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S.A.No.768 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 11.03.2022

PRONOUNCING ORDERS ON : 14.03.2022

Coram:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

Second Appeal No.768 of 2015

M.Selvaraj

..Defendant/Appellant/Appellant

..Vs..

Arulmigu Arunachaleswarar Thirukkoil
Represented by its Assistant
Commissioner/Executive Officer
Arulmighu Arunachaleswarar Temple
Premises, Thiruvannamalai

..Plaintiff/Respondent/Respondent

Prayer: Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree of the learned XV Additional Judge, City Civil Court, Chennai dated 19.9.2014 and passed in A.S.No.167 of 2013, confirming the decision rendered in the judgment and decree of the learned V Assistant Judge, City Civil Court, Chennai dated 19.11.2012 and passed in O.S.No.5313 of 2001.

For Appellant : Mr.D.S.Ramesh

For Respondents : Mr.A.K.Sri Ram
for M/s.A.S.Kailasam Associates



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JUDGMENT

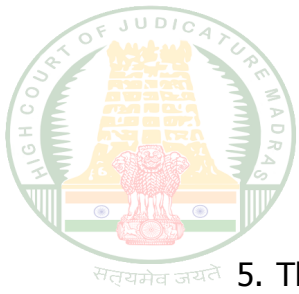
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The defendant is the appellant in this Second Appeal.

2. The respondent/plaintiff filed the suit seeking for the relief of delivery of vacant possession and for damages for use and occupation of the property from 01.09.2001 till the date of handing over of possession.

3. The case of the plaintiff is that they are the absolute owners of the suit property measuring an extent of 2400 Sq.ft. It is stated that the defendant is a tenant and the tenancy computed according to the English calendar month. The further case of the plaintiff is that the defendant had put up unauthorised additional construction in the property without any permission and had also let out some portion of the property to various individuals without the consent of the plaintiff. Hence, a notice was issued through their counsel on 28.07.2001, marked as Ex.B3. This was a notice under Section 106 of the Transfer of Property Act terminating the tenancy by the expiry of the end of the month of August 2001 and calling upon the defendant to quit and deliver vacant possession of the property. The defendant was also directed to pay the arrears of rent and for damages for the use and occupation from 01.09.2001 onwards till handing over of the vacant possession.

4. The defendant received the notice and did not comply with the same and hence the suit came to be filed seeking for the reliefs referred supra.



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5. The defendant filed a written statement and took a stand that they are paying the rents regularly. That apart, they were not putting up any additional construction and they were only attempting to carry out the repair works since the building was in a dilapidated condition. The defendant also questioned the termination of tenancy by issuing a notice through counsel. The defendant also claimed their right under the Madras City Tenants Protection Act, 1922. The defendant thus sought for the dismissal of the suit.

6. Both the courts below after considering the facts and circumstances of the case and on analysing the oral and documentary evidence, held against the defendant and the suit was decreed. Aggrieved by the same, the defendant has filed this second appeal.

7. This Court framed the following substantial questions of law.

(a) Whether the termination notice issued by the respondent temple by way of legal notice can be held to be valid when Section 34-B of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1958 provides for issuance of such a notice by a competent authority?

(b) Whether the suit filed by the respondent temple is maintainable in view of the specific bar contained under Section 108 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1958?



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(c) Whether the findings of both the Courts below can be held to be perverse since it is not in accordance with the oral and documentary evidence available on record?

8. The learned counsel for the appellant made the following submissions.

- The termination notice issued through the counsel for the plaintiff temple is invalid and the lease can be terminated only by way of issuing a notice under Section 34B of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'HR&CE Act').
- There is a specific bar under Section 108 of the HR & CE Act to institute any suit where there is already a provision under the HR & CE Act to evict the tenant if he is overstaying after the termination of the tenancy under Section 78 of the HR & CE Act.
- Both the Courts below did not properly appreciate the oral and documentary evidence and erroneously decreed the suit by rendering perverse findings.



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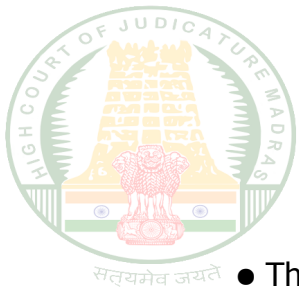
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●Both the Courts below did not properly deal with the issue of lack of jurisdiction and defective notice issued for terminating the tenancy.

9. Learned counsel for the appellant, to substantiate his submissions, relied upon the following judgments.

- (a) Shaji -Vs- Sree Pravaraswamy Devasthanam rep.by its Hereditary Managing Trustee **(2010 (3) CTC 851)**
- (b) C.Sathish Kumar -Vs- Commissioner, HR&CE Department, Chennai and Others **2007 (4) MLJ 1002**
- (c) A.V.G.P.Chettiar & Sons and Others -Vs- T.Palaniswamy Gounder **AIR 2002 (SC) 2171**
- (d) Abdul Waheed Khan -Vs- Bhawani and Others **AIR 1966 (SC) 1718**
- (e) M.S.V.Raja and Another -Vs- Seeni Thevar and Others **2001 (6) SCC 652**
- (f) S.Kumar -Vs- Commissioner and others in Civil Appeal Nos.3461-3505 of 2019.

10. Per Contra the learned counsel for the respondent made the following submissions.



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● The termination notice was issued on 28.07.2001 and the suit was filed on 03.09.2001 and at that point of time Section 34B of the HR & CE Act was not in force and it came into effect only on 10.05.2003.

● The termination notice issued through the counsel is not barred since the counsel acts as an agent of the plaintiff temple and the termination notice satisfies the requirements of section 106 of the Transfer of Property Act.

● The bar under Section 108 of the HR & CE act will not apply to the plaintiff temple since the option is given to the temple to either resort to the common law remedy by filing a suit or initiate proceedings for eviction under the HR& CE Act. The law on this issue has been well settled by the Division Bench of this Court in **2011-2-L.W.1 (A.N.Kumar -Vs- Arulmighu Arunachaleswarar Devasthanam, Tiruvannamalai rep.by its Executive Officer (Assistant Commissioner), Thiruvannamalai and Others"**

● Even in the extreme case where the grounds stated for termination of the tenancy is found to be incorrect, it is enough if the notice complies



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with the requirements of section 106 of Transfer of Property Act and reasons for termination of tenancy is irrelevant.

- The conduct of the appellant also plays a major part in this case since the appellant has been enjoying the property for nearly seven decades and even in the writ petition that was filed by them against the demand for the arrears of rent, they did not comply with the conditional order passed by this court to deposit Rs.20,00,000.

- It was also admitted in the affidavit filed in support of W.P.No.31046 of 2019 that a major portion of the property is being used for commercial purposes. The appellant also did not pay or challenge the fair rent that was fixed by the Commissioner.

11. This Court has carefully considered the submissions made on either side. This Court has also carefully perused the materials available on record and the findings of both the courts below.

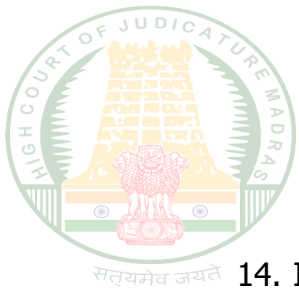
12. It is an admitted case that the plaintiff is the owner of the subject property measuring an extent of 2400 Sq.ft. The plaintiff temple was not interested in continuing with the tenancy and hence decided to terminate the tenancy granted in favour of the



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defendant. It is true that the plaintiff has alleged that the defendant had put up additional construction without seeking for permission and they have also sublet portions of the property for commercial usage. Apart from this, it is also alleged that the defendant did not pay the rent regularly and there is a huge arrears of rent payable by the defendant. As a subsequent development, even the fair rent that was fixed was not paid and the demand for the rent was put to challenge in the writ petition. The conditional order passed by this court directing the defendant to deposit a sum of Rs.20,00,000 was also not complied with. This Court does not want to go into any of the reasons assigned by the plaintiff who was seeking for the eviction of the defendant from their property. Section 106 of the Transfer of Property Act does not contemplate assigning any reason while terminating the tenancy. It is enough if the requirements of Section 106 of the Transfer of Property Act is complied with to claim for evicting a tenant from the property.

13. In the present case, the notice of termination has been issued by the plaintiff temple on 28.07.2001 through their counsel. The counsel has issued the notice on instructions from the Assistant Commissioner / Executive Officer of the temple. A notice issued through the counsel should be construed to be a notice issued by the concerned authority. The counsel only acts as an agent of his client and the acts performed by the counsel has to be necessarily construed to be the acts of the concerned authority. Therefore, issuing a termination notice through a counsel by itself will not vitiate the notice and there is no such bar provided under the relevant Act.



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14. Insofar as the requirements under Section 106 of the Transfer of Property Act is concerned, it must be a notice in writing which should specifically inform the tenant about the intention of the landlord to terminate the lease and the period of notice is fixed as 15 days for monthly tenancies which period should end with the end of the month of tenancy. The provision nowhere contemplates assigning any reasons for termination of tenancy. The law on this issue is too well settled.

15. In the present case, the termination notice dated 28.07.2001 fulfills all the requirements. It speaks about the fact that it was issued under Section 106 of the Transfer of Property Act. By virtue of the said notice, the defendant was informed that the tenancy is terminated. The defendant was also informed that the tenancy will expire in the end of the month of August 2001. The defendant was also informed that he must quit and deliver vacant possession of the property. Thus, the challenge made by the appellant on the termination notice issued by the respondent is unsustainable.

16. Learned counsel for the appellant apart from questioning the validity of the termination notice issued by the plaintiff also relies upon section 34-B of the HR&CE Act. This ground is totally unsustainable since the said provision was not in force at the time when the termination notice was issued and the suit was filed in the year 2001. Till this provision came into force, the issuance of notice under section 106 of the Transfer of Property Act is perfectly valid. The first substantial question of law is answered accordingly.



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17. Insofar as the maintainability of the suit is concerned, the learned counsel for the appellant has placed reliance upon Section 108 of the HR&CE Act And has also relied upon some of the judgments. This issue is no longer *res integra* and it is squarely covered by the judgment of the Division Bench in **A.N.Kumar's** case referred supra. The relevant portions of the judgement are extracted herein.

“ 25. Point No.3:- The learned counsel for the appellant contended that specific provisions for recovery of possession of the properties belonging to charitable or religious institutions or endowments and the eviction of encroachers have been provided in Tamil Nadu H.R. & C.E.Act, 1959 and hence the suit filed by the plaintiff Devasthanam for recovery of possession of the land and building in the Civil Court is not maintainable and that the same is barred under Section 108 of H.R.& C.E.Act. In support of his contention, the learned counsel placed reliance upon judgement of single Judge in *B.SHAJI VS. SREE PRAVARASWAMY DEVASTHANAM, 2010(3) CTC 851*, wherein the learned single Judge held that "provisions have been made for the removal of encroachment by the Joint Commissioner under Section 78. The bar provided under Section 108 of the Act will come into play to prevent a suit being filed straight away in a Civil Court for recovery of the property. The above contention is liable to be rejected on two simple grounds: Firstly, H.R. & C.E.Act, 1959 came into force on 2.12.1959 and in the case on hand, the lease is of the year 1937 and therefore provisions of H.R. & C.E.Act, 1959 are not applicable. Secondly, Section 78 was inserted by amendment under Tamil Nadu Act 39 of 1996, which came into force on 9.12.1996 and the suit - C.S.No.1486 of 1988 was filed way back in 1988 and Section 78 inserted by Amending Act 39 of 1996 is not applicable.



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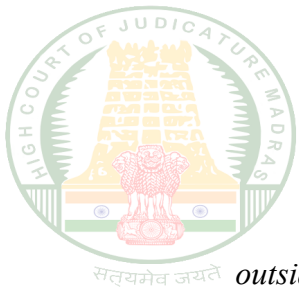
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26. After extracting Sections 78 and 79, in *B.Shaji's case (2010(3) CTC 851)*, the learned single Judge held that "since a specific provision has been made for the eviction of the encroacher, no suit can be directly instituted in any Court of law except and in conformity with the provisions of the Act as per Section 108 of Tamil Nadu H.R. & C.E.Act, 1959." In *B.Shaji's case (2010(3) CTC 851)*, the learned single Judge further held that in view of Section 108 of the Act, the Civil Court loses its jurisdiction to entertain the suit for recovery of possession and the learned judge has taken the view that a suit for recovery of possession squarely falls within the ambit of "administration or management of a religious institution or any other matter or disputes determining or deciding for which provision is made in the Act shall be made instituted.

27. Since the above findings of the learned single Judge in *B.Shaji's case (2010(3) CTC 851)* pertaining to the temple properties would adversely affect the number of suits filed by the Temples, we would like to analyse the said judgment to demonstrate that the view taken by the learned single judge is not a correct interpretation of Chapter VII and Sections 78 and 79 of the Act.

28. Chapter VII of 1959 Act containing Sections 77 to 85 is in the Statute book from the commencement of H.R. & C.E.Act, 1959. Chapter VII is introduced as new Chapter under the head "Encroachments". Section 77 deals with "Transfer of lands appurtenant to or adjoining religious institutions prohibited except in special cases." Section 77 starts with "Notwithstanding anything contained in Section 34, no trustee of the Religious institution shall lease or mortgage with possession or grant a licence for the occupation of:-

(a) any land belonging to the religious institution which is appurtenant to or adjoins the religious institution, or any sacred tank, well, spring or water course, appurtenant to the religious institution whether situated within or



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outside the precincts thereof, of
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The Section itself is explanatory. In Section 77, there is nothing express or implied barring the jurisdiction of the Civil Court.

29. Section 78 of the H.R. & C.E.Act deals with jurisdiction of Assistant Commissioner to remove encroachment by persons on land or building belonging to charitable or religious institution or endowment and the eviction of encroachers. Section 78 envisages a situation where encroachment of any land, building, sacred tank, well, spring or water course or any space, wherever situation belonging to the religious institution or endowment". As per explanation (b) of Section 78(1), an encroacher includes any person, who continues to remain in the property after the expiry or termination or cancellation of the lease, mortgage or licence granted to him. Thus, Section 78 squarely deals with "encroachments". Section 79 deals with "Mode of eviction on failure of removal of the encroachment as directed by the Joint Commissioner." As per Section 79, if within the period specified in the Order under Section 78(4) the encroacher has not removed the encroachment and has not vacated the property, by taking police assistance, the Assistant Commissioner may remove the encroachment and obtain possession of the property encroached upon. Section 79(1) contemplates taking police assistance for the purpose of eviction. Proviso to Section 79 expressly prohibits the suit instituted by a person who is let into possession of the property or who is a lessee, licensee or mortgagee of the religious institution or endowment. Section 79 also provides that a person aggrieved by the order of the Joint Commissioner under sub-section 4 of Section 78 can institute a suit in a Cviil Court to establish that the religious institution or endowment has no title to the property.



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30. In *B.Shaji's case*, (2010(3) CTC 851), the learned single judge has also held that similar provision has been made in Section 80 of the Act for eviction of a lessees, licensees or mortgagees. In our considered view, Section 80 deals with eviction of lessees, licensees or mortgagees with the possession only in certain cases.

31. As per Section 80(2), the Joint Commissioner or the Deputy Commissioner on being satisfied that the artistic appearance or the religious atmosphere of the religious institution has been marred or is likely to be marred by the action of the lessee, licensee or mortgagee concerned, shall issue show cause notice. Section 80(4) enables the Joint Commissioner or the Deputy Commissioner to pass orders on being satisfied when he decides that the artistic appearance or the religious atmosphere of the religious institution has been marred or ia likely to be marred by the action of the lessee, licensee or mortgagee. Close reading of Section 80 (1) would show that eviction contemplated under Section 80 only relates to the lease made by the authorities of which lessee, licensee or mortgagee has taken any action which has marred or is likely to mar the artistic appearance or the religious atmosphere of the religious institution.

32. Chapter VII of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 specifically speaks about "Encroachments". Sections 78 and 79 provide for mechanism to remove the encroachment. They merely speak about the powers and duties of the Assistant Commissioner and the joint Commissioner to take appropriate action under the Act to remove an encroachment. A perusal of Section 78 would make the position very clear that the action can be initiated by the Assistant Commissioner either suo motu on his own. In order to exercise such power, the Assistant Commissioner

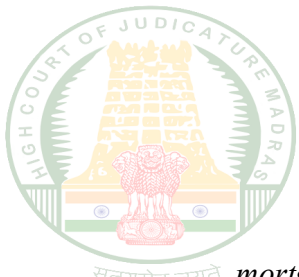


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concerned will have to act when an alleged encroachment of a property belonging to the temple coming under the purview of the Act comes to his knowledge. Similarly, action can be taken on a complaint made by the trustee concerned. It is important to note that Section 78 speaks about a complaint by the Trustee, which means after a complaint has been given by the trustee, then the further action will have to be taken by the Assistant Commissioner. When it is brought to the knowledge of the Assistant Commissioner by the Executive officer, then that information can be the basis of a suo motu action. Similarly, when a complaint is made by a trustee to an Officer appointed by an authority under the Act, then it can be taken as a complaint. Therefore, the role of the trustee or an Officer In-charge is limited to the extent of giving a complaint. The question that arises for consideration is in a case where the Assistant commissioner has not pursued the complaint or not exercises his suo motu powers in spite of the encroachment having been brought to his knowledge, what would be the remedy available to protect the property of the temple to an authority, who is competent to do so. The officer, in our considered view, is to have recourse to the Civil Court. The Executive officer, being an Officer appointed by a competent authority, is duty bound to protect the property of the temple. Therefore, it is incumbent on him to file a suit and protect the right of the temple.

33. Sections 78 and 79 provide for a mechanism to evict an encroacher. Section 79 specifically provides an opportunity to the encroacher to approach the Civil Court. It is pertinent to note that such a clause has not been provided to an authority representing the temple. Therefore, there is no express bar under Sections 78 and 79 for an authority acting on behalf of the temple to approach the Civil Court. Such a bar can only be applied to the encroacher by having recourse to section 79(2) of the Act. In our considered view, the bar of jurisdiction of Civil Court under second proviso to Section 79 is the express bar in respect of suits instituted only by a lessee, licensee, or



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सत्यमेव जयते mortgagee of the religious institution or endowment.

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34. Sections 77 to 85 provide for special mechanism empowering the Joint Commissioner/Deputy Commissioner to pass order of removal of encroachment or passing order of eviction against the lessees/licensees/mortgagees, whose action has marred or likely to mar the artistic appearance or the religious atmosphere of the religious institution. For facilitating eviction, under Section 79(1) or under Section 81(5), the Joint Commissioner or the Deputy Commissioner may seek police assistance for evicting the persons in possession on failure to removal of encroachment, as directed by the Joint Commissioner. Section 79-A deals with encroachment by group of persons on land belonging to charitable and religious institutions and their eviction. Section 79-B stipulates levy of penalty for offences in connection with encroachment. Section 79-C deals with recovery of moneys due to religious institution as arrears of land revenue. A close reading of Chapter VII containing Sections 78 to 85 would show that Chapter VII contains an inbuilt mechanism empowering the officers of Hindu Religious and Charitable Endowments to take speedy action for removal of encroachment and also to take action against those lessees, licensees or mortgagees, whose action has marred or is likely to mar the artistic appearance or the religious atmosphere of the religious institution.

35. In the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, no express provision is made to recover possession from tenant, licensee, lessee or mortgagee, which the temple intends to take possession after terminating the lease. Since no express provision is made to recover possession from tenants, licensees, lessees or mortgagees the bar under Section 108 is not attracted by filing ejectment suit by the temple.



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36. *The crucial question in these appeals is, whether for ejectment suit filed by the temple, jurisdiction of the Civil Court is expressly barred.*

37. *The normal rule of law is that Civil Courts have jurisdiction to try all suits of civil nature except those of which cognizance by them is either expressly or impliedly excluded as provided under Section 9 of the Code of Civil Procedure but such exclusions are not readily inferred and the presumption to be drawn must be in favour of the existence rather than exclusion of jurisdiction of the Civil Courts to try civil suit. The test adopted in examining such a question is (i) whether the legislature's intention to exclude arises explicitly or by necessary implication, and (ii) whether the statute in question provides for adequate and satisfactory alternative remedy to a party aggrieved by an order made under it. However, where a statute gives finality to the orders of the special tribunals, jurisdiction of the Civil Courts must be held to be excluded, if there is adequate remedy to do what the civil Courts would normally do in a suit and such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure (vide STATE OF ANDHRA PRADESH VS. MANJETI LAXMI KANTHA RAO, AIR 2000 SC 2220 = (2000) 3 SCC 689).*

.....
.....42. *It is a settled position of law that until and unless the jurisdiction of the Civil Court is ousted either expressly or impliedly, an affected party cannot be prevented from approaching it. As observed above, Sections 78 and 79 ,which deal with encroachment, merely embark upon a procedure for removing an encroacher of a temple property. They do not put any fetters on the power of the authority acting as a guardian of the temple property to have recourse to the Civil Court. The jurisdiction of the Civil Court is plenary in nature. Hence, unless the suit is barred either expressly or by necessary implication, it cannot*



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WEB COPY *be non-suited. (see NAHAR INDUSTRIAL ENTERPRISES LTD. VS. HONG KONG AND SHANGHAI BANKING CORPORATION, ((2009) 8 SCC 646) and RAJASTHAN SRTC VS. BAL MUKUND BAIRWA(2) ((2009) 4 SCC 299)).*

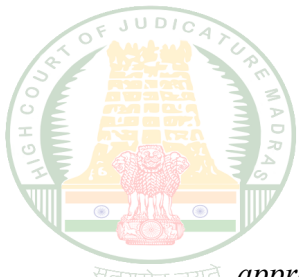
43. *When the temple has not chosen to go under the purview of the Act, then it cannot be said that the suit is barred. In other words, it is for the temple to choose either the common law remedy by way of filing a regular suit or invoke the provisions of the Act by approaching the authorities concerned. When such an action is taken against an encroacher, it cannot be questioned on the ground of lack of jurisdiction. Because initiation of the action ultimately lies with the temple.*

44. *As discussed above, Section 79 does not provide for any mechanism for the temple to approach the Civil Court. Therefore, the remedy is given only to the encroacher for passing an order against him. Hence, the bar certainly would apply to the case of the encroacher in directly filing the suit against the temple.*

1.

45. *The decision to elect a particular procedure lies with the owner of the property, being the temple. Considering the object of the introduction of Chapter VII, which only demarcates the procedure for removing the encroachment by the Officers of the Department, we have no hesitation in holding that the said procedural law will not bar the filing of the suit by the temple to recover and protect its own property.*

46. *Therefore, a reading of Sections 78 and 79 with the right available in seeking remedy under the common law would show that there is no inherent or implied inconsistency between the remedies provided therein. What would be the best course for the temple will have to be decided by the Person In-charge. It is further to be seen that when the encroacher has been given a right to*



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After all, the object sought to be achieved either under Section 78 and 79 of the H.R. & C.E. Act or by filing the suit is one and the same. Hence, the remedy sought for being one, the suit filed on behalf of the temple is very much maintainable. After all, procedural law will have to make way for the substantial justice to be rendered between the parties.

47. In our considered view, in *B.Shaji's case (2010(3) CTC 851)*, the learned single Judge has not correctly interpreted Chapter VII containing Sections 78, 79 and 80 and the learned single Judge has not correctly laid down the law on the ejectment suits filed by the temples and the judgment in *B.Shaji's case (2010(3) CTC 851)* would adversely effect the pending ejectment suits filed by the temple and it would have the affect of paralysing the proper administration of the properties of the temple. In our considered view, the decision in *B.Shaji's case (2010(3) CTC 851)* has not been rendered on proper interpretation of Chapter VII and the view taken by the learned single Judge is not a correct view.

48. During the course of arguments, it was submitted that about 6500 eviction petitions are pending before the Joint Commissioner, H.R. & C.E.Act, out of which only few cases have been disposed. If the temples are to approach the Joint Commissioner in all the cases for filing eviction petitions, the very object of H.R. & C.E.Act would be defeated. Having regard to the number of eviction petitions, keeping in view the interest of temple and the temple properties, it would be in order if the Government appoints more Officers to deal with the eviction petitions.

49. We summarise our conclusions as under:



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WEB COPY *So far as the suits filed by the temple for eviction of tenants/licensees/lessees/mortgagees for filing of the ejectment suit, the Civil Court's jurisdiction is not barred. The decision to approach Civil Court or invoke the provisions of H.R. & C.E. Act vests with the Temple.*

In cases of encroachers, temple authorities can either resort to the provisions under Sections 78, 79, 79-A, 79-B or to approach the Civil Court. The decision to elect a particular procedure lies with the owner of the property, being the Temple in view of the express bar under 2nd proviso to Section 79, in so far as the suits by the encroachers/lessees/ licensees/mortgagees, the bar under Section 108 will get attracted excepting in instances specifically stated in the 1st proviso to Section 79.”

18. It is clear from the above judgment that it is for the temple to choose either the common law remedy by filing a regular suit or invoke the provisions of the HR & CE Act for evicting the tenant who is overstaying and hence could be construed as an encroacher in the property. The second question of law is answered accordingly.

19. The learned counsel for the appellant by pointing out to the findings of the Trial Court and the Appellate Court submitted that both the Courts did not take into consideration the fact that the plaintiff temple never proved the allegations made against the defendant on the ground of unauthorised construction, sub-lease and arrears of rent. Therefore, the learned counsel submitted that the findings are perverse. In the considered view of this Court, the findings on these allegations are completely irrelevant



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since this Court has already held that the notice under Section 106 of the Transfer of Property Act has been duly issued and there is no requirement to assign any reasons for terminating the tenancy.

20. The lower appellate Court has also taken into consideration the stand of the defendant to the effect that there was a subsequent compromise through which it was agreed for enhancement of rent and the same being paid, the defendant can continue to be in possession of the property as a lessee. The lower appellate court has held that under Section 43 of the HR &CE Act, such a compromise can only be made by the Commissioner and the compromise that was mooted by the Assistant Commissioner is without jurisdiction. Therefore any subsequent communication for enhancement of rent will not come to the aid of the defendant whose tenancy has already been duly terminated.

21. This Court does not find any perversity in the findings of both the courts below and there are absolutely no grounds to interfere with the same in this second appeal. The third substantial question of law is answered accordingly.

22. In view of the above discussion this Court does not find any merits in this second appeal and accordingly the second appeal stands dismissed with costs . Considering the fact that the appellant has been in possession and enjoyment of the property for considerably a long time, this Court grants six months time for the appellant



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to vacate and handover the property to the respondent. It is also made clear that during this period, the arrears of rent must be settled and the monthly rents must be paid regularly till the property is vacated and handed over.

14.03.2022

Index : Yes
Internet : Yes
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To

1. XV Additional Judge, City Civil Court, Chennai
2. V Assistant Judge, City Civil Court, Chennai
3. The Section Officer
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Pre-Delivery Judgment in
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