



S.A.No.302 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No. 302 of 2018
and C.M.P.No.8428 of 2018

1. R.Raman
2. V.Arjunan

...Appellants

Vs.

1. A/M Marundeeswarar Temple
Rep. by its Executive Officer,
H.R. & C.E. East Coast Road,
Thiruvanmiyur, Chennai - 600 041.

2. R.Mani

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 16.08.2017 made in A.S.No.377 of 2013 on the file of XIX Additional City Civil Court, Chennai confirming the judgment and decree dated 15.09.2012 made in O.S.No.1624 of 2007 on the file of the XV Assistant City Civil Court, Chennai.

For Appellant : Mr.D.Shivakumaran

For Respondent 1 : Mr.S.Surya
for M/s.A.S.Kailasam Associates

For Respondent 2 : No appearance



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JUDGEMENT

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The unsuccessful defendants 2 and 3 are the appellants. The 1st respondent/plaintiff filed a suit seeking delivery of vacant possession of suit property after removing the super structure. They also sought for recovery of damages for use and occupation. The suit was decreed by the Trial Court and the findings of the Trial Court were affirmed by the First Appellate Court. Aggrieved by concurrent findings, the defendants 2 and 3 have come by way of second appeal. For the sake of convenience, the parties are referred to in this judgement as per their rank in the suit.

2. According to the 1st respondent/plaintiff, the suit site was let out to 1st defendant in the suit for monthly rent of Rs.11,350/-. The 1st defendant had put up super structure on the land let out to him and he had been enjoying the same. Thereafter, the 1st defendant, without any authorization from plaintiff, surrendered the possession of the suit property to defendants 2 and 3. By his act, the 1st defendant forfeited his right to remain in suit property. The defendants 2 and 3 are in illegal occupation of the suit property. They attempted to put up new construction in the suit property without any valid right. Hence, 1st respondent was constrained to file a suit for recovery of possession.



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3. The contesting defendants 2 and 3 filed a written statement and claimed that after death of 1st defendant, the suit property was divided among his sons namely Govindan, Murthy, R.Mani and daughters namely Gunavathi and Saratha. The 2nd son of 1st defendant, Murthy executed a Power of Attorney dated 10.03.2000 in favour of 2nd defendant appointing him to deal with 185 Sq.ft of suit property. Likewise, the 3rd son of 1st defendant namely Govindan executed a Power of Attorney dated 10.10.2002 in favour of 3rd defendant appointing him as his power agent to deal with 678 Sq.ft of suit property. Therefore, defendants 2 and 3 claimed that they have been in possession of the suit property under the Power of Attorney deeds executed by two sons of deceased 1st defendant and hence, they could not be termed as trespassers.

4. The Trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that there was no privity of contract between the 1st respondent temple and appellants/defendants 2 and 3 and their occupation is unauthorized and illegal. Therefore, a decree for recovery of possession was granted by directing the defendants 2 to 4 to deliver vacant



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possession of the suit property to 1st respondent temple. The defendants 2 to 4 were also directed to pay damages at the rate of Rs.10,250/- per month for use and occupation.

5. Aggrieved by the same, the defendants 2 and 3 preferred an appeal in A.S.No.377 of 2013 on the file of XIX Additional Judge, City Civil Court, Chennai. The First Appellate Court also concurred with the findings of the Trial Court and dismissed the suit. Aggrieved by the same, the defendants 2 and 3 have come by way of second appeal.

6. The learned counsel for the appellants submitted that the Courts below granted a decree for recovery of possession when 1st respondent temple failed to prove its title over the suit property. The learned counsel further submitted that defendants 2 to 4 are in possession of only portion of the suit property and hence, the decree passed against them to surrender the possession in respect of the entire suit property is not correct.

7. It is the specific case of the 1st respondent/plaintiff that suit property was let out to 1st defendant on monthly rent basis. Therefore, it is not in dispute



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that 1st respondent was tenant under temple. The appellants/defendants 2 and 3 are claiming right only under the Power of Attorney Deed executed by the legal representatives of 1st defendant. Being a person claiming right under original tenant of the suit property, the defendants 2 and 3 are not entitled to deny the title of the 1st respondent. It is not a case where defendants 2 and 3 set up any independent title or right over the suit property. They claimed right only under power of attorney deed executed by legal representatives of 1st defendant to whom the suit property was let out. In such circumstances, the defendants 2 and 3 are not entitled to dispute the title of the 1st respondent. The decree for recovery of possession was not only passed against the defendants 2 and 3 but it was also passed against the 4th defendant, who is the legal representative of estate of the deceased 1st defendant to whom the property was let out.

8. Accordingly to the appellants, they are only in possession of the portion of the suit property and the remaining property was not in their possession. The appellants are claiming right over the portion of the suit property under two Power of Attorney deeds executed by legal representatives of deceased 1st defendant under Ex.B1 and Ex.B3. The decree for delivery of possession was passed against the appellants and also against the legal representative of estate of



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the 1st defendant. The legal representative of deceased 1st defendant is not aggrieved by the decree for delivery of possession and he has not challenged the same by filing an appeal. It is only defendants 2 and 3, who filed appeal, failed to establish independent right to remain in possession. Therefore, both the Courts below rightly came to the conclusion that Power of Attorney deeds executed by legal representatives of original tenant of the temple will not confer any right to the appellants /defendants 2 and 3 to resist the suit for recovery of possession filed by the 1st respondent .

9. In such circumstances, I do not find any substantial questions of law arising for consideration in this second appeal.

10. Accordingly, the second appeal stands dismissed.

a) by affirming the judgment and decree passed in A.S.No.377 of 2013 dated 16.08.2017 on the file of XIX Additional City Civil Court, Chennai confirming the decree and judgment passed in O.S.No.1624 of 2007 dated 15.09.2012 on the file of the XV Assistant City Civil Court, Chennai.



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b) In the above facts and circumstances of the case, there will be no order as to costs.

c) Consequently, connected miscellaneous petition is closed.

11. At this juncture, the learned counsel for the appellants submitted that they have already made a representation to the authorities under the HR & CE Act seeking regularisation of their occupation in accordance with law. It is always open to the appellants to approach the competent authorities for regularisation of their occupation of temple land in accordance with law. The dismissal of the second appeal will not coming with way of appellants approaching the competent authority under HR & CE Act seeking regularization of their occupation, if it is permissible under law.

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Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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S.SOUNTHAR, J.

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To

- 1.The XIX Additional City Civil Court, Chennai
- 2.The XV Assistant City Civil Court, Chennai.

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