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S.A.Nos.444 & 367 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

S.A.Nos.444 & 367 of 2024

and

CMP.Nos.13267 & 11086 of 2024

S.A.No.444 of 2024

P.Shanbagavalli (Died)

Pandurangan (Died)

1.P.Sugumar

2.P.Karthikeyan

3.P.Gomathi

4.P.Soundari

(Cause Title accepted vide Court order

dated 19.06.2024 made in CMP.No.12180 of 2024

in S.A.SR.Nos.20585 of 2024)

... Appellants

/Vs./

Arulmighu Masimagam Kattalai,

Attached to Punnageswarar Temple,

At Nemili, Represented by its

Hereditary Trustee N.Kandasamy,

Representing Arulmighu Punnagaaswarar

And also being in charge of

Arulmighu Masimagam Kattalai,

Attached to the said Temple.

... Respondent



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Kanniyappan

... Appellant

/Vs./

Arulmighu Masimagam Kattalai,
Attached to Punnageswarar Temple,
At Nemili, Represented by its
Hereditary Trustee N.Kandasamy,
Aged about 69 years, S/o. Natesa Reddy,
Representing Arulmighu Punnagaaswarar
And also being in charge of
Arulmighu Masimagam Kattalai,
Attached to the said Temple.

... Respondent

COMMON PRAYER: Second Appeals are filed under Section 100 of the Code of Civil Procedure, to set aside the Decree and Judgment dated 08.08.2023 passed in A.S.Nos.01 & 07 of 2019 respectively passed by the Subordinate Judge, Arakkonam, by confirming the Decree and Judgment dated 26.09.2018 passed by the learned District Munsif, Arakkonam, in O.S.Nos.20 & 21 of 2005 respectively by allowing these Second Appeals.

For Appellants in
S.A.No.444 of 2024 : Mr.K.Sudhakar

For Appellants in
S.A.No.367 of 2024 : Mr.T.K.Saravanan

For Respondent in both
the Second Appeals : No appearance



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COMMON JUDGMENT

These Second Appeals are filed to set aside the Decree and Judgment dated 08.08.2023 passed in A.S.Nos.01 and 07 of 2019 respectively by the Subordinate Judge, Arakkonam, by confirming the Decree and Judgment dated 26.09.2018 passed by the learned District Munsif, Arakkonam, in O.S.Nos.20 & 21 of 2005 respectively by allowing these Second Appeals.

2.The issues raised in both the Second Appeals are one and the same, hence both the second appeals are taken up together and disposed of by this common order.

3.The parties will be referred to as per their rank in the Courts below.

4.The suit property in S.NO.232 belongs to the plaintiff i.e. Arulmighu Masimagam Kattalai, Attached to Punnageswarar Temple at Nemili. The defendants were inducted as tenants in the suit properties which were originally vacant sites with an agreement that the defendants would put up thatched super structure at their own cost and pay the Government Taxes in the name of the hereditary trustee or in his



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family members name. It was also agreed that the defendants would not claim any right to the thatched super structure put up by them. The rent agreed was Rs.75/- per month and the tenancy was for residential purpose. The defendants colluded with other tenants of the plaintiff and tried to put up a pacca structure in the suit properties and the said attempt was foiled by the plaintiff. The defendants therefore filed suit in O.S.No.126 of 2001 for permanent injunction restraining the plaintiff from evicting them except by due process of law. As the defendants failed to pay the rents regularly, the plaintiff issued a legal notice terminating the tenancy ending with 30.11.2003 and directed the defendants to handover the vacant portion of the scheduled property. The defendants neither replied to the legal notice, paid the rents nor handed over the vacant possession and so the plaintiff filed the suit for eviction.

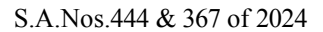
5.The defence set up by the defendants was that they were not in occupation of the plaintiff's property, but were occupying the Government Poromboke land in S.F.No.285. The defendants also denied the relationship of landlord and tenant with the plaintiff. The defendants questioned the maintainability of the suit on the ground of bar under Section 108 of the Hindu Religious and Charitable Endowments Act and also that the Trustee Kandhasamy was not the competent person to file the suits for eviction.



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6. Before the trial Court, in O.S.No.20 of 2005, the plaintiff and other witnesses were examined as PW1 and PW2 and three documents were marked. On the side of the defendants three witnesses were examined and 9 documents were marked. In O.S.No.21 of 2005, three witnesses were examined on the side of the plaintiff and 10 documents were marked and on the side of the defendants three witnesses were examined and five documents were marked. In both the suits the Advocate Commissioner's report and plan were marked as Ex.C1 and Ex.C2.

7. The trial Court after framing necessary issues dismissed the suits. The trial Court found that the contention of the defendants that the suit property was situated in S.F.No.285/1, the Government Poromboke land was not established by the defendants. The trial Court further found that the defendants contention that the suits were barred under Section 108 of the Hindu Religious and Charitable Endowments Act was untenable. The trial Court found that the defendants were estopped from denying the relationship of landlord/tenant in view of the plaint filed by the defendants in O.S.No.126 of 2001, filed for permanent injunction restraining the plaintiff from evicting them except by due process of law. The trial Court found that the defendants as tenants had defaulted in payment of rent and therefore the plaintiff was entitled to



8. At the time of admission of the second appeals, the learned counsel submitted that the Courts below failed to note that there was a specific bar under Section 108 of the Hindu Religious and Charitable Endowments Act to the suits filed by the respondent. The learned counsel submitted that the termination notice Ex.A18 was invalid in view of the Section 34 (b) of the Hindu Religious and Charitable Endowments Act and also that the termination notice failed to assess the quantum of compensation as mandated by Section 34 (c) of the Hindu Religious and Charitable Endowments Act. The learned counsel further submitted that the suits were bad for non joinder of necessary party, since the respondent admitted that Punnageswarar Temple was the owner of the property. The learned counsel further submitted that the Courts below erred in finding that the decree in O.S.No.126 of 2001 would operate as estoppel against the appellant from denying the title of the respondent. The learned counsel therefore submitted that it was a fit case for admission.



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9. I have heard both the learned counsels for the appellants and I have perused the materials placed on record.

10. The first contention of the learned counsel for the appellants is that the suits are barred by Section 108 of the Hindu Religious and Charitable Endowments Act. According to the learned counsel under Section 108 of the Hindu Religious and Charitable Endowments Act, suits in respect of administration or Management of religious institutions etc. are barred and therefore the temple ought to have initiated eviction proceedings only under the Hindu Religious and Charitable Endowments Act. The said contention of the learned counsels in my view is untenable in view of the Judgment of this Court in O.S.A.Nos.302 and 303 of 2004 reported in CDJ 2011 MHC 1412, the Hon'ble Division Bench in paragraph No.43 and 45 held as follows:

"43. When the temple has not chosen to go under the purview of the Act, then it cannot be said that the suit is barred.

In other words, it is for the temple to choose either the common law remedy by way of filing a regular suit or invoke the provisions of the Act by approaching the authorities concerned.

When such an action is taken against an encroacher, it cannot be



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questioned on the ground of lack of jurisdiction. Because

initiation of the action ultimately lies with the temple”.

“45.The decision to elect a particular procedure lies with the owner of the property, being the temple. Considering the object of the introduction of Chapter VII, which only demarcates the procedure for removing the encroachment by the Officers of the Department, we have no hesitation in holding that the said procedural law will not bar the filing of the suit by the temple to recover and protect its own property.”

11.From the aforesaid judgment it is clear that the suit for eviction filed by the plaintiff is maintainable and not barred by Section 108 of the Hindu Religious and Charitable Endowments Act. I therefore find that the Court's below were right in their finding that the suit was not barred by Section 108 of the Hindu Religious and Charitable Endowments Act.

12.According to the learned counsel, the competent authority who could terminate the tenancy was only the temple which was the owner of the property and not the hereditary trustee. The plaintiff kattalai was created for the purpose of the



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temple to which it is attached (i.e.) Punnageswarar Temple, Nemili. The hereditary trustees were appointed to discharge the specific endowments created for the purpose of performance of Masigmagham Utsavam in the temple. The Deputy Commissioner, Hindu Religious and Charitable Endowment in O.A.No.174 of 1974 dated 07.06.1975 marked as Ex.A6, appointed Sri.N.Kandhasamy as one of the hereditary trustees of the plaintiff Kattalai attached to the Punnageswarar temple. Therefore the hereditary trustee can maintain the suit. It is further pertinent to note that the defendants admitted the jural relationship with the plaintiff in the earlier suit in O.S.Nos.7 and 9 of 2019, filed by them for permanent injunction restraining the plaintiff from evicting them except by due process of law. The defendants plea that they paid rent to the temple mistakenly cannot be countenanced, moreso, when the defendants failed to establish that they were in occupation of Government poromboke land by leading tangible evidence. The documents filed by the defendants under Ex.B1 to Ex.B5 are only ration cards, voters cards, B Memo etc. In my view, these documents are not relevant to establish that the suit properties belong to the Government and not to the temple. The best document to establish the ownership of the Government is the settlement register and in absence of the same, the defence set up by the defendants was rightly rejected by the Courts below.



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13.The learned counsel next contended that Ex.A2 termination notice was invalid as the plaintiff failed to assess the quantum of compensation as per Section 34 (c) of the Tamil Nadu Hindu Religious and Charitable Endowment. In my view, the said contention is against the defendants own defence that there was no jural relationship between the plaintiff and the defendants.

14.In view of the above discussions, I find absolutely no merits in the second appeals. No substantial questions of law arise for consideration in the second appeals. Therefore, the second appeals are dismissed as meritless. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions stand closed.

03.07.2024

Index : Yes / No

Internet : Yes / No

Speaking Order/Non-speaking order
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To

1.The Subordinate Judge,
Arakkonam.

2.The District Munsif, Arakkonam

3.The Record Keeper,



Vernacular Records,
High Court, Madras.

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N.MALA, J.

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