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S.A.No.293 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

S.A.No.293 of 2024 and
C.M.P.Nos.8832 of 2024

Judgment reserved on 29.04.2024	Judgment pronounced on 21.06.2024
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1.Hamsavalli

2.Mallika

3.Rajeswari

4.Hemalatha

(2 to 4 are impleaded as legal
heirs of the deceased 2nd defendant
Kesavan Chettiyar)

5.B.Renukadevi

6.N.B.Bhoopathy

7.N.B.Thulasidoss

8.B.Selvaraj

(5 to 8 are impleaded as legal
heirs of the deceased 1st defendant
Balu Chettiyar)

...

Appellants

Vs.

Arulmighu Ekambareswarar Thirukoil

Rep.by its Executive officer

Aminjikarai

Chennai - 600 029

...

Respondent



S.A.No.293 of 2024

Prayer: This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree in A.S.No.624 of 2008 dated 05.01.2024 by the V Additional Judge, City Civil Court, Chennai reversing the well considered decree and judgment in O.S.No.8312/2005 dated 31.01.2008 by the VIII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.S.Mohana Sundararajan

JUDGMENT

Parties are referred to as per their ranking before the Trial Court, for the sake of convenience.

2. The defeated defendants are the appellants herein. The respondent/plaintiff filed a suit in O.S.No.8312 of 2005 before the VIII Asst. Judge, City Civil Court, Chennai to quit and deliver the vacant possession of the suit land after removing the superstructure thereon.



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3. The case of the respondent in the suit is that the suit property absolutely belongs to the respondent temple. The said land was leased out to one Rajathiammal alias Rajammal on a monthly rent of Rs.18.75 payable on the first week of every succeeding month. The said tenant was regularly paying the rent and the receipts were issued in her name. During the recent inspection of temple authorities, it was found that the tenant Rajathiammal died and the defendants are in occupation of the schedule property and they are paying the rents to Devasthanam in the name of the deceased defendant.

4. After following the procedure, the plaintiff temple fixed the fair rent as Rs.6326/- per month from 01.11.2001 and the same was intimated to the tenant in its letter dated 29.11.2002. Following the same, the plaintiff temple issued legal notice dated 12.01.2005 terminating the tenancy in respect of the land on completion of the month ending 31.01.2005 and demanded the defendants to quit and deliver the vacant possession of land after removing the superstructure. Since the defendants did not comply with the demand of the plaintiff temple, the suit was filed for eviction.



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5. In the written statement, the appellants/defendants have stated that the suit filed by the respondent/plaintiff on the ground that notice of termination based on the unilateral fixation of fair rent is not valid and the plaintiff is not entitled for recovery of possession.

6. Before the Trial Court, the Executive Officer of the plaintiff temple was examined as PW1 and Exs.A1 to A6 were marked. No oral evidence was adduced on the side of the defendants but, Ex.B1 was marked.

7. On consideration of oral and documentary evidence, the Trial Court dismissed the suit on 31.01.2008 and on appeal, after affording opportunity to both the parties, the Lower Appellate Court has allowed the appeal. Hence, this Second Appeal.

8. The learned counsel appearing for the defendants would state that the Lower Appellate Court has erred in reversing the well considered judgment of the Trial Court and the finding of the Lower Appellate Court that



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Executive Officer or the Trustees can fix the fair rent even without issuing any show cause notice and retrospectively monthly rent can be fixed is not proper.

He further contended that joint patta was given under the Innam Abolition Act.

9. Heard the learned counsel appearing for the appellants and perused the materials available on record.

10(a) On perusal of the plaint, I find that the respondent/plaintiff temple represented by its Executive Officer has filed the suit as against the defendants 1 to 4 in respect of the suit schedule property, a piece and parcel of land and a superstructure thereon bearing Door No.297, Plot No.109, Block No.25, Survey No.70/2 and T.S.No.11 measuring about 1350 sq.ft. situated in Poonamallee High Road, Aminjikarai, Chennai bounded by specific four boundaries

10(b) The plaintiff temple absolutely claims title to the suit schedule property and it was contended that the suit property was originally let out to



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one Rajathiammal @ Rajammal on a monthly rent of Rs.18.75 payable on the first week of every English Calender month and the original lessee Rajathiammal @ Rajammal was regularly paying the rent.

10(c) The appellants/defendants claim that they are the legal representatives of the original tenant Rajathiammal @ Rajammal but they have not taken any initiative to transfer the tenancy in their favour from the Tamil Nadu Hindu Religious Endowment Department assumes significance.

10(d) As per Ex.A1 – letter dated 29.11.2002, due notice has been given to the defendants that the fair rent at the rate of Rs.6326/- per month was fixed w.e.f. 01.11.2001. The said notice was acknowledged by the second defendant and another letter was sent by the plaintiff on 23.08.2003 to the defendants to pay the accumulated arrears of rent. The defendants neither paid the fair rent nor paid the arrears of fair rent. Thereafter, Ex.A2 – legal notice dated 11.01.2005 was issued under Section 106 (4) of Transfer of Property Act terminating the tenancy and calling upon the defendants to quit and deliver the vacant possession of land on 01.02.2005 after removing the



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superstructure put up in the land and further warned the defendants not to encumber the suit schedule property.

11. Though a stand has been taken that the plaintiff has not let out the suit property to the defendants, under the Tamil Nadu Minor Inam Abolition Act 1963, joint patta was issued in favour of the temple and in favour of Rajathiammal @ Rajammal, the appellants/defendants denied the title of the temple over the suit schedule property and also questioned the fixation of fair rent and also questioned the fair rent as defective for not following the principles of natural justice.

12. The Lower Appellate Court, considering G.O.Ms.No.260 (Tourisum Culture and Religious Endowments Department) dated 06.11.2015 has held that the Executive Officer is competent to initiate legal proceedings for eviction. The said Government Order was upheld in W.P.No.2290 of 2011 dated 31.10.2017 and hence, the said G.O. is held to be valid and consequently, the suit is maintainable.



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13. The present suit property in Survey No.70/2, being the Religious Minor Inam land, patta has been granted to the plaintiff temple which is evident from Ex.A4 – property register. The defendants have not disputed Ex.A4 – property register. It is seen from Ex.A4 that the plaintiff temple is the owner of the suit property and as per Taluk records, one Rajathiammal wife of Natesan Chettiyar in Block No.25, T.S.No.11, Aminjikai Village is the occupant of the said property.

14(a) It remains to be stated that in any Religious Inam lands, where anyone has put up construction and in possession, patta for the land only could be granted in favour of the Religious Institution and regarding the superstructure, a joint patta could be issued by including the tenant in such land, provided the person in joint possession should pay ground rent to the Government. In the present case, admittedly the original tenant has paid ground rent to the temple and Ex.A5 – rental receipt would prove that the 1st defendant has also paid ground rent to the plaintiff temple.



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14(b) Having paid the rent by the 1st defendant and payment of rent by the original tenant, Rajathiammal also could not be denied by the 1st defendant, the defendants are estopped to deny the title of the plaintiff temple over the land of the suit property.

14(c) Accordingly, the Lower Appellate Court has rightly confirmed the title of the temple besides also followed the decision of the Division Bench judgment of this court in W.A. 1294 & 1302 of 2021 in ***L.Varalakshmi v. The Commissioner, Hindu Religious and Charitable Endowments, Chennai and others*** wherein the very same temple - land was subject matter and the Division Bench of this Court has confirmed the title of the temple of the land in possession and the defendants is only the owner of the superstructure and no favour could be given to the defendants. As observed by the Division Bench in the above said decision, the title of the plaintiff temple is confirmed following the above cited judgment.



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WEB COPY 15. Coming to the question of whether Ex.A2 – quit notice issued under Section 106 of the Transfer of Property Act, is valid or defective, Ex.A2 - notice is preferably in order as the defendants have not only denied the title over the suit land but failed to pay the fair rent, after receipt of two notices, one for fixing of fair rent and another for payment of arrears of fair rent so fixed, which resulted in issuance of Ex.A2 – termination of tenancy notice.

16. On perusal of Ex.A2 – notice, it is seen that the plaintiff has clearly provided 15 days time to vacate and deliver the vacant possession of the suit property. There is absolutely no necessary for the plaintiff to give any reason for terminating the tenancy.

17. It is settled position of law that once a valid notice under Section 106 of Transfer of Property Act is issued and tenancy was terminated, the tenant has no other option except to vacate and deliver the vacant possession of the demised property. Whereas in the present case, the 1st defendant has denied title of the plaintiff temple and also questioned the method of fixing



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fair rent for the suit property by the plaintiff temple.

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18. At this juncture, the learned counsel for the appellants/defendants would contend that the fair rent fixed is higher. On perusal of the document filed before the Trial Court, it is seen that due notice has been issued to the defendants before fixation of fair rent and thereafter only fair rent has been fixed and demand notice was sent. On non-payment of the fair rent, arrears has accumulated and hence, further notice to pay the arrears of fair rent has also been sent to the defendants. Had the defendants are aggrieved by the order of the Executive Officer in fixing the fair rent, there is a special provision under HR&CE Act to file an appeal within 15 days to the Commissioner. In this case, the defendants have not taken any steps for the same.

19(a) Section 34 -B of the Tamil Nadu HR&CE Act empowers the plaintiff to terminate the tenancy on non-payment of lease amount to the religious institution. After giving reasonable opportunity, in this case, Ex.A1, A2 & A.3 notices have been duly issued by the plaintiff and hence I find that



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the plaintiff has followed the procedure contemplated under Tamil Nadu HR&CE Act and the order passed by the Lower Appellate Court cannot be found fault with regard to absence of any error or misleading of the interpretation of the Act.

19(b) Hence, I find that the plaintiff temple is the owner of the land and the Show Cause Notice to fix the fair rent has been issued, fixation of fair rent has also been served upon the appellants/defendants and demand notice to pay the fair rent has also been served. On non-payment of fair rent arrears, notice was also been issued and served upon the defendants. Ex.A3 - notice terminating the tenancy has also been properly issued by the plaintiff temple, both under Section 106 of Transfer of Property Act and under Section 34-B of Tamil Nadu Hindu Religious and Charitable Endowments Act. Hence, I find that the order of the Lower Appellate Court does not suffer from any irregularity or illegality warranting interference by this Court. Accordingly, I find no merit in this Second Appeal.



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20. In the result, **the Second Appeal is dismissed** confirming the judgment and decree in A.S.No.624 of 2008 dated 05.01.2024 by the V Additional Judge, City Civil Court, Chennai reversing the decree and judgment in O.S.No.8312/2005 dated 31.01.2008 by the VIII Assistant Judge, City Civil Court, Chennai. No costs. Consequently, the connected Miscellaneous Petition is closed.

21.06.2024

Index : Yes/No
Neutral Citation : Yes/No
rgr

To

1.The V Additional Judge,
City Civil Court,
Chennai

2.The VIII Assistant Judge,
City Civil Court,
Chennai

3.The Section Officer
VR Section, High Court
Madras.



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RMT.TEEKAA RAMAN, J.

(rgr)

**Judgment in
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