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S.A.No.752 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Second Appeal No.752 of 2013 &
M.P.No.1 of 2013

S.Moorthy

... Appellant/defendant

-Versus-

Arulmugu Chidambaraswarar Temple,
Public Charitable Trust attached
To a Religious Temple governed
By the provisions of the Hindu Religious and
Charitable Endowment Act, 1959 and
Controlled by the Hindu Religious and
Charitable Endowment Department,
Having its office at No.5, South Mada Street,
Choolai, Chennai – 600 112. rep. by its
Executive officer.

... Respondent/Plaintiff

Appeal filed under Section 100 of C.P.C. against the Judgment and decree dated 20.02.2008 made in A.S.No.426 of 2007 on the file of the VII Additional Judge, City Civil Court, Chennai confirming the judgement and decree dated 28.03.2006 made in O.S.No.7332 of 2001 on the file of the V Assistant City Civil Court Chennai.

For Appellant : Mr.S.Ravichandran

For Respondent : No appearance



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For Appellant : Mr.S.Ravichandran

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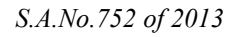
JUDGMENT

The present appeal arises out of the judgment and decree of the court of VIIth Additional City Civil Judge, Chennai in A.S.No.426 of 2007 dated 20.02.2008 in confirming the judgment and decree of the court of Vth Assistant City Civil Judge at Chennai in O.S.No.7332 of 2001 dated 28.03.2006.

2. O.S.No.7332 of 2001 is a suit filed for ejectment by the temple and for arrears of Rs.9,400/- as rent as on 31.10.2001 and for damages Rs.500/-.

3. For the sake of convenience, the parties will be referred to as their ranks in the suit.

4. The case of the plaintiff is that the temple is the absolute owner of the suit schedule property. The defendant is the tenant over the same. The defendant had been irregular in payment of rent and on the date of presentation of the plaint, he was in arrears of Rs.9,400/-. Terminating the tenancy, a notice



The notice was received by the defendant and sent a reply on 12.11.2001. Since he did not hand over possession, they presented the suit.

5. The defendant on service summons entered appearance and filed a detailed written statement. In the said written statement, he agreed that the monthly rent was Rs.350/-, but gave an explanation for the arrears stating that he was sick and hospitalised and therefore, he could not pay the amount. He would state that after being discharged from the hospital, he had paid the said amount.

6. On these pleadings, the trial court framed the following issues:

“1. Whether the defendant has to deliver vacant possession to the plaintiff?”

2. *Whether the plaintiff is entitled for arrears of rent and damages as claimed in the plaint?*

3. *To what relief?* ”

7. On behalf of the temple, the clerk of the temple entered the witness box as PW1 and marked Ex.A1 to Ex.A5. The defendant entered the witness



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box as DW1 and marked Ex.B1 to Ex.B11.

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8. Considering the evidence oral and documentary let in before the court, the learned Vth Assistant City Civil Judge was pleased to decree the suit with cost with respect to delivery of possession, but dismissed the suit with respect to arrears and future damages.

9. Aggrieved by the order of eviction, the defendant preferred an appeal in A.S.No.426 of 2007. The said appeal was dismissed confirming the judgment and decree of the court below. Aggrieved by the concurrent findings, the present second appeal has been filed before this Court.

10. On 09.02.2015, this second appeal was admitted on the following substantial question of law:

*“ Whether the Executive Officer appointed for the plaintiff temple is competent to execute the suit in view of the judgment of the Hon'ble Supreme Court in **Dr.Subramanian Swamy vs. State of Tamil Nadu (2014 (1) CTC 763)**? ”*

11. Though the respondent/plaintiff has been served, they have not entered appearance either through the counsel nor anybody representing the



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temple as a party.

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12. Mr.S.Ravichandran, learned counsel appearing for the appellant/defendant would contend that the executive officer of the temple does not have the jurisdiction to present the plaint. He would rely upon the judgment in ***Dr.Subramanian Swamy vs. State of Tamil Nadu and others*** reported in ***(2014) 5 SCC 75*** and would submit that the executive officer does not have jurisdiction to present the plaint and therefore, he would plead that the second appeal has to be allowed and the suit be dismissed.

13. I have carefully considered the submission of Mr.S.Ravichandran.

14. It is pertinent to point out that under Ex.A5, the Commissioner, Hindu Religious and Charitable Endowment Board, in exercise of powers vested in him, has authorised the executive officer to present the suit. This authorisation had been filed under Ex.A5 and the relevant portion in Ex.A5 reads as follows:

“The Executive Officer shall be the person entitled to sue or be used on behalf of the temple. It shall be the duty of the Executive officer to see that all legal proceedings on behalf of or against the Institution are instituted in due time and properly prosecuted.....”



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15. As per Rule 11 of the said order, the executive officer is authorised to present the plaint and perusal of the plaint shows that Chidambareswarar Temple has been represented by its Executive Officer in terms of the delegation granted by the Commissioner, Hindu Religious and Charitable Endowment Board under Ex.A5.

16. The Division Bench of this Court had held in ***Sri Arthanaeeswarar of Tiruchengode vs. T.M.Muthuswamy Padayachi and others, (2003) 1 LW 386*** that if the executive officer is not authorised, he is not entitled to present the plaint. However, in this particular case, as seen from Ex.A5, executive officer has been authorised to present the plaint. Therefore, the substantial question of law framed does not arise for consideration.

17. ***Dr.Subramanian Swamy's*** case related to the famous Sabanayagar Temple at Chidambaram. The temple by virtue of a decree of the civil court of colonial vintage has been under the control and governance of the Podhu Dikshitaras of Chidambaram. It is not the temple controlled by HR & CE. Hence, the said judgment is inapplicable to the facts of the case.

18. In view of the above discussion, the question of law being answered against the appellant, the second appeal necessarily has to fail. Accordingly,



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the second appeal is dismissed. In fine, the judgment and decree of the court of VIIth Additional City Civil Judge, Chennai in A.S.No.426 of 2007 dated 20.02.2008 in confirming the judgment and decree of the court of Vth Assistant City Civil Judge at Chennai in O.S.No.7332 of 2001 dated 28.03.2006 stands confirmed. Time for eviction granted is six months. No costs. Consequently, connected miscellaneous petition is closed.

15.03.2024

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Index : Yes / no
Neutral Citation : Yes / no
Speaking / Non Speaking Order

To

- 1.The V Assistant City Civil Court Chennai
- 2.The VII Additional Judge, City Civil Court, Chennai.



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V.LAKSHMINARAYANAN, J.

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