

(2010) 07 MAD CK 0083

In the Madras High Court

Case No : S.A. No. 1414 of 2008 and M.P. No"s. 1 of 2008 and 1 of 2009

E.K. Khadar Khan

APPELLANT

Vs

Arulmigu, Thalaivetti Muniappan and Thirumalai Amman
Aalayam Fort

RESPONDENT

Date of Decision : 26-07-2010

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 —
Section 78(2), 78(4)
Transfer of Property Act, 1882 — Section 106

Citation : (2010) 07 MAD CK 0083

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : A. Nagarathinam, for the Appellant; T. Murugamanickam, for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—This second appeal has been filed against the judgment and decree, dated 10.1.2006, made in A.S. No. 172 of 2005,

on the file of the Additional Subordinate Court, Salem, confirming the judgment and decree, of the trial Court, dated 4.7.2005, made in O.S. No.

575 of 2003, on the file of the Principal District Munsif Court, Salem.

2. The defendant in the suit, in O.S. No. 575 of 2003, is the appellant in the present second appeal. The plaintiff in the said suit is the respondent herein.

3. The plaintiff had filed the suit praying for a decree directing the defendant to vacate and handover the possession of the suit property after removing the superstructure therein, and for damages

4. In the plaint filed in the suit, in O.S. No. 575 of 2003, it had been stated that the suit property belongs to the plaintiff Temple, absolutely. The defendant had taken the property on lease. At the time of the commencement of the lease, the property in question was a vacant site. Thereafter, the defendant had put up a superstructure in the said property. The defendant is in possession and enjoyment of the property for more than 35 years and he is carrying on business in the said property. Since, the property had been leased out for non-residential commercial purpose, a sum of Rs. 150/- per month had been fixed, as the rent payable by the defendant. The plaintiff had enhanced the rent and a notice had been issued, on 5.3.2002, demanding a sum of Rs. 1425/- per month, from 1.11.2001. Though the defendant had received the notice he did not send any rent from 1.11.2001.

5. It had also been stated that the defendant had filed a vexatious suit, in O.S. No. 113 of 2002, on the file of the II Additional District Munsif Court, Salem. The plaintiff had terminated the tenancy by sending a notice, on 12.6.2003. Even though the defendant had received the said notice, he had failed to comply with the request made in the said notice. The defendant is not entitled to take shelter under the provisions of the Madras City Tenants Protection Act, 1921.

It had also been stated that the defendant is liable to pay to the plaintiff Temple the damages for the use and occupation of the premises in question, at the rate of Rs. 1425/- per month.

6. In the written statement filed by the defendant it has been stated that the suit property is a natham poramboke and it never belonged to the plaintiff temple, at any point of time. The defendant had never entered into the lease agreement, either with the plaintiff or with anybody else. The defendant is in possession and enjoyment of the suit property. The suit, in O.S. No. 113 of 2002, had been dismissed for default. It had also been stated that the plaintiff is not the owner of the property and he had never leased out the said property to the defendant. There is no lessor-lessee relationship between the plaintiff and the defendant. Further, the plaintiff is not entitled for compensation for the use and occupation of the property in question. Hence, the suit is liable to be dismissed.

7. In view of the averments made on behalf of the plaintiff, as well as the

defendant, the trial Court had framed the following issues for consideration:

- 1) Whether the plaintiff is the absolute owner of the suit property?
- 2) Whether the plaintiff had leased out the property to the defendant and whether there is a landlord and tenant relationship between the plaintiff and defendant?
- 3) Whether the notice to quit is valid?
- 4) Whether the plaintiff is entitled for recovery of possession?
- 5) Whether the plaintiff is entitled to recover the damages for use and occupation?
- 6) To what relief?

8. One R. Jaganathan had been examined, as P.W.1, on the side of the plaintiff. Exs.A-1 to A-3 had been marked. No oral or documentary evidence had been adduced on the side of the defendant.

9. Based on the evidence available on record, the trial Court had found that, in the suit filed by the defendant, in O.S. No. 113 of 2002, he had admitted that the plaintiff Temple, which was the defendant therein, was the owner of the suit property. The copy of the plaint filed in the said suit

had been marked as Ex.A-3. It had also been found that the plaintiff in the said suit, examined as P.W.1, had categorically stated, during the chief

examination, that the suit property belonged to the Temple. It had also been admitted by the defendant herein, who was the plaintiff in the suit, in

O.S. No. 113 of 2002, that he was only a tenant under the plaintiff Temple and that he has been paying the rent at the rate of Rs. 150/- per month,

for the vacant site. Even though the said suit had been dismissed for default, the admission made by the plaintiff therein would be binding on him.

10. The trial Court, while deciding the issue as to whether a notice, u/s 106 of the Transfer of Property Act, 1882, ought to have been issued by

the plaintiff Temple, in the present suit, before terminating the tenancy, the trial Court had found that the notice had been validly issued, as per the

relevant provisions of law. It had also been held that, since the plaintiff is a Temple, which is under the control of the Hindu Religious and

Charitable Endowments Department, the defendant is not entitled to the protection, under the Madras City Tenants Protection Act, 1921.

11. The trial Court had also found that the suit filed by the executive officer of the plaintiff Temple cannot be said to be improper and unsustainable.

It had been held that Sub-sections (2) and (4) of Section 78 of the Hindu Religious and Charitable Endowments Act, 1956, would apply only in

cases of encroachment upon the property belonging to a Temple and therefore, it would not be applicable to the present case, when it has been

admitted by the defendant that he is a tenant under the plaintiff Temple.

12. In such circumstances, the suit had been decreed by the trial Court, by its judgment and decree, dated 4.7.2005, directing the defendant to

handover the vacant possession of the suit property, within a period of two months from the date of the passing of the decree, and by further

directing the defendant to pay a sum of Rs. 500/- per month, from 1.8.2003, till the date of the handing over of possession of the property to the

plaintiff Temple.

13. Aggrieved by the judgment and decree of the trial Court, dated 4.7.2005, made in O.S. No. 575 of 2003, the defendant in the suit had filed an

appeal on the file of the Additional Subordinate Court, Salem, in A.S. No. 172 of 2005.

14. The First Appellate Court had framed the following points for consideration:

1) Whether the lower Court decree and judgment is liable to be set aside?

2) Whether the lower Court has failed to consider that there was no lease agreement between the plaintiff and the defendant?

3) Whether the lower Court has failed to consider that the O.S. No. 113/2002 was dismissed for default and wrongly appreciated the averments

in the plaint of that suit?

4) Whether the lower Court has wrongly fixed Rs. 500/- as damages per month?

15. The First Appellate Court had found that there was no oral or documentary evidence on the part of the appellant to sustain his claim that the

suit property is a natham poramboke, which is a vacant site, and that he has been in occupation of the said property, for more than 45 years. It had

also been found that the appellant in the first appeal had admitted in the plaint filed in the suit, in O.S. No. 113 of 2002, marked as Ex.A-3, that

the respondent Temple is the owner of the suit property and that the appellant is a tenant, in respect of the property in question. Once, the land-

lord tenant relationship, between the respondent and the appellant had been admitted in the suit filed by him, in O.S. No. 113 of 2002, it would not be open to him to deny the said admission, in the present suit.

16. The First Appellate Court had further held that due to the fact that the defendant had not paid the arrears of rent, a notice had been issued on behalf of the plaintiff Temple, marked as Ex.A-1, terminating the tenancy. The necessary statutory period had been granted to the appellant to vacate the suit property and to handover vacant possession of the same to the plaintiff Temple. Even though the appellant had claimed that the executive officer cannot maintain the suit on behalf of the respondent Temple there was nothing shown by the appellant in the first appeal to substantiate his claim. In such circumstances, the First Appellate Court had dismissed the appeal, by its judgment and decree, dated 10.1.2006, made in A.S. No. 172 of 2005, confirming the findings of the trial Court.

17. Aggrieved by the judgment and decree of the First Appellate Court, dated 10.1.2006, made in A.S. No. 172 of 2005, the defendant in the suit, who was the appellant in the first appeal, had preferred the present second appeal before this Court raising the following questions, as substantial questions of law:

- 1) Whether the notice to quit u/s 106 of Transfer of Property is valid or not, when there is no privity of contract between the appellant and the respondent?
- 2) Whether the appellant is entitled for notice while the appellate Court framed new issues at the Appellate stage.
- 3) Whether the lower Court failed to consider that O.S. No. 113 of 2002, was dismissed for default and wrongly appreciated the averments in the plaint of that suit?

18. The learned Counsel for the appellant had submitted that the Courts below had erred in coming to the conclusion that the suit property belonged to the respondent Temple and that the appellant was a tenant in the said property. Even though the suit property is a natham poramboke the Courts below had erroneously held that the suit property belongs to the respondent Temple. The Courts below had committed an error in arriving at their conclusions in favour of the respondent Temple. The Courts below ought to have held that the executive officer of the respondent

Temple cannot maintain the suit on behalf of the Temple, as per subsections (2) and (4) of Section 78 of the Hindu Religious and Charitable Endowments Act, 1956.

19. The learned Counsel appearing on behalf of the appellant had further submitted that the admission of the appellant in the suit filed by him, in

O.S. No. 113 of 2002, cannot be binding on him, in view of the fact that the said suit had been dismissed for default. The Courts below had failed

to note that there was no landlord-tenant relationship between the respondent Temple and the appellant in the second appeal. The trial Court, as

well as the First Appellate Court, had erred in holding that the appellant had not substantiated his claims, by way of evidence. Therefore, the

judgment and decree of the Courts below ought to be set aside, as they are erroneous and invalid in the eye of law.

20. Regarding the maintainability of the suit filed by the executive officer of the respondent Temple the learned Counsel appearing on behalf of the

appellant had relied on the following decision in support of his contention. Paragraph 21 of the said decision reads as follows:

21. ...It is clear that the Executive Officer is not the authority competent to initiate legal proceedings and that he had not been assigned with the

power of filing a suit. It is only the Board of Trustees in existence at that time which was competent to initiate the legal proceedings. The trustees

are not made parties to the suit and therefore, the finding insofar as the Executive Officer's suit is concerned, that it is filed without authority has to

be upheld.

21. Per contra, the learned Counsel appearing on behalf of the respondent Temple had submitted that the Courts below were right in coming to

their conclusions stating that there was no land lord tenant relationship between the respondent Temple and the appellant. The appellant had not

shown sufficient proof to show that he has been in occupation of the suit property for more than 45 years, without interruption. It had also been

rightly found that the executive officer of the Temple can maintain the suit on behalf of the respondent Temple. When the appellant had admitted, in

the plaint filed by him, in O.S. No. 113 of 2002, that he is a tenant under the respondent Temple, it would be sufficient evidence to sustain the plea

of the respondent Temple that the appellant was only a tenant in respect of the

suit property and that he had been paying a monthly rent of Rs.

150/- to the said Temple. As such, the trial Court, as well as the First Appellate Court, were right in allowing the suit filed by the respondent

Temple.

22. In view of the submissions made by the learned Counsels appearing on behalf of the appellant, as well as the respondent, and on a perusal of

the records available, this Court is of the considered view that the appellant has not shown sufficient cause or reason to interfere with the findings of

the Courts below. It is seen that the Courts below had arrived at their conclusions based on the evidence available on record. The trial Court, as

well as the First Appellate Court, had found that the appellant had admitted in the plaint filed by him in the suit, in O.S. No. 113 of 2002, that he

was a tenant in the suit property under the respondent Temple and that he was paying a monthly rent of Rs. 150/- to the Temple. Having made

such an admission it is not open to the appellant in the present second appeal, who was the defendant in the suit, in O.S. No. 575 of 2003, to

claim that the Temple is not the owner of the suit property and that he is not a tenant under the respondent Temple.

23. Further, the appellant had not been in a position to substantiate his claim that the executive officer of the respondent Temple is not the

authorized person to sue and to be sued on behalf of the Temple. As such, it cannot be said that the findings of the Courts below are erroneous

and unsustainable in the eye of law. In such circumstances, the present second appeal filed by the appellant, challenging the judgment and decree of

the Courts below, is liable to be dismissed, as devoid of merits. Hence, it is dismissed. No costs. Consequently, connected miscellaneous petitions

are closed.