

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:11.11.2016

PRONOUNCED ON:29.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.220 of 2011

M.P.Nos.1 of 2011 & 1 of 2015

1.V.Chandrasekaran
2.V.Rajendran
3.Sarojini ... Appellants/Appellants 2to4

Vs.

1.Venkatanaicker Trust
Rep. by its Manager,
Thiru E.V.K.S.Elangovan,
No.133, Cutchery Street,
Erode-638 003.

2.Subadhra
3.K.Sonia ... Respondents/Respondents/
Appellants 5 & 6

(R2 & R3 are given up)

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 02.09.2010 passed in A.S.No.71 of 2009 on the file of the Principal Subordinate Judge, Erode, confirming the judgment and decree dated 14.09.2009 passed in O.S.No.316 of 1997 on the file of the Second Additional District Munsif, Erode.

For Appellants : Mr.S.V.Jayaraman, Senior Counsel
for Mr.K.S.jeyaganeshan
For 1st Respondents: Mr.P.Valliappan

J U D G M E N T

The appellants 2 to 4 before the first Appellate Court have in this Second Appeal impugned the judgment and decree dated 02.09.2010 made in A.S.No.71 of 2009 on the file of the Principal Subordinate Judge, Erode, confirming the judgment and decree dated 14.09.2009 made in O.S.No.316 of 1997 on the file of the Second Additional District Munsif Court, Erode.

2.Suit for possession and damages.

3.Shorn of unnecessary details, the case of the plaintiff is as follows:

The plaintiff's Trust is represented by its Manager E.V.K.S. Elangovan. The suit property belonged to the plaintiff and that the same was leased out to the defendant. In as much as the defendant was not regular in the payment of rent and also as the property is required by the plaintiff for putting up shopping complex to augment its income, the plaintiff by notice dated 13.06.1997 terminated the tenancy of the defendant and despite the same the defendant did not vacate the suit property and hand over the possession, instead sent a reply containing false allegations. Hence, the suit.

4.The case of the defendant in brief is as follows:

The defendant has taken various pleas to non suit the plaintiff. As far as the pleas required for the purpose of disposing of the Second Appeal is that E.V.K.S. Elangovan has to prove that he is the Manager of the Trust and competent to file the present suit on behalf of the Trust and the Trust has not produced any resolution regarding the decision of the construction of the suit building or to file the present legal action and hence prayed for the dismissal of the suit.

5.In support of the plaintiff's case, PW1 has been examined. Ex.A1 to A9 were marked. On the side of the defendants, DW 1 has been examined. Ex.B1 was marked. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court was pleased to decree the suit as prayed for.

6.The first Appeal was preferred by the defendant and pending Appeal the defendant having died, his legal representatives have been brought on record as the appellants. The first Appellate Court also on a consideration of the oral and documentary evidence adduced by the parties was pleased to confirm the judgment and decree of the trial court. Challenging the same, the present Second appeal has been laid.

7.The Second Appeal was admitted and the following substantial questions of law are formulated for consideration in this Second Appeal:

(a)Whether the termination of tenancy by the issuance of Ex.B1, notice by the Manager is not in accordance with the provisions of the Indian Trust Act and whether the said notice took equity as ineffective?

(b)Whether the suit filed by the Manager of the Trust and not by the Trustees joined together, is not maintainable?

8.In as much as the questions of law canvassed in this Second Appeal, do not require the necessity of explaining the

case of the parties in detail, it is suffice to confine the facts at issue between the parties, as regards the substantial questions of law formulated for consideration in this Appeal.

9.The suit has been laid by the plaintiff, Venkatanaicker Trust, represented by its Manager, Thiru. E.V.K.S. Elangovan, B.A., The lease of the defendant has been terminated by the plaintiff under the notice dated 13.06.1997, which has been marked as Ex.A1. Repudiating the claim of the plaintiff under Ex.A1, the defendant has sent a reply.

10.The main point that is urged by the learned Senior counsel appearing for the appellant is that the suit as framed by the plaintiff is not maintainable and on that score alone, the suit is liable to be dismissed. Though that the frame of the suit is not maintainable had been canvased before the Courts below also, however, the Courts below did not entertain the same. It is argued by the learned Senior counsel for the appellant that the Courts below have erred in not following the principles of law adumbrated in the decisions placed before them on behalf of the appellants on the said issue and therefore prays that the findings of the Courts below on the frame of the suit are liable to be set aside.

11.As seen earlier, the Trust has laid the suit through its Manager. It is therefore obvious that the suit has not been laid by the Trust, represented by its Trustees. That the Manager is empowered to lay the suit on behalf of the Trust has not been established by the plaintiff, principally, by marking the Trust deed. No reason has been given by the plaintiff for not marking the Trust deed to evidence that the Trust deed authorized the Manager to institute the suit on behalf of the Trust. Therefore, now we are left to decide the issue in the absence of the Trust Deed. It could therefore be seen that the Trust has not placed any record before the Courts below to establish that it has the authority to file the suit through its Manager.

12. Now according to the learned Senior counsel appearing for the appellant, the Trust if it decides to lay the suit for recovery of possession from the tenant or for the matter, if it decides to terminate the tenancy of the tenant in respect of its property, the lease in respect of the same should have been determined only by the Trustees of the Trust and not by its Manager. It is also emphasized that even a single Trustee on his own could not lay the suit unless the Trust Deed authorises him to do so on behalf of the Trust.

13.Further, it is stressed that all the Trustees should be before the court to decide the lis between the Trust and the opponents and in the absence of the Trustees before the Courts, the suit laid by the Trust through its Manager is not maintainable. In this connection, the learned Senior Counsel appearing for the appellant lays stress on the decisions

reported in AIR 1973 Gujarat 113 (Atmaram Vs. Gulamhusein) and AIR 1984 Delhi 145 (Duli Chand Vs. M/s. M.P.T.C. Charitable Trust). In the decision reported in AIR 1973 Gujarat 113 (Atmaram Vs. Gulamhusein), two questions were referred to the Hon'ble Full Bench for reference. One is, whether some only out of several co-trustees can effectively determine a tenancy by giving notice to quit and the other is, whether a suit to evict a tenant can be filed by one or more co-trustees without joining other co-trustees in the suit.

As regards the question No.2, the conclusion/finding of the Hon'ble Full Bench is as follows:

11. We are, therefore, of the view that unless the instrument of trust otherwise provides, all co-trustees must join in filing a suit to recover possession of the property from the tenant after determination of the lease. No one single co-trustee, even he be a managing trustee unanimously chosen by the co-trustees, can maintain such a suit against the tenant without joining the other co-trustees. All co-trustees must be joined in the suit and if any one or more of them are unwilling to be joined in the suit as plaintiffs or for some reason or the other it is not possible to join them as plaintiffs, they must be impleaded as defendants so that all co-trustees are before the Court.

For arriving at the above conclusion the Hon'ble Full Bench also placed reliance and derived support from the following passage from Lewin on Trusts, (Sixteenth Edition), page 181:-

"In the case of co-trustees of a private trust, the office is a joint one. Where the administration of the trust is vested in co-trustees, they all form as it were but one collective trustee and therefore must execute the duties of the office in their joint capacity. Sometimes, one of several trustees is spoken of as the acting trustees, but the Court knows of no such distinction: all who accept the office are in the eyes of the law acting trustees. If any one refuses or is incapable to join, is it not competent for the others to proceed without him, and, if for any reason they are unable to appoint a new trustee in his place under Section 36(1) of the Act, the administration of the trust must devolve upon the Court. However, the act of one trustee done with the sanction and approval of a co-trustee may be regarded as the act to the both, though such action or approval must be strictly proved".

In addition to that as to whether a trustee cannot delegate any of the duties, functions and powers of his office to his co-trustees or to any one else, as that would be contrary to his obligation under the trust, holding that the position of law on the above aspect is well settled, the Hon'ble Full Bench relied upon the decision of the Apex Court reported in Abdul Kayum v. Alighai, AIR 1963 SC 309, which is very important and material in determining the controversy between the parties before this Second Appeal also and the same is reproduced as following:--

"..... trustees cannot transfer their duties, functions and powers to some other body of men and create them trustees in their own place unless this is clearly permitted by the trust deed, or agreed to by the entire body of beneficiaries. A person who is appointed a trustee is not bound to accept the trust; but having once entered upon the trust he cannot renounce the duties and liabilities expect with the permission of the Court or with the consent of the beneficiaries or by the authority of the trust deed itself. Nor can a trustee delegate his office or any of his functions except in some specified cases. The rules against renunciation of the trust by trustee and against delegation of his function by a trustee are embodied in respect of trusts to which the Indian Trust Act applies, in Section 46 and 47 of that Act..... It is true that Section 1 of the India Trusts Act makes provisions of the Act inapplicable to public or private religious or charitable endowments; and so, these sections may not in terms apply to the trust now in question. These sections however embody nothing more or less than the principles which have been applied to all trusts in all counties. The principle of the rule against delegation with which we are concerned in the present case, is clear: a fiduciary relationship having been created, it is against by the interests of society in general that such relationship should be allowed to be terminated unilaterally. That is why the law does not permit delegation by a trustee of his functions, except in cases of necessity or with the consent of the beneficiary or the authority of the trust deed itself; apart from the delegation in the regular course of business, that is, all such functions which a prudent man of business would ordinarily delegate in connection with his own affairs".

14.As regards the validity of the termination of quit notice by one co- trustee is valid or whether it is necessary that all the co- trustees must join in giving such notice, the Hon'ble Full Bench has come to the following conclusion:

It is, therefore, clear that one co-trustee cannot given notice to quit determining the tenancy. The decision to determine the tenancy by giving notice to quit must be taken by all co-trustees unless, of course, the instrument of trust otherwise provides, or the beneficiaries being competent to contract consent, or in any particular case it is established that on the peculiar facts obtaining in that case, the delegation of the power to determine the tenancy was necessary. But when he way that the tenancy must be determined by all co-trustees, we must make it clear that what we means is that the decision to terminate the tenancy must be taken by all the co-trustees. The formal act of the giving notice to quit pursuant to the decision taken all by the co-trustees may be performed by one co-trustee on behalf of the rest. The notice to quit given in such a case would be a notice given with the sanction and approval of all the co-trustees and would be clearly a notice given by all co-trustees.

For arriving at the above conclusion, the Hon'ble Full Bench has also placed reliance upon the decision of the our High Court reported in AIR 1938 Madras 982 (Vedakannu Vs. Annadana Chatram). That the Hon'ble Full Bench has also considered the effect of Section 36 of the Indian Trust Act can also be seen from the passage, Lewin on Trusts, which has been extracted supra.

15.As rightly pointed out by the learned Senior counsel appearing for the appellants, the Delhi High Court has also categorically held that the suit filed by one of the co-trustees even on authorisation by resolution passed by other co-trustees is not maintainable and the above aspect of the matter has been dealt by the Delhi High Court reported in AIR 1984 Delhi 145 (Duli Chand Vs. Mahabir Pershad Trilok Chand Charitable Trust, Delhi) in the following manner:

'A suit by one of the co-trustees on the basis of a resolution passed unanimously by all other co-trustees authorising that trustee to file the suit would not be maintainable. The position of trustees is exactly the same as of any other set of co-owners who must necessarily join together to file a suit.

It is possible for some of the trustees to authorise the others to file a suit. But this could only be done by the execution of a power of attorney. It cannot be done by a resolution.

If 'A', 'B' and 'C' are the owners of a property, they have to bring a joint suit for possession. They are all necessary parties to the suit. They cannot by resolution allow some of the other co-owners to file the suit. In such a suit, all the owners must be joined as parties as either plaintiffs or as defendants. Usually, the co-owners who are not joined in the suit are joined as proforma defendants. But, it is not possible for some of the owners to file a suit without joining others. As trustees are owners of the property, the same principle applies. They all have to be joined as parties to the suit, but they can execute the powers of attorney allowing themselves to be represented by some other co-trustees.

A trust is not a legal entity as such. In fact, a Trust may be defined as an obligation imposed on the ostensible owner of property to use the same for a particular object for the benefit of a named beneficiary or a charity. Thus all Trustees in law are owners of the property but they are obliged to use the same in a particular manner. If a number of trustees exist, they are joint owners of the property. It is not like a Corporation which has a legal existence of its own and therefore can appoint an agent. A Trust is not in this sense a legal entity. It is the trustees who are the legal entities.

The Delhi High Court has also taken into consideration the decision of the Hon'ble Full Bench of the Gujarat High Court reported in AIR 1973 Gujarat 113 (Atmaram Vs. Gulamhusein) adverted to earlier and the other decisions.

16. In the light of the above two decisions, it could be seen that the Trust being not a legal entity and all the Trustees in law being the owners of the property and if a number of Trustees exist, they being the joint owners of the property and a Trust not in the normal course a legal entity and only the Trustees being the legal entities, it could be seen that as held by the above said courts, a suit by one of the Trustees on behalf of the Trust, in the absence of any stipulation in the Trust Deed providing otherwise, it could be seen that such a suit would not be legally maintainable and all the Co-Trustees must join in filing the suit to recover possession of the property from the tenant, after the termination of the lease.

17. I am of the considered view that the Courts below have failed to follow the principles of law adumbrated in the above decisions in the right perspective and it could be seen that when the frame of the suit itself is not maintainable, the plaintiff would not be entitled to seek and obtain the reliefs sought for in the lease.

18. The learned counsel for the plaintiff contended that the defendants in the other incidental proceedings have laid the proceedings against the plaintiff Trust, rep. by its Manager, and the defendant having taken the initiative for seeking various reliefs by laying the proceedings against the Trust as such, now the defendant cannot turn around and contend that the suit filed by the Trust, rep. by its Manager, against him is not maintainable.

19. Countering the above contention, it is argued by the learned Senior counsel for the appellants that when the frame of the suit itself is not maintainable as per law, in the light of the above said decisions, the mere fact that the defendant has laid certain proceedings in the suit against the Trust, rep. by its Manager, by itself would not render the suit laid by the plaintiff legally maintainable and further it is contended that there cannot be any estoppel against the statute.

20. Such being the position, the argument put forth by the learned counsel for the plaintiff cannot be accepted. Insofar as this case is concerned, the suit has not been laid by the Trustees. It has been laid by the Manager representing the Trust. To show that the Manager is empowered to lay the suit on behalf of the Trust, no material is forthcoming. The Trust deed as seen earlier has not been produced. No reason has been adduced for the same. Further, it has also not been established that the Manager is empowered to lay the suit on behalf of the Trustees as per the provisions of the Indian Trust Act 1882. It could thus be seen that the plaintiff would not be entitled to seek any reliefs against the defendant for the reasons that the notice of termination of the tenancy has not been issued by the Trustees as contemplated under law and further the suit for possession has also not been laid by the Trustees as required under law. On the failure of the plaintiff to establish that the instrument of trust otherwise provides, following the above said decisions relied upon by the learned Senior counsel for the appellants, I hold that the suit filed by the Manager of the Trust and not by all the Trustees joining together is not maintainable. I further hold that the termination of notice issued by the Manager is not in accordance with the Indian Trust Act and invalid. Therefore, the substantial questions of law framed in this Second Appeal are answered against the respondent/plaintiff and in favour of the appellants.

21.The learned counsel for the respondents relied on the decision reported in 1997(1) CTC page 367(Hamsa Patel and two Others Vs. S.Balakrishnan and another). The above said decision, as rightly argued by the learned Senior Counsel for the appellants, would not be applicable to decide the substantial questions of law formulated for consideration in this Second Appeal.

22.The other decisions relied on by the learned counsel for the respondent reported in AIR 2013 Gujarat 58(Vasant Nature Cure Hospital and Pratibha Maternity Hospital Trust and Others Vs. Ukaji Kamaji and Others) also could be seen not applicable to the facts and circumstances of the case on hand. In this case, unlike the decision relied on, the trust has laid the suit, rep. by its Manager. No material placed to show that the Manger has been authorized to lay the suit. Further in the case covered in the above decision, all the trustees were subsequently joined as plaintiffs. However, in our case, the suit has not been laid by the trust, rep. by its trustee/trustees.

23.At the end, the judgment and decree of the Courts below are set aside and the suit filed by the plaintiff is dismissed. Accordingly, the Second Appeal is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1.The Principal Subordinate Judge,
Erode.

2.The Second Additional District Munsif,
Erode.

+2 cc's to Mr.P.Valliappan,advocate,sr.70467.

nm(co)
krd 5/1

S.A.No.220 of 2011