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S.A.(MD).No.27 of 2022

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD).No.27 of 2022

1.Paramakudi Vaniya Uravinmurai
Pothu Sabai,
Through its President,
M.Deiveendaran,
No.8/191, Kannagi Street,
Paramakudi.

2.Paramakudi Vaniya Uravinmurai
Pothu Sabai,
Through its Secretary,
Selvam,
No.8/191, Kannagi Street,
Paramakudi.

... Appellant

(Cause title accepted vide Court order,
dated 22.01.2020, made in C.M.P.(MD)
No.420 of 2020 in S.A.(MD)SR.No.
87450 of 87450 of 2019)

/Vs./

Karuppiah Pandithan (died)

1.Indurani
2.Kalaiyarasi
3.Chandra Sekar

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree, dated 06.12.2004, in A.S.No.71 of 2004 on the file of Principal District Court, Ramanathapuram, reversing the Judgment and



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Decree, dated 21.06.1999, in O.S.No.259 of 1992, on the file of District Munsif Court, Paramakudi.

For Appellants : Mr.R.G.Shankar Ganesh
For R1 to 3 : Mr.V.R.Shanmuganathan

JUDGMENT

This second appeal is preferred by the plaintiff Trust. the suit was filed by the Trust and the suit was decreed. Aggrieved over the same, the tenant had preferred the First Appeal and the First Appellate Court has allowed the appeal. Aggrieved over the same, the present second appeal is preferred by the Trust.

2. The Appellate Court has reversed the judgment of the Trial Court and had held the plaintiff ought to file a petition under RCOP to evict the tenant and the suit is not maintainable. The contention of the appellate Trust is that the respondent had not raised the question of maintainability before the Trial Court and had raised the same before the First Appellate Court by filing written arguments, hence the said issue cannot be entertained. The said contention cannot be accepted since jurisdiction is legal issue which can be raised at any point of time.

3. The next contention of the appellant is that the plaintiff is a Public Trust



and the Public Trust is exempted from the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, but the Appellate had not considered or discussed the fact that the appellate is Public Trust. The plaintiff relied on ExA1 wherein it is stated that the plaintiff is registered under the Societies Registration Act (Act 30 of 1973), hence suit can be filed for eviction of tenant.

4. It is seen that the First Appellate Court failed to take note of Ex.A1 and absolutely there is no discussion on the fact whether the plaintiff is private trust or public trust. The Learned Counsel appearing for the defendant submitted that the plaintiff trust is beneficial for particular community people and hence the same cannot be considered as public trust. But the Learned Counsel appearing for the plaintiff submitted that even though the trust is beneficial for particular community it is public trust since the trust is not for particular persons or particular family, but for persons belonging to the community. On perusing the rules and regulations of the Trust, it is seen that the Trust performs the following activities:

“The Trust was established for the development of the Vaishya community people. The Trust involves in upliftment of the Vaishya community people and other community people, in establishment of educational institutions, providing financial assistance for marriages, etc.”



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Since the Trust is involved in the above said activities, it is evident that it is a public Trust. Therefore, this Court is of the considered opinion that merely because it belongs to or it related to the members of a particular community alone, cannot be said to be a private trust. The issue is considered in an unreported judgment of the High Court dated 9.3.1998 delivered in S.A.No.1903 of 1997 filed by one Saravana Enterprises, represented by its Proprietrix I.M.T.Sarojadevi against Sowrashtra Sabha, Madurai, through its Honorary Secretary, in which D.Raju,J., (as he then was) held:-

".... merely because it belongs to or it related to the members of a particular community alone, cannot be said to be a private trust."

The aforesaid judgment is followed in CRP No.3164 of 1998 in the case of ***S. Kulandaivelu Vs Sowrashtra Vipra Sabha Namakkal represented by its President and Secretary at Dhuban Komarasami Theru, Namakkal***, vide order, dated 07.04.2004. In the present case, the First Appellate Court has not even taken this issue as point for consideration, thereby terribly erred in coming to the conclusion that suit is not maintainable and only Rent Control Act is applicable.

5. Further the Learned Counsel appearing for the plaintiff submitted that the amount collected by way of rent by the plaintiff Trust would be utilised both for public purpose and also for the purpose of marriages and for funeral expenses



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relating to the Vaniya community and in assisting the students to purchase books etc., and also for the purpose of agriculture activities and jobs and to help widows, orphans, handicapped etc. Hence, it is clear that the plaintiff Trust is a public trust and is exempted from the purview of the Rent Control Act. Therefore, the judgment rendered by the First Appellate Court is set aside.

6. It is seen that the defendant in the suit has failed to pay rent. Since the 1st respondent herein is an old lady staying alone, on equity this Court is directing the plaintiff / appellant Trust to pay Rs.3,00,000/- to the 1st respondent herein and also waive the arrears of rent amounting to Rs.1,75,000/-. The respondents herein are directed to evict the premises on or before 30.06.2024. The respondents herein shall hand over the keys to the appellant Trust on 30.06.2024. On such eviction and handing over of keys, the appellant Trust is directed to pay the amount of Rs. 3,00,000/- to the 1st respondent herein through Demand Draft.

7. With the above said directions, the second appeal is allowed. No costs.

05.03.2024

Index : Yes / No
NCC : Yes / No
Tmg

Note: Issue order copy on 05.07.2024.



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TO:

1. Principal District Court,
Ramanathapuram.
2. District Munsif Court, Paramakudi.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.27 of 2022

Dated:
05.03.2024