



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 09.07.2021

PRONOUNCED ON : 25 .11.2021

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

SA(MD).No.410 of 2021

(Through Video Conferencing)

N.Manimuthu

Appellant

Vs

1.The Periyar Self Respect Propaganda Institution
by its Secretary K.Veeramani, through his
Power Agent Seetharaman, Chennai-7

2.Sorimuthu

Respondents

Prayer:- This Second Appeal has been filed, under Section 100 of CPC, against the judgement and decree, dated, 03.03.2021, passed in AS.No.8 of 2020, by the Sub Judge, Pattukottai, confirming the judgement and decree, dated, 03.01.2020, passed in OS.No.67 of 2002, by the District Munsif, Pattukottai.

For Appellant : Mr.Babu Rajendran

JUDGEMENT

1.The unsuccessful 1st Defendant, who lost his case before both the courts below, has filed this Second Appeal, against the judgement and decree, dated, 03.03.2021, passed in AS.No.8 of 2020, by the Sub Judge, Pattukottai, confirming the judgement and decree, dated, 03.01.2020, passed in OS.No.67 of 2002, by the District Munsif, Pattukottai.

2.The case of the Plaintiff is that the Plaintiff is a registered Society and the suit property belonged to the Plaintiff, which has been doing services for the community both in respect of self-respect and also regarding public charitable services and running colleges, schools and homes for orphans and widows, etc. Initially, the father of the 1st Defendant was a tenant in the suit property and after his demise, the 1st Defendant is the tenant and now the monthly rent is Rs.425/-. The suit building is in a dilapidated condition. In order to get better income, by
https://hcservices.tn.courts.gov.in/hcservices/ placing up a new construction, by demolishing the old structure,

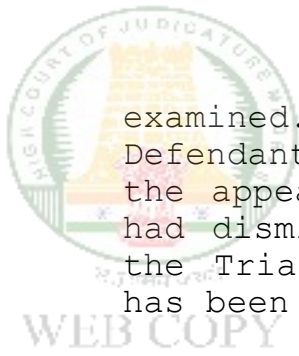


the suit property is required for them. The Plaintiff had issued a legal notice, dated 23.01.2002, terminating the tenancy from 28.02.2002, to the 1st Defendant, to vacate the same and put the Plaintiff in possession on 01.03.2002, on the ground of subletting the suit property to the 2nd Defendant, with a copy to the 2nd Defendant. In spite of several demands, the 1st Defendant had refused to vacate the suit property. Hence, the suit was filed, seeking a judgement and decree, directing the Defendants to vacate the suit property and deliver possession of the same to the Plaintiff and for mesne profits.

3. In the written statement, filed by the 1st Defendant, it is contended as follows:-

- a) The Plaintiff is not a Public Charitable Institution or a Charitable Public Trust. The purposes enumerated in Clauses 1 to 9 do not attract the GO.Ms.No.2000 Home, dated 16.8.1976 or GO.Ms.No.1998 Home, dated 12.08.1974 and hence, the Plaintiff is not entitled to claim exemption under the Tamil Nadu Building (Lease & Rent Control) Act 1960. The 1st Defendant and his father have been in possession of the suit premises belonging to the Plaintiff for the past 29 years and regularly paying rent without any default. Since the building is in a strong condition, the second floor of the suit building is let out for physical exercise for young people. The first floor of the building is used by the Plaintiff for library and also for holding meetings of Dravida Kazhaga Party. RCOP.No.17 of 1996 filed by the Plaintiff was withdrawn. The Plaintiff is now estopped from agitating that the Tamil Nadu Building (Lease & Rent Control) Act is not applicable to it and that the Transfer of Property Act alone is applicable.
- b) Since it was not possible for the Plaintiff to claim eviction under the Rent Control Act, since there was no default in payment of rent and since there was no case for bona fide requirement of personal occupation for demolition and reconstruction, the Plaintiff could not evict this defendant and hence, the Plaintiff has innovated a ground as if the Plaintiff is a Public Charitable Trust, attracting exemption under GO.Ms.No.2000, as stated above. Only the Tamil Nadu Building (Lease and Rent Control) Act is alone applicable. The notice to quit alleged in the plaint is not proper and valid notice to quit. This defendant has also issued a suitable reply to the notice issued by the Plaintiff. The 2nd Defendant is a fictitious person. The Plaintiff is not entitled to claim future mesne profit or costs and will only be entitled to monthly rent. In such circumstances, the suit is liable to be dismissed.

4. On the pleadings of the parties, issues were framed by the Trial Court. Before the Trial Court, on the side of the Plaintiff, Ex.A1 to Ex.A12 were marked and PW.1 and PW.2 were examined. On the side of the Defendants, Ex.B1 to Ex.B11 were marked and DW.1 was



examined. The Trial Court had decreed the suit as against the 1st Defendant and dismissed the suit as against the 2nd Defendant. On the appeal filed by the 1st Defendant, the lower appellate court had dismissed the appeal, confirming the judgement and decree of the Trial Court. Aggrieved against the same, this Second Appeal has been filed.

5.This Court heard the submissions of the learned counsel for the Appellant.

6.The learned counsel for the Appellant has submitted that as per the plaint, the Plaintiff is only a Sangam and registered under the Societies Registration Act and that when the Plaintiff is not a Public Trust or Public Charitable Trust, both the courts below erred in holding that the Plaintiff is exempted under the Tamil Nadu Building (Lease and Rent Control) Act, 1960. The learned counsel would further submit that the burden is on the Plaintiff to prove their case by legal evidence and that the courts below erred in considering the law involved in a proper perspective and hence, he would pray for setting aside the impugned judgements of the courts below.

7.This Court considered the submissions of the learned counsel for the Petitioner and also perused the materials placed on record.

8.The Appellant has assailed the impugned judgements of the court below, mainly on the ground that the Plaintiff Institution is not a Public Trust, but it is Society, registered under the Societies Registration Act and hence, it is not eligible to claim the benefits of the Government Orders passed under Section 29 of TNBLRC Act 1960 and the TNBLRC Act alone is applicable for the Plaintiff.

9.It is not in dispute that as per Ex.A5, the Plaintiff Institution is registered under the Societies Registration Act, 1860 and not as a Trust, under the Registration Act, 1908. In exercise of the powers conferred under Section 29 of the TNBLRC Act 1960, the Government of Tamil Nadu had issued the GO.Ms.No.2000, Home, dated the 16th August 1976, which reads as follows:

"No. II(2)/HO/4520/76-In exercise of the powers conferred by Section 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Tamil Nadu Act 18 of 1960), and in supersession of the Home Department Notification No. II(2)/HO/3811/74, dated the 12 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."

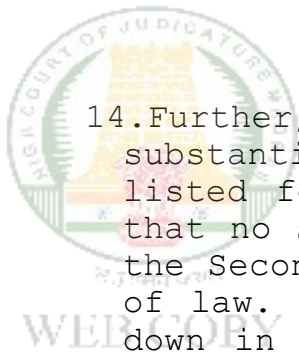


10.The above said Government Order does not specify that a Charitable Trust must be formulated only under the Indian Trusts Act as well as registered only under the provisions of Registration Act.

11.It is specifically pleaded in the plaint that the Institution is a Public Charitable Institution and hence, claiming exemption thereof. The courts below have found, on a perusal of Ex.A5, certified Copy of Memorandum of Association and Articles of Association of the Plaintiff Institution that the objects set out in details would disclose about the charitable nature of the Plaintiff Institution and that the properties of the Plaintiff Institution are dedicated to Charity and not to any one of the Individuals and from the recitals of Ex.A5, the courts below have held that the Plaintiff is a Trust, though it is a Society registered under the Societies Registration Act and as such, Institutions, devoted to the general public either in the form Religious Public Trust or in the form of Charitable Public Trust, are entitled for the benefits of the Government Order passed in the year 1976 under Section 29 of TNBLRC Act 1960. Thus, the suit is maintainable under Section 9 of CPC.

12.The present suit was filed in the year 2002 based on notice issued under section 106 of Transfer of Property Act, for eviction. The present cause of action is based on notice issued by the defendant on 23.1.2002, under section 106 of Transfer of Property Act terminating the tenancy. Therefore, Plaintiff is not precluded from filing the present suit for eviction under the Transfer of Property Act.

13.The courts below have also found that the tenancy in respect of suit property is not a perpetual tenancy. The litigation runs from the year 1996, almost for 25 years. There is no document produced by the Appellant to show the tenancy. It is trite law that under the Transfer of Property Act, a landlord is entitled to possession when there is a determination of tenancy and once the tenancy is determined, the Tenant is bound to put the landlord into possession of the property as per Section 108 (q) of the Act. It was noted that the Plaintiff had issued a notice dated 23.1.2002 by terminating the tenancy with effect from 28.2.2002, under Section 106 of the Transfer of Property Act and hence, the tenancy in respect of suit property between Plaintiff and the 1st Defendant pursuant to Ex.A2 to Ex.A4 was duly terminated with effect from 28.2.2002 and thereby, the Plaintiff is entitled for vacant premises, by evicting the Appellant. Considering the above reasonings, both the courts below were right in dismissing the suit, by the impugned judgements, which warrants no interference by this Court.



14.Further, the present Second Appeal does not give rise to any substantial question of law. On the day when a Second Appeal is listed for hearing on admission, if the High Court is satisfied that no substantial question of law is involved, it shall dismiss the Second Appeal, without even formulating a substantial question of law. The principle laid down by Honourable Supreme Court laid down in the case of **Kirpa Ram Vs. Surendra Deo Gaur (2020 SCC OnLine SC 935)** is that that a Second Appeal can be dismissed at the admission stage itself, without formulating a substantial question of law, if none arises was reiterated. The present case is one such case and therefore, this Second Appeal deserves to be dismissed at the admission stage itself, holding that no substantial question of law arises for consideration.

15.In fine, this Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

Srcm

To

1.The Sub Judge, Pattukottai

2.The District Munsif, Pattukottai

3.The Record Keeper, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.BABU RAJENDRAN, Advocate (SR-36209[F] dated 26/11/2021)

+1 CC to M/s.D.VEERASEKARAN, Advocate (SR-36414[F] dated 29/11/2021)

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RK(06/01/2021) 5P 7C