

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 31.8.2012

CORAM:

THE HONOURABLE MR. JUSTICE G.RAJASURIA

S.A.No.99 of 2006

Kancheepuram Gandhi Road
Javuli Vyabarigal
rep.by its Secretary
P.Shanmugam
S/o.E.Balasubramania Mudaliar,
122, Gandhi Road,
Kancheepuram

... Appellant

vs.

Babu

... Respondent

Second Appeal against the judgement and decree dated 9.3.2005 passed by the Subordinate Judge, Kancheepuram, A.S.No.60 of 2002 reversing the judgement and decree dated 20.2.2002 passed by the Principal District Munsif, Kancheepuram, in O.S.No.463 of 1999

For appellant :: Mr.M.Sriram

For Respondent :: Mr.Singaravelan for
Mr.N.S.Sivakumar

JUDGEMENT

This second appeal is focussed by the plaintiff in the suit as against the judgement and decree dated 9.3.2005 passed by the Subordinate Judge, Kancheepuram, in A.S.No60 of 2002 reversing the judgement and decree dated 20.2.2002 passed by the Principal District Munsif, Kancheepuram, in O.S.No.463 of 1999, which was one eviction.

2. The parties, for the sake of convenience, are referred to hereunder according to their litigative status and ranking before the trial Court.

3. Compendiously and concisely, the germane facts absolutely necessary for the disposal of this second appeal would run thus:

(i) The appellant herein, who happened to be the plaintiff, filed the suit seeking the following relief:

"to evict the defendant from the plaint schedule mentioned shop premises within the time to be fixed by this Hon'ble Court, filing which the same may be done through Court."

as against the defendant on the main ground that the plaintiff is a public charitable trust owning several buildings and it leased out various buildings also to several tenants and the defendant is one such tenant in the demised premises, described in the schedule of the plaint.

(ii) While so, the plaintiff on seeing that the defendant sub-leased the premises and also indulged in alteration of the demised structure, did choose to issue termination notice terminating the lease as per Section 106 of the Transfer of Property Act ending with 31.3.1999. Despite receipt of the notice, the defendant did not vacate the premises. Hence, the suit.

(iii) However, the defendant resisted the suit raising various pleas, including the one that the suit was not maintainable, as the plaintiff cannot carve out this case as from the purview of the Tamil Nadu Buildings (Lease and Rent Control) Act and that the allegations in the plaint as against the defendant relating to sub-letting and altering of the demised premises were all false. Accordingly, the defendant would pray for dismissal of the suit.

(iv) Whereupon issues were framed.

(v) During trial, on the plaintiff's side one Srinivasan was examined as P.W.1 and Exs.A1 to A8 were marked. The defendant examined himself as D.W.1 and Exs.B1 to B32 were marked.

(vi) Ultimately, the trial Court decreed the suit. However, the defendant preferred the appeal, whereupon the first appellate Court set aside the judgement and decree of the trial Court and dismissed the suit by giving the finding that the allegations made in the plaint were not proved.

4. Being aggrieved by and dissatisfied with the judgement and decree of the first appellate Court, this second appeal has been filed by the plaintiff on various grounds.

5. My learned predecessor framed the following substantial questions of law:

"a) Whether the lower appellate Court is justified in treating the proceedings as one under the Tamil Nadu Buildings (Lease and Rent Control) Act?

b) Whether the lower Appellate Court is correct in admitting additional evidence at the appellate stage that too, along with the final disposal of the appeal without following the procedure established under law for the reception of additional documents?
(extracted as such)

6. The learned counsel for the appellant/plaintiff would pyramid his arguments, which could succinctly and precisely be set out thus:

(i) Ex.A3-the copy of the G.O. Dated 24.6.1996 would exemplify and demonstrate that the Government itself recognised the plaintiff as the charitable public trust, whereupon it exempted it from paying the urban land tax.

(ii) Over and above that in one other second appeal this Court also held that the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act are not applicable concerning the buildings owned by the plaintiff. As such that issue is no more Res integra and accordingly, the trial Court was justified in ordering eviction.

(iii) Whereas, the first appellate Court instead of evaluating and assessing whether the termination notice under Section 106 of the T.P. was valid or not, delved deep into the matter and gone overboard and held that the allegations relating to the sub-lease and modification of the demised structure etc, were not proved. De hors proving such allegations, by merely giving valid termination notice under Section 106 of the Transfer of Property Act, a landlord can terminate the tenancy of the tenant after the expiry of the lease period and seek for eviction.

(iv) In this case, the valid termination notice was given and the first appellate Court had not found fault with such notice, but gone on certain other facts, which were not germane for deciding the case at all.

(v) The additional evidence entertained by the appellate Court were also relating to those facts concerning alleged non-subleasing and non-alteration of the premises etc., which are not necessary for the disposal of the appeal.

Accordingly, the learned counsel for the plaintiff would pray for setting aside the judgement and decree of the first appellate Court and for restoring the judgement and decree of the trial Court.

7. In a bid to torpedo and pulverise the arguments as put forth and set forth on the side of the appellant/plaintiff, the learned counsel for the respondent/defendant would advance his arguments, which could pithily and precisely be set out thus:

(i) In the said second appeal already disposed of by this Court, the defendant was not a party. Simply because the Government for the purpose of exempting the plaintiff from paying the urban tax, passed such G.O., the same cannot be taken to be a G.O. under Section 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act.

(ii) No specific issue also was framed by the trial Court with regard to the non-applicability of the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act.

Accordingly, the learned counsel would pray for the dismissal of the second appeal.

8. Substantial Question of Law (1) I would like to extract hereunder the relevant Section 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act.

"Sec.29.Exemptions - Notwithstanding anything contained in this Act, the Government may, subject to such conditions as they deem fit, by notification, exempt any building or class of buildings from all or any of the provisions of this Act."

9. A plain reading of the above provision would clearly indicate and convey that if a particular institution is a public charitable trust, owning a building certainly that would not be construed as the one which is within the purview of the Tamil Nadu Buildings (Lease and Rent Control) Act.

10. No doubt, Ex.A3-the G.O. cannot be construed as a notification passed under Section 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act, but a cue can be taken from it that the Government itself, by its order clearly and categorically exempted the plaintiff institution from paying the urban land tax on the sole ground that it is a public trust. As such, that fact cannot be gainsaid or denied by the defendant. Accordingly if viewed, the exemption as per Section 29 of the Act could rightly be held to be applicable to the plaintiff trust and the plea of the defendant sounds hollow.

11. In this connection I would like to recollect the following decision of this Court:

1991(1) MLJ 92 - VANJIAPPA GOUNDAR AND OTHERS V. SRI KANNIKA PARAMESWARI AMMAN KOIL BY ITS ADMINISTRATIVE TRUSTEE, certain excerpts from it would run thus:

"19. Mr.N.Thiagarajan, learned counsel for the defendant/appellant, in the first place, would contend that the plaintiff-temple is not a public temple, G.O.Ms.No.2000 is not applicable to the plaintiff-temple and the civil court has no jurisdiction to entertain and try the suits and the remedy available to the plaintiff is to file a

petition for eviction under the provisions of the Act. There is no merit in the contention of the learned counsel for the appellant. In the *Idol of Sri Kannika Parameswari Amman v. Educational Trustees Co.Ltd.*, (1990)1 L.W.291, a Division Bench of this court has held that the idol of Sri Kannikaparameswari Amman in a public religious and denominational institution belonging to Arya Vaisya community and it is a religious public trust entitled to file a suit for recovery of possession of the suit property comprising of land and building and for damages for use and occupation. Further, there is ample documentary evidence in the present case which goes to prove that the plaintiff-temple is under the administration of the Hindu Religious and Charitable Endowment Department and the managing trustee is appointed by the said Department. In view of the above position, it has to be held that the suit temple is a public religious institution belonging to Arya Vaisya community and it is a religious public trust and, therefore, the provisions of the Act will not apply to the present case in view of G.O.Ms.No.2000 and the suits filed for recovery of possession of the suit property and for recovery of rent or damages are maintainable." (emphasis supplied)

12. A plain reading of the above precedent would show that when the Court comes to the conclusion that an institution is a public charitable trust then the building owned by it could rightly be held to be one beyond the purview of the the Tamil Nadu Buildings (Lease and Rent Control) Act. As such, in this case, the factual matrix would unambiguously and unequivocally point out that the plaintiff is a public charitable trust and its buildings are beyond the purview of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

13. No doubt admittedly in the said second appeal, referred to supra, the defendant was not a party, but tenants similar to that of defendant were parties and ultimately this Court held that the buildings owned by the plaintiff were beyond the purview of the Rent Control Act. The said decision could be taken as a precedent also even though the defendant is not eo-nomine party in those proceedings.

14. Regarding non-framing of a specific issue is concerned, inasmuch as this is a law point, certainly in second appeal this could rightly be considered as a substantial question of law, as framed by my learned predecessor. Accordingly, the substantial Question of law (1) is answered in favour of the plaintiff as against the defendant to the effect that the suit building belonging to the plaintiff is beyond the purview of the Tamil Nadu Buildings (Lease and Rent Control) Act.

15. Point No.(2) is concerned, once it is held that the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act are not applicable, then the validity of the termination notice under Section 106 of the Transfer of Property Act alone should be considered.

16. Indubitably and indisputably the demised premises was taken on lease not for any industrial purpose but only for running shop business and in such a case, 15 days termination notice ending with the tenancy month would be sufficient.

17. Here Ex.A6 notice dated 21.2.1999 would connote and denote that by the end of March 1999, the tenancy was terminated giving 15 days notice, over which, there is no dispute.

18. Then the question arises as to whether the landlord is enjoined to prove all the allegations made by him in the plaint relating to sub-leasing as well as the modification of the structure of the demised premises.

19. I would like to hold that those allegations are totally not relevant for getting the tenant evicted. Once a valid termination notice is issued, the plaintiff is relieved of proving all those allegations. However, the plaintiff thought fit to give some reason for terminating the tenancy and with that in mind such averments were made. However, the Court can ignore those averments and allegations and take into account only the germane facts for the purpose of deciding the lis. In the wake of the settled proposition of law, the pleas of the defendant are improbable and belie logic. Consequently the additional evidence filed before the first appellate Court, in my considered opinion, were not germane. Accordingly point No.(2) is decided.

20. Accordingly, the substantial questions of law are answered as under:

Substantial Question of law (1) is decided to the effect that the lower appellate Court was not justified in holding that this case is covered under the Tamil Nadu Buildings (Lease and Rent Control) Act.

Substantial Question of law (2) is decided to the effect that the lower appellate Court was not correct in admitting additional evidence at the appellate stage.

21. In the result, I could see no perversity or illegality in the judgement rendered by the trial Court in ordering eviction. Accordingly, the judgement and decree of the first appellate Court is set aside and the judgement and decree of the trial Court is restored.

22. In the result, the second appeal is dismissed. However, there is no order as to costs.

23. On hearing this judgement, the learned counsel for the defendant would make an extempore submission that a years' time might be granted for the defendant to vacate and hand over possession of the suit property.

24. The learned counsel for the appellant/plaintiff would object for the same.

25. Taking into account the fact that the defendant is a businessman and that he might require sufficient time to vacate the premises and hand over the same to the plaintiff, I would like to grant a years' time from this date to the defendant to vacate the premises, subject to payment of damages for use and occupation, at the same rate of rent to the plaintiff. To that effect an affidavit shall be filed within 15 days from this date by the defendant.

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

Msk

To

1. The Subordinate Judge, Kancheepuram.
2. The Principal District Munsif, Kancheepuram
3. The Section Officer, VR Section, High Court, Madras.

+ 1 cc to M/s. M. Sriram, Counsel for appellant SR.52717

S.A.No.99 of 2006

RSK (CO)
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