

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.108 of 2015
and
M.P.No.1 of 2015

E.Damodharan

... Appellant/Defendant

-Versus-

Triplicane Annadhana Samajam,
Rep. by its Secretary,
K.K.Sivasankaran,
Having Office at
No.78, Pillaiyar Koil Street,
Triplicane, Chennai 600 005.

... Respondent/Plaintiff

This second appeal is filed under Section 100 of CPC against the decree and judgement dated 15.09.2014 made in A.S.No.137 of 2013 by the learned XV Additional Judge, City Civil Court, Chennai, confirming the decree and judgement dated 06.12.2012 made in O.S.No.2736 of 2003 by the learned II Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.Ashok Menon

For Respondent : Mr.C.Hanumantha Rao

JUDGMENT

The defendant in O.S.No.2736 of 2003 on the file of the learned II Assistant Judge, City Civil Court, Chennai, is the appellant herein. The plaintiff in the suit is the respondent. The said suit was filed for recovery of the suit premises from the defendant and for permanent injunction restraining the defendant from carrying out any work in the suit property. By decree and judgement dated 06.12.2012, the trial court decreed the suit as prayed for and directed the defendant to vacate and hand over the vacant possession of the suit property to the plaintiff on or before 06.02.2013. The trial court also granted a decree for permanent injunction restraining the defendant from

carrying out any work in the suit premises. Aggrieved by the same, the defendant filed an appeal in A.S.No.137 of 2013 on the file of the learned XV Additional Judge, City Civil Court, Chennai. The first appellate court, by decree and judgement dated 15.09.2014, dismissed the appeal thereby confirming the decree and judgement of the trial court. That is how, the defendant/appellant herein is now before this court with this second appeal.

2. This second appeal has come up today for admission. The respondent has made appearance through its counsel.

3. I have heard the learned counsel on either side and also perused the records carefully.

4. The case of the plaintiff in brief is as follows:- The plaintiff is a Society registered under The Societies Registration Act, 1860. The suit premises and building bearing Old No.18, New No.39, Venkatachala Chetty Street, Triplicane, Chennai 600 005, is owned by the plaintiff. The defendant is the tenant of the said premises under the plaintiff. Initially, the monthly rent was Rs.1,500/- up to April 1995 and subsequently it was increased to Rs.2,000/- per month from 01.05.1995 onwards. Though the defendant agreed to pay the rent as increased without fail, the defendant committed default. The defendant, thereafter, however, filed a petition in R.C.O.P.No.1965 of 1995 under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 before the Rent Controller, Chennai, for depositing the rent. The said petition was contested by the plaintiff herein and ultimately, the same was dismissed on 27.11.1997. Thereafter, the defendant approached the plaintiff and agreed to pay a sum of Rs.2,000/- per month towards rent. This undertaking was given by means of a letter dated 05.12.1997. He also gave a Demand Draft for Rs.62,000/- drawn on Vijaya Bank, Triplicane Branch, Chennai, as against the arrears of rent for the period between May 1995 and November 1997. Thus, up to November, 1997, the defendant has paid rent. Thereafter, the defendant has failed to pay the rent.

5. In those circumstances, the plaintiff issued a notice on 24.04.2002 under Section 106 of the Transfer of Property Act, 1882 terminating the lease and calling upon the defendant to deliver the vacant possession of the property on the expiry of the specified period. But, the defendant did not vacate the suit premises in pursuance of the said notice. Therefore, the plaintiff filed the present suit for recovery of possession. It was also contended in the plaint itself that though the building in question is situated in the Chennai City limits, the provisions of the Tamil Nadu Buildings (Lease and Rent Control)

Act, 1960, are not applicable in view of the exemption given under G.O.Ms.No.2000 Home Department, dated 16.08.1976. Thus, according to the plaintiff, the suit was maintainable and he was entitled for the relief sought for. The plaintiff also contended that the defendant was likely to make some alterations in the buildings in question and, therefore, injunction was also sought for.

6. In the written statement, the defendant questioned the jurisdiction of the civil court to entertain the suit. According to him, as per the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, the suit is not maintainable as there is a clear bar. It was also contended that the alleged notice of termination of lease is not legal and the same would not terminate the lease. On facts, the defendant disputed the claim of the plaintiff that the defendant had fallen in arrears.

7. Based on the above pleadings, the trial court framed appropriate issues. During trial, on the side of the plaintiff, 2 witnesses were examined and 39 documents were exhibited while on the side of the defendant, he was examined as D.W.1 and 18 documents were exhibited.

8. Having considered all the above, the trial court decreed the suit as prayed for which was, later on, confirmed by the first appellate court. That is how, the defendant is now before this court with the present second appeal.

9. The learned counsel for the appellant/defendant would submit that there is an important substantial question of law involved in this second appeal. According to him, the courts below were not right in holding that the suit is maintainable. The learned counsel for the appellant would submit that, admittedly, the plaintiff is only a society registered under The Societies Registration Act and that it is not a public trust. Therefore, according to him, the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act are applicable and thus, the notice issued under Section 106 of The Transfer of Property Act is not sustainable and further the suit is not maintainable.

10. Per contra, the learned counsel for the respondent/plaintiff would submit that the suit is maintainable. According to him, as per Ex.A.24, Will executed by one Sri.T.Rajakannoo Gramani, a trust was created with certain obligations and that the said trust is a public charitable trust and, therefore, the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, are not applicable to the suit premises. He would further that the said Will was probated by this court by order dated 09.08.1946 under Ex.A.25.

11. I have considered the above submissions carefully.

12. From the above submissions, the following substantial question of law has arisen for consideration:-

"Whether the suit is maintainable in law in view of the bar contained in Tamil Nadu Buildings (Lease and Rent Control) Act, 1960?

13. In this case, there is no controversy that the plaintiff is a society registered under the Societies Registration Act and thus, it is a juristic person. The suit property was originally owned by Sri.T.Rajakannoo Gramani. He executed a Will dated 22.09.1933 in respect of many of his properties including the suit property herein. Insofar as the suit property is concerned, he has bequeathed as follows in para 1 of the Will:-

"1. After my life time, house and ground No.27, Venkatachala Chetty Street, Triplicane, Madras, which is item 1 of the properties set out in the Schedule hereunder and house and ground No.4, Neeli Veeeraswami Chetti Street, 1st lane, which is item 2, shall be taken by The Triplicane Annadana Samajam, having its office at No.95, Pillaiyar Koil Street, Tiruvattheeswaranpet, Triplicane, which is performing Annadanam, and which is registered under Act XXI of 1860. After my life time, the Secretary of the said Samajam shall take possession of the aforesaid houses and grounds, let them out for rent and with the balance remaining after meeting the expenses for taxes and repairs from out of the income derived therefrom, shall feed not less than fifty poor persons on every Krithika day having regard to my salvation in the next world. The balance remaining after meeting the expenses incurred on this account, shall be added to the funds of the aforesaid Samajam and utilized for charitable purposes in accordance with the resolution of the Directors of the Samajam."

14. From a reading of para 1 of the said Will it is crystal clear that the title for the suit property was transferred by the donor to the plaintiff herein with an obligation to feed not less than fifty poor persons on every Krithika day from out of the rental income from the property and the balance remaining after meeting the expenses incurred on this account, shall be added to the funds of the aforesaid Samajam and utilized for the

charitable purposes. From these averments in the Will, it is crystal clear that the donor had created a Trust. The expression "Trust" has been defined in Section 3 of the Indian Trust Act, 1882 which states that "A trust is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner". Though the Indian Trust Act, 1882 is not applicable *stricto sensu* to a public trust, in order to understand as to what a trust is, we can draw an analogy from the definition given in Section 3 of the Indian Trust Act, 1882. Thus, it is crystal clear that trust is nothing but an obligation which is attached. If the said obligation is to do public charitable activities, then, the trust is a public charitable trust.

15. The Tamil Nadu Hindu Religious and Charitable Endowment Act also deals with a public charitable trust. Sub-section (17) of Section 6 of the said Act defines the term "religious endowment or endowment" which reads as follows:-

" 6 (17) "religious endowment" or "endowment" means all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity; and includes the institution concerned and also the premises thereof, but does not include gifts of property made as personal gifts to the archaka, service holder or other employee of a religious institution;"

16. From the above said definition also it becomes very clear that if a property belonging to a person is given for the purpose of any service or charity, then, it is a public charity.

17. When a trust is created, the person to whom the trust property is entrusted with the obligation to perform the objects of the trust is the trustee. Such person may be a natural person or an artificial juridical person. Such artificial person may be created by the trust deed itself or it may be already in existence. In this regard, we may look into the judgement of the Hon'ble Supreme Court in *Yogendra Nath Naskar v. Commissioner of Income Tax* reported in 1969 (1) SCC 555 wherein the Hon'ble Supreme Court has held as follows:-

"The legal position is comparable in many respects to the, development in Roman Law. So far as charitable endowment is concerned Roman Law-as later developed

recognized two kinds of juristic persons. One was a corporation or aggregate of (1) 10 C.L.J. 355 at 369. (2) Hindu Law of Religious & Charitable Trust by Mr. B.K, Mukherjee. persons which owed its juristic personality to State sanction. A private person might make over property by way of gift or legacy to a corporation already in existence and might at the same time prescribe the particular purpose for which the property was to be employed e.g. feeding the poor or giving relief to- the poor distressed. The recipient corporate would be in a position of a trustee and would be legally bound to spend the funds for the particular purpose. The other alternative was for the donor to create an institution or foundation himself. This would be a new juristic person which depended for its origin upon nothing else but the will of the founder provided it was directed to a charitable purpose. The foundation would be the owner of the dedicated property in the eye of law and the administrators would be in the position of trustees bound to carry out the object of the foundation."

18. The position has been further clarified by this court in para 16 of the judgement in Abraham Memorial Educational Trust v. C.Suresh Babu, 2012 (5) CTC 203 wherein this court has held as follows:-

"16. Keeping in mind the above judgments, if we look into the definition of the term "Trust", as made in Indian Trusts Act, the word 'Trust' denotes only an obligation attached to the property. In other words, Trust is nothing but a confidence reposed on the person whether natural or artificial. Such artificial person, upon whom trust is reposed, may even be founded by the creator of the Trust. As held by the Hon'ble Supreme Court, the trust obligation can be imposed on a person already in existence or the founder himself can create an artificial person upon whom the trust obligation can be imposed."

19. In the instant case, the plaintiff is an artificial person (society) already in existence and the same has not been created by the Will in question. There can be no doubt that

feeding not less than fifty poor persons on every Krithika day and spending the balance of amount after meeting out all expensing including taxes and repairs from out of the income derived from the property for charitable purposes in accordance with the resolution of the Directors of the plaintiff would clearly go to establish that the suit property carries with it an obligation which is a trust and thus, the plaintiff is only the trustee of the public charitable trust.

20. Now, let us look into Section 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act, which reads as follows:-

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

21. In exercise of the power conferred upon under section 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, the Government of Tamil Nadu has issued G.O.Ms.No.2000, Home Department, dated 16.08.1976 thereby exempting all the buildings owned by the Hindu, Christian and Muslim religious public trusts and public charitable trusts from all the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. Here, in the instant case, we have already concluded that the trust created under Ex.A.25 is a public charitable trust and the plaintiff (society) is the trustee and, therefore, the provisions of The Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, are not applicable to the suit property herein for the eviction of the tenant.

22. The learned counsel for the appellant would rely on a judgement of the Hon'ble Supreme Court in Menakuru Dasaratharami Reddi and another v. Duddukudru Subbu Rao and others, AIR 1957 SC 797 wherein, the Hon'ble Supreme Court in para 5 has held as follows:-

5. The principles of Hindu Law applicable to the consideration of questions of dedication of property to charity are well settled. Dedication to charity need not necessarily be by instrument or grant. It can be established by cogent and satisfactory evidence of conduct of the parties and user of the property which show the extinction of the, private secular character of the property and its complete dedication to

charity. On the other hand, in many cases Courts have to deal with grants or gifts showing dedication of property to charity.

Now it is clear that dedication of a property to religious or charitable purposes may be either complete or partial. If the dedication is complete, a trust in favour of public religious charity is created. If the dedication is partial, a trust in favour of the charity is not created but a charge in favour of the charity is attached to, and follows, the property which retains its original private and secular character. Whether or not dedication is complete would naturally be a question of fact to be determined in each case in the light of the material terms used in the document.

In such cases it is always a matter of ascertaining the true intention of the parties; it is obvious that such intention must be gathered on a fair and reasonable construction of the document considered as a whole. The use of the word "trust" or "trustee" is no doubt of some help in determining such intention; but the mere use of such words cannot be treated as decisive of the matter. Is the private title over the property intended to be completely extinguished?

Is the title in regard to the property intended to be completely transferred to the charity? The answer to these questions can be found not by concentrating on the significance of the use of the word "trustee" or "trust" alone but by gathering the true intent of the document considered as a whole. In some cases where documents purport to dedicate property in favour of public charity, provision is made for the maintenance of the worshiper who may be a member of the family of the original owner of the property himself and in such cases the question often arises whether the provision for the maintenance of the manager or the worshiper from the income of the property indicates an intention that the property

should retain its original character and should merely be burdened with an obligation in favour of the charity.

If the income of the property is substantially intended to be used for the purpose of the charity and only an insignificant and minor portion of it is allowed to be used for the maintenance of the worshiper or the manager, it may be possible to take the view that dedication is complete. If, on the other hand, for the maintenance of public charity a minor portion of the income is expected or required to be used and a substantial surplus is left in the hands of the manager or worshiper for his own private purposes, it would be difficult to accept the theory of complete dedication.

It is naturally difficult to lay down a general rule for the solution of the problem. Each case must be considered on its facts and the intention of the parties must be determined on reading the document as a whole."

23. In my considered view the said judgement does not come to the rescue of the appellant at all in any manner. In that case the Hon'ble Supreme Court was concerned with the question, from out of the nature of the obligation attached, whether a public trust has been created or not. The Hon'ble Supreme Court has held that if the income of the property is substantially intended to be used for the purpose of the charity and only an insignificant and minor portion of it is allowed to be used for the maintenance of the worshiper or the manager, it may be possible to take the view that dedication is complete. If, on the other hand, for the maintenance of public charity a minor portion of the income is expected or required to be used and a substantial surplus is left in the hands of the manager or worshiper for his own private purposes, it would be difficult to accept the theory of complete dedication.

24. In the instant case, out of the income from the suit property no amount has been retained for the benefit of any individual and the entire income from the suit property has been directed to be utilized for feeding not less than fifty poor persons on every Krithika day and the balance remaining after meeting the expenses for taxes and repairs, has been directed to be utilized only for charitable purposes. Thus, there is a

complete dedication. Therefore, applying the principles stated in the said judgement we have to only reiterate that in the instant case, the trust created under the Will is only a Public Charitable Trust and that the plaintiff is the trustee of the same.

25. The learned counsel for the appellant would rely on yet another judgement of the Hon'ble Supreme Court in A.V.G.P. Chettiar and Sons and others v. T.Palanisamy Gounder, AIR 2002 SC 2171. In that case, the question was whether a claim made in the proceedings under Tamil Nadu Buildings (Lease and Rent Control) Act, was by a public religious trust or charitable trust. On facts in that case, the Hon'ble Supreme Court held that it was exempted under G.O.Ms.No.2000, Home Department, dated 16.08.1976 and so, the proceedings before the Rent Control Authority under the Tamil Nadu Buildings (Lease and Rent Control) Act was not maintainable. I do not find anything in the above said judgement in favour of the appellant herein as the finding of the court was only on facts. In fine, I hold that the courts below were right in holding that the suit is maintainable. I accordingly answer the substantial question of law.

26. Now, turning to the facts, it has been established that the defendant had fallen in huge arrears of rent. The notice of termination of lease as required under Section 106 of the Transfer of Property Act was duly served and thus, there is a valid termination of lease. Therefore, the courts below were right in decreeing the suit as prayed for, which does not require any interference at the hands of this court at all. Thus, I do not find any merit at all in the second appeal and the same must fail.

27. In the result, the second appeal is dismissed. The decree and judgement of both the courts below are confirmed. However, there shall be no costs. Consequently, Connected MP Closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The XV Additional Judge,
City Civil Court,
Chennai.

2.The II Assistant Judge,
City Civil Court,
Chennai.

+2cc's to Mr.Ashok Menon, Advocate, S.R.No.68296

+2cc's to Mr.C.Hanumantha Rao, Advocate, S.R.No.68384 & 68385

Second Appeal No.108 of 2015

VD(CO)
CA(12/02/2016)



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