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S.A.No.239 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2025

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

S.A.No.239 of 2014

and

M.P.No.1 of 2014

R.Nagarajan

... Appellant / Plaintiff

vs.

1.Arulmighu Balasubramanyaswamy &
Alayamman Thirukkoil,
Rep. by its Executive Officer,
Having office at Arulmighu Alayamman Thirukkoil,
Teynampet,
Chennai-600 018.

2. The Joint Commissioner,
Hindu Religious and Charitable Endowments
(Admn.) Department,
Having office at
Nungambakkam, Chennai-600 034. ... Respondents / Defendants

PRAYER: This Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree dated 30.06.2011 made in A.S.No.414 of 2010, on the file of learned II Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 29.03.2010 passed in O.S.No.1274 of 2009 on the file of the I Assistant City Civil Court, Chennai.

For Appellant : Mr.M.Balasubramanian

For 1st Respondent : Mr.S.D.Ramalingam



S.A.No.239 of 2014

For 2nd Respondent : Mr.P.Gurunathan

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JUDGMENT

This Second Appeal has been preferred by the plaintiff against the judgment and decree dated 30.06.2011 made in A.S.No.414 of 2010, on the file of II Additional Judge, City Civil Court, Chennai.

2. Parties are indicated herein as per their litigative status and ranking before the trial Court.

3. According to the plaintiff the suit property is a shop situated at the basement. The plaintiff being a devotee of 1st defendant Temple gave a representation to the then Executive Officer of the 1st defendant temple on 07.01.1994 to the effect that the said basement room admeasuring 859 sq.ft., which is kept idle may be leased out to the plaintiff to convert into a shop. Accepting the request of the plaintiff, the Executive Officer of the temple along with five members and the Trustee of the temple sent a proposal to the 2nd defendant in the year 1994. The 1st defendant executed a lease deed on 10.02.1995 in favour of the plaintiff in respect of the suit property for a period of three years in Doc.No.122 of 1995 before the District Registrar Office, Madras Central, fixing monthly lease amount of Rs.2,500/- for the said premises. He paid security deposit of Rs.30,000/-



S.A.No.239 of 2014

for the leased property. He spent a huge amount i.e., Rs.1,14,127.10 ps towards the renovation and repair work etc. of the suit property. He constructed a new floor and put up gate and obtained electricity service connection by incurring a sum of Rs.5,385/-. He was running a xerox and PCO in the suit property under a valid licence. He used to pay the lease amount periodically at Rs.2,500/- p.m., with a periodical enhancement of Rs.2,500/-, Rs.2,750/-, Rs.3,025/- and thereafter at the rate of Rs.5,025/-.

4. The further case of the plaintiff is that the 1st defendant issued a notice on 17.10.2005 demanding the lease amount of Rs.9,464/- p.m with retrospective effect from 01.11.2001, by referring to the order passed by the 2nd respondent in Na.Ka.No.14294/2003 dated 08.10.2004. The said order was not furnished to him.

5. As per the terms of registered lease deed dated 10.02.1995, Rs.250/- would be increased every year and the loan amount would not come to such a huge amount of Rs.9,464/- p.m., as claimed by the 1st defendant on 17.10.2005 by way of notice with retrospective effect from 01.11.2001.

6. The 1st defendant issued a notice of demand on 22.01.2009



S.A.No.239 of 2014

seeking from the plaintiff to pay a sum of Rs.5,17,704/- @ Rs.9,464/- p.m. with retrospective effect from 01.11.2001 for the suit property which is in the occupation of the plaintiff herein.

7. Based on the resolution passed by the Board of Trustees dated 15.05.2008, claiming a huge amount from the plaintiff by giving two weeks time to comply with the same, he is deprived from preferring an appeal before the Commissioner, HR & CE and further revision petition provided under the HR & CE Act before the High Court of Madras. Hence, the suit.

8. Per contra, it was contended by the 1st defendant/1st respondent Temple that the suit relief filed is not maintainable before the trial Court in view of Section 108 of HR & CE Act, 1959, which is not a special enactment: If the plaintiff is aggrieved, revision petition has to be filed against Government Order and has the remedy to file an appeal before the Commissioner HR & CE under Section 21 of the said Act. The plaintiff is a tenant in respect of the basement shop.

9. Based on the above said pleadings, the trial Court framed the following issues :

- (i) Whether the suit is maintainable?
- (ii) Whether the trial Court has got jurisdiction to try the suit?



WEB COPY



S.A.No.239 of 2014

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

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

10. At trial, on the plaintiff's side, the plaintiff has examined himself as PW1 and Eleven documents were marked. On the defendants' side two witnesses were examined.

11. The trial Court, upon consideration of oral and documentary evidence and after hearing the arguments advanced by either side, holding that the suit filed by the plaintiff is not maintainable in law and the trial court does not have the jurisdiction to try the issue and dismissed the suit. Aggrieved, the plaintiff herein preferred appeal before II Additional City Civil Court, Chennai, in A.S.No.414 of 2010.

12. The First Appellate Court, upon consideration on perusal of the records and on hearing the arguments advanced by either side, held that the plaintiff without availing remedy provided under HR & CE Act, approached the Civil Court which is not correct and Civil Court does not have jurisdiction to entertain the suit and dismissed the appeal by confirming the judgment of the trial Court.



S.A.No.239 of 2014

WEB COPY

13. The following substantial question of law arise for consideration:

Whether the Courts below are right in ignoring the categorical admissions of the official witnesses in the above suit as DW1 and DW2 i.e., admitting the fact that fair rent has been fixed unilaterally based on invalid G.O.No.353, while deciding the matter concurrently?

14. The learned counsel for the appellant would submit that the appellant has handed over the possession to the 1st respondent namely Arulmighu Balasubramanyaswamy & Alayamman Thirukkoil, represented by its Executive Officer. This fact has been recorded by this Court as early as on 05.08.2016. The suit was laid by the plaintiff/appellant Nagarajan for the relief of (i) declaration that the impugned notice of demand dated 22.01.2009 issued by the 1st defendant as illegal, unreasonable and unenforceable; (ii) for a consequential injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the property.

15. The trial Court has held that as per Section 21 of HR & CE Act, the plaintiff should have preferred the revision before the Commissioner of



S.A.No.239 of 2014

HR & CE. It appears that PW1 during his cross-examination has also acceded to the fact that he has not preferred any revision against Exs.A7 and A8, notice before the Commissioner of HR & CE and as there is no territorial jurisdiction to decide the issue, the suit was dismissed. Section 21 of HR & CE is extracted hereunder:

"21. Power of Commissioner to call for records and pass orders.

(1) The Commissioner may call for and examine the record of [any Joint or Deputy or Assistant Commissioner] [Substituted by section 4 of the Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1995 (Tamil Nadu Act 38 of 1995).] or of any trustee of a religious institution other than a math or a specific endowment attached to a math in respect of any proceeding under this Act [not being a proceeding, in respect of which a suit or an appeal to a Court is provided by this Act, or in respect of which an application for revision has been preferred under section 21-A to the Joint Commissioner or Deputy Commissioner and is pending disposal by him] [Substituted by section 3 of the Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1978 (Tamil Nadu Act 42 of 1978).] to satisfy himself as to the regularity of such proceeding, or the correctness, legality or propriety of any decision or order passed therein.



WEB COPY



S.A.No.239 of 2014

(2) *If any such decision or order has been passed by [any Joint or Deputy or Assistant Commissioner] [Substituted by section 4 of the Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1995 (Tamil Nadu Act 38 of 1995).], or by the trustee of any religious institution other than a math or a specific endowment attached to a math and other than one included in the list published under section 46, and it appears to the Commissioner that the decision or order should be modified, annulled, reversed or remitted for re-consideration, he may pass orders accordingly.*

(3)(a) *If any such decision or order has been passed [xxx] [The words by any Area Committee or were omitted by section 7(ii)(a) of the Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1968 (Tamil Nadu Act 19 of 1968).] by the trustee of any religious institution included in the list published under section 46, the Commissioner may, if he thinks fit, remit the matter together with his observations in regard thereto [to the trustee,] [Substituted for the words to the Committee or trustee, as the case may be by section 7(ii)(a), of the Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1968 (Tamil Nadu Act 19 of 1968).] for re-consideration of the decision or order and report to the Commissioner within a time to be specified by him in this behalf.*

(b) *On receipt of, and after considering, such*



WEB COPY



S.A.No.239 of 2014

report, it shall be open to the Commissioner to modify, annul or reverse the decision or order, as revised after such re-consideration, as the case may be.

(c) If the report is not received by the Commissioner within the time specified or such further time as may be granted by him, the Commissioner may modify, annul or reverse the decision or order of [the trustee] [Substituted for the words to the Committee or trustee, as the case may be by section 7(ii)(a), of the Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1968 (Tamil Nadu Act 19 of 1968)].

(4)(a) The Commissioner may call for and examine the record of any trustee of a math or a specific endowment attached to a math in respect of any proceeding under this Act (not being a proceeding in respect of which a suit or an appeal to a Court is provided by this Act) to satisfy himself as to the legality of any decision or order passed therein.

(b) If any such decision or order has been passed illegally by the trustee of a math or a specific endowment attached to a math and it appears to the Commissioner that the decision or order should be modified, annulled, reversed or remitted for re-consideration, he may pass orders accordingly.

(5) The Commissioner shall not pass any order prejudicial to any party under sub-section (2) or clause (b) or clause (c) of sub-section (3), or under clause (b)



WEB COPY



S.A.No.239 of 2014

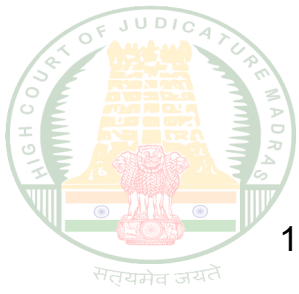
of sub-section (4), without hearing him or giving him a reasonable opportunity of being heard.

(6) The Commissioner may stay the execution of any decision or order of the nature referred to in sub-section (1) or clause (a) of sub-section (4), pending the exercise of his powers under sub-section (2) or sub-section (3) or under clause (b) of sub-section (4) in respect thereof.

(7) Every application to the Commissioner for the exercise of his powers under this section shall be preferred within three months from the date on which the order or proceeding to which the application relates was communicated to the applicant.

16. Section 108 of TN HR & CE Act, 1959 prevents any party from filing suits or initiate any legal proceedings regarding administration or management of religious institutions except those instituted in conformity with, the provisions of the Act.

17. The remedy available to the plaintiff/appellant is to file an appeal under Section 21 of the HR & CE Act. A careful perusal of Ex.A7 notice indicates the fact that the fair rent of Rs.9,464/- has been fixed for the suit property. Ex.A7 notice is dated 17.10.2005.



S.A.No.239 of 2014

18. As per Section 34A(3) of the above said Act, if at all the tenant is aggrieved by the fixation of fair rent/lease rent, he may prefer appeal within a period of 30 days from the date of receipt of the order to the Commissioner.

19. As per Section 34A(5) of the Act, any person aggrieved by the order of the Commissioner may prefer revision petition before the High Court. Section 34(D) of the HR & CE Act speaks about the bar of jurisdiction of Civil Court. It is pellucid that the lease rent was fixed by the Fair Rent Fixation Committee as per Section 34(A) of the Act and the Order fixing the fair rent was passed by the relevant authority under Section 34(A)(2) of the Act.

20. The appellant has filed the suit as mentioned supra without exhausting the remedy provided under Sections 21 and 34(A)(3) has filed the suit before the Civil Court which is clearly barred as per Section 34(D) which deals with bar of jurisdiction of Civil Court. In view of the clear bar as per Section 34(D), plaintiff cannot seek remedy before the Civil Court. The trial Court, for want of jurisdiction has rightly dismissed the suit which is also confirmed by the First Appellate Court. In view of the foregoing discussions, the substantial question of law is answered against the



S.A.No.239 of 2014

plaintiff.

WEB COPY

21. Based on the aforestated discussions and observations, this Second Appeal stands dismissed and sequel to this, the judgment and decree granted by the First Appellate Court in A.S.No.414 of 2010 by the learned II Additional Judge, City Civil Court, Chennai, stands confirmed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

27.03.2025

Index : Yes/No
Speaking / Non-speaking order
ssn

To:

1. The II Additional Judge,
City Civil Court, Chennai,
2. The I Assistant Judge,
City Civil Court, Chennai.
- 3.The Executive Officer,
Arulmighu Balasubramanyaswamy &
Alayamman Thirukkoil,
Having office at Arulmighu Alayamman Thirukkoil,
Teynampet, Chennai-600 018.
4. The Joint Commissioner,
Hindu Religious and Charitable Endowments
(Admn.) Department,
Having office at



S.A.No.239 of 2014

Nungambakkam, Chennai-600 034.

5. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

R.KALAIMATHI, J.,
ssn

S.A.No.239 of 2014
and
M.P.No.1 of 2014



WEB COPY



S.A.No.239 of 2014

27.03.2025