

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.04.2018

PRONOUNCED ON : 19.04.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.545 of 2004

R.Saravanan ... Appellant/2nd Appellant/3rd Defendant

Vs.

1. Pachaiyappan Trust,
rep. by its Secretary,
No.21, Harrington Road,
Chetpet, Chennai - 600 034.

... 1st Respondent/Respondent/Plaintiff

2. R.Chandran ... 2nd Respondent/1st Appellant/2nd Defendant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 31.10.2003 passed by the IIIrd Fast Track Court of the Additional District and Session Judge, Chennai in A.S.No.258/2002 confirming the judgment and decree dated 12.04.2000 of the Court of the IV Assistant Judge, City Civil Court, Chennai in O.S. No.1937/89.

For Appellant : Mr.J.Saravanel

For R1 : Mr.M.Devendran

For R2 : Given up

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 31.10.2003, passed in A.S.No.258/2002, on the file of the Additional District Judge, the IIIrd Fast Track Court, Chennai confirming the judgment and decree dated 12.04.2000, passed in O.S. No.1937/89, on the file of the IV Assistant Judge, City Civil Court, Chennai.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for possession.

4. The case of the plaintiff, in brief, is that the suit property belonged to Rajathi Ammal's estate and under the management of the Pachaiyappa's trust and the defendant is the tenant under the plaintiff in respect of the suit property on a monthly rent of Rs.200/- for residential purpose and the defendant is a chronic defaulter in the payment of monthly rents and failed and neglected to pay the rents for several months despite several demands and requests of the plaintiff and the plaintiff caused a legal notice on 01.10.1988 to the defendant, directing her to pay the arrears of rent and also by way of the said notice, terminated the tenancy ending 31.10.1988 and the said notice was acknowledged by the defendant and despite the same, failed to comply with the demands made thereunder and the plaintiff being the public trust, exempted from the provisions of the Tamil Nadu Buildings Lease and Rent Control Act 18 of 1960 as subsequently amended by Act 23 of 1973 and therefore, the plaintiff is entitled to file the suit for ejectment against the defendant as per the G.O.Ms.No.2000 Home Department, dated 16.08.1976 and hence the suit.

5. The case of the defendant, in brief, is that the suit is not maintainable either in law or on facts and it is true that the defendant is the tenant in respect of the suit property and it is false to state that the defendant is a chronic defaulter in payment of the rent and that the defendant had failed and neglected to pay the rent, despite several demands and requests of the plaintiff. To the knowledge of the defendant, no notice has been received by her alleged to have been sent by the plaintiff on 01.10.1988 and the suit is not maintainable for want of the statutory notice and there is no cause of action for the suit and the suit is liable to be dismissed.

6. In the additional written statement, a plea has been taken by the defendant that the frame of the suit is incorrect and the averments in the plaint reveal that the suit is claimed to be belonging to Rajathi Ammal's estate, however, the jural relationship between Rajathi Ammal's estate and Pachaiyappan's trust has not been explained in the plaint and no pleadings are made in the plaint as regards whether Rajathi Ammal's trust is the public trust and in the absence of the same, the suit is liable to be dismissed. Rajathi Ammal's estate being not a public trust is not entitled to lay the suit for ejectment against the defendant and hence, the suit is liable to be dismissed.

7. In support of the plaintiff's case PW1 has been examined, Exs.A1 to A3 were marked. On the side of the defendant, no oral and documentary evidence has been adduced.

8. On a consideration of the evidence adduced in the matter, oral and documentary and the submissions made, the Courts below were pleased to accept the plaintiff's case and granted the decree in favour of the plaintiff as prayed for. Impugning the same, the present second appeal has been preferred.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

" (i) Whether a legal entity which is not a public trust could assume the character of a public trust by the mere fact of its being managed by a public trust.

(ii) Whether a suitor could obtain a decree without establishing its locus standi merely on the basis of the defendant's failure to raise a specific plea in that regard."

10. The short point that arises for consideration in the second appeal is whether the suit laid by the plaintiff for ejectment is maintainable. The suit property is claimed to be belonging to Rajathi Ammal's trust. Further, according to the plaintiff, Rajathi Ammal's trust is under the management of Pachaiyappan's trust, the plaintiff and according to the plaintiff, inasmuch as the plaintiff, i.e., Pachaiyappan's trust being a public trust, is exempted from the provisions of the Tamil Nadu Buildings Lease and Rent Control Act 18 of 1960, subsequently as amended by Act 23 of 1973 and thus, the plaintiff is entitled to maintain the suit for ejectment by virtue of the G.O.Ms.No.2000 Home Department, dated 16.08.1976.

11. No doubt, in the abovesaid Government Order, the public trust has been exempted from the above mentioned Rent Control Act. However, the question remains whether Rajathi Ammal's trust, to whom the suit property is vested, is a public trust or not. Now, according to the plaintiff, the suit property only belongs to Rajathi Ammal's trust. However, the plaintiff Pachaiyappan's trust has laid the present suit on the footing that Rajathi Ammal's trust is under the management of the Pachaiyappan's trust, the plaintiff. The said fact has been disputed by the defendant in the additional written statement. The defendant has pleaded that Rajathi Ammal's trust is not a public trust and further, as there are no pleadings in the plaint as regards the entitlement of the plaintiff to maintain Rajathi Ammal's trust and also no evidence has been adduced with reference to the same, it is contended that the plaintiff having

failed to establish that Rajathi Ammal's trust is a public trust as envisaged under G.O.Ms.No.2000 Home Department, dated 16.08.1976, the plaintiff's suit for ejectment should fail and the only remedy available to the plaintiff is to invoke the provisions of the Rent Control Act above adverted to.

12. The plaintiff's case is sought to be based upon the evidence of PW1. However, during the course of his evidence, PW1 has marked only the DCB register extract marked as Ex.B3, for claiming that Rajathi Ammal's trust falls under the management of Pachaiyappan's trust. However, as rightly contended by the defendant's counsel, merely from Ex.B3 DCB register extract, we cannot safely conclude that Rajathi Ammal's trust is a public trust and that Rajathi Ammal's trust is under the management of the plaintiff Pachaiyappan's trust and thereby Rajathi Ammal's trust is also a public trust as envisaged under the abovementioned Government Order and in such view of the matter, it is found that Ex.B3 by itself would not be sufficient to hold that Rajathi Ammal's trust is a public trust as contemplated under the abovesaid Government Order. When a defence has been taken by the defendant that Rajathi Ammal's trust to whom the suit property is stated to be belonging to is not a public trust and when there are no pleadings in the plaint as to how Rajathi Ammal's trust had come under the management of the plaintiff Pachaiyappan's trust and further, no document is also forthcoming on the part of the plaintiff to hold that Rajathi Ammal's trust also is associated with the plaintiff Pachaiyappan's trust in one way or the other, on the sole basis of Ex.B3, it is found that the Courts below are not justified in upholding the maintainability of the suit as such, particularly, in the absence of any other evidence worth acceptance placed by the plaintiff in support of the suit.

13. In this connection, the defendant's counsel placed reliance upon the decision reported in 2009 (1) CTC 779 (Dhanasekaran Vs. The A.R.C.School Board, rep. by its Secretary, V.Balu) and from a reading of the abovesaid decision coupled with the G.O.Ms.No.2000 Home Department, dated 16.08.1976, as extracted in the abovesaid decision, it is found that by way of the abovesaid Government Order, the Government has exempted all the buildings owned by the Hindu, Christian and Muslim religious public trusts and charitable trust from the provisions of the Rent Control Act concerned and when the defence has been taken by the defendant that Rajathi Ammal's trust is not a public trust and not a public charitable trust as defined in the abovesaid Government Order and when there is no material on the part of the plaintiff to sustain that Rajathi Ammal's trust also falls under the abovesaid category of trust as envisaged under

the above said Government Order and further, when there is no material to hold that Rajathi Ammal's trust is under the management of the plaintiff Pachaiyappan's trust, on mere surmises and conjectures, without any proof, we cannot conclude safely that merely because Pachaiyappan's trust is a public trust, therefore Rajathi Ammal's trust also should be a public trust. In such view of the matter, it is found that unless and until the plaintiff establishes that Rajathi Ammal's trust also is a public trust and thereby, exempted from the purview of the Rent Control Act, the plaintiff cannot be allowed to seek the benefits of the exemptions provided under Sections 29 and 30 of the Rent Control Act as well as the G.O.Ms.No.2000 Home Department, dated 16.08.1976 and accordingly, it is found that the suit laid by the plaintiff should fail. The other decisions relied upon by the defendant's counsel in support of his contentions are reported in 2007 (2) CTC 127 (V.Kannadasan and others Vs. K.Swaminatha Pathar (died) and others) and 2010 (3) CTC 851 (B. Shaji Vs. Sree Pravaraswamy Devasthanam, rep. by its Hereditary Managing Trustee). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

14. In the light of the above discussions, the Courts below are not justified in upholding that Rajathi Ammal's trust is also a public trust, on the mere footing that the plaintiff Pachaiyappan's trust is a public trust sans any material pointing to the same and accordingly, the plaintiff for evicting the defendant, having failed to establish its locus standi in maintaining the civil suit for the same, on the basis of the G.O.Ms.No.2000 Home Department, dated 16.08.1976, merely because the defendant has not taken a specific plea in that regard by itself would not entitle the plaintiff to maintain the suit as such. The plaintiff having come forward with the suit for ejectment and for the maintainability of the suit seeking the benefits of the G.O.Ms.No.2000 Home Department, dated 16.08.1976, it is for the plaintiff to establish the same, particularly, when there is a dispute raised with reference to the same by the defendant. In such view of the matter, the substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendant.

15. For the reasons aforesaid, the judgment and decree dated 31.10.2003, passed in A.S.No.258/2002, on the file of the Additional District Judge, the IIIrd Fast Track Court, Chennai, confirming the judgment and decree dated 12.04.2000, passed in O.S. No.1937/89, on the file of the IV Assistant Judge, City

Civil Court, Chennai are set aside and the suit laid by the plaintiff in O.S.No.1937/89 is dismissed without costs. The second appeal is allowed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge,
the IIIrd Fast Track Court, Chennai.
2. The IV Assistant Judge, City Civil Court,
Chennai.
3. The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to Mr.M.Devendran, advocate sr.no.29112
+lcc to Mr.J.Saravanavel, Advocate sr.no.29119

S. A.No. 545 of 2004

nr 21/05/2018

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