



S.A.(MD)No.737 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.04.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD)No.737 of 2012
and M.P.(MD)No.1 of 2012

S.Masutha Begam

... Appellant

Vs

The Christian Education Health and
Development Society,
Rep. by its Secretary,
Shanthipuram, Ambiligai,
Ottanchathiram Taluk,
Dindigul District.

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 30.07.2012 made in A.S.No.10 of 2010 on the file of the Sub Court, Palani Confirming the judgment and decree dated 21.12.2009 made in O.S.No.256 of 2007 on the file of the District Munsif Court, Ottanchathiram.

For Appellant : Mr.I.Velpradeep

For Respondent : Mr.S.Anand Chandrasekar
for M/s.Sarvabhauman Associates



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JUDGMENT

The defendant in the suit is the appellant. The respondent Society filed a suit seeking recovery of possession. The suit was decreed by the trial Court and the findings of the trial Court were affirmed by the Appellate Court. Aggrieved by the concurrent findings, the defendant is before this Court.

2. According to the respondent/plaintiff, the suit property was let out to the appellant/defendant on 09.10.2004 on monthly rent of Rs.1,000/- for a period of one year and the said period was already over. The appellant failed to pay the rent from December 2005 and hence, the respondent had issued a notice on 03.12.2006, calling upon the appellant to vacate the suit property and the same was evaded by her. Therefore, the respondent was constrained to file the above suit.

3. The appellant herein filed a written statement denying lease arrangement between her and the respondent. It was the case of the appellant that she entered into lease agreement with the Principal of Christian Matriculation Higher Secondary School on 21.07.2000 and



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there was no lease arrangements with the respondent/plaintiff. The appellant also raised a plea that requirement for owners occupation by the respondent was a not *bona fide* one and hence, sought for dismissal of the suit.

4. Before the trial Court, the Secretary of the respondent Society was examined as PW1 and through him 5 documents were marked as Ex.A1 to Ex.A5. On behalf of the appellant, she was examined as D.W.1 and 39 documents were marked as Ex.B1 to Ex.B39.

5. The trial Court, on appreciation of oral and documentary evidence, came to the conclusion that the respondent/plaintiff was entitled to decree of possession, as prayed for and aggrieved by the same, the appellant preferred an appeal in A.S.No.10 of 2010 on the file of the Sub Court, Palani. The first appellate Court affirmed the findings of the trial Court. Aggrieved by the same, the appellant is before this Court.

6. The learned counsel appearing for the appellant vehemently contended that there was no landlord-tenant relationship between the appellant and the respondent and therefore, the Courts below ought not



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to have granted decree for possession. The learned counsel for the appellant submits that the suit property is situated in Ottanchathiram Town and therefore, it is coming within the urban rent control area. In such circumstances, the suit for possession before the Civil Court is not maintainable.

7. The learned counsel appearing for the respondent submitted that the respondent society is a public trust engaged in Christian Religious and Charitable activities and hence entitled to the benefit under G.O.Ms.No.2000, Home Department, dated 16.08.1976 issued under Section 30 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, and hence, the building belonging to the society is exempted from the purview of Rent Control Act. Therefore, the suit for possession filed before the Civil Court was very well maintainable. The learned counsel further submitted that the Christian Matriculation Higher Secondary School, with whom the appellant entered into a lease agreement is run by the respondent society and it is only an arm of the respondent Society and therefore, the Society is entitled to maintain a suit for recovery of possession. In support of his contention, the learned counsel relied on the following judgments:



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1. *Ranjan Devasahayam Vs. Hindustan Bible Institute of India* reported in *1996-1-L.W.533*;

2. *Vijayakumar Vs. Roman Catholic Church, Represented by Rev. Father J. Anthony Joseph, Musiri* reported in *2001-2-L.W.736*;

3. *S. Govindasamy (died) and 4 others Vs. Gowthiya Sangam, Nagore, Rep. by its Secretary, M.A.A. Sathakathullah* reported in *2007 (5) CTC 136*;

4. *Sha Poosaji Mangilal Vs. The South Indian Humanitarian League, represented by its Secretary, B.T. Vajawat* reported in *2009 (2) CTC 25*;

5. *E. Damodharan Vs. Triplicane Annadhana Samajam* reported in *2016 (2) CTC 277*;

6. *Chennai Vazhal Duraiyur Nadar Uravin Murai Magamai Sangam, Represented by its President Mr. A.S. Annamalaichamy Nadar and others Vs. K.A. Gurusamy and eight others* reported in *2004 (1) CTC 481*; and

7. *M/s. Jayant Cycle & Motor Co. Vs. The Arcot Lutheran Church, Represented by the Secretary of the Church Board* made in *S.A.No.732 of 2012, dated 03.08.2021*.



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8. The suit for recovery of possession was resisted by the defendant by denying the jural relationship of landlord and tenant. It was her specific case that she entered into tenancy agreement only with the Principal of Christian Matriculation Higher Secondary School. The plaintiff in the plaint clearly averred that the plaintiff have been running schools, hospitals and other religious and charitable institutions and the Christian Matriculation Higher Secondary School has been managed by the plaintiff society. The defendant in her written statement admitted that she entered into tenancy arrangement with the Principal of Christian Matriculation Higher Secondary School. The rental receipts issued by the defendant are signed by Correspondent / Principal of Christian Matriculation Higher Secondary School. It is not the case of the defendant that suit property is a private property of said Dr.Jacob Cheriyan. When there is a specific plea raised by the plaintiff that Christian Matriculation Higher Secondary School is managed by the plaintiff society and rental receipts were issued by the Correspondent of the said School, the plea raised by the defendant, as if there was no jural relationship between the plaintiff and defendant is not acceptable. The Christian Matriculation Higher Secondary School is only one of the arm



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of the plaintiff society, which runs various charitable institutions. In these circumstances, both the Courts below, on appreciation of evidence available on record, especially the admissions of D.W.1, rightly came to a factual conclusion that jural relationship was proved. The said conclusion requires no interference from this Court.

9. The learned counsel for the appellant vehemently contended that the suit property situated in an urban Rent Control area and therefore, the suit filed for recovery of possession is not maintainable in view of the provisions of Tamil Nadu Building (Lease and Rent) Control Act, 1960. It was claimed by the plaintiff even in his plaint that in view of Government Orders granting exemption to the buildings owned by Hindu, Christian and Muslim religious public trusts and public charitable trusts, the plaintiff was entitled to maintain a suit for recovery of possession before the civil Court instead of moving the Rent Controller. The learned counsel for the appellant submitted that the plaintiff is a Society registered under the Societies Registration Act, 1860 and therefore, it cannot be treated as a public charitable trust.

10. In *Ranjan Devasahayam Vs. Hindustan Bible Institute of India* reported in *1996-1-L.W.533*, while considering the question



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whether a society can be treated as a trust, this Court observed as follows:

“9. On reading of the above said relevant portions of Ex. A-2, it is clear to me that the plaintiff though a society, it is also a trust and its properties are trust properties. The above referred to directors mentioned in Ex. A-2 are stated to be the 'Trustees' of the society. Further, the said properties of the society are said to vest with the said trustees (directors). Further, it is also seen from the above passages that the above said institute shall solely be applied towards the promotion of the above said objects of the society and the members of the society are not to derive any benefit from the funds of the society. From this also, it can be inferred that there is a dedication of the said religious and charitable objects of the society. Further, on a reading of the above referred to main objects of the society, it is clear that it is a public religious and charitable trust. It is religious because it is established for the studying of the Holy Bible. It is also charitable because it is also for the study of other courses of study which are academic in nature including graduate work, and for practical and efficient training of young people for all kinds of educational work. Further, simply because P.W. 1 has deposed that the plaintiff is not trust, but only society, it cannot be held that the suit buildings is not a trust but only society, it cannot be held that the suit building is not a trust property particularly when the material documentary evidence Ex. A-2 shows that the suit building is a trust property. Therefore, there is no difficulty in holding that G.O.Ms.No.2000 would apply to the plaintiff.”



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11. In *Vijayakumar Vs. Roman Catholic Church, Represented by Rev. Father J.Anthony Joseph, Musiri* reported in *2001-2-L.W.736* while considering the question whether a society can be treated as a trust so as to claim exemption under G.O.Ms.No.2000, Home Department dated 16.08.1976 issued under Section 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, after taking into consideration the objects of the Society, which have been set out in the byelaws, this Court observed as follows:

“12.From a close reading of the various purposes which have been sought to be achieved by the respondent trust it can be safely concluded that the benefits are to be conferred not on any particular group or section but irrespective of caste, creed, race, community or even assuming the status the respondent intended to provide all kinds of service to all people of the society at large. Such being the laudable object of the society in which the respondent is a part, it can be safely concluded that the main purpose was charitable in character. The very purpose of granting exemption in G.O.Ms.2000 dated 16.8.1976 being to benefit such institutions it would be puerile if such benefits are to be denied on some hypertechnical basis such as the one raised now on behalf of the appellant. Therefore, I am unable to accept the contention of the appellant that the respondent being not a trust as registered under the Indian Trusts Act, it cannot claim the benefit of the



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exemption under G.O. Ms. 2000 dated 16.08.1976.....”

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12. In *S.Govindasamy (died) and 4 others Vs. Gowthiya Sangam, Nagore, Rep. by its Secretary, M.A.A.Sathakathullah* reported in 2007 (5) CTC 136, this Court while considering a similar question observed that the real character of a society has to be determined only with the reference to the objects of the society. The relevant observations read as follows:

“11. The Lower Appellate Court while considering the point as to whether the plaintiff society is a 'public trust' or a 'private trust', after considering the various provisions contained in Ex.A-3-bye-laws of the society and particularly the objects of the society and the provisions contained at page 25 of the bye-laws, has recorded a categorical finding that the society has not been formed by a particular member for the benefit of a particular section of the society and it is not functioning for the benefit of the particular section of society, whereas it has been formed for the benefit of the entire Muslim public. The Lower Appellate Court has also observed that simply because the plaintiff society has been incorporated under the Act 21 of 1960 it cannot be described as a private society. The real character of the plaintiff society has to be determined only with reference to the objects of the society.”

13. In *Sha Poosaji Mangilal Vs. The South Indian*



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Humanitarian League, represented by its Secretary, B.T.Vajawat

reported in **2009 (2) CTC 25**, this Court laid two conditions for determining the character of the institution as a trust or otherwise irrespective of the constitution of the same. The relevant observation reads as follows:

“11.On an analysis of the decisions relied upon by the learned Senior Counsel on both sides, it is seen that irrespective of the Constitution of the Institution, the Courts have looked into (i) the objects and purposes of the creation of the Institution and (ii) the entrustment of any fund or property for public religious or charitable purposes. If the objects and purposes of creation of the Institution are of public religious or charitable nature and if there was entrustment of any fund or property for such purposes, the Courts have treated them as Institutions which are entitled to certain privileges such as the exemptions under various tax laws.....”

14. In *E.Damodharan Vs. Triplicane Annadhana Samajam* reported in **2016 (2) CTC 277**, a society has been held to be a trust by taking into various functions of the same. The Relevant observations reads as follows:

“19. In the instant case, the plaintiff is an artificial person (society) already in existence and the same has not been created by the Will in question. There can be no doubt that feeding not less than fifty poor persons on every Krithika



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day and spending the balance of amount after meeting out all expensing including taxes and repairs from out of the income derived from the property for charitable purposes in accordance with the resolution of the Directors of the plaintiff would clearly go to establish that the suit property carries with it an obligation which is a trust and thus, the plaintiff is only the trustee of the public charitable trust.”

15. In *Chennai Vazhal Duraiyur Nadar Uravin Murai Magamai Sangam, Represented by its President Mr.A.S.Annamalaichamy Nadar and others Vs. K.A.Gurusamy and eight others* reported in 2004 (1) CTC 481, a Division Bench of this Court held that a Sangam or Association can be treated as a public trust having regard to the objects and its activities and hence, application for leave to sue under Section 92 of Code of Civil Procedure was maintainable. The relevant observations of the Division Bench reads as follows:

“13. The suit is not filed to vindicate the individual rights but to vindicate the welfare of Thuraiyur Nadar people residing in Chennai, who are the beneficiaries of the charitable trust created. Even from the object of the 1st plaintiff-sangam as mentioned in paragraph 4 of the plaint, it is clear that the Sangam was formed with a view to do charity to the beneficiaries therein providing free education, assistance to the handicapped and economically downtrodden persons and to provide financial assistance for the children of those people



who suffered due to fire accident, flood and other natural calamities. Paragraph 5 of the plaint also deals with as to how the Sangam is getting income for the purpose of doing charity.

14. But, the learned Judge rejected the Application, as stated already, only by reading paragraph No. 3 of the plaint and came to the conclusion that there is nothing in the pleadings to vindicate that there was a public trust and the public trust was created.”

16. A reading of the above judgments would make it clear that merely because a society is registered under Societies Registration Act, 1860, one cannot jump to a conclusion that it cannot be treated as a trust. Whether particular institution is a trust or not has to be determined by the character of such institution with reference to the objects and activities. In the case on hand, the objectives of the plaintiff society as per its byelaws reads as follows:

“6.The objectives of the Society:

BASIS: Faith in and devotion to God as revealed in the life of Jesus Christ. AIMS AND OBJECTIVES:

A) The objective of the society shall be the establishment, maintenance and development of educational. Health technical and other charitable institution and preparation, implementation and follow up of other projects of



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similar development nature in and around Odddanchatram for providing education and medical care of the highest quality the spirit of Christ with emphasis on more and spiritual values without my distinction of caste, creed or colour.

B)To train persons in education, medical and development fields and also to do research in the above fields with special emphasis on rural set up.

C) As members of the church to cooperate with dedicated youth movements and other nation building services.

D) Establishing Centres and facilities such as study conferences, retreats etc, and engaging in agriculture, dairy farming, poultry, keeping and other food production activities thereby witnessing to simplicity of living and dignity of manual labour.

E) To establish and carry on any other activities which seems right to the Society and which will help to achieve the above mentioned objectives.

F) To establish and carry on any other activities calculated to safeguard the value of any of the society's property or rights.

G) By acquiring, taking over, possessing issuing and managing property and funds for carrying out the objects of the Society.

H)By doing such other things as is incidental and conducive to the attainment of the above said programmes of the Society.”

17. As per byelaw 6, in pursuance of the above charitable objects,



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the society shall have the following powers:

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.....

E) To acquire immovable property by way of purchase, mortgage lease or otherwise and to possess or hold the same and to apply both the capital and the income thereof for the objects of the society”

18. As per byelaw 16, the funds of Society shall be applied only in furtherance of aims and objects of Society which reads as follows:

“16. The mode of Custody, application, investment of the funds of Society and the extent and conditions of such investment:

a) The funds of the Society will be invested/deposited in the movable and immovable properties, government securities, National saving Certificate Nationalized and Societies Banks or in Societies registered under the Tamil Nadu Societies Act, 1975 and other Govt. approved financial institutions. It will be operated by the Society. The Society can keep cash upto Rs.20,000/-.

b) The income, property and other assets of the Society shall be applied only in furtherance of the aims and objects of the society and according to the powers vested in the Society.”

19. A reading of objects of the plaintiff Society as per its byelaws



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and its functions and obligation as per the objects of the society will make it clear that it is a public charitable trust administered for the benefit of general public. The properties and funds of the Society shall be applied only in furtherance of objects of the Society. By following the decisions referred above, I come to the conclusion that the respondent/plaintiff society shall be treated as a public charitable trust and hence, it is entitled to claim exemption under G.O.MS.No.2000, Home Department, dated 16.08.1976, issued by Government of Tamil Nadu granting exemption to the buildings of public charitable trust.

20. As far as unreported judgment of this Court in S.A.No.732 of 2012, dated 03.08.2021 referred above is concerned, this Court, in that judgment, came to the conclusion that a Society could not be treated as a Trust, unless it confirmed to the definition of Trust as found in Indian Trust Act, 1882. A perusal of provisions of Indian Trust Act, 1882 would make it clear that the same is applicable only for the private trust and it is not applicable to the public trust. Therefore, a public charitable trust need not be declared by a non-testamentary instrument in writing signed by the author of the trust. In order to create a public religious or charitable trust, no written instrument is required. A dedication of private property to charity and creation of charitable trust need not be by



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writing and it can be done orally or even inferred from conduct.

[Reference may be had to *Tilkayat Shri Govindlalji Maharaj Vs. State of Rajasthan* reported in *AIR 1963 SC 1638 = MANU/SC/0028/1963*].

Therefore, the unreported judgment of this Court in S.A.732 of 2012, dated 03.08.2021 is not applicable to the facts of the case especially when we are concerned with a public charitable trust.

21. In view of the discussion made earlier, I hold that the respondent/plaintiff is entitled to maintain a suit for recovery of possession before the civil Court and both the Courts below rightly entertained the same and granted a decree for possession. Hence, the submissions made by the learned counsel for the appellant are rejected. I do not find any question of law much less substantial question of law involved in this Second Appeal and therefore, the Second Appeal stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Neutral Citation : Yes

Index : Yes

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- To
- 1.The Sub Court, Palani.
 - 2.The District Munsif Court, Ottanchathiram.
 - 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

S.SOUNTHAR, J.

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