



S.A.No.725 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:22.09.2023

Delivered on: 24.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

S.A.No.725 of 2009

Milap Jain

... Appellant

Vs.

M/s. Vidya Jyothi Trust
Rep by Mr.S.Saravanan

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C against the judgment and decree dated 30.01.2009 made in A.S.No.396 of 2008 by the learned VII Additional Judge, City Civil Court, Chennai confirming the judgment and decree dated 13.02.2008 made in O.S.No.7206 of 2005 on the file of XVI Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.J.Kamaraj

For Respondent : Mr.Jayesh B Dolia, Senior Counsel
Assisted by Mrs.Rita Chandrasekar
for
Mr.V.Kalyanaraman

JUDGMENT

The unsuccessful tenant in a suit for recovery of possession and damages for use and occupation is the appellant.



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2. The plaintiff Trust claimed to be the owners of the property. It is the case of the plaintiff that their vendors viz., the erstwhile landlords in and by a letter dated 14.08.2003 informed the tenant viz., the defendant that the suit property has been sold to the plaintiff on 13.08.2003. The defendant sent a reply dated 01.09.2003, calling upon the plaintiff to disclose the nature of its Trust and also furnish copies of the Trust deed and also informed the plaintiff that rent of Rs.102/- per month upto 30.06.2004 had already been paid in advance. The plaintiff issued a rejoinder on 15.10.2003, denying the allegations made by the defendant and also informing the defendant that the plaintiff is a Public Charitable Trust and the tenancy was to be terminated and rents paid upto 30.06.2004 was already refunded by the erstwhile landlords and received by the defendant. The rents for January 2005 to June 2005 were sent by the defendant to the plaintiff by money order. The defendant also filed a petition under Sec.8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 seeking deposit of past and future rents from January 2005. The plaintiff entered appearance in the said petition and



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questioned the maintainability of the petition as the plaintiff was a Public Charitable Trust, exempted from the provisions of Rent Control Act in terms of G.O.Ms.No.2000. Thereafter, the plaintiff issued a legal notice calling upon the defendant to quit and deliver vacant possession of the suit property which was also received by the defendant on 07.07.2005. The plaintiff also stated that they were running a school in the suit property measuring about 3902 sq.ft in which only 125 sq.ft has been occupied by the defendant. The plaintiff was unable to upgrade the school because of the occupation of the defendant in possession of the ground floor. Hence, the suit was instituted, seeking recovery of possession and also damages at Rs.10,000/- per month for use and occupation.

3. The defendant filed a written statement stating that the plaint has not been signed and verified by a proper person. One Mr.S.Saravanan, has represented the plaintiff in the plaint and he had no proper or valid authority to represent the plaintiff Trust. The notice of termination was also not proper or valid and on this ground also the suit was liable to be dismissed. The



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defendant, however, admitted to the exchange of letters/notices between the plaintiff and the defendant. According to the defendant, the plaintiff refused to receive the rent sent by the defendant by way of money order and only under such circumstances, he was compelled to file an eviction petition before the Rent Control Court, after following the procedure contemplated U/s. 8 of Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960. The defendant also stated that he is not liable to pay damages for use and occupation and denied the requirement of the plaintiff for upgrading the School. Contending all these, the defendant prayed for dismissal of the suit.

4. Before the Trial Court, the plaintiff Trust examined one Mr.D.Balaji as P.W.1 and marked Exs.A1 to A6. On the side of the defendant, the defendant examined himself as D.W.1 and marked Exs.B1 to B9. The Trial Court, holding that the defendant was a tenant, held that Ex.A4 notice was valid in law. The Trial Court also rejected the contention of the defendant that the plaint had not been signed and verified properly and held that it was only a technical ground which was unacceptable. Ultimately, the Trial Court



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decreed the suit in so far as recovery of possession. However, in so far as relief of damages for use and occupation, the Trial Court held that the plaintiff is entitled to only Rs.102/- per month and nothing more.

5. Aggrieved by the said judgment and decree, the appellant herein preferred A.S.No.396 of 2008 on the file of the VII Additional City Civil Court, Chennai. The First Appellate Court confirmed the finding of the Trial Court and dismissed the Appeal.

6. Aggrieved by the concurrent findings rendered by the Courts below, the defendant has come up with the present Second Appeal. At the time of admission, the following substantial questions of law were framed:

“ The above Second Appeal is admitted on the following substantial questions of law:

(i) When the Trust deed provides that any proceedings in a Court of law shall be initiated or defended by the Managing Trustee of the Trust and when admittedly the Managing Trustee has not verified the plaint whereas, one S.Saravanan has



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verified the plaint and his capacity to represent the Trust and verify the plaint has been challenged by the defendant, is it not incumbent on the part of the plaintiff to have produced before the Courts below, the necessary authorisation authorising S.Saravanan to represent the Trust and verify the plaint and whether the suit has been properly instituted by the Trust?

(ii) Whether the Courts below have committed any error of law in not framing a specific issue regarding the verification of the plaint by S.Saravanan?"

7. Heard Mr.J.Kamaraj, learned counsel for the appellant and Mr.Jayesh B.Dolia, Senior Counsel, assisted by Mrs. Rita Chandrasekar, for Mr.V.Kalyanaraman, learned counsel for the respondent. I have also perused the records as well as the judgments of the Courts below.

8. Admittedly, the case of the appellant, as defendant is that he is a tenant in the Suit property. Though his defence was wishy washy and even questioning the title of the plaintiff Trust, from the admitted position that the



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appellant filed a petition before the Rent Control Court seeking deposit of rents upon refusal by the plaintiff Trust to receive the same, there is no necessity to go into the factum of whether the appellant accepted his tenancy under the plaintiff Trust or whether he chose to deny the same. In view of the voluntary conduct and action taken by the appellant, it can be safely concluded that there is a clear admission on the part of the appellant that he was a tenant under the respondent's vendor earlier and subsequently he has attorned his tenancy in favour of the respondent Trust. The only defence that has been taken by the appellant is that the plaint has been signed by one Mr.S.Saravanan and he had no proper authority to represent the plaintiff Trust and verify the plaint. Admittedly, the plaintiff Trust has not filed any letter of authority or resolution authorising Mr.Saravanan to sign and verify the plaint. Equally, it is seen that the said Saravanan who chose to represent the plaintiff Trust and sign the plaint did not depose on behalf of the plaintiff Trust. For the purpose of letting in evidence, one Mr.Balaji was authorised and an authorisation letter in that regard was also marked as Ex.A1 on 20.06.2007. The respondent besides the said authorization has also marked



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the deed of Public Charitable Trust, copy of a sale deed in favour of the plaintiff Trust and also the notice issued by the plaintiff calling upon the defendant to vacate and deliver possession and also the reply notice dated 11.07.2005. On the side of the appellant, he marked the lawyer's notices dated 01.09.2003 and 14.10.2003, copy of the petition in R.C.O.P.No.626 of 2005, copy of counter statement of the respondent in the said RCOP and certified copies of the money order forms to establish that rents were rendered by the appellant from January to March 2005.

9. The appellant has taken a specific plea that the plaint has not been duly signed and verified and Mr.S.Saravanan who has signed the plaint on behalf of the plaintiff Trust and that he is not authorised to do so. Despite the specific stand taken by the appellant, the plaintiff Trust did not chose to take any further steps in that regard by either ratifying the action of Saravanan, representing the plaintiff and signing and verifying the plaint or at least by examining any of the Trustees.



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10. Curiously, for letting in evidence, during the trial of the suit, another person has been identified and he had been issued an authorisation letter.

11. Learned counsel for the appellant would rely on the following judgments in support of the substantial questions of law raised by the appellant. In the case of *Shiek Abdul Kayum and Ors Vs. Mulla Alibhai and Ors*, reported in *AIR-1963-SC-309*, the Hon'ble Apex Court held that trustees cannot transfer their duties, functions and powers to anybody else unless it was clearly permitted by the trust deed, or agreed to by the entire body of beneficiaries. The Supreme Court also held that Indian Trusts Act would not apply to Public, Religious or Charitable Trust but however the principle of Rule against delegation may still apply. However, the Supreme Court was dealing with a matter where a suit U/s. 92 of the Code of Civil Procedure had been filed alleging that the Trustees had not been appointed validly and they were sought to be removed and appointment of fit persons for managing the Trust properties was sought for in the said scheme suit, alleging breach of



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Trust by the defendants in the said suit. The Supreme Court, therefore, in such circumstances held that anything which is against the interests of the Trust in general could not be legalized and in such circumstances held that the Trustees cannot renounce the duties and liabilities and they are not entitled to delegate any of their functions except in specified cases. Therefore, it is seen that even the Hon'ble Supreme Court contemplated exceptions to the general principle.

12. In *Duli chand Vs. Mahabir Pershad Trilok Chand Charitable Trust*, reported in *1CIR-1983 SCC Online Del 270*, a Division Bench of Delhi High Court held that Trustees are joint owners of Trust property and a single Trustee cannot sue in the name of the Trust and all Trustees must be impleaded in the suit or the trustees should have executed a power of attorney empowering one of them to represent all and even a resolution in that regard would not suffice.

13. Despite finding that the suit before the Delhi Court was validly



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instituted, the Division Bench, finding that the point of view of the Trust involved cannot be ignored, especially when the Trust was seeking to recover possession of its property, ultimately, the Division Bench held that such errors on behalf of the plaintiff should not result in forcing the plaintiff Trust to withdraw the suit and file a fresh suit. The amendment which had been sought for in a miscellaneous application was ordered and the Trial Court was directed to dispose of the suit.

14. In *Atmaram Ranchhodbhai Vs. Gulamhusein Gulam Mohiyaddin and another*, reported in *1972 SCC Online Guj 10*, the Full Bench of the Gujarat High Court held that one co-trustee cannot give notice to quit, determining a tenancy and the decision to determine the tenancy must be decided by all co-trustees unless the instrument of trust provided otherwise. However, the Full Bench categorically held that what they meant by 'tenancy must be determined by all co-trustees' was that the decision to terminate the tenancy must have been taken by all the co-trustees. The formal act of giving



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notice to quit pursuant to the decision taken by all co-trustees may be even performed by one co-trustee on behalf of the rest. Therefore, an implied consent of co-trustees to determine the tenancy of a tenant would suffice.

15. Learned Single Judge of this Court in *V.Chandrasekaran and Ors Vs. Venkatanaicker Trust and Ors*, reported in *2016 SCC Online Mad 33745*, following the dictum of Full Bench of Gujarat High Court as well as the Division Bench of the Delhi High Court held that Suit filed by the manager of the Trust was not maintainable. However, in the said case even the Trust deed had not been produced by the plaintiff Trust.

16. Keeping the ratio laid down by the Courts as discussed herein above in mind, on perusing the Trust deed which has been marked as Ex.A2, I find that the Trust is a Public Charitable Trust. The objectives of the Trust are purely charitable in nature. I am also able to see that Trust Board is empowered to take all steps that may be necessary or required for preservation of Trust, Trust properties and title; to delegate any power of



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attorney as they can lawfully delegate to any person and execute such power of attorney as they may think fit for the purpose; to institute conduct defend legal proceedings by or against trustees; to delegate power to one or more of their body; to employ clerks and other employees, agents, bankers, lawyers, accountants and others and remuneration as they may think fit.

17. First and foremost the suit is laid for recovery of possession from tenant occupying a small portion of 125 sq.ft, forming part of a larger building which is under the occupation of the respondent Trust. The reasons have been set out for demanding vacant possession from the appellant in the lawyer's notice. To this notice, the appellant has sent a reply on 11.07.2005 calling upon the plaintiff to provide a copy of the Trust deed. In the said reply notice, the appellant has admitted that his erstwhile landlords by letter dated 14.08.2003 had informed the appellant regarding the sale of the property to the plaintiff on 13.08.2003 and to the same effect the plaintiff had also sent a letter on 14.08.2003. The tenancy is not denied and the very fact that the appellant himself has approached the Rent Control Court seeking to deposit



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rents would only confirm that the appellant is not having any iota of doubt or concern with regard to plaintiff's ownership of the suit property. The contentions sought to be put forth by the appellant was only that the plaintiff Trust is a private Trust and not a public Trust and they were not exempted from the provisions of Rent Control Act in terms of G.O.Ms.No.2000. Ex.B2 is a notice issued by the appellant on 14.10.2003 calling upon the plaintiff to furnish documents as required by the appellant in his reply notice dated 01.09.2003. Even in the said notice, the plaintiff Trust is shown to be represented by Trustee Mr.S.Vinothkumar. The termination notice is also issued by the same Trustee, Mr.S.Vinothkumar representing the plaintiff trust only. Further, even the RCOP 626 of 2005 filed by the appellant was only against the Trust represented by the Trustee Mr.S.Vinothkumar and not against all Trustees, which is the case now projected as a defence in the eviction proceedings. Thus, it is not the appellant's case that the plaintiff Trust is not the owner of the suit property. Infact, the appellant clearly admits the factum of the ownership of the suit property at the hands of the plaintiff Trust in various legal notices and also the petition U/s.8(5) of the Tamil Nadu



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Buildings (Lease and Rent Control) Act 18 of 1960. Through out, the appellant himself has chosen to address the Trust only being represented by its trustee Mr.S.Vinothkumar and not otherwise. However, to suit his convenience when the plaintiff's Trust choses to file eviction proceedings, a technical defence is raised that the Trust has no powers to authorise or delegate its powers.

18. I have already discussed the contents of the trust deed and there is enough material on record to show that the Board of trustees are empowered to delegate its powers to anybody. The plaintiff has authorised one Mr.S.Saravanan to institute the Suit. The very fact that subsequently during the trial of the suit, P.W.1 has been authorised to give evidence on behalf of the plaintiff Trust would go to show that the respondent Trust was fully aware of the fact that the suit to recover possession of the property from its tenant had been filed. The fact that Ex.A1 was issued authorising P.W.1 to represent the Trust and give evidence in the said suit would impliedly amount to ratifying the signing and verifying of the plaint by Mr.S.Saravanan, the



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authorised representative of the plaintiff's Trust. As already discussed herein above, the Indian Trust Act will not apply to a Public Charitable Trust and even otherwise, there is enough ammunition in the Trust deed to authorise anybody to represent the Trust. Therefore, I am unable to accept the submissions of the learned counsel for the appellant that for want of all Trustees signing the plaint, the Suit is liable to be dismissed. It is also to be borne in mind that the tenant is occupying 125 sq.ft of commercial space in a prime locality in the city of Chennai, paying a pittance of Rs.102/- per month. It has also come out in evidence that the appellant is not using the property and has kept it under lock and key. Thus, the entire exercise undertaken by the appellant is to continue to hold on the property by paying merely Rs.102/- per month.

19. I do not find any infirmity, illegality or perverse finding in the Courts below, having held that there is an implied ratification of the actions of the authorised representative of the plaintiff's trust, Mr.S.Saravanan. Moreover, all the steps taken by the said authorised representative as well as



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P.W.1 who deposed on behalf of the Trust were only steps that aided the furtherance of the objects of the Trust and not in anyway detrimental to the Charitable Trust. Therefore, it cannot even be said that the action of the said representative as well as P.W.1 prejudiced the interests of the Trust. Having held that the plaintiff Trust is a Public Charitable Trust and the provisions of the Indian Trust Act are not strictly applicable to such a Trust; the authorised representative has signed and verified in the plaint and having found that the Trust deed amply provides for delegation of powers and also appointment of agents, coupled with the fact that the appellant admits the title of the plaintiff's Trust and only intends to prolong his stay in the Suit property on a monthly rent of Rs.102/-, also taking note of the fact that he does not even use the Suit property, I am constrained to answer both the substantial questions of law against the appellant.

In fine, the Second Appeal is dismissed. The appellant shall vacate and



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handover vacant possession within a period of one month from the date of receipt of a copy of this judgment. There shall be no order as to costs.

24.11.2023.

Internet: Yes
Index: Yes/No
Neutral Citation: Yes/No
Speaking/Non-speaking order
kpr

To

- 1.The VII Additional Judge, City Civil Court,
Chennai.
- 2.The XVI Assistant Judge, City Civil Court,
Chennai.



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P.B.BALAJI, J.,
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Pre-delivery Judgment in
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