

(1996) 11 MAD CK 0018
In the Madras High Court

M.K. Varappan

APPELLANT

Vs

Sri Lakshminarayana Venugopalaswamy Temple

RESPONDENT

Date of Decision : 14-11-1996

Acts Referred:

Citation : (1997) 3 LW 27 : (1997) 2 MLJ 23

Hon'ble Judges : Raju, J

Bench : Division Bench

Judgement

Raju, J.—The defendant in O.S. No. 1516 of 1978 on the file of the District Munsif's Court Coimbatore who succeeded before the trial

court but lost before the learned first appellate Judge is the appellant in the above second appeal. The respondent/plaintiff filed the suit before the

trial court for permanent injunction against the defendant/appellant from altering the superstructure and attempting to put up a puccamasonry

construction with a foundation. The case of the plaintiff before the trial court was that the plaintiff temple was the owner of the vacant site with the

building in O.S. No. 545/3 in Coimbatore town, that it was leased Out to the defendant on a monthly rent of Rs. 3 payable on the first of every

English calendar month, that the defendant being a tenant has no right to remove the superstructures on the property but in spite of all these the

defendant suddenly removed the tiled structure and attempted to put up a pucca masonry construction necessitating the filing of the suit. The

defendant in the written statement contended that what was leased out was only the vacant site and the superstructure thereon belonged to the

defendant and the owner of the superstructure had every right to alter the superstructure or replace the same with a new superstructure and at any

rate the allegation that the defendant was altering the superstructure also was not factually correct.

2. On the above claims and counter claims the suit came to be tried and on behalf of both parties documentary evidence was marked. Though the

plaintiff has adduced oral evidence, on the side of the defendant there was no oral evidence and the defendant also has avoided to enter into the

box to tender any oral evidence. The learned trial Judge, on a consideration of the materials on record came to the conclusion that what was leased

out was only vacant site and the plaintiff temple is not the owner of the superstructure and therefore not entitled to have any injunction as prayed

for. Consequently, the suit was dismissed by judgment and decree dated 14.8.1981. Aggrieved the plaintiff pursued the matter on appeal before

the Sub Court in A.S. No. 25 of 1982. The learned Subordinate Judge chosen to re-appreciate the evidence and placing reliance upon the recitals

contained in Ex. A-1 an unregistered rent deed which disclosed that the subject matter of the lease was not only vacant site but the superstructure

thereon, the learned first appellate Judge held that there was no impediment in relying upon the unregistered rent deed for collateral purpose and

chose to disagree with the findings recorded by the learned trial Judge and came to the conclusion that the subject-matter of lease between the

parties was the land with superstructure. On that view the first appellate court allowed the appeal and decreed the suit. Hence the above second

appeal.

3. Mr. N. Varadarajan, learned Counsel appearing for the appellant strenuously contended that Ex. A-1 is inadmissible in evidence for want of

registration and non-payment of proper stamp duty and that the conclusions arrived at by the learned first appellate Judge is contrary to law and

the judgment is liable to be set aside. Learned Counsel for the respondent adopted the reasons assigned by the first appellate court and contended

that the conclusions arrived at by the learned first appellate Judge deviating from that of the trial Judge are quite in accordance with law and do not

call for any interference.

4. I have carefully considered the submissions of the learned Counsel appearing on either side. In my view, the judgment of the learned first

appellate Judge does not call for any interference. It is by now well-settled that

though a document particularly a document of the nature under consideration, the unregistered rent deed, has not been registered under the law of registration, there is no impediment for referring to the same or relying upon the recitals therein for collateral purposes. That apart, I find much turned on the oral evidence also in this case and in support of the facts contained in the unregistered rent deed the plaintiff temple examined P.Ws. 1 to 3 who spoke in favour and support of the case of the temple, but conveniently the defendant has avoided the box and thereby denied himself of a proper scrutiny of the case pleaded by him or any legally acceptable material to prove his version. In view of the above, there is no wonder that the first appellate court has thought fit to place reliance upon the oral evidence adduced on the side of the plaintiff temple also to accept the claim of the temple that the subject-matter of lease was both the land the superstructure. The factual finding recorded by the learned first appellate judge on appreciation of oral and documentary evidence does not call for any interference since in my view it does not suffer from any patent error of law or perversity of approach in the matter of appreciation of such evidence. The second appeal therefore fails and shall stand dismissed.