

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 12.12.2018

DATED: 10.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A. No. 992 of 2000

And

C.R.P.No. 2252 of 2011

1. Appadurai Pillai (deceased)
.. Defendant/Respondent/Appellant
2. A.Andal
3. A.Jayakumar .. 2nd and 3rd Appellants.
4. Nithyakala
5. Banumathi
6. Jayanthi
7. Kasthuri
8. Anandhi .. 4th to 8th Appellants
(Appellants 2 to 8 are brought on record
as LRs of the deceased sole appellant
vide order of Court dated 01.12.2016
made in CMP Nos.14067/2004 and 19324/16
in S.A.No.992/2000)

Vs.

Kootha Pillai Family Estate Charity
rep. by its hereditary trustee

S.Arumugam

son of late G.Sivaprakasam

48, Rama Naicken Kulam Street

Vellipalayam

Nagapattinam Taluk ...Plaintiff/Appellant/Respondent

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 12/04/2000, made in A.S.No. 151 of 1999, on the file of the Principal Subordinate Court at Nagapattinam, reversing the Judgment and decree dated 05.03.1999, made in O.S.No. 135 of 1998 on the file of the District Munsif Court at Nagapattinam.

C.R.P.No. 2252 of 2011:

Koothapillai Family Trust
represented by its Trustee
S.Arumugam

... Petitioner/Respondent/Petitioner
Land Lord

Vs.

1. Andal ... 1st Respondent/Tenant

2. A.Jayakumar ... 7th Respondent//2nd Respondent

Civil Revision Petition filed under Section 25 of the Tamil Nadu Building Lease and Rent Control Act 1960 (as amended by Act 23/73 amended Act 1/1980) against the decree and Judgment of the learned Subordinate Judge, (Appellate Authority) Nagapattinam dated 03.07.2008 in R.C.A.No. 50 of 2007 reversing the decree and judgment of the learned Rent Controller - cum- District Munsif, Nagapattinam dated 31.08.2007 in R.C.O.P.No. 3 of 2004.

For Appellants in
S.A. No.992/2000
& Respondents in
C.R.P.No. 2252 of 2011 : Mr. Srinath Sridevan

For Respondent in
S.A.No. 992/2000 &
Petitioner in C.R.P.No. 2252
of 2011 : Ms. G.Devi
for Mr.V.Raghupathi

JUDGMENT and ORDER made in

S.A. No. 992 of 2000

And

C.R.P.No. 2252 of 2011

The defendant K.Appadurai Pillai in O.S.No. 135 of 1998 on the file of the District Munsif Court, Nagapattinam, is the appellant in S.A.No. 992 of 2000.

2. The suit had been filed by the plaintiff S.Arumugam, sole trustee, Kootha Pillai Family Estate Charity, Nagapattinam, for a Judgment and Decree declaring that the plaintiff is the only sole trustee of Kootha Pillai Family Estate Charity entitled to collect rent and take appropriate legal proceedings against the defendant in occupation of a house property belonging to the family trust and for a direction, directing the

defendant to pay the plaintiff the costs of the suit.

3. This suit came up for consideration before the learned District Munsif, Nagapattinam. On 05.03.1999, the suit was dismissed with costs. Thereafter, the plaintiff filed A.S.No. 151 of 1999 before the Sub Court, Nagapattinam. By Judgment dated 12.04.2000, the Appeal was allowed with costs. Challenging that Judgment, the defendant had filed the present Second Appeal.

4. The second appeal had been admitted on the following substantial questions of law:-

(a) Whether a suit for a bare declaration of right to receive rent is maintainable?;

(b) Whether a Will can be proved without examining the attesting witness, or attributing any reason therefore, or even examining a person who can depose as to the attestor's signature?; and

(c) Whether the proviso to Sec. 10(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act is not mandatory, and once a tenant's denial of a trustee's right is upheld as bonafide, whether the landlord can institute a suit for a bare declaration of his right to receive rent, without any further consequential relief?

5. Pending the appeal, the appellant died and his legal representatives were brought on record as appellants 2 to 8.

O.S.No. 135 of 1998: District Munsif Court, Nagapattinam:

6. The plaintiff S.Arumugam, sole trustee, Kootha Pillai Family Estate Charity, Nagapattinam, had filed the suit against the defendant K.Appadurai Pillai, seeking a Judgment and Decree to declare that the plaintiff is the only sole trustee of Kootha Pillai Family Estate Charity entitled to collect rent and take appropriate legal proceedings against the defendant in occupation of a house property belonging to the family trust and also to direct the defendant to pay the plaintiff the costs of the suit.

7. The suit property was land and building bearing Door No. 1, Thandavaraya Pillai Street, in Ward No.3, Block No.8, T.S.No. 749, measuring 932 sq.ft in Nagapattinam. According to the plaintiff, Kootha Pillai Family Estate Charity was founded by the ancestor of the present trustee. Disputes had arisen subsequently, relating to management of the trust. The matter was agitated till the High Court. Finally it ended in compromise in S.A.No. 60 of 1959. The compromise decree provided for management of the trust jointly by Soundaranayaki Ammal and Paramasivam Pillai. The other members of the family were also parties to the compromise decree. Soundaranayaki Ammal

relinquished her right and handed over management of the Dharmam to Paramasivam Pillai in writing on 04.03.1963. Paramasivam Pillai was in exclusive management from that day till his death on 07.06.1992. Soundaranayaki Ammal died on 16.01.1977 at Thanjavur. She did not interfere with the management of the trust by Paramasivam Pillai. She died issueless. Paramasivam Pillai was the younger brother of Sivaprakasam Pillai, father of the present trustee. Further, the maternal grandmother of the present trustee, by name Neelambal was the daughter of Kootha Pillai. Paramasivam Pillai had no male issues. He handed over the management of the trust to the plaintiff. He executed a registered Will on 18.04.1986. After his death on 07.06.1992, the plaintiff had taken over management of the trust and its properties. It was stated that the defendant was in occupation of the suit property at a rent of Rs.20/-. He did not pay the rents to Paramasivam Pillai. Paramasivam Pillai filed R.C.O.P.No. 44 of 1982 for eviction. The petition was allowed. The appeal was dismissed. However in C.R.P.No. 1478 of 1985, the High Court took the view that there was a dispute between Paramasivam Pillai and Soundaranayaki Ammal and consequently held that the default was not willful and observed that the tenant was also depositing the rent into Court.

8. It was stated in the plaint that the defendant was also not paying rent to the plaintiff. The defendant had filed an application before the Rent Controller, Nagapattinam in 1972 and was depositing the rent into Court in R.C.O.P.No. 60 of 1972. The plaintiff filed I.A.No. 63 of 1995 to substitute himself as trustee in the said petition. The Rent Controller however dismissed the petition. Thereafter, the plaintiff had filed a suit against the defendant to withdraw the rent deposited into Court. Though the suit was filed in the Original Side of this Court, it was transferred and taken on file by the Small Causes Court and numbered as S.C.No. 6 of 1996. But subsequently, the defendant filed an application challenging jurisdiction. The transfer application was dismissed and the plaint in S.C.No. 6 of 1996 was returned. The plaintiff then issued an Advocate notice to the defendant on 07.10.1996. The defendant by reply dated 24.10.1996 stated that there was a dispute regarding right to trusteeship. The plaintiff claimed that nobody has disputed his right to manage the family trust as trustee. It was stated that the defendant was aware that Soundaranayaki Ammal had relinquished her right in favour of Paramasivam Pillai. He was also aware of the will executed by Paramasivam Pillai. Consequently, the plaintiff filed the present suit seeking the relief as stated above.

9. The defendant filed a written statement stating that the plaintiff should have filed the suit for declaration of his trusteeship right. Without seeking such a relief, it was stated

that the plaintiff was not entitled to get the rental amount as sole trustee of the trust. It was stated that Paramasivam Pillai was only an associate trustee nominated by way of family arrangement. It was stated that all the descendants of Kootha Pillai should have been impleaded as parties. It was stated that the Judgment of the High Court which ended in compromise in S.A.No. 60 of 1959 was only a temporary arrangement. The parties had to get their rights declared in a properly framed suit. No such suit had been filed till date. It was further stated that Soundaranayaki Ammal issued a notice to the defendant not to pay rent to Paramasivam Pillai. Parallely Paramasivam Pillai also claimed right to collect rent. Under those circumstances the defendant was forced to file R.C.O.P.No. 60 of 1972 under Section 9 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960, seeking to deposit the rent into Court. It was stated that the letter of relinquishment by Soundaranayaki Ammal dated 04.03.1963 was a fabricated document. It was also stated that the Will dated 18.04.1986 executed by Paramasivam Pillai is invalid and unenforceable. It has to be proved in manner known to law. It was stated that in R.C.O.P.No. 44 of 1982, the Rent Controller held that there was no willful default in payment of rent but ordered eviction on the ground of denial of title and requirement for personal occupation. In R.C.A.No. 22 of 1984, the ground of personal occupation was held to be not bona fide but eviction was ordered on the ground of denial of title. Thereafter, C.R.P.No. 1478 of 1985 was filed and the High Court held that the defendant had not denied the title of the trust, but that a contention had been raised expressing doubt as to who was the actual landlord entitled to receive the rent. The plaintiff had filed I.A.No. 63 of 1995 to recognise him as trustee in R.C.O.P.No. 60 of 1972. That application was dismissed with a direction to seek such relief by way of a separate suit. It was stated that other descendants of the founder Kootha Pillai are alive. It was stated that the suit is bad for non joinder of the other trustees. It was finally stated that the suit should be dismissed.

10. On the basis of the above pleadings, the learned District Munsif, Nagapattinam, framed the following issues for trial:

- (a) Whether Paramasivam Pillai had right to execute a Will with respect to the properties of Kootha Pillai Family Trust?;
- (b) Whether the contention of the plaintiff that he alone is the sole trustee is correct?;
- (c) Whether the plaintiff is entitled for the declaration

sought in the plaint?;

(d) Whether the suit is bad for non joinder of necessary parties?;

(e) Whether the claim of the defendant that the suit had not been framed properly is correct?; and

(f) To what other reliefs are the parties entitled to?

11. During trial, the plaintiff examined himself as PW-1 and examined two other witnesses Thambaiah and Thavasi Muthu as PW-2 and PW-3. The plaintiff marked Exs, A-1 to A-37. The Will of Kootha Pillai dated 06.02.1904 was marked as Ex.A-1. The Judgment of the Madras High Court in S.A.No. 671 of 1959 dated 24.11.1961 was marked as Ex.A-2. The authorisation letter given by Soundaranayaki Ammal in favour of Paramasivam Pillai dated 04.03.1963 was marked as Ex.A-3. The Will of Paramasivam Pillai dated 18.04.1986 was marked as Ex.A-5. The records relating to E.P.No. 155 of 1980 in R.C.O.P.No. 45 of 1978 was marked as Ex.A-31. The order in I.A.No. 63 of 1995 in R.C.O.P.No. 60 of 1972 dated 11.12.1995 was marked as Ex.A-33. The Judgment in R.C.O.P.No. 30 of 1996 dated 13.2.1997 was marked as Ex.A-35. The copy of the advocate notice issued to the defendant dated 07.10.1996 was marked as Ex.A-36. The copy of the reply dated 24.10.1996 was marked as Ex.A-37.

12. On the side of the defendants, the defendant, Appadurai Pillai examined himself as DW-1. He marked Exs. B-1 to B-9. Ex.B-1 was the notice issued by Paramasivam Pillai dated 25.09.1972. Ex.B-2 was the advocate notice issued on behalf of Soundaranayaki Ammal dated 26.08.1972. The Judgment in R.C.O.P.No. 60 of 1972 dated 30.07.1973 was marked as Ex.B-4. The copy of the counter affidavit in R.C.O.P.No. 60 of 1972 filed by Soundaranayaki Ammal was marked as Ex.B-5. The copy of the counter filed by Paramasivam Pillai in R.C.O.P.No. 60 of 1972 was marked as Ex.B-6. The evidence of Paramasivam Pillai in R.C.O.P.No. 60 of 1972 was marked as Ex.B-7. The evidence of Paramasivam Pillai in R.C.O.P.No. 44 of 1982 was marked as Ex.B-8. The order in C.R.P.No. 1478 of 1985 dated 03.08.1991 was marked as Ex.B-9.

13. On the basis of the oral and documentary evidence, the learned District Munsif, Nagapattinam, observed that Ex.A-3, authorisation letter given by Soundaranayaki Ammal in favour of Paramasivam Pillai dated 04.03.1963 was not a registered document and had been written in a plain white paper. It was further observed that by the said letter Soundaranayaki Ammal had granted authorisation to Paramasivam Pillai to act on behalf of the trust and collect rent and maintain the Dharmams

of the trust. It was however found that the witness to the said document Thangaraj was not examined. As a matter of fact, it was observed that no evidence was let in whether Thangaraj was available or not. It was further observed that the appellant was originally paying rent to the Soundaranayaki Ammal and thereafter had received notices Exs. B-1 and B-2 from the Advocates of Soundaranayaki Ammal and Paramasivam Pillai calling upon him to pay rent to their respective clients. The reply given by the appellant herein to Soundaranayaki Ammal had been marked as Ex.B-3. Thereafter, he had filed R.C.O.P.No. 60 of 1972 under Section 9(3) of the Tamil Nadu Buildings (Lease and Rent Control Act) 1916 to deposit the rent into Court. He had impleaded both Soundaranayaki Ammal and Paramasivam Pillai as respondents. The appellant was permitted to deposit the monthly rent into Court. That order had been marked as Ex.B-4. It was found that even though compromise had been effected in S.A.No. 671 of 1959 by appointing Soundaranayaki Ammal as trustee for her life time and permitting Paramasivam Pillai to act as associate trustee, subsequently, disputes had arisen between two of them. Under these circumstances, Ex.A-3 was examined by the learned District Munsif. It was found that it had been written on 04.03.1963 about 9 years prior to institution of R.C.O.P.No. 60 of 1972 filed to deposit the rent into Court. The learned District Munsif wondered whether writing such a letter would have been possible particularly in view of the disputes in the year 1972 between Soundaranayaki Ammal and Paramasivam Pillai. It was stated that even Paramasivam Pillai had not mentioned about the said letter in Ex. B-1, notice issued to the appellant. It was also found that the said letter dated 04.03.1963 marked as Ex.A-3 had not been marked during the trial in R.C.O.P.No. 60 of 1972. The learned District Munsif gave a categorical finding that the said letter was a falsely created document. Thereafter, the learned District Munsif, examined the Will said to have been executed by Paramasivam Pillai bequeathing rights to the present respondent Arumugam. The Will was marked as Ex.A-5. It was found that Ex.A-3 authorisation letter was not mentioned in the Will. It was found that even according to the compromise effected in S.A.No. 671 of 1959 Soundaranayaki Ammal was appointed as trustee for her lifetime and Paramasivam Pillai had been appointed only as associate trustee to help her in discharging the office of trustee. However after her death, he had taken over the entire trust without any declaration being granted. It was also found that Paramasivam Pillai in his capacity as trustee of Koothapillai Family Trust filed R.C.O.P.No. 44 of 1982 against the present appellant for wilful default in payment of rent and denial of title and for bona fide requirement of the property. The RCOP was allowed only on the ground of denial of title and bona fide requirement of property and was dismissed on the ground of willful default rent. Thereafter the appellant herein

had filed R.C.A.No. 22 of 1984 before the Sub Court, Nagapattinam. The Appellate Authority found that no bona fide ground had been made to uphold requirement of the property and consequently granted eviction only on the ground of denial of title. Thereafter Civil Revision Petition was filed before the High Court. In the Civil Revision Petition, the High Court had observed that it cannot be said that the appellant herein had denied the title of the respondent. He had only expressed a doubt about the right of the present trustee to collect the rent. It was held that proclaiming such doubt cannot be construed as denial of title. The Civil Revision Petition was allowed and the eviction order was set aside.

14. Determining all these facts, the learned Principal District Munsif found that Paramasivam Pillai did not have any right and Arumugam, who claimed to have obtained right through the Will said to be executed by Paramasivam Pillai had not come forward to prove the Will in manner known to law. In view of all these findings, the learned District Munsif, Nagapattinam, dismissed the suit.

A.S.No. 151 of 1999, Sub Court, Nagapattinam:

15. The respondent herein then filed a first Appeal. By Judgment dated 12.04.2000, the learned First Appellate Judge confirmed the findings with respect to the letter of Soundaranayaki Ammal in Ex.A-3. However, it was found that Paramasivam Pillai had a right to execute the Will and that the present respondent Arumugam had obtained a right under the Will to proceed against the appellant herein in the capacity as landlord. It was also found that as a fact, the respondent had been managing the affairs of the trust even when Paramasivam Pillai was alive. It was also held that the suit was not bad for non-joinder of necessary parties, particularly, any other person, who claims right to the office of trusteeship. The Appeal was allowed and the Judgment and Decree of the trial Court was set aside.

S.A.No. 992 of 2000:-

16. Challenging the said Judgment, this Second Appeal had been filed. The appeal had been admitted on the following substantial questions of law:-

(a) Whether a suit for a bare declaration of right to receive rent is maintainable?;

(b) Whether a Will can be proved without examining the attesting witness, or attributing any reason therefore, or even examining a person who can depose as to the attestor's

signature?; and

(c) Whether the proviso to Sec. 10(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act is not mandatory, and once a tenant's denial of a trustee's right is upheld as bonafide, whether the landlord can institute a suit for a bare declaration of his right to receive rent, without any further consequential relief?

17. Mr.Srinath Sridevan, learned counsel for the appellant placed strong placed reliance on Section 34 of the Specific Relief Act and particularly on the proviso to section 34 and stated that when a plaintiff should have sought further relief then mere declaration and omits to do so then the Court cannot grant declaration of status or right. The learned counsel pointed out that the respondent herein should have first sought a declaration that he was a trustee and thereafter, consequent to such declaration, seek a further declaration for right to collect the rents.

18. In this connection, the learned counsel relied on the Judgment reported in 1969(2) SCC 590 in M.K.Rappai and others vs. John and Others. That was a Judgment under Section 42 of the old Specific Relief Act which is equivalent to Section 34 of the Specific Relief Act 1963. In that Judgment, it was held that a suit for bare declaration without seeking a relief for possession was not maintainable. The learned counsel also relied on the Judgment reported in (2012) 8 SCC 148 in Union of India (UOI) Vs. Ibrahim Uddin and others wherein also it was held that a Court can not pass any order of declaration or status of right when the plaintiff being able to seek further relief than a mere declaration of title omits to do so. The learned counsel also relied on the Judgment reported in (1996) 1 SCC 95 in Housing Board of Haryana V. Haryana Housing Board Employees' Union and others, wherein again the Supreme Court had held that a suit for mere declaration without seeking consequential relief of payment of compensation was not maintainable.

19. The learned counsel pointed out that the present respondent claimed right through the Will Ex.A-5. However, the said Will had not been proved in the manner known to law. In this connection, the learned counsel relied on (2017) 1 SCC 257, Ramesh Verma (d) tr. L.Rs. Vs. Lajesh Saxena (D) and others wherein the Supreme Court had reaffirmed the well established proposition that a Will has to be proved in accordance with the requirements stipulated in Section 63 of the Indian Succession Act and Section 68 of the Evidence Act. It was argued with much vehemence that unless a Will is proved in manner approved by law, no right can flow from it or be claimed through it.

20. The learned counsel insisted that the suit is bad for non-joinder of necessary parties and pointed out that the appellant had raised the issue of non-joinder even in the written statement. The learned counsel stated that there were other legal heirs entitled to act as trustees and their names had also been given by the appellant herein and the respondent should have obtained a declaration to act as trustee in their presence and thereafter sought a declaration seeking entitlement for collection of rent. Pointing out all these facts, the learned counsel insisted that the Judgment under Appeal should be interfered with.

21. On the other hand, Ms. G.Devi, learned counsel for the respondent pointed out that the appellant had been a tenant paying a pittance as rent at the rate of Rs.20/- per month for a property measuring more than 900 sq.ft. The learned counsel stated that the respondent had been functioning as trustee for the past over 30 years, discharging his duties in accordance with the terms of the trust deed. It was stated that the stipulated Dharmams have been carried out without any fault. However, the appellant herein, as tenant, had successfully protracted the proceedings by raising issues regarding the status of the respondent to act as trustee. It was pointed out that there was a compromise effected and recorded in the Second Appeal in the earlier round of litigation and the rights of Soundaranayaki Ammal and Paramasivam Pillai had been affirmed. It was stated that Soundaranayaki Ammal died without leaving any issues. Subsequently Paramasivam Pillai continued to act as trustee and thereafter had executed a Will under Ex.A-5 granting rights to the present respondent. The learned counsel stated that the first appellate Court had rightly found that the respondent had a right to collect rent and a separate declaration was not required. The learned counsel also relied on Section 34 of the Specific Relief Act and pointed out that the significant provision under Section 34 was the discretion of the Court to declare status or right to any property and that the plaintiff need not in such suit seek any further relief. The learned counsel insisted that the appeal should be dismissed.

22. I have carefully considered the arguments advanced by both the sides.

23. Even though the appellant herein was the defendant in O.S. No. 135 of 1998 and the respondent herein was the plaintiff in the said suit, for the sake of convenience, the parties will be referred as plaintiff and the defendant.

24. The plaintiff had been described in the cause title in

the suit is as follows:-

S.Arumugam,
Sole Trustee
Kootha Pillay Family Estate Charity
Nagapattinam ...Plaintiff

Vs.

K.Appathurai Pillay ... Defendant

25. It is evident that S.Arumugam had filed the suit on the assumption and assertion that he was the sole trustee of Kootha Pillai Family Trust. He claims such right as sole trustee in view of his stand that he has been functioning continuously as trustee and discharging the duties allotted as trustee for the past over 30 years. Obviously that could not give him any right to be declared as trustee. Voluntary self assumption to the post of trustee cannot be basis for getting legal recognition as trustee. If there are other claimants, either they must join together and affirm his position, or he must seek a declaration in their presence before a Court of competent jurisdiction. The other manner in which he claims such right is under a bequeath in a Will said to have been executed by Paramasivam Pillai, who claimed that he was a trustee. This Will had been produced as Ex.A-5. Paramasivam Pillai claimed to be a trustee on the strength of the Judgment in S.A.No. 671 of 1959. That Second Appeal arose from a suit relating to disputes among various branches/ legal heirs of the original founder Koothapillai. The parties in O.S.No. 57 of 1956 were related to each other. Each one individually claimed right to trusteeship. Finally in the Second Appeal, they entered into a compromise.

26. According to the compromise, which was accepted and recorded by this Court in Judgment dated 24.11.1961, the first defendant, Soundaranayaki Ammal was recognised to act as trustee for the future and the sixth plaintiff, Paramasivam Pillai, was permitted to act as associate trustee. An 'associate' trustee is strictly not a 'trustee'. It was also stated that the two trustee will be responsible for realisation of rents from the properties. It was also agreed among the parties that Soundaranayaki Ammal would function as trustee during her life time or till her rights are affected by any adjudication of competent Court. Paramasivam Pillai was recognised as having the right to be associated as trustee with Soundaranayaki Ammal in the conduct of charitable and in management. It was also agreed that such association by the associate trustee should be helpful and amicable without giving rise to friction between the two parties. It was also agreed that if any controversy arose

between the two, the matter should be referred for settlement to the executive officer of the Neelathakshi Amman Temple, Nagapattinam. Soundaranayaki Ammal died issueless. Paramasivam Pillai then took over the office as sole trustee. No Court of law had recognised him as such. The other trustees have also not come forward to recognise him as sole Trustee. Even during the life time of Soundaranayaki Ammal disputes had arisen between her and Paramasivam Pillai. This was to the disadvantage of the trust. The defendant herein, who was a tenant, filed R.C.O.P.No. 60 of 1972 under Section 9(3) of the Tamilnadu Buildings (Lease and Rent) Control Act 1960 to deposit the rent into Court, claiming that he did not know to whom to pay the rent. This situation came about since he was issued with legal notices from advocates on behalf of both Soundaranayaki Ammal and Paramasivam Pillai claiming individual and exclusive right to collect the rent and each advocate calling upon him to pay the rent only to their respective clients. There is no evidence to show that the disputes were referred to the Executive Officer of the Neelathakshi Amman Temple as agreed and as recorded in the Judgment in S.A.No. 671 of 1959. Even prior to this, Ex.A-3 came into existence wherein Soundaranayaki Ammal is said to have relinquished her rights and authorised Paramasivam Pillai to act as trustee. This letter was of the year 1963, but both the Courts below have found that it was not genuine document.

27. The facts narrated above reveal the following points:-

(1) Soundaranayaki Ammal was recognised as Trustee and Paramasivam Pillai was declared to be an associate trustee;

(2) Disputes arose between Soundaranayaki Ammal and Paramasivam Pillai leading to the defendant herein to file R.C.O.P.No. 60 of 1972 under Section 9(3) of the Act to deposit rent into Court;

(3) Soundaranayaki Ammal died issueless;

(4) Paramasivam Pillai took upon himself the right as trustee, without there being any declaration by any competent Court or atleast consent by other claimants;

(5) Paramasivam Pillai filed R.C.O.P.No. 60 of 1972 against the defendant seeking eviction on the ground of Willful default of rent, denial of title and bona fide requirement;

(6) The rent controller negatived the claim of the Willful default of rent. The appellate authority negatived the claim of bona fide requirement. In Civil Revision Petition, the High

Court negated the claim of denial of title and held that there was a genuine doubt regarding the right of Paramasivam Pillai to collect the rent. That doubt was never cleared;

(7) On the other hand Paramasivam Pillai executed a Will granting right to Arumugam, the present plaintiff to act as trustee; and

(8) Unfortunately, the said Will had not been proved in manner approved by law.

28. Ex.A-5 is the Will said to have been executed by Paramasivam Pillai. It had not been proved in the manner known to law. Proof of a Will in the manner known to law is stipulated under Section 63 of the Indian Succession Act and under Section 68 of the Indian Evidence Act.

29. Section 63 of the Indian Succession Act is as follows:-

"63. 63 Execution of unprivileged Wills.
-Every testator, not being a soldier employed in an expedition or engaged in actual warfare,¹² [or an airman so employed or engaged,] or a mariner at sea, shall execute his Will according to the following rules:-

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary."

30. Section 68 of the Indian Evidence Act is as follows:-

68. Proof of execution of document required by law to be attested.—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence: 1[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]

31. In (2017) 1 SCC 257 (Ramesh Verma (d) tr. L.Rs. Vs. Lajesh Saxena (D) and others, the Hon'ble Supreme Court has held as follows:-

"13. A Will like any other document is to be proved in terms of the provisions of Section 68 of the Indian Succession Act and the Evidence Act. The propounder of the Will is called upon to show by satisfactory evidence that the Will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the disposition and put his signature to the document on his own free will and the document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. This is the mandate of Section 68 of the Evidence Act and the position remains the same even in a case where the opposite party does not specifically deny the execution of the document in the written statement.

14. In Savithri v. Karthyayani Amma reported as (2007) 11 SCC 621 at page 629, this Court has held as under:-

"A Will like any other document is to be proved in terms of the provisions of the Succession Act and the Evidence Act. The onus of proving the Will is on the propounder. The testamentary capacity of the testator must also be established. Execution of the Will by the testator has to be proved. At least one attesting witness is required to be examined for the purpose of proving the execution of the Will. It is required to be shown that the Will has been signed by the testator with his free will and that at the relevant time he was in sound disposing state of mind and understood the nature and effect of the disposition. It is also required to be established that he has signed the Will in the presence of two witnesses who attested his signature in his presence or in the presence of each other. Only when there exists suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the Court before it can be accepted as genuine."

32. It is clear that since Ex.A5 had not been proved in manner known to law. No right can flow under Ex.A-5 to Arumugam, the present plaintiff. The relief sought in the plaint is as follows:- सत्यमेव जयते

"(i) declaring that the plaintiff is the only sole trustee of Kootha Pillay Family Estate Charity entitled to collect the rent and take appropriate legal proceedings against the defendant in occupation of a house property belonging to the Family Trust; and

(ii) directing the defendant to pay the plaintiff his costs of this suit."

33. The plaintiff had sought a declaration that he is the sole trustee entitled to collect rent. If the Court is to grant a decree that he is the sole trustee then the other possible contestants to the office of trusteeship should have been impleaded as parties. If the plaintiff is to assume that he is already the sole trustee then he can claim such assumption and right only under Ex.A-5 Will, which had not been proved in manner known to law. Either way the relief sought is couched in an ambiguous manner and cannot be granted.

34. Under Section 34 of the Specific Relief Act, the proviso stipulates that when a plaintiff has to seek a further declaration and omits to do so, then the Court cannot grant any relief or status.

35. In M.K.Rappai and others vs. John and Others reported in 1969(2) SCC 590, while discussing Section 42 of the Specific Relief Act which is equivalent to Section 34 of the Specific Relief Act 1963, the Hon'ble Supreme Court had held as follows:-

"12. If as we held that the appointment of new trustees falls within section 92 of the Code can it yet be said that the plaintiffs will be entitled to a bare declaration of their right to be appointed. In the first place, it will be granting them the right to be appointed which itself is the foundation of appointment. If the appointment fails within the vice of section 92 any decision giving them the right "to be appointed will be prejudging the question and will be an impediment as far as the defendants are concerned in questioning the right of the plaintiffs to be appointed as trustees. Secondly, it is well settled that if any matter is directly prohibited, the same cannot be achieved indirectly. The appointment of new trustees is prohibited' in the absence of the compliance with the provisions of section 92 of the Code. If a right is granted to the plaintiffs to be appointed as trustees it will amount to an indirect way of giving the plaintiffs the relief of the right to be appointed. It will be particularly so because the right will be res-inclusa and will, therefore, be res judicata. The right will not be open to be questioned in subsequent proceedings. Thirdly, if the appointment of new trustees cannot be

proceeded with in the absence of compliance with the provisions of section 92 of the Code and when a suit has been instituted by the plaintiffs for the self-same reliefs after compliance with section 92 of the Code it is all the more necessary that the entire question of appointment which presupposes as its foundation the right to be appointed should be gone into the newly instituted suit in 1965 to which reference is made earlier. Fourthly, a bare declaration of right will be within the mischief of section 42 of the Specific Relief Act, 1877 and section 34 of the Specific Relief Act, 1963."

36. In *Housing Board of Haryana V. Haryana Housing Board Employees' Union and others* reported in (1996) 1 SCC 95, relating to the proviso to Section 34 of the Specific Relief Act, the Supreme Court again held that "a suit for mere declaration without consequential relief is not maintainable".

37. In *Union of India (UOI) Vs. Ibrahim Uddin and others* reported in (2012) 8 SCC 148 once again dealing with Section 34 of the Specific Relief Act 1963 and the proviso therein, the Supreme Court held as follows:-

"43. The Section provides that courts have discretion as to declaration of status or right, however, it carves out an exception that a court shall not make any such declaration of status or right where the complainant, being able to seek further relief than a mere declaration of title, omits to do so.

44. In *Ram Saran & Anr. v. Smt. Ganga Devi*, AIR 1972 SC 2685, the Supreme Court had categorically held that the suit seeking for declaration of title of ownership but where possession is not sought, is hit by the proviso of Section 34 of Specific Relief Act, 1963 (hereinafter called 'Specific Relief Act') and, thus, not maintainable.

45. In *Vinay Krishna v. Keshav Chandra & Anr.*, AIR 1993 SC 957, the Supreme Court dealt with a similar issue where the plaintiff was not in exclusive

possession of property and had filed a suit seeking declaration of title of ownership. Similar view has been reiterated observing that "the suit was not maintainable, if barred by the proviso to Section 34 of the Specific Relief Act".

46. In view of above, the law becomes crystal clear that it is not permissible to claim the relief of declaration without seeking consequential relief. In the instant case, suit for declaration of title of ownership had been filed though, the plaintiff/respondent no. 1 was admittedly not in possession of the suit property. Thus, the suit was barred by the provision of Section 34 of the Specific Relief Act and, therefore, ought to have been dismissed solely on this ground. The High Court though framed a substantial question on this point but for unknown reasons did not consider it proper to decide the same."

38. In view of the above, the law is crystal clear that it is not permissible to claim the relief of declaration without seeking consequential relief.

39. In the instant case, the plaintiff had sought a declaration that he is the sole trustee entitled to collect rents. He should have impleaded all other members of the family, who are entitled to contest for the post of trustee. This aspect had also been pointed out by the defendant in the written statement itself and the names have also been given. Only when he is declared to be the trustee can the plaintiff seek a consequential right to collect the rent. He should have sought both the reliefs in one suit and should have impleaded all parties as defendants. However, having not done so, I hold the frame of the suit itself is bad.

40. In 2009 6 CTC 385 V.Chidambara Gounder v. Commissioner, HR & CE at para 14, it was held that "this Court opines that all individuals who are interested in the office of the trusteeship must be made necessary parties in the suit." This again reaffirms the legal position that all legal heirs of Koothapillai are necessary parties to the suit and non-joinder is fatal to the case of the plaintiff.

41. With respect to the first substantial question of law, I hold that the suit for bare declaration for right to receive rent is not maintainable without a declaration that the plaintiff is a sole trustee. With respect to the second substantial question of law, I hold that the Will has to be proved in the manner known to law and as stipulated under Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act. With respect to the third substantial questions of law, I hold that in C.R.P.No. 1478 of 1985, this Court had acknowledged the defendant's right to question the status of the trustee to claim right to collect rent. Then it is obligatory on the part of the trustee to seek a declaration that he is the sole trustee and independently seek a declaration of right to collect the rent.

42. In view of the above findings, I hold that the Second Appeal has to be allowed and accordingly is allowed, however in the circumstances without costs. The Judgment and Decree of the First Appellate Court in A.S.No. 151 of 1999 dated 12/04/2000 is set aside. The Judgment and Decree of the trial Court in O.S.No. 135 of 1998 dated 05.03.1999 is confirmed.

C.R.P.No. 2252 of 2011:

43. The Civil Revision Petition arises from R.C.O.P.No. 3 of 2004 filed by the petitioner herein seeking eviction of the respondent under Section 10(2)(i), (10)(2)(vii) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960. The trial Court / Rent Controller by Order dated 31.08.2007 had ordered eviction on the ground of willful default in the payment of rent. Thereafter, R.C.A.No. 50 of 2007 was filed before the Appellate Authority/Sub Judge, Nagapattinam. By Judgment dated 3/7/2008, the Appellate Authority allowed the Appeal and set aside the order in R.C.O.P.No. 3 of 2004. However, the only reason given for allowing the appeal was that S.A.No. 992 of 2000 was pending before this Court. Now that S.A.No. 992 of 2000 has been disposed of, finally the Judgment of the Appellate Authority has to be set aside and is accordingly set aside and the matter is remanded back to the Appellate Authority for fresh disposal in accordance with law.

44. I therefore hold that the Judgment of the Appellate Authority / Sub Judge, Nagapattinam in R.C.A.No. 50 of 2007 which had been passed only because the Second Appeal was pending has to be set aside and that the matter has to be remanded back to the Appellate Authority (Sub Judge), Nagapattinam, for fresh disposal of R.C.A.No. 50 of 2007 in manner known to law. The Appellate Authority/Sub Judge, Nagapattinam, is directed to rehear R.C.A.No. 50 of 2007 in the

light of the Judgment in the Second Appeal and pass final Judgment within a period of three months from the date of receipt of this Judgment copy. The Civil Revision Petition is allowed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vsg

To

1. The Principal Subordinate Judge,
Nagapattinam.
2. The District Munsif,
Nagapattinam.
3. The Subordinate Judge, (Appellate Authority)
Nagapattinam.
4. Rent Controller - cum- District Munsif,
Nagapattinam.
5. The Section Officer, V.R.Section,
High Court, Madras.

+1 cc to Mr.V.Raghupathi, Advocate, Sr.No. 2941
+1 cc to Mr.Srinath Sridevan, Advocate, Sr.No. 3445

Judgment & Order
made in
S.A. No. 992 of 2000
And
C.R.P.No. 2252 of 2011

CSL/03.05.2019

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