



S.A.Nos.639 & 502 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2024

CORAM

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

S.A.Nos. 639 & 502 of 2012

Guru Ramalingm ... Appellant in both Second Appeals

vs.

1.Balaiyan ... 1st respondent in both Second Appeals

2.Arulmighu Vadhaneeswararar
Devasthanam (Vallalar Koil)
Mayiladuthurai,
Rep. by its Hereditary Trustee,
Dharmapuram Adhinakartar,
Dharmapuram Adheenam,
Dharmapuram,
Mayiladuthurai.

3.Mahalingam,
"Udayam Rewinding shop"
Melaveedhi,
Mayiladuthurai.

...Respondents 2 & 3 in S.A.No.639/2012

[since 3rd respondent remained
exparte in the Lower Appellate
Court, notice may be dispensed with
for him]

Prayer in S.A.No.639 of 2012:- Second Appeal filed under Section 100
of the Civil Procedure Code against the judgment and decree in A.S.No.



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58 of 2010 dated 08.11.2011 on the file of the Court of Additional Sub Ordinate Judge, Mayiladuthurai in confirming the judgement and Decree passed in O.S.No.465 of 2005 dated 05.03.2010 on the file of the court of Principal District Munsif, Mayiladuthurai.

Prayer in S.A.No.502 of 2012:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree in O.S.No.161 of 2006 dated 05.03.2010 on the file of the court of Principal District Munsif, Mayiladuthurai confirmed in A.S.No.56 of 2010 dated 08.11.2011 on the file of the Additional Sub-Ordinate Judge, Mayiladuthurai.

in both Second Appeals,
For appellant : Mr.A.Muthukumar
For respondent 1 : No Appearance
In S.A.No.639/2012,
For respondent 2 : M/s.S.Girish
For Respondent 3 : Ex-parte

COMMON JUDGMENT

The 2nd defendant in O.S.No.465 of 2005 before the Trial Court is figured as appellant herein in S.A.No.639 of 2001. The plaintiff is the 1st respondent and 1st and 3rd defendants are arrayed as the respondents 2



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and 3 in S.A.No.639 of 2001. Similarly in S.A.No.502/2012, the sole defendant in O.S.No.161 of 2006 is the appellant herein and the plaintiff is the respondent. The plaintiff as well as the defendant are the sons of one Pichai Pillai.

2. For the sake of convenience, the parties will be referred to according to their litigative status in O.S.No.465 of 2005.

3. The brief facts which give rise to the instant two Second Appeals are that, the land in which the house was built belongs to the 1st defendant. It appears that the 1st defendant has leased out the site to one Nagarathinam Thavilkarar, as he was doing service to the temple. After the lease it appears that he put up a superstructure thereon and he sold the superstructure to one Govindan Nainakar and after the demise of Govindan Nainakar, the superstructure devolves upon her wife Angammal. It appears that said Angammal had executed a Will in favour of her sister's daughter namely Janaki by virtue of a Will dated 26.08.1933, giving life estate to the property and leaving the vested remainder to her sons namely Pichaipillai, Radhakrishnan and



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Chinnaniayan. It appears that Chinnaiyan died as a bachelor. Thus, the estate devolves upon Pichaipillai and Radhakrishnan. According to the plaintiff, there was a partition between Pichaipillai and Radhakrishnan on 31.08.1967. In that partition 'A' schedule property namely the northern half of the property was allotted to Pichaipillai and 'B' schedule property namely the southern half was allotted to Radhakrishnan. While so, the plaintiff has purchased the southern half of the superstructure from Radhakrishnan on 25.06.1997.

4. It is the case of the plaintiff that he being the teacher and away from the suit property, the 2nd defendant has encroached upon the same and took possession over the superstructure. It is also the case of the plaintiff that after encroaching upon the suit property, he has subleased the portion of the property to the 3rd defendant. Therefore, the plaintiff has come up with a prayer for mandatory injunction directing the 1st defendant to enter the lease hold right of the plaintiff in the register maintained by them and also directing the defendants 2 & 3 to handover the vacant possession of the suit property.



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5. The said suit was resisted by the 1st defendant by contending that they have already recognised the 2nd defendant as their lessee as he has been doing service to the temple. It is also the contention of the 1st defendant that the alleged sale deed which was obtained by the plaintiff will in no way bind upon them as the same it is contravene the Section 34 of the Hindu Religious & Charitable Endowments Act,1959. Hence prayed to dismiss the suit.

6. The 2nd defendant has filed separate written statement, wherein he has disputes the sale deed executed by Radhakrishnan on 25.06.1997. It is also the contention of the defendant that after the demise of Radhakrishnan, he took care of his wife Amirthavalli. While so, the said Amirthavalli had permitted him to use the superstructure of the suit property. In the meanwhile the 1st defendant also recognised him as the tenant of the suit property. Therefore it is the contention of the defendant that the suit filed by the plaintiff is liable to be dismissed.

7. The 3rd defendant also supported the case of the 2nd defendant. It appears that during the pendency of the said suit, the



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plaintiff has again filed an another suit in O.S.No.161 of 2006 by contending that the sole defendant of that suit is attempting to demolish the superstructure which he has purchased from Radhakrishnan.

8. Both the suits have been tried together and common evidence have been let in. Before the Trial Court, on behalf of the plaintiff, the plaintiff examined himself as P.W.1 and on behalf of the defendants, 4 witnesses were examined as D.Ws.1 to 4. On behalf of the plaintiff exhibits Exs.A1 to A8 were marked and Exs.B1 to B8 were marked on the side of the defendants.

9. The Trial Court, after having considered the oral and documentary evidence have found that the plaintiff is not entitled to the relief of mandatory injunction. However, has directed the defendants 2 and 3 to vacate and surrender the possession to the plaintiff. Thus, partly decreed the suit in O.S.No.465/2005. In respect of the another suit in O.S.No.161 of 2006, the trial Court has granted permanent injunction restraining the defendant not to dismantle the old tiled house which is situated in the suit property. Being not satisfied with the order of the trial



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Court, the 2nd defendant preferred the two first appeals and the First Appellate Court has also concurred with the finding of the Trial court and dismissed both the First Appeals. Being aggrieved with the order of the First Appellate Court, the 2nd defendant is before this Court byway of these Second Appeals.

10. There is no representation on behalf of the 1st and 3rd respondents.

11. At the time of admitting the Second Appeal in S.A.No.639 of 2012, on the following Substantial Questions of Law have been framed:

(a) whether suit for mandatory injunction against the 1st defendant is maintainable in law when there is no privity of contract between the plaintiff and 1st defendant and the plaintiff is only a transferee of the lessee that too without the permission of the 1st defendant?

(b) When the tenancy between 1st defendant and the original owner, the 2nd defendant is subsisting whether the Courts below erred in law in granting the relief of possession in favour of the plaintiff?



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12. Though the Second Appeal in S.A.No.502 of 2012 was not admitted, this Court while hearing both the parties, today i.e. [26.04.2024] framed the following substantial questions of law and both the parties are given opportunity to argue on the following substantial questions of law:

(i) Whether a mere suit for permanent injunction is maintainable in law without a prayer for declaration of the plaintiff's alleged right to the site of the suit property?

(ii) In the absence of any lease deed between the title paramount and original tenant empowering him to alienate the lease hold rights, whether the plaintiff can claim any relief on the basis of the said transfer?

(iii) Whether the suit for permanent injunction is maintainable when the defendant has been recognized as a tenant by the title paramount?

13. The learned counsel appearing for the appellant/ 2nd



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defendant would vehemently submit that both the appeals are interconnected and that the subject to the result of the Second Appeal in S.A.No.639 of 2012, the connected appeal in S.A.No.502/2012 can be disposed off.

14. It is the contention of the learned counsel for the appellant/2nd defendant that the owner of the site namely the 1st defendant has recognised the 2nd defendant as their tenant, and that the so called sale deed which has been relied by the plaintiff is in contravention to Section 34 of Hindu Religious & Charitable Endowments Act,1959, and it is also the contention of the learned counsel for the appellant that once the original lessee namely Radhakrishnan has sold the property, the lease got extinguished with the owner of the superstructure and the 1st defendant who is the owner of the site qua the title paramount.

15. It is the further submission of the learned counsel that there is no privity of contract between the 1st defendant Adheenam and the plaintiff so as to compel them by way of a mandatory injunction to



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register their name as the tenant. Therefore, it is the contention of the learned counsel for the appellant that both the Courts below have not gone into the concept of extinguishment of lease, and also the implication of Section 34 of Hindu Religious & Charitable Endowments Act,1959. Therefore, it is the submission of the learned counsel for the appellant that findings recorded by the both Courts below are perverse and in contravention of law and is liable to be interfered with.

16. In support of the contention of the appellant, the learned counsel appearing on behalf of the 1st defendant would contend that the suit property is absolute property of the temple, and that, if at all the lessee of the site has entered any sale deed in respect of the superstructure with any third party, such sale will not bind upon the Temple, and would further contend that such sale deed is hit by Section 34 of Hindu Religious & Charitable Endowments Act,1959. Therefore, at any rate through the sale deed, the plaintiff cannot compel the defendant to register him as a lessee.

17. Per contra, it is the further contention of the learned counsel



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for the 1st respondent/ 1st defendant that they have already recognised the 2nd defendant as the tenant of the said premises, therefore the question of recognising the plaintiff as the tenant to the suit property does not arise. Hence, he also contend that the judgement of both the Courts below are perverse and are liable to be interfered with.

18. Despite the counsel's name printed, no one has entered appearance on behalf of the plaintiff.

19. I have given my anxious consideration to either side submissions.

20. The short point to be answered is whether mere purchase of the superstructure of the suit property will have got any impact in respect of transferring of lease hold right. It is pertinent to mention here, according to the plaintiff, he has purchased only the superstructure and admittedly the site belongs to the 1st defendant, and that they have originally recognized one Radhakrishnan who was the previous owner of the superstructure, as lessee to the suit property. Therefore in this



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background, whether the sale of superstructure by Radhakrishnan will have any impact in transferring the leasehold right to the plaintiff.

21. As rightly submitted by the learned counsel for the appellant there is no privity of contract between the plaintiff and the 1st defendant. At this juncture, the learned counsel for the 1st respondent would invite the attention of this Court in respect of Section 34 of the Hindu Religious & Charitable Endowments Act, 1959.

22. For ready reference Section 34 of the Hindu Religious & Charitable Endowments Act, 1959 is extracted hereunder:

"34. Alienation of immovable trust property.—

(1) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution :

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly consider by the Commissioner :



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Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government.

Explanation.— Any lease of the property above mentioned through for a term not exceeding five years shall, if it contains a provision for renewal for a further term (so as to exceed five years in the aggregate), whether subject to any condition or not, be deemed to be a lease for a period exceeding five years.

(2) When according such sanction, the Commissioner may impose such conditions and give such direction, as he may deem necessary regarding the utilization of the amount raised by the transaction, the investment thereof and in the case of a mortgage regarding the discharge of the same within a reasonable period.

(3) A copy of the order made by the Commissioner under this section shall be communicated to the Government and to the trustee and shall be published in such manner as may be prescribed.

(4) The trustee may, within three months from the date of his receipt of a copy of the order, and any person having interest may within three months from the date of the publication of the order appeal to the Court to modify the order or set it aside.

(4-A) The Government may issue such directions to the Commissioner as in their opinion are necessary, in respect of any exchange, sale, mortgage or lease of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution and the Commissioner shall give effect to all such directions.

(5) Nothing contained in this section shall apply to the imams referred to in section 41. "

23. It is pertinent to mention that though the temple comes under



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the administration of the Adheenam, the application of the Hindu Religious & Charitable Endowments Act,1959 is not fully excluded and as per Section 44 of the Hindu Religious & Charitable Endowments Act,1959, only Sections 45 to 58 of the Act have been excluded to Aadheenam quo 1st defendant. Therefore, as rightly contended by the learned counsel for the appellant as well as the 1st respondent, the application of Section 34 of Hindu Religious & Charitable Endowments Act,1959 is very well available to the 1st defendant Aadheenam.

24. While considering the sale made by the Radhakrishnan in favour of the plaintiff, this Court now have to look whether a sale in respect of the superstructure, upon a site in which a leasehold right exist is valid without getting any approval as contemplated under Section 34 of the Hindu Religious & Charitable Endowments Act,1959. In this regard, the learned counsel for the 1st respondent relied upon the judgment of this court reported in **MANU/TN/0984/2014** in ***R.Banumathy Vs. Joint Sub Registrar-I***. Wherein this Court has dealt similar factual position and held that even if the superstructure has been sold, under Section 34 (b) of Hindu Religious & Charitable Endowments Act,1959, a prior



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approval has to be obtained from the Commissioner of the Hindu Religious & Charitable Endowments Department.

25. For ready reference this Court deems it appropriate to extract the paragraphs No. 10 and 11:

"10. A reading of the above provision of law would explicit that any lease for a term exceeding five years of any immovable property belonging to religious institution shall be null and void unless it is sanctioned by the Commissioner, who in fact, shall not accord such sanction without the previous approval of the Government. Admittedly, the lease period given to original leaseholder, K.N: Vadivel had already been expired more than a decade back and therefore, such lease if claims by anyone including the petitioner and R.H. Jamal Mohideen shall be construed as null and void and there was no sanction accorded by the Commissioner in their favour, Of-course, it is true that the first respondent being Joint Sub Registrar has no authority to verify whether a particular transaction is null and void and the concerned (l.e. the temple) party who claims that the transaction is statutorily declared as null and void, has to establish the same before the Court and obtain necessary orders to restrain the first respondent from registering the document of sale. But in the circumstances of the present case, where the petitioner has not come forward with true particulars and it is pertinent to note that the petitioner has suppressed the fact of the suit filed by the HR & CE Department against him and others



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and suppressing the same, the petitioner has filed the present writ petition.

11. Section 34-B of the Act envisages that even though a lessee of the land which belonged to the temple, had put up a superstructure over it, he cannot claim exclusive right against the superstructure put up by him on the land taken on lease by him from the temple. Clause 3 of Section 34-B indicates that after the termination of the lease, the authorities of the public temple has got every right to take possession of the superstructure inclusive of fixtures put up by the lessee over the land which was leased out to him by the said temple. Therefore, when such being the position that after expiry of the lease, the authorities can take possession including the superstructure from the original lessee himself, this Court is of the view that the claim of the petitioner cannot be accepted. The learned counsel appearing for the petitioner relied upon the orders passed by this Court in similar writ petitions on earlier occasions. Having gone through the orders passed in W.P. Nos. 1528 of 2004, dated 16.7.2008, 26879 of 2008, dated 13.11.2008, 25516 of 2010, dated 22.12.2010 and 29430 of 2012, dated 1.11.2012, this Court finds that in those matters, neither the temple nor the HR & CE Department or the original owner of the subject property were party to the writ petitions and without consideration of the real dispute, those orders came to be passed without reference to Section 34 of the HR & CE Act and hence the said technical orders cannot be made applicable to the present case on hand."

26. Therefore this Court is of the firm view, that as rightly



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contented by the learned counsel for the appellant as well as the 1st respondent, there are no documents to substantiate the concurrence of the commissioner of HR&CE for the Ex.A1 sale deed. Therefore, this Court is of the firm view that the Ex.A1 sale deed will have no impact against the 1st defendant. To put it in other words the Ex.A1 sale deed will in no way bind upon the 1st defendant.

27. This may also be looked at in a different angle. Here the 1st defendant has leased the property only to Angammal. Now the present owner of the superstructure, Angammal has sold the property through Ex.A1 sale deed. On perusal of the Ex.A1 sale deed there is a specific recital

'மேற்படி கோவிலுக்கு உண்டான பகுதியை தாங்கள் பெயருக்கு தாங்களே மாற்றிக்கொள்ள வேண்டியது. பகுதியை தங்கள் பெயருக்கு மாற்றிக்கொள்ள சம்மதித்து அதற்கு ஓர் தனி ஆவணம் எழுதிகொடுத்துள்ளேன்.'

28. Therefore, even on mere perusal of such document there were no transfer in respect of the lease and Radhakrsihnan has only given



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his no objection to transfer such a lease in his favour. Therefore the contention of the plaintiff that by virtue of the Ex.A1 sale deed, the lease hold right has also been transferred cannot be accepted at all. But on the other hand the moment the superstructure has been sold to the plaintiff, the leasehold right if any exist in Radhakrishnan or previous leaseholder Annagammal got extinguished. In this regard, the learned counsel for the 1st respondent relied upon the judgment of this Court reported in **MANU/TN/6111/2006** in **K.V.Pushpavalli Vs.Arulmighu Theerthabaleeswarar Devasthanam**. For ready reference this Court deems it appropriate to extract paragraphs No.30 to 32 hereunder:

"30. Having sold away his leasehold right and delivered possession to the Second Defendant, what is the position of the First Defendant is the main point falling for consideration. On 07.06.1982, the First Defendant had sent Ex.B.3 Letter to the Executive Officer of Plaintiff Devasthanam informing about the sale to the Second Defendant and expressing his consent for transfer of leasehold right to the Second Defendant. In Ex.B.3, the First Defendant has stated,

*"நான் இதன் அடியில் குறிப்பிட்ட
தேவஸ்தானத்திற்கு சொந்தமான அடிமனை
மேலுள்ள கட்டிடத்தை கே.வி.புஸ்பவல்லி
அவர்களுக்கு கிரயத்திற்காக விற்று
விட்டேன். இந்த அடிமனையை அவர்கள்
பெயரில் மாற்றிக் கொடுக்க என்னுடைய*



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இசைவினை தெரிவித்துக் கொள்கிறேன்....."

Having sold his leasehold right and delivered possession to the Second Defendant, the First Defendant's lease is extinguished. No particular words are necessary for inferring extinguishment of lease. Once the First Defendant has sold his leasehold right and delivered possession to the Second Defendant, the First Defendant has no further right in the demised suit property.

31. Laying emphasis upon Section 108(1) of the T.P. Act, learned Senior Counsel has submitted that the Lessee may transfer his interest in the property and that the Lessee shall not by reason of such transfer cease to be the Lessee, subject to any of the liabilities attaching to the lease. Section 108(1) T.P. Act reads as follows:-

the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such Interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease.

32. Learned Senior Counsel has contended that what was sold under the document is only super structure and the leasehold right is not transferred and the First Defendant continued to be recognised as the Tenant. This contention has no force in view of Section 34 of the H.R. & C.E.Act and in view of the conduct of the Second Defendant claiming tenancy for herself. Section 108 (j) of the T.P. Act being the general law, cannot prevail against the Special Law."



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29. Even as per the above ratio, since because there was sale deed in respect of the plaintiff for the superstructure that will not confer any right upon him to have the leasehold right over the property. As rightly contented by the learned counsel for the 1st respondent there is no privity of contract between the plaintiff and the 1st defendant, and apart from that according to their record, they have already recognized the 2nd defendant as the lessee. Therefore, the plaintiff being the owner of the superstructure that too in contravention to Section 34 of Hindu Religious & Charitable Endowments Act, 1959 cannot compel the 1st defendant to register the leasehold right, which legal position has been rightly accepted by both the courts below. However, the Court below has directed the 2nd defendant to handover the possession of the property, when the 2nd defendant is in possession of the property.

30. The only right conferred upon the plaintiff is to seek delivery of the possession on the basis of Ex.A1, whereas the Ex.A1 is not a legal and valid one, in view of not obtaining any sanction from the Commissioner of Hindu Religious & Charitable Endowments



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Department, under Section 34 of Hindu Religious & Charitable Endowments Act, 1959. Therefore once Ex.A1 sale deed is not valid, the question of directing the defendants 2 and 3 to handover the delivery of vacant possession also cannot be sought for and granted. Therefore, this Court is of the firm view that the plaintiff cannot have any remedy by way of filing a suit for mandatory injunction and for delivery of possession.

31. Therefore, in view of the above detailed discussion, the substantial questions of law are answered in favour the appellant in respect of S.A.No.639/2012. Coming to the another appeal, it is only a off suit of the earlier S.A.No.639/2012. On the facts of the suit, in OS.No.161/2006, against which the another Second Appeal in S.A.No.502/2012 arises also based upon the Ex.A1 sale deed. Now that Ex.A1 sale deed is found to be not valid. Therefore, he is also not entitled to have any injunction as claimed in the another suit. Therefore the substantial questions of law framed in the appeal in S.A.No.502/2012 is also answered in favour of the appellant. Thus, both the Second Appeals are allowed and there by setting aside the judgment and decree passed in



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OS.No.161 of 2006 and O.S.No.465 of 2005, dated 05.03.2010 on the file of the Court of Principal District Munsif, Mayiladuthurai. There shall be no order as to costs. consequently, connected civil miscellaneous petitions if any are closed.

26.04.2024

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

Nutral: Yes/No

jrs



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To

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- 1.The Additional Sub Ordinate court,
Mayiladuthurai.
- 2.The Principal District Munsif court,
Mayiladuthurai.
- 3.The Section Officer,
V.R.Section, High Court,
Madras.



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C.KUMARAPPAN,J.

jrs

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