

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2016

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

Second Appeal No.611 of 2015

and

M.P.No.1 of 2015

M.Babu ... Appellant/1st Defendant

Vs.

1.The Chennapuri Annadana Samajam (Regd)
Rep. By its Honourary Secretary,
Mr.V.R.Udaya Shankar,
Having its Office at
No.13/76, Nyniappa Naicken Street,
Park Town, Chennai 600 003.
The present Trustees of the plaintiff Samajam are
1.Mr.T.E.Balasubramaniam
2.Mr.M.R.Varatharajan
3.Mr.K.Vinayakamurthy ...1st Respondent/Plaintiff

2.Mr.Sivajothi
carrying on business under the name and style of
Siva Om Agatheeswarar Sidha Medicine Centre,
At Old Door No.24, New No.14,
First Narayanan Street, Seven Wells,
Chennai 600 001.

3.Mr.Dilli ... Respondents 2 & 3/ Defendants 2&3

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the Judgment and Decree of the learned XV Additional Judge, City Civil Court, Chennai dated 31.10.2014 made in A.S.No.165 of 2013 confirming the judgment and decree of the learned Vth Assistant Judge, City Civil Court, Chennai in O.S.No.6384 of 2009 dated 30.12.2012.

For Appellant : Mr.A.Chenchurama Reddy

For Respondent : Mr.B.K.Sreenivasan for R1

J U D G M E N T

The first defendant in a suit for recovery of possession is the appellant. Both the courts concurrently found against the appellant and granted the decree in favour of the plaintiff Trust. The second

and third defendants remained exparte before both the courts. The present appeal is listed before me at the 'Adjourned Admission' stage.

2.The case of the plaintiff in short is as follows:-

The plaintiff is one of the philanthropic institution at Chennai, which is now more than 100 years old. Its objects are to feed the poor without distinction of caste or creed; to establish minor industries for such poor; to establish educational institutions for the poor and to establish permanent poor houses and orphanages. The subject matter property belongs to the Trust and the same was let out to the first defendant for the specific purpose of residential accommodation only. However he made unauthorised structural alteration to the building and damaged the same without the plaintiff's consent and put up two additional rooms, one on the eastern side and another on the northern side on the front side of the building and sublet those constructed portions to the second defendant and is collecting rent from him, thereby making illegal gains out of the property belonging to the plaintiff's Trust. The first defendant is liable to pay interest at the rate of Rs.4500/- per month towards damages for use and occupation from 01.05.2009.

3.The first defendant contested the said suit. It is his case that at the time of letting out the subject matter property, only 300 sq.ft. of constructed area was there out of 1200 sq.ft. of land and the remaining constructions were put up by the defendant with the consent of the plaintiff Trust. A Rent Control Proceedings was initiated by the first defendant under section 8(5) of the Tamilnadu Buildings (Lease and Rent Control) Act which was subsequently terminated as parties entered into a compromise.

4.Both the courts below by considering the rival pleadings of the parties and the evidence let in by them, rejected the claim of the first defendant and decreed the suit as prayed for. Now the second appeal is filed before this court mainly by raising the question of maintainability of the suit on the reason that the plaintiff Trust is not a public Trust and on the other hand, it is private Trust and therefore Proceedings under Rent Control Act alone is maintainable and not the present suit to evict the first defendant.

5.Learned counsel appearing for the appellant submitted that the plaintiff has not established before the courts below that it is a public Trust and the Articles of Association filed as Ex.A1 itself cannot be the conclusive evidence to hold that the plaintiff is a public trust thereby to maintain the suit. He further contended that when admittedly further constructions were put up by the first defendant in the suit property, the present suit for ejectment is not maintainable.

6.Learned counsel for the appellant in support of his submission relied on the decision of this Court reported in AIR 1953 MAD 456, Ravuru Punnamma vs. Lakkaraju Venkata Subba Rao.

7. Per contra, the learned counsel appearing for the respondent/plaintiff contended that the very object of the Trust as could be seen under Ex.A1 would show that it is a public Trust and there is a specific pleading also to that effect by the plaintiff in the reply statement filed by them before the trial court. In so far as the additional construction put up by the defendant is concerned, the learned counsel submitted that when such construction was put without consent of the plaintiff, the present suit as such is maintainable and therefore, both the courts below have rightly granted the decree in favour of the plaintiff. He further submitted that the defendant who claimed to have obtained permission for additional construction has failed to prove before the courts below regarding such alleged permission by letting in any evidence.

8. Heard both sides.

9. Having lost before both the courts below, the first defendant has filed this appeal and the same is listed before me at the stage of adjourned admission. Therefore, this court has to see as to whether any substantial question of law arises for consideration to entertain the appeal for further hearing of the matter.

10. The main objection raised by the appellant is that the plaintiff Trust is not a public Trust and therefore, the suit is not maintainable and the Rent Control Proceedings alone should have been resorted to. No doubt such contention of the appellant can be considered as having some force provided the status of the plaintiff trust is admitted by the plaintiff as the private Trust. It is not so in this case. On the other hand, it is the specific case of the plaintiff that it is a public trust having so many objects to serve the poor. In support of such claim, the plaintiff marked Ex.A1 viz., the memorandum of Articles of Association. Both the courts below, considering all the facts and circumstances found that the plaintiff trust is the public trust and thus rejected the claim of the first defendant. It is to be noted at this juncture that a question as to whether a Trust is a public Trust or private Trust is undoubtedly not a pure question of law alone, since answering such issue depends upon the appreciation of the facts and circumstances of the case and the materials available before the court in support of the pleadings of the parties and the findings rendered by the courts below.

11. In this case, I do not find any perversity in the finding rendered by the courts below with regard to the nature of the trust. In support of their pleading in the plaint as well as reply statement with regard to the status of the Trust as public trust, the plaintiff marked Ex.A1 which is Memorandum, Articles of Association, Bye-Laws and Rules of the plaintiff's trust. Perusal of the Ex.A1 shows that its Managing Committee consisted of Retired Judges of this Court as President, Vice President. Further perusal of the objects of the

Trust as could be seen under Ex.A1, clearly establishes that the plaintiff Trust is undoubtedly a public trust. The objects read as follows:

"NAME AND OBJECTS

I. The name of the Society shall be the "Chennapuri Annadana Samajam."

II. The objects of the Samajam shall be:-

(a) (i) To feed and, at times, to clothe without distinction of caste or creed, such poor as are unable to earn their livelihood owing to their old age infirmity or bodily defect.

(ii) To establish minor industries for such poor as aforesaid who are capable of such employment.

(b) To feed such poor pupils of educational institutions as are deserving of the Samajam's support.

(c) To establish permanent Poor Houses and Orphanages.

(d) To establish branch institutions of the nature in such places as the Managing Committee may think fit.

(e) To do all such other things as are incidental or conducive to the attainment of the above objects."

12. Learned counsel appearing on either side agrees that the Rent Control Proceedings is exempted as contemplated under G.O.Ms.No.2000, Home Department dated 16.08.1976 in so far as the public Trust is concerned. Therefore, the question with regard to the status of the Trust herein being the question of fact having been gone into by the courts below and answered that it is a public Trust and consequently granted the relief, I do not find that such an issue would raise any question of law more particularly a substantial one before this court even for entertaining the appeal.

13. Needless to mention that a second appeal before this court does not lie and cannot be entertained automatically as a matter of course or routine procedure, unless there exists a substantial question of law for entertaining such second appeal, as contemplated under Section 100 C.P.C. Time and again, the Hon'ble Supreme Court has cautioned the High Courts not to entertain a second appeal without formulating a substantial question of law. Therefore, it is very clear that formulation of such substantial question of law, which is the role of this Court, would arise only after the prima facie satisfaction of this court about the existence of a question of law on the facts and circumstances of the given case. At this juncture, it is to be noted that framing of such substantial question of law by this court, under the facts and circumstances of a particular case, is only for the purpose of entertaining the second appeal and to put the other side on notice to answer such question of law and to allow the parties to argue the appeal finally based on such question of law so as to arrive at a just and proper decision by answering such substantial question of law. Therefore, it is essential that even to entertain the second appeal, a substantial question of law must exist. In a recent decision of the Apex Court reported in 2016(4) MLJ 10, Raghavendra Swamy Mutt vs Uttaradi Mutt,

it has been observed that the High Court can entertain a second appeal only if it is satisfied that the appeal involves a substantial question of law. It is also observed in the said decision that even for passing an ex parte interim order deferring formulation of question of law is not permissible. The relevant paragraphs at 14 and 23 as follows:

"14. A plain reading of Section 100 CPC makes it explicit that the High Court can entertain a second appeal if it is satisfied that the appeal involves a substantial question of law. More than a decade and a half back, in *Ishwar Dass Jain v. Sohan Lal* AIR 2000 SC 426:(2000) 1 SCC 434): LININD 1999 SC 1062, it has been ruled that after the 1976 Amendment, it is essential for the High Court to formulate a substantial question of law and it is not permissible to reverse the judgment of the first appellate court without doing so.

..23. Submission of the learned senior counsel for the appellant is that Order XLI Rule 5 confers jurisdiction on the High Court while dealing with an appeal under Section 100 CPC to pass an ex parte order and such an order can be passed deferring formulation of question of law in grave situations. Be it stated, for passing an ex parte order the Court has to keep in mind the postulates provided under sub-rule (3) of Rule 5 of Order XLI. It has to be made clear that the Court for the purpose of passing an ex parte order is obligated to keep in view the language employed under Section 100 CPC. It is because formulation of substantial question of law enables the High Court to entertain an appeal and thereafter proceed to pass an order and at that juncture, needless to say, the Court has the jurisdiction to pass an interim order subject to the language employed in Order XLI Rule 5(3). It is clear as day that the High Court cannot admit a second appeal without examining whether it raises any substantial question of law for admission and thereafter, it is obliged to formulate the substantial question of law. Solely because the Court has the jurisdiction to pass an ex parte order, it does not empower it not to formulate the substantial question of law for the purpose of admission, defer the date of admission and pass an order of stay or grant an interim relief. That is not the scheme of CPC after its amendment in 1976 and that is not the tenor of precedents of this Court and it has been clearly so stated in *Ram Phal vs Banarasi and Others* (supra). Therefore, the High Court has rectified its mistake by vacating the order passed in IA No. 1/2015 and it is the correct approach adopted by the High Court. Thus, the impugned order is absolutely impregnable."

14. In an earlier decision reported in 2010(12) SCC 740, Dinesh Kumar vs Yusuf Ali, the Apex Court has observed at paragraph Nos.12 and 25 as follows:

"12. Second appeal does not lie on the ground of erroneous findings of facts based on appreciation of the relevant evidence. The High Court should not entertain a second appeal unless it raises a substantial question of law. It is the obligation on the Court of Law to further the clear intendment of the Legislature and not to frustrate it by ignoring the same.

25. Thus, the law on the subject emerges to the effect that Second Appeal under Section 100 CPC is maintainable basically on a substantial question of law and not on facts. However, if the High Court comes to the conclusion that the findings of fact recorded by the courts below are perverse being based on no evidence or based on irrelevant material, the appeal can be entertained and it is permissible for the Court to re-appreciate the evidence."

15. Considering the above decisions of the Apex Court, what emerges is that this court even to entertain a second appeal has to first find out as to whether any substantial question of law exists in such an appeal. If it is found that no such substantial question of law exists, the appeal need not be entertained. No doubt, if the findings on certain facts by the courts below, which go to the root of the matter, is totally perverse or being the one based on no evidence or based on irrelevant material, this court can entertain the appeal, as such ground would pave a way to raise the same as a substantial question of law. I have already pointed out that there is no perversity in the findings rendered by the courts below in appreciation of the evidence. I also find that such findings rendered are based on relevant material. Therefore, even this ground is not available to the appellant to raise it as a substantial question of law.

16. Insofar as the submissions made regarding the additional construction put up by the first defendant are concerned, it is seen that though it is admitted by the plaintiff in the plaint that the first defendant has put up the additional construction more than what was let out, it is their clear and categorical case that such construction was put by the defendant without the consent of the plaintiff. When the first defendant pleaded that it was with the consent of the plaintiff, the onus is on him to prove by leading evidence that such consent was given by the plaintiff. It is seen that no such evidence was let in by the defendant in support of such claim. Therefore, the unauthorised construction put up by the first defendant and letting the same to other defendants as sub tenants are not vital factors barring the plaintiff to maintain the present suit

for ejectment. As already stated supra, the second and third defendants remained absent and they were set exparte before both the courts and thus they are bound by the decree. Further it is to be seen that it is only the first defendant who went before the Rent Controller under Section 8(5) of the said Act which proceedings also said to have ended in compromise. Even otherwise it is well settled that the litigants cannot confer jurisdiction on a particular forum, if such jurisdiction is otherwise prohibited or not vested under law. Therefore, I do not find any substantial question of law arises for consideration on this aspect as well.

17.The decision reported in AIR 1953 Madras 456 (cited supra) relied on by the learned counsel for the appellant is not helping the appellant in any manner, since based on the facts and circumstances of that case, the learned Judge has pointed out that such disputed construction therein must have been done with the consent of each other and the plaintiff therein allowed the defendant to put up the structures. The case on hand before this court is totally a different one with distinguishable facts and circumstances as discussed supra. Therefore, the above decision is not helping the appellant in any manner. Accordingly, I find no reason to interfere with the concurrent finding of the courts below, as no substantial questions of law arises for consideration. Accordingly, the second appeal fails and the same is dismissed. No costs. The connected miscellaneous petition is also dismissed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

1. The XV Additional Judge,
City Civil Court, Chennai.
- 2.The Vth Assistant Judge,
City Civil Court, Chennai.

+1 cc to Mr.A.Chenchurama Reddy, Advocate, SR.31644.

kji(co)
krd 19/7

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