

IN HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2019

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

O.S.A.No.416 of 2018
and
C.M.P.No.18840 of 2018

M/s. Sri Matha Trust
Represented by its Founder
& Managing Trustee
Mr.V.Krishnamoorthy, Cancer Institute
East Canal Bank Road, Gandhi Nagar,
Adayar, Chennai - 600 020. ... Appellant/1st Defendant

vs.

1.M/s. Cancer Institute (WIA)
A Registered Society,
Represented by its Secretary,
Dr.A.V.Lakshmanan, Gandhi Nagar,
Adayar, Chennai - 600 020. ... 1st Respondent/Plaintiff

2.M/s. Rajasthani Association TamilNadu,
Old No.128, (New No.220),
N.S.C.Bose Road, Golden Complex,
4th Floor, Chennai-600 079. ... 2nd Respondent/2nd Respondent

(The 2nd respondent is given up in this
appeal since he was remained exparte in the
suit)

PRAYER: Original Side Appeal is filed under Order XXXVI Rule 1
of O.S.Rules r/w Clause 15 of Letters Patent, to set aside the
Decree and Judgment dated 28.04.2018 made in C.S.No.184 of 2014
on the file of the High Court of Judicature at Madras.

C.S.No. 184 of 2014:Plaint has been filed under IV Rule1 of
O.S.Rules read with order VII, Rule 1 code of Civil Procedure
(a) Direct the 1st Defendant to vacate and handover vacant

possession of the Suit property viz., the dharmasala, morefully described in the schedule hereunder, to the Plaintiff;

(b) Directing the 1st Defendant to pay a sum of Rs. 5,00,000/- Per month towards damages for use and occupation from the date of the suit, till the date of decree and thereafter at the same rate till the 1st Defendant vacates and hands over vacant possession of the suit schedule property to the plaintiff.

(C) Directing the 1st defendant to pay the costs of the suit.

For Appellant : Mr.M.V.Venkataseshan

For 1st Respondent

Caveator : Mr.P.B.Balaji

J U D G M E N T

(Judgment of the Court was delivered by C.SARAVANAN,J.)

The present appeal is directed against the Judgment and decree dated 28.04.2018 passed by the Learned Single Judge in C.S. No. 184 of 2014.

2. By the impugned Judgment and decree, the learned Single Judge has directed the appellant to hand over the vacant possession of the suit property within a period of three months from the date of receipt of the copy of the Judgment and Decree i.e. On 28.07.2018 and in case, the appellant fails to vacate the same within the aforesaid period, the appellant was held liable pay a sum of Rs.5,00,000/ as damages to the respondent.

3.The demand for 5 lakhs per month from the date of the suit was also justified on the ground that the total built-up area was 17,720 sq.ft constructed on a land area of 7665 sq.ft and that the value of the land was not less than Rupees 2.50 crores to 3 crores per ground.

4.The appellant is aggrieved by the Judgment and decree passed by the Learned Single Judge decreeing the suit by directing the appellant to vacate the premises on or before 28.07.2018 and in the event of failure to vacate the same, to pay additionally a compensation by way of damages of 5 lakhs.

5.Respondent is the owner of building consisting of ground floor and 3 floors, measuring 7665 sq.ft and having a total built up area of 17,720 sq.ft on a land that was leased out to the Respondent by the Government of Tamilnadu. The building was built by the second respondent M/s. Rajasthani Association Tamilnadu out of contribution of its members. It was built for running a dharmasala the purpose of providing free shelter and food to the patients and their attenders who visit 1st respondent's hospital for treatment.

6.The running of Dharmasala was originally to be entrusted to the Kanchi Kama kotti Peetam in the year 2000. Thereafter, the then Sankarachairar appears to have prevailed upon the first respondent to hand over the day to day running and operation of the Dharmasala to the appellant trust for providing free food and shelter to the patients of the respondent and attenders of patient from donations received from the general public.

7. In this connection, a Memorandum of Understanding was signed between the respondent Cancer Institute (WIA), the appellant Sri Matha Trust, and Sri Kanchi Kama kotti Peetam. The said document was filed as Ex.P2.

8. Ex.P2 Memorandum of Understanding states that Mohan Devi Hirachand Nahar Rajasthani Dharmasala (Dharmasala) was built by Respondent Cancer Institute in May 2000 with donations from the members of the second respondent Rajasthani Association Tamilnadu.

9. It is states that the respondent Cancer Institute (WIA) was not able to attend day to day management and maintenance of the Dharmasala and thus the Secretary and the Trustees of the appellant were deputed by Sri Jagadguru Sankarachariar Swamigal of Kanchi Kama kotti Peetam to undertake the responsibility.

10.Thus, the appellant was allowed to run Dharmasala for providing free food and shelter to the patients of the respondent and their relatives. The appellant was permissive occupant.

11. However, it appears that the trustee of the appellant was acting against the interest of the first respondent by setting up another hospital for cancer patients and was diverting the donations and patients coming to the respondent Cancer Institute.

12.Therefore, the first respondent/plaintiff vide Ex.A1 dated 27.02.2012, terminated the association with the appellant gave three months' notice to vacate the premises namely the Dharmasala.

13.Since the appellant did not vacate the premises and hand over the vacant possession C.S.No.184 of 2014 was filed by the first respondent/plaintiff.

14.In the said suit the second respondent M/s. Rajasthani Association Tamil Nadu was impleaded as a second defendant by way of abundant caution. The second respondent Rajasthani Association, Tamilnadu did not file their written statement and was set-exparte on 19.12.2014.

15.The learned Single Judge framed following five issues:-

- a) Whether the Respondent/plaintiff is entitled to recover possession of the suit property from the appellant?
- b) Whether the appellant/ 1st defendant is a permissive occupant of the suit property?
- c) Whether the Respondent/Plaintiff is entitled to damages for use and occupation from the Appellant/1st Defendant and if so at what rates?
- d) Whether the suit is bad for non-joinder of proper and necessary parties vis., KanchiMatam and other donors?
- e) To what reliefs are the parties entitled to?

16. The respondent marked the following documents as exhibits and its Secretary deprived evidence as PW.1:-

Sr.No	Date	Description of Documents	Exhibit
1	10.10.1967	Certificate of registration (true Xerox Copy)	P1
2	---	Memorandum of Association of the Plaintiff society (Printed booklet)	P2
3	27.12.2012	Letter - copy with A/d card (Original)	P3
4	17.09.2013	Receipt (true Xerox copy)	P4
5	04.10.2013	Letter - copy	P5
6	04.12.2013	Lawyer's notice - copy	P6
7	30.12.2013	Reply notice - original	P7

17. The appellant marked the following documents and examined its Trustee as DW1:-

LIST OF DOCUMENTS

- 1) Letter of Respondent dated 05.09.2002 - Copy
- 2) Letter of the 2nd defendant dated 29.01.2003 - Copy
- 3) Letter of the applicant dated 06.09.2012 - Copy
- 4) Letter of the first respondent dated 21.09.2012 - Copy
- 5) Letter of the applicant dated 15.12.2012 - Copy
- 6) Letter of the applicant dated 12.03.2013 - Office copy

- 7) Letter of the applicant dated 01.05.2013 - Copy
- 8) Auditors Statement of the respondent's society dated 31.08.2013 - Office copy along with original receipt.
- 9) Letter of the Kanchi Mutt dated 18.04.2015 - Copy

18.As far as issue Nos.1 and 2 is concerned, the learned Judge observed as follows:-

29.The Executive Committee has been vested with the responsibility to purchase and lease properties and with entering into contacts on behalf of the Institute. With respect to administration it had been stated that there shall be 3 Directors, one each for Administration, Research and Clinical. The Secretary shall maintain books and minutes of proceedings. In effect, the Bye-laws or the Memorandum of Association when drafted and approved, never contemplated a situation where there would be a necessity to institute a suit. The only provision regarding institution of suit is that the Secretary shall sue and be sued on behalf of the Institutes.

30.Section 20 of the Tamil Nadu Societies Registration Act relates to legal proceedings initiated by or against Registered Societies. It is as follows:

"20. Legal proceedings by or against registered societies.

(1) The committee or any officer of the registered society authorised in this behalf by its bye-laws may bring or defend or cause to be brought or defended any action or other legal proceeding touching or concerning any property right or claim.

1. Any action or other legal proceeding shall not abate or be discontinued by the death, resignation or removal from office of any officer of the registered society".

36.It was hoped that Sri Matha Trust would continue this association with the Cancer Institute on a permanent basis. It was also finally provided that if the Mutt desires to discontinue the association, it shall give 3 month's notice of its intention to the Institute. Likewise in the event the Institute sought to discontinue the association it shall give 3 month's

notice to Sri Matha Trust.

19. In the para 48 the Learned Single Judge observed as follows:-

48.It is seen that the charge of the plaintiff that there had been personal benefit gained by D.W.1 is established by the admissions of D.W.1 in cross examination. The evidence of D.W.1 is clear that the 1st defendant is actually interested in also projecting Sri Matha Cancer Care. This will be to the detriment of the 1st defendant Trust. It is obvious that the charge patients are diverted from the 1st defendant Trust to the Sri matha Cancer Care which functions from the residence of D.W.1 is also very probably true. These acts of the 1st defendant indicate that they have violated the terms of the memorandum of understanding.

20. As far as issue Nos.3, 4 and 5 are concerned, the Learned Single Judge has held as under:-

50.Issue No 3: The 1st defendant is running the Dharmasala with the help of donations. However they have started a parallel trust by name Sri Matha Cancer Care. This act has to be condemned. However it is seen that the patients who are given treatment by the plaintiff are given shelter and care by the 1st defendant. I hold that the issue of damages would arise only if there had been loss to the plaintiff, owing to refusal to comply with notice to vacate. In the present case, even if the 1st defendant had complied with the notice, the charitable nature of the work would have been continued albeit by another organisation. The fact that the entire Institute is running on the basis of Charity, should be kept in mind. This would naturally mean that even if any other organisation takes over the running of Dharmasala, it would only be purely on Charitable basis. The plaintiff never had any intention of making profits. Consequently, the issue of damages would not arise to that extent. However the 1st defendant would be liable to pay damages if he fails to vacate within the time period given by this Court, namely 3 months. The amount of damages payable shall be Rs.5,00,000/-. That is the value claimed by the plaintiff and there is no reason to differ from the same. The issue is answered accordingly.

51.Issue No.4: The kanchi Kamakodi Mutt only facilitated an agreement between the plaintiff and the 1st defendant, which culminated in the memorandum of understanding. There is no evidence either on the side of the plaintiff or on the side of the defendants that the Mutt continued to play an active role in the functioning of the Dharmasal or in its maintenance. They are not even members of the Governing Boady of the plaintiff. They merely facilitated the association between the plaintiff and the 1st defendant. That could not be a reason to drag them to any litigation between the plaintiff and the 1st defendant. Consequently, I hold that they were neither a necessary nor a proper party to the lis. This issue is answered against the 1st defendant.

52.Issue No.5: In view of the discussions stated above, the plaintiff is entitled to recover possession of the suit schedule property from the 1st defendant. The suit is decreed except with respect to the relief of damages, which shall be payable only as stated in Issue No.3. The plaintiff is entitled for costs of the suit. Time for eviction is 3 months.

21. Primary and principal allegation of the first respondent against a appellant was that the appellant was a permissive occupant of the building for running Dhramasala and had no right to remain if the first respondent did not wish to retain the appellants service.

22. Further, according to the first respondent the trustee of the appellant not only started misusing the donations received but had also started a parallel cancer hospital and was diverting the patients visiting the first respondent to the hospital started by its trustee and making unjust profits misusing the name of the first respondent and its founders.

23. It was under these circumstances the need arose to terminate the Ex.P2 Memorandum of Understanding between the appellant. In letter dated 27.12.2012 marked as Ex.P.1, the appellant was called upon to handover vacant possession on or before 01.04.2013.

24. The appellant tried to negotiate with the respondent which failed. Thereafter, vide Exhibit P.6 dated 04.12.2013 another notice was sent calling upon the appellant to vacate the premises and in the event of failure to vacate the premises, the appellant was to terms to pay for damages.

25. By a reply dated 30.12.2015 (Exhibit P7), the appellant

questioned the authority of the first respondent.

26. The appeal has been filed questioning the impugned judgement and decree primarily on the ground that Kanchi Kama Kotti Peetam who was a party to the Memorandum of understanding vide Ex.P2 pursuant to which the appellant was given the task of running a Dharmasala in the first respondent's hospital was not a party to the proceeding and therefore the suit was liable to fail on account of non-joinder of parties.

27. The governing body namely the Executive Committee of the first respondent had permitted the appellant to occupy the suit property. Thereafter, pursuant to resolution passed on 22.12.2014, a decision was taken to file suit against the appellant. The Learned Single Judge has found that the appellant was running a parallel trust under the name and style of Messers Sri Matha Cancer Care as was admitted by DW1.

28. The plea of the appellant that the suit was filed without the approval of the governing body of the respondent cannot be countenanced. The learned single judge has dealt with this issue by holding that "when an information is conveyed to the governing body, and there is no demur then it would only indicate that the Governing Body has acceded to such decision to institute the suit. The negative possibility can never be presumed. The Governing Body was informed that a suit was to be instituted. They did not protest. The Secretary proceeded to institute the suit. He cannot be faulted. The plaintiff cannot be non-suited on this ground."

29. Even otherwise, the appellant cannot question the internal decision of the 1st respondent to institute a suit against the appellant as it is an internal affairs of the 1st respondent. As long as the said decision has not been questioned by the governing body of the first respondent itself, the Appellant who is a permissive occupant can have no say in the said decision of the governing body of the first respondent. The appellant could only raise question legally of the decision as to whether the notice asking the appellant to vacate was justified.

30. We are also not impressed with the submissions of the appellant that said Kanchi Kama Kotti Peetam was not a party to the suit, the suit was to fail on account of non-joinder of parties. Kanchi Kama Kotti Peetam merely facilitated the Appellant to approach the respondent pursuant to which Memorandum of understanding Ex.P2 was executed. Merely, Kanchi Kama Kotti Peetam was not a party to the suit does not mean, the suit was to fail on account of judgment and decree.

31. We are convinced that there were sufficient reasons to ask the appellant to vacate the premises as he was engaged in

activities which was in conflict with the objects of 1st respondent/Cancer Institute (WIA). We do not find any reason to interfere with the said finding of the learned Single Judge. Consequently, the present appeal is liable to be dismissed.

32. In view of the above reasons, we are inclined to dismiss the appeal. The appellant has already over stayed at the property and had the advantage of carrying on the activities during the pendency of the suit.

33. Consequently, we direct the appellant to vacate the premises within four weeks from the date of receipt of a copy of this order. The amount of Rs.5,00,000/- awarded by the learned Single Judge is also upheld and should be paid immediately to the 1st respondent failing which the appellant will be liable to pay a sum of Rs.5,00,000/- p.m as prayed for in the suit till the date of vacating of the premises.

34. The 1st respondent may take appropriate steps to enforce the Judgment and decree dated 28.04.2018 of the learned Single Judge as affirmed by this order.

35. The Original Side Appeal stands dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

jen

To

The Sub Assistant Registrar,
OS.Section,
High Court, Madras.

+1cc to Mr. P.B.Ramanujam, Advocate, S.R.No. 23575

O.S.A.No.416 of 2018
and
C.M.P.No.18840 of 2018

PA (CO)
GN (11/06/2019)