

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 31.01.2012

Coram:-

The Hon'ble Mr. Justice T.RAJA

Second Appeal No.123 of 2007

Kanakeswari

... Appellant/4th Defendant

vs.

1. Aruligu Bava Oudishwaraswamy Devasthanam  
rep. by his executive Officer,  
Thiruthuraipoondi.

2. Hariharan

3. Kuber

(R2 & R3 given up)

... Respondents/Plaintiff  
and Defendants 2 and 3

Second Appeal filed under Section 100 CPC. as against the judgment and decree, dated 29.06.2006, passed by the Subordinate Judge, Mannargudi, in A.S. No.16 of 2006 reversing the judgment and decree, dated 29.08.2003, passed in O.S. No.184 of 1997, by the District Munsif, Thiruthuraipoondi.

For Appellant : Mr.A.Muthukumar

For Respondent: Mr.S.K.Raghunathan

J U D G M E N T

The 1st respondent herein/temple represented by its Executive Officer filed a suit in O.S. No.184 of 1997 on the file of the District Munsif Court, Thiruthuraipoondi, as against Defendant No.4/appellant herein and three others with a prayer for permanent injunction restraining the appellant herein/D4 from putting up further construction in the suit property, mandatory injunction to demolish the superstructure already put up by her with 46 pillars and for recovery of Rs.656.25 ps. from defendants-1 to 3 towards arrears of rent, by pleading that the suit property in Survey R.S. No.184/5 measuring 10 cents punja land belongs to the plaintiff/temple and by lease deed dated 17.08.1971, it was leased out to one Ayyathurai Chettiar, father of defendants-1 to 3, for the purpose of construction of residential house with the terms and conditions as

mentioned therein. After the demise of the said Ayyathurai Chettiar, his legal heirs/defendants 1 to 3 are in enjoyment of the said property. While so, the 4th defendant made a claim that she purchased the suit property from one Ummakani Ammal (wife of late Muhammad Abul Hasan) and others, whereupon, the plaintiff/temple filed a suit in O.S. No.275/96 seeking injunction to restrain the authorities from registering any sale deed in respect of the suit property. Late Ayyathurai Chettair was paying the lease rent for which receipts have been issued by the Temple and the 4th defendant, who is a stranger, has no claim over the property even in the capacity of a lease holder as there was no sub-lease or any other contract of tenancy in her favour regarding the suit property. Since there is arrear in payment of lease rent, defendants 1 to 3 the legal heirs of Ayyathurai Chettiar are added as necessary parties. Without any authorization, D4 started construction work over the suit property and laid 46 concrete pillars. Therefore, it is absolutely necessary that D4 is restrained from proceeding further with the unauthorised construction by grant of ad-interim injunction. Further, in order to demolish the already erected concrete pillars 46 in number, mandatory injunction may be granted. It is specifically added that the plaintiff/Executive Officer having been appointed by the HR & CE Board to administer the plaintiff/temple, in proper representative capacity, he filed the suit with the prayer as mentioned above.

2. Defendant No.4 filed a counter affidavit stating that the Executive Officer is put to strict proof that he, in the representative capacity, filed the suit and that the suit property belongs to the Temple. Originally, the suit property was enjoyed by Ayyathurai Chettiar and after his demise, his legal heirs sold the property to one late Muhammad Abul Hasan. Thereafter, on 22.07.1996, the 4th defendant purchased it from the legal heirs of late Muhammad Abul Hasan. The said transaction was challenged by the plaintiff by filing O.S. No.275/96 before the District Munsif Court, Thiruthurappoondi. Though the suit land was originally owned by the plaintiff/temple, after the Inam Abolition Act, the plaintiff had no right whatsoever over the suit property. For more than a decade, Muhammad Abul Hasan and his forefather were residing therein without any interruption. Therefore, the sale transaction from which D4 derived ownership over the property being valid, the plaintiff now cannot claim ownership. Nowhere in the plaint, the plaintiff did mention as to how the temple derived ownership over the property and how patta was obtained. Even accepting for the sake of argument that the temple has right over the property, at best, they can collect lease amount as being done in case of other temple lands in the vicinity for construction over such lands and cannot straight away seek for demolition of the constructed portion nearing completion. Since the grant of injunction would result in great prejudice to the 4th defendant, it is prayed that the suit may be dismissed.

3. The trial court, after considering the case of either side, dismissed the suit by judgment dated 29.08.2003. The aggrieved temple filed an appeal in A.S. No.16 of 2006 on the file of the Sub Court, Mannargudi, and by Judgement dated 29.06.2006, the appeal was allowed reversing the judgment of the trial court; hence, the present Second Appeal by the fourth defendant.

4. At the time of admission, this Court framed the following substantial questions of law for consideration:

a) Whether the lease deed, Ex.A1, executed by the plaintiff authorises for putting up superstructures on the site of the suit property, whether mere suit for mandatory injunction for removal of the entire superstructure is maintainable in law without filing a suit for recovery of possession?

b) Whether the suit for mandatory injunction for removal of the entire superstructure is maintainable in law without terminating the lease by issuing a notice to quit?

c) Whether the Executive officer of the temple is competent to file the suit when there is no averment in the plaint that there were no trustees or the trustees had authorised him to file the suit?

5. Learned counsel appearing for the appellant, by stating that the appellant herein/D4 purchased the suit property for a valid consideration from the legal heirs of Mohammad Abdul Hasan and after such purchase, the construction work commenced was almost completed with erection of 46 iron pillars, would submit that when the temple has no right, title or interest over the suit property, it is not entitled for grant of blanket mandatory injunction to demolish the superstructure that too without a appropriate prayer for declaration or at least for recovery of possession. If the plaintiff is right in its claim, at the first instance, it should have filed a suit for recovery of possession as against all the defendants after terminating the alleged lease continuing in favour of D1 to D3 after the demise of the original lessee-Ayyathurai Chettiar. The plaint is bald in the sense that there is no averment therein that no trustees are available or the available trustees have authorised the Executive Officer to file the suit. The lower appellate court failed to note that while the lease arrangement Ex.A1 authorizes the lessee to put up superstructure, without a prayer for recovery of possession of the suit property after removal of superstructure, in the given set of facts, a mere suit for mandatory injunction for demolition will not lie. The superstructure put up by D4 being prior to the suit and the plaintiff having allowed dismissal of the application for



appointment of Advocate Commissioner and further, the suit being bad for non-joinder of necessary parties/legal heirs of Muhammad Abdul Hasan, in all fairness, the lower appellate court should have confirmed the verdict of the trial court in dismissing the suit. Therefore, interference is called for by this Court.

6. Per contra, learned counsel appearing for the 1st respondent/temple argued that D4 has no right much less tenancy right over the property, for, the suit property absolutely belongs to the temple which fact is clearly borne out by the records. Ex.A1 the lease deed clearly establishes the case of the plaintiff that the temple is the absolute owner of the suit property in respect of which it entered into the lease agreement with late Ayyathurai Chettiar. Even the trial court itself reached a categorical finding that the suit property belongs only to the temple and by exhaustively analysing the entire issue in a broader spectrum, the lower appellate court rightly concluded against the defendants; therefore, there is no scope for interference.

7. Coming to questions of law-1 and 2, it is seen that Ex.A1 is the lease arrangement dated 17.08.1971 whereby the father of defendants-1 to 3 was given leasehold right over the suit property for three years to reside therein by raising construction. The authenticity of the said document is not refuted by the appellant herein. Therefore, it goes without saying that the appellant herself accepted the status of the temple as the owner of the suit property and as such, it has every right to lease it out to whomsoever it opts for. Added to that, Exs.P2 to P4 receipts further substantiate the ownership of the temple, for, they evidence payment of lease rent by Ayyathurai Chettiar to the plaintiff-temple. In the light of these documents, looking at the evidence of none else than the husband of D4 as DW1, it is seen that he admitted that the appellant never submitted any document before the Commissioner of the HR & CE for change of lease in her name. Therefore, the only conclusion would be that the lease standing in the name of Ayyathurai Chettiar never transferred to anyone else's name after his demise. Though the 4th defendant claimed absolute ownership initially and thereafter projected her as a lessee, not even a single document was produced before the courts below to substantiate that she had purchased the suit property from the actual owner/plaintiff or entered into lease with the temple or the authority administering the affairs of the temple/HR & CE Board. It must also be pointed out that the other suit filed by the temple in O.S. No.275 of 1996 against this appellant and the legal heirs of Muhammad Abdul Hasan was decreed in favour of the plaintiff/temple and the appeal suit filed in A.S. No.7 of 2000 before the Sub Court, Tiruvarur, also ended in favour of the temple. While the position being thus, the appellant herein, who in plain words can only be termed as a stranger to the suit property, cannot base any claim or seek for any relief by arguing that a mere suit for mandatory injunction for removal of the entire superstructure is not

maintainable in law without filing a suit for recovery of possession. In other words, the appellant is not a lessee or person permitted to enjoy the property by virtue of any order from the HR & CE Board which manages the affairs of the Temple. At best, such claim can be raised only by an authorised occupant like a lessee or tenant or person in permissive occupation and the appellant being an absolute stranger and a trespasser, she is not even entitled to raise any plea on the vague ground that she almost completed 75% of construction which she raised only in an illegal manner, that too, after suffering adverse orders as mentioned above. The settled legal position being that wherever the court concludes that the defendant is a trespasser, unless acquiescence amounting to equitable estoppel is established, mandatory injunction as sought for by the plaintiff/legal owner can be automatically granted, accordingly, those two questions of law are answered against the appellant by holding that there is no scope to disturb the clear findings rendered in that regard by the lower appellate court.

8. In respect of only remaining question of law No.3, there is no useful purpose in delving into such question on the authority of the Executive Officer appointed by the HR & CE Board which actually managing the affairs of the temple to file the suit, as the defendant/trespasser has no locus standi at all to raise such question. Therefore, the said question of law is answered against her.

9. In the result, the Second Appeal is dismissed as devoid of any merit, however, there will be no order as to costs.

Sd/  
Asst.Registrar

//True Copy//

Sub.Asst.Registrar

JI.

To

1. The Subordinate Judge, Mannargudi.
2. The District Munsif, Thiruthuraipoondi.

- 1 cc to Mr.S.K.Raghunathan , Advocate, Sr.No.6201  
1 cc to Mr.A.Muthukumar , Advocate, Sr.No.6049

S.A. No.123 of 2007.

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