

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:5.5.2005

C O R A M

THE HON'BLE MR. JUSTICE.S.K. KRISHNAN

S.A.No.309 of 1995

Veerakudi Vellala
Charities represented by
its Trustee-Kancheepuram
No.7, Narasingarayar Street
Kancheepuram, by its
Trustees

1.M.Kannan
2.V.Venkatraman
3.G.Govindasamy

... Appellants (Plaintiff)

Vs

M.Krishnan.

...Respondent (1st Defendant)

Second Appeal is filed under Section 100 C.P.C. against the judgment and decree dated 2.2.1994 passed in A.S.No.64 of 1990 on the file of the Subordinate Court, Kancheepuram and the Judgment and decree in O.S.No.12 of 1984, dated 5.11.1990 on the file of the District Munsif Court, Kancheepuram.

For Appellants : Mr.G.Venkatraman

for Mr.A.S.Thambuswamy

For Respondent: Mr.* S.K.Ravi.

JUDGMENT

Aggrieved by the judgment and decree dated 2.2.1994 passed in A.S.No.64 of 1990 on the file of the Subordinate Court, Kancheepuram reversing the Judgment and decree in O.S.No.12 of 1984, dated 5.11.1990 on the file of the District Munsif Court, Kancheepuram, the plaintiffs have filed the above second appeal.

2. The averments made in the plaint are as follows:

The plaintiffs were appointed as Trustees of Veerakodi Vellalar Charities at Kancheepuram by order dated 30.4.1983 for a period of three years from 30.4.1983. As per resolution dated 25.5.1983, the plaintiffs 1 to 3 were elected as Managing Trustee, Secretary and Treasurer respectively. The previous trustee leased out the choultry, which is the suit property, to the first defendant for running a military hotel for rent at Rs.150/- p.m., for a period of ten years. As the trustee is not empowered to lease the property for such a long period, such lease becomes invalid and therefore, a resolution dated 26.5.1983 was passed to evict the first defendant. Further, the suit property is in a dilapidated condition and hence, it requires reconstruction. Without any authorisation, the first defendant sub-leased the front portion facing Kamaraj Street to the second defendant and has been collecting a rent of Rs.12/-. When the same was questioned by the plaintiffs, the defendants questioned the title of the plaintiffs and claimed that the suit property belongs to Municipality. To the notice, dated 18.7.1983, issued by the plaintiffs terminating the tenancy, since the reply given by the defendants with only false and untenable allegations, the plaintiffs have filed the above said suit.

3. Denying the averments made in the plaint, the first defendant filed a written statement and prayed for dismissal of the suit.

4. On the basis of the oral and documentary evidence, though the trial Court decreed the suit, the lower appellate Court allowed the appeal. Hence the plaintiffs have come forward with this second appeal.

5. Heard both sides.

6. The Second appeal was admitted on the following substantial questions of law:

a. Whether the court below is correct in dismissing the suit on the ground of no cause of action arises on the date of filing of the suit?

b. Whether the courts are not entitled to take into consideration of the subsequent event that is the expiry of the lease period and grant the relief for the plaintiff?

7. It is an admitted fact that the plaintiffs 1 to 3 have been appointed as trustees of Veerakudi Vellala Charities, Kancheepuram for a period of three years from 30.4.1983. The said order was passed by the learned Subordinate Judge, Chengleput, on 30.4.1983.

8. It is seen that prior to the appointment of these trustees one Ramasamy was appointed as trustee to the said charities. The said Ramasamy allowed the first defendant to occupy the suit premises from 1978 onwards as a tenant for a monthly rent of Rs.150/-. The case of the plaintiffs is that the first defendant allowed the second defendant to run a military hotel in the same premises. The first plaintiff in the capacity of Managing Trustee had written a letter to the defendants on 13.6.1983, wherein, he has categorically informed the first defendant to renew the lease agreement with the Managing Trustee within 15 days from the date of receipt of the said letter.

9. It is seen that the said letter was written to the first defendant based on a resolution passed by the trustees. In addition to that the Managing Trustee also insisted the first defendant to renew the lease agreement with the trustees with regard to occupation and enjoyment of the front portion of the said choultry. Following the said letter addressed to the first defendant, the Managing Trustee sent one another letter dated 19.6.1983 under Ex.B.2 reiterating the execution of fresh lease agreement with the trustees in respect of the front portion of the suit property.

10. In this regard, the first defendant after the receipt of the letter under Ex.B.2 issued a reply under Ex.A.4, dated 23.7.1983, wherein, he has stated that he already entered into a lease agreement with the previous trustees for a period of ten years from 10.7.1978 under a registered lease deed. The defendant also informed the first plaintiff that he has agreed to pay the advance of Rs.500/- with a monthly rent of Rs.150/-. Further, he also informed that when the lease agreement entered with the previous trustees was subsisting, the question of renewal of lease agreement does not arise.

11. It is also informed that the first plaintiff never objected to the running of a military hotel in the suit premises, however, he demanded higher rent. When the demand of the first plaintiff was not accepted by the first defendant, he issued a legal notice asking the first defendant to vacate from the premises. It is also denied by the first defendant that the suit property was not sub leased to the second defendant.

12. The only point to be decided in this second appeal is whether the plaintiffs have any cause of action to institute the suit for eviction against the defendants.

13. In this regard, the learned counsel appearing for the appellants would submit that for instituting the suit against the defendants, the plaintiffs have got sufficient cause of action. He would submit that even though the defendants claimed that they have entered a lease agreement with the former Managing Trustee for a period of ten years, they have not produced the original registered lease agreement and when this fact was admitted in the written statement filed by the first defendant, the requirements of the provisions under Section 105 to 107 of the Transfer of Property Act have not been satisfactorily complied with. Further, it is emphasised by the learned counsel that the alleged lease agreement stated by the first defendant is not at all complied with the provisions of 17(1)(d) r/w 49 of the Registration Act.

14. In such circumstances, since the first defendant is not at all considered to be a statutory tenant under the first plaintiff, he issued a legal notice to the first defendant asking him to vacate from the premises.

15. It is pointed out by the learned counsel that in such circumstances, the legal notice sent by the first plaintiff dated 18.7.1983 under Ex.A.3 is sustainable under law and therefore, the first defendant is not at all considered to be a statutory tenant and that he has no legal right to remain in the premises. In such circumstances, the first plaintiff has come forward to issue a legal notice to the defendants asking them to vacate from the premises. Therefore, the first plaintiff terminated the tenancy of the defendant by the end of 31.8.1983. In such circumstances, the plaintiffs have got cause of action to institute the suit against the defendants for eviction.

16. Emphasising the provisions under Sections 105 to 107 of the Transfer of Property Act, as well as under the provisions of the Registration Act, the learned counsel would submit that the defendants are liable to be evicted from the premises.

17. Therefore, the suit instituted by the plaintiffs is maintainable under law. Without analysing the legal principles and the circumstances under which the defendants 1 and 2 occupied the premises and also without analysing the status of the defendants 1 and 2, the lower appellate Court has come to a wrong conclusion by holding that the plaintiffs have no cause of action and the suit filed by the plaintiffs is not

maintainable. Further, the lower appellate court without assigning sufficient reasons, it should not have come to such a erroneous conclusion.

18. However, the learned counsel appearing for the respondent would submit that even though the first defendant has not come forward to produce any registered lease agreement, in view of considering the fact that since the first plaintiff himself acknowledged the tenancy of the first defendant based on the lease agreement, they cannot now refute the statutory status of the first defendant as a tenant under the plaintiffs.

19. Further, when the lease agreement entered by the first defendant with the former Managing Trustee was subsisting upto 1988, the first plaintiff has no legal right to institute the suit against the defendants by stating that they are not at all statutory tenants under the plaintiffs.

20. Further, the learned counsel would point out that even the first plaintiff has not raised any objection in his notice, dated 18.7.1983, for running the military hotel by the first defendant in the said premises.

21. It is emphasised by the learned counsel that the first plaintiff after duly considering the first defendant as a statutory tenant under the former trustee has come forward and asked the first defendant to execute a fresh lease agreement with the first plaintiff.

22. It is further contended by the learned counsel that in the letters sent by the first plaintiff, he insisted the first defendant only to execute a new lease agreement with the first plaintiff for occupying the front portion of the said premises.

23. It is pointed out that since the first defendant was not obliged for the enhancement of rent to a sum of Rs.500/- p.m., and denied to execute a fresh lease agreement, the first plaintiff all of a sudden has come forward to issue a notice under Ex.A.3 asking the first defendant to vacate from the premises.

24. Therefore, in such circumstances, the learned counsel appearing for the respondent would submit that since the first defendant being a statutory tenant under the former Managing Trustee and when such tenancy is still subsisting and covering the period upto 1988, no cause of action has arisen for the first plaintiff to institute the suit against the defendants asking them to vacate from the premises.

25. In reply, the learned counsel appearing for the appellants would submit that no importance can be given to the recitals as well as the averments referred to in the letters under Ex.B.1 and B.2 said to have been written by the first plaintiff to the first defendant when no plea was raised with regard to such averments and recitals in the written statement.

26. In this regard, the learned counsel appearing for the respondent would submit that since the first plaintiff himself has categorically acknowledged and accepted the first defendant has a statutory tenant, such categorical acknowledgement of the first plaintiff cannot simply be rejected on the ground that no plea has been raised in the written statement by the first defendant with regard to the recitals and averments referred to in the said two letters.

27. On a careful consideration of the recitals referred to in Exs.B.1 and B.2 and also considering the arguments advanced by the learned counsel appearing for the respondents, this Court feels that there is some force in the argument advanced by the learned counsel for the respondents.

28. It is to be noted that on a perusal of the facts referred to in Exs.B.1 and B.2 which would categorically reveal the fact that the first plaintiff after duly recognising the first defendant as a tenant under the previous Managing Trustee has come forward and asked the first defendant to execute a fresh lease agreement with the first plaintiff.

29. As pointed out by the learned counsel, in the letters written by the first plaintiff, he has not raised any objection or dispute with regard to the status of the first defendant.

30. In fact, the first plaintiff after duly acknowledging the first defendant as a statutory tenant, he insisted in his letters for executing a fresh lease agreement with the first plaintiff. When such being the position, the first plaintiff all of a sudden has come forward to issue notice dated 18.7.1983 asking the first defendant to vacate from the premises. However, a suitable reply was given by the first defendant in his reply notice dated under Ex.A.4.

31. It is to be noted that the first defendant as a tenant under the former trustee Ramasamy occupied the premises in the year 1978. After a lapse of five years, the first plaintiff he has come forward to initiate legal proceedings against the first defendant stating that without possessing any legal right, the

first defendant is in occupation of the premises and terminated the tenancy of the first defendant by issuing a notice under Ex.A.3.

32. It is pointed out by the learned counsel appearing for the respondent that the said notice itself is not a valid one and no importance could be given for the said notice as the same was given without considering the fact that the first defendant was entitled to remain in the premises till the expiry of the lease period, i.e. till 1988. Therefore, the learned counsel appearing for the respondent would point out that after considering the entire aspects, the lower appellate court has rightly concluded that for instituting the suit against the first defendant, the plaintiffs have no cause of action. Therefore, in such circumstances, the suit instituted against the first defendant by the plaintiffs is not at all maintainable under law.

33. It is further pointed out by the learned counsel having allowed the first defendant as a statutory tenant and permitted him to occupy the premises from 1978 and also acknowledging his status as a statutory one by the first plaintiff, under Exs.B.1 and B.2, the first plaintiff cannot seek for eviction of the first defendant on the ground that the agreement entered by the first defendant with the former Trustee is invalid and is against the objects of the choultry.

34. At this juncture, it is pertinent to refer to the arguments advanced by the learned counsel appearing for the appellants that since the first defendant has not come forward to satisfy the requirements of Sections 105 to 107 of the T.P. Act as well as the provisions of the Registration Act, the remaining of the first defendant in the suit premises could not be considered as a legal one and his tenancy can be terminated by issuing a 15 days legal notice as required under Section 106 of the T.P. Act. Such proceedings could not be initiated by the first plaintiff against the first defendant. If the possession of the first defendant in the premises is without any legal basis and if the first defendant was allowed by the former trustee against the object of the charities, then the remedy available to the first plaintiff is to declare the tenancy of the first defendant with former trustee as null and void, whereas the first plaintiff has not approached the Court for such relief against the defendants.

35. In such circumstances, the arguments advanced by the learned counsel appearing for the appellants could not be considered for the reasons stated above. The substantial questions of law are answered against the appellants.

36. In the light of the discussion held above, this Court is of the view that no case is made out to interfere with the decision arrived at by the learned Subordinate Judge.

37. In result, the second appeal fails and is dismissed confirming the judgment and decree of the lower appellate court. No costs.

RNB

5.5.2005

Sd/19.5.2005
Asst.Registrar

Corrected Judgment reg. appearance
to the counsel for the respondent
as Mr.S.K.Ravi to be issued.

Sd/- 9.6.2005
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Subordinate Judge
Kancheepuram.(with records)

2.The District Munsif
Kancheepuram.

1 cc to Mr.A.S.Thambuswamy, Advocate, SR.21832]

1 cc to Mr.S.K.Ravi, Advocate, SR.21840]

vc (co)

dv

]To be substituted to
]the order already
]despatched on
]30.5.2005

S.A.No.309 of 1995

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