

(2011) 03 MAD CK 0309

In the Madras High Court

Case No : S.A. No. 67 of 2011 and M.P. No. 1 of 2011

Thomas Educatioal and Charitable Trust

APPELLANT

Vs

Arulmigu Ekambaranathar Thirukoil, Kancheepuram

RESPONDENT

Date of Decision : 28-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 45(3)

Citation : (2011) 03 MAD CK 0309

Hon'ble Judges : V. Periya Karupiah, J;R. Banumathi, J

Bench : Division Bench

**Advocate : V. Bhiman, for Sampathkumar and Associates, for the Appellant;
Arul Pazham Nee, for the Respondent**

Final Decision : Dismissed

Judgement

V. Periyakarupiah, J.—This appeal is directed against the order dated 21.02.2011 made in Application No. 65 of 2011 in C.S. No. 47 of 1999, dismissing the application filed by the Defendant for rejection of the plaint.

2. The short facts necessary for disposal of this appeal are as follows:

(i) The Civil Suit has been filed by the Plaintiff/Respondent herein against the Defendant/Appellant herein for recovery of vacant possession of land admeasuring 31 grounds and 300 sq.ft. situate on the southern side of Poonamallee High Road, Chennai and also for recovery of arrears of rent and damages for use and occupation.

(ii) Originally, the suit property was leased out to the Defendant by the Plaintiff for a period of 99 years which had expired on 17.11.1997. Hence, a notice was sent by the Plaintiff to the Defendant on 2.2.1998 calling upon him to quit and deliver the vacant possession of the land by 1.6.1998. The Defendant sent reply on 4.3.1998.

(iii) The suit was contested by the Defendant and P.W.1 has been examined.

When the suit was in the part heard stage, Application Nos. 64 and 65 of 2011 have been filed by the Defendant/Appellant herein.

(iv) Application No. 64 of 2011 has been filed stating that the Plaintiff has claimed possession as well as arrears of rent and damages for use and occupation in respect of suit schedule property; that the plaint has been filed by Executive Officer; that it is settled law as has been held by the Honourable Division Bench of this Court that the Executive Officer has no authority to file the suit; that an issue may be framed about maintainability; that the trust should be permitted to take up the additional defence; that if the Trust is permitted to file additional written statement and it was taken up on file, no prejudice would be caused to the Plaintiff and that on the contrary, Defendant will be put to irreparable loss and hardship, if the additional written statement was not received. Hence, application No. 64/2011 has been filed by the applicant/Defendant seeking permission to file the additional written statement.

(v) Application No. 65 of 2011 has been filed by the Defendant stating that the plaint has been filed by the Executive Officer; that it is settled law as has been held by the Honourable Division Bench of this Court that Executive Officer has no authority to file the suit and hence, the plaint is liable to be rejected. Thus, Application No. 65 of 2011 has been filed to reject the plaint.

(vi) A common counter affidavit was filed by the Plaintiff stating that the Defendant was making an attempt to reject the plaint under the guise of the judgment of a Division Bench of this Court, ignoring Division Bench decision of this Court, setting the law, confirming the order of the learned Single Judge that the Executive Officer of the Plaintiff temple herein alone is competent to file the suit by virtue of the rules framed under Hindu Religious & Charitable Endowments Act and also as per the directions of the Commissioner, the highest official under the Act; that the said rule as well as the direction of the Commissioner under the Hindu Religious & Charitable Endowments Act, had not been considered in the judgment of the Division Bench of this Court referred to by the Defendant; that therefore, the law having been well settled, especially, for the Plaintiff temple is concerned, these applications are not at all maintainable but have to be dismissed; that the Commissioner of Hindu Religious & Charitable Endowments Department had issued a Circular dated 10.6.1997 to all the Executive Officers, assigning responsibility to them to conduct the suits which had been reiterated by the concerned Joint Commissioner and who in turn by his letter dated 18.6.1997 had instructed the Executive Officers to follow the said Circular strictly; that the Special Commissioner and Commissioner in their letters to the Joint Commissioner and the Executive Officer had directed to take action to recover the properties belonging to the Plaintiff temple in Poonamallee High Road by filing suits in the Court of law; that all these proceedings had been reviewed by the Government and necessary instructions had been issued to the Executive Officer of the Respondent temple to receive necessary funds; that therefore, the above suit has been filed by the then Executive Officer as per the

specific directions of the Commissioner, Hindu Religious & Charitable Endowments Department, the sole authority under the Act and by the Government of Tamilnadu, as per law and rules; that the suit in C.S. No. 47 of 1999 was filed in accordance with the provisions of law and rules with proper directions and sanction from competent authorities; that the same cannot be rejected without regular trial; that the said applications were filed to prolong the case by not cross examining P.W.1. and therefore, the said applications have to be rejected.

(vii) The learned single Judge, in the light of the principles laid down in the decision of the Division Bench of this Court in O.S.A. No. 84 of 2005 has found that the Executive Officer of the Plaintiff/Respondent temple is empowered to initiate legal proceedings against the Defendant/applicant, as he was properly authorised by the Commissioner of Hindu Religious & Charitable Endowments Department and Board of fit persons who were functioning during the relevant period in the place of Board of trustees, and had come to a conclusion that there is no ground available to reject the plaint nor any justification to permit the Defendant/applicant to file an additional written statement in the common judgment, and thus, dismissed both the applications. Hence, this appeal at the instance of the Defendant/Appellant as against Application No. 65 of 2011 alone, dismissing the application for rejection of the plaint.

3. Heard, Mr. A. Bhiman, learned Counsel for the Appellant and Mr. Arul Pazham Nee, learned Counsel for the Respondent.

4. Learned Counsel for the Appellant/Defendant would submit in his argument that the learned Single Judge has not considered the legal position that the Executive Officer has no authority to file any suit sans any specific direction given by the Commissioner as per the judgment of the Honourable Division Bench of this Court reported in Sri Arthanareeswarar of Tiruchengode Vs. T.M. Muthuswamy Padayachi, M. Palanivelu, Smt. Dhanalakshmi Ammal, T.M. Thambiran Padayachi, T. Kuberan and Varadayammal, and ought to have rejected the plaint under Order VII Rule 11 CPC but it was found by the learned Single Judge that the suit was maintainable. He would further submit in his argument that the legal principle enunciated in the aforesaid judgment is the same even though the facts are different and therefore, the claim of the Appellant before the learned Single Judge ought to have been upheld and the plaint should have been rejected for want of authority. He would further submit in his argument that the temple which was actually under the management of Board of Trustees should have launched the proceedings through the Trustees and the Executive Officer has no "locus standi" to file any suit on behalf of the trustees of the temple. He would also submit in his argument that the unreported judgment of this Court made in O.S.A. No. 84 of 2005 dated 25.8.2005 is not applicable to the present facts of the case since the Trustees have not filed the suit against the Appellant/Defendant. He would also make his submissions quoting the orders passed by the Commissioner on 10.7.1995 and the circular issued by the Commissioner,

H.R. & C.E. Department on 9.7.1997, the resolution passed by the Board of Trustees dated 20.11.1998, the letter written by the Special Commissioner to the Joint Commissioner dated 22.8.1999 and the letter written by the Special Commissioner to Joint Commissioner, Vellore dated 3.9.99 as produced in the additional typed set and submit that those orders and circular would not be sufficient to comply with the requisites as laid down in the judgment of this Court made in Sri Arthanareeswarar of Tiruchengode Vs. T.M. Muthuswamy Padayachi, M. Palanivelu, Smt. Dhanalakshmi Ammal, T.M. Thambiran Padayachi, T. Kuberan and Varadayammal, . He would therefore, request the court to interfere with the judgment of the learned Single Judge and to allow the application filed by the Appellant to reject the plaint and thus, to allow the appeal.

5. Learned Counsel appearing for the Respondent would submit in his arguments that the application filed by the Appellant before the learned Single Judge was for the purpose of rejection of the plaint filed for recovery of possession and for damages after the completion of 99 years old lease agreement which ended on 17.11.1997. He would also submit that the extent of property was more than 31 grounds and 300 sq.ft. as detailed in the plaint, located at Poonamallee High Road, Kilpauk Chennai-10 and it is a prime property. He would further submit that the Respondent being the Executive Officer was directed by the Commissioner to take legal action against the Appellant and other lessees as soon as the completion of the lease period, in his letter dated 10.7.1995 and the said letter had specifically directed the Executive Officer to take appropriate action. He would also submit that the power given to the Executive Officer to file a suit was u/s 45(3) of the Tamil Nadu Hindu Religious and Charitable Endowments Act and it was distinctively passed by the Commissioner that the Executive Officer has to take action despite the trustees are in the management of the temple. He would further submit that the Commissioner did not authorise the trustees of the temple to file any proceedings and therefore, there is no necessity of joining the trustees in filing the suit for ejectment against the Appellant. He would also submit in his arguments that even otherwise the trustees have passed a resolution on 20.11.1998 to continue the suit filed by the Executive Officer on behalf of the temple and therefore, the contention of the Appellant that the trustees have not given consent to the filing of the suit cannot be sustained. He would also submit that the learned Single Judge has scrutinised all these circumstances and had come to a conclusion that those reasons are not sufficient to reject the plaint under Order VII Rule 11 CPC He would also submit that in an earlier occasion, this Court had upheld the maintainability of the suit filed by the Respondent against three other persons for a similar relief under the same documents of Respondent and it was considered by this Court and the judgment has been passed in O.S.A. No. 84 of 2005 on 25.8.2005 upholding the maintainability of the suit. He would also submit that this Court had distinguished the facts referred to in the judgment of this Court made in Sri Arthanareeswarar of Tiruchengode Vs. T.M. Muthuswamy Padayachi, M. Palanivelu, Smt. Dhanalakshmi Ammal, T.M. Thambiran Padayachi, T. Kuberan and

Varadayammal, and had come to the conclusion that those facts are different in nature and therefore, the principles laid down in the said judgment were not applicable to the facts of the case in O.S.A. No. 84 of 2005. The order of the Commissioner passed on 10.7.1995 authorising the Executive Officer to file a case and the resolution passed all trustees on 20.11.1998, were considered in the said judgment and were upheld by this Court that they would be sufficient for authorising the Executive Officer to file a suit and the resolution passed by the board of Trustees would be sufficient to delegate the power to the Executive Officer for maintaining the suit and therefore, the Executive Officer has got competency and authorisation to file and maintain the suit. He would further submit that the provisions of Order VII Rule 11 CPC would not be attracted by the reasons submitted by the Appellant since the suit is sustainable and therefore, the judgment of the learned Single Judge may not be interfered with and the appeal may not be allowed.

6. We have given anxious thoughts to the arguments advanced on either side.

7. The suit in C.S. No. 47 of 1999 was filed by the Respondent against the Appellant/Defendant for the following relief"s:

i) for recovery of vacant possession of the piece of land bearing Municipal Corporation Door No. 769, Poonamallee High Road, Chennai 600 010 more fully and particularly described in the schedule hereunder

ii) for recovery of arrears of rent Rs. 266/-for the period from 1.11.1997 to 31.5.1998 at the rate of Rs. 15.62per month;

iii) for recovery of damages, use and occupation at the rate ofrs.4,33,260/- per month from 1.6.1998 to 31.01.1998 being Rs. 21,66,300/-;

iv) for recovery of damages for use and occupation at Rs. 4,33,260/- per month from 1.11.1998 and at the same rate, till the date of recovery of possession of the property;

v) for recovery of costs of the suit.

8. The ejectment sought for against the Appellant was purely due to the efflux of time of the tenancy which ended on 17.11.1997. The Execution Officer of the Respondent Temple filed the suit on behalf of the temple and the Appellant/Defendant has questioned the same on its maintainability that the Executive Officer was not having authority to file the suit. Per contra, it is contended by the Respondent that the Executive Officer was competent to file a suit on the direction given by the Commissioner of HR & CE on the basis of an order passed on 10.7.1995. However, it has been contended by the Appellant that there was no specific power given to the Executive Officer to sue against the Appellant since the alleged power was given on 10.7.1995, even prior to the completion of the lease period. When we peruse the order of the Commissioner dated 10.7.1995, we could see that the Executive Officer was given a specific direction to take appropriate action for recovery of possession of the properties including

the plaint mentioned property. The further contention of the Appellant would be that the Board of Trustees have not passed any resolution prior to the filing of the suit authorising the Executive Officer to file a suit on behalf of the temple. However, the Board of Trustees themselves have chosen to pass a resolution as early as on 20.11.1998 wherein it was resolved to proceed with the cases already filed for eviction and also initiate steps to issue notice and to take further action in respect of the others. Even though an attempt is made on behalf of the learned Counsel for the Appellants that in the said resolution, it is not specifically indicated that the action should be initiated by filing a suit represented by the Executive Officer, the implementation of the said resolution has to be considered in the light of Rule 14 of the functioning of the Board of Trust Rules, which reads as follows:

14. All matters relating to the administration of the religious institution shall be decided at the meetings of the board of trustees. The Executive Officer or the Chairman of the board of trustees, as the case may be, shall carry into effect the decisions of the board of trustees after obtaining the orders of the competent authority on individual subjects.

The above Rule makes it clear that the Executive Officer shall carryout the effect of the decision of the Board of Trustees after obtaining orders of the competent authority. In the present case, inasmuch as a resolution is passed by the Board of Trustees to continue with the legal proceedings initiated already as well as to initiate further action in respect of others, the said authorisation given by the Board of trustees would ratify the action taken by the Executive Officer in filing the suit against the Appellant.

9. Section 45(3) would empower the Commissioner to define powers and duties of both Executive Officer and Trustee to be exercised and discharged by them respectively. For better understand Section 45(3) is necessarily be extracted hereunder.

45. (1)....

(2)....

(3) The Commissioner may define the powers and duties which may be exercised and discharged respectively by the Executive Officer and the trustee, if any , of any religious institution other than a math or a specific endowment attached to a math.

10. On a careful consideration of the said provision, we can understand that the Commissioner, while defining the powers of both Executive Officer and Trustee in respect of filing the suit for evicting the tenant in his order dated 10.7.1995 has given power only to the Executive Officer to take appropriate action and has not given any power of the Trustee. However, the Board of Trustees have passed a resolution on 20.11.1998 authorising the Executive Officer to continue the suits pending on the date which includes the present suit also. In the said

circumstances, ratification given by the Board of Trustees would cure the defect even otherwise the authorisation of the Board of Trustees is required at the time of filing of the suit.

11. The ratio of the decision rendered by this Court in Sri Arthanareeswarar of Tiruchengode Vs. T.M. Muthuswamy Padayachi, M. Palanivelu, Smt. Dhanalakshmi Ammal, T.M. Thambiran Padayachi, T. Kuberan and Varadayammal, cannot be pressed into service in aid of the Appellant for the following reasons:

The said decision was rendered by a Division Bench of this Court wherein no such direction was issued by the Commissioner to the Executive Officer therein to initiate legal action or to file a suit. When an opinion was sought for by the Executive Officer therein, the Commissioner has sent a communication wherein the Executive Officer and the Board of trustees were directed to obtain legal opinion to enforce the charges mentioned in the settlement deed therein. The said fact was spoken to by the Executive Officer in his chief-examination as P.W.1. Inasmuch as a direction was issued only to seek a legal opinion, the Executive Officer seems to have exceeded the powers conferred upon him by the Commissioner and chosen to file a suit which was held to be not maintainable in law. It was also pointed out that at the relevant point of time, the Board of trustees were in existence and the trustees were not made parties to the suit. In the case on hand, a specific direction is issued by the Commissioner as early as on 10.7.1995 directing the Executive Officer to initiate action for eviction which was followed by a valid resolution of the Board of Trustees dated 20.11.1998. Apart from the above decisions, an unreported decision of a Division Bench of this Court in W.A. No. 619 of 2003 dated 5.4.2004 reiterates the principle that the Board of Trustees are entitled to delegate the powers with the Executive Officer to take such action in terms of the resolution passed by them. In the said decision, it was pointed out that similar view was taken by another Division Bench of this Court and as such, a uniform view is taken on more than one occasion that the Executive Officer has to implement the resolution passed by the Board of trustees.

12. We could also see that the Defendants in C.S. No. 769/2001, a suit filed by the Respondent against the other tenants was sought to be rejected, on their application and the same was dismissed by the learned Single Judge and against which the appeal was preferred in O.S.A. No. 84 of 2005 and the same documents were considered by the Division Bench and it had come to the conclusion that the power given by the Commissioner to the Executive Officer u/s 45(3) of the Act empowers the Executive Officer through his order dated 10.7.1995 would be sufficient to maintain the suit. It was also decided that the Board of Trustees can delegate the power in favour of the Executive Officer to file any suit on their behalf. On going through the unreported judgment of this Court made in O.S.A. No. 84 of 2005, we are entirely in agreement with the judgment and hold that the facts and circumstances discussed in the judgment of this

Court reported in Sri Arthanareeswarar of Tiruchengode Vs. T.M. Muthuswamy Padayachi, M. Palanivelu, Smt. Dhanalakshmi Ammal, T.M. Thambiran Padayachi, T. Kuberan and Varadayammal, is different. In the light of the facts and circumstances, we are of the view that the suit filed by the temple represented by the Executive Officer is maintainable in law and accordingly, the order of the learned Judge on this score is sustainable in law. Therefore, we are of the considered view that the suit filed by the Executive Officer on behalf of the temple is in order.

13. However, it has been argued by the learned Counsel for the Respondent/Plaintiff that the question of maintainability has not been enlisted in the provisions of Order VII Rule 11 CPC and when it is not covered under the provisions of Order VII Rule 11 C.P.C, the application filed by the Appellant/Defendant for rejection of the plaint was not at all sustainable. Order VII Rule 11 C.P.C reads as follows:

11. Rejection of plaint: The plaint shall be rejected in the following cases:

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the Plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, failed to do so;

(c) Where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the Plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

.....

14. On a careful perusal of the provisions of Order VII Rule 11 C.P.C., we could see that the points raised by the Appellant regarding maintainability on the basis of the lack of competency for the Executive Officer of the Temple to file a suit is not a ground for rejection. On this aspect also, we are not accepting the submission of the Appellant for rejection of the plaint.

15. Learned Single Judge dismissed the application by referring to various provisions of Tamil Nadu Hindu Religious and Charitable Endowments Act as well as the findings reached in the unreported judgment made in O.S.A. No. 84 of 2005. The said findings of the learned Single Judge is found to be in order. Therefore, we are of the considered opinion that the order passed by the learned single Judge is not liable to be interfered with. Accordingly, the appeal is dismissed. Consequently, M.P. No. 1 of 2011 is closed. No order as to costs.

16. After we have passed the judgment, the learned Counsel for the Respondent has submitted that the suit is of the year 1999 and is a long pending matter and

requested for an observation regarding early disposal of the suit.

17. Having regard to the submissions of the learned Counsel for the Respondent that the suit is of the year 1999 and the suit property belongs to the temple - Arulmighu Ekambaranathar Thirukkoil, Kancheepuram, we request the learned Single Judge to take up the suit and dispose of the same at an early date.