



S.A.No.434 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.05.2025

CORAM:

THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

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1.Santhakumari
2.Rathinasabapathy
3.Balambal
4.Sambamoorthy
5.Girija

... Appellants / Defendants

-VS-

Arulmighu Virdhagirishwarar Thirukovil,
represented by its
Executive Officer

... Respondent / Plaintiff

PRAYER: This Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.7 of 2013, dated 26.02.2014, on the file of the Principal Subordinate Judge, Virdchalam in confirming the judgment and decree in O.S.No.88 of 2003, dated 30.08.2011 on the file of the Principal District Munsif, Virdhachalam.

For Appellants : Mrs.V.Srimathi
For Respondent : Mrs.C.Jaya Chitra



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JUDGMENT

This Second Appeal has been preferred by the defendants against the judgment and decree dated 26.02.2014 in A.S.No.7 of 2013, by the Principal Sub-Court, Vridhachalam.

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

3. Heard the arguments of the learned counsel for the appellants/defendants and the learned counsel for the respondent/plaintiff.

4. The case of the plaintiff Temple is that the suit property namely land in R.S.No.263/1A-situated at North-Fort Street, Virdhachalam Taluk, Vridachalam belongs to the plaintiff, Devastanam. The said property is let out to the defendants for a monthly rent of Rs.10/- p.m., by the plaintiff



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Temple and the said rent was raised to Rs.20/- p.m. At the time of accepting the lease, the defendants agreed not to raise pucca construction while agreeing to pay the rent. In violation of the agreement, the defendants have raised construction on the ground floor by blocking the rainwater way. Action is being taken in this regard by the plaintiff Temple. At present he is also putting up pillars in the first floor, but the devotees will be prevented from doing darshan from north side Gopuram and there is a hindrance for the plaintiff Temple security and the defendants have no right to raise pucca construction and no permission is granted to raise the construction by the Executive Officer of the Temple. Without any proper permission, raising of the building by the defendants is not maintainable in law. Hence, the suit for, permanent injunction not to raise any pucca construction and for mandatory injunction to remove the first floor and for other reliefs.

5. It was counteracted by the defendants by filing the written



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statement to the effect that the ground floor was constructed with the permission of the Devastanam. The defendants gave an application on 28.02.2003 to the Executive Officer seeking permission to raise the first floor. Based on the oral permission granted by the Assistant Commissioner, he completed construction of first floor within the month of March 2003.

6. Based on the divergent pleadings, the trial Court framed the relevant issues. At trial to substantiate the details of plaint, on the plaintiffs' side, one witness is examined and six documents have been marked. On the defendant's side, two witnesses have been examined and no document was marked.

7. The trial Court upon consideration of oral and documentary evidence and after hearing both sides, partly decreed the suit. Aggrieved the defendants preferred Appeal before the Principal Sub-Court,



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Vridachalam in A.S.No.7 of 2013.

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8. Upon consideration of entire case records and after hearing both sides arguments, the First Appellate Court held that the defendants raised the construction on the first floor after obtaining such permission and dismissed the appeal by confirming the judgment and decree of the trial Court. Aggrieved the defendants have preferred this Second Appeal before this Court.

9. The learned counsel for the appellant/defendants would contend that as per Ex.A4, communication and the resolutions passed by the temple administration dated 23.04.2003, he has completed construction.

10. From the evidence of PW1, it appears that the land was let out to the 1st defendant on a monthly rent of Rs.10/- and thereafter, it was raised to Rs.20/- and the same was being paid by the 1st defendant.



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11. PW1 has filed his proof affidavit in line with the details of the plaint. Ex.A2 is the application dated 26.02.2003 given by the 1st defendant to the Executive Officer of the plaintiff Temple sought for permission to raise construction in the first floor.

12. It is the evidence of PW1 that the 1st defendant has raised construction in the ground floor as well as in the first floor without any permission. He has also put up pillars in the first floor. The contention of the 1st defendant that the 1st defendant got oral permission of the then Assistant Commissioner, Cuddalore is totally incorrect. When the construction is raised without any permission, then the plaintiff Temple has got every right to terminate the tenancy.

13. From the evidence of DW1, it is pellucid that no construction approval is obtained from the Municipality. Though DW1 would state that



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he has been paying the house tax, but no house tax receipt is marked.

DW1's father, who is the 1st defendant Viruthagiri died in the year 2004.

From the evidence of PW1 as well as DW1, it is clear that the suit property is in possession and enjoyment of the defendants. Ex.A2 application is given by the 1st defendant Viruthagiri Gurukkal and based on the same, the defendants would contend that oral permission was granted by the temple administration to raise construction in the first floor. Ex.A6 is the notice dated 18.11.1969 issued by the plaintiff Temple to the defendant. In the said notice, it has been mentioned that the 1st defendant was permitted to construct a hut and rent has to be paid.

14. It is the case of defendants that when the suit was pending, construction in the first floor was completed. When the plaintiff Temple takes the stand that without permission, the defendants have raised the ground and first floor construction, then the burden lies upon the defendants to prove that the constructions were made after obtaining



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proper permission. But, no order permitting the 1st defendant to raise construction granted by the temple authority was marked by the defendants. First prayer in the suit is for grant of permanent injunction not to raise any construction in the first floor. As the first floor construction was over at the time of conclusion of trial, the first prayer was not granted in favour of the plaintiff and the other prayers namely, for grant of mandatory injunction to remove the unauthorised construction and the third prayer namely, for recovery of possession have been granted in favour of the plaintiff Temple.

15. Based on the aforesaid details, the First Appellate Court has rightly confirmed the findings of the learned trial Court as mentioned supra. This Court also does not find any good reason to interfere with the findings of the First Appellate Court and no substantial question of law arises for consideration.



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16. Based on the aforesaid discussions, this Second Appeal stands dismissed. Sequel to this, the judgment and decree granted by the Principal Sub-Court, Vridhachalam in A.S.No.7 of 2013, dated 26.02.2014, stands confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition, if any stands closed.

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

To

1. The Principal Subordinate Judge,
Virdchalam.
2. The Principal District Munsif,
Virdhachalam.
3. The Section Officer,
V.R.Section,
High Court of Madras,

9/11



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