

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	09/12/2019
Delivered on	03/01/2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.Nos.840 & 841 of 2014 & M.P.Nos.1 & 1 of 2015
S.A.No.101 of 2017 & C.M.P.No.2019 of 2017

V.Sreenivasagam ... Appellant/Appellant/Defendant in
all Second Appeals

Versus

Vannia Community Development Trust,
Rep. by its Manging Trustee,
N.V.Boopalan,
S/o.N.Venkatesan,
No.61, Vealachery Main Road,
Velachery,
Chennai - 600 042. ... Respondent/Respondent/Plaintiff in
all Second Appeals

Prayers in S.A.Nos.840 & 841 of 2014: Second Appeals filed under Section 100 of Civil Procedure Code against the Judgments and Decrees in A.S.Nos.235 & 236 of 2012, dated 25.02.2014, on the file of the III Additional Judge City Civil Court, Chennai, confirming the Judgments and Decrees made in O.S.Nos.7109 & 7108 of 2007, dated 09.12.2011, on the file of the III Assistant Judge City Civil Court, Chennai.

Prayer in S.A.No.101 of 2017: Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree in A.S.No.284 of 2015, dated 05.11.2016, on the file of the XV Additional Judge City Civil Court, Chennai, confirming the Judgment and Decree made in O.S.No.9458 of 2006, dated 27.07.2015, on the file of IV Assistant Judge City Civil Court, Chennai.

For Appellant in
all Second Appeals : Mr.G.Jeremiah

For Respondent in
all Second Appeals : Mr.S.Senthilnathan

C O M M O N J U D G M E N T

The unsuccessful tenant is the appellant in these appeals. Three suits in O.S.Nos.9458 of 2006, 7108 & 7109 of 2007, were instituted against the appellant for delivery of vacant possession of the suit properties.

2. According to the plaintiff, the plaintiff Trust was originally constituted on 15.12.1993 and the same was reconstituted by another deed on 24.02.1995. Mr.N.V.Boopalan was functioning as Managing Trustee of the plaintiff-Trust, since 02.01.1998. It is the further case of the plaintiff that the defendant is a tenant in respect of the suit schedule properties. The premises were let out for non-residential purpose on a monthly rent, but they committed default from May 2015. Therefore, notice dated 04.05.2006 were issued against the defendant to vacate the premises, by 30.06.2006 and hand over possession. Though the defendant acknowledged the receipt, but no reply was sent, nor possession was handed over to the plaintiff.

3. The suit was resisted by the defendant contending that the lease agreement, dated 02.03.2005 was for a period of 10 years. Apart from advance amount, they were paying rent regularly, but no receipt was given by the plaintiff. It is further alleged that the plaintiff Trust had occupied the Government land and after receiving the notice from the Tahsildar, Guindy Taluk, under Section 6 of Tamil Nadu Land Encroachment Act, dated 20.10.2005, the defendant approached the plaintiff for repayment of the advance amount, totally a sum of Rs.5,35,000/-, but it was not returned. Hence, the defendant lodged a complaint with the Tamil Nadu Legal Services Authority, but the plaintiff did not appear before the concerned Forum for about 8 hearings and prayed for dismissal of the suits.

4. On the basis of the pleadings, the Trial Court framed necessary issues and the parties had let in oral and documentary evidence. Upon consideration of the evidence, the Trial Court decreed the suits. On appeal, the findings were confirmed by the Appellate Court. Hence, these Second Appeals.

5. The first two Second Appeals were admitted on the following substantial questions of law:-

"1. Whether the Courts below have failed to note that a suit for recovery of possession of a trust property by a single trustee is not maintainable?

2. Whether the judgment and decree of the Court below are sustainable in law in view of the prohibition contained in Sections 47 and 48 of the Indian Trusts Act?

6. S.A.No.101 of 2017 came to be admitted on the following substantial questions of law.

"1. Whether the Courts below are correct in law in having failed to note that a suit for recovery of possession of a trust property by a single trustee was not maintainable?

2. Whether the judgment and decree of the Court below are sustainable in law in view of the prohibition contained in Section 47 of the Indian Trusts Act?"

7. Mr.G.Jeremiah, learned counsel, representing Mr.P.Chandrasekar, learned counsel for the appellant would urge that there is no proper description in the plaint whether the plaintiff is Public Trust or Private Trust and hence, the defendant was not in a position to state anything about the Trust in the written statement. It is further contended that the Civil Suits were filed only by the Managing Trustee and when the other Trustees did not join with the Managing Trustee, the suits filed by the Managing Trustee are not maintainable. In support of the above contentions, the learned counsel has cited the following decisions:-

(i) AIR 1963 SC 309 [Abdul Kayum vs. Mulla Alibhai]

(ii) AIR 1973 Guj 113 [Atmaram Rachhodbhai vs. Gulamhusein Gulam Mohiyaddin]

(iii) AIR 1974 Calcutta 16 [Abdul Rahman vs. Sm.Angur Bala Manna and Anr.]

8. Per contra Mr.S.Senthilnathan, learned counsel appearing on behalf of the respondent would contend that the Indian Trust Act is applicable only to the Private Trust, which is evident from the preamble of the Act itself. It is the contention of the learned counsel that the trust deed marked as Ex.A1 would show that the plaintiff is the Public Trust, but there was no whisper in the written statement about the maintainability of the suit. So, it may not be proper for the defendant, who is admittedly a defaulter in payment of rent since 2005, to question the maintainability of the suit at the appellate stage. He further added that when the lease agreement was signed only by the Managing Trustee, the tenant is now estopped from raising the

maintainability of the suit. It is the submission of the learned counsel that on hyper technical ground the plaintiff cannot be non suited. In support of the above contention, the decision reported in 2005 (1) SCC 457 [Thayarammal v. Kanakammal] is relied upon.

9. Heard the rival submissions and perused the materials available on record.

10. Before going into the merits of the matter, this Court is now considering the decisions relied on by the learned counsels.

i) In AIR 1963 SC 309 (supra), a question arose before the Apex Court that whether a Trust created for governing, managing, administering the affairs of a School can form a Society subsequently for the purpose of running the School. In that context, the Hon'ble Apex Court has held as follows:

"16. There cannot, in our opinion, be any doubt about the correctness of the legal position that 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 except 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 a trustee and against delegation of his functions by a trustee are embodied, in respect of trusts to which the Indian Trusts Act applies, in ss. 46 and 47 of that Act. These sections run thus :-

'46. A trustee who has accepted the trust cannot afterwards renounce it except (a) with the permission of a principal Civil Court of Original Jurisdiction, or (b) if the beneficiary is competent to contract, with his consent, or (c) by virtue of a special power in the instrument of trust.

47. A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless (a) the instrument of trust so provides, or (b) the delegation is in

the regular course of business, or (c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation.'

ii) The Full Bench of Gujarat High Court in AIR 1973 Gujarat 113 (supra) has observed that one co-trustee has no right or authority to initiate proceedings in determining tenancy, but if it is pursuant to the decision of all Trustees or if the instrument of the trust provides so, it is valid. The excerpt would run thus:-

"8. It is, therefore, clear that one co-trustee cannot given notice to quire determining the tenancy. The decision to determine the tenancy by giving notice to quire must be taken by all co-trustees unless, of course, the instrument of trust otherwise provides, or the benefaction being competent to the contract consent, or it any particular case 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-trustee, 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 quire 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 quire given in such a case would be a notice given when the sanction and approval of all the co-trustees and would be clearly a notice given by all co-trustees."

iii) In AIR 1974 Calcutta 16 (supra), a suit was instituted by the Trustee for declaration of his tenancy right based on the settlement made by the Managing Trustee. The trust deed was not produced. The Calcutta High Court having found that the lease / settlement was made without the consent of the other Trustees, dismissed the suit.

11. In the decisions cited by the learned counsel for the respondent.

i) in (2005) 1 SCC 457 (supra), the Hon'ble Supreme Court has held that the Indian Trust Act, has clear by its preamble and contentions is applicable only to Private Trusts and not to Public Trusts and the relevant paragraph is extracted hereunder:-

"15. The contents of the stone inscription clearly indicate that the owner has dedicated the property for use as 'Dharamchatra' meaning a resting place for the

travelers and pilgrims visiting the Thyagraja Temple. Such a dedication in the strict legal sense is neither a 'gift' as understood in the Transfer of Property Act which requires an acceptance by the donee of the property donated nor it is a 'trust'. The Indian Trusts Act as clear by its Preamble and contents is applicable only to private trusts and not to public trusts. A dedication by a Hindu for religious or charitable purposes is neither a 'gift' nor a 'trust' in the strict legal sense. [See: BK Mukherjea on Hindu Law of Religious and Charitable Trusts, fifth Edition by AC Sen pages 102 103]"

ii) The Allahabad High Court in 2007 (1) ARC 824 [Warron Halliburn and Ors. vs. The XIIIth Additional District and Sessions Judge] has observed that a co-trustee is like a co-owner of a joint family, who can maintain a suit for the beneficiaries of the Trust. Paragraph No.19 would run thus:-

"19. There is yet another aspect of the case. A co-trustee acts like a co-owner to carry out the objects of the trust for the benefits of the beneficiaries of the trust. It is now an acknowledged legal position that co-owner can institute a suit for eviction against a tenant, without impleading other co-owners. A co-owner in such suit is acting as agent on behalf of other co-owners, unless the other co-owners expressly dissent with the co-owner (plaintiff). The same principle can be extended in the case of trust also.

12. The only issue that arise for consideration is whether the suits instituted by the Trust represented by the Managing Trustee alone is maintainable.

13. In the matter on hand, it is not in dispute that the respondent-Trust is the owner of the suit properties and the appellant was inducted as the tenant and the building is now being used for non residential purpose. Admittedly, the tenant is not paying rent from May 2005. The learned counsel for the appellant submitted that in view of the order passed in the Second Appeals, the tenant is depositing the rent and there is no arrears as on date. However, indisputably rent was not being paid regularly to the landlord as per the lease agreement.

14. It is the case of the respondent that the Managing Trustee alone had entered into the lease agreement with the tenant and the submission is not disputed by the appellant

herein. The trust deed was marked as Exs.A1. In the trust deed, it has been stated that the Managing Trustee shall be the custodian of the title deeds, records and other documents relating to the transactions and other matters of the Trust and he shall be in charge of the movable and immovable properties and things belonging to the Trust.

15. During the course of argument, the learned counsel for the appellant submitted that the Public Trust is not a juristic person and hence, the suits ought to have been filed by all the Trustees. I find no substance in the said contention, for the reason that this Court in M/s.Abraham Memorial Vs. C.Suresh Babu [2012 (5) CTC 203], has held that the Trust is a juristic person and it can sue and it can be sued. It is pertinent to note that Section 48 of the Trust Act provides embargo for filing a suit by one co-trustee, however it will be valid if the instrument of Trust provides so.

16. In the case of hand, it is explicit from the trust deed that the Managing Trustee shall be in charge of the movable and immovable properties and things belonging to the Trust. Therefore, as the custodian of the Trust property, the Managing Trustee is entitled to take action against the erring tenant to safeguard the interest of the beneficiaries of the Trust. It is to be noted that Section 116 of the Indian Evidence Act makes it very clear that during the subsistence of the tenancy, the tenant is estopped from questioning the title of the landlord. A perusal of the records would reveal that the tenant, who examined himself as DW1 has admitted in his evidence that after receiving notice from the Tahsildar, he disputed the title of the landlord and stopped paying rent to the Trust from May 2005.

17. It may be true that the Trust would have constructed the superstructure on the land belonging to the Government. For which, a notice might have been issued by the revenue authority. It was a dispute only between the Trust and the Government, in which, the tenant has nothing to say. It is further seen from the records that the tenant filed a criminal complaint against the Trustees and the complaint was quashed by the High Court. It is relevant to note that the proceedings initiated by the Trust represented by the Managing Trustee is not questioned by any of the Trustees so far.

18. In similar circumstances, the High Court of Allahabad in 2007 (1) ARC 824 (supra) has held in paragraph 32 as follows:-

"It is admitted case of the petitioners-tenant that they have not paid any rent since December 1972. A notice of demand and termination of tenancy was served

29.08.1974. In this view of the matter, the ground for eviction of the petitioners was made out and the decree of the Court below can be sustained on this ground alone."

19. Mr.G.Jeremiah, learned counsel for the appellant has drawn the attention of this Court to the decision reported in AIR 1963 Supreme Court 309 in support of his contention that the Indian Trust Act is also applicable to the public or private religious or charitable endowments. The Hon'ble Apex Court in the subsequent decision reported in 2005 (1) SCC 457 has categorically held that the Indian Trust Act is applicable only to the Private Trust and not the Public Trust. So with great respect, this Court is not able to follow the decision reported in AIR 1963 Supreme Court 309. The other judgments cited by the learned counsel are distinguishable on facts and they do not advance the case of the appellant.

20. In the light of the above facts, this Court is of the opinion that the suits instituted by the Trust represented by the Managing Trustee are maintainable. In such view, the questions of law are answered against the appellant. In fine, the second appeals fail and they are dismissed with costs. Consequently, connected applications are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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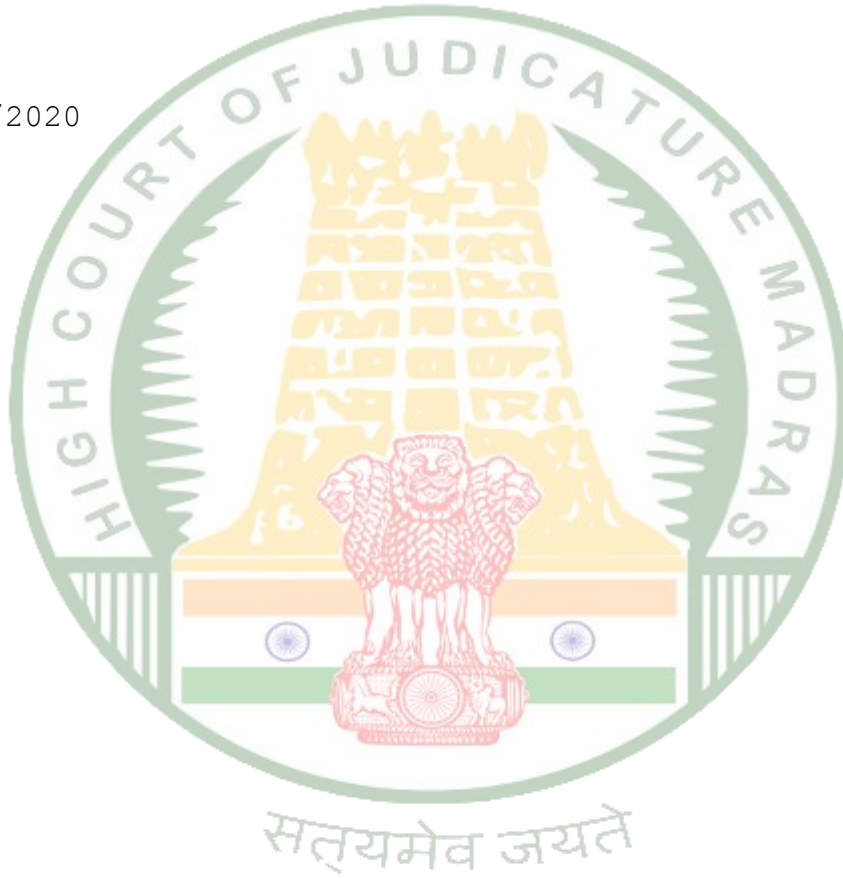
1. The III Additional Judge, City Civil Court,
Chennai.
2. The XV Additional Judge,
City Civil Court, Chennai.
3. The III Assistant Judge City Civil Court,
Chennai.

4.The IV Assistant Judge,
City Civil Court, Chennai.

+3cc to Mr.P.Chandrasekaran, Advocate SR.1154 to 1156
+3cc to Mr.S.Senthil Nathan, Advocate Sr.542 to 544

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