

(2006) 02 MAD CK 0306

In the Madras High Court

Case No : S.A. No. 1909 of 2002 and C.M.P. No. 9179 of 2004

K.V. Pushpavalli

APPELLANT

Vs

Arulmighu Theerthabaleeswarar Devasthanam and P. Hayath
Basha

RESPONDENT

Date of Decision : 08-02-2006

Acts Referred:

Transfer of Property Act, 1882 — Section 106, 108, 108(c), 108(j), 108(j)

Citation : (2006) 02 MAD CK 0306

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : G. Masilamani, for Mr. B. Kaalathinathan, for the Appellant; R. Thirumaran, for the Respondent

Judgement

R. Banumathi, J.—This Second Appeal is preferred against the Judgment and Decree dated 08.11.2000 of the VI Additional Judge, City Civil Court, Madras in A.S.No.258 of 1997, confirming the Judgment and Decree dated 14.07.1997 in O.S.No.3388 of 1985 passed by the VIII Assistant Judge, City Civil Court, Chennai. The unsuccessful Second Defendant is the Appellant herein. The Suit Property relates to lands measuring 474 1/4 sq.ft bearing Corporation Old Door No.31, New Door No.41, Dr. Natesan Road, Second Lane, Krishnampet, Madras - 5 comprised in R.S.No.826 (Part). Admittedly, the Suit Property belongs to the Plaintiff - Devasthanam, under whom the First Defendant had become a Tenant. The Appellant - Second Defendant is said to have purchased the Lease hold right from the First Defendant.

2. Case of the Plaintiff - Devasthanam is that the First Defendant was a Tenant under the Plaintiff in respect of the Suit Property. The First Defendant had put up a thatched hut on the suit property and he was paying the land rent of Rs. 5/- per month to the Plaintiff. The leasehold right of the First Defendant was a personal right to enjoy the same and it was not an absolute and alienable right. As such, the First Defendant cannot validly transfer or assign his personal right.

While so, the First Defendant has sold the Thatched hut to the Second Defendant under the Registered Sale Deed dated 24.08.1981. Under Ex.B.1 - dated 07.06.1982, the Second Defendant / Appellant sent a letter, requesting the Plaintiff - Devasthanam to transfer the leasehold right of the land in her favour and to recognise her as a Tenant under the Plaintiff. Since the First Defendant had no right to transfer the leasehold right, the Second Defendant has not acquired any valid right over the Suit Property. Hence, the Executive Officer of the Plaintiff - Devasthanam refused to effect transfer and to recognise the Second Defendant as the Tenant under the Plaintiff.

3. Further case of the Plaintiff is that the Second Defendant had removed the Thatched hut put up by the First Defendant and put up a new construction over the Plaintiff - Devasthanam land. The Plaintiff -Devasthanam immediately objected for the construction of the new building by the Second Defendant and the Second Defendant did not care for the objection. Hence, the Plaintiff - Devasthanam issued Legal Notice on 25.04.1984 (Ex.A.1) calling upon the Second Defendant to restrain from putting up new construction and causing loss and damage to the property of the Plaintiff. The Second Defendant is a total stranger squatting on the Plaintiffs land without any right or authority. The Second Defendant has no right to put any new construction on the Suit Property. Hence, the Plaintiff - Devasthanam has filed the Suit for delivery of possession of the Suit Property and for other reliefs.

4. Admitting that the First Defendant was a Tenant in respect of the Suit Property, the Second Defendant has filed the Written Statement contending that the First Defendant was owning the pucca super structure put up in the suit property. The Second Defendant has purchased the said super structure together with the lease hold right of the First Defendant under the Sale Deed dated 24.08.1981. The Second Defendant has been paying the ground rent of Rs. 5/- to the Plaintiff - Devasthanam ever since her purchase. The Second Defendant had also written letters to the Plaintiff - Devasthanam requesting it to transfer the lease hold rights in her favour and to recognise her as a Tenant under the Plaintiff - Devasthanam in respect of the Suit Property. The Application for transfer of lease hold right of the Suit land is under consideration. One year prior to the Suit, the Second Defendant has changed the roof of the Super structure into RCC and the present market value of the super structure is very much higher. The First Defendant was entitled for compensation for the super structure within the meaning of Section 3 of Tamil Nadu City Tenants Protection Act. The Second Defendant has also filed I.A.No. 15490 of 1985 for direction to the Plaintiff to sell the Suit land to the Second Defendant for a price to be fixed by the Court. The Executive Officer of the Plaintiff - Devasthanam has already recommended the case of the Second Defendant for recognising her leasehold rights and the Second Defendant was eagerly waiting for favourable orders regarding transfer of leasehold right. The Plaintiff has hurriedly filed the Suit. The Suit is not maintainable in the absence of Notice u/s 106 of the Transfer of Property Act (for short T.P. Act).

5. In consideration of the evidence, the Trial Court held that under the Sale Deed, the Second Defendant cannot derive Leasehold right and that the Second Defendant is not a Tenant under the Plaintiff - Devasthanam. It was further held that since the Second Defendant was not a Tenant, there was no necessity to issue a Notice u/s 106 of the Transfer of Property Act, terminating the tenancy. Finding that the Second Defendant is not entitled to the benefits of Section 9 of the City Tenants Protection Act, Application No. 15490 of 1985 was dismissed. It was further held that by Exs.B.4 to B.13, the Landlord - Tenant relationship between the Plaintiff and the Second Defendant has not been proved.

6. As against the Judgment and Decree of the Trial Court, the Second Defendant preferred an Appeal in A.S.No.258 of 1997 on the file of City Civil Court, Madras. The lower Appellate Court confirmed the findings of the Trial Court and dismissed the Appeal finding that the Landlord - Tenant relationship does not exist and there is no necessity to issue the notice u/s 106 of the Transfer of Property Act to terminate the tenancy.

7. Aggrieved over the Judgment and Decree of the Appellate Court and ordering delivery of vacant possession and the concurrent findings, the Second Defendant has preferred this Second Appeal.

8. At the time of admission of the Second Appeal, the following substantial questions of law were framed:-

1. Whether the Courts below are right in holding that issuance of notice to quit u/s 106 of the Transfer of Property Act to the First Defendant (Tenant) before filing the Suit in ejectment is not necessary?

2. Whether by virtue of clause (j) of Section 108 of the Transfer of Property Act, the Second Respondent herein was legally entitled to transfer his rights vis-a-vis the first respondent herein in favour of the Appellant?

9. Laying emphasis upon Section 106 T.P. Act, learned Senior Counsel for the Appellant / Second Defendant has contended that without issuance of Notice to quit and when the essential requirements of Section 106 T.P. Act are not complied with, the Plaintiff - Devasthanam cannot maintain the ejectment Suit. Learned Senior Counsel interalia raised the following contentions:-

Under Section 108(j) of the T.P. Act, the Lessee can transfer the leasehold rights. Since the First Defendant has transferred the leasehold right to the Second Defendant, the Plaintiff - Devasthanam received the rent from the Second Defendant (in some rent receipts without stating "without prejudice").

The Plaintiff ought to have issued notice to the Second Defendant to quit the suit property.

If assignment of leasehold right to the Second Defendant is not approved, the Plaintiff - Devasthanam cannot ignore the tenancy of the First Defendant merely because the First Defendant sold the super structure to the Second Defendant.

Having received the rent from the Second Defendant on behalf of the First Defendant, the First Defendant must have deemed to have paid the rent.

It is not the case of the Plaintiff - Devasthanam that the First Defendant had refused to pay the rent. Hence, the tenancy between the Plaintiff and the First Defendant still subsists.

When the tenancy between the Plaintiff and the First Defendant still subsists, the mandatory Notice u/s 106 T.P. Act ought to have been issued. Without terminating the tenancy of the First Defendant, the Second Defendant cannot be evicted.

Contending that the sweep of Section 106 T.P. Act was not properly appreciated by the Courts below, learned Senior Counsel has submitted that in view of privity of contract subsisting between the First Defendant and Second Defendant, the Courts below ought to have dismissed the Suit for want of Notice u/s 106 T.P. Act. Pointing out non-production of Lease Deed between the Plaintiff and the First Defendant, learned Senior Counsel urged that in the absence of Contract to the contrary, the provisions of T.P. Act would prevail and hence, the ejectment suit filed without complying the mandatory requirements of Section 106 T.P. Act is not maintainable. Learned Senior Counsel has relied upon the decisions reported in 62 L.W. 143 and Waman Shrinivas Kini Vs. Ratilal Bhagwandas and Co., .

10. Countering the arguments, learned counsel for the Plaintiff - Devasthanam has submitted that in view of issuance of Consent Letter by the First Defendant, requesting to transfer leasehold right to the Second Defendant, there is no privity of contract subsisting between the First Defendant and the Plaintiff. Learned counsel has made the following submissions:

The First Defendant remained *exparte* in all the proceedings. When the First Defendant had not claimed any tenancy right / lease hold right in the Suit Property and when the First Defendant had assigned the lease hold right to the Second Defendant, there was no necessity to issue Notice to the Second Defendant.

When the Second Defendant herself claimed Tenancy right for herself, it is not open to the Second Defendant to urge that tenancy of the First Defendant still subsist. The Second Defendant has only raised plea of promissory estoppel against the Plaintiff - Devasthanam.

Mere payment of rent would not signify assent to tenancy (2005 T.L.N.J. 142 (CIVIL))

Under Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, (for short "HR & CE Act") the property of the religious institution cannot be sold or leased for a period of more than five years except with the approval of the Commissioner. The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 shall prevail over the general law.

It is further contended that after the term is over, the First Defendant has sold the leasehold right to third party / Second Defendant, which is void as per Section 34 of the HR & CE Act. The Second Defendant cannot have any lawful right to remain in occupation. It is also submitted that the Second Defendant having illegally put up the super structure is squatting on the Plaintiffs Temple property without paying any rent and that the Courts below have concurrently found that no Notice u/s 106 T.P. Act is required and that the concurrent findings do not suffer from any substantial error warranting interference.

11. To appreciate the contention in the light of the concurrent findings, we may briefly refer to the undisputed facts.

12. The Plaintiff - Devasthanam is the owner of the lands measuring 474 1/4 sq.ft comprised in R.S.No.826 (Part) bearing Corporation Old Door No.31, New Door No.41, Dr. Natesan Road, Second Lane, Krishnampet, Madras - 5. The First Defendant became a Tenant under the Plaintiff for the vacant land. It is stated that the lease hold right in favour of the First Defendant over the land was a personal one. The First Defendant had put up super structure in the Suit Property. The family had dealt with the Suit Property as is seen from Ex.B.19 - Partition Deed dated 17.12.1973. In the said Partition, the Suit Property (lease hold right of vacant site) shown as "Schedule-A" property was allotted to the First Defendant.

13. In Ex.B.19 - Partition Deed, the Suit Property is described as 474 1/4 sq. ft., with a thatched hut bearing Old Door No.31, Dr. Natesan Road, Krishnampet, Madras - 5. The Appellant / Second Defendant had purchased the lease hold right in the vacant land of 474 1/4 sq.ft and the super structure under the Sale Deed dated 24.08.1981 for a consideration of Rs. 10,000/-. The document is termed as said document filed seems to be an unregistered document. The document was not marked as Exhibit, perhaps for want of registration and for want of stamp duty. Suffice it to point that prior to sale, consent of Plaintiff - Devasthanam was not obtained nor the same was informed to the Plaintiff till March - June 1982.

14. Under Ex.B.1 - Letter (dated 07.06.1982 / 16.06.1982), the Second Defendant has requested the Executive Officer to transfer the lease hold right of the land to her. Contention of the Plaintiff - Devasthanam is that sale of the thatched hut with a lease hold right by the First Defendant is illegal and the Second Defendant has not acquired any right over land belonging to the Plaintiff - Devasthanam and the transfer of tenancy right was refused by the Plaintiff - Devasthanam. Alleging that the transaction of assigning the lease hold right in favour of the Second Defendant by the First Defendant is illegal and that the Second Defendant has no right to sit on the land of Plaintiff - Devasthanam and calling upon the Second Defendant to restrain from putting up any construction over the Suit property, the Plaintiff - Devasthanam has issued Ex.A.1 - Notice on 25.04.1984. In Ex.A.1 -Notice, the Plaintiff - Devasthanam has stated that the Second Defendant is a stranger and she is not entitled to remain in the property

and has no right to carry on any construction work in the Suit Property. In Ex.A.1 - Notice, the Plaintiff - Devasthanam has also warned the Second Defendant that if the construction work is not stopped, appropriate legal proceedings would be initiated against the Second Defendant. Without responding to Ex.A.1 - Notice, flouting all the terms and conditions, the Second Defendant is said to have completed the construction. The Plaintiff - Devasthanam has filed the Suit for eviction on 29.03.1985.

15. The Second Defendant has sent Ex.B.1 - Representation to the Executive Officer requesting to transfer the lease hold right in her favour. She has also sent Ex.B.2 (09.08.1984) and Ex.B.3 (18.09.1984) - Representations to the Hon'ble Minister, H.R & C.E. Department requesting to transfer lease hold right in her favour and to recognise her as the Tenant of the Plaintiff - Devasthanam. Neither the Plaintiff - Devasthanam nor the H.R & C.E Department has approved the transfer nor recognised the Second Defendant as the Tenant of the Plaintiff - Devasthanam.

16. Rent of Rs. 45/- for a period of nine months from June 1981 to February 1982 was paid by the Second Defendant, for which Ex.B.4 - Receipt (15.03.1982) was issued in the name of the First Defendant. As against the column, "Payee Signature", the Second Defendant - Pushpavalli has signed. Similarly, the Second Defendant has paid rent for February 1984 to June 1984, for which also, Exs.B.6 and B.7 - Receipts were issued by the Plaintiff - Devasthanam with endorsement "Without Prejudice". In Exs.B.6 and B.7 also, the Second Defendant has signed in the column "Payee Signature". In Ex.B.4 - Receipt, the endorsement "Without Prejudice" has not been made. Hence, it is contended that rent had been paid by the Second Defendant, for which receipt was also issued in the name of the First Defendant. When the rent was paid on behalf of the First Defendant, it is submitted that the First Defendant continues to be the tenant by holding over. Learned Senior Counsel has contended that rent having been paid, the First Defendant continues to be the Tenant and by accepting the rent on behalf of the First Defendant, the First Defendant continues to be the Tenant by holding over.

17. In support of his contention that the First Defendant continues to be the Tenant by holding over, learned Senior Counsel has laid much emphasis upon Section 108(c) T.P. Act. u/s 108(c) of T.P. Act, the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease, without interruption. u/s 108(c) T.P. Act, the lessor is deemed to contract with the lessee that he may hold the property during the time limit by the lease, without interruption. No doubt, the covenant for quiet enjoyment extends against the disturbance of the lessee's possession by the lessor or by persons claiming under him. It is contended that u/s 108(c) T.P. Act, the Second Defendant is entitled to be in possession and enjoyment of the demised property against the disturbance of the lessee's possession by the

Lessor / Devasthanam.

18. The above contention has no merits. Though rent had been received under Exs.B.6 and B.7, the same was received only "without prejudice". The omission to make an endorsement "without prejudice" in Ex.B.4 would not in any way advance the case of the Appellant. In any event, mere receipt of the rent would not in any way amount to assent recognition of the status of the Second Defendant as the Tenant under the Plaintiff - Devasthanam. Placing reliance upon the decision reported in 2005 (3) T.L.N.J. 142 (Civil), learned Counsel for the Plaintiff has submitted that even if the rent had been paid and received in the absence of express or implied recognition of the Second Defendant as the Tenant, the receipt of rent would not help the Appellant. Referring to number of decisions reported in S.R. Radhakrishnan and Others Vs. Neelamegam, , in the decision reported in Lease And Company and others ..vs.. M.S.A. Mohammed Farook (2005 (3) T.L.N.J. 142 (Civil)) Prabha Sridevan, J. has held that the Petitioner must prove that there was express or implied recognition as Tenants. In the decision reported in Shanti Prasad Devi and Another Vs. Shankar Mahto and Others, t was held that mere acceptance of rent will not signify assent to tenancy, nor could be the tenant claim that he was "holding over". The leasehold right of vacant site was given to the First Defendant by the Plaintiff - Devasthanam. Without the knowledge of the lessor - Devasthanam, there cannot be transaction between the First Defendant and Second Defendant. Rent receipts were issued only with endorsement "without prejudice". The Second Defendant cannot take advantage of omission to make an endorsement "without prejudice" in Ex.B.4.

19. The above decision squarely apply to the case in hand. There is nothing to show that the Plaintiff - Devasthanam has assented to the sale of the land and the lease hold right in favour of the Second Defendant. The request of the Second Defendant to recognise her as Tenant has not been granted till this date. When the Second Defendant has not been recognised as the Tenant, she cannot claim to be the Tenant under the Plaintiff - Devasthanam and the Second Defendant is not entitled to any protection.

20. The main point falls for consideration is whether the Tenant who has already sold the lease hold right to the Second Defendant can claim protection u/s 108(c) T.P. Act. The right u/s 108(c) T.P. Act extends to the action filed by the Landlord. When the Party suing for eviction is the true owner, the Lessee cannot claim protection u/s 108(c) T.P. Act. This is all the more so, when the Courts below have concurrently found that the First Defendant is no longer a Tenant under the Plaintiff - Devasthanam.

21. Ex.A.1 - Notice (25.04.1984) was issued to the Second Defendant calling upon her not to carry on any construction work on the land of the Devasthanam and from doing any act causing loss and damage to the property. u/s 106 T.P. Act, Notice to terminate the lease is a must. The Ejectment suit was filed on 29.03.1985. The Notice must contain the words "Your tenancy is hereby

terminated". The relevant requirements of Section 106 T.P. Act are two fold viz.,:- (i) monthly lease is terminable on the service of 15 days notice; (ii) such 15 days notice must expire with the end of a month of the tenancy. There is no doubt that both the requirements of Section 106 T.P. Act are subject to contract or local law or usage to the contrary.

22. Learned Senior Counsel for the Appellant has contended that Ex.A.1 - Notice issued to the Second Defendant is not a notice to quit within the sweep of Section 106 T.P. Act. It is further contended that the essential requirements of Section 106 T.P. Act has not been complied with since Notice to quit was not issued to the First Defendant and in Ex.A.1 - Notice issued to the Second Defendant, the relevant requirement of Section 106 T.P. Act has not been complied with. The Ejectment suit is mainly attacked on the ground of non-issuance of Notice to the First Defendant and the non-compliance of relevant requirements of Section 106 T.P. Act. The main contention urged is that in the absence of Notice u/s 106 T.P. Act, the ejectment suit is not maintainable.

23. Learned Senior Counsel has submitted that two situations arise viz., (i) if the Assignment of leasehold right to the Second Defendant is accepted, the Second Defendant becomes a statutory Tenant and Notice to Second Defendant ought to have been issued as contemplated u/s 106 T.P. Act and (ii) if the Assignment of leasehold right is not accepted, the privity of contract between the Plaintiff and the First Defendant continues and the Plaintiff - Devasthanam ought to have issued Notice to quit to the First Defendant. Much contentions were advanced contending that without Notice u/s 106 T.P. Act either to the First Defendant or to the Second Defendant, the Suit is not maintainable and the Courts below have not properly appreciated the purport of Section 106 T.P. Act and the relevant requirements.

24. Much contention was advanced on behalf of the Appellant / Second Defendant has to be considered in the light of two points viz., (i) after the First Defendant had sold away his leasehold right to the Second Defendant, what is the relationship of the First Defendant with the Plaintiff - Devasthanam? and (ii) in the absence of recognition of the Second Defendant as the Tenant, what is the relationship of the Second Defendant with the Plaintiff and what is the status of the Second Defendant.

25. The Second Defendant has purchased the lease hold right and the thatched hut thereon under the document dated 24.08.1981. As noted earlier, for want of Registration and for want of Stamp Duty, the document was not marked before the Court. The Second Defendant has not been approved as the Tenant under the Plaintiff - Devasthanam. The document assigning leasehold right to the Second Defendant has no validity in the eye of law.

26. The Second Defendant claims right only through the lease hold right sold to her by the First Defendant. u/s 34 of the H.R & C.E Act, any alienation of immovable property of any religious institution by way of sale, mortgage,

exchange or lease for a term exceeding five years shall be null and void, unless sanctioned by the Commissioner as being beneficial or necessary for the institution. The Commissioner shall accord such sanction only with the previous approval of the Government and subject to Government's directions in this regard. The Commissioner may, in according the sanction, give directions as to the utilisation of the amount raised, the investment of the amount, etc. An Appeal shall lie to the Court against any such order at the instance of a Trustee or interested person.

27. There are similar provisions in Section 41 in respect of inams granted for maintenance of a religious institution for performance of service or charity connected therewith, and such alienations are not valid unless sanctioned by the Government on the ground of its being necessary or beneficial to the Institution. For the breach of the above, and for other specified grounds, the Collector may resume the whole or any part of such inam, after due notice to the inamdhar and other specified persons and against the order of the Collector, an appeal shall lie to the District Collector, whose orders thereon shall be final.

28. The tenor of the document assigning leasehold right of the First Defendant to the Second Defendant is like a regular sale deed. In view of Section 34 of the H.R. & C.E. Act, unless the transaction is approved by the Commissioner, the document shall be null and void. Perhaps, realising the purport of Section 34 of the H.R. & C.E. Act., the Second Defendant has made the representation to the Hon'ble Minister for H.R. & C.E. Department to recognise her as the Tenant under the Plaintiff - Devasthanam. In the absence of approval by the Government and by the H.R. & C.E., Department, the Second Defendant is only a stranger and a trespasser in the Suit Property. In proper appreciation of the evidence, the Courts below have rightly found that on the basis of the document dated 24.08.1981, the Second Defendant cannot be construed as the Tenant. Since the Second Defendant is only a trespasser, there is no necessity to give Notice to quit u/s 106 T.P. Act.

29. In fact, the Second Defendant had filed I.A. No. 15490 of 1985 claiming benefit u/s 9 of the City Tenants Protection Act. That Application was also dismissed by the Trial Court holding that the Second Defendant is not entitled to the benefits under the City Tenants Protection Act. The Second Defendant was not a Tenant under the Plaintiff - Devasthanam. Hence, there was no necessity to comply with the requirement u/s 106 T.P. Act.

30. Having sold away his leasehold right and delivered possession to the Second Defendant, what is the position of the First Defendant is the main point falling for consideration. On 07.06.1982, the First Defendant had sent Ex.B.3 - Letter to the Executive Officer of Plaintiff - Devasthanam informing about the sale to the Second Defendant and expressing his consent for transfer of leasehold right to the Second Defendant. In Ex.B.3, the First Defendant has stated,

Having sold his leasehold right and delivered possession to the Second

Defendant, the First Defendant's lease is extinguished. No particular words are necessary for inferring extinguishment of lease. Once the First Defendant has sold his leasehold right and delivered possession to the Second Defendant, the First Defendant has no further right in the demised suit property.

31. Laying emphasis upon Section 108(j) of the T.P. Act, learned Senior Counsel has submitted that the Lessee may transfer his interest in the property and that the Lessee shall not by reason of such transfer cease to be the Lessee, subject to any of the liabilities attaching to the lease. Section 108(j) T.P. Act reads as follows:-

the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease.

32. Learned Senior Counsel has contended that what was sold under the document is only super structure and the leasehold right is not transferred and the First Defendant continued to be recognised as the Tenant. This contention has no force in view of Section 34 of the H.R. & C.E. Act and in view of the conduct of the Second Defendant claiming tenancy for herself. Section 108 (j) of the T.P. Act being the general law, cannot prevail against the Special Law.

33. Learned counsel for the Plaintiff has also drawn the attention of the Court to the decision reported in Smt. Nai Bahu Vs. Lala Ramnarayan and Others, and submitted that the general law of the Landlord and Tenant to that extent will give way to the Special Act in that behalf. In view of the maxim "Generalia specialibus non derogant", Section 108 T.P. Act cannot prevail upon the provisions of Section 34 of H.R.& C.E.Act.

34. Learned Senior Counsel for the Appellant contended that Section 34 of the H.R.& C.E.Act is only in the hands of those who is administering the temple properties. It is further contended that Section 34 of the Act is intended to bring only for exchange, sale, mortgage and the lease which are created or effected by those who are administering the temple properties and Section 34 cannot be invoked to the case in hand where the First Defendant had assigned his leasehold right to the Second Defendant. If this contention is to be accepted, it would lead to dangerous consequences. If such interpretation is to be adopted, what cannot be done u/s 34 of the Act could be done in an indirect way. For instance, if the Devasthanam wants to create lease for ten years or wants to sell or exchange the property, it may create lease in favour of Tenant and thereafter, the Tenant might either sell, exchange or create the lease for a period of more than five years, which is prohibited u/s 34 of H.R. & C.E. Act.

35. The contention urged that the privity of the contract between the First Defendant and the Plaintiff - Devasthanam is contradictory to the stand adopted by the Defendants. The First Defendant had already sent Ex.B.1 - Requisition requesting to transfer leasehold right to the Second Defendant. After the Second

Defendant has sold the leasehold right and the same has not been approved by the H.R. & C.E. Department u/s 34 of the Act, lease of the First Defendant is extinguished. By repeatedly requesting to recognise as the Tenant, the Second Defendant was claiming tenancy right in herself. In fact, in Paragraph (6) of the Written Statement, it is alleged that the Executive Officer had recommended her case and that she would be getting favourable orders from the H.R. & C.E. Department very soon. On that plea, the second substantial question of law is also raised, "Whether the Courts below are right in holding that the Suit is not affected by the principle of promissory estoppel". By claiming leasehold right in herself, the Second Defendant has only raised the plea of tenancy in herself. While so, at this stage, it is not open to the Defendants to raise the contention that the privity of Contract between the First Defendant and the Plaintiff - Devasthanam subsist and that Notice terminating tenancy to quit as contemplated u/s 106 T.P. Act ought to have been issued to the First Defendant. Such a contention contradicts the case of the Second Defendant.

36. Contending that when the Lessor collects the rent from the transferee, the privity of contract is established between the Lessor and the transferee, learned Senior Counsel has placed reliance upon the decisions reported in *Devindasa Bhatta ..vs.. Ratnakara Rao and another* (A.I.R. 1966 Mys 147) and *Krishna Bhatta ..vs.. Narayana Achary* (62 L.W. 143). In the first decision, it was held that,

...It is a firmly established principle that in the case of a lease, the lessee between whom and the lessor there is a privity of contract cannot divest himself of his liability to the lessor by merely making an assignment of the lease. The assignment of the lease may result in a privity of estate between the assignee and the lessor in consequence of which, both the assigning lessee and the assignee become liable to be lessor for the payment of rent, and until between the assignee and the lessor a privity of contract is established by the collection of rent by the lessor from the assignee, the privity of contract between the lessee and the lessor continues and does not come to an end....

The above principle could be applied only if the lease of the First Defendant was not extinguished. By giving Ex.B.3 - requisition to the Plaintiff - Devasthanam, requesting to transfer the leasehold right to the Second Defendant, the privity of contract between the lessee and the Plaintiff - Devasthanam has come to an end. Hence, the above decisions cannot be applied to the case in hand.

37. In proper appreciation of the evidence, the Courts below have rightly found that the Second Defendant is not a Tenant under the Plaintiff - Devasthanam. It is stated that inspite of Ex. A. 1 - Notice, the Second Defendant had completed the construction. The Appellant / Second Defendant is squatting on the property from 1981 for nearly 25 years without paying any damages for use and occupation of the Temple Land. It is also stated that the suit property situate in Triplicane in the Central place of Chennai City and the market value is worth several lakhs. The concurrent findings of the Courts below does not suffer from

any serious or substantial error warranting interference in the Second Appeal. Therefore, the Judgment and Decree dated 08.11.2000 of the VI Additional Judge, City Civil Court, Madras in A.S.No.258 of 1997, confirming the Judgment and Decree dated 14.07.1997 in O.S.No.3388 of 1985 passed by the VIII Assistant Judge, City Civil Court, Chennai is confirmed and this Second Appeal is dismissed with the costs of the Respondent / Devasthanam, Two months time from today is granted to the Appellant for delivery of possession to the Respondent. In view of the Judgment in the main Second Appeal, the connected C.M.P.No.9179 of 2004 is closed.