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S.A.No.166 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.166 of 2017
CMP.No.3371 of 2017

Mohammed Noorudeen

...Appellant

Vs.

1.Arulmighu Karaneeswarar Devasthanam
Rep. by its Executive Officer, Karaneeswarer Koil Street,
Saidapet, Chennai – 15.

Abbas Sheriff (Deceased)

2.S.Panchatcharam

3.A.Selvaraj

4.Sartaj Begum

5.Aktar Begum

6.Ansar Begum

...Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree in A.S.No.357 of 2009 on the file of the VII Additional City Civil Court, Chennai, Confirming the judgment and decree dated 02.09.2008 made in O.S.No.7263 of 1996 on the file of the I Assistant Civil Court, Chennai.

For Appellant : Mr.V.Shanmugasundaram

For Respondents : Mr.P.Willson Topaz
for M/s.A.S.Kailasam and Associates
for R1



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J U D G M E N T

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The first respondent/temple filed a suit for declaration that surrender deed dated 20.03.1987 and consequential lease deed dated 25.03.1987 executed by the second defendant in favour of defendants 3 and 4 were void, inoperative, not binding on the plaintiff and for recovery of possession of the suit property. The first respondent/temple also sought for a decree for damages for use and occupation. The trial Court granted a decree for declaration and possession as prayed for. Aggrieved by the same, the first defendant in the suit who was brought on record as legal representative of deceased second defendant filed an appeal in A.S.No.357 of 2009, on the file of VII Additional City Civil Court, Chennai. The said appeal was dismissed by confirming the findings of the trial Court. Aggrieved by the same, the unsuccessful first defendant is before this Court.

2. According to the first respondent/plaintiff, the suit property belonged to the temple was let out to deceased/second defendant by defendants 3 and 4, who acted as executive trustees at the relevant time in violation of the mandatory provisions of scheme decree governing the administration of the temple. The first respondent also raised a plea that lease deed dated



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25.03.1987 is a void document as it violates Section 34 of HR and CE Act.

The second defendant illegally and unauthorizedly put up superstructure in the lease hold land. Originally, the property was let out to the second defendant for a period of three years by entering into a lease arrangement on 17.07.1985, after expiry of the period by efflux of time, the suit property was surrendered to the temple and another lease deed was executed by first defendant in favour of the temple on 25.03.1987. The said lease containing the renewal clause allows the parties to extend the period of lease up to nine years. As the lease deed executed in favour of first respondent was violative of Section 34 of HR and CE Act, the notice was issued calling upon him to surrender the lease hold. Since he failed to agree for surrender of the lease hold land, the first respondent temple was constrained to file the suit with the above said relief.

3. The appellant/1st defendant filed a written statement denying the various allegations contained the plaint. It was contended by the first defendant that lease deed was executed by temple represented by its trustees by complying all the formalities. It was also averred by the first defendant that at the time of execution of surrender deed in favour of the temple, the suit



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property was a vacant site. It was contended by the appellant/first defendant that the trustee who executed lease deed in his favour is competent to execute the same in favour of temple and they have not violated any provision of law. Being a lessee inducted in to the possession by the competent trustee of the temple, the first defendant is in legal possession of suit property. Hence, the first respondent/plaintiff is not entitled to maintain a suit for recovery of possession.

4. On these pleadings, the parties went to the trial. On behalf of the first respondent/temple, one witness was examined and eleven documents were marked as Exs.A1 to A11. On behalf of the appellant one witness was examined as PW.1 and fifteen documents were marked as Exs.B1 to B15.

5. The trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that at the time of execution of lease deed the trustees failed to follow the mandatory requirements under the scheme decree and consequently the lease deed executed in favour of first respondent was not binding on the temple. The trial Court also held that the appellant, who derived his right under illegal document



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is not entitled to continue his possession. Therefore, the trial Court granted a decree granting declaration and recovery of possession as prayed for.

Aggrieved by the same, the appellant preferred an Appeal in A.S.No.357 of 2009, on the file of VII Additional City Civil Court, Chennai. The First Appellate Court also confirmed the findings of the trial Court. Aggrieved by the same, the appellant is before this Court.

6. The learned counsel for the appellant vehemently contended that the trustees of the temple executed a lease deed in favour of the appellant and hence, he cannot be treated as a trespasser of the property. The learned counsel further submitted that after coming into force of Tamil Nadu Hindu Religious and Charitable Endorsement Act, 1959, the scheme framed under the old Act cannot be pressed into service. The learned counsel further submitted that the appellant is entitled to protection under the Tamil Nadu City Tenants and Protection Act and consequently the decree for possession granted by the Courts below are liable to be set aside.

7. It is seen from the pleadings of the appellant and also lease deed marked by him as Ex.A3, the appellant entered the suit property as a



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lessee under the temple by executing a lease deed. The lease deed was executed by the trustees of the temple. Originally lease deed was executed on 17.07.1985 under Ex.A1 by deceased 2nd respondent for a period of three years. After expiry of the lease period due to efflux of time, the possession of suit property was surrendered in favour of the temple under Ex.A2. Thereafter, again the property was let out to appellant under Ex.A3 dated 25.03.1987. It is seen from the observations made by the Courts below that Ex.A3 lease deed was executed for a period of nine years with renewal clause.

8. Under Section 34 of HR and CE Act, any lease for a term exceeding five years requires sanction from Commissioner of HR and CE. If such lease is entered into without sanction by the Commissioner of HR and CE, the same shall be a void document.

9. Section 34 (1) of the HR and CE Act reads as follows:

34. Alienation of immovable trust property.—(1) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution shall be null and void unless it is sanctioned by 1[the Commissioner] as being necessary or beneficial to the institution :



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Provided that before such sanction is accorded, the

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particulars relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly consider by 1[the Commissioner] :

2 [Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government].

Explanation.—Any lease of the property above mentioned through for a term not exceeding five years shall, if it contains a provision for renewal for a further term (so as to exceed five years in the aggregate), whether subject to any condition or not, be deemed to be a lease for a period exceeding five years.

10. A perusal of the above provision would make it clear that every lease of property belongs to the religious institution for a term exceeding five years shall be sanctioned by the Commissioner of Hindu Religious and Charitable Endowments Department as being necessary and beneficial to the institution. In the absence of any such sanction, the lease deed is null and void. The explanation to the sub section 1 of Section 34 of the HR and CE Act,



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would make it clear that if a lease for a term less than five years contains a provisions for renewal for a further term so as to exceed five years in aggregate such lease shall be treated as a lease for a period exceeding five years. In the case on hand, the Courts below on perusal of Ex.A3 found that the lease is for a period of three years with enabling provision to extend the lease period for three more block periods of three years each. Therefore, the aggregate period under the lease would be twelve years. Hence, explanation to Section 34 (1) of HR and CE Act gets attracted and Ex.A3-lease deed shall be treated as a null and void document in the absence of sanction by Commissioner.

11. Apart from Section 34 of HR and CE Act, as per the scheme governing 1st respondent/temple, which was marked as Ex.A8 in case of lease for a period exceeding three years, the consent of electors and the sanction by Court are mandatory as per the Clause-12 of the decree. In the case on hand, though aggregate lease period exceeds three years no consent from the electors or sanction from the Court was obtained. Therefore, both the Courts below came to a factual conclusion that the lease deed has been executed in favour of the appellant violating scheme provisions. In any event, by virtue of Section 34 of new HR and CE Act, which came into force in the year 1959, the lease deed



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challenged in the suit shall be treated as void document for want of sanction by Commissioner.

12. Once this Court comes to a conclusion that lease deed under which appellant had entered the suit property is a void document, he is not entitled to resist the action for recovery of possession filed by the 1st respondent. Accordingly, the decree granted by the Courts below that lease deed executed by the trustee is void document and in operative with consequential relief for recovery of possession need not be interfered with.

13. The learned counsel appearing for the appellant submitted that subsequent to the lease he had put up building in the suit property and made improvements in the suit property. As mentioned earlier, the appellant entered the suit property under a void document, when he is not having any *de-jure* status to occupy the property of the temple, any improvements made by him will not confer any equity upon him.

14. In such circumstances, I do not see any question of law to entertain the second appeal. Accordingly, the second appeal is dismissed by confirming the findings of the Courts below.



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15. In nutshell,

The Second Appeal is dismissed by confirming the judgment and decree passed in A.S.No.357 of 2009 on the file of the VII Additional City Civil Court, Chennai, confirming the judgment and decree in O.S.No.7263 of 1996 on the file of the I Assistant Civil Court, Chennai, dated 02.09.2008.

b) In the facts and circumstances of the case, there shall be no order as to costs; and

c) consequently, connected Miscellaneous Petition is closed.

16.10.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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To

1. The VII Additional City Civil Court, Chennai.
2. The I Assistant Civil Court, Chennai.



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S.SOUNTHAR, J.

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