



S.A. No. 873 of 2024
and C.M.P. No.19426 of 2024

S.A. No. 873 of 2024

WEB COPY

T.V.THAMILSELVI, J.

Heard and considered submissions of learned counsel for appellant and perused the materials available on record.

2. The appellant, who is the plaintiff filed the suit in O.S.No. 2494 of 1999, challenging the reversal findings of the courts below, had preferred this Second Appeal.

3. Mr.N.Jothi, learned senior counsel for appellant would submit that the first appellate judge had erroneously concluded that they received the rent from the 1st respondent, so that they are inclined to accept the tenancy of the 1st respondent itself, which is totally erroneous one, since because already the 1st respondent subletted the property to the 2nd respondent without their consent. Furthermore, in the year 2010 itself, the tenancy was terminated, but without appreciating the said fact, the first appellate court allowed the appeal suit in favour of 1st respondent, as such is totally erroneous one and the same is liable to be set aside. Accordingly, he prayed to set aside the findings of the court below by raising the following



S.A. No. 873 of 2024
and C.M.P. No.19426 of 2024

WEB COPY

grounds:-

(i) The first appellate court failed to consider that the 1st respondent herein is no longer in existence but the appeal in A.S.No.19 of 2023 is filed only by the trespasser and the human agency by name S.Suresh Rao (D.W.1), who is rank trespasser.

(ii) The nomenclature of the 1st respondent's business name viz., M/s.Woodlands Tiffin Room name is just abused by the trespasser (D.W.1) under the cloak and shell of the trade name, which no longer possesses the legal character of the original firm.

(iii) Whereas while giving evidence as D.W.1 Suresh Rao, the trespasser had admitted that he is a third party to the lease agreement dated 28.06.1975 and not even aware of it. Whereas the same stood expired long ago at least by 15 years ago as on this date. (date of expiry on 27.06.2010).

(iv) During 1975, a registered firm by name M/s. Woodlands Tiffin Room represented by its then Managing Partner by name K.Gopal Rao entered into the lease agreement in respect of an extent of 5263 sq.ft. facing Nageswararao Road at Panagal Park to carry on hotel business.



S.A. No. 873 of 2024
and C.M.P. No.19426 of 2024

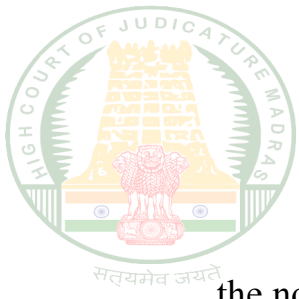
WEB COPY

(v) It is to be submitted that based on the decision and the resolution of the General Body and Executive Committee of the plaintiff (appellant) club, a registered Lease of Deed was then made on 28.06.1975 with the firm, viz., M/s.Woodlands Tiffin Room represented by K.Gopal, son of K.Krishna Rao with terms and conditions inbuilt in the said lease deed.

(vi) The plaintiff herein filed the above suit as against the defendants herein for the prayers made in the Suit. The suit was filed by verifying the plaint dated 12.04.1999 that is about 25 years ago as on this date for the reasons and prayers as stated therein.

(vii) It is now stated that the 2nd defendant that is M/s. Bank of Maharashtra stood vacated. But, the possession of it was not surrendered to the plaintiff and is retained by the usurpers and the present unauthorised occupants.

(viii) The members of the Club got agitated over the manner in which the lease was abused. Hence, it was resolved and demanded to the office-bearers to take steps to evict the occupants, who by name sake retained only



S.A. No. 873 of 2024
and C.M.P. No.19426 of 2024

WEB COPY

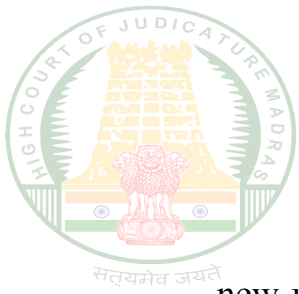
the nomenclature of the 1st defendant name.

(ix) The 2nd defendant also was let-in by the 1st defendant unauthorisedly as sub-tenant viz., Bank of Maharashtra for the purposes of availing loan facility. It is now stated that the 2nd defendant vacated from the building. However, the possession or such vacated area is also retained by the unauthorised persons, who are under the cloak of the 1st defendant's nomenclature systematically came in and went out.

(x) Further, when the suit in O.S.No.2494 of 1999 was filed the true colours of persons in occupation came to be discussed and is known and they started claiming “rights” on the land itself. They are wholly inapplicable to the conditions of the lease and to the facts of the case.

(xi) This court rejected the claims of the 1st defendant stating that the 1st defendant is not entitled to any benefit under Madras City Tenants Protection Act.

(xii) The said judgment also gave a clear finding to the extent that the original tenant who originated the lease deed had left long years ago and



S.A. No. 873 of 2024
and C.M.P. No.19426 of 2024

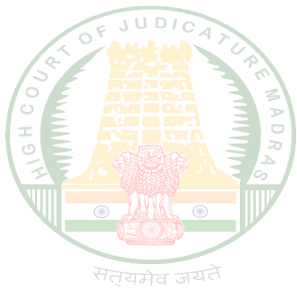
WEB COPY

new unauthorised persons have usurped into the building and hijacked the benefits of the “lease” and are enjoying the suit property unauthorisedly and illegally.

(xiii) In the long march of the pendency of the suit from April, 1999 till this date a period of well over 25 years have gone. Whereas the lease period of 35 years period commencing from 28.06.1975 also by efflux of time stood lapsed at least 14 years ago or about with the ending of 27.06.2010. Thus, the trespassers are in unlawful occupation and are enjoying the fruits of their illegal occupation.

4. Considering the facts and circumstances as well as considering his submissions, this Second Appeal is admitted on the following question of law :-

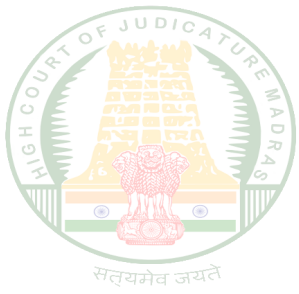
a) Whether the reversal judgment of the first appellate court is correct and proper in law so as to vary the well considered judgment of the trial court based on the admissions of D.W.1 together with Ex.B3 and Ex.B4 that he is not the original lessee at all?



S.A. No. 873 of 2024
and C.M.P. No.19426 of 2024

WEB COPY

- b) *When there is a clear admission of D.W.1 in his oral evidence that he is a third party and stranger to the original lease, is it proper on the part of the first appellate court to allow such unauthorised occupation to continue?*
- c) *Whether the first appellate court is correct in its findings that there should be termination of lease when the registered Lease Deed marked in Ex.A6 itself the period of lease is consciously agreed and fixed for quietly vacating and handing over the possession which itself got already expired on 27.06.2010 itself that is 14 years ago?*
- d) *Whether the first appellate court is correct in its finding that the damages of Rs.3,500/- per mensem sent for the occupation of 5263 sq.ft. at the prime commercial area unilaterally by the third party trespasser would amount to “acceptance of rent” to legitimise the trespassing and unauthorised occupation by a stranger?*



S.A. No. 873 of 2024
and C.M.P. No.19426 of 2024

WEB COPY

e) *Whether the first appellate court is correct in its finding that the unregistered partnership deeds in Ex.B3 and Ex.B4 among the very family members of D.W.1 would qualify to be a Partnership Deed within the meaning of Indian Partnership Act?*

5. Issue notice to the respondents through court returnable by 15.12.2024. Private notice is also permitted.

6. Furthermore, learned senior counsel for appellant would submit that a Civil Revision Petition in C.R.P.No. 2239 of 2024 is connected with the this dispute. Hence, he prayed to post the said C.R.P. along with this Second Appeal.

7. Considering his submissions, Registry is directed to post this Second Appeal along with C.R.P.Nos.2239 2024 after getting necessary permission from My Lord, Hon'ble Chief Justice.

8. Post the matter on 15.12.2024.



WEB COPY
rpp



S.A. No. 873 of 2024
and C.M.P. No.19426 of 2024

04.12.2024

T.V.THAMILSELVI, J.

rpp

S.A. No. 873 of 2024

04.12.2024