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S.A.No.946 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2024

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THE HONOURABLE MR.JUSTICE M. JOTHIRAMAN

S.A.No.946 of 2006
and M.P.No.4 of 2014

Arulmighu Bahagavathi Amman Koil
by its Trustees:

1.Nagappan
2.Govindasami,
Vilvanagar, Cuddalore – 1.

... Appellant / Defendant

Vs.

1.Dhayalan (died)
2.Rani
3.Maheswari
4.Kalaivani (Minor)
5.Devanathan (Minor)

(R2 to R5 are brought on record as LR's of deceased R1 vide order of Court dated 13.09.2017 made in C.M.P.No.1 to 3 of 2014 in S.A.No.946 of 2006 by SBJ)

(R4 and R5 are represented by mother and Natural Guardian Rani R2)

... Respondents / Plaintiffs

PRAYER : This Second Appeal is filed under Section 100 of the Code of Civil Procedure 1908 to set aside the judgment and decree dated 27.12.2005



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passed in A.S.No.69 of 2005 on the file of the learned First Additional Subordinate Judge, Cuddalore reversing the Judgment and decree dated 29.06.2005 passed in O.S.No.61 of 2003 on the file of the learned Principal District Munsif Cuddalore by allowing the above first appeal.

For Appellant : M/s.S.Kingston Jerrold
for Mr.S.K.Rakhunathan

For Respondents : Mr.R.Sunil Kumar
2 to 5

JUDGMENT

The instant second appeal has been filed at the instance of the defendant. The respondent herein is the plaintiff before the trial Court.

2. For the sake of convenience, the parties will be referred to according to their litigative status before the trial Court.

3. The brief facts which gave raise to the instant second appeal are as follows :-



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The suit property belongs to Arulmighu Bhagavathi Amman Koil represented by Trustees. Originally, the plaintiff became the tenant of the suit property in the year 1964 itself and he continuous to be the tenant of the property. The monthly rent was Rs.3/-. Subsequently, it was increased to Rs.7/-. The plaintiff to be up a thatched shed in the property with brick built walls and has residing in the eastern portion of the hut with his family members and in the western portion, he was running a small canteen. The plaintiff has also got EB service connection. He paid the last rent on 19.08.1997. Subsequently also, the rent was collected, but, receipts were not given to the plaintiff. There has been an intense among the trustees of the temple. The trustees of the defendant asked the plaintiff to evict the property by force. The plaintiff has lodged a complaint in Crime No.304 of 2003 in Cuddalore O.T.Police Station. The plaintiff prays a decree declaring that the plaintiff is entitled to be in possession of the property unless until duly effected by due process of law and to pass decree for permanent injunction restraining the trustees of the defendant his men and



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servants in any manner from interfering that the plaintiff's possession and enjoyment of the suit property.

4. According to the defendant the suit site belongs to the defendant's temple and the plaintiff is the tenant from 1964 and now the present rent is Rs.50/- per month. The plaintiff has put up only a small thatched shed measuring 10 x 10 and is squatting there expecting PAGADI from the defendant to vacate the property. There is no difference of opinion among the trustees of the temple. The defendant never attempted to evict the plaintiff forcibly. The plaintiff is a chronic defaulter and he has committed wilful default in the payment of rent from February 1997 onwards. He has been wantonly withholding the rent in spite of repeated demands. Since the defendant insisted payment of arrears and the plaintiff has vexatiously filing the suit. After the suit the defendant has issued notice on 10.02.2003 and terminated the tenancy in favour of the plaintiff. The plaintiff sent a reply on 20.02.2003 and he sent the arrears by demand draft. The occupation of the plaintiff after termination of the tenancy is that of a trespasser. Since the plaintiff has not vacated the suit property the relief of recovery of



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possession and damages for use and occupation is prayed for as counter claim.

5. Before the trial Court on the side of the plaintiff, the plaintiff examined himself as P.W.1 and Ex.A1 to Ex.A41 were marked. On the side of the defendant, one of the Trustee Govindasamy was examined as D.W.1 and Ex.B1 and Ex.B2 were marked.

6. Finding of the both the Courts below:-

The trial Court after having considered the oral and documentary evidence and the submissions on either side as found that there was a arrears of rent for a sum of Rs.5110/- and the same was sent by way of demand draft in Ex.A39. The plaintiff is a defaulter and he has committed wilful default in the payment of rent. There is no cause of action arises to maintain the suit. The trial Court has dismissed the suit and decreed the counter claim made by the defendant and directed to handover the possession within two months by the common judgment. Being not satisfied with the decree and judgment of the trial Court the plaintiff has preferred the two appeals (i)



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A.S.No.75 of 2005 filed as against the dismissal of suit, for the relief of not to evict except under due process of law and for permanent injunction, (ii)

A.S.No.69 of 2005 filed as against the counter claim is allowed and directed the plaintiff to handover the possession within two months. The First Appellate Court on re-appreciation of evidence as reversed the finding that the plaintiff was having protection under Tamil Nadu City Tenants' Protection Act, 1994. It is also finding that the defendant has not issued notice under Section 11 of the Tamil Nadu City Tenants' Protection Act, 1994. It is also finding that the defendant's trust has not a public trust and the plaintiff is entitled to seek protection governed under Section 9 and 11 of the said Act and issuance of notice under Section 11 of the Act is mandatory. Hence, the appeal filed against the counter claim in A.S.No.69 of 2005 was allowed. It is also finding that there is no cause of action arises to maintain the suit and confirmed the findings of the trial Court. Hence, the appeal filed against the suit for not to evict except under due process of law in A.S.No.75 of 2005 was dismissed. Aggrieved, over the Judgment and Decree of the First Appellate Court, Defendant / Appellant Temple has preferred the Second Appeal before this Court.



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7. At the time of admission, this Court has formulated the substantial questions of law:

1. Whether the Lower Appellate Court is right in holding that the suit is not maintainable for want of notice under Section 11 of the Tamil Nadu City Tenants Protection Act overlooking the fact that the provisions of the Tamil Nadu City Tenants Protection Act are not applicable to the Appellant Religious Institution by virtue of the Amending Act 2 of 1996 to the Tamil Nadu City Tenants Protection Act 1922?

2. Whether on the facts and circumstances of the case the Respondent has waived the notice under Section 11 of the Tamil Nadu City Tenants Protection Act especially when the Respondent failed to make a claim for compensation under Section 4 of the Tamil Nadu City Tenants Protection Act or for purchase of the property under Section 9 of the Tamil Nadu City Tenants Protection Act 1922?

3. Whether is not the Judgment and Decree of the Lower Appellate Court vitiated by its failure to consider the issuance of notice by the Appellant under Section 106 of



*the Transfer of Property Act which is sufficient to seek
ejection of the Respondent from the suit property?*

*4. Whether the Appellant is entitled to claim exemption as
Religious Institution under the Provisions of the Tamil
Nadu City Tenants Protection Act as amended by Act 2 of
1996?*

8. Heard the learned counsel for the appellant and the learned counsel
for the respondent and perused the materials available on record.

9. The learned Counsel appearing for the defendants / appellants
would submit that, in view of the amending Act 2 of 1996 the Religious
Institutions have been exempted from the provisions of the Tamil Nadu City
Tenants' Protection Act and therefore, defendant / appellant there was no
need or necessity for giving any notice under Section 11 of the Tamil Nadu
City Tenants' Protection Act. The First Appellate Court has not proper in
going into the question, as to whether the appellant is a public trust? or a
private trust? evidently in overlooking that the amending Act 2 of 1996
which does not make any distinction with regard to public trust or a private



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trust. It was also contended that the First Appellate Court failed to note that the defendant / appellant has issued a notice under Ex.B1, to the plaintiff, directing to pay arrears grant and to vacate the suit property and the same is sufficient. It was also contended that the respondent did not raise, the question of maintainability, of the suit, under Section 11 of the Tamil Nadu City Tenants' Protection Act and in that the respondent having failed to make an application or claiming any right under Section 9 of the Act, then the plaintiff / respondent has waived his right. To support of his contentions the learned counsel relied upon the following judgments reported in

(a) Mylapore Club v. State of Tamil Nadu & Another in [CDJ 2005 SC 840]

(b) P.Thambi (deceased) & Others v. The Official Trustee of Tamilnadu, Rep. By the Trust Estate of Kadappakkam Charities, Chennai [CDJ 2022 MHC 4760]



***(c) K.M.Sanjeevi Raja (died) & Others v.
Pudupalayam Sakarajakottai Poosapadi Dayadi
Pannai, Represented by its President, Rajapalayam in
[CDJ 2024 MHC 4638]***

10. The learned counsel appearing for the plaintiff / respondents would submit that the respondents are having protection under Section 11 of the Tamil Nadu City Tenants' Protection Act and the defendant / appellant has failed to prove that the rights of the plaintiff was waived.

11. This Court has given anxious consideration from the submissions made by either side and perused the records available.

12. It is seen from the records, that the plaintiff / respondent has preferred the second appeal in S.A.No.1123 of 2006, as against the Judgment and decree passed in A.S.No.75 of 2005 on the file of Subordinate Court, Cuddalore before this Court. The appeal in S.A.No.1123 of 2006 was dismissed vide order dated 13.11.2006 by this Court. The relevant portion of the judgment is extracted hereunder:



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“9. Learned counsel for the defendants / respondents herein submits that the fact that the defendants sought for eviction in the counter claim itself shows that they are seeking possession from the plaintiff only under due process of law. When the courts below have found that there is no cause of action for the suit and when the plaintiff has not established any cause of action for granting a decree for injunction, the plaintiff, as pointed out by the lower Appellate Court, is not entitled to get any injunction. The learned counsel further submitted that when the courts below have concurrently found that there is no cause of action for the suit, this Court exercising power under Section 100 of the C.P.C., cannot interfere with the concurrent finding of fact. This Court is of the considered view that simply because the Second Appeal S.A.No.946 of 2006 filed by the defendants against the rejection of counter claim is pending, that does not mean that this Second Appeal also should be admitted when the Lower Appellate Court has, on a careful consideration of the evidence has recorded a finding that there was no cause of action for filing the suit and pointed out that the defendants are seeking possession only by due process of law. The learned counsel for the appellant is also unable to show any cause of action for filing the suit. The Apex Court has



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held that if the findings of fact of the Courts below are based on legal evidence, the same cannot be interfered by this Court while exercising power under Section 100 of the C.P.C. This Court finds no reason to interfere with the finding of the court below and accordingly, the Second Appeal is dismissed. No costs. Consequently, connected M.Ps are dismissed.”

13. Admittedly in the plaint, it has been stated that the suit property belongs to Arulmighu Bhagavathi Amman Koil represented by Trustees, originally the plaintiff became the tenant of the suit property in the year 1964 itself and the suit was filed in the year 2003. While considering the arguments putforth by the learned counsel for the defendant / appellant, he drew the attention of this Court by referring the Tamil Nadu Act III of 1992 “Chennai City Tenants' Protection (Act, 1921)”, religious institution have been exempted.

14. At this juncture, it is relevant to extract the relevant provisions of the aforesaid Act. Proviso of sub-section (3) of Section 1 as follows:



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“(3) Provided that nothing contained in this Act shall apply to tenancies of Land owned –

(f) by any religious institution or religious charity belonging to Hindu, Muslim, Christian or other religion.

Explanation. - *For the purpose of this clause,--*

(A) “religious institution” means any--

(i) temple;

(ii) math;

(iii) mosque;

(iv) church; or

(v) other place by whatever name known,

which is dedicated to, or for the benefit of, or used as of right by, any community or section thereof as a place of public religious worship; by any religious institution.”

15. It is pertinent to refer to Section 3 of the Chennai City Tenants'

Protection (Amendment) Act, 1994 (Tamil Nadu Act 2 of 1996)

“3. Certain pending proceedings to abate.- *Every proceeding instituted by a tenant in respect of any land owned by any religious institution or religious charity belonging to Hindu, Muslim, Christian or other religion and pending before any Court or other authority or officer on the date of the publication of this Act in the Tamil Nadu*



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Government Gazette, shall, in so far as the proceeding relates to any matter failing within the scope of the principal Act, as amended by this Act, in respect of such land, abate, and all rights of any such land which may have accrued to that tenant in respect of any such land and subsisting immediately before the said date shall, in so far as such rights and privileges relate to any matter falling within the scope of the principal Act, as amended by this Act, cease and determine and shall not be enforceable:

Provided that nothing contained in this section shall be deemed to invalidate any suit or proceeding in which a decree or order passed has been executed or satisfied in full before the said date.”

16. It is also relevant to cite the judgment in connection with religious institutions.

“Once the temple is given exemption from the City Tenants' Protection Act, then, there is no need to follow the provision for evicting the tenant. Hence, the question of issuing notice under Section 11 need not be necessary. [M.Sam v. Sanjeevi Chettiar, Hereditary Trustee of Sri Vedavinayagar Temple, Manjakuppam, 2011(3) MWN (Civil) 598].”



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17. It is not disputed that the plaintiff / respondent was a Temple and the suit property belongs to the defendant / appellant Temple. By applying the ratio decided in the above said ruling cited supra, the First Appellate Court has failed to note that in view of the amending Act 2 of 1996, the religious institutions have been exempted under Section 3 of the Chennai City Tenants' Protection Act, 1994 (T.N. Act 2 of 1996); and therefore there is no necessity for giving any notice under Section 11 of the said Act. The First Appellate Court also not correct in going into the question, as to whether the appellant is a public trust or a private trust, evidently overlooking that the amending Act 2 of 1996 does not make any distinction with regard to public trust or a private trust and what of the Section contemplates is only religious institutions. The First Appellate Court failed to note that defendant / appellant has issued notice under Ex.B1 and that therefore the same is sufficient for termination of tenancy. The rulings relied by the defendant / appellant side also supported the case of the defendant / appellant. For the foregoing detailed discussion, this Court is of the view that intervention may be warranted. Accordingly, the Judgment



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and Decree passed by First Appellate Court in A.S.No.69 of 2005 on the file of Subordinate Court, Cuddalore is liable to be set aside.

18. In the result, this Second Appeal is allowed by setting aside the Judgment and Decree passed in A.S.No.69 of 2005 on the file of Subordinate Court, Cuddalore and by confirming the judgment and decree passed in O.S.No.61 of 2003 on the file of Principal District Munsif, Cuddalore. No costs. The respondent / tenant is directed to hand over the possession of the suit property within **three months** from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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To

1. The I Additional Sub Court, Cuddalore.
2. The Principal District Munsif Court, Cuddalore.



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