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(2002) 04 MAD CK 0232

In the Madras High Court

Case No : A.S. No. 1038 of 1986

The Philipspuram Pastorate Church, C.S.I. — APPELLANT

Vs

Y. Davidson, Sayed Mohammed, S.T. Daniel, R. Damodharan, C.S.I. Home Church, The Church of South India and The Church of South India Trust — RESPONDENT

Date of Decision : 03-04-2002

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8

Citation : (2002) 2 MLJ 167

Hon'ble Judges : Prabha Sridevan, J

Bench : Single Bench

Advocate : P. Ananthakrishnan Nair and N. Paul Vasanthakumar, for the Appellant; T.R. Rajaraman and V. Selvaraj, for the Respondent

Final Decision : Allowed

Judgement

Prabha Sridevan, J.—The dispute is between two churches for a piece of property.

2. The history of the case starts in the 19th century when Christian Missionaries from England set up missions all over the world to spread the message of Christianity. One such society was the London Mission Society whose object was to enlighten the ignorant regarding the greatness of the Lord. So they left their country and went to the four corners of the world to spread their message. They purchased several properties in India for building churches and prayer halls. In 1804 Rev. Ringeltaube set foot in India and set up several churches in the south. Later, Col. Monroe and Rev. Charles Mead spread the message of Christianity. Mead was appointed as the Judge of Nagercoil Court and he built a huge church in Nagercoil with stones and it was called the Kal kovil. Ex.B5 which is a publication called the "Nagercoil Home Church properties and gift lands, etc." gives the history of the properties belonging to the Christians in Nagercoil. In the 3rd chapter, which is marked as Ex.B5, it is said that whatever properties were obtained by efforts of the Mission people either by donation, gift or purchase

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were called Mission properties and even those properties that were purchased with individual funds were called Mission properties. The following line in Ex.B5 is relevant:

@gpw;fhy'';fspy; rigfs; nghpYk; fhh;gnuc&d; nghpYk; rk;ghjpj;jitfSk; kpc&d; brhj;Jf;fns/@

and at paragraph 5 of the 3rd chapter which is marked as Ex.B5, there is reference to the various properties for which patta no.2432 has been given in the name of Nagercoil London Mission Kasba Sabai. Paragraph 6 which refers to the Sabha purchasing other properties mentions the suit property. According to the appellants, this was purchased by London Mission Society under two sale deeds; one on 9.9.1089 ME which corresponds to 1894 and again under another sale deed which is of the year 1072 (ME) which corresponds to 1897. According to the appellants, the church on this property was constructed by the residents of that locality and it came to be called the Philipspuram church. In the beginning, it was a small church and therefore, the London Mission Society entrusted the management, worship and other arrangements of this property with the Home Church, Nagercoil which was one of the major churches which has already been referred to as the London Mission Kasba Sabai supra. In 1947, all the churches and properties belonging to London Mission Society vested with CSI trust association and the properties in Kanyakumari district and some portion of Tirunelveli district form the Kanyakumari Diocese and is managed by the Executive Committee of Kasba Diocese. The Home Church was managing the property within the Philipspuram church compound and leases were created. Respondents 1 to 4 are the tenants and the contesting respondent is the 5th respondent which is the Home Church. According to the appellants, the lease is only on their behalf and collection of rent was also on their behalf. The appellant Church grew and it was apparent that it could be an independent Church on its own. In 1974, the Diocesan Council upgraded the church as an independent Pastorate church. The management vested in the appellant church. Patta for the suit property is issued in its name and tax also paid by the appellant Church. All on a sudden, the Home Church disputed the appellant Church''s right to manage the property. The dispute was referred to the Diocesan Council which appointed a special committee to enquire into the matter. The special committee filed a report which was scrutinised by the Executive Committee and approved. The decision of the Executive Committee was in favour of the appellant. The lease granted by the respondent Church on behalf of the appellant has expired and therefore, the suit was filed for a declaration of the appellant''s right to recover possession and for recovery of arrears of rent. The suit is framed in this manner because the title to the suit properties vests with the Church of South India. It is only the right to manage that belongs to the respective churches.

3. A written statement was filed by the tenants who denied the rights of the appellant. The written statement of the 5th respondent is alone relevant. According to this respondent, the properties were purchased only by the Home

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Church. The school was constructed and started only by the Home church. The Home church has been functioning independently from its origin. Philipspuram church which is the appellant church is only a branch church. Philipspuram church is an exclusive property of the Home church. Since the London Mission Society never managed the affairs of the Home church, there was no occasion for London Mission Society to entrust the right of management of Philipspuram church to the Home church. In 1967, the C.S.I trust association was formed and in the transfer deed where under all the properties of London Mission were transferred, the suit properties were not mentioned only because they belong to the Home church. The shops which form the suit property were constructed out of Home church funds after obtaining the necessary sanction from Nagercoil Municipality. In 1974, it was the Home church which gave the Philipspuram church the status of Pastorate. The change of patta in the name of the appellant church is ab initio void and in appeal, the grant of patta has been set aside and the suit must be dismissed.

4. The trial Court dismissed the suit. Against that, the present appeal has been filed.

5. When the appeal first came up for final disposal, a question was raised as to whether the suit can be maintained without following the procedure under Order 1 Rule 8 C.P.C. Subsequently, a petition was filed under the said Rule and was ordered and publication was also effected. So, the question regarding the maintainability of the suit on this ground has been set at rest.

6. Mr. Ananthakrishnan Nair, learned counsel for the appellants would submit that the Court below had totally erred in coming to the conclusion that the 5th defendant Church had acquired the property with its own funds and was maintaining the property as its own property. It was also submitted that when the appellants are not claiming paramount title to the suit property, there was no reason for the trial Court to go into this question. According to the learned counsel, the property originally belonged to London Mission Society which alone purchased the property and subsequently, it was transferred to C.S.I. According to the learned counsel, the written statement is patently false and the documents are sufficient to prove the same. The two sale deeds Exs.A1 and A2 under which the property was purchased were read out by the learned counsel and it was clear that the purchaser who is an Evangelist by name Yesuvadiyan, had purchased the property on behalf of the London Mission. The recitals also show that the funds for purchase of the property came from the monies secured by the said Evangelist. Similarly, in Ex.A2, Yesuvadiyan refers to himself as the trustee of London Mission and also refers to the fact that Yesuvadiyan purchased the property and built the school. Ex.A26 gives a short history of the appellant church in which Philipspuram church is referred to as a branch church and in paragraph 3 of this publication, which is the Home church Nagercoil C.S.I Triple Jubilee Souvenir, there is reference to Yesuvadiyan, with his own effort and the donation from several Christians purchasing the property. There is also reference

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to a committee functioning in Philipspuram church. All these, according to the learned counsel would show that the purchase and the construction of the church in the Philipspuram compound was not by the Home church, but by the donations as well as the effort of the Philipspuram committee. Ex.A25 would prove that the case of the respondent that they raised the status of the Pastorate is false, because it is a communication from C.S.I Kanyakumari Diocese informing that the status of the Philipspuram church has been raised to that of a Pastorate as per the decision of the church board. Therefore, it was the C.S.I which is the parent body which has the authority to elevate the status of the appellant church and the 5th respondent was merely informed of that. Ex.A27 the report and the Minutes of the committee meeting, was pointed out in which, after enquiry, an Executive Committee came to the conclusion that the appellant church alone has the right to manage and supervise the suit buildings and the second lease executed by the 5th respondent church should be cancelled. Ex.A6 is a communication from the Church of South India which refers to the resolution that right of management of the suit property should be given to the appellant church committee. Ex.A15 shows that patta is in the name of the appellant church. According to the learned counsel, all these documents would show that the appellants alone have the right to manage the property. The respondents were also aware of the fact that the properties belong to the appellant church, but so long as the appellant was a branch church, the respondent did not foresee any danger, but once the appellant became an independent Pastorate church, the respondent realised that the rent and other income would go to the appellants and therefore, this dispute has started. Learned counsel submitted that as against the various documents produced by the appellants, the respondents have nothing to show that they have an independent right.

7. Mr. Selvaraj, learned counsel for the 5th respondent submitted that if the plaintiffs cannot prove that London Mission Society purchased the property or that it vested in C.S.I, then a decree cannot be granted. At no point of time, has the 5th defendant transferred the property to the appellants and therefore, the appellants cannot maintain the suit. According to the learned counsel, Ex.A6 resolution of the C.S.I Diocese does not bind the 5th respondent because the property does not belong to C.S.I and therefore they have no authority to transfer the title. In any event, title cannot be transferred by resolutions. According to him, the non-joinder of Kanyakumari Diocese is fatal to the case.

8. Mr. Paul Vasanthakumar appearing for C.S.I would submit that both the appellant and the 5th respondent church came under the control of this parent body namely C.S.I and when Ex.A6 which is the resolution of the C.S.I has not been challenged, the suit must be decreed.

9. It was also submitted on behalf of the appellant that if the pleadings of the respondents that the Home church was an independent entity which had nothing to do with London Mission Society and that they dissociated themselves from London Mission has to be accepted, then Exs.A1 and A2 which show that

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purchase was for London Mission would clearly prove that the Home church has no right to claim this property as theirs. But if the London Mission had established the Home church and it continued under the control of London Mission until the date when it was transferred to C.S.I, then, the properties purchased in the name of London Mission vested in C.S.I and therefore even then, the Home church cannot claim any independent right.

10. In 1996 (2) L.W 295 (ASIRVATHAM, V. (Deceased) & OTHERS vs. Rt. Rev .G .CHIRSTDOSS & OTHERS) which arose out of a dispute in respect of a property in Vadasery known as Christu koil church, the history of the Protestant church in Ramnad district has been dealt with it was held thus:

" The protestant Churches in Travancore were originally known as ''London Mission Churches'', since they were founded by Missionaries sent out by London Missionary Societies. The same were founded in 1795 and the first Missionary sent out by the Society to India was one Rev. Ringeltaube. He converted a large number of persons in the Travancore area to the Christian faith. He was succeeded by Rev. Mead who founded many of the Protestant Churches in Travancore. In 1863, with a view to co-ordinate the activities of the missionaries and to ensure efficient working of the Missions, the Society directed the missionaries to form in all Mission centers District Committees and issued general regulations in that behalf. Similar missionaries were sent to other parts of India also, and various Churches were founded by the Missions. By the end of 19th Century, there came into being a strong movement for the unity of churches in India. At a conference held in 1919, called the Tranquebar Conference, the possibility of a union with Episcepal churches subject to certain cardinal principles was envisaged. Negotiations continued thereafter for a long time and after prolonged discussions in various committees and general body meetings, a proposal emerged. This proposal was approved by a meeting of the Church Councils in 1946. The resolution for the union was placed before a General Assembly in September 1946 and was passed by an overwhelming majority, and the Church of South India was formed. It is seen that the Church of South India was formally inaugurated at St. George Cathedral, Madras, and, on 26.9.1947, the Church of South India Association was incorporated under Indian Companies Act. After the formation of the Trust, all the assets were taken over by it and thus the London Mission Society was wound up. "

11. Various booklets and publications of the London Mission as well as the Home church have been marked and they show that originally, the foreign missionaries were in charge of the areas chosen for spreading their religion. Subsequently, when they identified well qualified local persons, they were appointed as Pastors and a Home station church was created for the "native" pastors'' pastorate. Therefore, the claim of 5th respondent that the Home church has nothing to do with London Mission is not correct. According to the written statement, the 5th respondent had always been independent and the London Mission Society never managed the affairs of the 5th respondent church.

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" The London Mission Society never entrusted the management, worship and other arrangements of the Philipspuram Church with Home Church, Nagercoil. So also the London Mission Society never managed the affairs of Home Church at any time. From the beginning it is an independent church which can own properties of their own. "

In Ex.A26, which is the Souvenir published and which gives a short history of Nagercoil Home church, it is seen that in 1810, a Home church was started with grants given by the Rani of Tranvancore. In 1866, one Devadasan was made the Pastor by the Bishop. This was perhaps the time when the Home church became an independent Pastorate. Therefore, the case of the respondents that there was an independent right from the beginning does not appear to be correct. The Souvenir also refers to Yesuvadiyan who is the purchaser in Exs.A1 and A2. It is evident from this that even though the Home church had come into existence in 1819 itself, and had become an independent Pastorate in 1866, the sale deeds show that the property was purchased only on behalf of London Mission. The recitals in Exs.A1 and A2 are clear.

Ex.A1:

" 1 k; g[!;jfk; 4k; thypa[k; 40. 41k; gf;fk; 606k; ek;guhf 1069k; Mz;L rpj;jpiu khjk; 19k; njjp yz;ld; kpc&d; tiff;F. nfhl;lhW gplhf nfs;tpapy; ehfh;nfhtpy; k'';fhbjUtpy; fpwp!;J kjk; g[nuhl;l!;lz;L fph;!;jpahtp ic& kpc&d; tif Rtnrc&fh; cj;jpnahfk; 50 taJs;s brg!;jpahd; VrtoahDf;F /////// vj;Jnt ic& kpc&d; tiff;F tpiy bfhLj;J //// ic& kpc&d; tiff;fhf ic&ahh; nrh;jpw;Wl;Ls;s Kjypy; ,Ue;Jk; ic&ahh; trk; gw;wpf;bfhz;L t!;Jit tpiy bfhLj;J/ "

Ex.A2:

"yz;ld; kpc&d; tiff;F ic& kpc&d; tifapy; jh;kfh;j;jh / / / ic& Vrtoahd; tpiy th'';fp gs;spf;Tlk; fl;o mDgtpj;J tUfpw / /// / vd;Dila Kd;ghf ehfh;nfhtpy; yz;ld; kpc&d; tiff;F ntz;o jh;kfh;j;jh brgj;jpahd; kfd; VrthoahDila Mshfpa Vrtoahd; kfd; Vrjhrhdhy; byl;Rkp //////

12. Ex.A26 has already been referred to and the following extracts in Ex.A26 where Philipspuram church is referred to are also relevant:

",th;fspy; r'';/v!;/ VRtoahd; Iah; jdJ bgUKaw;rpahy; gy fpwp!;jth;fspd; ed;bfhilfisf; bfhz;L 1069 Mk; Mz;L 37 brd;l; g{kp th'';fpdhh;/ ,Jnt jw;nghija Myak; ,Uf;Fk; ,lkhFk; / // / ,tuJ kfd; jpU/ Vrjh!; Rtpnrc&fhpd; Kaw;rpahy; ,e;j 37 brd;l; g{kpnahL nrh;j;J 1072 Mk; Mz;L 17 brd;l; g{kpa[k; xU rpwpa fl;olKk; th'';fg;gl;lJ/ bjhlh;e;J gyhpd; Kaw;rpahy; Kjy; Myak; gzp bra;ag;gl;lJ/ jpU/ VRjh!; Rtpnrc&fnu 1933 Mk; Mz;L Kjy; jlitahf ,jd; bghWg;g[Vw;wjhf bjhpfpwJ/ / // / vdnt ,r;rigapd; tUkhdk; bfhz;L xU rig CHpaUf;Ff; Fiwe;j mst[r; rk;gsKk; bfhLf;f Koahky;. Rig epd;W tpLnkh vd;w jhH;thd epiya[k; cUthdJz;L/ / // / rig tsut[k; jpUr;rig m'';f'';fspd; vz;zpf;if Tlt[k; VJthdjhy; f!;gh rigapd; mDkjpnahL 1962 Kjy; ,'';F xU fkpl;o mikf;fg;gl;L bray;glyhapw;W // / / Fwpg;ghf f!;gh rig brf;bul;lwp jpU/ o/xa;/ bcwd;wp/ gp/V/. vy;/w;wp/ mth;fs;

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vg;nghJk; Tlnt epd;W ntiy elg;gpj;J. mauhJ ciHj;J epjp jpul;oaJ ed;wpa[ld; epidt[Tuj;jffjhFk; ;// // ,jw;bfd;W f!;gh rig ed;bfhilahf U:/5.000-? Kk; lnahrpfd; U:/1.000-?Kk; je;J cjtpd/"

Therefore, the purchase was made by Yesuvadiyan and the salary of the church servants were met from the income of the appellant church alone. As pleaded by the appellants, the 5th respondent was having all the administrative control of the appellant church and that is why there is reference to the donation by the respondent church. If the property belonged to the 5th respondent, there is no occasion for using the word "donation". Ex.A25 is the letter addressed by C.S.I to the appellant church informing that the status of the appellant church has been raised to that of a Pastorate. In Ex.A27, which is the Minutes of the Kanyakumari Diocese and Council, the letter written by the Secretary of the Home church Nagercoil is extracted.

"Sir, 29-05-1973 Sub: Raising the status of the Philipspuram Church to the status of the independent pastorate church

Ref: Your Letter dated 01-04-1973 & M.No.3 dated 01-04-1973.

The Home Church committee that met on 15-05-1973 had resolved on the above reference that the Philipspuram can be made a pastorate. At the same time we wish to point out that the shop-building etc. are under an agreement between the Home Church and the tenant for another six years. This is for your kind information.

Yours truly,

Sd. A.T.Joseph. "

There was no necessity to refer to the lease deed between the respondent Home church and the tenants unless the Home church had been exercising acts of possession on behalf of the appellant church and not independently. The suit property is located in the compound of the Philipspuram church. All the properties that belong to London Mission were transferred to C.S.I under Ex.B8. The fact that this property is not mentioned therein does not in any way defeat the appellants'' case. Ex.A.27 the report shows that the committee has construed Exs.A1 and A2 as purchases made on behalf of London Mission and it is also reported therein that since Nagercoil Home church is one of the churches under the control of Kanyakumari Dioceses C.S.I, any property that is under its control would automatically vest with the C.S.I and the Home church cannot claim any right independent of the right of the C.S.I Kanyakumari Diocese. The fact that the respondent church played an important part in the construction of the shop buildings will not convey any special right because at that time, the appellant church was a branch church and so, there is nothing unusual in the main church exhibiting interest in the acquisition or improvement of the property of the branch churches. Ex.B10 which is an agreement between the Home church and one of the defendant tenants reads thus:

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" The Home church is in management and administrative control of the property attached to the C.S.I church, Philipspuram. Clause 2: The above said Nagercoil church is constructing a - - - building - - - within the Philips church compound."

Therefore, in 1969, the respondent church had acknowledged that this property was attached to C.S.I Church, Philipspuram. In Ex.B11, which is a lease deed of the year 1980, there is a reference to this property being Nagercoil Home church property. Ex.B12 which is the property tax receipt does not help the respondents since the person remitting the tax is described as Secretary, Home church and since at that time the 5th respondent was in control and management of the property, it is but natural that they would have paid the property tax. So this will not in any way advance the case of the respondent. The other documents which are subsequent to the dispute are not of use.

13. On the other hand, the patta pass book filed by the appellants as Ex.A12 shows that the patta is in the name of the appellant church. In Ex.B2, which is dated 31.1.1969, again, the property is described as the property within the Philipspuram church compound. In Ex.B9 which shows the "Thandaper" assessment also shows that the assessee is Nagercoil London Mission Sabai and several properties are mentioned therein including survey no. 1568. This also supports the case of the appellant that the Home church was originally part of London Mission. So it cannot claim any right independent of London Mission. Therefore, none of these documents really help the respondents. It is true that the appellants being the plaintiffs must prove their case. When the appellants have shown that the property belonged to London Mission and the purchase was for London Mission and that all the properties belonging to London Mission were transferred to C.S.I. When documents and books published by the Home church bear a clear acknowledgement that these properties are the C.S.I Philipspuram church, then definitely, the respondent church should show how this property belongs to it. In the accounts filed for the years 1969, 1970, 1971, there is a separate account called Philipspuram account. This was noted in Ex.A.26. In Ex.B8 which was marked as the list of the properties belonging to the church, the entry at page 3 shows:

" ehfu;nfhtpy; gpypg;!;g[uk; gs;spf;Tl fhk;gt[z;l; tpiy Mjhuk; "

and the survey number is shown as 1568.

14. In Ex.B26 the Home Church minutes book, there are repeated references to the Philipspuram Church Compound and steps to be taken and also to get the opinion of the Philipspuram committee. The following words of the resolution are extracted:

",f;fojj;ij gpypg;!;g[u Mya fkpl;of;F mDg;gp mth;fsJ mgpg;gpuhaj;ij bjhpe;Jbfhs;s ntz;Lbkd;W jPh;khdpf;fg;gl;lJ/@

This is with reference to the Philipspuram Church compound and the resolution is of the year 1967 and so seven years before Philipspuram Church committee

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became an independent Pastor Church, the Home Church had been ascertaining the opinion of the Philipspuram Church Committee regarding the steps to be taken in the shops. If the shops belong to the 5th respondent and not to the appellant church, there was no necessity for this entry. Then again at Ledger Folio No.323 of the same exhibit it is seen that the Philipspuram Church Committee had recommended the increase of one of the Church service and for construction of a house within the Philipspuram Church compound. It is apparent from these entries in the ledger that Philipspuram Church had its own committee for administration of its matters but since the Church was only a branch Church, at that time they had to get the approval of the main Church namely the Home Church and the decision of the Home Church with regard to this suit shops depended on the opinion of the Philipspuram Church Committee. In page No.359, there is an entry which shows that while considering the necessity to locate a new site for a Church in Pudukudi the members felt that a Church could be built if the Pudukudi Church takes initiative and collects money just as the Philipspuram Church had collected money for its own Church. It is clear from the documents that the property was purchased on behalf of the London Mission and if the 5th respondent exercised any control over the suit property it was only on behalf of the appellant Church and that too only until they became independent. In Ex-B8 at page No.368 survey No.1568 which relates to the suit property is found and it is described as Philipspuram t!;J in item No.12 and survey No.1567 is referred to as Phillipspuram g{kp/ Therefore, this also supports the case of the appellants.

15. Now the oral evidence may be considered. D.W.1, is the Secretary of Home Church. It is his evidence that the Home Church became an independent pastorate in 1956 and from then it has been acting independently. He admits that this Church was called London Missionary Society Church. His evidence is that Yesuvadiyan purchased the suit property in the Home Church''s name. This is clearly wrong as seen from the extract of the documents supra. He also states that the Home Church bore the entire expense for putting up the School. This has also been demonstrated to be incorrect. According to him, from the date of purchase it was only the Home Church which was enjoying the property and not London Missionary Society. It is difficult to appreciate what the witness means by this since London Mission Society purchased the property in its own name and the local Churches had been enjoying the properties and managing the properties. He refers to Ex-B8 and says that this would show that the property belongs to the Home Church whereas even as per Ex-B8 this property is described as Philipspuram Church. In cross-examination, the witness would state that though they have the accounts for purchasing the property at Philipspuram it would be produced before the Court later. It was never produced. Even the accounts that they have filed do not correlate with the amounts spent. The witness admits that what is said in Ex-A26 is correct. He also admits that the accounts of Philipspuram Church were maintained separately. The evidence of D.W.1 does not help the respondents.

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16. The learned counsel for the appellants relied on 1971 I MLJ 190 (KUPPUSWAMY ODAYAR V. NARTHANGUDI PANCHAYAT) just to refer to the maxim that when the extremes have been proved those things which lie between are presumed. According to the learned counsel the documents Exs-A1 and A2 show that the properties were purchased for London Mission. It has been established that the properties were situated at Philipspuram Church compound and unless there are any documents to show that at some point of time the title or other rights vested in Home Church the suit must by decreed. Therefore, the appellants are entitled to declaration of their right to recover possession of the suit properties as well as the arrears of rent due. The finding of the Trial Court that the Home Church has got title and possession of the suit properties is set aside. The suit property had vested with CSI when London Mission Society was wound up and the suit properties which are located in the Philipspuram Church compound are bound to be administered and managed by the appellant Church with a right to receive rents from the tenants and also to evict the tenants.

17. The finding of the Trial Court that since the lease was given by the 5th respondent herein the tenants cannot be evicted by the appellants is clearly erroneous. The lease given by the 5th respondent is only on behalf of the appellants. The appellants have issued a notice to the tenants calling upon them to vacate the suit property. A reply has been given by them denying the title. From the judgment it is seen that this aspect of the matter has not at all been gone into by the Trial Court nor have the tenants let in oral evidence. The matter must be remanded to the Trial Court for consideration of reliefs B and C. The Trial Court shall frame the necessary issues in this regard and permit the parties to let in oral and documentary evidence.

18. In the result the judgment of the Trial Court is set aside and decree is granted in respect of relief (A). As regards other reliefs the matter is remanded to the Trial Court for disposal in accordance with law. Appeal is allowed as above. No costs.

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