



S.A.No.50 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.01.2024

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No. 50 of 2024
&
C.M.P. No. 1332 of 2024

Nirmala Devi

...Appellant

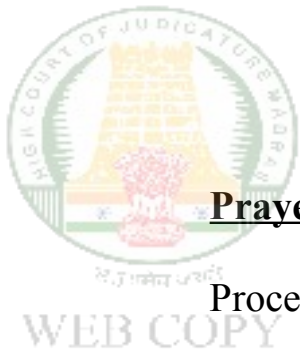
Vs.

1.The Joint Commissioner,
HR & CE Department,
Nungambakkam, Chennai – 600 034.

2.The Assistant Commissioner,
HR & CE Department
Nungambakkam, Chennai – 600 034.

3.The Executive Office,
Arulmighu Agatheeswarar Temple,
Villivakkam,
Chennai – 600 049.

...Respondents



S.A.No.50 of 2027

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree passed in A.S.No.335 of 2018 dated 15.03.2019 on the file of the learned XVIII Additional City Civil Court, Chennai confirming the Judgement and Decree dated 28.04.2018 passed in O.S.No.4561 of 2016 on the file of the learned XV Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr. S.Sadasharam

For Respondents : Dr. S.Suriya
Additional Government Pleader.

JUDGMENT

The plaintiff who has been unsuccessful before the Courts below is the appellant before this Court challenging the Judgement passed by the XVIII Additional City Civil Judge, Chennai in A.S.No.335 of 2018 in and by which the learned Judge has confirmed the Judgement and Decree passed by the XV Assistant City Civil Judge, Chennai. The facts are set out herein below with the parties being referred to in the same ranking as before the Trial Court.



S.A.No.50 of 2027

2. The plaintiff had filed the suit O.S.No.4561 of 2016 for a declaration that the suit property is gramanatham and for an injunction restraining the defendants, their men, servants, employees, subordinates from interfering with her peaceful possession and enjoyment of the suit property.

3. The case of the plaintiff is that her father-in-law, Dakshinamoorthy was in enjoyment of the suit property and on his death, his wife, the plaintiff's mother-in-law was in enjoyment of the same. After her lifetime, the plaintiff's husband Nagarajan and the plaintiff were in possession of the suit property. The said Nagarajan died on 28.11.2007, leaving behind the surviving plaintiff and their son Narenthiran as his legal heirs.

4. The plaintiff would submit that she had obtained electricity connection and ration card in her name in respect of the suit property and had also been paying property tax, water tax, sewerage tax to the Chennai Metropolitan Water Supply and Sewerage Board. While so,



she was issued with a notice dated 16.12.2015, asking her to showcause as to why she should not be evicted from the suit property. The notice was issued by the 3rd defendant and the plaintiff had immediately contacted the 3rd defendant and she was advised to pay monthly rents and arrears of rents.

5. Thereafter, she verified and found that the suit property is classified as a gramanatham and was not the property of the 3rd defendant. Therefore, it is her contention that 3rd defendant cannot make any claim over the suit property and hence the suit.

6. The 3rd defendant had filed a written statement inter alia contending that as per records of the temple the tenancy stood in the name of the plaintiff's mother-in-law, Sakunthala and her death has not been informed to the temple by her son Nagarajan and even his death was not informed by the plaintiff to the 3rd defendant.

7. The 3rd defendant would submit that the tenancy was not



transferred in the name of the plaintiff. The payment of electricity charges or property tax would not confer any title over the plaintiff.

Since there were arrears in the payment of rent, the 3rd defendant had initiated proceedings under Section 78 (2) of the H.R. & C.E. Act before the 1st defendant, against the said Sakunthala. Though notice was received on the plaintiff, she had not appeared before the 1st defendant.

8. The 3rd defendant would further submit that the first prayer in the suit cannot be granted as it is within the exclusive domain of the revenue authorities and the Civil Court has no jurisdiction to grant the said prayer. Further, adequate Court fees has not been paid. The 3rd defendant would further submit that the suit is not maintainable in the light of Section 108 of the H.R. & C.E Act. Therefore, they sought for the dismissal of the suit.

9. The Trial Court had framed the following issues:



S.A.No.50 of 2027

“(i)Whether the Court has got no jurisdiction to try the suit in respect of the prayer A.?

(ii)Whether the suit property belongs to the temple ?

(iii)Whether the plaintiff is a trespasser?

(iv)Whether the plaintiff is estopped from denying title of temple in suit property?

(v)Whether the suit is barred U/s. 108 of T.N.H.R. & C.E. Act?

(vi)Whether the plaintiff is entitled to relief of declaration as prayed for?

(vii)Whether the plaintiff is entitled to relief of permanent injunction as prayed for?

(viii)Whether D3 is entitled to exemplary cost?

(ix)To What other relief, the plaintiff is entitled to?

10. The plaintiff has examined herself as P.W.1 and marked Ex.A.1 to Ex.A.7. On the side of the defendants one Jayaprakash Narayanan was examined as D.W.1 and Ex.B.1 to Ex.B.9 were marked.

11. The Trial Court on considering the evidence on record and the arguments submitted held that the revenue records, namely, Ex.A.2



which is the extract of the settlement register would clarify the property as a gramanatham and the names of Sakunthala and Nagarajan are found. However, with reference to utilisation of the land, it would describe it as super structure and it appears that the said Sakunthala's name was inserted only on 31.08.1993. The learned Judge held that the revenue entries would not confer title over the property. The property register, Ex.B.7 maintained by the 3rd defendant clarifies the land as Punja Land and it is leased out and the suit property finds place in property register.

12. The Trial Court has also noticed that the said Sakunthala had paid rents to the 3rd defendant temple as evidenced by Ex.B.1 and Ex.B.2. Further, the plaintiff has herself requested the 3rd defendant under Ex.B.3 letter dated 29.11.2012 to transfer the tenancy in respect of the suit property in her name. Therefore, the learned Judge held that the plaintiff had herself recognised the 3rd defendant as the owner of the property and that she was in occupation of the suit property as a tenant. However, this fact has been suppressed in the plaint and it is only



during the cross examination of the plaintiff as P.W.1 that she has come out with the truth. The plaintiff by setting up a separate title to the property has denied the title of the temple. Therefore, the suit came to be dismissed.

13. Aggrieved by the said Judgement and Decree, the plaintiff had filed A.S.No.335 of 2018 on the file of the XVIII Additional City Civil Judge, Chennai. The Lower Appellate Court has also confirmed the Judgement and Decree of the Trial Court. It is aggrieved by the same that the plaintiff is before this Court.

14. Heard the learned counsel and perused the records.

15. The plaintiff has come to the Court stating that the suit property belonged to her father-in-law and on his death it devolved on her mother-in-law, Sakunthala and on the demise of the said Sakunthala, the property devolved on the plaintiff's husband. It is the contention of the plaintiff that the property was being enjoyed by her



and her husband, Nagarajan who had also died on 28.11.2007 leaving behind the plaintiff and her son Narenthiran. The plaintiff has therefore come to the Court suppressing the fact that she and her predecessor in title were tenants under the temple. It is only in her cross examination as P.W.1 that she has admitted that they were tenants in respect of the suit property.

16. The Lower Appellate Court has extracted the admission of P.W.1 during her cross examination. It is also admitted that the plaintiff was paying rents to the 3rd defendant which she later defaulted and therefore the plaintiff has been in arrears of rent. The plaintiff is also simultaneously contesting the Section 78 proceedings before the 1st defendant. As rightly held by the Courts below, the first relief for declaring the suit property to be a gramanatham vests only with the revenue authorities and the jurisdiction of this Court is ousted. Therefore, the plaintiff is not entitled to the first relief.

17. With regard to the second relief, the plaintiff by denying the



S.A.No.50 of 2024

title of the temple to the property has given a ground to the authorities to initiate eviction proceedings and the plaintiff has also contesting the said proceedings. Therefore, the plaintiff who has suppressed the true facts and come to Court with unclean hands would not entitle to the relief of injunction.

18. Both the Courts below have rightly arrived at this conclusion and I see no reason to interfere with the well considered Judgement and Decree of the Courts below. The Second Appeal is therefore dismissed. Consequently, the connected Civil Miscellaneous Petition is closed. No costs.

23.01.2024

Index : Yes/No
Internet : Yes/No
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To

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

10/12



S.A.No.50 of 2027

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

P.T. ASHA, J,

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S.A.No.50 of 2024

S.A.No. 50 of 2024

23.01.2024