



S.A.(MD).No.223 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.06.2023

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

S.A.(MD).No.223 of 2022

and

C.M.P.(MD).No.2657 of 2022

Ashokan

... Appellant/Respondent/Defendant

Vs.

Executive Officer,
Arulmigu Panjavarnasamy Temple,
Uraiyur,
Thiruchirapalli.

...Respondent/Appellant/Plaintiff

Prayer: Second Appeal is filed under Section 100 of CPC to set aside the judgment and decree passed in A.S.No.128/2013 on the file of Principal Subordinate Judge, Thiruchirapalli dated 28.02.2019 reversing the judgment and decree passed in Principal District Munsif, Thiruchirapalli in O.S.No.2299/1996 dated 07.03.2012.

For Appellant : Mr.N.Vallinayagam

For Respondent : Mr.Ramesh Mahadev



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JUDGMENT

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This Second Appeal has been filed challenging the judgment and decree of the Lower Appellate Court, namely, the Principal Sub Court, Tiruchirappalli dated 28.02.2019 passed in A.S.No.128 of 2013. The appellant is the defendant in the suit O.S.No.2299 of 1996 on the file of the Principal District Munsif Court, Tiruchirappalli. The respondent is the plaintiff in the said suit. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

2. The plaintiff temple filed the suit against the defendant for recovery of possession and for damages for unlawful use and occupation of the suit schedule property by the defendant. According to the plaintiff, the defendant has not paid the rent to the plaintiff for more than 28 years. The defendant in his written statement denied the contentions of the plaintiff and has stated that the superstructure over the suit schedule property was put up by him and he was a tenant only in respect of the vacant land alone. However, the same has been disputed by the plaintiff in the suit.

3. Based on the pleadings of the respective parties, the Trial Court framed issues as to whether the plaintiff is entitled for the reliefs as prayed for in the



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plaint, namely, for recovery of possession and for damages. Before the Trial Court, the plaintiff filed six documents, which were marked as exhibits A1 to A6 and they are as follows:

Exhibits	Date	Details
Ex.A1	21.11.1995	legal notice sent by the plaintiff temple to the defendant
Ex.A2	13.04.1995	Notice sent by the plaintiff to the defendant
Ex.A3	-	Miscellaneous Book Receipt No.6 for having paid the rent to the plaintiff temple
Ex.A4	04.12.1995	Reply notice sent by the defendant to the plaintiff
Ex.A5	-	Accounts payable register of the plaintiff temple
Ex.A6	-	Rental receipts of the plaintiff temple

On the side of the plaintiff, two witnesses were examined, namely, P.W.1 by name, Sampathkumar, the Administrative Officer of the plaintiff temple and Mr.Anandakrishnan as P.W.2, the clerk of the plaintiff temple. On the side of the defendant, 44 documents were filed which were marked as exhibits B1 to B44 and they are as follows:

Exhibits	Date	Details
Ex.B1	18.12.1987	Miscellaneous receipt for the rent paid by the defendant to the plaintiff temple
Ex.B2	17.03.1988	Miscellaneous receipt for the rent paid by the defendant to the plaintiff temple
Ex.B3	20.07.1988	Miscellaneous receipt for the rent paid by the defendant to the plaintiff temple
Ex.B4	28.10.1995	Coupon for the rent paid by the defendant to the plaintiff temple through money order



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Ex.B5	21.11.1995	Coupon for the rent paid by the defendant to the plaintiff temple through money order
Ex.B6	28.10.1995	Miscellaneous receipt for the rent paid by the defendant to the plaintiff temple
Ex.B7	21.11.1995	Miscellaneous receipt for the rent paid by the defendant to the plaintiff temple
Ex.B8	11.01.1993	Miscellaneous receipt for the rent paid by Ethirajulu to the plaintiff temple
Ex.B9 Series	-	Two miscellaneous receipts for the rent paid by the defendant to the plaintiff temple
Ex.B10	02.04.1983	House tax receipt of Janakiammal
Ex.B11	28.08.1984	Special notice regarding property tax, new tax assessment or correction in the name of Ashokan and Velachi
Ex.B12	-	Taxation form sent by the Assistant Commissioner of Tiruchirappalli Corporation to the defendant
Ex.B13	19.06.1975	Gift settlement deed executed by Parvatham Sundariammal
Ex.B14	23.06.1984	Sale deed executed by Janakiammal in favour of Velarasi and the defendant
Ex.B15	03.02.1998	Certificate issued by the Village Administrative Officer Thamalavarubayam Sindhamani
Ex.B16	-	Money order receipt
Ex.B17	-	Money order coupon
Ex.B18	-	Money order receipt
Ex.B19	-	Money order coupon
Ex.B20	-	Acknowledgment card for having received the money order
Ex.B21	24.12.1996	Challan for having deposited the rent to the Court
Ex.B22	23.10.1997	Challan for having deposited the rent to the Court
Ex.B23	05.01.2011	Challan for having deposited the rent to the Court
Ex.B24	12.08.1975	Notice sent by the Commissioner of



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		Tiruchirappalli Municipality to Janakiammal
Ex.B25	-	House tax receipt of Janakiammal
Ex.B26	22.07.1974	Notice calling upon Janakiammal to pay the property tax
Ex.B27	24.09.1984	House tax receipt of the defendant
Ex.B28	27.01.1988	House tax receipt of the defendant
Ex.B29	18.09.2010	Property tax receipt of the defendant
Ex.B30	-	Notice sent by the Health Officer of Tiruchirappalli Corporation to the defendant
Ex.B31	11.05.1999	Receipt issued by the Information Centre Officer of Tiruchirappalli Corporation
Ex.B32	11.05.1999	Receipt for the payment made by the defendant to Tiruchirappalli Corporation Treasury
Ex.B33	10.05.1999	Receipt for the payment made by the defendant to Tiruchirappalli Corporation Treasury
Ex.B34	25.02.1985	Estimate for drinking water supply
Ex.B35	28.02.1985	Letter sent by Tiruchirappalli City Council Commissioner to the defendant
Ex.B36	28.02.1985	Plan for drinking water supply in the name of the defendant
Ex.B37	05.03.1985	Receipt for the payment made by the defendant to Tiruchirappalli Corporation Treasury
Ex.B38	06.06.1986	Water tax receipt of the defendant
Ex.B39	27.01.1988	Water tax receipt of the defendant
Ex.B40	24.06.2011	Water tax receipt of the defendant
Ex.B41	26.04.1995	Notice sent by the defendant to the plaintiff
Ex.B42	-	Acknowledgment card
Ex.B43	-	Electricity charges card in the name of the defendant
Ex.B44	20.12.2011	Receipt for the electricity charges paid by the defendant



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One witness was examined on the side of the defendant, namely, the defendant himself as D.W.1.

4. The Trial Court by its judgment and decree dated 07.03.2012 dismissed the suit filed by the plaintiff temple on the ground that the quit notice issued by the plaintiff Ex.A1 calling upon the defendant to vacate and hand over possession of the suit schedule property pertains to only a vacant site and not for the superstructure and hence, the suit is not maintainable.

5. Aggrieved by the judgment and decree of the Trial Court dated 07.03.2012 passed in O.S.No.2299 of 1996 by the the plaintiff temple filed a first appeal before the Principal Sub Court, Tiruchirappalli in A.S.No.128 of 2013. The Lower Appellate Court by its judgment and decree dated 28.02.2019 based on the oral and documentary evidence available on record reversed the findings of the Trial Court by holding that exhibits B10 to B12, B24 to B44 establishes the ownership of the superstructure by the plaintiff temple and hence, the Trial Court has committed an error in dismissing the suit. Accordingly, the Lower Appellate Court by reversing the judgment and decree of the Trial Court granted the reliefs of recovery of possession and damages in favour of the plaintiff as prayed for in the plaint by its judgment and decree



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dated 28.02.2019 passed in A.S.No.128 of 2013. Aggrieved by the judgment and decree dated 28.02.2019 passed in A.S.No.128 of 2013 by the Principal Sub Court, Tiruchirappalli, the defendant in the suit has filed this Second Appeal.

6. This Court on 09.03.2023 admitted the Second Appeal by formulating the following substantial questions of law:

"(i) When the lease is for site only whether the suit notice to quit covering the super structure also is valid in law?

(ii) Whether the Lower Appellate Court's finding that the super structure in the suit property also belongs to the respondent is correct or not?"

7. The learned counsel for the appellant/defendant would submit that the Lower Appellate Court had erroneously held that the superstructure in the suit schedule property belongs to the plaintiff by erroneously applying Section 108(h) of the Transfer of Property Act. According to the learned counsel for the appellant, the superstructure was constructed only by the appellant/defendant and the vacant site alone was rented out to him by the respondent/plaintiff temple. He would also rely upon the judgment of the Trial Court and submit that the Trial Court has rightly held that the quit notice issued to the



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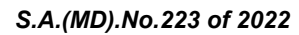
appellant/defendant is invalid and he would submit that only if a valid notice is issued as per the provisions of Section 106 of the Transfer of property Act, the suit can be decreed in favour of the plaintiff temple. He would further submit that the suit has been filed by the plaintiff temple without proper authorisation. According to him, as per the provisions of Section 45 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, the plaintiff temple ought to have sought the permission of the Commissioner and he would further submit that even though the said plea was not raised by the defendant before the Trial Court, the same can be raised even in the Second Appeal stage as it is purely a question of law.

8. In support of his submission, the learned counsel for the appellant/defendant relied upon a judgment of the Division Bench of this Court in the case of *Sri Arthanareeswarar of Tiruchengode Vs. T.M.Muthuswamy Padayachi and others* reported in (2003) 1 LW 386 and would submit that in the said decision, it was held that the plea taken by the appellant/defendant that the suit is not maintainable for want of proper authorisation can be taken at any stage of the proceedings.



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9. However, the learned counsel for the respondent/plaintiff would submit that the appellant/defendant is a wilful defaulter in the payment of the rent for more than 28 years. He has not paid a single penny towards the rent for the past 28 years. He would also submit that the superstructure in the suit schedule property also belongs to the plaintiff temple and the Lower Appellate Court has rightly held as seen from the exhibits B10 to B12, B24 to B44 that the superstructure also belongs to the respondent/plaintiff temple. Further after referring to Section 108(h) of the Transfer of Property Act, the learned counsel for the respondent/plaintiff temple would submit that even assuming that the lessee has put up the superstructure subsequent to the tenancy, it is his responsibility to remove the superstructure at his cost and he cannot take a plea that the plaintiff is not entitled for vacant possession of the suit schedule property just because he had put up a superstructure after the date of the tenancy. He would also submit that the same provision has been incorporated in G.O.No.131, Tamil Development, Culture and Endowment Department dated 18.05.2004, which makes it clear that even if a tenant has unauthorisedly put up superstructure, it is his responsibility to remove the same while handing over vacant possession of the property to the respondent/plaintiff temple.



10. Discussion:

Admittedly, the appellant is a tenant under the respondent/plaintiff temple. Admittedly even for the vacant site which the appellant/defendant claims to be a tenant under the respondent/plaintiff temple, he has not paid the rent to the respondent/plaintiff temple for more than 28 years. No documentary evidence has been placed by the appellant/defendant to show that he has paid the rent to the respondent/plaintiff temple. The documentary evidence produced by the appellant/defendant through exhibits B10 to B12, B24 to B44 discloses that the tenancy covers both the land as well as the superstructure. No contra evidence has been produced by the appellant/defendant to disprove the same. The Trial Court has dismissed the suit only on the ground that the quit notice issued by the respondent/plaintiff did not mention the superstructure without going into the admitted fact that the appellant/defendant is a tenant under the respondent/plaintiff who has not paid rent for more than 28 years. This Court is of the considered view that the Trial Court has misdirected itself and did not apply its mind to the oral and documentary evidence available on record which will clearly reveal that the appellant/defendant is a willful defaulter in the payment of the rent to the respondent/plaintiff temple for more than 28 years as pleaded in the plaint filed by the respondent/plaintiff temple.



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The Trial Court has erroneously dismissed the suit filed by the respondent/plaintiff in its judgment and decree dated 07.03.2012 passed in O.S.No.2299 of 1996 on the file of the Principal District Munsif Court, Tiruchirappalli.

11. The learned counsel for the appellant/defendant has raised for the first time in this Second Appeal that the suit filed by the respondent/plaintiff is bad for not having filed a proper authorisation as per the provisions of Section 45 of the Hindu Religious and Charitable Endowments Act. The said plea was never raised in the written statement filed by the appellant/defendant before the Trial Court and it was also not raised before the Lower Appellate Court. Only for the first time in this Second Appeal, the same is raised by the learned counsel for the appellant during the course of his arguments. The learned counsel for the appellant relied upon a judgment of the Division Bench of this Court in the case of *Sri Arthanareeswarar of Tiruchengode Vs. T.M.Muthuswamy Padayachi and others* reported in (2003) 1 LW 386 and would submit that the question of authorisation for filing the suit can be raised at any stage. But as seen from the said judgment, the plea was raised by the party questioning the authorisation in the suit itself during the course of the counsel's arguments and was not a case where the plea of authorisation was



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raised in the Second Appeal stage under Section 100 of CPC. Therefore, the said authority has no bearing for the facts of the instant case. It is also disputed by the learned counsel for the respondent/plaintiff that only through proper authorisation, the Executive Officer of the respondent/plaintiff temple filed the suit. If such a plea of authorisation contended by the learned counsel for the appellant is entertained in the Second Appeal stage, there will be no finality for any legal proceeding. Hence, there is no merit in the submission made by the learned counsel for the appellant that the suit has been filed without proper authorisation.

12. No documentary evidence has also been produced by the appellant/defendant to prove that he had put up the superstructure at his cost in the suit schedule property. There is no iota of evidence produced by the appellant/defendant before the Trial Court to prove that he had put up the superstructure in the suit schedule property at his cost. After giving due consideration to the aforementioned factors, this Court is of the considered view that the respondent/plaintiff temple is the owner of the land and the superstructure and they are entitled for recovery of possession and for damages as determined by the Lower Appellate Court in its judgment and decree dated 28.02.2019 passed in A.S.No.128 of 2013 on the file of the Principal Sub



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Court, Tiruchirappalli as the appellant/defendant is a willful defaulter in the payment of rent to the respondent/plaintiff temple for the past several years.

13. For the foregoing reasons, the substantial questions of law formulated by this Court on 09.03.2023 extracted supra are answered against the appellant/defendant by holding that the Lower Appellate Court has rightly reversed the findings of the Trial Court by decreeing the suit as prayed for by the respondent/plaintiff temple in its judgment and decree dated 28.02.2019 in A.S.No.128 of 2013 on the file of the Principal Sub Court, Tiruchirappalli. Accordingly, there is no merit in this Second Appeal and this Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

08.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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To

- 1.The Principal Sub Court,
Thiruchirapalli.
- 2.The Principal District Munsif Court,
Thiruchirapalli.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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ABDUL QUDDHOSE, J.

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