



S.A.(MD).No.258 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.(MD).No.258 of 2024

and

C.M.P.(MD).No.5062 of 2024

Arumugam

... Appellant

Vs.

Viyasarajapuram sivagnanamoothy Kovil,
represented by its Hugdar, Trustee and
Worshiper Narayanan Asari,
S/o.Subramaniya Asari,
Kannan Kovil Street,
Nanguneri Taluk,
Kalakkadu,
Tirunelveli District.

... Respondent

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 20.12.2023 passed in A.S.No.5 of 2023 on the file of the Sub Court, Nanguneri confirming the judgment and decree dated 28.02.2014 passed in O.S.No.267 of 2004 on the file of the Additional District Munsif Court, Nanguneri.



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For Appellant : Mr.M.R.Sreenivasan

J U D G M E N T

The defendant in the suit is the appellant. The respondent filed a suit seeking recovery of possession of the site of the suit property and also for recovery of arrears of rent and other reliefs. The suit was decreed by the trial Court by granting decree for possession. Aggrieved by the same, the appellant preferred a first appeal and the same was also dismissed. Hence, he is before this Court.

2. According to the respondent/plaintiff, the suit property belonged to respondent temple and the temple is represented by its trustee and worshipper. It was claimed by the respondent that the appellant's grandfather Masana Konar entered into lease agreement with the respondent temple on 23.02.1974, agreeing to pay a rent of Rs.50/- per month. The agreed rent was increased from time to time. After the death of Masana Konar, his son and the appellant's father Veeraputhira Konar enjoyed the suit property as a lessee. The rent for suit



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property was enhanced to Rs.100/- from 01.11.2001. The appellant became lessee of the suit property, after the death of Veerapathira Konar and he paid rent on 13.03.2002, in the name of Veerapathira Konar for six months and thereafter, he failed to pay the rent to the respondent. The respondent issued a notice terminating the tenancy and also seeking arrears of rent on 05.07.2003 and in spite of the same, the appellant failed to hand over the possession and also pay the arrears. Hence, the respondent was constrained to file a suit for recovery of possession.

3. The appellant herein filed a written statement and denied the title of the respondent over the suit property. It was claimed by the appellant that the suit property belonged to Government and the appellant and his ancestors had been in possession and enjoyment of the suit site by running a restaurant thereon for more than 45 years. It was also claimed that the appellant and his predecessor in interest had been in possession and enjoyment of the suit property for more than statutory period and hence, prescribed title over the same. Thus, the appellant sought for dismissal of the suit. The appellant also disputed the competency of person, who filed the suit as a trustee of the respondent temple.



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4. Before the trial Court, the trustee of the temple was examined as P.W.1 and two other witnesses were examined as P.Ws.2 and 3. On behalf of the respondent, 10 documents were marked as Exs.A1 to A10. On behalf of the appellant, one Marimuthu was examined as D.W.1 and 3 documents were marked as Exs.B1 to B3. Two other documents were marked as Exs.X1 and X2.

5. The trial Court, on consideration of evidence available on record, came to the conclusion that the appellant had been enjoying the suit site only as a lessee and hence, granted a decree for possession. Aggrieved by the same, the appellant preferred an appeal in A.S.No.5 of 2023 on the file of Sub Court, Nanguneri. The first appellate Court affirmed the findings of the trial Court. Aggrieved by the concurrent findings, the appellant is before this Court.

6. The learned counsel appearing for the appellant submitted that the suit property is a Natham Poramboke property and therefore, the respondent temple has no right over the same. The learned counsel for the appellant further submitted that the respondent failed to produce any document to establish



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temple's title over the suit property and hence, the Courts below ought not to have granted a decree for possession in favour of the respondent temple. The learned counsel for the appellant also submitted that the findings rendered by the Courts below as if the appellant had been enjoying the suit property as a lessee of the suit site is vitiated by non-consideration of evidence available on record.

7. The respondent filed a suit for recovery of possession based on lessor-lessee relationship. It was the case of the respondent that originally the grandfather of the appellant Mansana Konar entered into lease arrangement with respondent temple on 23.02.1974 and thereafter his son and appellant's father Veerapathira Konar enjoyed the suit site as a lessee. After the death of Veerapathira Konar, the appellant has been enjoying the suit property as a lessee only. In order to prove the lessor-lessee relationship, the respondent temple produced Ex.A10 counter foils of rental receipt issued in the name of appellant's father Veerapathira Konar and the appellant's grandfather Masana Konar. When the appellant's father and grandfather paid rent to the respondent temple accepting the respondent temple's right over the suit property, the contention raised by the appellant as if respondent temple has no right over the suit property and it was not



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entitled to maintain a suit for recovery of possession etc., cannot be accepted. Further, Ex.A1 / Adangal Extract and Ex.A2 / Natham Adangal Register would establish the suit property is registered in the name of Sudalaimada Samy temple in revenue records. The appellant's own witness D.W.1 clearly admitted that the respondent temple was also known as Kannar Kovil. Therefore, both the Courts below based on Exs.A1 and A2 and the admission of D.W.1 came to the conclusion that the suit property belonged to respondent temple and hence, the contention raised by the appellant as if the suit property is a Natham Puramboke belonged to the Government is not acceptable to this Court. The Courts below on appreciation of counter foils of rental receipt issued in favour of the appellant's father and grandfather, rightly came to the conclusion that the appellant was a lessee under the respondent temple. The said conclusion is based on the evidence available on record and it is not vitiated by any perversity. The respondent terminated the lease by issuing notice under Ex.A8 and the same was received by the respondent under Ex.A9 / postal acknowledgement card. No argument is advanced regarding legality or otherwise of notice to quit. It is also seen that the appellant has not paid the rent to the respondent temple after 2002. The person representing respondent temple not only described him as a trustee and also



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described him as a worshipper of temple. In these circumstances, the Courts below are justified in granting a decree for ejectment in favour of the respondent temple by treating the appellant as a defaulting lessee. I do not find any question of law much less substantial question of law to interfere with the findings arrived by the Courts below and hence, the Second Appeal is dismissed. No costs.

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NCC : Yes/No
Index : Yes/No
Internet : Yes/No

akv

To

- 1.The Sub Court,
Nanguneri.
- 2.The Additional District Munsif Court,
Nanguneri.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR,J.

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