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S.A.Nos.1109 and 1110 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2024

CORAM:

THE HON'BLE MR. JUSTICE V.LAKSHMINARAYANAN

S.A.Nos.1109 and 1110 of 2013

S.A.Nos.1109 of 2013

Arulmigu Parvadhavardhini Samedha
Ramanandeeswara Sowdambigai Thirukovil,
Cuddalore -14, rep. by its Trustees,
Umapathy
S.Selvaraj
V.Kannappan

...Appellant

vs.

1. K.Selvam
2. Venkatesan

...Respondents

Prayer: Second Appeal filed under Section 100 CPC, against the judgment and decree dated 25.06.2013 passed in AS.No.11 of 2012 on the file of the First Additional Subordinate Court, Cuddalore reversing the judgment and decree dated 21.11.2011 passed in OS.No.654 of 2005 on the file of the First Additional District Munsif Court, Cuddalore.

For Appellant : Mr.S.Kingston Jerold

For Respondents
for R1 : M/s.R.Guru Raj



S.A.Nos.1109 and 1110 of 2013

S.A.Nos.1110 of 2013

Arulmigu Parvadhavardhini Samedha
Ramanandeeswara Sowdambigai Thirukovil,
Cuddalore -14, rep. by its Managing Trustee

...Appellant

vs.

1. Mohammed Zubai
2. K. Selvam

...Respondents

Prayer: Second Appeal filed under Section 100 CPC, against the judgment and decree dated 25.06.2013 passed in AS.No.12 of 2012 on the file of the First Additional Subordinate Court, Cuddalore reversing the judgment and decree dated 21.11.2011 passed in OS.No.220 of 2006 on the file of the First Additional District Munsif Court, Cuddalore.

For Appellant : Mr.S.Kingston Jerold

For Respondents

for R1 : Died

for R2 : M/s.R.Guru Raj

COMMON JUDGMENT

The present second appeals arise out of the judgment and decree of the First Additional Subordinate Court at Cuddalore in AS.Nos.11 and 12 of 2012 dated 25.06.2013 in reversing the judgment and decree of the Court of the First Additional District Munsif at Cuddalore in OS.No.654 of 2005 and OS.No.220 of 2006.



S.A.Nos.1109 and 1110 of 2013

WEB COPY 2. OS.No.654 of 2005 was presented by the second respondent herein/Selvam in S.A.No.1110 of 2013 for the relief of injunction restraining the defendants their men etc., from interfering with the peaceful possession and enjoyment of the suit schedule mentioned property.

3. OS.No.220 of 2006 is a suit which was filed by the first defendant in OS.No.654 of 2005 for the relief of ejectment and for recovery of damages for use and occupation of the property till recovery of possession.

4. The undisputed facts are as follows:

i) The property situated at Door No.18-C Imperial Road, Cuddalore, Old Town belong to Arulmigu Parvathavarthini Samadha Ramanadeeshwara Sowdambigai Amman Thirukoil. This Temple leased the subject property to one Mohammed Zubai, the first defendant in the suit. According to the Temple, Mohammed Zubai had unauthorisedly inducted the second defendant/Selvam in the property. Hence, the Temple issued a notice on 21.12.2005 to its tenant Mohammed Zubai. According



S.A.Nos.1109 and 1110 of 2013

to the Temple, the second defendant is a rank trespasser, who is in unlawful possession of the property.

ii) It is the written statement of the second respondent, who is the only contesting respondent in this appeal, that he is a direct tenant under the temple. The said Selvam cleared a sum of Rs.40,500/- on 19.05.2022 and 20.05.2022 being the rental arrears of Mohammed Zubai and became direct tenant under the Temple.

iii) He would further state that the Trustees of the Temple had agreed to transfer the tenancy in his favour, but failed to do so. One of the Trustees, wanted the second respondent Selvam to vacate a certain portion of his property and grant the same to the fourth defendant/Venkatesan and since Selvam did not agree to the same, the Temple started interfering with his possession and hence, the suit.

5. The learned Trial Judge framed the following issues in the suit for injunction:

- i) Whether the plaintiff is a tenant in respect of suit property with the 1st defendant?
- ii) Whether the plaintiff is in possession and enjoyment of the suit property?
- iii) Whether the plaintiff is entitled to the relief of Permanent Injunction as prayed for?



iv) Whether the 4th defendant is an unnecessary party to the suit?

and the following issues were framed in the ejectment suit:

- i) Whether the plaintiff is entitled to the relief of recovery of possession and for mesne profits?*
- ii) Whether the 2nd defendant is a trespasser in unlawful possession of the suit property?*
- iii) To what relief in the plaintiff is entitled to?*

6. Both the suits went for joint trial. Since the suit for injunction was the first suit, evidence was recorded therein. Selvam entered witness box as PW1 and he marked Exs.A1 to A38. On the side of the defendants, DW1 was examined and he marked Exs.B1 to B9. On considering all the the oral and documentary evidence before the Trial Court, the learned Trial Judge came to the conclusion that

- i) The Civil Court has jurisdiction even if the property is covered under the HR & CE Act;
- ii) The Temple need not approach the Rent Control Court as denomination Temple is also a Public Temple;
- iii) As Selvam had been unable to prove the direct tenancy between himself and the Temple, he is a trespasser in the property and therefore, he is liable to be evicted and



S.A.Nos.1109 and 1110 of 2013

- iv) It deferred the proceedings under Order 20 rule 12 CPC with respect to future damages.

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On the basis of these findings, the learned Judge decreed OS.No.220 of 2006 and dismissed OS.No.654 of 2005.

7. Aggrieved by the same, Selvam preferred AS.Nos.11 of 2012 and 120 of 2012. The learned First Additional Subordinate Judge, Cuddalore, held that the Civil Court has jurisdiction and it is not ousted by virtue of the Rent Control Act and HR & CE Act. Insofar as tenancy is concerned, she came to the conclusion that there was a tenancy by acquiescence and therefore, the ejectment suit was not maintainable. Consequently, she allowed the appeals and dismissed the suit for ejectment and decreed the suit for injunction.

8. Against this reversal of the findings, the present Second Appeals have been filed before this Court. On 13.02.2014, the Second Appeals were admitted on the following Substantial Questions of law:

- i) *Whether the judgment and decree of the lower Appellate Court is vitiated by its failure to give any reasons for reversing the judgment and decree of the Trial Court?*



- 2) *Whether the judgment and decree of the lower Appellate court is in conformity with the provisions contained in Order 20 Rule 10 of the Civil Procedure Code?*
- 3) *The Lower Appellate Court having rightly held that the Civil Court has got jurisdiction and that the plaintiff is a temple coming within the purview of the H.R. & C.E. Board, whether the finding of that the suit for recovery of possession by the appellant against the respondents are not maintainable is correct?*

9. I heard Mr.S.Kingston Jerold, for the appellant/Temple and Mr.R.Guru Raj, for the second respondent.

10. Mr.S.Kingston Jerold, submitted that when there is no proof of direct tenancy between the Temple and the second respondent, the Lower Appellate Court erred in presuming the tenancy. He pointed out that there is no proof that Selvam was inducted as tenant by the Temple. There was no deed of tenancy as pleaded on 07.06.2002 and being a Public Temple, it was exempted from the provisions of the Rent Control Act. He would further submit that Sections 78 and 79 of the HR & CE Act are only enabling provisions and it is not a bar for maintaining a suit exercising right under Section 106 of the Transfer of Property Act.



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11. He would point out that as required by law, notice was issued under Ex.B4 to the tenant and it had been acknowledged by the tenant under Ex.B5, but no reply had been given for the same. He would point out that as pleaded by the second respondent that Mohammed Zubai had handed over possession to the Temple and on his eviction, Selvam had taken possession of the property as tenant, however, absolutely there is no proof that has been adduced by Selvam and therefore, the reversal of judgment by the Lower Appellate Court is erroneous. He would also take me through the judgment of the First Appellate Court and would point out that the learned Judge has not discussed or given any reasons for reversing the judgment of the Trial Court. Hence, he would plead that he has made out a case for reversal of the judgment of the Lower Appellate Court and for restoration of the judgment of the Trial Court.

12. Mr.R.Guru Raj, learned counsel for the second respondent would submit that

- i) The Temple is a denomination Temple and therefore only RCOP is maintainable.
- ii) His next point would be that since the HR & CE Act is a self-



S.A.Nos.1109 and 1110 of 2013

contained code and it acts a bar for presentation of a plaint.

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iii) Thirdly, he would point out that from Ex.A2 to A19, the Temple had issued receipts for a continuous period of four years from 2002 till 2006 when the ejectment suit was presented and this would disclose the tenancy by acquiescence. He would state that the Temple premises as well as the shop premises are adjacent to each other. Therefore, the Trustees would have aware that it was Selvam, who was in occupation of the property and therefore, they cannot turn around today and plead that Mohammed Zubai was the original tenant and the second defendant was the sub tenant.

13. I have carefully considered the submissions on either side and gone through the records.

14. I will first take the argument of Mr.Gururaj that since the rent receipts have been given over a period of for 4 years by the Temple, there is a deemed tenancy between the second respondent and the Temple.

15. The original records show that from 19.05.2002 onwards till 29.11.2005 rent receipts have been issued by the Temple. However, the



S.A.Nos.1109 and 1110 of 2013

receipts do not stand in the name of Selvam but stand in the name of Mohammed Zubai. If that plea of tenancy by acquiescence is to be accepted, those receipts must have been issued in the name of Selvam and not in the name of Mohammed Zubai. Sub tenancy is a secretive arrangement that was entered between the original tenant and the sub tenant and this cannot go within the knowledge of the landlord. Therefore under Section 106 of the Indian Evidence Act, it is the duty of the person, who is a party to the said secretive arrangement, to prove before the Court that he is not a sub tenant but a direct tenant under the Temple. Though the receipts had been issued in the name of Mohammed Zubai, Selvam did not raise a little finger objecting the same. This makes it clear that the landlord at no point of time accepted the tenancy of Selvam.

16. The principle of acquiescence means as an act by which a party stands when his known right is frittered away by another. This act of standing and watching an act going on would be held against the former when litigation is commenced between the parties. Examining the rent receipts that have been produced before the Trial Court, I am able to come to the conclusion that there was no acquiescence by the Temple to the possession of Selvam.



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17. On the contrary, the Temple is clear and categorical and all the receipts were issued only in the name of Mohammed Zubai. The sub tenant in the property, i.e., Selvam accepted the situation and continued to pay the rents in the name of original tenant Mohammed Zubai. Today, it does not lie in his mouth, turn around and state that he had paid rents in the name of Mohammed Zubai and these receipts should be treated as been given in his name and not in the name of the original tenant. Therefore, the arguments of tenancy by acquisaence stands rejected.

18. In a suit for ejectment by the landlord as against the tenant, I have to see whether there has been compliance of Section 106 of the Transfer of Property Act. In this particular case, as seen from Ex.B4, Lawyer's notice had been issued by the Temple to Mohammed Zubai and it was acknowledged Mohammed Zubai under Ex.B5. Therefore, the terms of Section 106 having been complied with.

19. I would now turn to the next two arguments of Mr.R.Guru Raj that the suit is not maintainable and remedy is only before the Civil Court.



S.A.Nos.1109 and 1110 of 2013

WEB COPY 20. Under the provisions of the Tamil Nadu Buildings (Lease and Rent control) Act, exemptions were granted to certain Institutions. One such category of Institution is covered under G.O.Ms.No.2000 Home Department dated 16.08.1976. By virtue of the G.O., His Excellency the Governor of Tamil Nadu had exempted all buildings belonging to Hindu, Christian and Muslim Religious Public Trust and Public Charitable Trust from the operation of the Rent Control Act.

21. It is the argument of the learned counsel Mr.R.Guru Raj, that since the property is situated within the Municipal limits of the Town at Cuddalore, the Rent Control Act will apply. When His Excellency Governor has issued an exemption notification and that has been in force for at least 48 years, the question of applying Rent Control Act to a Temple will not arise. In fact this issue had been specifically gone into by the Trial Court. The Trial Court relied upon the Judgment of this Court in ***Seeni Thevar and others vs. M.S.Velayutha Raja*** in 1992 2 LW 190 and held that a denomination Temple are also Public Temple and it is only the management that vests with the body of those belonging to the



S.A.Nos.1109 and 1110 of 2013

denomination and it would still be a public Temple. If it is a public Temple, which is of Hindu persuasion, G.O.Ms.No.2000, dated 16.08.1976 will apply and consequently, Civil Court will have jurisdiction.

22. The next point that is urged by the learned counsel Mr.R.Guru Raj is that the HR & CE Act is a self-contained code, which provides for eviction of encroachers under Sections 78 and 79 of the Act. The HR & CE Act also deals with bar of jurisdiction of Civil Court and therefore, if the case of the temple is that Selvam is an encroacher, the Temple should have proceeded only under the HR & CE Act and should not have approached the Civil Court.

23. This argument had been raised before a Division Bench of this Court in *A.N.Kumar vs. Arulmighu Arunachaleswarar Devasthanam Thiruvannamalai*. The Division Bench consisting of their Lordships Hon'ble Mrs. Justice R.Banumathi and Hon'ble Mr.Justice M.M.Sundresh as their Lordships then were, rejected the argument and held that HR & CE Act is not a bar for presentation of the suit for ejectment. They held as



S.A.Nos.1109 and 1110 of 2013

follows:

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"There is no express bar under Sections 78 and 79 for an authority acting on behalf of the Temple to approach the Civil Court. Bar of jurisdiction of Civil Court under second proviso to Section 79 is the bar in respect of suits instituted only by lessee, licensee or mortgagee of the religious institution or endowment.

When the encroacher has been given a right to approach the Civil Court after an order has been passed by the Deputy Commissioner against him, there cannot be a bar for the Temple to file a suit. Suit filed on behalf of the Temple is very much maintainable.

This dictum of the Division Bench is clear and categorical. In the light of the verdict, I necessarily have to reject the argument of Mr.R.Guru Raj that the HR & CE Act is a bar for presentation of the suit for ejectment.

24. As rightly pointed out by the learned counsel Mr.S.Kingston Jerold that the Lower Appellate Court has not discussed any of these issues. It merely extracted one judgment after another and has come to the conclusion that the appeal has to be allowed. While the First Appellate Court is the last Court of facts and Law, it is the duty of the



S.A.Nos.1109 and 1110 of 2013

First Appellate Court to give reasons whether it is confirming or reversing the judgment of the Trial Court, why it is disagreeing with the learned Trial Judge or why it is agreeing with the trial judge and thereafter proceed to give its verdict. As it is oft repeated, furnishing of reasons is the heartbeat of an order and in case, no reasons are given, the order is contrary to law.

25. In this case, I have carefully gone through the judgment of the Lower Appellate Court and I am unable to find any reasons have been given by the Lower Appellate Judge for reversing the judgment of the Trial court, whereas she has extracted several judgments of principle of estoppel and came to the conclusion that the Temple treats Selvam as a tenant. As pointed out above, the Temple had never accepted the tenancy of Selvam and at all point of time issued receipts only in the name of Mohammed Zubai, the original tenant.

26. In the light of the above, it is held that the Civil Court has jurisdiction to entertain the suit. I have found Selvam is an unauthorised occupant of the property and to the fact that notice under Section 106 of



S.A.Nos.1109 and 1110 of 2013

the Transfer of Property Act had been property issued by the Temple.

Hence, I have necessarily to set aside the judgment of the Lower Appellate Court and restore the judgment of the Trial Court.

27. In fine

- i) substantial questions of law are answered in favour of the appellant and as against the respondents
- ii) the Appeals are allowed
- iii) the judgment and decree in A.S.Nos.11 of 2012 and 12 of 2012 on the file of the First Additional Subordinate Court, Cuddalore dated 25.06.2013 are set aside and the judgment and decree of the Additional District Munsif Court, Cuddalore in OS.No.220 of 2006 dated 21.11.2011 are restored.
- iv) The suit in OS.No.220 of 2006 shall stand decreed as prayed for and the suit in OS.No.654 of 2005 shall stand dismissed.
- v) Time for eviction is 3 months. Since ejectment suit is decreed and the decree of the Trial Court has been restored, insofar as mense profits are concerned, it is open to the Temple to take appropriate



S.A.Nos.1109 and 1110 of 2013

proceedings under the provisions of Order 20 Rule 12 CPC and

WEB COPY proceed in accordance with law.

vi) Costs throughout.

15.03.2024

pvs

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking Order

To

1. The First Additional Subordinate Court, Cuddalore
2. The First Additional District Munsif Court, Cuddalore.
3. The Section Officer,
V.R.Section, High Court, Madras



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S.A.Nos.1109 and 1110 of 2013

V.LAKSHMINARAYANAN, J.

pvs

S.A.Nos.1109 and 1110 of 2013

15.03.2024