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S.A.No.1064 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2024

CORAM

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

S.A.No.1064 of 2012

1.Nallammal

2.Shanthi

3.Poongodi

... Defendants/Appellants/Appellants

Vs.

Sowrashtra Viprasbha
Dhurupan Kumarasamy Street
Namakkal District.

... Plaintiff/Respondent/Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and decree dated 26.10.2010 made in A.S.No.119 of 2007 on the file of Subordinate Judge's Court, Namakkal confirming the judgment and decree dated 04.04.2007 made in O.S.No.204 of 2005 on the file of Principal District Munsif Court at Namakkal.

For Appellants : Mr.K.Venkatasubban for
M/S.Sarvabhauman Associates.

For sole Respondent : Mr.V.Sachin Vinayak for
Mr.I.Abrar Md.Abdullah



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JUDGMENT

The defendants in the suit are the appellants before this Court. The appeal is filed against the judgment and decree dated 26.10.2010 made in A.S.No.119 of 2007 on the file of the Subordinate Judge, Namakkal, confirming the judgment and decree dated 04.04.2007 in O.S.No.204 of 2005 on the file of Additional District Munsif Court, Namakkal.

2. For the sake of convenience, the parties are referred to as per the ranking of the trial Court.

3. According to the plaintiff Sabha, the husband of the 1st defendant and the father of defendants 2 to 3 Varadhappan had taken the schedule properties on oral tenancy on a monthly rent from the plaintiff Sabha. After his death, the legal heirs, who are the defendants, had been continuing as statutory tenants. In respect of item-1 of the schedule property, the monthly rent was fixed as Rs.175/- and in respect of item-2 of suit schedule property, the monthly rent was fixed as Rs.150/-. Since, the defendants were in arrears of the payment of rent, the Plaintiff Sabha had initiated Rent Control proceedings before the District Munsif Court,



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Namakkal, which ended against them and the appeal preferred thereon was also dismissed as “not pressed”.

4. Since the relationship between the plaintiff and the defendants became sour, the rent was not paid in time and there are arrears, the plaintiff issued a legal notice on 11.01.2005 demanding the defendants to hand over the possession of the suit properties. Since the plaintiff received an evasive reply on 25.01.2005, they have come up with the suit for delivery of possession of the suit property.

5. The defendants resisted the suit by filing a written statement admitting the ownership of the plaintiff over the suit property. However, according to them they have been paying the rent properly. The R.C.O.P proceedings filed by the plaintiff in R.C.O.P. Nos.6 of 1999 and 7 of 1999 had been dismissed and the appeal filed in R.C.A.Nos.1 of 2001 and 2 of 2001 had also been dismissed. Since the plaintiff refused to receive the rent, they have filed a petition in R.C.O.P.Nos.8 of 1998 and 5 of 1999 and they have been depositing the rents in the suit. According to the defendants, since already the proceedings initiated by the plaintiff had been dismissed in the R.C.O.P and also in the appeal, the judgment



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thereon will operate as *res judicata* and the present suit filed by the plaintiff for eviction is not maintainable and sought for dismissal of the suit.

6. During trial, on the side of the plaintiff, P.W1 was examined and Exs.A1 to Ex.A3 were marked. On the side of the defendants D.W1 was examined and Ex.B1 and Ex.B2 were marked.

7. After analysing the evidences and documents, the trial Court decreed the suit. The trial Court found that the earlier proceedings initiated by the plaintiff Sabha was dismissed and the appeal was not pressed, as the rent control proceedings is not maintainable. Since the plaintiff is the Trust, only as such, the plaintiff has come up with the suit for eviction after issuing the proper notice terminating tenancy as per the Section 106 of Transfer of Property Act.

8. Aggrieved, the defendants filed an appeal in A.S.No.119 of 2007 on the file of the Subordinate Judge, Namakkal. The lower appellate Court, after re-appreciating the evidences, dismissed the appeal. Aggrieved by the concurrent findings of fact, the defendants are before this Court on appeal.



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9. This Court by order dated 20.11.2012, ordered notice 'regarding admission'.

10. The learned counsel appearing for the appellant argued that already the R.C.O.P. proceedings initiated by the plaintiff Sabha has been dismissed on merits and also the appeal filed thereon has been dismissed. Therefore, the present suit filed by the plaintiff Sabha is not maintainable and is hit by *res judicata*. The learned counsel further argued that the defendants had admitted the ownership and have been paying rents regularly and only since the plaintiff refused to receive, they have also filed necessary application before the concerned Court and also they have been regularly depositing rents before the Court and hence, the present proceedings initiated by the plaintiff for eviction cannot be sustained.

11. The learned counsel further contended that both the Courts below failed to consider this aspect and have arrived at a finding and decreed the suit for eviction which is not based on the materials available on record and therefore it is perverse and sought for allowing the appeal.



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12. Per contra, the learned counsel appearing for the respondent Sabha argued that in earlier proceedings filed in R.C.O.P No.6 and 7 of 1999 and R.C.A.Nos.1 and 2 of 2001 was dismissed. The appeal was dismissed only as 'not pressed' as the plaintiff, being a Sabha cannot initiate proceedings under the Rent Control proceedings as it has been settled by the judgment of this Hon'ble Court reported in **2004(4) LW 474** in ***S.Kulandaivelu Vs. Sowrashtra Vipra Sabha Namakkal*** and therefore, it became necessary for the plaintiff to initiate the present suit. The learned counsel further contended that since the defendants were in arrears of rent, proper notices under Section 106 of Transfer of Property Act was issued terminating tenancy and only since the defendants did not vacate the property, the plaintiff have chosen to file the above suit. The Courts below have rightly taken note of the materials available on record and decreed the suit and no interference is required in the above appeal.

13. Heard the learned counsel on both sides and perused the materials available on record.

14. Admittedly, the suit property belongs to the plaintiff Sabha and originally the husband of the first defendant and the father of the 2nd



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and 3rd defendants had been a tenant of the suit properties under the plaintiff Sabha. Pursuant to his death, the defendants have continued the tenancy and the defendants, while admitting the ownership of the suit property of the plaintiff, only contend that they are not in arrears of rent and only since the plaintiff refused to receive the rent, they have filed a petition before the Rent Control Court and they have been depositing the rents.

15. It is seen from the records that the plaintiff had earlier initiated R.C.O.P Nos.6 of 1999 and 7 of 1999 on the file of the Rent Control Court as against the defendants seeking for eviction. The R.C.O.P filed by the plaintiff was dismissed and the plaintiff had filed an appeal in R.C.A.Nos.1 of 2001 and 2 of 2001. While the appeals were pending, the plaintiffs realised the fact that the plaintiff being a Saba indulging in the public activities are exempted from initiating rent control proceedings from the Rent Control Act and cannot maintain the suit for eviction before the Rent Control Court.

16. It is useful to refer to the judgment of this Hon'ble Court reported in **2004(4) LW 474** in ***S.Kulandaivelu Vs. Sowrashtra Vipra***



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Sabha Namakkal is extracted hereunder:

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“7. It is seen from Ex.B-1 that the amount collected by way of rent by the respondent Sabha is utilised both for public purpose and also for the purpose of marriages and for funeral expenses relating to the Sowrashttra community and to conduct night school and in assisting the students for the purpose of higher technical education and to purchase books etc., for the students and also for the purpose of establishing co-operative societies and to start new jobs to effect improvement on the field of agriculture and business in the hand-loom and weaving sectors and to help widows and social orphans (சமூக அநாதைகள்) and also to attend on the handicapped poor patients suffering from incurable disease. As such, it is clear that the respondent Sabha is a public trust in which case, the respondent Sabha being a public trust is exempted from the purview of the Rent Control Act. It follows that the Rent Control Original Petition as filed is not maintainable. Though no case was set up and specific pleading was not taken in the counter that the respondent Sabha is a public trust and as such the petition premises is exempted from the purview of the Rent Control Act, such stand taken by the revision petitioner/tenant before this Court is very much maintainable being the question of law and the finding recorded by the learned Rent Control Appellate Authority



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that the respondent Sabha is only a private trust and so the maintainability of the Rent Control Original Petition in favour of the respondent Sabha cannot be said to be correct. Such finding of the learned Rent Control Appellate Authority is to be set aside.”

17. In view of the further developments, the plaintiff Sabha thought it fit not to press the appeal and initiate appropriate proceedings for eviction. Thereby, after the appeal was not pressed, the plaintiff has duly issued a notice under Section 106 of Transfer of Property Act calling upon the defendant to vacate the suit premises. On receiving the legal notice, the defendants had only contended that since the earlier proceedings initiated by them has been dismissed, they cannot initiate any further proceedings. Even in the present suit, it is the only stand of the defendants that the present suit is not maintainable due to the orders passed by the earlier proceedings in R.C.O.P and R.C.A., and it will operate as *res judicata*.

18. As referred earlier, only since the proceedings under the Rent Control Act is not maintainable, the plaintiff being a Sabha, they have chosen to file the present suit for eviction after issuing necessary



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notice as per the Section 106 of the Transfer of Property Act. Therefore, the order passed in R.C.O.P and R.C.A cannot be taken to operate as *res judicata* and the present suit filed by the plaintiff for eviction is maintainable.

19. The Courts below have arrived at a finding of fact which are based on the materials that are available on record, and there is no illegality or perversity. This Court does not find any substantial questions of law involved in the above appeal for the intervention of this Court.

20. In such circumstances, the second appeal is dismissed. However, there shall be no order as to costs.

13.03.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

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WEB COPY To:

1. The Principal District Munsif Court, Namakkal
2. The Subordinate Judge,
Namakkal.
3. The Section Officer,
Vernacular Section,
High Court of Madras.



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G.ARUL MURUGAN ,J.

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