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S.A.No.1001 of 2000

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.11.2025

PRONOUNCED ON : 04.02.2026

CORAM:

THE HON'BLE MR.JUSTICE **V.LAKSHMINARAYANAN**

S.A.No.1001 of 2000

1.S.N.L.Jayabalan

2.S.N.L.Vettriselvan

3.S.N.L.Manoharan

... Appellants

Vs.

1.Arulmigu Ananda Vigneswarar Koil @
Thatta Pillayar Temple,
By its Hereditary Trustee,
Singaravelu, S/o.Namasivaya Pattar,
Ramanayagakula Theru,
Velliapalayam,
Nagapattinam.

2.Vadivelu

3.Gunasekaran

... Respondents

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure against the judgement and decree dated 11.02.2000 in A.S.No.198 of 1999 on the file of Additional Subordinate Court, Nagapattinam reversing the Judgment and Decree in O.S.No.179 of 1996 dated 22.03.1999 on the file of the District Munsif, Nannilam.

For Appellant

: Mr.S.Subbiah,
Senior Counsel,
for Ms.Elizabeth

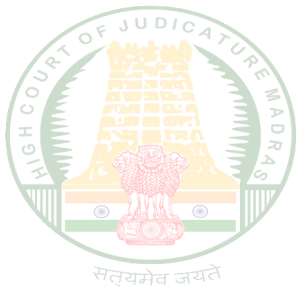
For Respondents

1 & 2

: Mr.B.Jawahar

For Respondent 3

: Mr.L.G.Sahadevan



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JUDGMENT

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The present appeal arises against the judgment and decree of the learned Additional Subordinate Judge, at Nagapattinam in A.S.No.198 of 1999 dated 11.02.2000 in reversing the judgment and decree of the learned District Munsif at Nannilam in O.S.No.179 of 1996 dated 22.03.1999.

2. The defendants 1 to 3 are the appellants. O.S.No.179 of 1996 is a suit for ejectment, recovery of arrears of rent, for past mesne profits and for costs.

3. For the sake of convenience, the parties shall be referred to as the plaintiffs and the defendants.

4. It is the case of the plaintiff that the suit schedule mentioned property belonged to the temple. The plaintiff, being an idol, the suit was presented by its hereditary trustees. They alleged that on 17.03.1955, one Namasivaya Pattar, who was the father of the plaintiffs, the then trustee of the temple, had entered into an oral lease with one Pushpavalli Ammal, who is the mother of the defendants 1 to 3, for the suit schedule mentioned property. The monthly rent was Rs.5.00. In evidence of the payment of rents, receipts were issued by the temple and were duly



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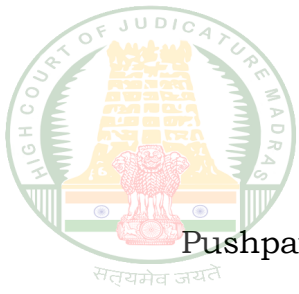
signed by Pushpavalli Ammal. Pushpavalli Ammal died on 16.06.1990.

On her death, the defendants 1 to 3 became the tenants of the suit property as her legal heirs.

5. There are two houses in the suit property, and the same had been leased out in favour of the defendants 4 and 5. The plaintiffs demanded the defendants to execute a fresh lease deed and also to clear the arrears of rent. As they did not do so, a notice under Section 106 of the Transfer of Property Act was issued on 23.04.1993. The defendants 3 and 4 alone issued a reply. As the demand in the notice had not been complied with, the temple presented the suit for the aforesaid reliefs.

6. Summons were served on the defendants. The defendants 1 to 3 and the defendant 4 filed separate written statements.

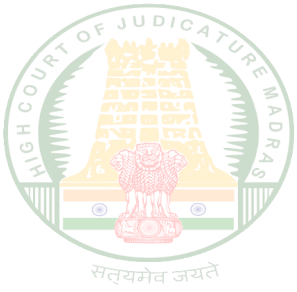
7. According to the defendants 1 to 3, the property situated in Town Survey Nos.1375 and 1376 was purchased by Pushpavalli Ammal from one Subramani Chettiar, under a registered sale deed dated 22.02.1954. Subramani Chettiar had purchased the property in a court auction held on 07.12.1953. Thereafter, he took delivery of the same on 19.02.1954. The said Pushpavalli Ammal executed a "**WILL**" in favour of the defendants 1 to 3 on 17.10.1988. Upon her death, the defendants 1 to 3 became the absolute owners of the property. They pleaded that



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Pushpavalli Ammal had erected a compound wall and a fence around the suit schedule mentioned properties, as well as with respect to the properties in Town Survey Nos.1375 and 1376. The adjacent vacant lands were lands appurtenant to the suit properties. They further pleaded that the houses constructed on the suit land belonged to them.

8. The defendants 1 to 3 also pleaded that the suit properties are inam lands and that, with the coming into force of The Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 26 of 1963 (hereinafter referred to as 'Act 26 of 1963'), the defendants 1 to 3 became entitled to the properties. They alleged that whatever right the temple had, had been taken over by the Government. They denied the lease arrangement between the temple and their mother. They claimed that the temple cannot claim any right, title, or interest in the suit properties. They additionally alleged that as the owners of the building, they are entitled to the benefits under the Tamil Nadu City Tenants Protection Act, 1921 and that the nature of their holding is one of permanent tenancy. They also alleged that the notice under Section 106 of the Transfer of Property Act had not been issued properly, nor was the suit preceded by a notice under Section 11 of the City Tenants Protection Act. Consequently, they sought dismissal of the suit.



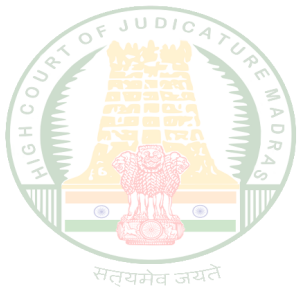
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9. The fourth defendant pleaded that he is a statutory tenant under defendants 1 to 3 with respect to Town Survey No.1376. Fearing that the defendants 1 to 3 would dispossess him from the property, he presented O.S.No.148 of 1993. He added that, insofar as Town Survey Nos.1364 and 1376 are concerned, he is enjoying the usufructs from the trees, which belonged to the temple. He added that, in the event the suit is decreed, he is willing to attorn the tenancy in favour of the plaintiff temple. Consequently, he sought for dismissal of the suit.

10. On the basis of the pleadings, the learned Trial Judge framed the following issues:

- “ 1/ thjpfS; jhf;fy; bra;Js;s ,t;tHf;F epiyf;fj;jf;fjh>
2/ jhth brhj;Jf;fs; Kiwahf tpthpf;fg;gl;Ls;sdth>
3/ jhth brhj;Jf;fs; ikdh; ,dhk; ,y;iyah> mg;goahdhy;
thjpfSf;F gl;lh tH';fg;gl;L ,th;fSf;F-chpikK:yk; cs;sjh> ,e;j tHf;F
ePjpkd;w Kj;jpiuf; fl;lzr; rl;lk; gphpt[43(2) d; fPH; epiyf;fj; jf;fjh>
4/ 4tJ gpupthjpapd; mDgtj;jpy; o/v!;/1376 brhj;Js;sjh>
5/ thjpfS; jhth o/v!;/1375 brhj;ij mDgtj;jpy; itj;Js;shuh>

6/ 20/6/43 ehspl;l gFjp gj;jpuk; cz;ikahdjh> ,J 1 Kjy; 3
gpupthjpfis fl;Lg;gLj;jf; Toajh
7/ jhth brhj;Jf;fs; 1 Kjy; 3 gpupthjpfSf;F Fj;jiff;F
tplg;gl;Ls;sjhff; TWtJ cz;ikah>
8/ ,t;tHf;fpw;F nghjpa ePjpkd;wf;fl;lzk; brYj;jg;gl;Ls;sjh
9/ ,t;tHf;;F tidag;gl;Ls;sJ rhpah>
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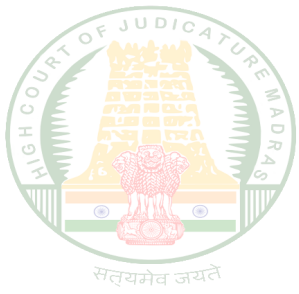
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12/ cgathjpfSf;F fpilf;Fk; ntW ghpfhu';fs; ahit> ”

11. At this juncture, I should point out that the plaintiffs had filed another suit in O.S.No.180 of 1996 seeking permanent injunction against the very same defendants. That suit came to be tried along with O.S.No.179 of 1996 and the evidence was recorded in common.

12. On the side of the plaintiffs, the second plaintiff was examined as PW1 and one, Ramachandran, as PW2. Ex.A1 to Ex.A14 were marked. On the side of the defendants, three witnesses were examined. Ex.B1 to Ex.B22 were marked. In addition, Ex.C1 to Ex.C2 were also marked.

13. The learned Trial Judge, on an analysis of the pleadings and evidence, came to a conclusion that the rent receipts filed by the plaintiffs cannot be relied upon. On the basis of the Act 26 of 1963, he came to a conclusion that the title had been divested from the plaintiffs, and did not give much weightage to the judgment and decree passed in O.S.No.202 of 1994 on the file of the learned Principal Subordinate Judge at Nagapattinam, which was marked as Ex.A6. holding that the plaintiffs were the owners of the property.

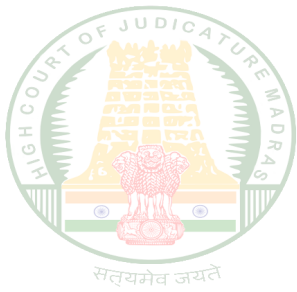


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14. Aggrieved by the dismissal of O.S.No.179 of 1996, the plaintiffs preferred A.S.No.198 of 1999 before the Additional Sub Court, Nagapattinam. The suit in O.S.No.180 of 1996 (suit for bare injunction) too came to be dismissed. The appeal preferred therefrom is A.S.No.197 of 1999.

15. The learned First Appellate Judge came to a conclusion that the intervention of Act 26 of 1963 did not put an end to the rights of the inamdars over the land, even if the tenant had constructed his own building. Relying upon the counterfoil of rent receipt under Ex.A1, the lower appellate court came to a conclusion that as Pushpavalli Ammal had signed on the back side of the counterfoils, it proves that the document is not fabricated. He concluded that the defendants 1 to 3, though had pleaded permanent tenancy, are only monthly tenants with respect to Town Survey No.1373 and 1374. Consequently, he allowed the appeal and decreed the suit as prayed for in A.S.No.198 of 1999 and dismissed the first appeal in A.S.No.197 of 1999. Hence, the present Second Appeal at the instance of the defendants came to be filed, who were aggrieved by the judgment and decree passed in A.S.No.198 of 1999. A.S.No.197 of 1999 came to be dismissed and no second appeal has been preferred against the said judgment and decree passed.



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16. This court admitted the second appeal on 22.09.2000 and

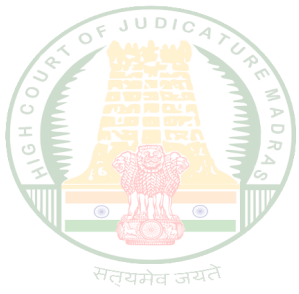
the framed the following substantial questions of law:

“1. Whether the lower court is right in not even considering the plea of the defendants that the tenancy of their predecessor in interest and themselves are permanent in nature and hence they could not be evicted from the suit property?

2. Whether the lower court erred in not considering the fact as to whether the grant of lease has lost in ambiguity and the origin of tenancy is not known, whether there has been uniform payment of rent, and whether the property has been passed on by succession which is the sine qua non for proof of permanent tenancy?

3. Whether the lower court erred in coming to the conclusion that the provisions of Act 26/63 would not divest the title of the plaintiff especially in a case where it is not shown that patta proceedings were initiated under the Act and that patta has been granted in favour of the plaintiff?”

17. The defendants 1 to 3 herein had initiated rent control proceedings against their tenants. Against those orders, revisions had been preferred to this court. By an order dated 24.03.2006, the Hon'ble Mr. Justice S.K.Krishnan had granted stay of all further proceedings in RCA.20 of 2000, pending disposal of this second appeal.

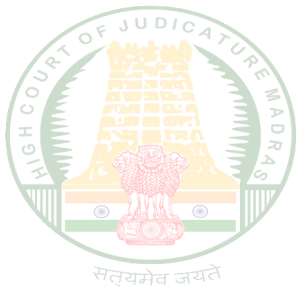


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18. As the parties were the same, the Hon'ble Chief Justice directed that the second appeal and the revisions be posted before one learned Single Judge. Accordingly, they were listed before me for hearing. On 23.10.2025, the revisions were dismissed by me.

19. I heard Mr.S.Subbaiah, learned Senior Counsel for Ms.Elizabeth Ravi for the appellants/defendants 1 to 3, Mr.B.Jawahar for the plaintiffs/the first and second respondents and Mr.L.Sagadevan for the fourth defendant/third respondent.

20. Mr.S.Subbiah urged that the lower appellate court committed an error in coming to a conclusion that Pushpavalli Ammal had signed the counterfoil of Ex.A1 rent receipts. He further urged that the document relied upon by the plaintiffs under Ex.A11 was not signed by the predecessor-in-title of the defendants 1 to 3, but had been executed by a third party. He urged the mother of the defendants 1 to 3 had secured her right by virtue of the sale made in her favour by Subramania Chettiar under Ex.B1, who, in turn, purchased the property under Ex.B2 through the sale of the property of one Shanmuga Nadar on the strength of the decree in O.S.No.280 of 1849. This according to him, would point towards existence of a permanent tenancy over the suit property.



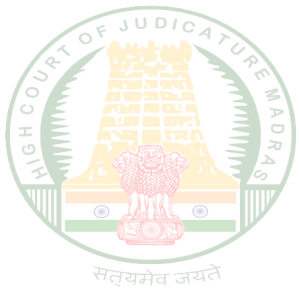
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21. Mr.S.Subbiah urged that the lower appellate court should have concluded that the grant of lease is lost in antiquity, and the origin of lease is not known, and therefore, the defendants 1 to 3 have permanent tenancy rights over the suit property. He pointed out that both the trial court, as well as the lower appellate court ought not to have gone into the issue of title, as it is unnecessary in the present suit. As admittedly the defendants 1 to 3 and their predecessor-in-title had been in possession of the property, either as tenants or otherwise, and the property having been covered by the Act 26 of 1963, the rights of the inamdar stood extinguished and hence, nothing remained with the plaintiffs to enforce against the defendants 1 to 3.

22. Mr.S.Subbiah pleaded that in terms of Section 15 of Act 26 of 1963, the defendants 1 to 3 are entitled to be in possession of the property. Consequently, he sought for the appeal to be allowed, and the judgment and decree of the first appellate court be set aside, and that of the trial court be restored.

23. Per contra, Mr.B.Jawahar urged that Ex.B1 and Ex.B2, the sheet anchors of the plaintiffs' case, show that the property brought for auction was only a superstructure, which in turn had been transferred in favour of the defendants' mother, Pushpavalli Ammal. This does not, in any way, affect the title of the suit property.

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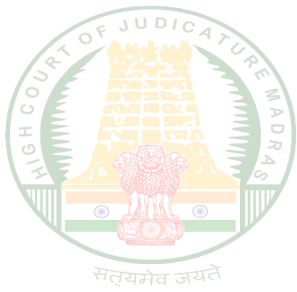
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24. Mr.B.Jawahar placed heavy reliance upon the judgment and decree of the court of the subordinate Judge in O.S.No.202 of 1994, whereunder, the learned Principal Subordinate Judge had come to a conclusion that the suit property belonged to the plaintiffs. He pointed out that the appellants/defendants 1 to 3 had filed an application in O.P.No.8 of 1997 on the file of the District Munsif Court at Nagapattinam seeking benefit under the City Tenants Protection Act and therefore, it is not open to them to deny the title to the plaintiff.

25. Finally, Mr.B.Jawahar invited my attention to paragraph 11 of the written statement of the defendants 1 to 3 to point out that, while they had claimed permanent tenancy, they had not established the same. On the contrary, the temple had produced Ex.A1 rent receipts to prove that it was only a monthly tenancy and hence, the view of the learned first appellate Judge need not be interfered with. He sought dismissal of the second appeal.

26. Mr.L.G.Sahadevan appearing for the third respondent urged that he is a tenant under defendants 1 to 3 and is willing to attorn the tenancy in favour of the temple, in case, this court comes to a conclusion that the suit has to be decreed.

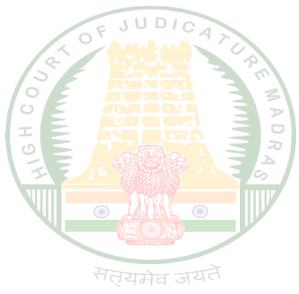


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27. I have carefully considered the submissions of both sides and have gone through the records.

28. This is a simple suit for ejectment. The focus of the court in such suit should be as to, whether there exists a relationship of landlord and tenant between the parties. In such a suit, the question of going in-depth into the title does not arise at all. This is because, a person, if a tenant cannot question or dispute the title of a landlord, at the inception of tenancy, in an ejectment suit. The main concern of the court should be on the relationship between the parties and not on the title of the landlord.

29. The trial court should have noticed the suit before it is a suit for ejectment. In such a suit, issue of title is irrelevant. This is because if the landlord fails to prove title to the premises but proves the existence of relationship of landlord and tenant in respect of the suit property, his suit succeeds. On the contrary, even if the landlord proves the title but fails to prove the relationship of landlord and tenant, then the court cannot order eviction in a suit for ejectment. (See, **Kanaklata Das v. Naba Kumar Das, AIR 2018 SC 682** and **Dr.Rambir Singh v. Ashrafi Lal, (1995) 6 SCC 580**)

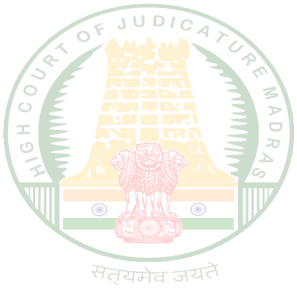


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30. The learned Trial Judge, forgetting this fundamental principle, had embarked on an issue that was absolutely alien to the case.

So much so, though not in as many words, had laid down that the view expressed by the learned Principal Subordinate Judge at Nagapattinam in O.S.No.202 of 1994 dated 10.04.1997 (Ex.A6) does not help the case of the plaintiffs. It was in that judgment, that the court had come to a conclusion that the patta that had been granted in favour of another religious institution is erroneous and does not bind the plaintiff and had concluded that the present suit schedule mentioned properties, which were also shown as suit properties in O.S.No.202 of 1994 belonged to the plaintiffs.

31. The entire case of the defendants 1 to 3 is based upon Ex.B1 and Ex.B2. Though the “**WILL**” said to have been executed by their mother in their favour, it is irrelevant to decide the same in the present case. Under Ex.B2, Subramania Chettiar had brought whatever right, title, and interest that vested in Shanmuga Nadar, for a court auction sale. Having purchased the property, in the court auction, the same was alienated in favour of the Pushpavalli Ammal under Ex.B1. It is well settled that there is no warranty of title in a court auction sale. All that is sold is the interest that the judgment debtor has in and over the property.

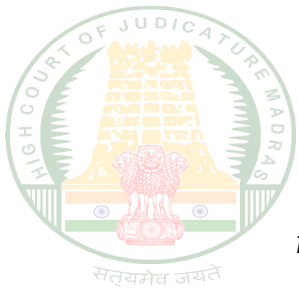


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32. A careful perusal of Ex.B1 and Ex.B2 shows that it was not a right over the land, which was the subject matter of the suit but only the right that Shanmuga Nadar had over the superstructure erected over the land, which had been sold. The prayer in this suit shows that the plaintiffs had claimed only a right over the land and not over the superstructure. In fact, the temple wanted possession of the land, after removal of the superstructure.

33. As rightly pointed out by Mr.B.Jawahar, having pleaded permanent tenancy to the property, it is not open to the defendants 1 to 3 to deny the title of the landlord. The relevant portion of the written statement where defendants pleaded permanent tenancy is extracted hereunder:

“ 11.jhthr; brhj;Jfis Mjpapy; ,Ue;jth;fs; rh!;jt gFjpf;F vLj;J fl;ol';fs; fl;o mDgtpj;J te;jpUf;fpwhh;fs;/ fl;olk; fl;o mDgtpg;gjw;fhfnt gFjpf;Fk; bfhLf;fg;gl;Ls;sJ/ me;j tifapy; jhthtpy;fz;l ,uz;L g[y vz;fspYk; fl;olk; fl;lg;gl;Ls;sJ/ mjw;F fPH;g[wkhf cs;s g[y vz; 1376 g{uht[nk jhthr; brhj;Jf;fs; mDgtpg;gjw;F njitahd mtrpakhd gFjpfis nrh;j;J mDgtpj;J tug;gLfpwJ/ fil fhk;gt[z;L Rth; tiu cs;s gFjp g[y vz' 1373 kw;Wk; 1374 Mfj;jhd; ,Uf;Fk; vd;w vz;zj;jpnyna bjhlh;e;J nrh;j;J mDgtpf;fg;gl;L tUfpwJ/ Mifapdhy;. Mjpay; gFjpf;F vLj;j ,lkhtJ jhthr; brhj;Jf;fnshL 1376 y; cs;s g{uh ,lj;ija[k; nrh;j;Jjhd; cs;sJ/ me;j Kiwapy;jhd 1953 y; ePjpkd;w Vyj;jpy; te;J Rg;gpukzpa brl;oahuhy; Vyk; vLf;fg;gl;L mjd;gpd; g[c&;gty;yp mk;khSf;F



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gpupthjpfs; mDgtpj;J ,Ue;J tUfpwJ/ /// ”*

34. Permanent tenancy, also known as a lease in perpetuity, grants a tenant a long term right to a property. Such a right can be inherited and in some cases, transferred. While the tenant holds most rights in the property, the landlord retains the underlying title. This kind of tenancy significantly differs from the normal arrangements that are entered between a landlord and tenant, which are either fixed term or month-to-month, which are easily defined or terminable.

35. The test for permanent tenancy is that the right to occupy the land can be passed down from one generation to another, as long as, the tenant pays the said rent. The right of permanent tenancy is not only inheritable but also transferable. A tenant, who claims permanent tenancy, is protected from eviction, except on specific and legally defined grounds such as default in payment of rent or when he damages the property. For the mere fact, that a person occupies the property for a long time does not mean that an ordinary tenancy blossoms into a permanent tenancy.

36. In order to prove permanent tenancy, the tenant must show that a written or oral agreement existed from the beginning of the tenancy

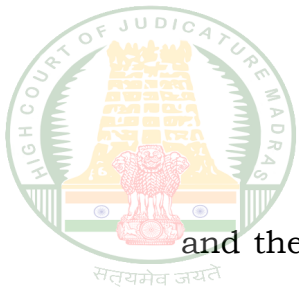


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that explicitly or implicitly grants him permanent rights. The court may, in certain cases, presume permanency, if the origin of the tenancy or its duration is unknown and that there is no evidence that it was ever temporary.

37. The burden of proof is on the tenant to prove that the tenancy was of a permanency character. In order to prove such a tenancy, a tenant must show that the tenancy had passed through generations, in the same family, without the landlord ever questioning the same. In addition, a tenant must show that he had made substantial and permanent improvements to the property in such capacity rather than a temporary tenant. In addition, in certain cases, the permanent tenant can also show that he had secured the tenancy by way of a transfer from the previous tenant or that the existing tenant had mortgaged his tenancy rights.

38. In addition to the above, a tenant must show through the enough documentation that the landlord concerned had consistently accepted a fixed or a paltry sum, as rent over a long period of time, without attempting to increase it. Where the tenancy is governed by an instrument in writing, the court can come to a conclusion whether the tenancy is permanent or otherwise, having regard to the document itself. In case, the language is ambiguous, the circumstances pointed out above



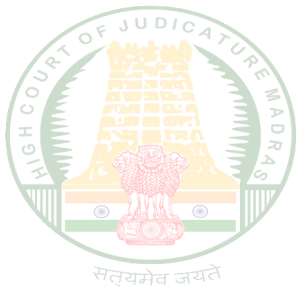
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and the subsequent conduct of parties would throw light on whether the tenancy is a fixed term or a permanent one.

39. The normal test being that, if the origin of tenancy is not known, long possession coupled with uniform payment of rent, construction of permanent structure, successive devolution of the property by transfer of inheritance may lead the court to such a conclusion (See, **Bejoy Gopal Mukherji v. Pratul Chandra Ghose, (1953) 1 SCC 148**).

40. While permanent tenancy can be presumed in certain circumstances, there is no such presumption when the landlord is a religious institution. This very issue whether the permanent tenancy applies where the landlord is a temple or charitable endowment, was a subject matter of consideration in **Chinnammal v. P. Ratnasabhapathy Chettiar, (1920) 12 LW 191 (DB)**. The Division bench held as follows:

“ No presumption of permanency is therefore applicable to a property which was debutter (i.e., dedicated to charity) at the time the tenancy originated; for, to create a new and fixed rent for all time, though adequate at the time, in lieu of giving the endowment the benefit of an augmentation of a variable rent from time to time would be a breach of duty in a shebait, i.e., a trustee.”



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41. The Privy Council also considered this very issue in

Maharanee Shibes-Souree Debia v. Mothoo-Ranath Acharjo, (1869-70)

13 Moo IA 270. The Board held that it is only under exceptional circumstances that permanent alienation of the temple property can be justified and when it is questioned whether the temple authority granted a permanent lease or not, the presumption is against any such intention to make the grant. Hence, when the courts have consistently held that the burden of proof is heavy on the tenants to prove the permanent tenancy and when no evidence to the aforesaid effect has been let in by the tenants/defendants, in the present case, I am not in a position to agree with the submissions of Mr.S.Subbiah that there existed a permanent tenancy between the plaintiffs and the defendants 1 to 3.

42. In addition to these, as rightly submitted by Mr.B.Jawahar, the defendants themselves had claimed a right under the provisions of the City Tenants Protection Act. This is clear from a casual reading of the written statement extracted above.

43. Section 2(4) of the Tamil Nadu City Tenants Protection Act defines as to who is a tenant. Having claimed such a status, the defendants 1 to 3 are estopped by conduct and by representation from



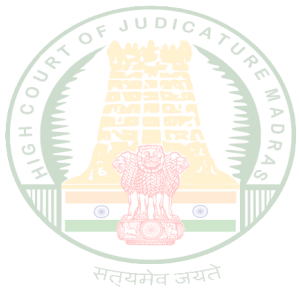
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pleading that the right of the temple was extinguished by virtue of Act 26 of 1963.

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44. The estoppel operates by conduct, as the defendants 1 to 3 themselves, had filed an application invoking the provisions of the City Tenants Protection Act before the learned District Munsif at Nagapattinam. The fact that they withdrew the application, at a later stage, does not wipe out the effect of such conduct. It is clear from a bare perusal of Ex.A14. As long as the tenancy exists, a tenant is estopped from denying the title of the landlord.

45. The additional fact, which impels me to go against the permanent tenancy, is that the death of Pushpavalli Ammal was in 1990 and the plaintiffs/ landlord did not agree to the inheritance of the tenancy in favour of the defendants 1 to 3. The permanent tenancy is always intended to be a hereditary one. Since the plaintiffs have presented the suit for ejectment soon after the death of Pushpavalli Ammal, I am of the view that there is no presumption that the tenancy is a hereditary one (See **Satya Sri Ghoshal and Ors. Vs. Kartik Chandra Das and Ors. , (1912) 15 CLJ 227** paragraph Nos. 3 and 4). The view taken by the Division Bench of the Calcutta High Court found approval of the Board in **A.S.N. Naina Pillai Marakayar v. T.A.R.A. Rm. Ramanathan Chettiar, AIR 1924 PC 65.**



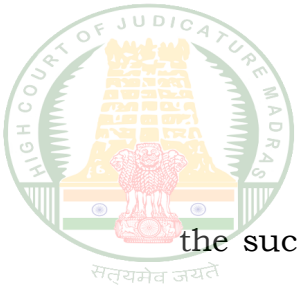
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46. Whether there exists a relationship of landlord and tenant between the defendants 1 to 3 and the plaintiffs is the next issue for consideration. The case of the defendants 1 to 3, in the written statement, is one of permanent tenancy. Permanent tenancy is an exception to the normal rule of tenancy where the relationship of landlord and tenant exists but as pointed out above, the tenant is protected from eviction unless and until certain legally recognised circumstances arise.

47. The very fact that the defendants 1 to 3 pleaded permanent tenancy shows that they accepted the relationship between the plaintiffs and themselves. In addition to this, there are two other circumstances, which I would rely upon for the purpose of coming to a conclusion that there existed a relationship.

48. I have gone through Ex.A1 filed by the plaintiffs. This is a book containing counterfoils for the rent receipts that have been issued by the temple to its tenants. One such tenant was Pushpavalli Ammal. The receipts have been issued in the name of the temple represented by Namasivaya Pattar. It is not disputed that Namasivaya Pattar is the father of the present trustee representing the temple. The document, which particularly identifies that the plaintiffs were entitled to manage the institution as hereditary trustees, is Ex.A10. They filed an application as



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the successor-in-interest of the said Namasivaya Pattar. The counterfoils found in Sl.No.134, 144 and 148 of the rent receipt book have been issued in the name of Pushpavalli Ammal. The signature of Pushpavalli Ammal is found on the rear side of the receipts.

49. DW1, curiously enough in his chief examination, has stated as follows:

*“ th.rh/M/1 d;go vd; jhahh; gFjp urPJ bgwtpy;iy/ mjpg;
g[c&;gts;sp mk;khs; ifbaGj;jpl;Ls;shh;/ mJ vd; jhahhpd;
ifbaGj;jy;y/”*

50. On account of this evidence, the court took upon itself the job of comparing the signatures. No document was presented by the defendants in which the admitted signatures of Pushpavalli Ammal are found. The learned Judge compared the signatures found under Ex.A1 and came to a conclusion that they had been prepared for the purpose of the case.

51. I have to point out that under Section 73 of the Indian Evidence Act, a court is entitled to compare disputed signatures, writings or seals with another one that is admitted or proved to be genuine to the court's satisfaction. Comparison means there exists two documents: one admitted and another disputed. Interestingly, in this case. The learned

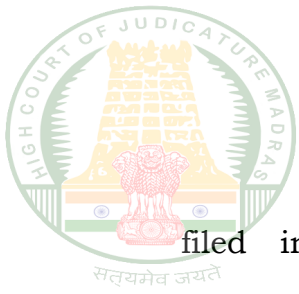


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trial judge had compared one signature in Ex.A1 with the other signatures found in the other counterfoils. No effort had been taken by the defendants to assist the court by producing admitted documents for comparison. Judges are not handwriting experts and should not assume the role and came to a conclusion, solely on the basis of their opinion. The exercise of comparison should be careful and details of the difference in the signatures should have been given in the very verdict.

52. I am not to be understood to have held that an opinion of the expert is binding on the court. While the court can compare the disputed signature with the admitted signature, as pointed out by the Supreme Court in ***Thiruvengadam Pillai v. Navaneethammal, AIR (2008) SC 1541***, such comparison without assistance of experts is always hazardous and risky. Ex.A1 does not contain the signatures of the defendants' mother alone. There are several other receipts relating to other tenants. Hence, to presume the same had been prepared for the purpose of the case, without any evidence to that effect, is erroneous.

53. Even if I were to keep Ex.A1 apart, the other document which clinches the case of the plaintiffs is Ex.A14. This was an application filed by the defendants claiming the benefit of the City Tenants Protection Act. Such protection cannot be claimed by a stranger, but only by a tenant as defined under that Act. This application had been



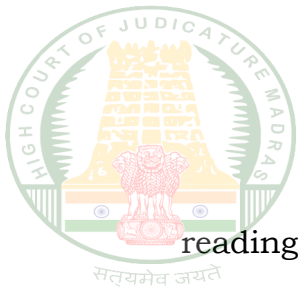
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filed in O.P.No.8 of 1997 before the District Munsif Court at Nagapattinam, where this suit was originally pending.

54. A perusal of Ex.A14 shows that this very suit in its original avatar as O.S.No.178 of 1993, on the file of the District Munsif Court at Nagapattinam, is referred to in the petition. The petitioners in O.P.No.8 of 1997 are the defendants herein. They did not prosecute O.P.No.8 of 1997 for the reason that there was a change in law.

55. In the course of his evidence, DW1 has stated that he had filed CTOP for R.S.Nos.1374, 1375, 1376 and 1364. R.S.Nos.1373 and 1374 are the subject matter of the dispute here. He deposed that he did not prosecute the petition further on account of the aforesaid change in law.

56. The change in law that is referred to in evidence is the enactment of Amendment Act 2 of 1996 which took away the application of City Tenants Protection Act to Religious and Charitable institutions like the plaintiffs. The averments in Ex.A14 conclusively show that the defendants 1 to 3 had admitted to the tenancy with the plaintiff and wanted a direction from the court to purchase the land, over which they had put up the building. CTOP came to be filed after the written statement was presented in the suit on 04.01.1995. Hence, a combined



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reading of Ex.A1 and Ex.A14 makes it clear that the defendants 1 to 3 were the tenants under the plaintiffs.

57. Though Mr.B.Jawahar invited my attention to Ex.A13 to plead that the property register of the temple points out to the title of the temple to the property, I am not inclined to consider the same as I have already held in a suit for ejectment, all that I am concerned with is whether the relationship of landlord and tenant exists and if the notice under Section 106 of the Transfer of property Act had been issued. That having been satisfied, I am of the view that the plaintiffs are entitled to a decree.

58. In the light of the above discussion, the questions of law are answered as follows:

Question Nos. 1 & 2:

“1.Whether the lower court is right in not even considering the plea of the defendants that the tenancy of their predecessor in interest and themselves are permanent in nature and hence, they could not be evicted from the suit property?

2. Whether the lower court erred in not considering the fact as to whether the grant of lease has lost in ambiguity and the origin of tenancy is not known, whether there has been uniform payment of rent,



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and whether the property has been passed on by succession which is the sine qua non for proof of permanent tenancy?"

Answers for Questions 1 & 2:

“The defendants have failed to prove that the lease amounts to permanent tenancy. Further, when the landlord is a religious institution, no presumption of permanent tenancy arises. Hence, they are answered against the appellants and in favour of the respondents.”

Question No.3:

Whether the lower court erred in coming to the conclusion that the provisions of Act 26/63 would not divest the title of the plaintiff especially in a case where it is not shown that patta proceedings were initiated under the Act and that patta has been granted in favour of the plaintiff?

Answer of Question No.3:

In the suit for ejectment, a court is not concerned with the issue of title. Only the relationship of landlord and tenant alone matters. That having been proved, this question of law does not arise for consideration in the present appeal

59. For the reasons set forth in this judgment, I do not find any necessity to interfere with the judgment and decree passed by the learned



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Additional Subordinate Judge at Nagapattinam in A.S.No.198 of 1999
dated 11.02.2000 in reversing the judgment and decree passed by the
learned District Munsif, Nannilam in O.S.No.179 of 1996 dated
22.03.1999.

60. The Second appeal is dismissed. Costs throughout. Time for
eviction is three months.

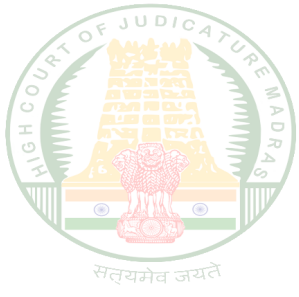
04.02.2026

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Index : Yes/No
Speaking order/Non-speaking order
Neutral Citation : Yes/No

To

- 1.The District Munsif, Nannilam
- 2.The Additional Subordinate Judge at Nagapattinam
- 3.The Section Officer, VR Records,



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V.LAKSHMINARAYANAN, J.

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