

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 17.06.2019

Judgment Pronounced on : 28.06.2019

CORAM : THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

S.A.No.543 of 2008
and M.P.No.1 of 2008

V.Lakshamma (Died)
1.V.Munirathinam

V.Narayana Chetty (Died)

2.V.Sanjeevi (Died)
3.S.Sathish

... Appellants /Appellants / Defendants 2 & 4
(3rd Appellant brought on record as L.Rs of the deceased
2nd appellant vide order of Court dated 03.8.2018
made in CMP.No.13369 to 13371/2018 in SA.No.543/2008)

Vs

Bysani Madhava Chetti's Charity Fund
A Public Religious and Charitable Trust,
Having its office at No.377, Mint Street,
Madras - 79.
Rep. by its Trustees

1.C.Venkatachalam
2.P.Ilayalwar
3.M.Bashakarlu
4.P.S.Bashyam
5.B.Krishna
6.P.V.Sudama
7.Sharadha Krishnan
8.Y.Alwar
9.V.R.Bakthavatchalam
10.K.K.A.Venkatachari

.. Respondents / Respondents / Plaintiffs

Prayer : Second Appeal filed under Section 100 of CPC against the judgment and decree dated 21.07.2007 in A.S.No.353 of 2006 on the file of Additional District Judge, Fast Track Court-V, Chennai, in confirming the judgment and decree for possession dated 17.02.2005 in O.S.No.8104 of 1994 on the file of V Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.N.Jayabalan

For Respondents : Mr.M.Devendran [R1 to R5]
(No Appearance)

Mr.Vijayakumar [R8 & R9]
R6, R7 & R10 - No Appearance

JUDGMENT

The present appeal is preferred by the defendants, who have lost successively before the Courts below in a suit for their eviction from the suit property.

2. The plaintiff claims the first plaintiff is a public charitable Trust, that the defendants were its lessees of its building since 04-11-1993, that Vide G.O.Ms.No.2000 (Home), dated 16.08.1976 passed in terms of Sec.29 of the Tamil Nadu Buildings(Lease and Rent Control) Act, 1960, the buildings it owned are exempted from the ambit of the said Act, that the Secretary of the plaintiff-Trust had issued a notice (Ext.A1) on the defendants terminating the lease granted to them, that the suit for delivery of possession of the leased-property became necessary when the first defendant refused to deliver property when he raised untenable contentions in his reply dated 22.11.1993, marked as Ext.A3.

3. In his written statement, the first defendant took up the following contentions:

- Plaintiff's character as a Public Religious and Charitable Trust is denied. The first defendant contended in his written statement that G.O.Ms. No. 2000 (Home), dated 16.08.1976 would not apply to the suit property, and that if at all the plaintiff requires his eviction, it needs to proceed under Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.
- Earlier the plaintiff had issued a notice in Ext.B.1, dated 03.10.1993 demanding fabulously a higher sum as rent which it later withdrew Vide Ext.B2, dated 15.10.1993 and hence the eviction now sought is motivated.

4. The point that came up for consideration before the Courts below was whether the plaintiff is a Charitable Trust. To understand the same, both the Courts below relied on Ext.A5, the Rules and Regulations of the plaintiff Society, and has held point in the affirmative, and then proceeded to hold that the suit property plaintiff is one to which exemption granted under G.O.Ms. No. 2000 (Home), dated 16.08.1976 from the application of the Tamil Nadu Buildings (Lease & Rent Control) Act 1960, would apply and decreed the suit successively. This is in challenge now.

5. Appeal is yet to be admitted.

6. Learned counsel for the appellants argued that according to the first plaintiff, the suit property belonged to the public charitable Trust, and is constituted under the name, 'Bysani Madhva Chetty's Charity Fund', but, there is hardly any material to indicate that the property belonged to the said Trust. When the Trust was later constituted into a Society and Rules were framed as seen in Ext.A5, yet there is no material to show that the Trust, before it assumed the character of a Society, actually owned the suit property. Secondly, as per the by-law 33 and 34, only the Secretary to the Society can maintain a Suit but, the present suit is filed by all the trustees of the Trust. This would imply that the suit itself is not maintainable. Reliance was placed by the learned counsel for the appellants in V.Chandrasekaran & Others Vs. Venkatanaicker Trust and Others [2017(1) CTC 56].

7. Per contra, the learned counsel for the respondent would argue that the issue of locus standi in maintaining the suit is raised for the first time only before this Court. Appropriately, the Courts below have not framed any issue touching upon it. This apart, the Secretary, who according to the arguments of the appellants' counsel, alone is competent to maintain the Suit is concerned, the Secretary of the Society himself is a trustee and he is very much in the party array alongside other trustees. In other words, he who had to maintain the suit is there in the party array, and as for the presence of the other trustees, if the Courts were to consider that only the Secretary can maintain the Suit, then, the presence of other trustees can well be treated a superfluous addition in the party array. On facts, the ratio in the case of Chandrasekaran Vs. Venkatanaicker Trust [2017 (1) CTC 56] would not apply to the facts of this case.

8. Turning to the second part, namely, whether G.O.Ms.No.2000, Home, dated 16.08.1976 would apply to the plaintiff is concerned, apart from the statement of objectors, in Ext.A5, wherein, the various charitable aspects of the Trust is highlighted, and that the plaintiff has produced Exts.A6 to A19, wherein the specific objects for which the Trust has spent its money is also indicated. When once the charitable angle of the Trust is established then, G.O.Ms.No.2000, Home, dated 16.08.1976 automatically invites itself to grant exemption to the plaintiff Trust.

9.1 On the point of maintainability of the suit, this Court finds that it is an improvement attempted in the second appellate stage. The learned counsel for the respondents has contended that inasmuch as the Secretary of the Trust, which now functions as a registered Society, is a party along with other trustees, the plaintiffs cannot be non-suited. This Court is in agreement with this contention. Turning to Chandrasekaran Vs. Venkatanaicker Trust [2017 (1) CTC 56], the

authority cited by the appellant, on facts it is not a case where, in a suit that was laid, the person competent to institute a suit has not joined the plaintiff to institute the suit either. This is not the case here. Necessarily the first point fails.

9.2 Turning to the second point on the interpretation of Ext.A5, whether the property of the part of Trust property is concerned, the primary line of defence taken up in the written statement by the appellants/defendants is that the suit property does not belong to the charitable Trust, and that they could be evicted only under the provisions of Tamil Nadu Buildings (Lease & Rent Control) Act 1960. In other words, they did not dispute that the plaintiffs are not the lessors of the property, but only say that the property is not an endowed property for charitable purposes. This is belied by Ext.A5. Ext.A5 is a printed book of the Memorandum of the Association of the plaintiff Society. It also has printed the Certificate of Incorporation of the plaintiff-Society as No.20/1891-92 as the Society under "An Act for the Registration of Literary Scientific and Charitable Societies 1860". Having accepted the plaintiff as the defendants are nowir lessor, the defendants are now under a burden to demonstrate that the suit property is governed by the Tamil Nadu Buildings (Lease & Rent Control) Act 1960. Here, this Court sees nothing on record to rebut the inference that Ext.A5 strongly suggests. This apart the plaintiffs also have produced Exts.A6 to A19, all of which show the contribution made by the plaintiff Society to various Trusts. The contributions to charity as evidenced by Exts.A6 to A19 only goes to strengthen the plaintiff's case that the plaintiff Society is not a sham Society on paper, but a functional charitable Society. The finding on it is a question of fact, and it has been decided concurrently by both the Courts below and this Court does not spot any perversity in their finding. Necessarily on this point too, defendants fail.

10. In conclusion, there is no merit in the appeal and hence it is dismissed. The judgment and decree dated 21.07.2007 in A.S.No.353 of 2006 on the file of Additional District Judge, Fast Track Court-V, Chennai, confirming the judgment and decree for possession dated 17.02.2005 in O.S.No.8104 of 1994 on the file of V Assistant Judge, City Civil Court, Chennai, is hereby confirmed. The appellant is granted four months time to vacate the premises. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

To:

1. The Additional District Judge
Fast Track Court No.V
Chennai.

2. The V Assistant Judge
City Civil Court
Chennai.

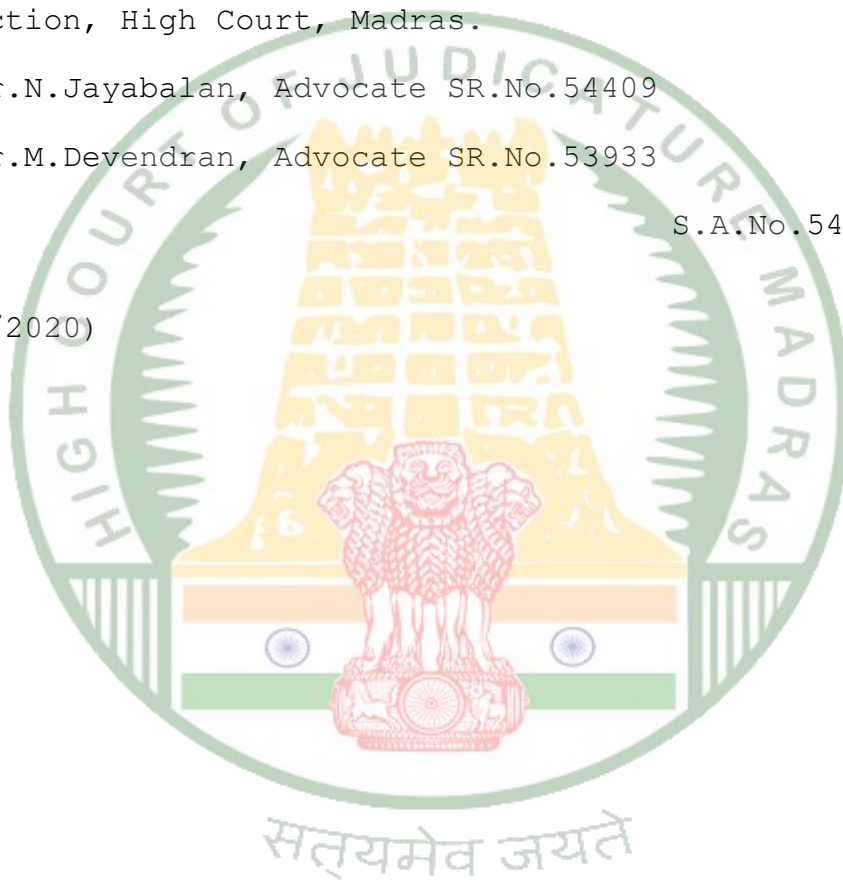
3. The Section Officer
VR Section, High Court, Madras.

+1cc to Mr.N.Jayabalan, Advocate SR.No.54409

+1cc to Mr.M.Devendran, Advocate SR.No.53933

S.A.No.543 of 2008

SPD(CO)
GMY(10/01/2020)



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