



S.A.(MD) No.75 of 2005

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved On 31.01.2023	Judgment Pronounced On 15.02.2023
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CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.(MD) No.75 of 2005

1.S.M.Devi	.. 1 st Appellant/1 st Respondent/ 2 nd Defendant
2.S.M.Sankar	.. 2 nd Appellant/ 2 nd Respondent/3 rd Defendant

-VS-

The Idol of Sri Jambukeswarar
Akilandeswari Devasthanam,
Rep., by its Executive officer,
Thiruvanaikovil,
Trichi-5.

.. Respondent/Appellant/
Plaintiff

Prayer: Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 29.09.2004 made in A.S.No.166 of 2004 on the file of the Principal District Court, Tiruchirappalli reversing the judgment and decree dated 13.10.2003 made in O.S.No.198 of 1995 on the file of the II-Additional District Munsif's Court, Tiruchirappalli.

For Appellants : Mr.S.Vinayak
for Mr.Jayaprakash Narayanan



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For Respondent : Ms.N.Krishnaveni
Senior Counsel
assisted by
Mr.P.Thiagarajan

JUDGMENT

1.1. Defendants 2 and 3 are the appellants. The respondent herein filed a suit for recovery of possession and also for arrears of rent against the appellants. The suit was dismissed by the trial Court and on appeal filed by the respondent, the judgment of the trial Court was reversed and the suit was decreed. Aggrieved by the same, defendants 2 and 3 are before this Court.

1.2. The respondent is the Idol of Sri Jambukeswarar Akilandeswari Devasthanam, represented by its Executive Officer. As per the plaint averment, the respondent/Idol is the absolute owner of the suit property and the appellants are the tenants. The tenancy is oral and as per the understanding, the first defendant (the suit was originally filed against the deceased first defendant and pending suit he died, the appellants his legal representatives were brought on record as defendants 2 and 3) has to pay monthly rent of Rs.325/- on or before fifth of every succeeding month. The



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first appellant had committed default in payment of rent from August, 1992 and on the date of presentation of the suit, there was an arrear of Rs.9,050/-. It was further stated that in spite of several demands made by the respondent/temple, the first defendant failed to pay the rent.

1.3. It was further averred that the suit property is situated at the Thousand Pillared Mandapam of the temple and the respondent required the same for up-keeping the Mandapam in a clean manner. The notice to quit was issued to the first defendant on 17.07.1994 terminating the tenancy with effect from the end of tenancy month of August, 1994. Though the deceased first defendant received the notice, he had not cared to send any reply. Therefore, the respondent was constrained to file the above suit.

2. The appellants filed a written statement and admitted the title of the respondent/temple and the tenancy arrangement. According to the appellants, they were very regular in payment of the rent and they claimed that the rent was paid up to 31.01.1995. It was further averred that after issuance of notice to quit, the appellants approached the respondent/temple officials and they informed them that notice was wrongly issued and



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thereafter, received rent to the tune of Rs.4,100/- and thereby waived the notice to quit dated 17.07.1994. Therefore, the appellants mainly sought for dismissal of the suit on the ground of waiver of notice to quit.

3. Before the trial Court, an employee of the respondent/temple was examined as P.W.1 and two documents were marked on behalf of the respondent/temple viz., the notice to quit and the acknowledgement card sent by the deceased first defendant as Ex.A.1 and Ex.A.2 respectively. On behalf of the appellants, the second appellant was examined as D.W.1 and nine documents were marked on their side as Ex.B.1 to Ex.B.9.

4. The trial Court, on appreciation of oral and documentary evidences available on record, came to the conclusion that accepting the rent paid by the tenants subsequent to the notice to quit would amount to waiver of the earlier notice under Section 106 of the Transfer of Property Act, 1882. Therefore, the trial Court dismissed the suit. Aggrieved by the same, the respondent filed an appeal in A.S.No.166 of 2004 on the file of the Principal District Court, Tiruchirappalli. The first appellate Court came to the conclusion that mere receipt of rent after issuance of notice and filing of suit



for ejectment would not amount to waiver of notice, unless such acceptance of rent is accompanied by intention to continue the tenancy and consequently, set aside the judgment and decree passed by the trial Court and allowed the appeal. Aggrieved by the same, the appellants/defendants 2 and 3 are before this Court.

5. At the time of admission, the following substantial questions of law were formulated:

“1. Whether the receipt of rents by the plaintiff from the defendant without exhibiting any protest after issue of notice to quit dated 17.07.1994 by plaintiff would amount to waiver of notice to quit in terms of Section 116 of Transfer of Property Act?

2. When the tenancy of the defendants is not governed by Rent Control Act, the distinction made by the Apex Court between cases governed by statutory tenants and normal or contractual tenants as regards waiver extends to the defendants or not? and

3. When the plaintiff after the institution of suit for eviction claims enhanced rent from the defendants through a notice dated 1.7.1995 would it not give rise to fresh tenancy impliedly waiving the suit relief?”



6. The learned counsel for the appellants filed a memo dated 19.11.2021 seeking leave of the Court to raise the following substantial questions of law:

“1. Whether the suit filed by the Executive Officer/Respondent is maintainable in view of decision reported in 2003 (1) L.W. 386 and other judgments of this Hon'ble Court? And

2. Whether the findings of the First Appellate Court is perverse and incorrect by allowing the appeal, thereby directing the appellants to pay a sum of Rs.5,050/- as arrears of rent to the respondent, when the said amount was admittedly paid by appellants in Ex.B.1?”

7. This Court, after hearing the learned counsel for the appellants allowed him to raise the following additional substantial questions of law:

“1. Whether the suit filed by the Executive Officer/Respondent is maintainable in view of decision reported in 2003 (1) L.W. 386 and other judgments of this Hon'ble Court? And

2. Whether the findings of the First Appellate Court is perverse and incorrect by allowing the appeal, thereby directing the appellants to pay a sum of Rs.5,050/- as arrears of rent to the respondent, when the said amount was admittedly paid by appellants in Ex.B.1?”



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8.1. Mr.S.Vinayak, learned counsel for the appellants submitted that under the provisions of the Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as “the HR & CE Act” for brevity), the Trustee is the competent person to file a suit on behalf of the temple and the Executive Officer is incompetent to represent the temple in a suit. This suit, being filed by the Executive Officer of the respondent/temple, is incompetent and consequently, liable to be dismissed. In this regard, the learned counsel relied on the judgment of a Division Bench of this Court in ***Sri Arthanareeswarar of Tiruchendgode by its present Executive Officer Vs. T.M.Muthuswamy Padayachi etc., and others*** reported in ***2003-1-L.W. 386***. The learned counsel also relied on the following judgments, wherein the above said judgment was followed by this Court:

- i. ***S.Radhabai Vs. Bharani Abishheka Kattalai attached to A/M Arunachaleswarar Thirukoil, Rep., by its Deputy Commissioner/Executive Officer in S.A.No.1224 of 2007 dated 13.08.2021;***
- ii. ***E.V.Mohan Vs. Arulmigu Sengaluneer Vinayakar and Koluraman Thirukoil by its Executive Officer in C.R.P.(NPD) No.2966 of 2007 dated 23.04.2018;*** and



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iii. B.S.Manian and others Vs. Arulmigu Yoganarasimhaswami

Tirukoil in S.A.No.469 of 2014 dated 20.11.2019.

8.2. The learned counsel further submitted that though the question with regard to the incompetency of the Executive Officer to maintain the suit was not raised by the appellants before the Courts below, it being a pure question of law can be raised before the second appellate Court. The learned counsel relied on the judgment of this Court in ***A.Mahadevan (Died) through LRs Vs. Arulmigu Kapaleeswarar Temple, Rep., by its Deputy Commissioner/Executive Officer in S.A.No.1106 of 2005 dated 11.11.2019*** and ***Arulmigu Vedaranyeswaraswamy Devasthanam, Rep., by its Executive Officer Vs. A. Ibrahim Sahib*** reported in ***2017-5-L.W.772*** in this regard.

8.3. Secondly, the learned counsel submitted that subsequent to the filing of the suit, the appellants paid rent to the respondent/temple and the same has been received by them without protest and therefore, the receipt of rent subsequent to the filing of the suit would amount to waiver of the notice to quit. Hence, the learned counsel submitted that the judgment of



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the trial Court dismissing the suit on the ground of waiver of the notice to quit shall be restored.

9.1. Per contra, Ms.N.Krishnaveni, learned Senior Counsel, by drawing the attention of this Court to Section 34-B of the HR & CE Act, submitted that the Executive Officer of a temple is empowered to take possession of the leasehold property after termination of the lease. It is the submission of the learned Senior Counsel that possession of the property can be taken by the Executive Officer on various modes available under the law and filing a suit for recovery of possession before the civil Court is one of such modes. Therefore, in view of the statutory recognition of Executive Officer's power to take possession of the property, the point raised by the learned counsel for the appellants cannot be accepted.

9.2. The learned Senior Counsel further submitted that as far as the property of the temple is concerned, even a worshipper of the temple is entitled to maintain a suit on behalf of the temple and the Executive Officer, as a person incharge of the affairs of the temple, can very well be treated as a worshipper or the person interested in the temple and hence, the suit filed



by him representing the Idol is very well maintainable. The learned Senior Counsel further submitted that Idol of the temple, to which the property is vested, is like a minor and whenever the minor's interest is under threat, this Court as a *parens patriae* can very well entertain a suit filed by any person having interest in the temple. The learned Senior Counsel, by relying on the judgment of the Hon'ble Apex Court in ***Sarup Singh Gupta Vs. S.Jagdish Singh and others*** reported in **(2006) 4 SCC 205**, submitted that mere acceptance of rent by the landlord is not sufficient to infer waiver of notice to quit, unless it is accompanied by intention to create new tenancy.

9.3. The learned Senior Counsel, by taking this Court to the evidence of D.W.1, submitted that D.W.1 admitted during his examination that at the time of filing of the suit, there was an arrear of Rs.5,050/- and hence, the decree passed by the appellate Court directing the appellants to pay a sum of Rs.5,050/- towards arrears of rent is based on the admission made by the appellants and therefore, it requires no interference. The learned Senior Counsel also had drawn the attention of this Court to the judgment of this Court in ***Durgai Lakshmi Kalyana Mandapam Vs. Idols of Arulmigu Siddhi Ganesar Natarja Perumal Durgaiamman Group Temples*** in



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A.S.No.397 of 2010 dated **14.12.2022** and submitted that the suit filed by the Executive Officer is maintainable.

10. Heard the arguments of Mr.S.Vinayak, learned counsel for the appellants and Ms.N.Krishnaveni, learned Senior Counsel for the respondent. Perused the typed set of papers and other records.

11. The learned counsel for the appellants at the time of arguments, raised only two points viz., the incompetency of the Executive Officer to maintain the suit and the waiver of notice to quit. The first additional substantial question of law framed today is with reference to the competency of the Executive Officer to maintain a suit. The substantial questions of law framed at the time of admission on 28.01.2005 and the second additional substantial question of law framed today are with regard to the waiver of notice.

Additional Substantial Question of Law No.1:

12.1. The learned counsel for the appellants vehemently contended by relying on the judgment reported in *Sri Arthanareeswarar of*



Tiruchendgode by its present Executive Officer Vs. T.M.Muthuswamy

Padayachi etc., and others reported in ***2003-1-L.W.386*** and other judgments mentioned above that the suit filed by the Executive Officer representing the temple is incompetent. In ***Sri Arthanareeswarar of Tiruchendgode case*** cited *supra*, the temple represented by the Executive Officer filed a suit for declaration of title and recovery of possession. The temple based its right under a gift deed dated 01.11.1897 executed in favour of the plaintiff Arthanareeswar Swamy temple. When question of maintainability of the suit filed by the Executive Officer came before the Division Bench, it concluded that even worshipper can *sue* on behalf of the temple and the suit filed by the worshipper is very well maintainable. However, on the facts of the case, it was held that under the gift deed relied on by the temple, no valid trust was created and there was no mutation of records in the name of the plaintiff temple. The property continued in the name of the settlor and after purchase by the defendants therein, the mutation had taken place in the name of the defendants. Therefore, though the Division Bench observed that the suit filed by a worshipper was maintainable, as he is a person interested in the trust, in view of the fact that the suit property in question was not at all dedicated to the temple, the said



analogy was not pressed into service and ultimately, it was held that the suit filed by the Executive Officer was not maintainable.

12.2. As far as the present case is concerned, here, there is no dispute with regard to the title of the respondent/temple. The appellants admitted the title of the respondent/temple and in the pleadings, they specifically admitted that they are the lessees of the respondent/temple. Therefore, in the case on hand, the respondent/Idol has got clear title over the suit property. In such case, any worshipper having interest in the temple in order to protect the interest of the temple can maintain a suit. In the case on hand, the Executive Officer of the temple has filed the suit. The Executive Officer of the temple is a person who is incharge of the day-to-day administration of the temple. Therefore, certainly, he is a person interested in the welfare of the temple. When law recognises a mere worshipper of the temple to maintain a suit on behalf of the Idol, as a person incharge of day-to-day affairs of the temple, the Executive Officer can very well maintain a suit on behalf of the temple. As far as *Sri Arthanareeswarar of Tiruchendgode case* cited *supra* is concerned, property was not vested with the Idol and therefore, after holding even worshipper is entitled to maintain



a suit, the Division Bench proceeded to hold that such right is subject to the creation of valid trust. On facts, the Division Bench held that there was no creation of trust in favour of the idol. Therefore, the suit filed by the Executive Officer was held to be not maintainable. In the facts and circumstances of the present case, where title of the respondent/temple is not at all in dispute, I hold that the suit filed by the Executive Officer, as a person interested in the welfare of the Idol is very well maintainable. It would be appropriate to extract the observation of the Division Bench in ***Sri Arthanareeswarar of Tiruchendgode case*** which is as follows:

“22. The suit by the villagers - B.K.MUKHERJEA's "The Hindu Law of religious and Charitable Trust" states as follows:

"An idol is a juristic person in whom the title to the properties of the endowment vests. But it is only in an ideal sense that the idol is the owner. It has to act through human agency, and that agent is the Shebait, who is, in law, the person entitled to take proceedings on its behalf. The personality of the idol might, therefore, be said to be merged in that of the Shebait.

(2) Where, however, the Shebait refuses to act for the idol, or where the suit is to challenge the act of the Shebait himself as prejudicial to the interests of the idol,



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then there must be some other agency which must have the right to act for the idol. The law accordingly recognises a right in persons interested in the endowment to take proceedings on behalf of the idol."

Thus, the legal position is that even a worshipper can sue when cause of action is due to trustee acting adversely. The suit by the worshippers is maintainable. However, this will be subject to our finding whether trust had indeed been created and come into effect." (emphasis supplied)

12.3. After holding so, the Division Bench, on facts, held that no trust was created in favour of the Idol. The relevant observation of the Division Bench is as follows:

"38. Therefore, we are of the view that there is absolutely no oral evidence to support the case that there was divestiture of the property contemporaneously so as to say that there was a valid trust. (emphasis supplied) Besides, admittedly, there was no mutation of records in the name of the trust or the temple. The property continued to be in the name of Venkatachala Gounder and after the purchase of the property, the records were changed in the name of the purchasers. We have also got Ex.A.2, a registered cancellation deed executed by the wife of Venkatachala Gounder, Amma Muthu Ammal, one of the



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donors of Ex.A.1. The recitals in that deed say that though they have executed a gift of the property for the purpose of performing Nandavanam charities, from the date of the deed, the property was in their possession and they had been paying the kist and other charges to the Government. Besides, it is specifically recited that the suit property was not put to use for Nandavanam purposes. She further proceeds to say that since the charities were not being performed and there was no possibility of their performance in future, she cancelled the said trust. Whether this document is valid or not, this can collaterally be used as an evidence as to its contents, namely that the gifted property was not utilised for the performance of the charities. Hence, we are of the view that no valid trust has come into existence in reference to the suit property.” (emphasis supplied)

12.4. The Division Bench in the above said case categorically held that the suit filed by a worshipper on behalf of the temple is maintainable. However, in view of the peculiar facts of that case, where there was no dedication of property in favour of the Trust or Idol, the Division Bench could not go further and examine whether the Executive Officer, who is incharge of the day-to-day administration of the temple, could also be



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treated as a person interested in the welfare of the Idol as worshipper and hence, he could maintain a suit on behalf of the Idol.

12.5. Regarding the entitlement of the worshipper of the temple to maintain a suit on behalf of the Idol, it would be appropriate to refer to the decision of this Court in *Amirjan Vs. Shaik Sulaiman Sahib and others* reported in **(1968) 2 MLJ 559 : 1967 SCC OnLine Mad 249**. The relevant observations of this Court are as follows:

“But there is no doubt that even a worshipper will be entitled to maintain a suit for possession of a trust property where the trustee has alienated the trust property and would not proceed to recover possession of the same or has disabled himself otherwise from maintaining a suit in respect thereof, declines to institute a suit. The worshippers are in that case entitled to maintain a suit for preserving the trust property or restoring the property to the trust either by instituting a suit for declaration or for an injunction or even for possession. If the suit is one brought for possession by the worshippers, the court can, after declaring the property to be trust property and setting aside the alienation, direct delivery of possession to the trustees. In cases where there is no trustee, it is open to the court to direct delivery of possession to the worshippers on behalf of the trust.”



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12.6. In yet another decision, a Full Bench of this Court has taken a view that so long as an action for recovery of possession of property belonging to a trust is for the benefit of the Idol, the person in management of the affairs of the Idol or mutt, in his *de facto* capacity can maintain a suit. The relevant observations of the Hon'ble Full Bench of this Court in ***Sankaranarayanan Iyer Vs. Poovananthaswami Temple, Kalipatti*** reported in ***(1949) 2 M.L.J. 171*** are as follows:

“So long as an action for recovery of property belonging to a trust held adversely by a stranger is for the benefit of the real owner, namely, the idol or the mutt, and the person bringing the action is the only person who is in the management of the affairs of the idol or the mutt, for the time being, and is therefore its de facto trustee, there is no reason why such person should not be allowed to maintain the action on behalf of the idol or the mutt.”

12.7. The Hon'ble Apex Court in ***Bishwanath and another Vs. Sri Thakur Radha Ballabhji and others*** reported in ***AIR 1967 SC 1044***, held that the legal status of an Idol is that of a minor and when the person



representing it leaves it in a lurch, a worshipper of the Idol, in his *ad hoc* capacity, can maintain a suit for possession. The relevant observation of the

Hon'ble Apex Court is as follows:

“10. An idol is in the position of a minor when the person representing it leaves it in a lurch, a person interested in the worship of the idol can certainly be clothed with an ad hoc power of representation to protect its interest. It is a pragmatic, yet a legal solution to a difficult situation. Should it be held that a Shebait, who transferred the property, can only bring a suit for recovery, in most of the cases it will be an indirect approval of the dereliction of the Shebait's duty, for more often than not he will not admit his default and take steps to recover the property, apart from other technical pleas that may be open to the transferee in a suit. Should it be held that a worshipper can file only a suit for the removal of a Shebait and for the appointment of another in order to enable him to take steps to recover the property, such a procedure will be rather a prolonged and a complicated one and the interest of the idol may irreparably suffer. That is why decisions have permitted a worshipper in such circumstances to represent the idol and to recover the property for the idol. It has been held in a number of decisions that worshippers may file a suit praying for possession of a property on behalf of an endowment.”



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12.8. A Hindu Idol is recognised as “*juristic* entity”. The property vests with the Idol and the position of Trustee is only that of a Manager. The ownership vests with the deity and for the purpose of management of property, physical possession is with the Manager, who shall manage the property for the benefit of the deity. In the case on hand, the appellants committed default in payment of rent and the Executive Officer filed a suit for the benefit of the Idol to recover possession and also for profits. Hence, following the authorities referred above, I hold that the suit by the Executive Officer is maintainable as if it is a suit by a worshipper for the benefit of the Idol. Therefore, following the ratio in ***Amirjan Vs. Shaik Sulaiman Sahib and others*** referred above, there may not be any difficulty in granting a decree for recovery of possession in this suit with a clarification that recovery of possession by the Executive Officer is only on behalf of the Trustee/Fit Person of the respondent Idol/Devasthanam.

12.9. Further, Section 45 of the HR & CE Act which deals with appointment and duties of Executive Officers reads as follows:

“45.Appointment and duties of Executive Officers.—

(1) Notwithstanding anything contained in this Act, the



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Commissioner may appoint, subject to such conditions as may be prescribed, an Executive Officer for any religious institution other than a math or a specific endowment attached to a math.

[Explanation.—In this section “math” shall not include a temple under the control of a math].

(2) The Executive Officer shall exercise such powers and discharge such duties as may be assigned to him by the Commissioner.

Provided that only such powers and duties as appertain to the administration of the properties of the religious institution referred in sub-section (1) shall be assigned to the Executed Officer.

(3) The Commissioner may define the powers and duties which may be exercised and discharged, respectively, by the Executive Officer and the trustee, if any, of any religious institution other than a math or a specific endowment attached to a math.

(4) The Commissioner may, for good and sufficient cause, suspend, remove or dismiss the Executive Officer.”

12.10. A perusal of the above said provision makes it clear that at the time of appointment of Executive Officer, the Commissioner would define the powers and duties which may be exercised and discharged by the Executive Officer and the Trustee. Whether power to *sue* or be *sued* was



conferred on the Executive Officer or not depends on the terms and conditions of appointment of the Executive Officer. In fact, as per Rule 4(b)(iii) of Conditions for Appointment of Executive Officers Rules, 2015, framed under HR & CE Act, an Executive Officer is entitled to *sue* or be *sued* in the name of the religious institution in all legal proceedings with the approval of the competent authority. The relevant rule reads as follows:

“Rule 4(b)(iii) sue or be sued in the name of the religious institution in all legal proceedings with the approval of the competent authority.”

12.11. In the case on hand, the question of incompetency of the Executive Officer was not at all raised by the appellants before the Courts below. This particular point was raised by the appellants only at the time of argument of the second appeal by memo dated 19.11.2021. Whether the Executive Officer has got power to *sue* or be *sued* on behalf of the Idol depends on the terms and conditions of his order of appointment. Had this point been raised by the appellants before the trial Court, the respondent/temple would have got an opportunity to produce the old order of appointment of the Executive Officer to the respondent/temple for the



first time which may contain the terms and conditions defining the powers of the Executive Officer. The answer to this questions depends on facts viz., the terms and conditions of the original order appointing the Executive Officer to the temple for the first time. Therefore, the respondent lost an opportunity to produce the valuable piece of documentary evidence in support of his case, as this point was not raised by the appellants before the trial Court.

12.12. It is also appropriate to refer to Section 34-B of the HR & CE Act, which reads as follows:

“34-B. Termination of lease of immovable property.—

(1) The lease of immovable property belonging to, or given or endowed for the purpose of, any religious institution shall be liable to be terminated on the non-payment of the lease rent [or on violation of any of the conditions imposed in the lease agreement] after giving a reasonable opportunity of being heard.

(2) No proceeding to terminate the lease shall be initiated, if—

(i) the time for appeal or revision under sub-section (3) or sub-section (5), as the case may be, of section 34-A has not expired; or



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(ii) the order has been made the subject of such appeal or revision till the disposal of the matter.

(3) On the termination of the lease under sub-section (1), the property shall vest with the concerned religious institution free from all encumbrances and the Executive Officer, the Trustee or the chairman of the Board of Trustees, as the case may be, of such religious institution shall take possession of the property including the building, superstructure and trees, if any.”

12.13. A perusal of the above said provision would make it clear that on termination of lease of immovable property, the Executive Officer of the temple is empowered to take possession of the subject matter of the lease. In order to take possession of the subject matter of the lease, the Executive Officer can either file a suit for recovery of possession under common law or take recourse to Section 78 of the HR & CE Act by moving the Joint Commissioner. In the case on hand, the Executive Officer had chosen to proceed under the first option.

12.14. The learned counsel for the appellants submitted that Section 34-B of the HR & CE Act was introduced by way of amendment to the main



Act by Tamil Nadu Act 25 of 2003. But however, the suit was filed even prior to that. Therefore, the Executive Officer cannot take shelter under this provision and argue that the suit was competent. When the Executive Officer is specifically empowered under Section 34-B to take possession of the property in respect of which lease was terminated, the benefit of that provision would certainly enure to all pending litigations. In the present case, the suit was filed by an Idol. Since an idol cannot act on its own, it is represented by a human being viz., the Executive Officer. So long as the Executive Officer acts in conformity with the interest of the temple, as a person interested in the temple, he can be allowed to represent the Idol in order to protect the interest of the temple. In the case on hand, the appellants herein admittedly committed default in payment of rent. Therefore, notice to quit was issued against them and the present suit was filed for recovery of possession after termination of the lease. In these circumstances, the Executive Officer by filing the suit for possession is acting in the interest of the Idol. Therefore, nothing wrong in allowing him to continue the suit as a person interested in the religious institution. Therefore, the first additional substantial question of law is answered in favour of the respondent and against the appellants.



Substantial Question of Law Nos.1, 2 and 3:

13.1. The learned counsel for the appellants also submitted that subsequent to the filing of the suit, the respondent/temple received rent without protest and it would amount to waiver of the notice to quit. The suit was filed on 03.02.1995. As per the admission of the second appellant as D.W.1, even at the time of filing of the suit, there was arrears to the tune of Rs.5,050/-. Subsequently, after three years on 11.02.1998, the appellants paid a sum of Rs.20,820/- under Ex.B.1. Perusal of Ex.B.1 would make it clear that the appellants paid the said sum to wipe out the arrears up to December, 1997 only. Therefore, even on the date of Ex.B.1, there was arrears for the month of January, 1998. Subsequently also, the appellants paid amount towards arrears of rent under Ex.B.2 to Ex.B.9 on various dates viz., 02.10.2001, 22.09.1999, 20.10.1999 and 01.09.2003. Though in Ex.B.1, the respondent/temple official received the arrears of rent without protest, in other receipts viz., Ex.B.2 to Ex.B.9, arrears of rent was received without prejudice to their case. Merely because an official of respondent/temple received portion of the arrear of rent paid by the appellants, it cannot be presumed that the appellants waived the notice to quit and there is



commencement of new tenancy. In this regard, the observations of the Hon'ble Apex Court in ***Sarup Singh Gupta Vs. S.Jagdish Singh and others*** reported in **(2006) 4 SCC 205**, would be useful. The relevant observation of the Hon'ble Apex Court reads as follows:

“8. In the instant case, as we have noticed earlier, two notices to quit were given on 10-2-1979 and 17-3-1979. The suit was filed on 2-6-1979. The tenant offered and the landlord accepted the rent for the months of April, May and thereafter. The question is whether this by itself constitutes an act on the part of the landlord showing an intention to treat the lease as subsisting. In our view, mere acceptance of rent did not by itself constitute an act of the nature envisaged by Section 113, Transfer of Property Act showing an intention to treat the lease as subsisting. The fact remains that even after accepting the rent tendered, the landlord did file a suit for eviction, and even while prosecuting the suit accepted the rent which was being paid to him by the tenant. It cannot, therefore, be said that by accepting rent, he intended to waive the notice to quit and to treat the lease as subsisting. We cannot ignore the fact that in any event, even if rent was neither tendered nor accepted, the landlord in the event of success would be entitled to the payment of the arrears of rent. To avoid any controversy, in the event of termination of lease the practice followed by the courts is to permit the landlord to receive each month by way of compensation for the use and occupation of



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the premises, an amount equal to the monthly rent payable by the tenant. It cannot, therefore, be said that mere acceptance of rent amounts to waiver of notice to quit unless there be any other evidence to prove or establish that the landlord so intended. In the instant case, we find no other fact or circumstance to support the plea of waiver. On the contrary, the filing of and prosecution of the eviction proceeding by the landlord suggests otherwise.”

13.2. Therefore, it is clear that mere acceptance of rent by the landlord after notice to quit would not amount to waiver of the notice to quit. The acceptance of rent by the landlord shall be accompanied by his intention to treat the lease as subsisting. Unless, there is an active animus on the part of the landlord to treat the person who pays the rent as his tenant, mere acceptance of portion of arrears of rent would not amount to waiver of notice. In the case on hand, notice to quit was issued on 17.07.1994. In pursuance of the same, the respondent/temple filed a suit for recovery of possession on 03.02.1995. When the suit is actively pursued by the respondent/temple, the appellants offered to pay portion of the arrears of rent and that was accepted by the respondent. Therefore, absolutely there is nothing on record to suggest that there was necessary animus in the mind of



the official of the respondent/temple to treat the appellants as the tenants of the temple. Further, it is also to be noted that except Ex.B.1, in all other receipts, the part payment of arrears made by the appellants was accepted with protest without prejudice to the case of the temple. Therefore, the evidence available on record is against the appellants and the temple had been pursuing the suit for recovery of possession all along. In the light of the law laid down by the Hon'ble Apex Court in ***Sarup Singh Gupta case*** cited *supra*, I hold that in the case on hand, there is no animus to treat the appellants as tenants and hence, mere acceptance of portion of the arrears of rent would not amount to waiver of notice under Section 106 of the Transfer of Property Act. Therefore, Substantial Question of Law Nos.1 to 3 are answered against the appellants and in favour of the respondent.

Additional Substantial Question of Law No.2:

14. The learned counsel for the appellants submitted that under Ex.B.1, the appellants paid rent up to December, 1997 and the same had been accepted by the respondent/temple pending suit. Therefore, the first appellate Court is not justified in granting a decree for arrears of rent to the tune of Rs.5,050/-. In this regard, the learned Senior Counsel for the



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respondent submitted by taking this Court to the evidence of D.W.1 that the second appellant himself as D.W.1 admitted at the time of presentation of the plaint that there was arrears to the tune of Rs.5,050/- and therefore, the appellate Court was justified in granting a decree for arrears of Rs.5,050/-. In any event, as per Ex.B.1, receipt issued by the respondent/temple, arrears up to December, 1997 had been paid by the appellants. Therefore, arrears of Rs.5,050/- that was outstanding on the date of plaint was wiped out by subsequent payment. Therefore, the decree granted by the first appellate Court directing the appellants to pay a sum of Rs.5,050/- cannot be sustained and the same is liable to be set aside. However, the respondent/temple is at liberty to take appropriate proceedings for recovery of future damages from the appellants. Hence, Additional Substantial Question of Law No.2 is answered in favour of the appellants and against the respondent.

Conclusion:

15. In fine,

(i) this Second Appeal is partly allowed by setting aside the decree passed by the first appellate Court insofar as the direction to the appellants



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to pay the arrears of rent to the tune of Rs.5,050/- is concerned;

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(ii) the decree for recovery of possession granted in favour of the respondent is confirmed;

(iii) in other respects, the judgment and decree passed by the first appellate Court, are confirmed; and

(iv) in the facts and circumstances of the case, there would be no order as to costs.

15.02.2023

NCC: Yes

Index: Yes

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To

- 1.The Principal District Judge,
Tiruchirappalli.
- 2.The II-Additional District Munsif,
Tiruchirappalli.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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Pre-delivery Judgment made in
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15.02.2023