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SA No. 815 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-09-2025

CORAM

THE HON'BLE DR.JUSTICE R.N.MANJULA

SA No. 815 of 2009

M/s Kabaliswarar Temple
Rep By Its Executive Officer D. Gajendran S/o.
Thambusamy Vijayapuram Tiruvarur.

..Appellant / Plaintiff

Vs

1. MALATHY
W/o. Of K Murugesan No 96 Anna Salai
Vijayapuram Tiruvarur Dist.
2. BABY
W/o. Of K Shanmugam No 96 Anna Salai
Vijayapuram Tiruvarur Dist.

..Respondents /
Defendants

PRAYER : Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 16.12.2004 and made in A.S.No.78 of 2003 on the file of the Sub Court, Tiruvarur, confirming the judgment and decree dated 30.07.2003 and made in O.S.No.313 of 1991 on the file of the District Munsif Court, Tiruvarur.

For Appellant(s): M/S G. GOVARTHANAN

FOR M/S.B. RAMAMOORTHY

For Respondent(s): M/S P.SRIVIDYA
M/S.A.MUTHUKUMAR
FOR RR1 & 2

JUDGMENT



This Second Appeal has been filed to set aside the judgment and decree dated 16.12.2004 made in A.S.No.78 of 2003 on the file of the Sub Court, Tiruvarur, confirming the judgment and decree dated 30.07.2003 made in O.S.No.313 of 1991 on the file of the District Munsif Court, Tiruvarur.

2. Heard Mr.G.Govarthanan, learned counsel for the appellant and Ms.P.Srividya, learned counsel for the respondents and perused the materials available on record.

3. The Second Appeal has been preferred by the appellant / plaintiff, who has filed a suit in O.S.No.313 of 1991 against the defendants for seeking the relief of recovery of possession after the removal of the superstructure thereon and the recovery of arrears of rent and for future mesne profits along with costs. The Trial Court had dismissed the suit. The First Appeal preferred challenging the judgment of the Trial Court in A.S.No.78 of 2003 was also dismissed. Aggrieved over the same, the plaintiff has filed the present Second Appeal.

4. The short facts averred in the Appeal are as follows: -

The suit schedule property belongs to the plaintiff temple. The defendants are the paguthithraras of the site. The paguthi is Rs.288/- per fasli year. There is



no residential or non-residential building in the site. There was only a shed with asbestos roof. The site was used as a garden to grow flowers for pooja. The defendants have purchased the site just recently. On 05.05.1991, the plaintiff has issued a notice to terminate the tenancy by 31.05.1991. The defendants received the notice on 08.05.1991 and thereafter, filed an application to repair the old shed in the site.

4.1. The Assistant Commissioner gave permission on 13.05.1991 to repair the old shed only. No permission was given for the new construction. After filing the caveat, the defendants started to put up a new building. The plaintiff has filed a suit for permanent injunction to prevent the defendants from constructing the building. Despite the interim injunction, the defendants continue to put up construction. The plaintiff issued notice dated 05.05.1991 under the City Tenants Protection Act, only to avoid unnecessary contentions, even though the defendants are not entitled to the benefit of the said Act. The defendants are bound to pay Rs.384/- as past rent till the end of October, 1991 and they are bound to pay future rent as well till the date of delivery. Hence, the plaintiff had filed a suit seeking for the relief of recovery of possession after removing the superstructure and for the recovery of rent arrears along with future profits.



5. The averments stated in the written statement of the defendants

are in brief: -

The defendants have taken the land on lease and put up a pucca construction and are in enjoyment of the same. The lease has been granted only for building purpose and the building is worth about several lakhs. It is false to state that the defendants have put up a building after filing of the suit in O.S.No.193 of 1991. The defendants are entitled to the benefits under the provisions of City Tenants Protection Act. As per Section 32 of the said Act, they are entitled to receive compensation for the superstructure. The plaintiff without offering any value for the superstructure, had filed the suit.

5.1. No valid notice under Section 11 of the T.P. Act is issued. The defendants are entitled to purchase the land and prayed for a direction from the Court to sell the land to the defendants as they were ready and willing to purchase the land for the price fixed by the Court. The plaintiff-temple has not been properly represented by a person who is empowered to sue on behalf of the temple. The Executive Officer has no authority to initiate and conduct legal proceedings for and on behalf of the temple. The suit has been filed by the Executive Officer without any sanction or authority from the competent person and hence, the suit is liable to be dismissed at the threshold stage itself.



6. On the basis of the above pleadings, the Trial Court has framed the following issues and additional issues:

- "1. Whether the plaintiff is entitled to recovery of possession after removing the superstructure?*
- 2. Whether the plaintiff is entitled for the past and present rent?*
- 3. Whether the defendants are entitled to get the benefit under City Tenants Protection Act?*
- 4. Is it true to state that the notice under Section 11 of the City Tenants Protection Act was not given?*
- 5. What other relief the plaintiff is entitled?"*

Additional issues framed by the Trial Court: -

- "6. Is the suit filed by the Executive Officer is maintainable as the trustees alone had locus to file suit representing the temple?"*



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7. During the course of the trial, on the side of the plaintiff, one witness was examined as P.W.1 and Ex.A1 to Ex.A6 were marked. On the side of the defendants, one witness was examined as D.W.1 and no documents have been marked.

8. On the conclusion of trial, on considering the evidence available on record, the Trial Court had dismissed the suit and the First Appeal has been preferred and the same was also dismissed and now, the Second Appeal has been filed by the plaintiff and the same has been admitted on the following substantial questions of law: -

“i) Whether the findings of the courts below that the non-production of the appointment order of the Executive Officer will have legs to stand when admittedly the appointment of the Executive Officer to the appellant temple is under the provisions of Ex.A4?

ii) Whether the findings of the courts below that the provisions of the scheme framed under Ex.A4 will be in force only for the time when the trustees were not appointed is correct as per the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1968?

iii) Whether the respondents are entitled to question the competency of the Executive Officer to represent the temple at later stage of proceedings when the respondents have not taken



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such a defence in application under Section 9 of the City Tenant's Protection Act, which went up to High Court and the appellant succeeded?"

9. The learned counsel for the appellant / plaintiff submitted that the plaintiff has already filed a scheme decree to manage the temple. Under Ex.A4 scheme decree to manage the temple, a *suo moto* proceeding has been issued by the Deputy Commissioner of HR&CE Department, Thanjavur dated 10.03.1958, in O.A.No.134 of 1954. It has been further submitted that the Executive Officer shall be the person who is entitled to sue on behalf of the temple and that has been ignored by both the Courts below. The trial Court had failed to consider Ex.P4 and misconstrued that it is only a temporary arrangement. The defendants never denied the title of the temple and the administration of the Executive Officer. Hence, the Appeal should be allowed.

10. The learned counsel for the respondents / defendants submitted that even though the scheme decree has authorised for Executive Officer to represent the temple, the said scheme decree is relevant only for the period till the trustees are appointed. Once the trustees are appointed as per Section 45 of the HR & CE Act, the Joint Commissioner has to give power to the Executive Officer to represent the temple before the Court. In the absence of such



authority issued by the Joint Commissioner, the Executive Officer is not competent to maintain the suit.

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11. In support of the above contention, the learned counsel for the respondents relied on Judgment of this Court held in *Arthanaareeshwarar Temple, Thiruchencode vs. T.M.Muthusamy Padayachi and Others* reported in **2003 (1) LW 386**. The relevant paragraph is extracted hereunder:

"19. Maintainability of the suits :

The Executive Officer's suit is filed by the then Executive Officer. The case of the Executive Officer is that after his appointment in the year 1970, he came to know, after enquiry, that the suit property is a trust property and that the various registered documents obtained are colourable and not binding on the temple. Though the question as to the competency of the Executive Officer to file the suit was not raised in the written statements, the question was raised in the course of argument that under the H.R. & C.E. Act, the Board of Trustees alone have been empowered to sue and be sued and that before filing the suit, enquiries have been made by the authorities of the H.R. & C.E. Department and it was found that there was no Nandavanam in the suit property. Rejecting the objection of the plaintiffs, the trial court proceeded to consider the question of maintainability as the question of law and found that the Executive Officer had no authority to file the suit and that he cannot invoke [Article 96](#) of the [Limitation Act](#). The Supreme Court, in [STATE OF RAJASTHAN VS. RAO RAJA KALYAN SINGH](#), has held that the plea of maintainability of a suit is essentially a legal plea. If the suit, on the face of it, is not



maintainable, the fact that no specific plea was taken or no precise issues were framed is of little consequence. Therefore, it is open to the parties to raise the plea of maintainability of the suit as a legal plea without there being a specific plea in the written statement or the issues. "

12. The learned Trial Judge and the First Appellate Judge had rightly understood the position of law and applied all the facts of the case and had arrived at a correct conclusion and dismissed the case of the appellant. Hence, this Second Appeal should be dismissed.

13. Despite there are three substantial questions of law that were framed, all devolve around one single point about the power of the Executive Officer to maintain the suit on behalf of the temple. On facts, the scheme decree has been passed in respect of the administration of the temple on 10.03.1958 which has been marked as Ex.A4. According to the scheme framed by the Court, the Executive Officer shall administer the properties of the temple and he shall be responsible for the day to day affairs of the temple, including conduct of the festivals and represent the temples in the suits filed by the temple or against the temple. The said fact was not denied by the respondents also. But the only contention of the respondents is that the terms of the scheme decree can be construed as an interim arrangement until the trustees are appointed. Once the



trustees are appointed, it is the trustees who have to administer the temple and not the Executive Officer.

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14. The duties and powers of the Executive Officer can be only in accordance with the power given to him by the Commissioner. There cannot be any quarrel on this point because it is very much patent from the provisions of HR & CE Act. As per Section 23 of the HR & CE Act, the general Superintendence and control over the temple properties would be with the power of the Commissioner. As per Section 45 of the HR & CE Act, the Commissioner is the appointing authority of the Executive Officer and the Executive Officer can derive the powers only from the powers conferred upon him by the Commissioner as his duties are also assigned by the Commissioner with regard to the representation of the suits filed or against the temple.

15. The position of law has been held in the judgment of this Court in ***Arthanaareeshwarar Temple, Thiruchencode vs. T.M.Muthusamy Padayachi and Others*** reported in 2003 (1) LW 386. In the said judgment, it is held that so far as the Executive Officer's suit is concerned, he is the person appointed by the Commissioner and executes the duties as assigned to him by the Commissioner. In this regard, the relevant paragraph is extracted hereunder:

"20. Insofar as the Executive Officer's suit is concerned, it is seen that 'Executive Officer' has been



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defined under Section 6(2) of the H.R. & C.E. Act. According to this definition, Executive Officer is a person who is appointed to exercise such powers and discharge such duties appertaining to the administration of a religious institution as are assigned to him by or under the Act or the Rules framed thereunder. 'Trustee' has been defined under [Section 6\(22\)](#) of the Act as any person or body in whom the administration of a religious institution is vested. [Section 45](#) of the Act deals with the appointment and the duties of an Executive Officer. Sub-section (2) to [Section 45](#) says that the Executive Officer shall exercise such powers and discharge such duties as may be assigned to him by the Commissioner. The proviso says that only such powers and duties as appertaining to the administration of the properties of the religious institution shall be assigned to the Executive Officer. The powers and duties of the Executive Officer shall be defined by the Commissioner. [Section 28](#) of the Act empowers the trustee of every religious institution to administer its affairs and to apply the funds and properties of the institution. He shall be entitled to exercise all powers incidental to the provident and beneficial administration of the religious institution."

16. However, the submission of the learned counsel for the appellant is that the trustees have not been appointed so far and hence, the power given to the Executive Officer by virtue of the scheme decree dated 10.03.1958 is still in force and hence, the suit filed by the Executive Officer is maintainable.



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17. In reality, P.W.1 who has been examined on the side of the appellant / plaintiff, has admitted in his evidence that the trustees have been selected twice, when the trustees are elected. The purpose of the scheme decree would come to an end thereafter, the administration of the temple would be taken over by the trustees in accordance with the provisions of HR & CE Act.

18. However, the learned counsel for the appellant submitted that subsequent to the suit, on 12.02.2007, the Commissioner had issued a circular by conferring the powers for managing the properties and to represent the suits in the Court by the Executive Officer.

19. Before filing this Appeal and after the judgment of the First Appellate Court, a circular has been issued by the Commissioner giving powers to the Executive Officer and such power is given to both the pending and future suits. So it is claimed by the appellant / plaintiff that the Executive Officer is a competent person to represent the temple.



20. As the above circular has been given only after the First Appeal has been preferred, the Trial Court and the First Appellate Court may not be aware of the said circular dated 12.02.2007. As the suit and the First Appeal has been dismissed only on this technical point and the technicalities have now been cured, I feel one more opportunity can be given to the plaintiff to contest the case. Hence, the impugned judgment has to be set aside and the matter has to be remanded back to the file of the Trial Court to hear the matter afresh.

21. In the result, this Second Appeal is allowed and the judgment and decree dated 16.12.2004 made in A.S.No.78 of 2003 on the file of the Sub Court, Tiruvarur and the judgment and decree made in O.S.No.313 of 1991 dated 30.07.2003 on the file of the District Munsif Court, Tiruvarur are set aside. The matter is remanded back to the file of the Trial Court to hear the matter afresh and dispose the same on merits as expeditiously as possible. No costs.

16-09-2025

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

GSK



To

1. The Sub Court,

Tiruvarur.

2. The District Munsif Court,

Tiruvarur.

3. MALATHY

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DR.R.N.MANJULA, J.

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