

(2011) 08 AP CK 0010
In the Andhra Pradesh High Court
Case No : Appeal Suit No. 484 of 2003

Tirumala Tirupati Devasthanams

APPELLANT

Vs

A.M. Eswara Mudaliar

RESPONDENT

Date of Decision : 10-08-2011

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 118, 151, 75, 76, 83
Removal of Encroachments Rules, 1987 — Rule 6
Transfer of Property Act, 1882 — Section 106

Citation : (2011) 08 AP CK 0010

Hon'ble Judges : B. Chandra Kumar, J

Bench : Single Bench

Advocate : M. Adinarayana Raju, for the Appellant; M.P. Chandramouli, for the Respondent

Final Decision : Allowed

Judgement

B. Chandra Kumar

1. The appellant-Tirumala Tirupathi Devasthanam, represented by its Executive Officer, Tirupati, aggrieved by the judgment and decree dated 09.12.2002 passed in O.S. No. 6 of 1999 by the learned Additional Senior Civil Judge, Tirupathi, preferred this appeal.
2. The appellant herein is the plaintiff and the respondent herein is the sole defendant in the suit. The parties hereinafter will be referred to as they are arrayed before the lower Court for the sake of convenience.
3. The plaintiff filed the suit for recovery of Rs.1,98,000/-with interest at 12% p.a., from the date of suit till realisation being the arrears of damages for use and occupation of plaint schedule properties by the defendant from 01.01.1996 to 31.12.1998 at the rate of Rs.5,500/- per month and for directing the defendant to pay future damages till the date of taking possession of the plaint

schedule property and for costs of the suit. The case of the plaintiff, in brief, is as follows. The plaintiff is the owner of the suit schedule building bearing Door No.11-1-220, Gandhi road, Tirupati. The plaintiff schedule property was leased out to the defendant on a monthly rent of Rs.1,331/-and the lease was extended from time to time, lastly from 01.04.1989 to 31.03.1990. After expiry of the lease period, the plaintiff issued a notification to auction the leasehold rights of the plaintiff schedule property in public auction on 20.04.1990. Questioning the proceedings of the plaintiff dated 11.04.1990 proposing to auction the leasehold rights of the plaintiff schedule property, the defendant filed Writ Petition No.5345 of 1990 and also sought stay of all further proceedings in WPMP No.6840 of 1990. It appears that no stay was granted by this Court. However, the said writ petition was finally dismissed by this Court on 11.07.1997. Challenging the order passed by this Court in the said writ petition, the defendant preferred an appeal in W.A. No.876 of 1997. However, the same was dismissed at the admission stage itself. Then, the defendant filed O.S. No.732 of 1997 on the file of the Additional Junior Civil Judge, Tirupati, for declaration that he is entitled to continue in possession of the plaintiff schedule property and for permanent injunction against the plaintiff and its subordinates and also sought temporary injunction in I.A. No.1434 of 1997. It appears that the said petition was dismissed with costs on 03.12.1997 and the defendant was also unsuccessful in CMA No.40 of 1997 before the appellate Court i.e., III Additional District Judge, Tirupati, and the said CMA was dismissed with costs on 06.02.1998. The specific case of the plaintiff is that the lease period expired by 31.03.1990 and since the defendant failed to vacate the premises, the status of the defendant is only an encroacher and, therefore, he is liable to pay damages for use and occupation of the plaintiff schedule property from 01.04.1990 onwards. It is also the case of the plaintiff that similar buildings are fetching monthly rent of Rs.6,000/-and, therefore, the defendant is liable to pay Rs.5,500/- per month from 01.04.1990. It is also the case of the plaintiff that the sealed tenders were invited on 19.11.1998 to grant licence up to 31.03.2000 and one K. Nagaraj offered highest amount of Rs.5,499/-towards licence fees, but the plaintiff could not finalise the transaction, since the defendant did not deliver the vacant possession of the plaintiff schedule property to the plaintiff. The plaintiff, after adjusting the amount of Rs.51,909/-paid by the defendant, claimed Rs.1,98,000/-towards arrears of damages for use and occupation from 01.01.1996 to 31.12.1998 @ Rs.5,500/- per month.

4. The defendant resisted the claim of the plaintiff contending that the defendant is only a tenant by holding over and he cannot be termed as an encroacher under the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for brevity "the Act"). It is also the case of the defendant that the plaintiff was demanding rent at Rs.1331/- per month and issued several notices even after 31.03.1990 i.e., after expiry of lease period and, therefore, the question of claiming damages does not arise. It is also his case that usually 10% hike per annum on the existing rent is demanded and collected. It is denied that the

similar buildings in the area are fetching monthly rent of Rs.6,000/-. It is also the case of the defendant that calling of the tenders for lease/licence of the premises is unknown to law and tenders will be called only for supplies etc. It is also the case of the defendant that the plaintiff is not entitled to adjust the amount for damages and there is no cause of action arose for filing the suit. It is also the case of the defendant that he being a tenant by holding over, unless and until his tenancy is duly terminated by due process of law, the plaintiff has absolutely no right to claim damages.

5. The defendant also filed additional written statement contending, inter alia, that under Sub-section 6 of Section 83 of the Act the civil Court's jurisdiction is ousted. The plaintiff also filed a re-joinder contending that the contention of the defendant that the Civil Court has no jurisdiction is untenable and that the suit was filed in 1999 and this plea is taken at a belated stage.

6. The lower Court framed the following issues.

1. Whether the plaintiff is entitled for damages at Rs.5,500/- per month.

2. To what relief?

7. The following additional issue was also framed by the lower Court.

Whether this Court has got jurisdiction to entertain the suit?

8. On behalf of the plaintiff, PW.1 was examined and Exs.A1 to A8 were marked. On behalf of the defendant DW.1 was examined and Exs.B1 to B3 were marked.

9. The lower Court, on consideration of the entire oral and documentary evidence, came to the conclusion that awarding damages for use and occupation of the shop at Rs.2,000/- per month would meet the ends of justice and, accordingly, held that the plaintiff is entitled for damages at Rs.2000/- per month from 01.01.1996 to 31.12.1998 but not at the rate of Rs.5,500/- per month, in case the plaintiff establishes that the Civil Court has got jurisdiction to entertain the suit. However, on the point of jurisdiction, the lower Court came to the conclusion that the Civil Court has no jurisdiction to entertain the suit in view of Section 83 read with Section 118 of the Act. The lower Court has mainly relied on the judgment of this Court passed in similar matters i.e., in S.A Nos.343 of 2001 and batch, dated 25.09.2002, wherein this Court held that the civil Court has no jurisdiction to entertain the suit and, accordingly, dismissed the suit. Aggrieved by the same, the plaintiff filed the present appeal.

10. Sri M. Adinarayana Raju, learned counsel appearing for the appellant/plaintiff, submits that there is no provision under the Act to claim damages for the use and occupation of the premises. His main submission is that sub-section 6 of Section 83 of the Act applies only when a matter is pending before the authorities that too for the limited period during which the proceedings were pending before the said authority. His main submission is that sub-section 6 of Section 83 of the Act does not apply to the period prior to the institution of any

proceedings before the authority concerned (Deputy Commissioner) for eviction of an encroacher. Relying on the judgment of this Court reported in *Bondili Satyanarayana Singh v. Sri Rajagopalaswami Vari Devasthanam, Madhavaripalem* 1983 (1) APLJ 235, he has submitted that when other reliefs have been claimed i.e., one or more of the reliefs which are not governed by the local law, namely A.P. Charitable and Hindu Religious Institutions and Endowments Act and when there is no specific provision for recovery of arrears of rents or damages it is certainly open to the plaintiff to file a civil suit. Relying on the judgment of this Court reported in *Chigurupati Venkatasubbaiah v. Ravi Punneyya* 1957 (II) An.W.R. 204, he has also submitted that the jurisdiction of the Civil Court is not excluded when special forums could not grant certain prayers. Reliance is also placed on a decision reported in *Estate Shri Laxmanji Maharaj Temple v. A. Narsing Rao* 1989 (1) APLJ 593, wherein Sections 75 and 76, prior to the amendments to the Act, came up for consideration and this Court held that the Civil Court has jurisdiction to entertain a suit filed by an endowment for recovery of possession, arrears of rent and future damages in respect of the property in possession of tenant. It is submitted that Section 75 is equal to Section 83 of the new Act.

11. According to Sri M.P. Chandramouli, learned counsel for the respondent/defendant, sub-section 6 of Section 83 of the Act empowers the Deputy Commissioner to direct the encroacher to deposit such amount as may be specified by him and therefore the plaintiff could have approached the concerned authority claiming arrears of rent. He submitted that the very framing of the suit is erroneous and the Civil Court has no jurisdiction to entertain the suit and if at all the civil Court has jurisdiction the plaintiff would have issued notice as prescribed u/s 106 of the Transfer of Property Act. It is also his submission that no evidence has been let in to show the rents collected for adjacent shops. The claim of Rs.5,500/- per month is only imaginary and without any basis. His main submission is that the plaintiff ought to have invoked Section 83 of the Act before the Commissioner and could have claimed relief of eviction, arrears of rent, if any and even the arrears of rents during the pendency of the proceedings before the Commissioner.

12. The points that arise for consideration are whether Section 83 of the Act is applicable to the facts of this case, whether the Civil Court has no jurisdiction to entertain the suit filed by the plaintiff, whether the plaintiff can claim damages under sub-section 6 of Section 83 of the Act and whether the claim of damages of Rs.5,500/-has any basis and to which relief the plaintiff is entitled to in the facts and circumstances of the case.

13. As seen from the record, it is not in dispute that the defendant was a tenant of the shop bearing Door No.11-1-220, Gandhi road, Tirupati and the lease period expired by 31.03.1990. It appears that the plaintiff wanted to conduct auction of the leasehold rights of the plaint schedule property on 20.04.1990. However, the same could not be materialized in view of the filing of writ petition

by the defendant in W.P. No.5345 of 1990. It is also not in dispute that ultimately the said writ petition was dismissed and the defendant was also unsuccessful when he filed writ appeal in W.A. No.876 of 1997. It is also not in dispute that though the defendant filed a civil suit in O.S. No.732 of 1997 on the file of the Additional Junir Civil Judge, Tirupati, the said suit was ultimately dismissed. As seen from the averments made in the written statement and plaint averments and from the evidence let in and as admitted by both the parties, it appears that the defendant in all paid Rs.51,909/-. If the said amount is adjusted at Rs.1331/- per month, it can be adjusted till 30.06.1993. The plaintiff claimed damages from 01.01.1996 to 31.12.1998. The suit has been filed on 19.01.1999. Admittedly, the defendant did not pay any amount either towards rent or damages from 01.01.1996 to 31.12.1998. There is no evidence to show that the defendant has offered any amount during that period. Therefore, it cannot be said that the defendant should be treated as a tenant by holding over. Even as seen from the averments of the written statement, the case of the defendant is that the plaintiff cannot seek any relief u/s 83 of the Act. Thus, it appears that the defendant has to be treated as only an encroacher or as a person who continued to remain in the building after expiry of the lease period.

14. Section 151 of the Act is as follows.

151. Bar of jurisdiction:-No suit or other legal proceeding in respect of administration or management of an institution or endowment or any other matters of dispute for determining or deciding for which provision is made in this Act shall be instituted in any Court of Law except under and in conformity with the provisions of this Act.

15. Thus, where a specific provision has been made in the Act in respect of administration or management of an institution or endowment or any other matters of dispute, then the Civil Court has no jurisdiction to entertain any suit or other legal proceedings u/s 151 of the Act. Therefore, it has to be seen whether the claim of the plaintiff is covered by sub-section 6 of Section 83 of the Act or not.

16. In similar matters in S.A.Nos.343 of 2001 and batch, this Court by an order dated 25-09-2002, having regard to the pleadings in the plaint, held that since the basic foundation for damages is that the defendant is an encroacher within the meaning of Section 83 of the Act, the declaration is required to be given by a competent authority u/s 118 of the Act that the alleged un-authorized person has encroached and until such time he is declared as an encroacher, the user charges cannot be quantified and collected. It was further held that when the area of jurisdiction was finally occupied u/s 83 of the Act and in view of the bar contained u/s 151 of the Act, the Civil Courts cannot have any jurisdiction to entertain the suit.

17. It has to be seen that Sri P. Chandramouli, learned counsel submits that the Civil Court has no jurisdiction u/s 83 of the Act to quantify the damages and in

view of the above referred judgment, only the competent authority can declare a person as an encroacher. It has to be seen that the circumstances of the case are entirely different in this case and the period of lease was expired when the T.T.D. proposed to conduct auction of leasehold rights. The defendant filed writ petition and consequently the proceedings were pending from 1990 to 1997. It has to be seen that in W.A.No.876 of 1997 a Division Bench of this Court categorically held that the defendant has no leasehold right in respect of plaint schedule property and presently he is a trespasser only. Since a categorical finding has been given in the Writ Appeal, it appears that there is no need to make a further declaration that the defendant is an encroacher. It is true that the defendant was a tenant. But after expiry of the lease period, if a tenant continuous in possession of the property and if his possession is with the consent of the landlord then such tenant can be called as tenant holding over. A tenant continuing in possession after the termination of the lease without the consent of the landlord is called tenant in sufferance. In this case the defendant can be called as tenant in sufferance. The tenancy in sufferance does not create relationship between landlord and tenant. Since in this case the status of the defendant is only a tenant in sufferance, he is liable to pay the damages.

18. In view of the finding in the Writ Appeal and in view of the facts and circumstances of the case, I am of the view that there is no need to seek a separate declaration that he is an encroacher. Even otherwise the explanation clause of Section 83 of the Act makes it very clear, which reads as follows:

83. Encroachments by persons and land or building belonging to charitable or religious institution or endowment and the eviction of encroachers:-(1) Where the Assistant Commissioner having jurisdiction either suo motu or upon a complaint made by the trustee has reason to believe that any person has encroached upon (hereinafter in this Chapter referred to as "encroacher") and land, building, tank, well, spring or water-course or any space belonging to the institution or endowment, wherever situated or deemed as an encroacher under any of the provisions of this Act, the Assistant Commissioner shall report the fact together with relevant particulars to the Deputy Commissioner having jurisdiction over the division in which the institution or endowment is situated.

Explanation:-For the purpose of this Chapter the expression "encroacher" shall mean any person who un-authorisedly occupy any land or building or space and deemed to include any person who is in occupation of the land or building or space without the approval of the competent authority sanctioning lease or mortgage, or licence and also a person who continues to remain in the land or building or space after the expiry or termination or cancellation of the lease, mortgage or licence in respect thereof granted to him or it.

(2) Where, on a perusal of the report received by him under sub-section (1), the Deputy Commissioner finds that there is a prima facie case of encroachment, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling on him to show cause before a certain date why

an order requiring him to remove the encroachment before the date specified in the notice should not be made. A copy of the notice shall also be sent to the trustee of the institution or endowment concerned.

(3) The notice referred to in sub-section (2) shall be served in such manner as may be prescribed.

(4) Whereafter considering the objections, if any, of the encroacher received during the period specified in the notice referred to in sub-section (2) and after conducting such enquiry as may be prescribed, the Deputy Commissioner is satisfied that there has been an encroachment, he may, by order, require the encroacher to remove the encroachment and deliver possession of the land or, building or space encroached upon to the trustee before the date specified in such order.

(5) The order of the Deputy Commissioner under sub-section (4) shall be in writing and shall contain the grounds on which he has passed the order.

(6) During the pendency of the proceedings, the Deputy Commissioner shall order the encroacher to deposit such amount as may be specified by him in consideration of the use and occupation of the properties in question in the manner prescribed.

19. A reading of the above provision makes it clear that the Assistant Commissioner has jurisdiction to pass orders evicting the encroachers of any land, building etc., and belonging to the institution or endowments covered under the Act. The explanation also makes it clear that the encroacher shall mean any person who unauthorisedly occupy any land or building and also a person who continues to remain in the land or building or space after expiry or termination or cancellation of the lease, mortgage or licence in respect thereof granted to him or it. Sub-section 6 of Section 83 is relevant for the purpose of this case. Sub-section 6 envisages that the Deputy Commissioner shall order the encroacher to deposit such amount as may be specified by him in consideration of the use and occupation of the properties in question in the manner prescribed during the pendency of the proceedings. The words "during the pendency of the proceedings" assume importance. Thus, the jurisdiction of the Deputy Commissioner cannot be extended to the period prior to the institution of any proceedings before the Deputy Commissioner. Thus, the Deputy Commissioner shall have power or authority to direct the encroacher to deposit such amount as may be specified by him for the period during which the proceedings were pending before him. Thus, it is clear that the defendant is an encroacher in view of the explanation u/s 83 of the Act. A fair reading of Section 83 of the Act makes it very clear that the competent authority after determining that a person is an encroacher may pass orders evicting him and sub-section 6 of Section 83 of the Act only empowers the Deputy Commissioner to direct such encroacher to deposit such amount as may be specified by him in consideration of the use and occupation in question particularly, to the specific period i.e., to the period during

pendency of the proceedings only.

20. Admittedly, in this case, the damages are claimed from 01.01.1996 to 31.12.1998 i.e., for a period during which the matters were pending in the writ petition or in the Writ Appeal before this Court. Admittedly, no proceedings were pending before the Deputy Commissioner during that period for which damages have been claimed in this matter. Of course, the plaintiff could have initiated proceedings u/s 83 of the Act for recovery of possession or for eviction of the defendant from the premises. But, as seen from the prayer in the plaint the plaintiff did not specifically seek relief of eviction. Section 83 of the Act will apply only when eviction proceedings have been initiated. Where in a case the claim is only for damages, in my considered view Section 83 has no application.

21. Moreover, when a relief of eviction and damages have been claimed, then what is to be done, under the provisions of Andhra Pradesh (Andhra Area) Tenancy Act, came up for consideration before this Court in case of Satyapramoda Thirthaswamulavaru Vs. Mula Gunnayya (deceased) and Others, wherein it was held that the eviction was within the purview of the provisions of Andhra Pradesh (Andhra Area) Tenancy Act but there was no specific provision as in this case for claiming damages under provisions of the said Act. This Court also categorically held in paragraph No.31 of the said decision, which is as follows:

It is now well established by a catena of decisions of this Court reported in Chigurupati Venkatasubbaiah v. Ravi Punneya ((1957) 2 An WR 204), Mahendrada Ramayya v. Mahendrada Govindu ((1966) 1 An WR 352 and Dontireddy Venkata Reddy Vs. Bhimavarapu Bhushireddy and Others, that when only a part of the relief claimed can be granted by a tenancy court, the Civil Court had jurisdiction to entertain the suit. Indisputably in this case, the Tenancy Court cannot grant relief for damages and only a relief of eviction can be granted by the Revenue Court and, therefore, in our opinion, the civil court has undoubtedly, jurisdiction to entertain the suit, and the Court below was in error in holding that the civil court had no jurisdiction to entertain the suit.

22. The same analogy and principles are applicable in this case. It appears that this decision of the Division Bench was not considered by the learned Single Judge of this Court while disposing of the above batch of Second Appeals.

23. I have also considered Rule 6 of the Removal of Encroachments Rules, 1987. Neither the Rules nor Section 83 empowers the Deputy Commissioner to determine the damages for the past use and occupation of the premises by tenant as in this case. Since there is no specific provision for determination of the damages for the use and occupation of the property it is clear that the Civil Court has jurisdiction to entertain the suit.

24. Now the question is what is the reasonable amount that can be awarded towards damages for use and occupation of the premises. Since the defendant has paid an amount of Rs.51,909/- and since earlier rent was only Rs.1,331/- per

month the same can be adjusted till 08-01-1991. Therefore, it appears that the defendant is liable to pay damages till the delivery of possession i.e., 30-05-2000.

25. According to PW-1 auction was held on 19-11-1998 and one K. Nagaraju became highest bidder for Rs. 5,500/- per month towards licence. His further case is that the possession could not be delivered to the highest bidder since the defendant was continuing in possession of the property. It is not in dispute that the plaintiff called for the tenders for auctioning the leasehold rights as under Ex.B-3. According to PW-1 one K. Nagaraju filed the sealed tender form, wherein he had quoted the rent at Rs. 5,499/- per month. It is submitted by Sri Adinarayana Raju, learned counsel for the T.T.D. that, had the said auction accepted and consequently the tenders were finalized, then the plaintiff would have got rent @ Rs.5,499/- per month without any difficulty. It appears that the lower Court has not justified in simply brushing aside the evidence of PW-1 and the above referred documents. In the circumstances, admittedly, the premises which was in occupation of the defendant is situated in Gandhi Road, Tirupati, i.e., in commercial locality and the defendant used the premises for commercial purpose. Therefore, it appears that the lower Court should have quantified the rent at Rs.5,499/- per month without any difficulty.

26. Accordingly, I hold that the plaintiff is entitled for damages at Rs.5,499/- per month from 01-01-1996 to 31-12-1998 and also from 01-01-1999 till the date of delivery of possession i.e., 30-05-2000, which comes to Rs.2,91,447/-(Rupees Two Lakhs Ninety One Thousand Four Hundred and Forty Seven only) (Rs.5,499 x 53 months = Rs.2,91,447).

27. In view of the above discussion, the appeal is allowed with costs and the suit filed by the plaintiff stands decreed and the defendant is directed to pay Rs.2,91,447/-to the plaintiff with interest at 6% p.a., thereon from the date of this appeal.