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A.S.No.416 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.No.416 of 2018
and
C.M.P.No.10962 of 2018

A.Kandaswamy

... Appellant

Vs.

1.A/M.Om Sumooga Ganapathy and
A/M.Kulasekara Alwar Thiru Koils,
Rep. by its Fit Person having its,
Administrative Office at
A/M.Sakthivinayagar Temple's Premises,
P.T.Rajan Salai, K.K.Nagar,
Chennai – 600 078.

2.P.Anandhan
3.G.Umapathy
4.D.Dilli Baskar
5.B.Rajendran
6.C.Mohan

... Respondents

Prayer: Appeal Suit is filed under Section 96 of the Civil Procedure Code, to set aside the judgement and decree dated 13.12.2017 passed in O.S.No.209 of 2009 by the learned Additional District Judge-2, Poonamallee.



For Appellant	: Mr.S.Giridharan
For R1	: Mr.R.Mahalingam
For R2 to R6	: Mr.V.Raghavachari Senior Counsel For Mrs.V.Srimathi
For [HR & CE]	: Mr.K.Karthikeyan Government Advocate

J U D G M E N T

The Appeal Suit on hand has been instituted against the judgment and decree dated 13.12.2017 passed in O.S.No.209 of 2009.

2. The appellant is the 1st defendant and a Suit was instituted by the 1st respondent herein, which is the Temple. The Suit was instituted for recovery of possession of the suit mentioned property and to direct the appellant / 1st defendant and other defendants to pay a sum of Rs.15,000/- per annum to pay the damages for use and occupation from 01.08.2009 till the delivery of the vacant possession of the suit mentioned property. The Temple in its plaint has stated that Arulmigu Om Sumooga Ganapathy and Arulmigu Kulasekara Alwar Temples are under the control of the Hindu Religious and Charitable Endowments (HR & CE) Department. The said



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two Temples are brought under the direct administration of Arulmigu Sakthivinayagar Temple, K.K.Nagar, Chennai 600 078. For over all administration of all the Temples in Valasaravakkam Village it is termed as “Group Temples” for which an Executive Officer or a Fit Person is appointed by the said (HR and CE) Department.

3. In the year 1955, an immovable property was purchased by Mr.Palani Naicker and Kannayeram Naicker for a total sale consideration of Rs.400/-. Arulmigu Kulasekara Alwar Thiru Koil was constructed by them exclusively for the welfare of the people in Kaikankuppam Village, which was a small hamlet during the relevant point of time. Similarly, Arulmigu Om Sumooga Ganapathy Thiru Koil had come into existence about 50 years back. The exact years of construction of the said Temples are not known to the Authorities. Later on Mr.Palani Naicker and Kannayeram Naicker had formed a committee and maintained the said two Temples. The Temples were maintained by them through donations from the people of the said village and from the income through the Hundial and that was very meagre at that point of time. The suit schedule property was transferred in favour of the two Temples vide D.No.1442 of 1955 by Mr.Kannayeram Naicker,



Mr.Paramasivam Naicker and Tmt.Kamatchi Ammal. Thiru. Paramasivam

Naicker is one of the sons of Tmt.Kamatchi Ammal, who was the wife of Late Mr.Palani Naicker. The said deed was registered at the Sub Registrar Office at Saidapet. The intentions of the donors were that the Temples in the Village should be administered and maintained from and out of the income derived from the said property.

4. In the year 1970, the Commissioner, HR and CE Department had granted permission to lease the property. Accordingly, the Executive Trustee of the Temple was permitted to lease out the suit mentioned property with some conditions in favour of the Lawmech Upper Primary School, which was the school proposed to be established in Kaikankuppam Village. The period of lease fixed by the Competent Authority was for 50 years and the annual rent of Rs.60/- was fixed.

5. Pursuant to the permission granted by the Commissioner, HR and CE Department, Mr.Ponnuswamy Naicker executed a Lease Deed in favour of Mr.Ponnuranga Naicker, who was the Correspondent to the Lawmech Upper Primary School with a vital condition to start a primary school in the



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said Village for the benefit of the children in and around that area. The 1st defendant had become the Correspondents / Secretary of the Lawmech Upper Primary School. But the 1st defendant / appellant neither took steps to start the primary school in the village nor paid the annual rent to the temple as per the terms and conditions stipulated in the Lease Deed. The plaint states that the grown up trees in the suit mentioned property were cut-down and sold by the 1st defendant to the “Brick Industries” situated in and around Maduravoyal Village. Through his illegal activities, the 1st defendant had earned a good income from the Temple's property. However, he did not initiate any steps to run the primary school as per the conditions agreed between the Temple Authorities and the 1st defendant. Since the suit mentioned property was not utilised for the purpose for which it was leased out by the Temple Authorities and the Commissioner, a legal notice was issued to the 1st defendant. However, the 1st defendant failed to send any reply to the Temple and also failed to pay the annual rent till 29.01.2004. Thereafter, the 1st defendant had sent a letter to the Temple along with the Demand Draft for Rs.60/-. Since the lease conditions are violated and the 1st defendant has wrongfully used the property and had cut-down the grown up trees in the suit mentioned property, the Suit was instituted by the Temple



for recovery of possession by cancelling the Lease Deed.

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6. The 1st defendant filed a written statement denying the plaint averments. The 1st defendant specifically denied that he had not involved in cutting of any trees in the suit mentioned property. The 1st defendant further stated that he was paying the rent to the then Trustees. Pursuant to the Lease Deed, the predecessors of the defendant had constructed the School building and a Nursery School was being run in the suit property. The 1st defendant had started to construct a permanent and pakka building in the suit mentioned property, which is yet to be completed. The Plaintiff / Temple had not issued any proper notice for termination in accordance with law. The notice of termination dated 12.07.2022, terminating the Lease Deed was invalid and improper in the eye of law. The tenancy commenced from 04.08.1971 and should have been terminated on expiry of the tenancy period. Thus, the Suit is to be dismissed.

7. The defendants filed additional written statement by stating that the Suit instituted by the 1st respondent Temple is barred under Section 34B and 34D of the Hindu Religious and Charitable Endowment Act [hereinafter referred as the 'Act']. An application under Order VII Rule 11 of Code of



Civil Procedure was filed by the first defendant. However, the said application was rejected. The Civil Revision Petition filed against the order of the Trial Court was also dismissed and this Court directed to proceed with the trial.

8. Based on the pleading, the Trial Court framed the following issues:

- 1) Whether the plaintiff is entitled for recovery of vacant possession of the suit schedule property excluding the temple?*
- 2) Whether the plaintiff is entitled a sum of Rs.15,000/- damage for use and occupation from the 1st defendant from 01.08.2009 to till the delivery of possession?*
- 3) To what relief the plaintiff is entitled?*

Additional Issues framed:

- 1) Whether the suit is maintainable in Law?*

9. Regarding issue No.1, whether the plaintiff is entitled for recovery of vacant possession of the suit schedule property or not. The Trial Court considered the documents relating to the purchase of property and also the donations given to the Temple by the original purchasers. It is not in dispute that the Assistant Commissioner of HR and CE Department is appointed as a Fit Person under Section 49 of the Act. The Trial Court examined the



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appointment of the Fit Person and the power conferred on the Assistant Commissioner under the Act. The findings of the Trial Court reveals that the power conferred under the Act was properly exercised and there was no infirmity in respect of the appointment of the Fit Person to the Subject Temple. The analysis made by the Trial in this regard is in consonance with the provisions of the Act and this Court do not find any infirmity or otherwise. Therefore, the Trial Court found that the Suit instituted on behalf of the Temple by the Fit Person is maintainable and accordingly, answered issue No.1 in favour of the plaintiff.

10. In respect of the lease conditions agreed between the Temple and the 1st defendant in the Suit, the plaintiff was to establish that 1st defendant was not running the School by constructing pakka building. The very purpose for which the suit mentioned property was leased out by the Temple in favour of the 1st defendant, was to construct a school for the benefit of the children in and around the Temple and the said purpose was defeated and thus, the Suit was instituted by the Temple Authorities. The Temple was able to establish that no pakka building was constructed as promised by the 1st defendant and he was not conducting any school in the said property. Therefore, the said issue was also decided in favour of the plaintiff and the



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Trial Court found that as per the lease conditions, the 1st defendant had neither constructed any pakka building nor was running a primary school as per his promise. That apart, the 1st defendant had committed default in payment of annual rent as agreed between the parties.

11. Regarding issue Nos.2 and 3, the Trial Court found that notice was issued by following the procedures as contemplated and after issuing the notice, the Suit was instituted and therefore, the plaintiff is entitled for the relief of recovery of possession. Consequently, the relief of recovery of possession was granted and further, the relief sought for to direct the defendants to pay a sum of Rs.15,000/- per annum as compensation for use and occupation was also granted by the Trial Court.

12. The learned counsel for the appellant mainly contended that the defendant was always willing and initiated steps for the purpose of running the primary school in the suit mentioned property. On account of the illegal interference of the respondents 2 to 6, the 1st defendant / appellant is unable to take possession of the property for the purpose of constructing pakka building in the suit property. Therefore, the Temple Authorities failed to initiate appropriate steps to remove the difficulties for constructing a school



building and to run the primary school. Thus, the appellant is not liable to pay any compensation and more so, the learned counsel for the appellant on instruction made a submission that the appellant is not in possession of the suit schedule property as of now and it is with the possession of the Temple Authorities.

13. The learned counsel for the appellant further said that the respondents 2 to 6 are also interfering with the peaceful possession of the suit schedule property and therefore, the appellant now after six month of time may not be in a position of constructing any pakka building for the purpose of running a primary school in a suit mentioned property. The appellant is running an established school in the nearby location and therefore, he is not interested in occupation of the suit schedule property for the purpose of any further building for running the primary school or otherwise.

14. The learned counsel for the appellant further contended that the compensation granted by the Trial Court is untenable in view of the fact that it is exemplary and not in consonance with the annual rent agreed between



the parties as per the lease deed. Thus, the judgment and decree is liable to be set aside.

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15. The learned counsel appearing on behalf of the Temple contended that the Subject Property was donated for the purpose of deriving income, which is to be utilised for the Temple activities. With the noble idea, the erstwhile Trustees of the Temple with the permission of the Commissioner, HR and CE Department entered into a lease agreement with the 1st defendant for running a primary school for the benefit of the children of that locality. Thus, the Lease Deed was executed for the purpose of imparting education and for the welfare of the people of that locality, which was not fulfilled by the 1st defendant and he has violated the terms and conditions of the lease agreement. The 1st defendant had neither constructed any building for running a school nor was running the primary school as agreed by him. Thus, the Temple Authorities issued a legal notice by following the procedures and thereafter, instituted a Suit, which was considered by the Trial Court in a right perspective and a delivery was ordered. More so, the respondents 2 to 6 herein are causing unnecessary nuisance to the Temple administration. They are interfering with the duties of the Fit Person / Executive Officer of the Temple and the Fit Person is also initiating steps



against those respondents, who all are interfering with the legal activities of the Competent Authorities appointed under the provisions of the Hindu Religious and Charitable Endowment Act.

16. It is not in dispute that the Fit Person was appointed by the Competent Authority as per the Act. The respondents 2 to 6 are not allowing the Fit Person to administer the Temple and its activities in accordance with the provisions of the Act and therefore, all further actions are also initiated for peaceful administration of the Temple and for the maintenance of the properties belong to the Temple.

17. The learned Government Advocate appearing on behalf of the Department based on the directions of this Court submitted a report through the Executive Officer. The report of the Executive Officer dated 17.02.2023 reveals that the appellant is not in possession of the suit mentioned property. The Lease Deed was cancelled by the Competent Authorities during the relevant point of time before institution of the Suit. However, the lease period itself got expired in the year 2021 and thus, the lease did not exists as of now. Since the lease period expired and the appellant is not interested in occupation of the suit schedule premises, this Court is of an opinion that the



relief of recovery of possession granted by the Trial Court need no further interference.

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18. Regarding the report of the Executive Officer, the Fit Person appointed is unable to function peacefully on account of certain interference of the respondents 2 to 6, who are not recognised by the Competent Authorities of the Department under the provisions of the Act either as Trustees or otherwise. A person, who has not been appointed as a Trustee under the provisions of the Act cannot interfere with the administration of the Temple or cause any inconvenience to the Fit Person, while exercising his/her powers under the provisions of the Act and Rules. Further, the report of the Executive Officer states that some unknown persons are claiming themselves as the treasurers of the Temple Administration and collecting money illegally from the public at large. This Court is of the considered opinion that all such illegal activities are to be controlled by the Fit Person appointed by the Department and if any illegal activities in this regard are noticed, all appropriate actions including criminal actions are to be initiated by the Fit Person to protect the administration of the Temple and its properties.



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19. The learned Government Advocate appearing on behalf of the HR and CE Department brought to the notice of this Court that Arulmigu Gangai Amman Temple is also brought under the control of the HR and CE Department and a Fit Person is also appointed to that Temple.

20. The appellant herein is not in possession of the suit schedule property and the Fit Person appointed was already permitted to take charge of the administration of the Temple and also the suit mentioned property. The Temple administration and the learned Government Advocate brought to the notice of this Court that the Fit Person has already took charge of the administration and had taken possession of the suit mentioned property with the assistance of the Police and in this regard, a Report also has been filed before this Court. Thus, the appellant is directed to execute the cancellation of the Lease Deed dated 04.08.1971 by cooperating with the Temple administration, which is to be done in the Registrar's Office concerned. The appellant has agreed to settle the arrears of compensation as ordered by the Trial Court in favour of the Temple administration, within a period of four weeks from the date of receipt of a copy of this judgement.



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21. Accordingly, the judgment and decree dated 13.12.2017 passed in O.S.No.209 of 2009 stands confirmed and consequently, the Appeal Suit in A.S.No.416 of 2018 is dismissed. However, there shall be no order as to costs. The connected Miscellaneous Petition is also dismissed.

21.02.2023

Jeni/Svn
Index : Yes
Speaking order
Neutral Citation : Yes

To

The II Additional District Judge,
II Additional District Court,
Poonamalle.



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S.M.SUBRAMANIAM, J.

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