



S.A.(MD)No.1004 of 2007

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.04.2024

DELIVERED ON: 30.04.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

**S.A.(MD)No.1004 of 2007
and M.P.(MD)No.1 of 2009
and C.M.P.(MD)No.1570 of 2023**

The Sourashtra High School
Council, a registered Society
represented by its Honorary Secretary
A.R.Jagannath,
110, Kamarajar Salai,
Madurai – 9.

... Appellant

(Name of the Secretary of the appellant school is substituted vide Court order dated 17.11.2022 made in C.M.P.(MD)No.10820/2016 in S.A.(MD)No.1004 of 2007)

Vs

Sourashtra Girls Vidya Sangam,
Represented by its Secretaries and Correspondent
1.M.V.Janaranjanibai
2.M.P.V.K.Seethabai
Teppakulam,
Anuppanadi Road, Madurai – 9.

... Respondent

(Name of the Secretary of the respondent sangam is substituted vide Court order dated 17.11.2022 made in C.M.P.(MD)No.10820/2016 in S.A.(MD)No.1004 of 2007)



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PRAYER: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 19.01.2007 passed by the I Additional Sub-Judge, Madurai in A.S.No.226 of 2006 reversing the judgment and decree dated 26.07.2006 passed in O.S.No.1698 of 2004 on the file of the I Additional District Munsif, Madurai Town.

For Appellant	: Mr.M.Vallinayagam, Senior Counsel for Mr.D.Nallathambi
For Respondent	: Mr.A.P.Athithan for Mr.T.R.Subramanian

JUDGMENT

The appellant filed a suit for recovery of possession against the respondent and also for recovery of damages for use and occupation. The appellant also sought for an injunction restraining the respondent from effecting any alterations or additions in the suit property. The suit was decreed as prayed for by granting decree for recovery of possession and injunction. As far as prayer for profits are concerned, the trial Court relegated the plaintiff for separate proceedings. Aggrieved by the said judgment and decree, the respondent/defendant filed an appeal. The first appellate Court allowed the appeal by reversing the findings of the trial Court. Aggrieved by the same, the plaintiff is before this Court.



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The averments found in the plaint:

2. According to the plaintiff society, the suit building belonged to it and the same was let out to the respondent/defendant in the year 1947 for a monthly rent of Rs.10/- for accommodating its school in the suit property. The plaintiff is a Public Charitable institution running various schools and as the suit building was required for its own use, a communication was sent to the defendant on 30.04.1993, requesting them to vacate and surrender the building. The defendant sent a reply on 14.06.1993, with a false allegation that suit property was gifted to them by the plaintiff. Thereafter, the plaintiff issued a notice to quit on 11.02.1997, determining the lease and directing the defendant to surrender possession by 01.03.1997. The plaintiff in its legal notice also said that there was forfeiture of lease, as defendant denied the title of the plaintiff. Again the defendant replied by claiming right over the property under alleged gift. In these circumstances, the above said suit was filed by the plaintiff for recovery of possession and other reliefs.



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The averments found in the written statement:

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3. The defendant filed a written statement denying the jural relationship of landlord and tenant between the plaintiff and defendant. It was claimed by the defendant that its society approached the plaintiff in the year 1947, with a request to donate the suit building in favour of the defendant. It was further claimed that the plaintiff appreciating the laudable object of the defendant, expressed its willingness to donate the suit property to enable the defendant to run the educational institutions thereon. Thus, the defendant claimed possession of the suit property from the year 1947 and running a school for girls in the suit property. It was also claimed that Municipal Tax for the building was changed in the name of the defendant society with the co-operation of the plaintiff. The defendant also claimed that in the year 1976, the plaintiff society passed a resolution agreeing to gift the suit property to the defendant. It was also claimed that the defendant had been exercising the right of the ownership for the past 50 years and hence, it perfected its title to the said property by prescription. On these pleadings, the defendant sought for dismissal of the suit.



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Evidence let in by the parties:

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4. Before the trial Court, the Secretary of the plaintiff society was examined as P.W.1 and 51 documents were marked on behalf of the plaintiff as Ex.A1 to Ex.A51. The Honorary Secretary of the defendant was examined as D.W.1 and Clerk of the defendant school was examined as D.W.2. On behalf of the defendants 35 documents were marked as Ex.B1 to Ex.B35.

Findings of the Courts below:

5. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the suit property was let out by the plaintiff to the defendant on a monthly rent of Rs.10/- and hence, decreed the suit as prayed for. Aggrieved by the same, the defendant preferred an appeal in A.S.No.226 of 2006 on the file of I Additional Sub Court, Madurai. The first appellate Court reversed the findings of the trial Court and rendered a finding that there was no landlord and tenant relationship between the parties and consequently, dismissed the suit. Aggrieved by the same, the plaintiff is before this Court.



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Substantial question of law formulated at the time of admission of the Second Appeal:

6. This Court at the time of admission formulated the following substantial question of law by an order dated 12.11.2007:

“Whether the lower appellate Court has not committed an error in law in non-suiting the appellant/plaintiff even after negating the plea of gift and adverse possession made by the respondent/defendant, when the original title of the appellant/plaintiff in respect of the suit property was not denied?”

Submissions of the learned Senior Counsel appearing for the appellant:

7. Mr.M.Vallinayagam, the learned Senior Counsel appearing for the appellant submitted that having negated the plea of gift and adverse possession made by the defendant, the first appellate Court committed serious error of law in non-suiting the plaintiff by ignoring the material evidence available on record, which establishes the jural relationship of landlord and tenant between the parties. The learned Senior Counsel by taking this Court to Ex.A2 to Ex.A10 submitted that the defendant paid a



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sum of Rs.10/- per month as a rent for the use and occupation of the suit building under the said exhibits and the first appellate Court miserably failed to consider the same in proper perspective. The learned Senior Counsel submitted that though in Ex.A2 to Ex.A10 receipts, the amount paid by the defendant was mentioned by the plaintiff as donation for use and occupation of the building, in the facts and circumstances of the case, the same shall be treated as rent. He further submitted that mere nomenclature in the receipt is not conclusive to assess the character of the payment and the same shall be decided by taking into consideration the attendant circumstances and intention of the parties. In support of his contention, he relied on the judgment of the Hon'ble Apex Court in ***Commissioner of Income Tax Vs The Panbari Tea Co. Ltd.***, reported in ***AIR 1965 SC 1871***. He further submitted that when amount was collected for use and occupation, it cannot be treated as donation. In support of the said contention, he relied on the judgment of the Hon'ble Apex Court in ***The Commissioner of Expenditure Tax, Andhra Pradesh Vs. PVG Raju, Raja of Vizianagaram*** reported in ***AIR 1976 SC 140***. The learned Senior Counsel further submitted that the defendant pleaded gift of the suit property and in the absence of any registered instrument executed by the plaintiff in favour of the defendant, the defendant is not



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entitled to claim any title over the suit property. In nutshell, it is the submission of the learned Senior Counsel that the first appellate Court was carried away by the nomenclature “donation” used in the receipt issued by the plaintiff without considering the real meaning of the word donation and consequently the findings of the first appellate Court, as if there was no landlord tenant relationship, gets vitiated by misreading of evidence.

Submissions of the learned counsel for the respondent:

8. Mr.A.P.Athithan, the learned counsel appearing for the respondent submitted that as a token of gratitude for allowing them to run the school in the suit premises, the defendant paid a sum of Rs.10/- per month as donation to the plaintiff and the same cannot be treated as a rent under tenancy agreement. The learned counsel submitted that in the ledgers produced by the plaintiff, no separate page was allotted to the defendant for recording the collection of rent paid by it and hence, the first appellate Court was justified in coming to the conclusion that there was no landlord tenant relationship. The learned counsel for the defendant by taking this Court to Ex.A25, resolution of the plaintiff



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society submitted that the word “உபயோகித்து வரும்” (user) employed in the resolution denotes there was no landlord tenant relationship. The learned counsel further submitted that the defendant issued a notice under Ex.B2 directing the plaintiff to produce resolution book of the years 1946, 1947 and 1948 to establish that the suit property was gifted to defendant in the year 1947 itself and the plaintiff failed to produce the same and in such circumstances, adverse inference shall be drawn against the plaintiff. The learned counsel also by referring to the resolution of the plaintiff dated 11.04.1976, enclosed in Ex.B6, letter of the plaintiff, submitted that the plaintiff passed a resolution for executing a gift deed in favour of the defendant and therefore, there cannot be any landlord tenant relationship. Finally, the learned counsel submitted that when General Body of the plaintiff society passed a resolution for gifting the suit property to the defendant, the Secretary of the plaintiff is not entitled to file a suit for recovery of possession. The learned counsel by referring to the Municipal tax receipt in the name of the defendant submitted that unless the property was gifted in favour of the defendant, there was no occasion for the defendant to pay tax in its own name.



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Discussion on the question of law framed:

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9. The plaintiff filed a suit for recovery of possession based on landlord tenant relationship. A perusal of the plaint would suggest that it was valued under Section 43 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 and Court fee was paid on the annual rental value. Therefore, it is clear that the suit was filed by the plaintiff only based on landlord tenant relationship and it is not a suit for recovery of possession based on title. If it is the suit for recovery of possession based on title, the plaint should have been valued on the basis of the market value and the relevant Court fee should have been paid under Section 30 of Tamil Court Fees and Suits Valuation Act, 1955. Therefore, there is no dispute that the suit is based on landlord tenant relationship. It is settled law, in a suit for possession based on jural relationship of landlord and tenant, the plaintiff shall prove the jural relationship, the determination of lease in the manner known to law and recover the possession. On the other hand, the question of title is alien to such a suit. Therefore, in a suit for recovery of possession based on jural relationship as mentioned above, the Courts need not go to the question of title.



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10. The suit was mainly resisted by the defendant on the ground that even in the year 1947, the suit building was gifted to the defendant for running a school. Though the extract of the resolution passed by the plaintiff society dated 11.04.1976 was filed by the defendant along with Ex.B6 letter, admittedly no registered document was executed by the plaintiff in favour of the defendant. A mere resolution passed by the plaintiff society agreeing in principle to convey the suit property to defendant by execution of gift deed will not convey any title to the defendant, unless the said resolution was implemented in the sense, by execution of registered gift deed. It is needless to say that under Section 123 of “the Transfer of Property Act, 1882” (hereinafter referred to as “TP Act” for brevity) transfer by way of gift requires registered document. The resolution said to have been passed by the plaintiff was of the year 1976. Till date, no registered document has been executed. In such circumstances, the claim made by the defendant that the property was conveyed to defendant by way of gift was rightly negated by the Courts below and the said factual conclusion requires no interference from this Court.



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11. In the written statement, the defendant also raised the plea of adverse possession. Ex.B19 is a letter sent by the defendant, wherein it was clearly admitted by the defendant that girls school was run by defendant society in the suit property under permission from the plaintiff. In the said letter, the defendant also requested the plaintiff to execute a gift deed in favour of the defendant. Having admitted that defendant's possession was permissive one by admitting the plaintiff's title, the defendant is not entitled to turn around and deny the title. Further, the plea of gift and plea of adverse possession will not go together. The first appellate Court rightly came to the conclusion that the defendant failed to prove adverse possession pleaded by it. As mentioned earlier, the plaintiff has not sought for recovery of possession based on title and he laid the suit only based on jural relationship of landlord and tenant. Only in a case where the suit is filed for recovery of possession based on title, the defendant is entitled to raise the plea of adverse possession. In a suit for possession based on jural relationship of landlord and tenant, if the jural relationship is proved, the defendant / tenant is not entitled to deny the title of landlord and set up the plea of adverse possession by virtue of Section 116 of Indian Evidence Act, 1872. The defence of adverse possession is available to the defendant only in a suit for recovery of



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possession based on title and the same is not available in a suit for recovery of possession, based on jural relationship of landlord and tenant. Further, the defendant admitting the title of plaintiff made a request for transfer of suit property to it by way of gift. Hence, possession of defendant being permissive cannot be treated as hostile one. In the case on hand, the first appellate Court came to a factual conclusion that the defendant failed to prove the plea of adverse possession and the same requires no interference from this Court in view of the position stated above.

12. In the light of the above discussion made, the only question to be decided in this case is whether the jural relationship of landlord and tenant having pleaded by the plaintiff is true and the lease arrangement is properly determined in the manner known to law? In order to prove the jural relationship, the plaintiff pressed into service the receipts issued by it under Ex.A2 to Ex.A10 for having received the rent at the rate of Rs. 10/- per month. A perusal of Ex.A2 and Ex.A3 would suggest that the plaintiff issued a receipt to the defendant for having received donation of Rs.120/- for a period from April to March in the respective financial years. A perusal of EX.A4 to Ex.A10 would suggest that the plaintiff



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issued a receipt to the defendant for having received donation of Rs.120/- for using the suit property for running a school. The footnotes in the receipts would suggest that said amount was collected under the head rent collection and payment account. The learned Senior Counsel for the appellant by taking this Court to the definition of the word “lease” under Section 105 of TP act submitted that any periodical payment of amount in lieu of transfer of right to enjoy the property shall be treated as a rent and merely because, the amount was mentioned as donation in the receipts issued by the plaintiff, it will not acquire the character of donation. The learned counsel for the respondent laid emphasis on the usage of word “donation” in Ex.A2 to Ex.A10 and submitted that necessary inference is payment was not made as rent.

13. The word “donation” is defined in Oxford Dictionary as follows:

“Something that is given to a person or an organisation such as a charity, in order to help them.”

The word “donation” is defined in P.Ramanatha Aiyar's Advanced Law Lexicon as follows:

“The action of donating or giving, presentation; gratuitous transfer of property from one to another; that which



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is presented; a gift.

Money or other asset given by a person or organization to another person or organization (such as a charity or political party)

When a person who is the owner of a thing, voluntarily transfers the title and possession of the same from himself to another, without any consideration, it is donation.”

14. A perusal of the above definitions would suggest that donation means voluntary transfer of a thing or property by one person to another without consideration. In nutshell, donation means gratuitous transfer of property from one person to another. In Ex.A4 to Ex.10, receipts issued by the plaintiff, it was clearly mentioned that donation was received from the defendant for using the suit property for the purpose of running a school. Therefore, it is not an act of voluntary transfer of a thing or property without consideration. It is not a gratuitous transfer of property / amount by the defendant to the plaintiff. The defendant paid amount to the plaintiff for its use and occupation of the plaintiff's property. Therefore, the employment of the word donation in the receipts issued by the plaintiff is only a misnomer. The amount paid by the defendant represents consideration for the enjoyment of the suit property. Therefore, even though the word donation is used in the receipts, it



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cannot be termed as a donation as it was not a gratuitous payment. In this regard, it would be appropriate to refer to the decision of the Hon'ble Apex Court in ***Commissioner of Income Tax Vs The Panbari Tea Co. Ltd.***, reported in ***AIR 1965 SC 1871***, wherein while considering the question whether the amount paid was a premium or rent, the Supreme Court observed as follows:

“Under Section 105 of the Transfer of Property Act, a lease of immovable property is a transfer of a right to enjoy the property made for a certain time, express or implied or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent. The section, therefore, brings out the distinction between a price paid for a transfer of a right to enjoy the property and the rent to be paid periodically to the lessor. When the interest of the lessor is parted with for a price, the price paid is premium or salami. But the periodical payments made for the continuous enjoyment of the benefits under the lease are in the nature of rent. The former is a capital income and the latter a revenue receipt. There may be circumstances where the parties may camouflage the real nature of the transaction by using clever phraseology. In some cases, the



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so-called premium is in fact advance rent and in others rent is deferred price. It is not the form but the substance of the transaction that matters. The nomenclature used may not be decisive or conclusive but it helps the Court, having regard to the other circumstances, to ascertain the intention of the parties.”

15. Therefore, it is clear the nomenclature used in the receipt issued by the plaintiff is not decisive or conclusive to come to a conclusion whether it should be treated as donation or rent. The character of the payment made by the defendant shall be decided by ascertaining the real intention of the parties by taking into consideration other attendant circumstances. In the case on hand, though the amount received by the plaintiff was described as donation in the receipt issued by it, in the very same receipt, it was clearly mentioned that the amount was received by the plaintiff from the defendant for use of suit building for running a school. The footnotes in the receipts also denote that it was collected under the head rent and payment account. The account ledgers produced by the plaintiff also established that the amount collected from the defendant was entered in the ledgers under the head rent. Therefore, the amount tendered by the defendant is not a gratuitous payment without any consideration. The payment was made by defendant only as a



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consideration for use and occupation. In this regard, the admission made by D.W.1 assumes significance. The relevant portion of D.W.1's evidence in vernacular reads as follows:

“நாங்கள் கொடுத்த ரூபாய் பத்து மாத வாடகை என்று சொன்னால் சரியல்ல. அது நன்கொடையாக தான் கொடுக்கப்பட்டது. அந்த நன்கொடை தாவா சொத்தை எங்களது சுவாதீனம் கொடுத்ததற்கு நன்றியாக கொடுக்கப்பட்டது. சொத்தின் மதிப்புக்கும் விஸ்திரனத்திற்கும் சம்பந்தமில்லாமல் மேற்படி ரூ.10/□ ஒரு நாமினலாக கொடுக்கப்பட்டதாகும். அது இருசங்கங்களும் உள்ள உறவின் அடிப்படையில் அமைந்தது. ரூபாய் பத்து கொடுப்பதை நிறுத்தியதற்கு காரணம் வாதி சங்கம் தானப்பத்திரம் பதிந்துகொடுக்கும் என்ற நம்பிக்கை தான். 1976ல் இருந்து ரூ.10/□ கொடுக்கவில்லை. ரூபாய் பத்து நாளது வரை கொடுக்கவேண்டிய கடமை உண்டு.”

16. A perusal of D.W.1's evidence would suggest that the above said donation was made by the defendant as a gratitude for allowing the defendant to enjoy the property. D.W.1 also admitted that after some time, the payment of amount was stopped by the defendant on the belief, a gift deed would be executed by plaintiff. He also admitted even today, the defendant was under the obligation to pay the said amount of Rs.10/- per month. Therefore, D.W.1 clearly admitted that the defendant paid Rs.10/- per month only in lieu of its enjoyment of the suit property. He therefore, admitted notwithstanding proposal to execute gift deed in



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favour of defendant even today, the defendant is under the obligation to pay the said amount. If there is no agreement between the parties to pay rent for enjoyment of the suit property, there is no question of obligation to pay Rs.10/- every month. There cannot be an obligation to pay donation, because donation is a voluntary payment made without any consideration. When D.W.1 admits about the obligation to pay Rs.10/- per month to the plaintiff as a gratitude for allowing the defendant to enjoy the property, implied understanding to pay amount in lieu of enjoyment can be inferred. Therefore, there is no difficulty in coming to the conclusion that the amount mentioned in Ex.A4 to Ex.A10 receipts are only rents paid by the defendant to the plaintiff. The plaintiff paid Rs.10/- per month as a consideration for its use and occupation and the said amount was collected annually and the receipts were issued by mentioning the period as April to March of the relevant financial year. The first appellate Court has committed a serious error in inferring the true character of the payment made under Ex.A4 to Ex.A10. The first appellate Court failed to take into consideration the crucial words “donation received for using our council building for school purpose” and admissions of D.W.1 in this regard. The first appellate Court also failed to take into consideration, as per the footnotes found in the



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receipts, the amount was collected under the head rent collection and payment account. Therefore, the conclusion reached by the first appellate Court as if the amount paid by the defendant was only donation is vitiated by non consideration of material evidence available on record.

17. The term lease is defined under Section 105 of TP Act and it reads as follows:

“105. Lease defined.— A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, lessee, premium and rent defined.—The transferor is called the lessor; the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.”

18. A close scrutiny of the same would suggest the following are the ingredients of the definition of lease:

- I) The transfer of right to enjoy immovable property
- ii) The said transfer may be for a certain time or in perpetuity;



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iii) Such transfer shall be for consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee.

19. In the case on hand, there is a transfer of right to enjoy the immovable property and the said fact is admitted one. Even in the year 1947, the defendant started enjoying the property of the plaintiff and it has been running a school thereon. Therefore, the first ingredient is satisfied. There is no written lease arrangement between the parties. However, as per the definition, the lease of immovable may be expressed or implied. Therefore, the lease can be inferred by taking into consideration the conduct of the parties. In the case on hand, the receipts issued by the plaintiff to defendant under Ex.A3 to Ex.A10 would suggest, a periodical payment of Rs.10/- per month was made by the defendant to the appellant for running a school. Even though period is not specified, it is month to month lease. Therefore, the second condition is also satisfied. Ex.A3 to Ex.A10 also established periodical payment of money by defendant for use and occupation of the suit property. Therefore, the third condition is also satisfied. In view of the same, all



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the ingredients of the lease as defined by the TP Act are satisfied in this case. Therefore, this Court has no hesitation in coming to the conclusion that by producing rental receipts under Ex.A3 to Ex.A10, the plaintiff proved the existence of landlord tenant relationship. By taking into consideration the evidence available on record, the trial Court rightly came to the conclusion that the plaintiff established the jural relationship. On the other hand, the first appellate Court was carried away by the nomenclature used in receipt issued by the plaintiff and held that there was no landlord tenant relationship. The first appellate Court failed to take into consideration the amount was paid by the defendant for use of suit building and it also failed to consider the admission made by the D.W.1 with regard to the obligation to pay said amount of Rs.10/- even today. The final conclusion reached by the first appellate Court that payment made by the defendant was not a rent but donation is vitiated by non consideration of material evidence available on record. The learned counsel for the respondent submitted that P.W.1 in his evidence admitted that in the year 1947, the suit building would fetch a sum of Rs.2,000/- as rent. However, the defendant only paid Rs.10/- per month and therefore, it could not be taken as rent for use and occupation. Merely because, the rent agreed between the lessor and lessee is less than the market rent, we



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cannot jump to the conclusion that there was no lease and jural relationship. Lease is a special relationship established by agreement between lessor and lessee and parties to the lease arrangement are at liberty to fix any amount as rent as per their wish. The validity of the lease will not get affected merely because the rent fixed was less than market rent. Further, D.W.1 in his evidence talks about the special relationship between the plaintiff and the defendant. Both the plaintiff and defendant are charitable institutions running a school. By taking into consideration the laudable objects of the defendant, the plaintiff, which appears to be a sister's institution would have agreed for a token amount as rent. Hence, the said submission made by the learned counsel for the respondent is not appealable to this Court.

20. The learned counsel for the respondent also submitted that when annual general body of plaintiff decided to execute a lease deed in favour of defendant by resolution passed in the year 1976, the present suit filed by the plaintiff is not maintainable. Admittedly, the resolution relied on by the defendant was not given effect to and till date, no gift deed has been executed in favour of the defendant. Therefore, as on today, the legal title vests with the plaintiff. The plaintiff issued a proper



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notice to quit on 11.02.1997 under Ex.A28 and the same was received by the defendant on 12.02.1997. The monthly tenancy was determined with end of the month viz., 28.02.1997 with clear 15 days notice. The defendant was asked to hand over the possession by 01.03.1997. Ex.A1 is the byelaws of plaintiff society and byelaw 27(l) authorises Executive Committee to lease any property of the association. Byelaw 35 says that legal proceedings by or against the association and its institutions shall be instituted in the name of the Secretary. Therefore, the suit was instituted by Secretary as per the decision of the Executive Committee and as per the bylaw of the society and the suit is maintainable in the name of the Secretary. The suit was filed in the year 1997, till date no member of the society appeared to have questioned the filing of the suit by the plaintiff against the defendant for recovery of possession. If ultimately, the General Body of the plaintiff Society wants to give effect to the earlier resolution of gifting the property to the defendant, it can do so at any time notwithstanding the decree for ejectment. As on today, no gift deed has been executed validly in favour of the defendant and when the lease is properly terminated by issuing proper notice to quit, the plaintiff is entitled to seek recovery of possession. Further in view of Section 116 of the Indian Evidence Act, 1872 the defendant is not



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entitled to deny the title of plaintiff. In the case on hand, claiming title under alleged gift, the defendant denied the title of the plaintiff.

Therefore, the right of the defendant is forfeited under Section 111(g) of TP Act. On that ground also, the lease between the parties got determined. Hence, the defendant is liable to surrender the possession to the plaintiff. In view of the discussion made earlier, the findings rendered by the first appellate Court as if there was no landlord tenant relationship between the plaintiff and defendant is set aside and the question of law framed at the time of second appeal is answered in favour of the appellant and against the respondent.

21. While the Second Appeal was pending, the respondent filed C.M.P.(MD)No.1570 of 2023 for reception of additional evidence viz., certified copy of the Town Survey Register dated 14.12.2022 and Survey Sketch. The learned counsel for the respondent submitted that in the Town Survey Register, the name of the respondent's school is registered as owner of the property and therefore, the said document will have material bearing on the final outcome of the suit. In the affidavit filed in support of the petition, it was stated by the petitioner/respondent that the Town Survey Register was obtained by the petitioner/respondent only on



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14.12.2022 and the said document was not available with the petitioner/respondent, when the matter was pending before the trial Court as well as the first appellate Court. The petitioner could have applied for the certified copy of the Town Survey Register even when the suit was pending. The petitioner/respondent has not given any convincing reason for its failure to apply for the certified copy of the Town Survey Register and file the same before the trial Court or at least before the first appellate Court. Further, merely because, the name of the respondent school is entered in the Town Survey Register as owner of the property, we cannot come to a conclusion that the respondent is the owner of the property. As discussed earlier, the respondent admitted the title of the appellant and pleaded gift in its favour. When the gift is not effected by way of registered document, as contemplated under Section 123 of TP Act, no title will pass on to the respondent/defendant. It is not known on what basis, the respondent school's name was entered in the Town Survey Register and it is also not known when such entry was made in favour of respondent school. Further, the respondent school paid periodical payments to appellant/plaintiff towards use and occupation. If respondent is the real owner of property, there is no need to pay amount towards use of suit buildings to appellant under Ex.A2 to Ex.A10.



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Hence, the additional documents produced by the respondent/defendant are no way helpful to them to prove the alleged gift in their favour in the absence of registered document. In such circumstances, the Town Survey Register and the Sketch produced by the respondent/defendant by way of additional evidence will not have any impact on the final outcome of this Second Appeal. Therefore, C.M.P.(MD)No.1570 of 2023 is dismissed.

22. In nutshell, the Second Appeal is allowed, the judgment and decree passed by the first appellate Court is set aside and the judgment and decree passed by the trial Court is restored. In the facts and circumstances of the case, there will be no order as to costs. Consequently, M.P.(MD)No.1 of 2009 is closed.

30.04.2024

Neutral Citation : Yes
Index : Yes
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S.SOUNTHAR, J.

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To

1. I Additional Sub-Judge, Madurai
2. I Additional District Munsif, Madurai Town.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

Judgement in
S.A.(MD)No.1004 of 2007

30.04.2024