
(2011) 10 MAD CK 0109

In the Madras High Court

Case No : S.A. (MD) No. 1060 of 2011 and M.P. (MD) No. 1 of 2011

Ponraj Ammal

APPELLANT

Vs

Sri Kanniga Parameswari Koil, Uthamapalayam

RESPONDENT

Date of Decision : 28-10-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Evidence Act, 1872 — Section 116

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 29, 6, 83(1)

Citation : (2011) 10 MAD CK 0109

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : K. Palaniappan, for the Appellant;

Final Decision : Dismissed

Judgement

G. Rajasuria, J.—This second appeal is focussed by the defendant animadverting upon the judgment and decree dated 21.10.2010 made in A.S.No.15 of 2010 on the file of the learned Sub Judge, Uthamapalayam, confirming the judgment and decree dated 10.11.2009 made in O.S.No.107 of 2008 on the file of the District Munsif Court, Uthamapalayam.

2. The parties, for the sake of convenience, are referred to hereunder according to their litigative status and ranking before the trial Court.

3. A summation and summarisation, avoiding discursive delineation, of the relevant facts absolutely necessary and germane for the disposal of the second appeal, would run thus:

The plaintiff who is cited as respondent herein, has filed the suit seeking the reliefs of declaration of his title to the suit property and for recovery of possession along with arrears of rent and subsequent damages for use and occupation, on the main ground that the defendant being the tenant failed to pay the rent; whereupon notice was sent terminating the tenancy and calling upon

him to vacate the premises and hand over possession to the plaintiff and to pay the arrears of rent.

4. The suit was resisted on various grounds and the relevant issues were framed by the trial Court.

5. Ultimately, the trial Court decreed the suit.

6. As against the judgment and decree of the trial Court, the defendant filed the appeal for nothing but to be dismissed.

7. Being aggrieved by and dissatisfied with the same, this second appeal has been filed by the unsuccessful defendant setting out various grounds including the following alleged substantial questions of law:

1) Whether the suit is maintainable in view of the applicability of the Tamilnadu Buildings (Lease and Rent Control) Act of 1960 as Amended by Act 23 of 1973 to the suit premises since the plaintiff trust is a private one?

2) Whether the plaintiff is legally entitled to file the suit when he has not produced any document to show that the plaintiff trust is a Registered one?

3) Whether the plaintiff is legally entitled to file the suit when there is no resolution is passed to that effect?

4) Whether it is not a settled law that the plaintiff must prove his case by his own evidence and he should not rely upon the weakness of the evidence of the defendant?

(Extracted as such)

8. The learned Counsel for the defendant has put forth and set forth his arguments reiterating the grounds of appeal which could tersely and briefly be set out thus:

There was no landlord and tenant relationship. In fact, the defendant has been in possession of the suit property for more than 30 years independently. Both the Courts below failed to take note of the relevant facts and figures placed by the defendant, but they were simply carried away by the pleadings in the plaint and ordered eviction warranting interference in second appeal. The suit property being a building situated in a rent control area covered by the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, the question of evicting the alleged tenant namely the defendant by the alleged landlord by filing the suit, is a well nigh impossibility. Even then, both the Courts below ignored this serious law point and ordered eviction warranting interference by this Court in second appeal. There is no iota or shred, shard or miniscule, jot or pint of evidence to display and convey that the plaintiff is the owner of the suit property. When such is the position, the trial Court was not justified in ordering eviction of the premises, there at the defendant occupies in his own right. No resolution was passed authorising the alleged Managing Trustee -Mannar Chettiar to file the suit.

Accordingly, the learned Counsel for the defendant would pray for setting aside the judgments and the decrees of both the Courts below and for dismissing the original suit.

9. At this juncture, I would like to fumigate my mind with the following decisions of the Honourable Apex Court:

(i) Hero Vinoth (minor) Vs. Seshammal, .

(ii) Kashmir Singh Vs. Harnam Singh and Another, .

(iii) State Bank of India and others v. S.N. Goya reported in 2009 1 L.W. 1.

10. A plain reading of those precedents would reveal and demonstrate that u/s 100 of the Code of Civil Procedure, Second Appeal cannot be entertained, unless substantial question of law is involved.

11. Keeping in mind the aforesaid dictum of the Honourable Apex Court, I proceed to analyse and scrutinize the case in the second appeal.

12. The contention as put forth by the learned Counsel for the defendant that the suit property is covered by the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, deserves no detailed analysis and consideration for the reason that as per G.O.Ms.No.2000, Home, dated 16th August, 1976, passed u/s 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, it is ex facie and prima facie clear that in respect of the buildings belonging to the religious public trusts, the question of applying the said Act does not arise. It is the run of the mill legal proposition that to claim exemption under the said notification u/s 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, it is sufficient that it is a religious public institution/trust.

13. The plaintiff is Sri Kanniga Parameswari Koil, Uthamapalayam which is a religious public institution/trust and it is represented by its Managing Trustee. Obviously and axiomatically, it is evident pellucidly and palpably that the plaintiff is a religious trust/institution. The plea challenging its capacity to sue de hors the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, was not actually taken even in the written statement. Since he raised it as a substantial question of law before this Court, I have decided to consider that also and has discussed supra to the effect that all religious trusts/institutions are exempted from the purview of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The relevant notification would run thus:

Exemption of All Buildings Owned by Hindu, Christian and Muslim Religious Public Trusts and Charitable Trusts From ALL Provisions of Tamil Nadu Buildings (Lease and Rent Control) ACT, 1960

(G.O.Ms. No. 2000, Home, dated 16th August, 1976)

No.II(2)/HO /4520/76.-In exercise of the powers conferred by Section 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Tamil Nadu Act XVIII

of 1960) and in super session of the Home Department Notification No.II(2)/HO/3811/74, dated 12th August, 1974, published at page 444 of Part II-Section 2 of the Tamil Nadu Government Gazette, dated the 21st August, 1974, the Governor of Tamil Nadu hereby exempts all the buildings owned by Hindu, Christian and Muslim religious public trusts and public charitable trusts from all the provisions of the said Act.

14. In this connection, I would also like to refer to the following decisions:

(i) The Idol of Sri Kannika Parameswari Amman and others Vs. The Educational Trustees Co. Ltd., Madras and others, . Certain excerpts from it, would run thus:

The learned counsel for the appellants drew the attention of this court to the decision reported in Sri Kannikaparameswari Devasthanam v. Salem Municipal Council [1981 II M.L.J. 199], wherein while considering the question whether Sri Kannikaparameswari Devasthanam is entitled to claim exemption under S. 83(1) (a) of the Tamil Nadu District Municipalities Act from payment of Tax, on the ground that it is a public temple and a place set apart for public worship, and relying on the decision of Division Bench of this Court reported in Sri Chidambareswara Sivagami Ambigai Temple v. Commissioner, H.R & C.E., [78 L.W. 404 : 1966 I M.L.J. 109] held:

The Arya Vysya community people of Ammapet in the instant case do form a part of the Hindu community at large. They constitute a considerable section of the Hindu Public. Merely because the place set apart for worship is being used by a particular section of the public it will not cease to be a place set apart for public worship within the meaning of Section 83(1)(a) of the Tamil Nadu Act V of 1920.

In Sri Chidambareswara Sivagami Ambigai Temple v. Commissioner, H.R & C.E. Madras, which was a case arising under the Madras Hindu Religious and Charitable Endowments Act, a Division Bench was considering the tests with regard to public and private temples and it has recognised the proposition that even a temple dedicated for the purpose of a particular section of the Hindu community could also be a public temple if the community constitutes a considerable section of the Hindu Public and the members of which worship in the temple as of a right. Clause (20) of Section 6 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, defines "temple" as follows:

"Temple" means a place by whatever designation known used as a place of public religious worship, and dedicated to, or for the benefit of, or used "as of right by, the Hindu community or any section thereof, as a place of public religious worship.

... Hence, we answer the first point in favour of the appellant and hold that the plaintiff is entitled to file the suit as public trust.

(ii) Vanjiappa Gounder and others v. Sri Kannika Parameswari Amman Koil by its

Administrative Trustee reported in 1991 (I) MLJ 92 at 94. Certain excerpts from it, would run thus:

19. ...In The Idol of Sri Kannika Parameswari Amman and others Vs. The Educational Trustees Co. Ltd., Madras and others, , a Division Bench of this Court has held that the idol of Sri Kannikaparameswari Amman in a public religious and denominational institution belonging to Arya Vaisya community and it is a religious public trust entitled to file a suit for recovery of possession of the suit property comprising of land and building and for damages for use and occupation....

... In view of the above position, it has to be held that the suit temple is a public religious institution belonging to Arya Vaisya community and it is a religious public trust and, therefore, the provisions of the Act will not apply to the present case in view of G.O.Ms.No.2000 and the suits filed for recovery of possession of the suit property and for recovery of rent or damage sare maintainable.

15. It is, therefore, crystal clear that the alleged substantial question of law raised by the learned Counsel for the defendant for the first time is having no legs to stand. Accordingly, it has to be rejected.

16. I recollect and call up Section 116 of the Indian Evidence Act, 1872, which is extracted hereunder for ready reference:

Section 116. Estoppel of tenant; and of licensee of person in possession.-No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

17. A mere poring over and perusal of the above said Section would clearly exemplify and connote that the tenant is not entitled to veer round and take a plea by having a volte face quite antithetical to what he committed to himself by his conduct in entering the premises as a tenant under the landlord and thereafter, to question his capacity as landlord.

18. The judgments of both the Courts below would unambiguously and unequivocally highlight and spotlight the fact that from the evidence available, it was clear that the defendant's husband entered into the suit property as a tenant only under the plaintiff and in such a case, the defendant being the wife cannot set up a title in her favour and the plea of "Jus tertii" is something not enuring to the benefit of the defendant in the facts and circumstances of this case. The concurrent findings of facts of both the Courts below based on evidence warrant no interference in second appeal. A fortiori, I could see no perversity or illegality in such findings also.

19. The contention as put forth by the defendant that the Managing Trustee was not competent to sue, veer round and take a plea by having a volte face quite antithetical to what he committed to himself by his conduct in entering the premises as a tenant under the landlord and thereafter, to question his capacity as landlord.

20. The judgments of both the Courts below would unambiguously and unequivocally highlight and spotlight the fact that from the evidence available, it was clear that the defendant's husband entered into the suit property as a tenant only under the plaintiff and in such a case, the defendant being the wife cannot set up a title in her favour and the plea of "Jus tertii" is something not enuring to the benefit of the defendant in the facts and circumstances of this case. The concurrent findings of facts of both the Courts below based on evidence warrant no interference in second appeal. A fortiori, I could see no perversity or illegality in such findings also.

21. The contention as put forth by the defendant that the Managing Trustee was not competent to sue, fails to carry conviction with this Court for the reason that the defendant did not raise the same in the written statement. I also recollect the maxim "Juiciest judicare secundum allegata et probata." [It is the proper role of a judge to decide according to the allegations and proofs.]

22. As such, the plea raised by the defendant is not a pure question of law, but a pure question of fact and for the first time in the second appeal, it cannot be raised, without pleadings. The same point is found highlighted in the decision in Vanjiappa Gounder and others v. Sri Kannika Parameswari Amman Koil by its Administrative Trustee reported in 1991 (I) MLJ 92 at 94.

23. I am of the view that absolutely there is no question of law much less any substantial question of law involved in this second appeal and accordingly, this second appeal is not tenable.

24. On balance, the second appeal is dismissed, confirming the judgment and decree dated 21.10.2010 made in A.S.No.15 of 2010 on the file of the learned Sub Judge, Uthamapalayam, confirming the judgment and decree dated 10.11.2009 made in O.S.No.107 of 2008 on the file of the District Munsif Court, Uthamapalayam. Consequently, the connected Miscellaneous Petition is dismissed. No costs.