



S.A.(MD).No.417 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

S.A.(MD).No.417 of 2022 and
CMP(MD) No.5155 of 2022

Poongothai

... Appellant

Vs.

1.Pillian Kattalai
Tirunelveli Town
Through its Executive Officer,
no.35 Sudalaimadan Kovil Street,
Tirunelveli Town

2.Mogaideen

3.Abdul Khather

4.Sheyad Ali

5.Pakeer Mydeen

6.Ashnammal

7.Rahmad Meeral

8.Sharal Beevi

9.Sammethal Begam



S.A.(MD).No.417 of 2022

Pathumuthu (died)

10.Peer Mohammed Mydeen

11.Mydeen Pathu

12.Ashan Ammal

... Respondents

PRAYER: The Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 29.11.2019 passed by the Additional Subordinate Court, Tirunelveli in A.S.No.134 of 2012 confirming the judgment and decree of the 2nd Additional District Munsif, Tirunelveli, dated 27.08.2002 in O.S.No.82 of 2000.

For Appellant : Mr.Prabhu Rajadurai

For Respondents : Mr.R.Velmurugan for R1

R2 to R13 dispensed with

J U D G M E N T

This second appeal is filed challenging the judgment in A.S.No. 134/2012 on the file of the Additional Sub Court, Tirunelveli confirming the judgment in O.S.No.82/2000 on the file of the second Additional District Munsif, Tirunelveli.

2.The first respondent/plaintiff filed the suit in O.S.No.82/2000 against the appellant and five others seeking the relief of possession, arrears of rent and



S.A.(MD).No.417 of 2022

damages for the use and occupation of the suit property. The case of the first respondent/plaintiff is that the suit property belongs to first respondent. There was a litigation between the first respondent and second defendant's husband seeking possession of the suit property in O.S.No.944/1969. First respondent was the plaintiff in that suit. The suit was dismissed. The appeal filed in A.S.No. 105/1971 ended in dismissal. The second appeal in SA No.1990/1972 was disposed of in favour of the plaintiff. The second defendant's husband filed appeal before the Supreme Court on the basis of the amendment brought in Tamil Nadu Act 3 of 2022. The appeal was allowed by the Supreme Court.

3. In this case, the first defendant and his brother were paying rent to the suit property. After the death of first defendant's brother, his wife had to pay the rent. D2 to D5 are the legal heirs of the first defendant's brother. First defendant is liable to pay Rs.4,500/- and D2 to D5 are liable to pay Rs.3,600/- towards arrears of rent for the period from 01.09.1996 to 28.12.1997. They have not paid the rent properly and therefore, a notice to quit was issued to the defendants on 05.08.1996. First defendant refused to receive the notice. Second defendant's husband received the notice, however, no reply was sent. The tenancy was



S.A.(MD).No.417 of 2022

terminated with effect from 31.08.1996. The defendants have not handed over the possession on 01.09.1996 as per the notice to quit. Under the said circumstances, the suit is filed.

4.The defendants 3 to 5 filed written statement stating that D1 to D5 are strangers to the suit property. The first defendant was not in possession and enjoyment of the suit property. The suit land was taken on lease from the plaintiff by the defendant's father Mohammed Mohideen in the year 1968. He constructed a superstructure with tin sheet roof. He was running fried gram business till 1994. Thereafter, he sold the property to the 6th defendant on 19.10.1994 for Rs.25,000/-. The defendants 2 to 5 are not necessary parties to the suit and they are not liable to pay any rent or damages to the plaintiff.

5. 6th defendant filed written statement stating that she purchased the superstructure from Mohammed Mohideen with the knowledge of the officers of the plaintiff. The officers promised to transfer the tenancy in the name of the 6th defendant in due course of time. The assessment for the superstructure was transferred to the name of the 6th defendant. She was running a fire crackers



S.A.(MD).No.417 of 2022

WEB COPY

business in the suit property after obtaining necessary license from the District Revenue Officer. She continues to pay the rent to the plaintiff. The officers of the plaintiff demanded illegal gratification of Rs.10,000/- for transferring the tenancy to the name of the 6th defendant. When that was not given, they are trying to evict the 6th defendant. She is a lawful tenant and without giving notice to her, the suit is not maintainable.

6. On the basis of oral and documentary evidence, the trial Court found that the 6th defendant is only a trespasser and therefore, she has to hand over possession of the suit property to the plaintiff within six months and directed the defendants 2 to 5 to pay compensation to the plaintiff. In an appeal filed by the 6th defendant in A.S.No.134/2012, the findings of the trial Court was affirmed and appeal was dismissed by confirming the judgment and decree in O.S.No.82/2000. Therefore, this second appeal.

7. It is the submission of the learned counsel for the appellant that the suit is barred under Section 34(D) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'the Act'). The next



S.A.(MD).No.417 of 2022

WEB COPY

submission is that even after the dismissal of the suit, the plaintiff was receiving rent from the appellant/6th defendant. Therefore, it is not open to the respondent/plaintiff to deny the claim of the appellant of her tenancy right in respect of the suit property.

8. In response, the learned counsel for the 1st respondent/plaintiff submitted that the appellant filed suit in O.S.No.847/1996 for declaring herself as a tenant in respect of the suit property and for the consequential relief of permanent injunction not to evict her from the suit property, unless by due process of law. The suit was decreed. Appeal in A.S.No.25/2000 against this Judgment was allowed and confirmed in S.A.No.758 of 2002 by this Court. This Court had held in S.A.No.758/2002 that appellant/6th defendant is not a tenant in respect of the suit property. Therefore, the appellant cannot claim as a tenant. She is only a trespasser and she is liable to hand over the possession of the suit property.

9. I have considered the rival submissions and perused the materials available on record.



S.A.(MD).No.417 of 2022

WEB COPY

10. From the records produced and submissions of the learned counsel appearing on behalf of the parties, it is evident that appellant filed O.S.No. 847/1996 to declare herself as a tenant and for other reliefs. That suit was decreed. Appeal in A.S.No.25/2000 against this Judgment was allowed and confirmed in S.A.No.758 of 2002 by this Court. This Court had held in S.A.No. 758/2002 that appellant/6th defendant is not a tenant in respect of the suit property. Therefore, it is not open to the appellant to contend in this case that she is a tenant in respect of the suit property. Thus, the findings of the Court below in this regard needs no interference.

11. As regards the submission of the learned counsel for the appellant that the suit is barred under Section 34(D) of the Act, Section 34-D reads as follows:

“34-D. Bar of jurisdiction of Civil Court.—Save as otherwise provided in section 34-A or 34-C, no suit or other legal proceeding in respect of an order passed under section 34-A or 34-B or 34-C, as the case may be, shall be instituted in any court of law.”



S.A.(MD).No.417 of 2022

WEB COPY

12. 34D does not altogether bar the jurisdiction of the civil Court. It only says that no suit or the legal proceedings in respect of an order passed under Section 34A or 34B or 34C shall be instituted in any Court of law except as provided under Section 34A or 34C.

13. 34A deals with fixation of lease rent payable for the lease of immovable properties belong to or given or endowed for the purpose of any religious institution. 34B deals with termination of lease of immovable properties. 34C deals with payment of amount to the lessee for the building, superstructure and trees, if any, erected or planted in accordance with terms of agreement or with permission of Commissioner, by the lessee on the property vested with the religious institution under Section 34B.

14. In the case before hand, the appellant is not a lessee under the first respondent. She is only a trespasser. Therefore, none of the above said provisions is applicable to this case. That apart, Section 34 A to D were inserted by way of amendment by Tamil Nadu Act 25 of 2003 and came into force only on 10.05.2003. This suit was filed in the year 2000. Therefore, these provisions



S.A.(MD).No.417 of 2022

WEB COPY

cannot be applied to this case. The submission of the learned counsel for the appellant that the suit is barred under Section 34D of the Act cannot be accepted.

15. Merely because rents have been received from the appellant, it cannot confer the status of tenant to the 6th defendant. The plaintiff cannot be expected to allow its property to be used for a charity by anyone, especially, the 6th defendant. Therefore, receipt of money as damages for use and occupation of the suit property from the 6th defendant cannot confer any right on the 6th defendant. Both the Courts have properly appreciated the oral and documentary evidence and rightly decreed the suit filed by the plaintiff/first respondent.

16. In *Sir Chunilal V. Mehta and Sons v. The Century Spinning Co. Ltd.*, 1962 reported in AIR 1962 SC 1314, the Hon'ble Supreme Court formulated what amounts to a substantial question of law, as follows:

1. Whether it is of general public importance (or)
2. Whether it directly and substantially affects the rights of parties ***and if so***,
3. Whether it is ***either*** an open question (in the sense not finally settled by this Court or Privy Council or Federal Court) ***(or)***



S.A.(MD).No.417 of 2022

WEB COPY

4.The question is not free from difficulty and calls for discussion of alternative views.

17. In the case before hand, the appellant has not made out any of the aforesaid grounds to formulate substantial question of law. There is no substantial question of law arises for consideration in this second appeal. The judgments of the Courts below are confirmed and the appeal stands dismissed. No costs. Consequently connected Miscellaneous Petition is closed.

30.10.2023

NCC : Yes/No

Index : Yes/No

RR

To

1.The Additional Subordinate Court, Tirunelveli

2.The 2nd Additional District Munsif, Tirunelveli.

3.The Section Officer,

V.R.Section,

Madurai Bench of Madras High Court,

Madurai.



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S.A.(MD).No.417 of 2022

G.CHANDRASEKHARAN,J.

RR

S.A.(MD).No.417 of 2022

30.10.2023