IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	08.07.2021
PRONOUNCED ON	03.08.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

S.A.No.732 of 2012
and
M.P.No.1 of 2012
(Through Video Conferencing)

M/s.Jayant Cycle & Motor Co.,
Jayantilal - Proprietor,
No.1, Thatha Muthiappan Street, 6,
(Old No.14, Davidson Street),
Chennai - 600 001. ...Appellant/Appellant/Defendant

Vs.

The Arcot Lutheran Church,
Represented by the Secretary
of the Church Board,
No.9, A.L.C. Complex, Cuddalore.
...Respondent/Respondent/Plaintiff

This Second Appeal filed under Section 100 of the Code of the Civil Procedure, against the Judgment and Decree dated 04.11.2011 in A.S.No.444 of 2010 on the file of II Additional City Civil Court, Chennai confirming the Judgment and Decree of the XVIII Assistant City Civil Court, Chennai dated 03.03.2010 in O.S.No.2451 of 2008.

For Appellant : M/s.Shah and Shah

For Respondent : Mr.Srinath Sridevan

J U D G M E N T

This Second Appeal has been filed by the unsuccessful defendant against the impugned Judgment and Decree dated 04.11.2011 passed by II Additional City Civil Court (hereinafter referred to as First Appellate Court) in A.S.No.444 of 2010.

2. By the impugned Judgment and Decree, the First Appellate Court has dismissed the appeal in A.S.No.444 of 2010 filed by the appellant against Judgment and Decree dated 03.03.2010 passed by the XVIII Additional Judge, City Civil Court (hereinafter referred to as Trial Court) in O.S.No.2451 of 2008 .

3. The respondent herein had leased out a property to the appellant. The respondent had filed O.S.No.2451 of 2008 against the appellant to deliver vacant possession of the suit schedule property under Section 9 of CPC read with Order VII Rule I of CPC.

4. In the said suit, the appellant had set up a defence that the respondent was a mere society registered under the provisions of the Tamil Nadu Societies Registration Act, 1975 and was not a Public Religious Trust within the meaning of G.O.Ms.No.2000, (Home) dated 16.08.1976 and therefore the suit was without jurisdiction.

5. It was therefore argued that the eviction proceedings ought to have been initiated against the appellant only under the Provisions of the erstwhile ''Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as exemption under G.O.Ms.No.2000 (Home) dated 16.08.1976 was not applicable to the respondent.

6. Before the Trial Court, the respondent marked Exs.A1 to A5 and examined one Samuvel Paulraj, the Secretary of the respondent as P.W.1. The proprietor of the respondent Jayanthilal filed Exs.B1 to B7 and examined himself as D.W.1. The Trial Court framed the following three issues:

i. Whether the plaintiff is entitled to the delivery of possession of the suit property?
ii. Whether the plaintiff is entitled to the damages as claimed in the plaint?
iii. To what other relief is the plaintiff entitled to?

7.The Trail Court concluded that the respondent was a Religious Charitable Trust and therefore was exempted from initiating the proceedings under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The Trial Court placed reliance on the Ex.B5 Byelaws of the respondent to conclude that the activity of the respondent was a charitable in nature and therefore exempt in terms of the G.O.Ms.No.2000, (Home) dated 16.08.1976.

8.The First Appellate Court re-affirmed the aforesaid conclusion of the Trial Court in the impugned Judgment and Decree dated 14.11.2011. The First Appellate Court has also extracted the objects of the respondent from Ex.A4 (Byelaws and Constitution of Lutheran Church) which reads as under:-

a) To endeavor to work towards the spiritual growth of the Church;
b) To gather the members into congregation for worship and for preaching the word of God and

administering the sacraments.

c) To instruct the children and young people on the fundamentals of Christian faith.
d) To establish and administer Schools, Training Institutes, Colleges, Polytechnics and other Educational Institutions for the benefit of the under privileged especially the poor and needy among Christians and non-Christians irrespective of caste, creed, community or any other consideration.
e) To establish and administer Hostels, Boarding Homes, Destitute Homes, Poor People's Homes and also institutions for promoting Non-formal Education, Adult Education and Continuing Education and the benefit of all these shall be available to those in need, irrespective of caste, creed or community.
f) To establish and administer hospitals and other medical institutions, caring for the sick, without profit motive and also maintain preventive medical work, especially among the hill tribes and most backward people in the rural areas to serve the poor and the destitute without any consideration of caste, creed or community.
g) To preach the Gospel to Christians and non-Christians alike and
h) To help the Church to become financially self-supporting and to take the responsibility for the wider ministry in India through various institutions, such as the Bible Society, the Leprosy Mission, the National Council of churches in India, churches Auxiliary for Social Action, Medical Institutions in India and abroad, etc.

9. Thus, there is a concurrent finding recorded both by the Trial Court and the First Appellate Court that the respondent was a Public Religious and Charitable Trust and therefore the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 was not applicable to it.

10. The First Appellate Court has further concluded that in Page No.27 (7)(C) of Exhibit A4 Byelaws of the respondent, it is stated that the Secretary to the Respondent's Church shall be examined the Executive Officer of the Church Board and he shall sue and be sued on behalf of the respondent Church. It was therefore concluded in the impugned Judgment and Decree that the Secretary of the Church Board of the respondent church was empowered to file the suit on behalf of the respondent.

11. On behalf of the appellant, it was argued that

G.O.Ms.No.2000, (Home) dated 16.08.1976 replaced G.O.Ms.No.1998, (Home) dated 12.08.1974. There was departure in G.O.Ms.No.2000 (Home) dated 16.08.1976 by revoking the exemption given to Charitable Institution under G.O.Ms.No.1998 (Home) dated 12.08.1974 by restricting the exemption to only charitable trust ie. public charitable trust and religious public trust and not to religious institution.

12. Defending the impugned Judgment and Decree, the learned counsel for the respondent/plaintiff submits that the respondent was a Religious Charitable Trust under Section 6 of the Indian Trusts Act, 1882.

13. He submits that in view of the specific language under Section 6 of the aforesaid Indian Trusts Act, 1882 and considering the objects of the respondent society, the respondent society has to be held only as a Public Religious and Charitable Trust and therefore the suit filed before the Trial Court in O.S.No.2451 of 2008 was maintainable.

14. The learned counsel for the respondent relied on the following decisions:-

i. Govindsamy and Others Vs. Gowthiya Sangham, 2007 (5) CTC 136

ii. Rajan Devasahayam Vs. Hindustan Bible Institute of India, (1996) 1 L.W.533.

iii. Vijayakumar Vs. Roman Catholic Church, (2001) 2 L.W.736.

15. I have heard the learned counsel for the appellant and the learned counsel for the respondent. I have perused impugned Judgment and Decree and the Exhibits marked before the Trial Court. Both the G.O.Ms have been issued under Section 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. A reading of G.O.Ms.No.2000 (Home) dated 16.08.1976 indicates that G.O.Ms.No.1998 (Home)dated 12.08.1974 has been expressly revoked.

16. The substantial question of law that falls for consideration in this appeal is whether the respondent was a “Religious Public Trust” or a “Public Charitable Trust”?; and whether the leased building belonged to such a Religious Public Trusts or a Public Charitable Trusts? If so, whether respondent was exempted under G.O.Ms.No.2000, (Home) dated 16.08.1976 and therefore outside the purview of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960?

17. The Trial Court and the First Appellate Court have concluded that the respondent was a Christian Religious Public Trust within the meaning of G.O.Ms.No.2000, (Home) dated 16.08.1976 and therefore the respondent was exempted from

initiating proceedings to evict the appellant under the special dispention and in the above Act.

18. For coming to the above conclusion, both the Trial Court and the First Appellate Court have referred to Ex.A4, Byelaws and Constitution of the respondent Church which indicates that the nature of activities undertaken by then are in charitable and nature.

19.G.O.Ms.No.1998,(Home) dated12.08.1974 and G.O.Ms.No.2000, (Home) dated 16.08.1976 issued under Section 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 read as under:-

G.O.Ms.No.1998 (Home) dated 12.08.1974	G.O.Ms.No.2000 (Home) dated 16.08.1976
No. II (2)/HO/3811/74— In exercise of the powers conferred by Section 29 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Tamil Nadu Act XVIII of 1960) the Governor of Tamil Nadu hereby exempts all the buildings owned by, the Hindu, Christian and Muslim religious trusts and Charitable Institutions from all provisions of the said Act.	“No. II (2)/HO/452076— In exercise of the powers conferred by Section 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Tamil Nadu Act XVIII of 1960), and in supersession of the Home Department Notification No. II(2)/ HO/38/3811/74, dated the 12th August, 1974, published at page 444 of Part-II, Section 2 of the Tamil Nadu Government Gazette, dated the 21st August 1974, the Governor of Tamil Nadu hereby exempts all the buildings owned by the Hindu, Christian and Muslim religious public trusts and public charitable trusts from all the provisions of the said Act.

20. Thus, exemption under G.O.Ms.No.1998, (Home) dated 12.08.1974 to all the buildings owned by, the Hindu, Christian and Muslim religious trusts and Charitable Institutions from all provisions of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Tamil Nadu Act XVIII of 1960) was substituted by G.O.Ms.No.2000 (Home) dated 16.08.1976 and confined to all the buildings owned by the Hindu, Christian and Muslim Religious Public Trusts and Public Charitable Trusts alone.

21. Only all the buildings owned by the Hindu, Christian and Muslim Religious Public Trusts and Public Charitable Trusts were exempted from all the provisions of the Tamil Nadu Buildings

(Lease and Rent Control) Act, 1960 (Tamil Nadu Act XVIII of 1960).

22. From reading of the above notification in G.O.Ms.No.2000 (Home), dated 16.08.1976 issued under Section 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, it is evident that exemption applies only to all the building owned by Hindu, Christian, Muslim Religious Public Trusts and/or Public Charitable Trusts alone.

23. The expression used is "Religious Public Trust" and "Public Charitable Trust". In law, there is a specific connotation when the expression "Trust" is used. A Trust is different from an "Institution" though both may have charitable objects and may be involved in religious and charitable activities.

24. Even under Section 12 of the Income Tax Act, 1961, any voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purpose, shall be deemed to be income derived from property held under trust or institution wholly for charitable or religious purpose. Thus, there is a distinction between a trust and an institution.

25. It is to be remembered that a trust is created when the author of the trust indicates with reasonable certainly by any words or acts (a) an intention on his part to create thereby a trust, (b)expresses the purpose of the trust, (c) the beneficiary, and (d) the trust-property, and (unless the trust is declared by will or the author of the trust is himself to be the trustee) transfers the trust property to the trustee.

26. To be an instrument of trust, there should be at least two parties, namely, settler on the one hand and the trustees on the other hand apart from the beneficiaries who benefit indirectly from instrument of trust as held by the Hon'ble Supreme Court in C.I.T Vs. Kamla Town Trust, AIR 1996 SC 620 : (1996) 7 SCC 349.

27. The subject of trust must be a property transferable to the beneficiaries. It must not be beneficiary under the subsisting trust. Further, as per Section 3 of the Indian Trust Act, 1882, a trust is an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner.

28. As per Section 5 of the Indian Trust Act, 1882, no trust in relation to immovable property is valid unless declared by a

non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee. The respondent has not proved that it satisfies the above requirement. Even as per plaint the respondent was merely a society registered under the provisions of the Tamil Nadu Societies Registration Act, 1975.

29. The respondent may be a religious institution created/registered only for the charitable or for religious purpose under the Tamil Nadu Societies Registration Act. It cannot however be called as a "Religious Public Trusts" (Hindu, Christian & Muslim) or a "Public Charitable Trust" for the purpose of G.O.Ms.No.2000, Home, dated 16.08.1976.

30. In my view, both the Trial Court and the First Appellate Court have committed an error in holding that the respondent was a religious public charitable trust merely based on a reading of Clause from Ex.A4, By-Laws and Constitution of the respondent Church.

31. The substantial questions of law are therefore answered against the respondent by holding that it is merely a religious institution with charitable objects. The respondent is neither a "religious public charitable trust" nor a "public charitable trust" for the purpose of Tamil Nadu Buildings (Lease and Rent Control)Act, 1960 under G.O.Ms.No.2000,(Home) dated 16.08.1976.

32.The suit instituted before the Trial Court was therefore without jurisdiction. It was therefore incumbent on the part of the respondent to institute only rent control proceeding under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 to evict the appellant instead of instituting a civil suit.

33. In the light of the above conclusion, this appeal filed by the appellant deserves to be allowed and the substantial questions of law are answered in favour of the appellant. This Second Appeal is allowed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar,
   The XVIII Assistant City Civil Court,
   Chennai.

2. The Registrar,
   The II Additional City Civil Court,
   Chennai.

Copy To

The Section Officer,
V.R.Section,
Madras High Court.

+1cc to M/s.Shah & Shah, Advocate, S.R.No.38323

+1cc to Mr.Srinath Sridevan, Advocate, S.R.No.37657

S.A.No.732 of 2012
and
M.P.No.1 of 2012

PVS(CO)
RGA(10/12/2021)