



S.A. No.541 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2025

CORAM

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A.No.541 of 2023

and

CMP.No.16961 of 2023

Mrs. Rosamma (deceased)

Sai Prasad

... Appellant

Vs

1.Arulmighu Srinivasa Perumal Devasthanam
Rep. By its Executive Officer and Trustees,
Having office at No.18, Vathiyar Kanda Pillai Street,
Choolai, Chennai-600 112.

2.E.Ethirajulu Chetty
3.Dandu Munuswamy Deenadayalan
4.Vellore Balasubramaniam
5.C.R.Ramakoti
6.Kavala Jayachander
7.Balakrishnan

... Respondents

PRAYER: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 07.09.2022 made in A.S.No.192 of 2017 on the file of the VII Additional City Civil Court, Chennai, confirming the Judgement and decree dated 24.10.2016 made in O.S.No.8142 of 1993 on the file of the learned V Assistant Judge, City Civil Court, Chennai.

1\40



S.A. No.541 of 2023

For Appellants : Mr.D.R.Arun Kumar
For Respondents : Mr.S.D.Ramalingam for R1

JUDGMENT

The appellant have filed this Second Appeal against the judgment and decree dated 07.09.2022 made in A.S.No.192 of 2017 on the file of the VII Additional City Civil Court, Chennai, confirming the Judgement and decree dated 24.10.2016 made in O.S.No.8142 of 1993 on the file of the learned V Assistant Judge, City Civil Court, Chennai.

2. Heard Mr.D.R.Arun Kumar, learned counsel for the appellant, Mr.S.D.Ramalingam, learned counsel appearing for the respondents, and perused the material available on record.

3. For the sake of convenience, the parties herein are referred to as they were ranked in the suit.

4. Challenging the concurrent findings of the Courts below, the seventh defendant, who is one of the legal heirs of the first defendant, Rosamma (deceased), has preferred the present appeal.

2\40



S.A. No.541 of 2023

5. The first respondent herein, Arulmighu Srinivasa Perumal

Devasthanam, is the first plaintiff in O.S.No.8142 of 1993 on the file of the V Assistant City Civil Court, Chennai. Respondents 2 to 6 herein are plaintiffs 2 to 6 in the said suit and are the trustees of the temple. The seventh respondent herein is the eighth defendant in the suit and is also one of the legal heirs of the first defendant, Rosamma (deceased).

6. Originally, the first plaintiff, Arulmighu Srinivasa Perumal Devasthanam, is a denominational temple belonging to a particular community. The management and administration of the temple are governed by a scheme decree passed by the High Court of Madras in C.S.No.553 of 1928. The present plaintiffs 2 to 6 were appointed as trustees pursuant to the order passed in W.P.No.15564 of 1989 and they assumed charge on 22.01.1991. Since then, they have been functioning as trustees of the suit temple, and in that capacity, they instituted the present suit.

7. The plaintiffs contend that the property described in the plaint schedule exclusively belongs to the first plaintiff temple and that they are



S.A. No.541 of 2023

entitled to absolute right, title, and possession over the said property. While

so, they came to know that a previous Executive Officer of the temple had permitted certain individuals to occupy portions within the compound and prakaram of the temple for carrying on their business by putting up superstructures. The first defendant, Rosamma, was one such person, who claimed ownership over the suit property based on a sale order dated 05.07.1983. He further contended that the first defendant was not in actual possession of the suit property and had sublet the same to a cycle shop and an auto workshop, namely defendants 2 and 3. The plaintiffs further allege that the sale order obtained by the first defendant under Section 9 of the Madras City Tenants Protection Act was in the ejectment proceedings in O.S.No.6669 of 1979. According to the plaintiffs, the then Executive Officer colluded with the first defendant and allowed an ex parte order to be passed in the Section 9 application, pursuant to which a sale deed was obtained for an extent of 833 square feet, even though the lease granted as per the temple records was only for 400 square feet.

8. The plaintiffs further contend that thereafter, the first defendant erected fencing around the suit property within the temple prakaram,

4\40



S.A. No.541 of 2023

thereby contravening Sections 34, 77, 78, and 107 of the Tamil Nadu Hindu

Religious and Charitable Endowments Act, 1959 (Act 22 of 1959). Hence, the alleged sale is invalid in law and void ab initio, as no prior sanction was obtained from the Commissioner, HR & CE Department. The plaintiffs further allege that the sale order was obtained by fraud and collusion, and that the first defendant secured conveyance for an extent exceeding the leasehold area. He also contended that the Section 9 application itself was not filed within 30 days of the ejectment proceedings as mandated under the Madras City Tenants Protection Act. Further, no proper sanction was obtained from the Commissioner, HR & CE Department, thereby violating the provisions of the HR & CE Act as well as the mandatory requirements of Section 9 of the City Tenants Protection Act. It is further alleged that the value of the property was not mentioned in the sale deed.

9. On the above grounds, the plaintiffs contend that the alleged lease granted by the Executive Officer is illegal, and consequently, the sale deed obtained by the first defendant is also void and not binding on the plaintiffs, as it is in gross violation of the mandatory statutory provisions. Therefore, the plaintiffs instituted the present suit seeking the following reliefs:

5\40



S.A. No.541 of 2023

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(a) A declaration that the order of sale passed under Section 9 of the Madras City Tenants Protection Act dated 05.07.1983 in I.A.No.5099 of 1982, and the orders passed in I.A.No.4065 of 1991 dated 02.08.1991 and E.P.No.3195 of 1991 dated 27.02.1992 in O.S.No.6669 of 1979 on the file of the City Civil Court, Madras, directing conveyance of the suit property in favour of the first defendant, are illegal, non est, null and void ab initio and not binding on the trustees, and to set aside the same;

(b) A declaration that the registered sale deed dated 30.04.1992 bearing Registration No.1290 of 1992, executed by R. Doraisami, IX Assistant Judge, City Civil Court, Madras, in favour of the first defendant, is illegal, null and void and not binding on the plaintiffs, and to set aside the said sale deed; and

(c) For recovery of possession of the suit property and for costs.

10. During the pendency of the suit, the first defendant died, and her legal heirs, defendants 7 and 8, were brought on record and contested the suit. The sub-tenants, namely defendants 2 to 6, 9, and 10, remained ex parte. At the time of filing the written statement, the first defendant was alive and had filed her written statement contending that the trustees had no locus standi to file the suit, as Section 51(1) of Tamil Nadu Act 46 of 1991 came into force only on 11.11.1991, and therefore, the plaintiffs ought not represent the temple by instituting the suit.



S.A. No.541 of 2023

11. The first defendant denied that the leased property formed part of the temple prakaram and contended that the leased property abuts the road and is not connected with the main temple. Hence, Sections 77 and 78 of the HR & CE Act would not apply to the facts of the present case. She further contended that she had not encroached upon any larger extent and that she was granted lease for an extent of 833 square feet. According to her, the fencing was put up long ago and no encroachment had been committed.

12. The first defendant further contended that the proceedings initiated by her under Section 9 of the Madras City Tenants Protection Act were valid, that the sale was effected pursuant to a court order, and that the same could not be questioned by the plaintiffs, who were not trustees at the relevant time. She asserted that she is not a trespasser and that she is in lawful possession of the property. She further contended that the lease was validly granted by the Executive Officer and that the property abuts the road and is not situated within the temple prakaram. She also stated that the Section 9 application was filed immediately after the ejectment suit was instituted and that there was no collusion between her and the Executive Officer.

7\40



S.A. No.541 of 2023

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13. According to the first defendant, no sanction from the Commissioner, HR & CE Department, was required, and therefore, Section 34 of the HR & CE Act would not apply to the present case. She further contended that the civil court, being a competent court, had passed the order under Section 9 of the City Tenants Protection Act, and the same cannot be declared void ab initio. Since the sale of land is not prohibited under Act 3 of 1922 Act, the Commissioner has no role in granting sanction. Thus, contending that the sale order passed under Section 9 of the City Tenants Protection Act is valid and enforceable and cannot be invalidated on the grounds alleged by the plaintiffs, the first defendant prayed for dismissal of the suit as devoid of merits.

14. After the demise of the first defendant, her legal heirs, namely defendants 7 and 8, filed written statements adopting the same averments made by the first defendant.



S.A. No.541 of 2023

15. Before the Trial Court, both parties adduced oral and documentary evidence. On the side of the plaintiffs, P.Ws.1 to 3 were examined and Exs.A1 to A17 were marked. On the side of the defendants, D.W.1 was examined and Exs.B1 to B7 were marked. On the Court side, Exs.C1 to C3 were marked.

16. Upon consideration of the evidence on record, the Trial Court framed ten issues. After detailed analysis, the Trial Court concluded that plaintiffs 2 to 6 were competent and entitled to represent the first plaintiff temple. He further held that defendants 2 and 3 were sub-tenants under the first defendant and that the lease in favour of the first defendant was hit by Sections 34 and 77 of the HR & CE Act.

17. The Trial Court further held that the lease deed executed by the Executive Officer in favour of the first defendant was not valid in law. Consequently, the sale of the suit property pursuant to the order passed under Section 9 of the City Tenants Protection Act in favour of the first defendant, being in contravention of the mandatory provisions of the City



S.A. No.541 of 2023

Tenants Protection Act as well as the HR & CE Act, was also held to be invalid. He further held that the suit was not barred either by res judicata or by limitation.

18. Accordingly, the Trial Court held that the plaintiffs were entitled to the relief of declaration as prayed for and also entitled to recovery of possession of the suit property. All the issues, namely Issues 1 to 10, were answered in favour of the plaintiffs and the suit was decreed as prayed for. The defendants were granted two months' time to hand over possession of the suit property.

19. Aggrieved by the judgment and decree of the Trial Court, the legal heirs of the first defendant, namely defendants 7 and 8, preferred an appeal in A.S.No.192 of 1997 before the VII Additional Judge, City Civil Court, Chennai, as against the plaintiffs and other defendants, namely defendants 2 to 6, 9 and 10.



S.A. No.541 of 2023

20. The First Appellate Court framed separate points for consideration

and, upon re-appreciation of the entire oral and documentary evidence, concurred with the findings of the Trial Court. The First Appellate Court held that the suit property measuring an extent of 833 square feet belonged to the first plaintiff temple and that it is situated within the temple prakaram. The Appellate Court further held that under Section 77 of the HR & CE Act, any land appurtenant to or adjoining a religious institution, whether within or outside its precincts, including any space within or outside prakarams, mantapams, courtyards, or corridors, shall not be leased or mortgaged with possession, except for limited purposes such as providing amenities to pilgrims or vending flowers or articles used for worship. He also observed that in the written statement itself, the first defendant had admitted that the suit property is situated within the temple compound. Therefore, the property could neither have been leased nor sold by the Executive Officer. Consequently, the sale executed in favour of the first defendant pursuant to the order under Section 9 of the City Tenants Protection Act was held to be invalid. In support of the said conclusion, reliance was placed on the judgments reported in **2010 (3) MLJ 1154** and **AIR 1963 Madras 369**.



S.A. No.541 of 2023

21. The First Appellate Court further observed that while passing the order in I.A.No.5099 of 1982 under Section 9 of the City Tenants Protection Act, the extent and valuation of the property were not properly examined. Though the value of the property was fixed at Rs.12,498/-, the same was not determined by taking into account the prevailing market value, nor was the minimum extent requirement under the HR & CE Act considered. It was also found that the Executive Officer had not obtained prior permission from the Commissioner, HR & CE Department, before leasing out the property. Further, the Section 9 application was not filed within the mandatory period of 30 days from the date of institution of the ejectment suit, but was filed nearly two years later.

22. The Appellate Court further held that the then Executive Officer, by colluding with the first defendant, failed to raise objections to the Section 9 application and that the Trial Court, while passing the order in I.A.No.5099 of 1982, failed to appreciate the legal provisions correctly. Consequently, the order passed under Section 9 of the City Tenants Protection Act was held to be invalid, having been obtained fraudulently by collusion between the first defendant and the then Executive Officer.

12\40



S.A. No.541 of 2023

Accordingly, Points 1 to 4 were answered against the appellants, and the appeal was dismissed. Aggrieved by the concurrent findings of both the Courts below, the seventh defendant has preferred the present appeal.

23. The learned counsel for the appellants challenged the findings of the Courts below and raised following grounds:

(I) The Courts below have failed to consider that the trial court while deciding the suit in O.S.No. 2269 of 1979 after hearing both sides and being convinced with the argument of the defendant, it was pleased to allow the application filed under section 9 in favour of the defendant and dismissed the suit of the plaintiff/ 1st respondent herein. It is pertinent to note that the plaintiff therein is the 1st plaintiff in the present suit.

(ii) The Courts below have failed to note that the plaintiffs who has alleged collusion and treachery in the earlier suit for filing this Second Suit, ought to have specifically pleaded as to who committed treachery, what was the said act and what was the action taken against the said E.O.

(iii) The Courts below further failed to note that the plaintiffs have nowhere pleaded or hinted out the instances of treachery. Mere reproducing the word treachery is not enough for nullifying a contest Decree, but the

13\40



S.A. No.541 of 2023

plaintiffs have to give instances after instances of treachery for sustaining a second suit. Admittedly the plaintiffs did not produce any evidence of Initiating departmental action against any of the three executive officers who assumed offices between filing of the suit till the date of its decree for the alleged treachery. That apart the pleadings did not disclose any of the particulars with regard to the alleged treachery in compliance with Order 6 Rule 4 of CPC.

(iv) The courts below failed to consider that the first plaintiff was not examined for the reasons best known to them. P.W. 1 and P.W.2 had deposed that only the authorities (1 plaintiff) knew everything and they did not know any of the details pertaining to the temple and suit property. The 2nd plaintiff who was examined as PW 1 has stated in his deposition that he was not even aware of the Section 9 Petition filed in I.A.No. 5099 of 1982 but he is seeking a relief to declare the order passed in the said I.A. as null and void on the ground of treachery. Apart from that he was also not aware of even single detail of the averments made in the plaint and pertaining to the subject matter property.

(v) The courts below failed to note that the respondents cannot sustain the present suit for the very same relief sought for in the earlier suit. The



S.A. No.541 of 2023

first plaintiff herein and the plaintiff who filed the earlier suit are one and the same. Hence as against the contested Judgement and Decree, they are entitled for an appeal remedy and the present suit is hit by res-judicate as held by the Hon'ble Apex Court in 2007 8 SCC 329 "Saroja Vs Chinnusamy & Anr" that if the fraud and collusion in the earlier suit is not established, the subsequent suit will hit by res-judicata. Hence none of the further issues can be entertained.

(vi). The Courts below have failed to note that as per section 114 (e) of The Evidence Act, 1872, all the court proceedings/official acts are presumed to be done properly. Hence the plaintiff cannot dispute or contradict the proceedings in the earlier suit in a casual manner and seek to nullify the same. It is pertinent to mention here that there is no non-obstacle barring the defendant to file a petition under section 9 beyond the specified time Entertainment Ltd" relying upon the Judgment of the Honble Supreme as held in in 2022 3 ctc 337 "Kamal Haasan Vs Regent Saimira Court in Kailash Vs Nanhku 2005 2 CTC 355 (SC). Hence limitation set out in section 9 of the Act is mere directory and not mandatory as the said Act did not prescribe the consequences if the section 9 petition is filed beyond the limitation.

15\40



S.A. No.541 of 2023

(vii). The courts below have failed to consider that Section 9 of the Act empowers the Court to direct the plaintiff who filed the suit for eviction to sell the property to the tenant without reference to any of the Acts like H.R& C.E. Act, Indian Trust Act etc. The P.W.1 has also deposed that the Executive officer has rightly instituted the suit for eviction against the appellants. Hence this is nothing but an attempt to re-agitation the entire issue under the guise of alleging fraud.

(viii) the Courts below failed to consider that the suit was valued under section 25(d) of the Tamil Court Fees Act and not under section 40. Admittedly the above suit was filed for cancellation of the decree and as such the plaintiff ought to have filed court fees under section 40 of the Act as held in the Honourable Supreme Court in 2017 (11) SCC 852.

(ix) It is submitted that the plaintiffs who ought to have establish their locus standi to file the second suit has not even produced a single piece of evidence to show that they are the trustees of the temple and they are authorized to file the suit. Though in the deposition PW1 states that they are trustees are authorized to file the suit as per the Order passed by this Honble Court, the said order was not marked as evidence. Hence on that sole

16\40



S.A. No.541 of 2023

ground the plaintiffs ought to be non-suited. Executive Officer who is one of the plaintiffs has neither signed the plaint nor deposed hi evident as stated by PW1 in his evidence which was not considered by the trial court.

24. Based on the said grounds, the learned counsel formulated the following substantial questions of law, and prayed for setting aside the concurrent findings of the Courts below.

a. Whether the Courts below are correct in accepting the plea of treachery and collusion made by the respondents herein without any specific pleadings and evidences to that effect?

b. Whether the Courts below are correct in ignoring Order 6 Rule 4 of CPC which deciding the suit?

c. Whether the Courts below were correct in reappreciating the merits of the case in absence of proof of treachery and collusion?

d. Whether the Courts below are correct in accepting the Locus Standi of the respondents?

e. Whether the courts below are correct in decreeing the suit while the respondents never deposited the amount paid by the Appellant in the former suit in consideration of the suit property?

f. Whether the Courts below are correct in entertaining this suit valued under Section 25 (d) of the Tamilnadu Court Fees, Act?

g. Whether the subject matter suit is hit by Limitation and Res Judicatae?

h. Whether the respondents are entitled for the relief that are claimed by them?



S.A. No.541 of 2023

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25. The suit property described in the plaint schedule is a vacant land measuring an extent of 833 square feet, bearing Door No.19, Vathiyar Kanda Pillai Street, Choolai, Madras-600 112, Division No.61, bounded on the North by Srinivasa Perumal Temple, on the South by Vathiyar Kanda Pillai Street, on the East by land leased to Jayaram, and on the West by Maddex Street, situated in R.S.No.871, within the Sub-Registration District of Purasawalkam and Registration District of Madras. As per the order passed in I.A.No.5099 of 1982 in E.P.No.3195 of 1991 in O.S.No.6669 of 1979 on the file of the City Civil Court, Madras, the suit property was conveyed in favour of the first defendant under Section 9 of the City Tenants Protection Act. On the date of the suit, the first defendant claimed absolute ownership of the suit property based on the said sale deed and had sub-let the property to defendants 2 and 3.

26. The plaintiffs' case is that the suit property absolutely belongs to the first plaintiff denominational temple, the management of which vests with the Board of Trustees appointed under the scheme decree in C.S.No.553 of 1928. Plaintiffs 2 to 6 are the present trustees. The HR & CE

18\40



S.A. No.541 of 2023

Commissioner exercises only supervisory control over the temple administration.

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27. It is an undisputed fact that as per temple records, only an extent of 400 square feet was originally leased out. However, the first defendant encroached upon a larger extent and fraudulently obtained an order of sale for 833 square feet and erected fencing around the suit property.

28. The plaintiffs further contend that the lease purportedly granted by the then Executive Officer in favour of the first defendant was in violation of Sections 34, 77, 78, and 107 of the HR & CE Act, 1959. Consequently, the Section 9 application under the City Tenants Protection Act, being founded on a void lease, and the resultant sale order are non est in law and not binding on the plaintiffs.

29. It is an admitted fact that the land measuring 833 square feet described in the plaint schedule belongs absolutely to the first plaintiff

19\40



S.A. No.541 of 2023

temple. The records further reveal that the Executive Officer had filed O.S.No.6669 of 1979 for ejectment, during which the first defendant filed a Section 9 application in I.A.No.4063 of 1991 and obtained an ex parte order dated 02.08.1991. Thereafter, a sale deed dated 30.04.1992 was executed in favour of the first defendant. Immediately after assuming charge, the trustees came to know of the illegal sale deed obtained by the first defendant in collusion with the then Executive Officer, who had no authority to lease or alienate temple property without prior sanction of the Commissioner. Hence, the plaintiffs instituted the present suit seeking declaration that the sale deed is null and void and for consequential reliefs.

30. The foremost objection of the plaintiffs is that both the lease and the sale in favour of the first defendant are in violation of Sections 34, 77, 78, and 107 of the HR & CE Act.

Section 34 of the HR & CE Act reads as follows: *“Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property belonging to, or given or endowed for the purpose of any religious institution shall be null and void unless it is sanctioned by the commissioner*



S.A. No.541 of 2023

as being necessary or beneficial in the institution: provided that, before such sanction is accorded the particulars relating to the proposed transaction will be published in such a manner as may be described inviting objections, and suggestions with respect thereto and all objection and suggestions received from the Trustee or other persons having interest shall be duly considered by the commissioner."

31. Admittedly, in the present case, the Executive Officer did not obtain any permission from the Commissioner to lease out the property to the first defendant. Even the evidence of D.W.1 reveals that his father had allegedly taken the lease in the year 1940 without any documentary proof. After his father's demise in 1971, the first defendant continued in occupation without any written lease and without knowledge of the exact extent leased.

32. D.W.1 further admitted that he was not aware of the exact extent of land originally leased, though the defendants claimed 833 square feet. There is no proof that the Executive Officer obtained prior sanction from the Commissioner for leasing the property. Therefore, violation of Section 34 of



S.A. No.541 of 2023

the HR & CE Act stands clearly established, as rightly appreciated by the Trial Court in paragraphs 22 and 23 of its judgment.

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33. Furthermore, the suit property is situated within the prakaram of the temple and therefore cannot be leased out, having regard to the definition of “land” under Section 2(2) of the HR&CE Act. Since the suit property lies within the praharam, as contemplated under Section 77 of the HR&CE Act, the land, being appurtenant to or adjoining the religious institution, belongs to the temple and shall not be leased out. Section 77 of the HR&CE Act clearly prohibits such leasing, which as follows:

"Notwithstanding anything contained in Section 34, no trustee of a religious institution shall lease or mortgage with possession or grant a licence for the occupation of -

(a) any land belonging to the religious institution which is appurtenant to or adjoins the religious institution, or any sacred tank, well, spring or water-course, appurtenant to the religious institution whether situated within or outside the precincts thereof, or



S.A. No.541 of 2023

(b) any space within or outside the prakarams, mantapams, courtyards or corridors of the religious institution:

Provided that nothing contained in this sub-section shall apply to the leasing of any such land or space for the purpose of providing amenities to pilgrims or of vending flowers or other articles used for worship or of holding for specified periods, fairs or exhibitions during festivals connected with the religious institution.

(2) Any lease or mortgage with possession or licence in contravention of the provisions of sub-section (1) shall be null and void."

34. Admittedly, during cross-examination, DW1 has conceded that the suit property is situated within the compound wall of the plaintiff temple. The Advocate Commissioner also inspected the suit property and found that it lies within the precincts of the temple and its compound wall. The said fact has been rightly appreciated by the trial court on the basis of Exs. C1 to C3. The evidence in this regard has been elaborately discussed by the trial court in paragraphs 13 and 14 of its findings. Furthermore, even though Section 77 permits leasing of land or space for the limited purpose



S.A. No.541 of 2023

of providing amenities to pilgrims or for vending flowers or other articles used for worship, the nature of use of the suit property as on the date of filing of the suit clearly shows that the first defendant was using the property for running a firewood stall as well as a cycle shop. Such use does not fall within the permissible category under Section 77 of the HR&CE Act. Therefore, the lease is not permissible in law. In this regard, the findings of the trial court do not warrant any interference.

35. The learned trial Judge has also concluded that Section 9 of the City Tenants Protection Act (CTP Act) is not applicable to temple properties. For arriving at this conclusion, the trial court rightly relied upon the ratio laid down in T.V. Sambandam Chetty v. St. Francis Xavier's Church, reported in 1973 (2) MLJ 2, stated as follows:

"in respect of temples or churches or the buildings appurtenant there to Section 9 of the City Tenants Protection Act is not applicable" and in the decision reported in Natesa Mudaliar Vs. S.B.K.P.K. Bhajana Matam and Sundareswarar Devasthanam Vs. Marimuthu a distinction has been pointed out between two types of properties which a temple or a church may possess viz "(i) the site of the temple or church, its building and appurtenances thereto and; (ii) other properties owned by the temple or the church and there will be no power, under any circumstances, in the trustee to sell or otherwise alienate the



S.A. No.541 of 2023

first category of property and it is the consistent view that in respect of the first category of properties Section 9 of the City Tenants Protection Act is not applicable and one of the conditions which a tenant will have to satisfy for enabling him to file the application is that he is a tenant who is entitled to compensation under Section 3 and does not mean that all those tenants who are entitled to compensation under Section 3 will automatically be entitled to file an application under Section 9 irrespective of the fact whether the property itself satisfies the definition of land in the Explanation to section 9."

36. In the present case also, it is an admitted fact that the suit property is situated within the premises of the temple. Hence, Section 9 of the CTP Act is not applicable. Moreover, the petitioner did not file the application under Section 9 of the Act within one month from the date of filing of the suit in O.S. No. 6669 of 1979. Instead, the application in L.A. No. 5099 of 1982 under Section 9 of the City Tenants Protection Act was filed nearly two years later. In this context, the trial court has rightly relied upon Section 9 of the Act and correctly applied the law.

Section 9 of City Tenants Protection Act reads as follows:

"(1) (a) (1) Any tenant who is entitled to compensation under section 3 and against whom a suit in ejectment has been instituted or proceeding under section 41 of the Presidency Small Cause Courts Act, 1882, taken by the landlord may, within one month of the date of the publication of Madras City Tenants Protection Amendment Act, 1979 in the Tamil Nadu



S.A. No.541 of 2023

Government Gazette or of the date with effect from which this Act is extended to the municipal town, township or village in which the land is situate or within one month after the service on him of summons, apply to the Court fro an order that the landlord shall be directed to sell for a price to be fixed by the Court, the whole or part of the extent of and specified in the application.

“ Land means the interest of the landlord in the land and all other interests which he can convey under any power and includes also the full interest which a trustee can convey under the power possessed by him to convey trust property when necessity exists for the same or the alienation of the property is for the benefit of the estate or trust.”

37. Therefore, the first defendant ought to have filed an application before the Court within 30 days from the date of service of summons, as mandated under Section 9 of the Act. Though the first defendant filed the written statement in the said suit on 04.03.1980, he filed the application under Section 9 only on 15.03.1982, nearly two years later, without filing any application seeking condonation of delay.

38. The Executive Officer, who had initiated the earlier suit in O.S. No. 6669 of 1979, neither filed any objection with regard to the said delay nor contested the Section 9 application and remained ex parte. This was

26\40



S.A. No.541 of 2023

despite the fact that he was fully aware of the entire proceedings. His silence in the Section 9 proceedings itself clearly establishes collusion between the then Executive Officer and the first defendant. In any event, as per Section 77 of the HR&CE Act, the suit property, being situated within the prakaram of the temple and constituting inalienable temple land, could not have been leased. Consequently, Section 9 of the City Tenants Protection Act is also not applicable.

39. Further, the suit property was admittedly used for selling firewood and therefore does not fall within any of the exceptions carved out under Section 77 of the HR&CE Act. Thus, the plaintiff has clearly established the violation of Section 77 of the Act. The said aspect has been rightly appreciated by the learned trial Judge, and the findings recorded therein do not call for any interference.

40. Furthermore, while deciding an application under Section 9 of the Act, the Court is mandatorily required to determine the minimum extent of land necessary for the convenient enjoyment of the tenant. In the case on hand, an extent of 833 square feet was granted to the first defendant by way

27\40



S.A. No.541 of 2023

of an ex parte order, without assigning any reasons and without determining the minimum extent required. In this regard, the plaintiff rightly relied upon the ratio laid down in:

(i) M. Arasan Chettiar v. Sri S.P. Narasimhalu Naidu's Estate Trust, Coimbatore, and Executor, C.M. Abbai Naidu, represented by the Secretary, and Sri Raveeswarar Temple by its Executive Officer v. V. Navaneetha Ammal and others, reported in 1980 (2) MLJ 303;and

(ii) P. Ananthakrishnan Nair and another v. Dr. G. Ramakrishnan and another, reported in AIR 1987 SC 1272.

41. Relying on the above judgments, and as discussed in paragraph 20 of the trial court findings, the learned trial Judge has rightly held that the procedure prescribed for granting sale in favour of a tenant under Section 9 of the Act must be strictly adhered to. Since the said mandatory procedures were not followed while allowing the Section 9 application, the order passed therein is legally unsustainable.

42. Further, the facts on record reveal that at the time of filing the application under Section 9 of the Act, the first defendant did not specifically mention the extent or boundaries of the land alleged to have been leased to her. Neither in the written statement filed in O.S. No. 6669 of 28\40



S.A. No.541 of 2023

1979 nor in any subsequent pleadings were the survey number, boundaries, or precise extent of the leased property specified. Only in the Section 9 application, marked as Exhibit A-5, did the first defendant claim an extent of 840 square feet. However, as per the temple records, only 400 square feet had been leased out. By encroaching upon a larger extent of land, the first defendant filed the application under Section 9. Even in the said application, the then Executive Officer, who was in charge of the temple and well aware of the property situated within the same premises, deliberately failed to file any objection. Consequently, a sale deed came to be executed in favour of the first defendant for a meagre market value of Rs. 12,495/-.

43. However, the first defendant thereafter mortgaged the very same property in favour of a private benefit fund, wherein the property was valued at Rs. 1,42,000/-. As per the court-executed sale deed marked as Exhibit A-2, dated 30.04.1992, the value of the property was fixed at only Rs. 12,490/-. Further, in the cancellation of mortgage deed relied upon by the first defendant, marked as Exhibit B-3, the value of the property was shown as Rs. 1,42,000/-. The glaring discrepancy in the valuation clearly establishes that the property was undervalued by playing fraud upon the



S.A. No.541 of 2023

Court. The then Executive Officer, in collusion with the first defendant, obtained an order for sale of the temple property without determining the minimum extent of land required and without fixing the correct market value. Thus, the mandatory provisions of Section 9 of the Act were not properly followed. The plaintiffs have clearly established such violations, and the same has been rightly appreciated by the courts below. Hence, the findings do not warrant any interference.

44. It is a known fact that immediately after filing of the suit, within 30 days from the date of receipt of the summons, application under CTP Act not been filed, near about two years later, after filing of the written statement. The first defendant approached the Court and obtained ex parte order without condonation of delay application, which itself shows that it is a clear case of abuse of process of law. Otherwise, when it brought to the knowledge of the court, the 1st defendant can be thrown out from the proceedings at any stage.



S.A. No.541 of 2023

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45. The plaintiff also established that the Sub Registrar has informed to the then Executive Officer, about the sale deed which was submitted for registration. Even after such notice, Executive Officer of the plaintiffs temple not raised any objection which itself shows that the Executive Officer willfully not contested IA.No.5099 of 1982, not preferred any appeal against the said order and the same was established by the plaintiffs by Exs.A1, A3, A4, A5, A7 and A8, D3, through which the collusion between the first defendant and the then Executive Officer of the plaintiff's temple was proved. Thereby, the trial court rightly held that the order obtained under Section 9 of CTPA Act, as such is tainted with fraud, which requires no interference.

46. The objection raised by the appellants that there were no specific pleadings regarding fraud in the plaint is untenable. Though the plaint does not expressly use the word “fraud”, the plaintiffs have clearly pleaded acts of treachery, which were satisfactorily explained before the Court. The term “treachery” conveys deceit, dishonesty, trickery, and fraudulent conduct, and is equivalent to the legal concept of fraud. In this regard, reliance was

31\40



S.A. No.541 of 2023

rightly placed on the ratio laid down in 2010 (3) MLJ 1154. Therefore, even in the absence of the express use of the word “fraud”, the pleadings and evidence conduct of parties clearly establish fraudulent act on their part. The learned trial Judge has correctly discussed this issue and rendered a finding in paragraph No. 27 of the trial court judgment, which does not call for any interference. Hence, the objection raised by the appellants on this ground is unsustainable. Thus, question of law A, B and C are answered.

47. Another objection raised by the appellants is that the plaintiff has no locus standi to file the suit on the ground that there were no trustees in office. Even assuming that there were no trustees, it is well-settled law that worshippers of a temple are entitled to maintain a suit to protect temple properties. In support of this proposition, reliance was rightly placed on the judgment reported in 1996 (2) MLJ 645, Chandrasekharan Pillai and others v. Muthu Boji and others, and also on 2011 WLR 994, V. Thiagarajan, Hindu Baktha Jana Sabha v. State of Tamil Nadu, represented by the Secretary to Government, Religious Endowment Department, Fort St. George, Chennai-9. The said decisions are squarely applicable to the facts of the present case. Hence, this objection raised by the appellants is also



S.A. No.541 of 2023

devoid of merit and does not warrant any interference. Thus, question of law

D is answered.

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48. Another objection raised by the appellants is that the suit is barred by limitation. In this regard, the plaintiff relied upon the judgment reported in 2007 (3) MLJ 85, wherein it has been held that in respect of properties belonging to a temple or trust, the Limitation Act does not apply for recovery of possession. The learned trial Judge has rightly appreciated the said proposition and discussed the same in paragraph No. 28 of the judgment. Hence, the plea of limitation raised by the appellants is unsustainable.

Paragraph 28 of the trial court Judgement reads as follows:

.....in Subramaniam and others Vs. Sri Devanathaswami Devasthanam, rep. by its Executive officer Sri S.Veerappan and another it reads as follows:-

"Section 109 of the Principal Act:

Section 109. Property of religious institution not to vest under the law of limitation after the 30.9.1951: Nothing contained in any law of limitation for the time being in force shall be deemed to vest in any person the property or funds of any religious institution which had not vested in such person or his predecessor-in-title before the 30.9.1951.



S.A. No.541 of 2023

Section 109. Central Act 36 of 1963 not to apply for recovery of properties of religious institutions: Nothing contained in the Limitation Act, 1963 (Central Act 36 of 1963) shall apply to any suit for possession of immovable properties belonging to any institutions or for possession of any interest or of any interest (sic) in such property".

49. It is a settled position that the plaintiff has proved that the lease in favour of the first defendant and her husband was executed without obtaining the prior permission of the Commissioner, as mandated under the HR&CE Act, and therefore the lease is invalid in law. It is further established that the suit property is situated within the premises of the temple.

50. The appellants further contended that the suit was not filed within three years from the date of the decree passed in O.S. No. 6669 of 1979. However, in the present case, the sale deed in favour of the first defendant was executed only in the year 1992. As per Ex. A2, the sale deed was executed on 30.04.1992, and the present suit was filed in the year 1993, well within the prescribed period of three years. Therefore, the objection relating to limitation on this ground is also untenable.



S.A. No.541 of 2023

51. Another contention raised by the appellants is that the earlier suit in O.S. No. 6669 of 1979 was decided in favour of the first defendant and that the plaintiffs ought to have raised their objections in the proceedings under Section 9 of the City Tenants Protection Act in L.A. No. 4065 of 1991, which was allowed ex parte on 02.08.1991. According to the appellants, since the plaintiffs were aware of the said proceedings and did not raise any objection, the present suit is barred by estoppel. This contention is also devoid of merit. As discussed earlier, the plaintiffs assumed charge as trustees only in November 1991, and immediately upon coming to know about the collusion between the first defendant and the then Executive Officer, they filed the present suit in the year 1993. Moreover, the relief sought in the earlier suit was only for ejectment of the first defendant. The comprehensive relief now sought, including declaration of invalidity of the lease and sale, could not have been claimed in the earlier proceedings and therefore necessitated a separate suit.

52. The plaintiffs have clearly established fraud and collusion on the part of the first defendant and the then Executive Officer, as well as gross violations of statutory provisions, as discussed supra. Hence, the present suit

35\40



S.A. No.541 of 2023

is maintainable in law, and the plea of res judicata has no application to the facts of the case. Accordingly, the objections raised by the appellants are unsustainable and do not warrant any interference. Thus, question of law G is answered.

53. Therefore, the first appellate court independently analysed the entire facts and circumstances of the case, rightly framed separate points for consideration, and ultimately held that the suit property is situated within the compound wall of the temple. Consequently, the suit property could not have been sold, and the provisions of the City Tenants Protection Act were held to be inapplicable.

54. The first appellate court further held that the Executive Officer of the temple was not competent to alienate the temple property without obtaining prior sanction from the Commissioner. It was also categorically held that once the property was classified as res extra commercium, the same could not be sold at all. Accordingly, the sale in favour of the defendant was held to be invalid, relying upon the ratio laid down in 2010

36\40



S.A. No.541 of 2023

(3) MLJ 1154. The appellate court further found that the defendant had obtained the sale deed by playing fraud, with an intention to unlawfully grab the temple property for illegal gain.

55. The first appellate court also recorded a finding that the market value of the property was never properly determined, and that the property had been sublet by the tenant for running a firewood stall and a cycle shop, in clear violation of the provisions of the HR&CE Act. On these grounds, the appellate court rightly concluded that the contentions raised by the appellants were insufficient to interfere with the findings of the trial court, Including payment of Court fee.

56. Both the courts below have rightly decreed the suit in favour of the plaintiffs/respondents 1 to 6. The concurrent findings are well-reasoned and supported by evidence and do not warrant any interference. Thus question of law F and H are answered. It follows that no substantial question of law has been made out by the appellants. There is no question of law involved for consideration in this second appeal. **Accordingly, the**



S.A. No.541 of 2023

second appeal is dismissed. There shall be no order as to costs.

Consequently, the connected miscellaneous petition is closed.

57. The appellant / 7th defendant is granted eight weeks' time from the date of receipt of a copy of this judgement to vacate the premises. The appellant contended that there is no specific order regarding the re-deposit of the sale consideration paid by the first defendant. However, no such plea was raised in the written statement. This contention is sought to be raised for the first time in the second appeal and is therefore untenable. In any event, the suit was filed only for recovery of possession of the land and not for the superstructure. Hence, the appellant / seventh defendant is at liberty to remove the superstructure and hand over vacant possession of the land to the plaintiffs.

26.03.2025

Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non Speaking order

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38\40



S.A. No.541 of 2023

To

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1. The VII Additional City Civil Court, Chennai.
- 2.The V Assistant Judge, City Civil Court, Chennai.
- 3.The Section Officer, VR Section, High Court of Madras.



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S.A. No.541 of 2023

T.V.THAMILSELVI, J.

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S.A.No.541 of 2023
and
CMP.No.16961 of 2023

26.03.2025

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