

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.03.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.145 of 2015

&

M.P.No. 1 of 2015

Gulabdoss Narayandoss & Company
(also known as Gulabdoss Narayandoss
Agencies) carrying on business at
Old No.63, New No.82, Godown Street,
Chennai-1.Appellant/Defendant

-Vs-

Calve Sadasiva Chetty (Madras)
Charities rep. by its Trustees
1. Sri.Calve Sambasivam
2. Sri.S.Lutchmiah Chetty
3. Sri.V.Nagaraj
4. Sri.Dr.G.Vijaykumar,
having Office at No.100,
Govindappa Naicken Street,
Chennai-600 001.Respondents/Plaintiffs

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 16.12.2014 passed in A.S.No.400 of 2011 by the learned I Additional District Judge, City Civil Court, Chennai confirming the judgment and decree dated 22.06.2011 passed in O.S.No.13462 of 2009 by the learned VI Assistant Judge, City Civil Court, Chennai directing delivery of possession of the suit property.

For Appellant : Mr.K.Shakespere

For Respondent : ...

J U D G M E N T

The defendant in O.S.No.13462 of 2009 on the file of the learned VI Assistant Judge, City Civil Court, Chennai is the appellant herein. The respondent is the plaintiff in the suit. The said suit was filed for recovery of possession and for recovery of damages for use and occupation of the building by the defendant at the rate of Rs.25,000/- per month from 01.11.2009. The trial court partly decreed the suit thereby granting decree for recovery of possession alone, but, the claim for damages was dismissed. As against the same, the appellant filed an appeal in A.S.No.400/2011 on the file of the learned I Additional Judge, City Civil Court, Chennai. By decree and judgment dated 16.12.2014, the lower appellate court dismissed the appeal, thereby confirming the decree and judgment of the trial court. Challenging the same, the appellant is before this Court with this Second Appeal.

2. This Second Appeal has come up today for admission. I have heard the learned Counsel for the appellant and I have also perused the records carefully.

3. The case of the plaintiff in brief is as follows:

The plaintiff claims that it is a Public Hindu Religious and Charitable Trust and all its properties are exempted from the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as, 'the Act'), by virtue of G.O.Ms.No.2000, Home Department, dated 16.8.1976. According to the plaintiff, the defendant is a tenant in respect of a non-residential portion in the ground floor of the suit property facing street in premises bearing Old No.63, New No.82, Godown Street, Chennai-1 on a monthly rent of Rs.3,750/- and Rs.1,750/- per month towards amenity charges and in all amounting to Rs.5,500/- per month. According to the plaintiff, the suit property is situated near the Broadway Bus Stand in the heart of Chennai City and the defendant has been paying the above said amount towards rent and amenities from 01.09.2001. It is the further case of the plaintiff that going by the location of the property and the rental value, even in the year 2009, the property would have fetched the monthly rent of Rs.25,000/-. Therefore, the plaintiff by letter dated 29.07.2009 called upon the defendant to agree for payment of Rs.25,000/- p.m. towards rent from 01.08.2009 and to enter into a fresh rental agreement. But the defendant did not come forward for the same. It is also the case of the plaintiff that the plaintiff is unable to perform its objects, namely, to feed the poor, render medical aid and scholarship etc. as per the objects of the Trust for paucity of funds. It is further

stated that since the defendant did not come forward to pay reasonable rent, a notice was issued on 11.09.2009, terminating the lease under Section 106 of the Transfer of Property Act. Even after the said notice of termination and expiry of the time granted in the said notice, the defendant had not vacated the property and handed over vacant possession of the same. In those circumstances, according to the plaintiff, from the date of coming into force of termination, the defendant has got no right to continue in possession of the property. With these allegations, the plaintiff filed the said suit seeking the above reliefs.

4. In the written statement, mainly, the jurisdiction of the civil court was questioned. According to the defendant, the plaintiff is not a Public Hindu Religious Charitable Trust and therefore, the exemption granted under G.O.Ms.No.2000 is not applicable to the suit property and thus, according to the defendant, the suit is not at all maintainable as the defendant is entitled for the benefits of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. Regarding the grounds of eviction, it is stated that since the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 is applicable, notice of termination of lease issued by the plaintiff is illegal and the same would not terminate the relationship of landlord and tenant between the plaintiff and the defendant. It is also pleaded that on receipt of the notice dated 11.09.2009 by which the plaintiff had demanded exorbitant increase in the rent, the defendant agreed to pay the rent at the reasonable increased rate. That was not accepted by the plaintiff. At any rate, according to the defendant, the suit is liable to be dismissed.

5. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiff, he was examined as P.W.1 and as many as 9 documents were exhibited. On the side of the defendant, one witness was examined as D.W.1 and 3 documents were exhibited. Having considered the above, the trial court decreed the suit in part as narrated hereinabove which was confirmed by the lower appellate court. That is how, the appellant is before this Court with this Second Appeal.

6. In this Second Appeal, it is contended by the learned Counsel for the appellant that the lower appellate court was not right in holding that the respondent is a Public Hindu Religious and Charitable Trust so as to enjoy the exemption under G.O.Ms.No.2000. The learned Counsel for the appellant would further submit that in paragraph 10 of the judgment, the lower appellate court has held that the plaintiff is a Public Trust performing religious and charitable

activities. This, according to the learned Counsel for the appellant, would go to show that there is no clear finding that it is a religious trust. The learned Counsel for the appellant would also submit that G.O.Ms.No.2000 exempts only the buildings owned by the Public Trust and Charitable Trust belonging to Hindus, Christians and Muslims and it does not cover the secular charities.

7. Here, in this case, according to the learned Counsel for the appellant, the lower appellate court has relied on Ex.A.9, a decree passed on the civil side of this Court under Section 92 of the Code of Civil Procedure (hereinafter referred to as, 'CPC') framing scheme for the respondent Trust. It is the further contention of the learned Counsel for the appellant that if it is a Hindu Religious Trust as it is stated by the respondent, the civil court would not have had jurisdiction to decide the character of the Trust under Section 92 of the CPC., instead, the same should have been examined and decided only by the Joint Commissioner, Hindu Religious and Charitable Endowment Department under Section 63 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 (hereinafter referred to as, 'HR&CE Act').

8. The learned Counsel for the appellant would further submit that since there is an exclusive jurisdiction vested with the Joint Commissioner, Hindu Religious and Endowment Department under the HR&CE Act to decide as to whether a particular Trust is a Hindu Religious Trust or not and since in the instant case, the Joint Commissioner has not decided the case, the civil court has decided the issue under Section 92 of the Act, it cannot be held that the respondent is a Hindu Religious and Charitable Trust.

9. I have considered the above submissions.

10. At the outset, I should say that there is no question of law, much less a substantial question of law involved warranting admission of the Second Appeal. The only question raised by the learned Counsel for the appellant before this Court is as to whether the respondent is a Hindu Religious and Charitable Trust or not. This is, essentially, a question of fact, which has been decided by the lower appellate court. There is no question of law involved in this Second Appeal at all. The lower appellate court cannot be found fault with the said conclusion, since the lower appellate court has given sound reasons for coming to the said conclusion.

11. The contention of the appellant is that whether a particular Charitable Trust is a Hindu Religious Charitable Trust or not is a

matter to be gone into only by the Joint Commissioner under Section 63 of the HR&CE Act. Regarding this legal position, there can be no second opinion. Here in this case, admittedly, the Joint Commissioner, Hindu Religious and Charitable Endowment Department has not decided as to whether the plaintiff is an institution which is a religious institution or not as required under Section 63 of the HR&CE Act. In my considered opinion, on that score, one cannot rush to the conclusion that the character of the Charitable Trust i.e. religious will disappear. Whether a Trust is a religious charitable trust or not is to be gathered from the object of the Trust. In this regard, the lower appellate court has extensively referred to the object of the HR&CE Act and has come to the right conclusion that the character of the Charitable Trust is religious. Therefore I am of the view that simply because, the Joint Commissioner had not decided the issue, it cannot be said that the respondent Trust is not a Hindu Religious and Charitable Trust.

12. The next contention of the learned Counsel for the appellant is with reference to Section 92 of the CPC. In this regard, I may refer to Section 5 of the Tamil Nadu Hindu Religious and Charitable Endowment Act of 1959 which says that Sections 92 and 93 of CPC, 1908 shall cease to apply to Hindu Religious Institutions and Endowments. Therefore, so far as the present case is concerned, Section 92 of the CPC is not applicable, since the respondent is a Hindu Religious Institution. But, such a suit under Section 92 of the CPC. was entertained by the court in respect of the plaintiff and has framed the scheme.

13. In my considered opinion, because the civil court had exercised its power under Section 92 of the CPC., it cannot be held that the Trust will loose its religious character. On that score also, I have to hold that there is no valid ground in the Second Appeal. As I have already pointed out, the lower appellate court has given vivid reasons and in fact I have to say that it is a well written judgment wherein the lower appellate court has dealt with all the factual as well as legal issues to come to a right conclusion that the respondent is a Hindu Religious Institution and therefore, it is exempted under G.O.No.2000.

14. Coming to the grounds for recovery of possession, it is stated that a notice terminating the lease was issued under Section 106 of the Transfer of Property Act. Strangely, the appellant had not sent any reply to the said notice. Had it been true that the defendant/appellant was sure that the respondent/plaintiff is not a Hindu Religious Institution, the appellant would have certainly sent

a reply disputing the authority of the respondent/plaintiff to issue such a notice invoking Section 106 of the Transfer of Property Act. The appellant would have certainly stated that G.O.Ms.No.2000 is not applicable and that the appellant is entitled for the benefits of the Tamil Nadu Buildings (lease and Rent Control) Act. Further, the fact that the appellant/defendant did not send any reply to the termination notice would go to show that it is an afterthought and that only with a view to drag on the proceedings, he has taken the plea in the suit that the respondent/plaintiff is not a Hindu Religious Institution.

15. In my considered view, as it has been rightly held by the lower appellate Court, the termination is valid in terms of Section 106 of the Transfer of Property Act and therefore, the appellant is liable to be dispossessed and the respondent is entitled to recover possession from him.

16. So far as the damages claimed by the respondent/plaintiff is concerned, since the respondent/plaintiff had not filed any Cross-Objection, I need not go into that question. In view of all the above, I do not find any merit at all involved in this Second Appeal.

17. In the result, the Second Appeal fails and the same is accordingly dismissed. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The I Additional District Judge,
City Civil Court,
Chennai.

WEB COPY

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

1 CC to Mr.K.Shakespere, Advocate SR.No. 14949

S.A.No.145 OF 2015
& M.P. No. 1 of 2015

MP (CO)
PSI (15.04.2015)



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