2023
(2/2)

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No

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To

1. The Principal Subordinate Judge, Nagapattinam.
2. The District Munsif, Nagapattinam.



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V.LAKSHMINARAYANAN,J.

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