



S.A(MD)No.556 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE G. CHANDRASEKHARAN

S.A(MD)No.556 of 2023
and
C.M.P(MD) No.13155 of 2023

K.Natarajan

...Appellant

-Vs-

M.VR.Mela Oorani Trust,
Mela Oorani Road, Karaikudi,
Represented by its Managing Trustees
L.Murugappan
and
SP.Subramanian

... Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to call for the records relating to the judgment and decree dated 29.06.2022 in A.S.No.51 of 2018 on the file of learned Sessions Judge, Fast Track Mahila Court, Sivagangai, reversing the judgment and decree dated 24.09.2018 in O.S.No.41 of 2017 on the file of the Subordinate Court, Devakottai and set aside the same and allow the present second appeal.



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For Appellant : Mr.K.Saravanan

For Respondent : Mr.H.Arumugam
for Mr.S.V.Sankar

JUDGMENT

This second appeal is filed challenging the judgment in A.S.No.51 of 2018 on the file of the learned Sessions Judge, Fast Track Mahila Court, Sivagangai, reversing the judgment in O.S.No.41 of 2017 on the file of the learned Subordinate Judge, Devakottai.

2. The respondent/plaintiff filed a suit in O.S.No.41 of 2017 on the file of the Trial Court, seeking the relief of declaration that the suit property belongs to the plaintiff Trust and also for recovery of possession. The case of the respondent/plaintiff in brief is that the suit property was a ryotwari land in Town Survey No.83, Patta No.1443 at Karaikudi Town. The plaintiff trust is a private trust for charitable purposes formed by two families of Karaikudi Nagarathars, namely, one Meiyappa Chettiyar and Veerappa Chettiyar before 200 years back. The trust was in their names of the first letter. The trust was not registered. Among the legal heirs of the two families, the married male members will become



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the members of the trust. Every year, the Managing Trustees will be elected by all the trustees. Out of the quorum present, the trust will elect the Managing Trustees. The Managing Trustees have the power of administration and maintenance of account of the trust including the power to sue and to defend the suit on behalf of the trust and its properties. L.Murugappan and SP.Subramanian were elected as Managing trustees through the resolution dated 26.05.2016. There are several properties under the administration and management of the trust. One of the trust properties is the suit property. Some of the properties possessed and enjoyed by the trust have been taken over by the Government as per Tamilnadu Inam Abolition Act, 1963. In a subsequent claim made by the trust, enquiry was conducted by the Assistant Settlement Officer, Sivaganga and by his proceedings, it was again given to the plaintiff trust. The defendant / appellant was not a tenant of the plaintiff trust. By creating the fraudulent conveyance for the superstructure on the suit properties through misrepresentation, patta was obtained from the Assistant Settlement Officer, Chennai, named Muthukrishnan, in respect of the suit property in the year 1995. It came to the knowledge of the plaintiff in September 2006. The plaintiff trust gave a petition dated 12.09.2006 to cancel the patta to the Devakottai, Revenue Divisional Officer. After hearing



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both sides, the Revenue Divisional Officer cancelled the patta by his order dated 30.08.2007 in PA.MU.A1/7920/2006. Taking advantage of the earlier patta, the defendant trespassed into the suit property in April 2007 and claimed that he is in possession and enjoyment of the suit property. A police complaint was given. The defendants approached the High Court against the order of RDO, Devakottai in WP(MD) No.49743 of 2011. This Court ordered to re-enquire the matter. The Hon'ble High Court in W.P(MD)No.2904 of 2005 dated 24.09.2008 held that the patta issued by the Assistant Settlement Officer from 1994 stands cancelled and criminal action to be initiated against him. The Revenue Divisional Officer passed an order on 25.06.2013 in Na.K.A1/2415/2013 in favour of the plaintiff trust by cancelling the patta granted in favour of the defendant. Against the said order, the defendant filed a revision before the District Revenue Officer, Sivaganga. The District Revenue Officer, Sivaganga confirmed the order of Revenue Divisional Officer, through his order dated 29.02.2016 in NA.KA.D1/17233/2013. The defendant is trespasser of the suit property. In the said circumstances, the suit is filed for the aforesaid relief.

3. In the written statement filed by the defendant, it is denied that the



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plaintiff is a private trust. There is no document filed to show the creation of M.VR.Mela Oorani Trust. The averments made in the plaint that the trust was formed 200 years back and the trustees were elected, are objected. The claim of succession of trusteeships is neither in accordance with Hindu Succession Act nor in accordance with the provisions of the Trust Act. In the absence of any document in support of the claim of succession, the plaintiff cannot claim to have right over to maintain and administer the trust. There is no detail given with regard to the properties owned by the trust. As per Section 15 of Inam Abolition Act, when a building has been constructed by any other person than the land holder, the person who put up the building would be eligible for grant of patta. Perusal of District Revenue Officer's order would go to show that there is no finding of title in favour of the plaintiff. The defendant is carrying on business as car mechanic by establishing a service centre for the past 40 years as of right, by exercising right of ownership in a larger extent of the property. The plaintiff has mentioned only a lesser extent by not mentioning the other structures in the rest of the area. By a long, open and continuous possession without any interference as a owner of the property, the defendant acquired prescriptive title. Thus, the defendant prayed for dismissal of the suit.



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4. During the trial, on the side of the plaintiff, PW1 and P.W.2 were examined and Exs.A1 to A.21 were marked and on the side of the defendant, D.W.1 was examined and no documentary evidence was produced.

5. On going through the oral and documentary evidence, the learned Trial Judge had dismissed the suit for the reasons that there is no proof to show that the trust was formed 200 years back; trust is not registered under Section 5 of Indian Trust Act and the other trustees are not impleaded as per Section 36 and 48 of Indian Trust Act. Challenging the dismissal of the suit, the respondent filed an appeal in A.S.No.51 of 2018 on the file of the learned Sessions Judge, Fast Track Mahila Court, Sivagangai. The learned First Appellate Judge, on re-appreciation of oral and documentary evidence, found that the trust was formed more than 200 years back; Ex.A2 to 10, Ex.A13 and Ex.A14 established the fact that the suit properties belonged to the plaintiff trust; the defendant has not produced any evidence to show that he is in possession and enjoyment of the suit property; the suit is not required to be registered as per Section 95 of the Indian Trust Act; Ex.A15 was executed to safeguard the property of the trust and therefore, the suit is valid. On these reasonings, the learned First Appellate Judge reversed the



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judgment of the trial Court and decreed the suit. Therefore, the defendant filed this second appeal.

6. The learned counsel for the appellant submitted that as per Section 5 of Indian Trust Act, the Trust is required to be registered. Having failed to register the trust, the suit filed itself is not maintainable. There is no evidence to show that the trust was established 200 years back. Ex.A15 is a the xerox copy of the document and therefore, it was rightly rejected by the trial Court. No plausible reasons were given by the first appellate Court for accepting Ex.A15. When other trustees have not joined in filing the suit, the suit is not maintainable. He further submitted that the defendant purchased this property through a registered sale deed in 1970 and he filed a petition for reception of additional document. That sale deed will establish his title to the suit property. Thus, he prayed for setting aside the judgment of the first appellate Court and for dismissal of the suit.

7. In response, the learned counsel for the respondent submitted that it is pleaded in the plaint that the trust was established 200 years back and therefore, there is no document was executed for establishment of the trust. The fact that the trust was established 200 years back was not specifically denied in the written



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statement, but a bald allegation was made that the pleading in this regard is objected. When the trust was established 200 years back, the application of Section 5 cannot be invoked in this case. Assuming that Section 5 of Indian Trust Act applies, this Section reads that this rule do not apply where they would operate so as to effectuate a fraud.

8. In continuing his submission, the learned counsel for the respondent submitted that the defendant obtained a patta in respect of the suit property by fraudulent deed. On the proceeding initiated by the respondent, the patta was cancelled by the Revenue Divisional Officer and that was confirmed by the District Revenue Officer and the High Court directed for initiation of criminal action against one Muthukrishnan, who was the then Assistant Settlement Officer, responsible for issuing patta to persons, who had no legal claim. Ex.A15 authorized the present plaintiff to institute the suit. Sections 36 and 48 of the Indian Trust Act have no application for the present case.

9. Considered the rival submission and perused the records.



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10. From the pleadings, oral and documentary evidence, judgments of the Courts below and the submissions of the learned counsel for the parties, there is a rival claim with regard to the suit property. The plaintiff claimed that the suit property belongs to the trust. In support of this, the plaintiff has produced Ex.A1 to Ex.A21 documents. On the other hand, the defendant claimed that he is in possession and enjoyment of the suit property for more than 40 years. In support of his contention, except the oral evidence of defendant as R.W.1, no documentary evidence was produced. Ex.A1 to Ex.A9 show that the suit property is registered in the name of the plaintiff trust and the plaintiff trust has been paying property tax and kist for the suit property. Ex.A10 is the proceeding of the RDO, Devakottai giving patta to the defendant in respect of the suit property. However, in the proceedings initiated before the District Revenue Officer, the patta issued in favour of the defendant was cancelled. The defendant filed a revision against this order before the District Revenue Officer and the District Revenue Officer had confirmed the order passed by the Revenue Divisional Officer and dismissed the revision petition filed by the defendant. Ex.A18 to Ex.A20 are the proceedings between the plaintiff and the brother of the defendant in respect of the plaintiff trust property. It is stated that the proceedings ended in



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favour of the plaintiff. The trial Court rejected the reliance on these documents for the reason that there was no pleading in respect of these documents. Similarly, Ex.A15 is the xerox copy of the memorandum empowering the present plaintiff to file the suit. That was also rejected by the trial Court for the reason that Ex.A15 is the xerox copy and not proved in accordance with law.

11. The learned First Appellate Court on re-appreciation of the evidence found that Ex.A2 to Ex.A10, Ex.A13 and Ex.A14 had clearly established the title of the plaintiff in respect of the suit property, whereas the defendant had failed to produce any single document in support of the claim in the suit property. There is also a finding that the plaintiff trust was created more than 200 years back and it is not necessary for it to get registered.

12. It is true that there is no clinching evidence available to show that the trust was established 200 years back. The fact remains that the patta granted in respect of the suit property in favour of the defendant was cancelled and patta in the name of the plaintiff in respect of the suit property, was confirmed. This is evident from Ex.A13 and Ex.A14. Ex.A2 to Ex.A10 confirm that several records



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stand in the name of the plaintiff trust. When the plaintiff claimed that the trust was established 200 years back, there is no specific denial in the written statement, except a bald objection that this claim is objected.

13. Section 5 of the Indian Trust Act reads as follows:

5. Trust of immoveable property.—*No trust in relation to immoveable 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.*

Trust of moveable property.—*No trust in relation to moveable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee.*

These rules do not apply where they would operate so as to effectuate a fraud.

14. This Section stipulates that unless the trust is declared by non-testamentary instrument in writing signed by the author of the trust and registered, the trust is not valid. However, this Section also reads that this rule will not apply, where it would operate so as to effectuate a fraud.



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15. Section 1 deals with commencement of Indian Trust Act. It reads as follows:-

1.Short title, Commencement.---This Act may be called the Indian Trusts Act, 1882 and it shall come into force on the first day of March, 1882.

16. As per this Section, Indian Trust Act comes into force on the 1st day of March 1882. When it is claimed that the plaintiff trust was established 200 years back, i.e., in and around 1817, it is no doubt that the provision of Indian Trust Act cannot be made applicable to the plaintiff trust. Even assuming that the trust had come into existence after the enactment of the Indian Trust Act, 1882, as per Section 5 of the Act, the rules do not apply where they would operate so as to effectuate a fraud. When it is clearly established from Ex.A13 to Ex.A14, that patta granted in favour of the the defendant was cancelled, obviously for obtaining a patta by fraudulent means, this Court has no second opinion in concluding that Section 5 of the Act is not applicable to the facts of this case.

17. The next and important ground taken is that Ex.A15 is only a xerox copy and the reliance placed by the first appellate Court as Ex.A15 is not correct.

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Admittedly, Ex.A15 is the xerox copy of the resolution empowering the plaintiff to file the suit. If there is an objection to mark this document, the objection should have been taken at the time of marking the document. Having failed to object to mark Ex.A15, it is not open to the defendant now to contend that Ex.A15 is not reliable and it cannot be acted upon.

18. Sections 36 and 48 reads as follows:-

36. General authority of trustee.—*In addition to the powers expressly conferred by this Act and by the instrument of trust, and subject to the restrictions, if any, contained in such instrument, and to the provisions of section 17, a trustee may do all acts which are reasonable and proper for the realisation, protection or benefit of the trust-property, and for the protection or support of a beneficiary who is not competent to contract.*

[* * *]

Except with the permission of a principal Civil Court of original jurisdiction, no trustee shall lease trust-property for a term exceeding twenty-one years from the date of executing the lease, nor without reserving the best yearly rent that can be reasonably obtained.



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48. Co-trustees cannot act singly. — *When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides.*

19. Section 36 deals with general authority of the trustee. Section 48 deals with Co-trustees cannot act singly. However, in the case on hand, Ex.A15 empowers the plaintiff to institute the suit. Therefore, the filing of the suit by the plaintiff cannot be questioned. The plaintiff, by producing oral and documentary evidence, clearly established its title and the claim in respect of the suit property, whereas the defendant, by not producing any single document in support of his claim of possession for over 40 years, miserably failed to prove his case. The plaintiff has a better case than the defendant and therefore, this Court is of the view that the first appellate Court has rightly reconsidered the evidence, set aside the judgment of the trial Court and decreed the suit. The finding of the first appellate Court does not require any interference.

20. In ***Sir Chunilal V. Mehta and Sons v. The Century Spinning Co. Ltd., 1962*** reported in ***AIR 1962 SC 1314***, the Hon'ble Supreme Court formulated what amounts to a substantial question of law, as follows:



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1. Whether it is of general public importance (or)
2. Whether it directly and substantially affects the rights of parties *and if so*,
3. Whether it is *either* an open question (in the sense not finally settled by this Court or Privy Council or Federal Court) (*or*)
4. The question is not free from difficulty and calls for discussion of alternative views.

21. In the case before hand, the appellant has not made out any of the aforesaid grounds to formulate substantial question of law. There is no substantial question of law arises for consideration in this second appeal.

22. In fine, this Second Appeal is dismissed confirming the judgment dated 29.06.2022 made in A.S.No.51 of 2018, on the file of learned Sessions Judge, Fast Track Mahila Court, Sivagangai. No costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Sessions Judge,
Fast Track Mahila Court,
Sivagangai.
- 2.The Subordinate Judge, Devakottai.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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G. CHANDRASEKHARAN, J.

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