



S.A(MD)No.789 and 790 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE G. CHANDRASEKHARAN

S.A(MD)Nos.789 and 790 of 2021

S.A(MD) No.789 of 2021

The Society of St.Francis Xavier,
A registered Society through the Procurator,
St.Xavier's College Complex,
Palayamkottai, Tirunelveli-627002.

...Appellant

-Vs-

V.Murugan

... Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the Judgement and Decree dated 23.09.2019 passed in A.S.No.19 of 2018 on the file of the Principal Sub Court, Tirunelveli, reversing the Judgment and decree dated 01.11.2017 passed in O.S.No.207 of 2014 on the file of the II Additional District Munsif Court, Tirunelveli and allowing the second appeal.

For Appellant : Mr.B.Gurusankar
for Mr.T.Selvam

For Respondent : Mr.P.Santhosh Kumar



S.A(MD)No.789 and 790 of 2021

S.A(MD) No.790 of 2021

The Society of St.Francis Xavier,
A registered Society through the Procurator,
St.Xavier's College Complex,
Palayamkottai, Tirunelveli-627002.

...Appellant

-Vs-

R.Jeyakumar

... Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the Judgement and Decree dated 23.09.2019 passed in A.S.No.25 of 2018 on the file of the Principal Sub Court, Tirunelveli, reversing the Judgment and decree dated 01.11.2017 passed in O.S.No.215 of 2014 on the file of the II Additional District Munsif Court, Tirunelveli and allowing the second appeal.

For Appellant : Mr.B.Gurusankar
for Mr.T.Selvam

For Respondent : Mr.P.Santhosh Kumar

COMMON JUDGMENT

S.A(MD)No.789 of 2021 is filed against the judgment and decree dated 23.09.2019 passed in A.S.No.19 of 2018 on the file of the Principal Sub Court,



S.A(MD)No.789 and 790 of 2021

Tirunelveli, reversing the judgment and decree dated 01.11.2017 passed in O.S.No.207 of 2014 on the file of the 2nd Additional District Munsif Court, Tirunelveli.

2. S.A(MD) No.790 of 2021 is filed against the judgment and decree dated 23.09.2019 passed in A.S.No.25 of 2018 on the file of the Principal Sub Court, Tirunelveli, reversing the judgment and decree dated 01.11.2017 passed in O.S.No.215 of 2014 on the file of the 2nd Additional District Munsif Court, Tirunelveli.

3. The plaintiff in both the suits, namely, the Society of St.Francis Xavier, a registered Society through the Procurator, St.Xavier's College Complex, Palayamkottai, is the appellant herein in these appeals. The suit in O.S.No.207 of 2014 was filed against the defendant Murugan and the suit in O.S.No.215 of 2014 was filed against the defendant Jeyakumar. The relief asked in both the suits is to direct the defendants to surrender the vacant possession of the suit properties to the plaintiff, award damages for the use and occupation at the rate of Rs.2,000/- per month from 01.02.2014 till the date of delivery and for costs.



S.A(MD)No.789 and 790 of 2021

WEB COPY

4. The case of the plaintiff from the plaint averments in both the suits, in brief, is as follows:-

The suit properties belong to the plaintiff. The defendants are the tenants in respect of the suit properties. The tenancy is according to the Gregorian calendar. Each month rent is payable on or before the 5th day of every succeeding month. The monthly rent of the building was Rs.10,000/- and a sum of Rs.30,000/- was paid as advance by the defendant Murugan and Jeyakumar paid a sum of Rs.10,000/- as advance. Murugan is doing Carpentry work in the suit property and Jeyakumar is doing xerox business in the suit property. The plaintiff previously sent notice terminating the tenancy at the last hour of 30.04.2010 to the defendants. The defendants along with other tenants filed a suit in O.S.No. 422 of 2010 on the file of the First Additional District Munsif, Tirunelveli, seeking the relief of injunction against the plaintiff not to evict, unless by due process of law. After contest, the suits were dismissed on 15.06.2011. The plaintiff requires the suit property for its own use. After first notice, some of the tenants in Shop Nos.2, 17, 19 and 20 had vacated and surrendered the possession. However, the defendants have not vacated the suit properties. Therefore, the plaintiff sent a notice on 07.01.2014 terminating the tenancy and seeking vacant



S.A(MD)No.789 and 790 of 2021

WEB COPY

possession. The defendants received the notice and sent replies along with some other tenants on 25.01.2014. Since they have not vacated the suit properties after the receipt of notice issued under Section 106 of Transfer of Property Act, the suits are filed for the aforesaid reliefs.

5. The defendants filed separate written statements with the identical defence taken. The main contention of the defendants is that the requirement of the suit properties by the plaintiff is not *bona fide* and it is a *mala fide* attempt to get rid of the defendants from the suit property. The claim that the defendants are liable to pay arrears of rent, is not true. The defendants are the tenants under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The defendants have not filed any appeal against the judgment in O.S.No.422 of 2010 for the reason that the plaintiff has not taken any steps for vacating the defendants. Shop Nos.2, 17, 19 and 20 are in occupation of the tenants. The tenancy is not terminated in the manner known to law. Thus, the defendants prayed for dismissal of the suits.

6. In the trial conducted in O.S.No.207 of 2014, on the side plaintiff, P.W1



S.A(MD)No.789 and 790 of 2021

was examined and Ex.A1 and Ex.A2 were marked and on the side of the defendant, D.W.1 and D.W.2 were examined and Ex.X1 was marked.

7. In the trial conducted in O.S.No.215 of 2014, on the side plaintiff, P.W1 was examined and Ex.A1 and Ex.A3 were marked and on the side of the defendant, D.W.1 and D.W.2 were examined and Ex.X1 was marked.

8. On the basis of oral and documentary evidence produced, the learned Trial Judge decreed the suits and directed the defendants to vacate the suit properties within a period of 45 days from the date of judgment and directed the defendants to pay a sum of Rs.1,000/- from 01.02.2014 to till the date of delivery to the plaintiff. Against the judgment in O.S.No.207 of 2014, the defendant Murugan filed an appeal in A.S.No.19 of 2018 and against the judgment in O.S.No.215 of 2014, the defendant Jeyakumar filed an appeal in A.S.No.25 of 2018. The learned First Appellate Judge found that the byelaws of the plaintiff Society has not been marked to establish that the plaintiff society is the religious and charitable society and thus, exempted under the Act 18/1960. In this view of the matter, the learned first appellate Judge, allowed the appeals and dismissed



S.A(MD)No.789 and 790 of 2021

the suits. Challenging the judgments in A.S.Nos.19 and 25 of 2018, Second Appeals in S.A(MD)Nos.789 and 790 of 2021 are filed respectively.

9. It is the submission of the learned counsel for the appellant that the appellant had filed ten suits including these suits. In all the other suits, in O.S.Nos.219, 208, 210, 203, 206, 204 and 209 of 2014, the appellant had marked the byelaws of the society as an exhibit. Therefore, after contest, these suits were decreed and the appeals filed against those Judgments in A.S.Nos.24, 20,22, 16, 18, 17 and 21 of 2018 had been dismissed. Unfortunately, in the present suits, namely, O.S.Nos.207 of 2014 and 215 of 2014, the byelaws had been omitted to be marked. Though the trial Court decreed the suit, the first appellate Court finding that the byelaws have not been marked and thus, the plaintiff has failed to establish that the plaintiff Society is the religious institution exempted from the operation of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, allowed the appeals. Therefore, these second appeals are filed. He would further submit that the tenants, who were lost the appeals, had filed the second appeals in S.A(MD)Nos.56 to 60, 73 and 74 of 2020. This Court, on considering the rival submissions, had dismissed the second appeals. These two cases stand on



S.A(MD)No.789 and 790 of 2021

WEB COURT

identical footing with the second appeals in S.A(MD)Nos.56 to 60, 73 and 74 of 2020. Thus, he prays for allowing these second appeals filed by the appellant and decreeing the suits by setting aside the judgments of the first appellate Court.

10. In response, the learned counsel for the respondents submitted that the only defence taken before the first appellate Court was that the Society had failed to establish that the plaintiff Society is the religious institution exempted from the operation of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. He further submitted that he had an instruction that the tenants had vacated the suit properties.

11. From the submissions made by the parties, the following substantial question of law is framed for consideration in both the appeals:

“Whether the appellant is entitled to the exemption under Section 29 of Tamil Nadu Act 18 of 1960? “

12. From the submission of the learned counsel for the parties, it is evident that the appeals in A.S.No.19 of 2018 and A.S.No.25 of 2018 had been allowed



S.A(MD)No.789 and 790 of 2021

mainly for the reason that the plaintiff failed to produce the byelaws of the plaintiff society. Now, the appellant filed C.M.P(MD)Nos.7181 of 2022 and 16137 of 2023 for reception of byelaws of the Society as additional evidence along with the judgments of this Court in S.A(MD)Nos.56 to 60, 73 and 74 of 2020. The said petitions were allowed and these documents were ordered to be received as additional evidence and marked as Ex.A3 and Ex.A4.

13. From the admitted case of the parties, it is not in dispute that the plaintiff is the owner of the suit properties and the defendants are the tenants in respect of the suit properties. Earlier, a notice was given terminating the tenancy and then, the defendants had filed O.S.No.422 of 2010 against the plaintiff seeking injunction not to evict them unless by due process of law. The said suit was dismissed. Again, the present notice which was marked as Ex.A1, was given terminating the tenancy under Section 106 of Transfer of Property Act. The notice under Section 106 of Transfer of Property Act, was given confirming the requirements for terminating the tenancy under Section 106 of Transfer of Property Act. There is no serious dispute made out against the validity of this notice. Finding that the appellant requires the suit property for its own use, the



S.A(MD)No.789 and 790 of 2021

WEB COPY Trial Court has decreed the suits. As already stated, the first appellate Court reversed the finding of the trial Court mainly for the reason that the byelaws of the society had not been produced to establish that the plaintiff is the religious and charitable society exempted from the operation of Tamil Nadu Buildings (Lease and Rent Control) Act. The defect is now rectified.

14. After considering the submission made by the learned counsel appearing for the parties, this Court found that Santhiyaku was appointed as Treasurer cum Secretary of the plaintiff society on 28.01.2001. He signed several Form-V which were required to be filed under the provisions of Societies Registration Act in his capacity of Procurator. Byelaw of the society showed that the post of the Treasurer and Procurator are the same. A perusal of the clause-VII of the byelaws shows that the object of the society is to maintain and administer the St.Xavier's College, Palayamkottai, St.Xavier's Higher Secondary School and other colleges. It also shows that several charitable and religious activities are to be carried out by the plaintiff society. G.O(MS)No.200, dated 16.08.1978, exempted the buildings belonging to public religious and charitable institutions from the provision of Tamil Nadu Buildings (Lease and Rent Control) Act.



S.A(MD)No.789 and 790 of 2021

WEB COPY

15. In this view of the matter, this Court had dismissed the second appeals filed by the tenants in S.A(MD)Nos.56 to 60, 73 and 74 of 2020. These judgments squarely applies to the facts of these cases as well. This Court finds that the suit was rightly instituted and the tenancy was terminated in accordance with law as the suit property is exempted from the provision of Tamil Nadu Buildings (Lease and Rent Control) Act. Accordingly, the substantial question of law is answered in favour of the appellant.

16. In this view of the matter and in view of the reception of additional documents marked as Ex.A3 and Ex.A4, these second appeals are allowed by setting aside the judgment passed in A.S.Nos.19 and 25 of 2018, dated 23.09.2019, on the file of the Principal Sub Court, Tirunelveli and restoring the judgments of Trial Court. Consequently, the suits in O.S.Nos.207 and 215 of 2014 are decreed. No costs.

27.11.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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S.A(MD)No.789 and 790 of 2021

WEB COPY

Exhibits marked on the side of the appellant in both the second appeals:

Ex.A3 – Certified Copy of the Byelaws of the Society

Ex.A.4 – Certified copy of the judgment made in
S.A(MD) Nos.56 to 60, 73 and 74 of 2020.

27.11.2023

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To

- 1.The Principal Sub Court,
Tirunelveli.
- 2.The II Additional District Munsif,
Tirunelveli.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A(MD)No.789 and 790 of 2021

G. CHANDRASEKHARAN, J.

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S.A(MD)Nos.789 and 790 of 2021

27.11.2023