

The Doveton Protestant Schools Association, Rep. by its President H.E. Wilkins, Chennai Vs. Mateen Kaiser and Others

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Court : Chennai

Decided On : Mar-11-2016

Judge : P.R. Shivakumar

Appeal No. : C.R.P (PD) Nos. 590, 591 & 592 of 2016 & C.M.P. No. 3126 of 2016

Appellant : The Doveton Protestant Schools Association, Rep. by its President H.E. Wilkins, Chennai

Respondent : Mateen Kaiser and Others

Judgement :

(Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India against the common judgment and decretal orders of the XVI Additional Judge, City Civil Court, Chennai dated 03.07.2015 passed in C.M.A.Nos.88/2014, 93/2014 and 94/2014 setting aside the order and decretal order of the XIV Assistant Judge, City Civil Court, Chennai dated 18.06.2014 made in I.A.No.483/2011 in O.S.No.7079 of 2010.)

Common Order:

1. These civil revision petitions have been preferred against the decretal orders of the learned lower appellate judge dated 03.07.2014 made in C.M.A.Nos.88/2014, 93/2014 and 94/2014. Notice before admission was given and the respondents,

who were the appellants in the above said civil miscellaneous appeals, have entered appearance through counsel. The learned counsel appearing for both parties submit that the civil revision petitions may be disposed of at the time of admission itself, as the issue involved in them is only a legal issue.

2. Accordingly, the arguments advanced by Mr.N.D.Bahety, learned counsel for the petitioners in all the civil revision petitions, by Mr.T.P.Sankaran, learned counsel appearing for respondents 1 to 8 in C.R.P.(PD) No.590/2016, by Ms.B.Priya, learned counsel for the respondents 9 and 10 in C.R.P.No.590/2016 and for Respondents 1 and 10 in C.R.P.(PD) No.591 and 592/2016 and by Mr.T.P.Sankar, learned counsel for R5 in C.R.P.(PD) No.591 and 592 of 2016 are heard. Certified copies of the impugned common judgment and decretal orders of the lower appellate court and copies of other documents produced in the form of typed set of papers are also perused.

3. The plaintiff in O.S.No.7079/2010 on the file of the XIV Assistant Judge, City Civil Court, Chennai, namely The Doveton Protestant Schools Association, represented by its President, is the petitioner in all the civil revision petitions. The said suit was filed by the petitioner herein against the respondents herein for: 1) a direction against the respondents herein/defendants to quit and deliver vacant possession of the premises bearing Nos.52 to 54 Jeremiah Road and Nos.1 and 12, Ritherdon Road, Vepery, Chennai - 600 007 forming part of old S.No.32 Re-Survey No.665/1 measuring an extent of two grounds 84 sq.ft. morefully described in the plaint schedule; (2) a mandatory injunction directing the respondents herein/defendants to remove all the superstructure and constructions put up and are found in the plaint schedule land and (3) a direction against the respondents 1 to 5/defendants 1 to 5 to pay damages for use and occupation at the rate of Rs.2,00,000/- per month from 15.04.2010 till delivery of possession and (4) cost.

4. The above said suit property, as a vacant land, had been leased out to late M.Asif for a period of 12 years under a registered lease deed dated 15.04.1968 bearing document No.1031/1968 in the office of the SRO, West Madras and the same was subsequently, periodically extended by registered deeds of extension and last of such extension was made by document No.818/1990 on the file of Sub

Registrar, Periamet, Chennai dated 29.03.1990 for twenty years up to 14.04.2010 on a monthly rent of Rs.1,350/-. After the death of Asif, the first respondent/first defendant, being his widow, and the respondents 2 to 5/defendants 2 to 5, being his children, continued as lessees in respect of the land. The respondents 6 to 8 herein, are various business concerns run by the family of respondents 1 to 5. The land was leased out for running a petroleum outlet. The respondents 1 to 5 have inducted the respondents 9 and 10 in respect of two different portions of the building put up by them as their tenants. On the expiry of the lease period as per the lease deed dated 29.03.1990, the petitioner herein/plaintiff issued a notice dated 06.01.2010 informing the respondents 1 to 5/defendants 1 to 5 that no further extension of lease would be granted and calling upon them to quit, vacate and hand over vacant possession of the plaint schedule land to the petitioner herein/plaintiff. The respondents 1 to 8, after service of summons in the suit, filed a petition in I.A.No.16780/2010 under Section 9 of the Tamil Nadu City Tenants Protection Act, 1921 seeking a direction to the revision petitioner herein/plaintiff to sell the suit land for a price to be fixed by the court.

5. The said petition was resisted by the petitioner herein/plaintiff contending that the respondents 1 to 8, excluding the second respondent, were outsiders, not entitled to inherit the business of late M.Asif; that the business being carried on by them were not connected with the business, namely trade in petrol and petroleum products, oil and kindred motor accessories; that in addition, they had let out portions to run a medical shop and beeda shop by the 9th and 10th respondents respectively; that therefore, none of the respondents were entitled to the protection under Section 9 of the Tamil Nadu City Tenants Protection Act, 1921 and that since the respondents 1 to 5 had inducted sub-tenants, they would not be entitled to the benefit under Section 9 of the Tamil Nadu City Tenants Protection Act, 1921.

6. The petitioner herein/plaintiff filed an application in I.A.No.483/2011 under Order XXXIX Rules 1 and 2 of CPC for a direction to the respondents 9 and 10/defendants 9 and 10 to deposit the monthly rent payable in respect of the portions of the premises in their occupation to the credit of the suit pending disposal of the suit. The said application was allowed by the trial court by an order

dated 18.06.2014 directing the 9th and 10th defendants to deposit the rent for the shop portions in their occupation in to the court until further orders.

7. As against the said order dated 18.06.2014 made in I.A.No.483/2011, the respondents 1 to 8 herein/defendants 1 to 8 filed an appeal in C.M.A.No.88/2014 before the lower appellate court. The 9th respondent/9th defendant preferred an appeal in C.M.A.No.93/2014 against the decretal order made in I.A.No.483/2011. Similarly, 10th respondent herein/10th defendant filed C.M.A.No.94/2014 against the same order made in I.A.No.483/2011. As against the order dated 19.02.2014 made in I.A.No.16780/2010 filed under Section 9 of the Tamil Nadu City Tenants Protection Act, no appeal came to be filed. As such all the three appeals, namely C.M.A.Nos.88/2014, 93/2014 and 94/2014 came to be filed by the respondents 1 to 8, 9th respondent and 10th respondent respectively. All the three civil miscellaneous appeals were jointly heard by the learned lower appellate judge. The learned XVI Additional Judge, City Civil Court, Chennai, by a common judgment and decretal orders allowed all the three CMAs, set aside the order of the trial court dated 18.06.2014 and dismissed I.A.No.483/2011 in O.S.No.7079/2010. As against the said common judgment and the decretal orders made in C.M.A.No.88/2014 preferred by respondents 1 to 8, C.M.A.No.93/2014 preferred by respondent No.9 and C.M.A.No.94/2014 preferred by respondent No.10, the petitioner herein/plaintiff has filed C.R.P.(PD) Nos.590, 591 and 592/2016 respectively.

8. Admittedly the suit land, namely premises bearing Nos.52 to 54 Jeremiah Road and Nos.1 and 12, Ritherdon Road, Vepery, Chennai - 600 007 forming part of old S.No.32 Re-Survey No.665/1 measuring an extent of two grounds 84 sq.ft., was leased out to one M.Asif for running a petroleum outlet for the sale of petroleum products and the allied materials. It is not a tenancy in respect of a building. On the other hand, it is purely a lease of vacant land for a specific purpose. The lease was created by a registered lease deed, which also came to be extended from time to time by registered deeds of extension of lease. The last of such extension of lease took place in 1990 under a registered deed bearing Document No.818/1990 on the file of Sub Registrar, Periamet, Chennai. After the death of original lessee M.Asif, his legal heirs, namely respondents 1 to 5 became the

lessees. The respondents 6 to 8 are none other than the business establishments/business firms run by the respondents 1 to 5. The fact remains that the respondents 1 to 5 became lessees of the vacant site and the superstructures were put up by them.

9. Under such circumstances, when further extension of lease was refused and the petitioner herein/land owner sued for ejectment (for reovery of possession after removal of the superstructure put up by the respondents 1 to 5), the respondents 1 to 5 and the respondents 6 to 8, namely the business concerns/business firms run by the respondents 1 to 5, claimed benefit under the provisions of the Tamil Nadu City Tenants Protection Act, 1921 and filed an application under Section 9 of the said Act in I.A.No.16730/2010 for a direction to the revision petitioner herein/plaintiff to sell the land for a price to be fixed by the court. Before ever an order could be passed in the said application, the revision petitioner herein/plaintiff filed I.A.No.483/2011 purportedly under Order XXXIX Rules 1 and 2 of CPC praying for a direction in the nature of mandatory injunction directing the respondents 9 and 10 to deposit the rent in respect of the shop portions in their occupation into the court to the credit of the suit till disposal of the suit. But the application filed by the respondents 1 to 8, namely I.A.No.16780/2010 under Section 9 of the Tamil Nadu City Tenants Protection Act, 1921, came to be disposed of by an order dated 19.02.2014, much before I.A.No.483/2011 holding the respondents 1 to 8 to be entitled to the protection under the Tamil Nadu City Tenants Protection Act, 1921 and entitled to seek the sale of the property for a price to be fixed by the court under Section 9 of the said Act, barring the area over which the building portions in the occupation of the 9th and 10th respondent/9th and 10th defendants stand. Thus the trial court held the respondents 1 to 8 entitled to purchase the land from the lessor only in respect of 4388 sq.ft. out of 4884 sq.ft. leased out to them. The operative part of the said order reads as follows:

"In the result, the petition is ordered and thereby the petitioners 1 to 8 are entitled for the relief under Sec.9 of the Tamil Nadu City Tenants Protection Act, 1921 (Amended) and thereby the respondent/plaintiff is directed to sell the land measuring 4388 sq.ft. (2 grounds 84 sq.ft., = 4884 sq.ft., - 496 = 4388) on a market price as on today and the petitioners shall take steps to fix the market price

of the suit property within a month from the date of order viz today. No cost."

The said finding was arrived at on the premise that the respondents 1 to 8 (lessors) were not in actual possession of the portion of the leasehold land over which the shops let out to the respondents 9 and 10 stand and that hence, they were not entitled to the relief in respect of the said portion alone. Thus the respondents 1 to 8 were held to be entitled to get 4388 sq.ft. of land sold to them for a market price to be fixed by the court.

10. The relief under Section 9 of the Tamil Nadu City Tenants Protection Act, 1921 was rejected only in respect of 496 sq.ft. As against the said order of the trial court dated 19.02.2014, neither the plaintiff nor the defendants 1 to 8, chose to file any appeal. What remains to be done in the said petition is to fix the market price for the sale of the above said 4388 sq.ft. out of 4884 sq.ft. of land leased out by the petitioner/plaintiff. The same is not the subject matter of the present revisions.

11. The claim of the revision petitioner/plaintiff for a direction to the respondents 9 and 10 to deposit the rent for the portions in their occupation was no doubt allowed by the trial court, but the appeals preferred by respondents 1 to 8, respondent No.9 and respondent No.10 separately, came to be allowed and the said order of the trial court was set aside. The petitioner herein/plaintiff contends that since the right of the respondents 1 to 8 under Section 9 of the Tamil Nadu City Tenants Protection Act, 1921 stands negated, the revision petitioner/plaintiff shall be entitled to collect the rent for those portions in the occupation of respondents 9 and 10, as they are sub-tenants in respect of those portions. Learned counsel for the petitioner also contends that in view of the rejection of the claim of the respondents 1 to 8 for the relief under Section 9 of the Tamil Nadu City Tenants Protection Act, 1921 they shall not be entitled to collect the rent for those portions, regarding which their claim was rejected and that therefore, the revision petitioner/plaintiff is entitled to claim the rent for the portions in the occupation of the respondents 9 and 10. It is his further contention that even if the court comes to the conclusion that the revision petitioner/plaintiff is not entitled to collect the rent from the respondents 9 and 10, as they are entitled to recover damages for use and occupation, the respondents 9 and 10 should have been directed not to

pay the rent to the respondents 1 to 8 and on the other hand they should have been directed to deposit the rent to the credit of the suit till the disposal of the suit for adjustment of the aid amount depending on the result of the suit. The said contention of the learned counsel for the petitioner is responded by the following contentions by the learned counsel for the respondents:-

i) The lease being one for vacant land over which the building was put up by the respondents 1 to 8, any tenant inducted in such building will not become a sub-lessee or sub-tenant of the land owner and the the land owner, namely the revision petitioner, cannot claim the rent for the building from the tenants (respondents 9 and 10) of the lessees (respondents 1 to 8).

ii) It is the contention of the learned counsel for the respondents that when there is no privity of contract and the revision petitioner cannot claim rent from the respondents 9 and 10 directly. The prayer made in its petition for a direction to deposit the rent being not bonafide, the learned lower appellate judge came to a correct conclusion that the trial court committed an error and the same should be corrected in the appeals.

iii) A consideration of the fact that the revision petitioner/plaintiff is only a land owner of the vacant site, which was leased out to the respondents 1 to 8 and the buildings were constructed by the lessees, namely respondents 1 to 5, any tenant inducted in respect of the building by the owners of the building will be the tenants of the lessees of the land and they cannot be termed as sub-tenants of the land owner and the land owner cannot become the landlord of such tenants in respect of the building. What the land owner (lessor) is entitled is to collect the lease amount and after termination of lease, claim amount towards damages for use and occupation for the land alone and it cannot claim any rent for the building even from his direct lessee. Similar is the case of the petitioner herein. The petitioner, at the best, can claim the lease amount and damages after the termination of the lease. It cannot claim rent from the lessees for the building put up by the lessees. When the revision petitioner/plaintiff is not entitled to claim rent for the building from his lessees themselves, the revision petitioner cannot have any iota of right to claim that the rent payable by the tenants in respect of the building to be paid to

the petitioner (land owner) or to be deposited to the credit of the suit. Even if the prayer can be construed to be an attempt to have an attachment before judgment, the future rent cannot be directed to be deposited to the credit of the suit.

12. Viewed from any angle, the common judgment and the decretal orders of the lower appellate court dated 03.07.2015 made in C.M.A.Nos.88/2014, 93/2014 and 94/2014 holding the revision petitioner/plaintiff not entitled to the direction prayed for in I.A.No.483/2011, cannot be said to be either defective or infirm, much less illegal or one passed in wrong exercise of jurisdiction. It cannot also be said that the decretal orders of the lower appellate court is patently erroneous or is capable of causing miscarriage of justice to warrant interference by this court in exercise of its revisional power.

13. Furthermore, the revision came to be filed under Section 115 of the Code of Civil Procedure. The scope of revision under the said provision has been restricted to cases wherein the Subordinate court appears to have exercised a jurisdiction not vested in it by law or to have failed its jurisdiction so vested in it by law or to have acted in exercise of its jurisdiction illegally or with material irregularity. As pointed out supra, the lower appellate court cannot be said to have exercised jurisdiction not vested in it or to have failed to exercise a jurisdiction vested in it or to have acted with illegality or material irregularity in such exercise of jurisdiction, warranting interference by this court in exercise of its power of revision. Furthermore the proviso to section 115 of CPC is a bar insofar as the order of the court below would not have caused the termination of the proceeding, had it been in favour of the revision petitioner.

14. For all the reasons stated above, this court comes to the conclusion that the decretal orders of the lower appellate court cannot be interfered with either under Section 115 of the Code of Civil Procedure in exercise of the revisional powers of this court or even under Article 227 of the Constitution of India in exercise of this court's power of superintendence over the subordinate courts. There is no merit in these revisions and all the three revisions are bound to be dismissed.

In the result, all the civil revision petitions, namely C.R.P.(PD) Nos.590 to 592 of 2016 are hereby dismissed confirming the decretal orders of the XVI Additional

Judge, City Civil Court, Chennai dated 03.07.2015 made in C.M.A.Nos.88/2014, 93/2014 and 94/2014, setting aside the order of the trial court dated 18.06.2014 made in I.A.No.483/2011 in O.S.No.7079 of 2010. However, there shall be no order as to cost. Consequently the connected miscellaneous petition is closed.

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