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S.A. No.102 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2025

CORAM :

THE HONOURABLE MR.JUSTICE P.DHANABAL

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1. M. Rajasekara Naidu [Deceased]

S/o. Munusamy Naidu

2. R. Andal W/o. Rajasekara Naidu

3. R. Shridharan S/o. Rajasekara Naidu

4. J. Sumathi D/o. Rajasekara Naidu

[2 to 4 Appellants brought on record as
Legal Representatives of the deceased / sole
appellant vide order dated 24.01.2018
made in C.M.P. No.22596 of 2017]

...Appellant / Appellant /
Defendant

Vs.

Arulmigu Ekambareswarar Thirukoil

Hindu Religious Temple under the
control and supervision of

Hindu Religious & Charitable Endowment

Department [H.R. & C.E.]

represented by its Executive Officer,

Temple Premises at Aminjikarai, Chennai-29....

/

Respondent / Respondent
Plaintiff

PRAYER: The Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 18.03.2014 in A.S. No.403 of 2013 passed by the XIX Additional City Civil Court, Chennai confirming the decree and judgment passed in O.S. No.1528 of 2006 on the file of the XIII Assistant Judge, City Civil Court, Chennai dated 03.11.2020.

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For Appellant : Mr. Vijayan Subramanian

For Respondents: Mr. D.R. Sivakumar

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JUDGMENT

The Second Appeal has been filed as against the decree and judgment passed by the I Appellate Court in A.S. No.403/2013 on the file of the XIX Additional Judge, City Civil Court, Chennai dated 18.03.2014, wherein the appellant herein, has preferred an appeal as against the decree and judgment passed by the Trial Court i.e, XIII Assistant Court, City Civil Court, Chennai in O.S. No.1528 of 2006 dated 03.11.2020. Before the Trial Court, the respondent herein filed a Suit in O.S. No.1528 of 2006 for directing the defendant to quit and deliver vacant possession of the Suit property after removing the superstructure put up by him and standing on the Suit land to the Plaintiff. The trial Court have decreed the Suit and directed the defendant to deliver the vacant possession of the Suit land after removing superstructure put up by him within 6 months and also directed to pay arrears of rent from 01.03.2005 to 15.01.2006 and for damages from 15.01.2006 to 15.02.2006. The said Decree and Judgment was challenged through a first appeal before the I Appellate Court and the same was dismissed by the I Appellate Court. Aggrieved by the said decree and judgment, the present



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Second Appeal has been preferred.

2. The case of the Plaintiff before the Trial Court is as follows:-

The Devasthanam Arulmigu Ekambareswarar Thirukoil is the owner of the Suit property and the same was let out to the defendant on a monthly rent of Rs.50/- and the tenant was having a temporary structure in the Suit land. The defendant was very irregular in payment of the rent and now a sum of Rs.525/- is due, owing to the arrears of rent from 01.03.2005 to 15.01.2006. The defendant had also tried to put up illegal construction in the land belonging to the temple and thereby, the Plaintiff filed a Suit in O.S No.7131 of 1995 for permanent and mandatory injunction and the same was dismissed on 29.06.2005. Thereafter, the Hindu Religious & Charitable Endowment Department [H.R. & C.E.] fixed a fair rent @ Rs.2,756/- per month from 01.11.2001 onwards and the same could not be communicated to the defendant, since the Suit for permanent injunction was pending. The Plaintiff sent a Notice of Termination to the defendant through their counsel on 27.12.2005 terminating the tenancy with the expiry of 15.01.2006 and called upon the defendant to pay future damages at the rate of Rs.3,700/- per month from 16.01.2006 onwards. After receipt of notice, no reply was sent. After



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termination of tenancy, the defendant has no manner of right, title or interest to remain in possession of the property. Therefore, the Plaintiff filed the Suit.

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3. The case of the defendant before the Trial Court is as follows:-

The defendant is the tenant and he entered into an agreement of rent at Rs.50/- per month and the defendant got permission from the Plaintiff to repair and renovate the construction already existing in the property as early as 1982. After obtaining permission, repair works were carried out with the knowledge of the Plaintiff. The allegation that there was only a temporary structure in the Suit land is denied. The allegation that a sum of Rs.525/- is due towards arrears of land rent is denied. Also denied the allegation that he attempted to put up illegal construction in the property. In fact, the construction has been existing long back and only after obtaining permission, renovation work was done by the defendant. The Plaintiff is not entitled to fix the rent at Rs.2,756/- arbitrarily. The defendant denied that he is in wrongful possession and liable to pay damages at the rate of Rs.3,700/- per month. The defendant is liable to pay rent as agreed and always ready and willing to pay the same. But the Plaintiff did not collect the rent properly. Therefore, the Suit is liable to be dismissed.



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4. Based on the above said pleadings, upon hearing both sides and perusing the records, the trial Court had framed the following issues:-

(i) Is it true that the Suit is not maintainable?

(ii) Is it true that the Suit is not having cause of action?

(iii) Whether the Plaintiff is entitled for a judgment and decree as prayed for?

(iv) To what relief the Plaintiff is entitled to?

5. In order to prove the case, on the side of the Plaintiff, PW1 was examined and marked Ex.A.1 to Ex.A.6. On the side of defendant, DW1 was examined and Ex.B1 was marked. After analysing the oral and documentary evidences adduced on either side, the trial Court has decreed the Suit. Aggrieved by the said decree and judgment, the defendant in the Suit had preferred an Appeal before the I Appellate Court in A.S.403 of 2013 and the first Appellate Court, after hearing both sides, framed the following ***points for determination:***



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- 1. Whether the respondent / Plaintiff is entitled to get delivery of possession of the Suit schedule property from the appellant / defendant.***
- 2. Whether the respondent / Plaintiff is entitled to get arrears of rent of Rs.525/- from 01.03.2005 to 15.01.2006 from the defendant.***
- 3. Whether the respondent / Plaintiff is entitled to get Rs.3,700/- as past damages from 05.01.2006 to 15.02.2006 and future damages for use and occupation of the Suit schedule property at the rate of Rs.3,700/- per month from the appellant / defendant.***
- 4. Whether the Executive Officer of the respondent / Plaintiff is entitled to file the Suit and the Suit is maintainable.***
- 5. Whether the judgment and decree of the trial Court dated 03.11.2020 is not sustainable and liable to be set aside.***

Thereafter, the I Appellate Court, after hearing both sides and perusing the records, dismissed the appeal by confirming the decree and judgment of the trial Court. Therefore, the present Second Appeal has been preferred by the defendant in the main Suit.



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6. This Court, at the time of admitting the second appeal, has framed the following substantial questions of law:

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Whether the respondent temple which is governed by the Tamil Nadu Hindu Religious & Charitable Endowment Act could be represented by its Executive Officer whose appointment itself is void in view of the Judgment of the Hon'ble Supreme Court in Dr. Subramanian Swamy and another v. State of Tamil Nadu and others (2014(1) CTC 763).

6.1. For the sake of convenience and brevity, the parties herein after will be referred to as per their status / ranking in the Trial Court.

7. The learned counsel appearing for the appellant / defendant would submit that the defendant is the tenant under the respondent / Plaintiff and without any intimation, rent was enhanced by the respondent / Plaintiff and therefore, there was a dispute between the Plaintiff and the defendant in respect of the payment of rent. Thereafter, the Plaintiff filed the Suit for eviction and for damages. The Trial Court decreed the Suit. Before the trial Court, on the side of the Plaintiff, PW1 was examined and marked Ex.A.1 to Ex.A.6 and on the side of defendant, DW1 was examined and marked Ex.B.1.



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The trial Court, without considering the evidence on the side of defendant, by relying upon the evidence on the side of Plaintiffs, erroneously decreed the

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Suit. Therefore, the appellant / defendant had preferred an appeal in A.S. No.403 of 2013 before the I Appellate Court. The I Appellate Court also erroneously dismissed the appeal, without considering the grounds raised by the appellant / defendant. The Executive Officer of the temple is not a competent authority to file the Suit, but the Trial Court committed error that the Executive Officer is a competent person to institute the Suit and he also relied on the Resolution. The Courts below failed to consider that a proper notice under Section 106 of Transfer of Property Act has been served to the defendant. Therefore, the Courts below have committed error and the appeal has to be allowed.

7.1. The learned counsel appearing for the appellant / defendant has also filed an affidavit that now the respondent / Plaintiff has fixed the rent at the rate of Rs.23,310/- with effect from 01.07.2016 and the arrears of rent would come around Rs.28,44,664/- and already the Plaintiff remitted a sum of Rs.6,23,054/- towards rent and for the remaining amount of Rs.22,21,610/- , the appellant is ready to pay the same on installments. Now the respondent /



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Plaintiff has remitted the entire rent for the month of November for a sum of Rs.23,310/- and appellant / defendant has issued a Demand Draft dated 04.11.2025 in favour of the respondent / Plaintiff for a sum of Rs.1 lakh and the same was also received by the Plaintiff. Therefore, without any protest the Plaintiff received the amount. The Tamil Nadu Government has appointed a high-level committee to fix the fair rent for properties belonging to temples under the Hindu Religious and Charitable Endowments (HR & CE) department and if any rent is revised, the appellant / defendant is ready to pay such amount fixed by the High Level Committee. Therefore, by accepting the affidavit, appropriate orders may be passed by this Court.

8. The learned counsel appearing for the respondent / Plaintiff would submit that the appellant / defendant is the chronic defaulter in paying the rent and therefore, the respondent / Plaintiff filed the Suit. The Executive Officer of the temple was authroized through a Resolution dated 18.04.2007 and the same was marked as 'Ex.A2'. Therefore, the Trial Court after considering the evidence adduced on both sides, fairly came to a conclusion that the respondent / Plaintiff is entitled to decree as prayed for and thereby, decreed the Suit. Thereafter, the appellant / defendant filed the first appeal



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before the I Appellate Court and the same was dismissed after analysing the evidence adduced on both sides. There is no substantial question of law involved in this case. As per the Substantial Question of law framed by this Court, there is no bar to file a Suit by the respondent / Plaintiff. The said judgment is in respect of the appointment of the Executive Officer in the particular temple, which already declared as a private temple. Therefore, there is no any substantial question of law is involved in this case.

9. Heard both sides and perused the entire materials available on record.

10. In this case, there is no dispute that the appellant / defendant is a tenant under the respondent / Plaintiff. It is also admitted by the appellant / defendant that there are arrears of rent and the appellant / defendant was irregular in payment of rent. . Therefore, the trial Court decreed the Suit and the I Appellate Court has also confirmed the decree and judgment passed by the trial Court. This Court also framed substantial question of law. As far as the judgment of Hon'ble Supreme Court in ***Dr. Subramanian Swamy and another v. State of Tamil Nadu and others (2014(1) CTC 763)*** is concerned, that is in respect of the appointment of Executive Officer in a private temple,



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thereby, the said judgment will not be applicable to the present case.

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11. The main contention of the appellant / defendant in this appeal is *whether the Executive Officer is a competent person to institute a Suit as per the judgment of this Court in **Sri Arthanareeswarar of Tiruchengode and others v. T.M. Muthuswamy Padayachi reported in 2003 1 LW 386.*** As per the said judgment, without authorisation by the Chairman or the Commissioner of Hindu Religious and Charitable Endowments (HR & CE), its Executive Officer cannot file a Suit on behalf of a temple. However, in this case, as per Ex.A.2, the respondent / Plaintiff temple appointed a fit person i.e., Executive Officer through a Resolution dated 18.04.2007 and also authorized the Executive Officer to file a Suit. The Trial Court has not framed a specific issue as about the maintainability of the Suit and not discussed about the maintainability of the Suit and competency of the Executive Officer. However, the I Appellate Court framed a specific point for determination that ***Whether the Executive Officer of the respondent / Plaintiff is entitled to file the Suit and the Suit is maintainable*** and also answered for that point that a true copy of the Resolution dated 18.04.2007 authorizing the Executive Officer to file a Suit was marked as Ex.A.2 and PW1 also deposed that there is no Trustee for the Temple from the year 1997



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and the fit person has been appointed by the Hindu Religious and Charitable Endowment Department for the temple in the place of Trustees. The copy of Resolution of the fit person is marked as Ex.A.6. Therefore, the Suit is maintainable. Therefore, there is no any substantial question of law involved in this case.

12. However, during the pendency of this second appeal, the appellant filed an affidavit stating that he is ready to pay the rent fixed by the respondent and arrears of rent would come to Rs.28,44,664/- and already he paid Rs.6,23,054/- and the remaining amount of Rs.22,21,610/- will be paid on installments and to show his bonafideness, he paid a sum of Rs.1 lakh through a Demand Draft dated 04.11.2025 and also paid the rent for the month of November 2025 at Rs.23,310/-. Therefore, recording the above said affidavit, this Court is inclined to ***dispose of*** this second appeal:

Though there is no substantial question of law is involved in this case, this Court, by invoking power under Section 103 of Civil Procedure Code, is inclined to pass the following orders:

1. The appellant / defendant is directed to pay arrears of rent ***within 2***



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years (Two Years) on four installments i.e., once in 6 months. The

appellant / defendant has to complete the payment of arrears of rent within 4 (four) installments. If any default in payment of arrears of rent by the appellant / defendant within the said installment period, the respondent / Plaintiff is at liberty to take delivery of vacant possession of the Suit premises without any further reference and straight away, the Plaintiff can initiate steps to take delivery of vacant possession of the premises.

2. The date of commencement of payment of arrears is from 01.01.2026 and should be concluded on or before 31.12.2027.
3. The entire payment of arrears of rent shall be paid without any deviations.
4. The present rent fixed at Rs.23,310/- has to be paid without any due on ever month, within 5 days on every English Calendar month.
5. The appellant / defendant is at liberty to pay rent as fixed by the High-Level Committee appointed by the Government of Tamil Nadu for the properties belonging to Temples under the Hindu Religious and Charitable Endowments (HR & CE) Act.



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13. With the above said directions and observations, the **second appeal**

is disposed of. There shall be no order as to costs.

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Index : Yes/No
Speaking Order : Yes/No
mjs

To

1. XIX Additional Judge, XIX Additional City Civil Court, Chennai.
2. XIII Assistant Judge, XIII Assistant City Civil Court, Chennai

P.DHANABAL.,J

mjs

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