

(2010) 10 AHC CK 0213

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 47250 of 2008

Gaurishankar Gupta

APPELLANT

Vs

Shri Keshavji Gaudiya Math Dharmshala, Mathura and others

RESPONDENT

Date of Decision : 19-10-2010

Acts Referred:

Evidence Act, 1872 — Section 90, 90A
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2(1)(bb)

Citation : (2010) 10 AHC CK 0213

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned counsel for the parties and perused the record.

The facts culled out from the record are that the property in dispute being shop no. 150C, Shri Keshavji Gaudiya Math Dharmshala, Kanstela, Hospital Road, Mathura, was let out by the trustee to the petitioner Gauri Shankar Gupta in 1959 for business of Dry Cleaning of clothes. The property aforesaid originally belonged to Baba Gharib Das and his son Gursaran Das constructed Dharmshala over a portion of the land.

2. The contention of learned counsel for the petitioner is that Baba Gharib Das bequeathed all his properties, including Dharmshala with the right of management in favour of his son, Gursaran who died in 1944 and was succeeded by his sons Nand Kishore, Jagan Prasad alias Jai Ram and Madan Lal, who executed the Trust Deed in question on 13.12.1954. A notice of demand and quit was issued by Gaudiya Vedant Samiti on 23.8.1995, as managing body of the property in dispute namely Sri Keshavji Gaudiya Math, Dharmshala. The notice was replied by the petitioner on 19.9.1995, challenging its validity on the ground that it had not been issued on behalf of the landlord Trust, viz., Sri Keshavji Gaudiya Math, Dharmshala. It was also averred in the notice that no rent was due as the same has been regularly deposited.

3. The trial court vide its order dated 13.2.2007 decreed the suit and the revisional court viz. Addl. District Judge, Court No.1, Mathura, vide its judgment and order dated 19.9.2008 affirmed the decree passed by the trial court.

4. Aggrieved by the order dated 19.9.2008, this writ petition has been preferred by the tenant challenging the validity and correctness of the order impugned on the ground that the notice is invalid having been issued by a person who is neither landlord, nor one of the trustees; that photostat copy of the original Trust Deed was admissible in evidence; that courts below have failed to consider as to whether presumption under Section 90 and 90A of the Evidence Act can be extended to even execution and proof of the contents of the document. It is also challenged on the ground that court below has erred in law as to whether testimony of Sri Purandar Brahmachari, who was a mere holder of power of attorney of the plaintiff, is evidence at all in the eyes of law; and as to whether the courts below committed manifest error of law in placing reliance upon the judgment dated 3.10. 2007 passed by this Court in Writ Petition No. 45694 of 2007 to which petitioner was not a party.

5. The submission of learned counsel for the petitioner is that the notice appended as Annexure No. 1 to the writ petition demonstrates that it has not been given by the trustees. He has relied upon the following excerpts of the trust deed appended as Annexure 6 in this regard. Relevant portion of the same is quoted as under:

"Times are very hard and living has become costly. Every property is liable to decay if steps are not taken to improve it. It is not within our means to improve the Dharamshala. After mature deliberations amongst ourselves and our friends, relatives and wellwishers, we have arrived at this conclusion that for the improvement and better management of the Dharamshala we should create a trust and entrust the management of the Dharamshala to some influential and religious persons who may be in a position to improve the present condition of the Dharamshala and may not allow it to be deteriorated. Accordingly we approached Swami Bhakti Projan Keshab Maharaj and some other members of the Gaudidya Vedanta Society to kindly agree to serve on the trust committee as trustees and to manage and improve the Dharamshala. The said Swamijis have out of piety agreed to our proposal, provided a regular trust deed is executed, and the powers of the trust committee and of the trustees are defined and laid down in a proper deed. We also consider this proposal to be sound, so that the trust may function properly on well defined lines. Moreover no proper trust deed has been executed and no rules and regulations have been framed for the proper management of the trust, and it is urgently necessary that a proper deed of Trust should be drawn up for the purpose. We, accordingly, out of our own free will and without coercion or intimidation from any quarter, execute this deed of trust with the sole object of improvement and better management of the Dharamshala of which the full description is given below in the schedule.

We, our heirs, successors in interest, representatives and assignees are and shall

be bound down by the terms of this deed and shall never have any power to repudiate it or any of its terms. This deed of Trust will stand, last and be in force for ever."

6. According to the counsel for the petitioner, perusal of the Trust Deed shows that Trustees were disciples of Paramhansa Swami 108 Shree Shreemad Bhakti Projan Keshb Maharaj who were managing the Dharamshala and that the trust deed aforesaid unerringly demonstrates that the Gaudiya Vedant Samit was not at all the trustee and the trustees were:

- i. TRIDANDI SWAMI BHAKTI VEDANTA BAMAN MAHARAJ.
- ii. TRIDANDI SWAMI BHAKTI VEDANT TRIVIKRAM MAHARAJA
- iii. TRIDANDI SWAMI BHAKTI VEDANTA NARAYAN MAHARAJA
- iv. SRI SUDAM SHAKHA BRAHMACHARY
- v. SRI HARIPADA DASHADHIKARY.

7. It is stated that in terms of clause Nos. 5, 6 and 7 of the trust deed, the President of Gaudiya Vedant Society is, however, endowed with the authority to remove a trustee for a breach of trust or for any other reason at his discretion or nominee from the body of trustees; that Clause 11 designates the President of the Board of Trustees or his nominee to represent the trust in all matters and before law courts and sign any document or paper for that purpose. Therefore, the notice given by Gaudiya Vedant Samiti was not valid in the eyes of law, but the courts below have totally gone astray in confounding Gaudiya Vedant Samiti a trustee of Shri Keshavji Gaudiya Math Dharmshala. Clause 5, 6, 7 and 11 of the trust deed are thus:

Clause 5: That the President of the GAUDIYA VEDANTI SOCIETY of Navedwip (Nadia West Bengal) shall have power to remove any member of the Board of Trustees for a breach of trust or for any other reason at his discretion, which shall not be challenged in any court of law.

Clause 6: That if the Board of Trustees hereby or hereafter appointed fail function for any reason whatsoever, the President of the said Gaudiya Vedants Society of Navadwip (Nadia West bengal) shall exofficio become the Head of the trust and he shall have powers to nominate a fresh Board of Trustees.

Clause 7: That the meeting of the Board of Trustees shall be held every three months or as and when requisitioned by 3 trustees of which due notice shall be given by the Secretary.

Clause 11: That the President of the Board of Trustees or his nominee shall represent the trust in all legal matters, and before law courts etc. and he or the Secretary shall be competent to and are authorized to represent the trust and the Board of Trustees and to sign any document or paper for that purpose.

8. He has placed the statement of witness, Shri Purandar Brahmchari in support

of his case and further stated that the property in question is the property of Thakurji. According to him, the aforesaid statement totally demolishes and destroys the plaintiff's case, who at all points of time has been claiming that the property is owned by the plaintiff's trust. It is stated that there is no question of endowment as stated by the witness and thus, the very basis evaporates. He further states that the plaintiff's trust and Gaudiya Vedant Samiti are two different entities; that the witness Purandar Brahmchari admits that Rao Baman Ji Maharaj was the President of the trust and that upon his death, Bhakti Vedant Narayan Goswami Maharaj became its president. It is emphasized that that the aforesaid statement is suffice to knock the very basis of the suit, as notice has been issued on the instruction of Gaudiya Vedanta Samiti and not the trustees of the plaintiff's trust.

9. With regard to his contention as to whether photostat copy of the original Trust Deed was admissible in evidence; and whether presumption under Section 90 and 90A of the Evidence Act can be extended to even execution and prove the contents of the document. It is submitted that Sections 90 and 90A of the Evidence Act (as amended in the State of U.P.) merely raises a presumption regarding custody and handwriting of the author of the deed. It does not accord any presumption at all regarding the contents of execution of the trust.

10. In support of his above contention he has relied upon paragraph no. 3 of the judgment reported in AIR 1981 All. 3, Ghurahu and others vs. Sheo Ratan and others which for ready reference is reproduced as under:

"The submission is not without merit. The extent of presumption is laid down in the section itself. It cannot be stretched beyond it. If a document is twenty years old and the court is satisfied of its proper custody it may be presumed that signature and any other part of document which purports to be in handwriting of any particular person is in that person's handwriting, that the document was executed by the person by whom it purports to have been executed and that the document was attested by the person by whom it purports to have been attested. In fact section 90 dispenses with proof of document as required in Sections 67 and 68 and what is required to be done is deemed to have been done by operation of law. But the proof of signature or handwriting does not establish that whatever is stated in document is also correct. That has to be proved not only by production of document but by proving its contents as well."

11. On aforesaid basis it is submitted that presumption extends to only original and not copy of the deed. It is stated that admittedly, original trust deed was not been produced and only xerox copy thereof has been filed in the court. Referring to evidence of Purandar Brahmachari, it is stated that this witness has admitted the fact that original trust deed has been lost and this fact was told to him by Maharaj Ji, but there is no F.I.R. regarding the loss of the trust deed though Maharaj Ji one of the plaintiffs of the suit is alive. Hence, the testimony of Purandar Brahmachari is of no avail and it has to be discarded.

12. He urged that significantly enough the witness on one hand fails to prove the trust deed and on the other hand feigns ignorance about the signature of Keshavji Maharaj on the trust deed. Therefore, nothing remained in the suit.

13. He has relied upon paragraph 10 of the judgment reported in AIR 1954 SC 606, Sital Das v. Sant Ram & others and paragraph 4 of the judgment reported in 1969 (3) SCC 367, Tilak Chand Kureel v. Bhim Raj.

Paragraph 10 of Sital Das v. Sant Ram & others (supra) is thus:

10. "The plaintiff's case as made in the plaint is that according to the custom of the Bairagis, when a Mahant dies the person who is appointed by the "Bhek" of the Bairagis and the "Sewaks" or worshippers of the institution can only be regarded as a duly appointed Mahant and can function as such. It is not said in the plaint as to whether the "Bhek" or the Sewaks are competent to appoint any and every person they like or their choice is limited to the disciples of the last Mahant or at any rate to those who claim, like codisciples, some sort of spiritual affinity with the latter.

Defendant no. 3, on the other hand, in his written statement rested his claim to Mahantship upon appointment by Kishore Das as his successor by his will, an appointment which, he alleged, was ratified by the "Bhek" of the Bairagis on the seventeenth day after the demise of the last Mahant. The case set up by him seems to be that none but a "chela" of the last Mahant can succeed to the office, that it is open to a Mahant to nominate during his lifetime his successor from amongst his "chelas" & the "Bhek" or assembly of Sadhus is more or less a confirming authority which ratifies the wishes expressed by the deceased Mahant".

Paragraph 4 of the judgment in the case of Tilak Chand Kurees v. Bhim Raj (supra) is thus:

4. On behalf of the appellant it was contended that Exs. 2, 18 and 19 were not admissible in evidence and the High Court was wrong in relying upon these documents. It was said that the presumption under Section 90 of the Evidence Act was not applicable as copies were produced and not the original documents. In our opinion this argument is wellfounded. In Basant v. Brijraj it was held by the Privy Council that the presumption enacted in Section 90 of the Evidence Act can be applied only with regard to original documents and not copies thereof. The same view taken by this Court in Harihar Prasad Singh v. Mst. of Munshi Nath Prasad. In view of the legal position it is manifest that the High Court ought not to have taken into consideration Exs. 2, 18 and 19. But even if Exs. 2, 18 and 19 are not taken into account the documentary and oral evidence produced on behalf of the respondents sufficiently establishes that the property in dispute was acquired by the Kureel community and has been used for charitable purposes for the benefit of the Kureel community. For these reasons we hold that the judgment of the High Court is right and this appeal is accordingly dismissed with costs."

14. It is next submitted that the law is fairly well entrenched. The holder of power of attorney who does not have specific knowledge of the subject matter cannot depose on his personal knowledge nor can he be examined on these facts. He can, at best, depose about some act done by him, consequent to execution of power of attorney and as such, the evidence of Purandar Brahmachari was no evidence at all in the eyes of law and deserved out right rejection.

15. It is argued that it has been claimed in the notice that rent from the month of August was due but the tenancy of the shop in dispute admittedly was monthly tenancy, therefore, the rent would accrue at the end of month and not during continuity of the month. Since the notice was given on 23.08.1995 i.e., before the expiry of the month of August, 1995, consequently, the suit was premature.

16. In this regard he has relied upon paragraph 2 of the judgment rendered in the case of Hiralal and others v. Vijay Kumar and others reported in 2002 (1) ARC 122 which says thus:

Para 2. The appellant is the tenant. The respondent is the landlord. The respondent filed an application under clauses 13 (i), (ii) and (vi) of subsection (3) of the C.P. and Berar Letting of Houses and Rent Control Order, 1949 (hereinafter "the Rent Control Order") seeking permission of the Rent Controller to issue notice to the tenant for terminating lease on various grounds contained in the application. The application was resisted and it was denied that the landlord was in bona fide need of the premises. It was also denied that the tenant was a habitual defaulter in payment of rent. The stand taken by the tenant in that behalf was that the landlord used to come and collect the rent according to his convenience and since this practice had developed and rent was paid as and when demanded by the the landlord, the tenant could not be said to be a defaulter or in arrears of rent by not sending the rent to the landlord. The Rent Controller dismissed the application, accepting the stand taken by the tenant to the effect that the landlord used to come and collect the rent at his convenience and that this practice was being followed throughout. On an appeal filed by the landlord, the appellate authority set aside the findings recorded by the Rent Controller and held the tenant to be a defaulter. The tenant approached the High Court through a writ petition which was allowed and the order of the appellate authority was set aside. The matter was remanded to the appellate authority to return findings on the question of bona fide need of the landlord. The landlord filed an appeal before the Division Bench which was allowed and the order of the learned Single Judge was set aside and that of the appellate authority restored."

17. The contention of the counsel for the petitioner in support of his above contention is that the courts below have acted rather perversely in placing implicit reliance on the finding recorded by this Court on interpretation of trust deed of the trust in question to hold it as a public religious charitable trust. It is

submitted that in view of Sections 40 to 43 of the Evidence Act, the findings recorded in a judgment, which is not interparty, cannot be looked into. The judgment is admissible as regards identity of the parties, nature of the decree passed in the suit and subject matter of the suit. Therefore, both the courts below exceeded their jurisdiction in placing reliance on the aforesaid judgment to hold that the trust deed in question was a public religious charitable trust. In this regard he has relied upon paragraphs 122, 133 and 143 of a judgment rendered in the case of State of Bihar & others vs. Sri Radha Krishna Singh & others reported in AIR 1983 SC 684. Aforesaid paragraphs are as under:

"Para 122: It is also well settled that a judgment in rem like judgments passed in probate, insolvency, matrimonial or guardianship or other similar proceedings, is admissible in all cases whether such judgments are inter partes or not. In the instant case, however, all the documents consisting of judgments filed are not judgments in rem and therefore, the question of their admissibility on that basis does not arise. As mentioned earlier, the judgments filed as Exhibits in the instant case, are judgments in personam and, therefore, they do not fulfil the conditions mentioned in S. 41 of the Evidence Act."

"Para 133: The cumulative effect of the decisions cited above on this point clearly is that under the Evidence Act a judgment which is not inter partes is inadmissible in evidence except for the limited purpose of proving as to who the parties were and what was the decree passed and the properties which were the subject matter of the suit. In these circumstances, therefore, it is not open to the plaintiffs/respondents to derive any support from some of the judgments which they have filed in order to support their title and relationship in which neither the plaintiffs nor the defendants were parties. Indeed, if the judgments are used for the limited purpose mentioned above, they do not take us anywhere so as to prove the plaintiffs' case."

Para 143: Thus, summarising the ratio of the authorities mentioned above, the position that emerges and the principles that are deducible from the aforesaid decisions are as follows:

- (1) A judgment in rem e.g., judgments or orders passed in admiralty, probate proceedings, etc., would always be admissible irrespective of whether they are inter partes or not.
- (2) Judgments in personam not inter partes are not at all admissible in evidence except for the three purposes mentioned above.
- (3) On a parity of aforesaid reasoning, the recitals in a judgment like findings given in appreciation of evidence made or arguments or genealogies referred to in the judgment would be wholly inadmissible in a case where neither the plaintiff nor the defendant were parties.
- (4) The probative value of documents which, however ancient they may be, do not disclose sources of their information or have not achieved sufficient notoriety

is precious little.

(5) Statements, declarations or depositions, etc., would not be admissible if they are post litem motam."

18. It is submitted that according to the ratio laid down in this judgment the courts below could not have relied upon the judgment which was not entered between the parties of exception provided therein. It appears that there is a clear misunderstanding in the case set up by the petitioner as he does not at all dispute that the landlord of the property in dispute is "Sri Keshavji Gaudiya Math" Dharmshala. In fact, on the other hand, the aforesaid rent receipts clearly fortify the plea of the petitioner that Shri Keshavji Gaudiya Trust is the landlord. Therefore, the rent receipts clearly negate that the Gaudiya Vedanta Samiti was the trustee and it is Gaudiya Vedanta Samiti, who has issued notice as contemplated under section 106 of the Transfer of Property Act.

19. Per contra counsel for the respondent submits that notice under section 106 of the Transfer of Property Act was not invalid. He further submits that in paragraph 3 of the decision rendered in the case of Bhagabandas Agarwala vs. Bhagwandas Kanu and others reported in (1977) 2 SCC 646 it has been held that "the validity of a notice to quit ought not to turn on the spitting of a straw" and should not be construed with a desire to find faults in it but the construction is to be made so that the subject may have an effect rather than none.

20. He has further placed reliance upon paragraph 12 of the judgment reported in AIR 1976 Allahabad 434: Balbir Singh & another vs. Smt. Kalawati wherein it has been held that "notices to quit, though not strictly accurate or consistent in the statements embodied in them, may still be good and effective in law;.....but what they would mean to tenants presumably conversant with all those facts and circumstances.

21. The contention of the learned counsel for the respondent further is that the petitioner has admitted the Gaudiya Vedanta Samiti trust to be the landlord for receiving rent on behalf of Sri Keshavji Gaudiya Math, Dharmshala.

22. However, a glance at the statement, more particularly clearly negates the points of the following crucial factors:

(i) execution and proof of the trust deed;

(ii) trust is a public religious and charitable trust;

(iii) to prove that trust has been engaging itself in religious and charitable activities. He admits that he has failed to prove a shred of evidence that any charitable activity, viz., bhandara, hawan or puja or that the distribution of clothes, food, cereals and books etc. was ever conducted by the trust. He has merely placed on record the resolution passed by the trustees to hold such functions or things. However, there is absolutely no proof regarding actual conduct or purchase or distribution.

23. In reply to the submission of the petitioner regarding the Trust Deed being inadmissible in evidence, learned counsel for the respondent has submitted that reliance having been placed on clause 5 of the said deed, it is not open for the petitioner to contend that the copy of the deed filed was inadmissible or was not proved in view of judgment reported in (2007) 13 SCC 476: Oriental Insurance Company Limited vs. Premlata Shukla & others. In paragraph 14 of the said judgment it has been averred that once a part of a document is relied upon by both the parties, a court or Tribunal does not commit any illegality in relaying upon the other part of the said document, irrespective of the contents of the document having been proved or not.

24. It is then submitted that the landlord was a religious and charitable institution entitled to the exemption under section 2(1) (b b) of the Act no. 13 of 1972. The finding that the landlord is a charitable trust and public trust is not based only on the basis of balance sheets and the audit papers prepared by the Chartered Accountant or the Trust deed alone. In this regard he has placed reliance upon findings recorded by the court below as under:

25. It is lastly submitted that in view of the categorical findings returned by the trial court, it is established that the disputed property is of a religious place, hence Act No. 13 of 1972 will not apply. The aforesaid findings of the trial court has been confined by the revisional court in following manner:

26. After hearing learned counsel for the parties and on perusal of record, it appears that owner and landlord of the shop in dispute is Sri Keshavji Gaudiya Math Dharmshala, Mathura. However, perusal of notice dated 23.8.1995 shows that it was given on the direction of Sri V.V. Narain Ji Maharaj, Keshavji Gaudiya Math, managed by Gaudiya Vedant Samiti. of whom he is the Uppradhan. Though in paragraph 2 of the reply given by the petitioner he has attempted to say that Gaudiya Vedant Samiti is not the landlord, but it is clearly averred therein that petitioner is paying rent in advance to the above landlord i.e. Keshavji Gaudiya Math, managed by Gaudiya Vendant Samiti through Sri V.V. Narain Maharaj, the then Vice President of Gaudiya Vedant Samiti. It is also stated therein that petitioner has not defaulted in payment of rent but as the rent was refused it was was deposited in the court for the month of August and September onwards.

Relevant extract of reply is thus:

27. Thus, it is apparent from record that notice dated 23.8.1995 was given to the petitioner on the direction of Sri V.V. Narain Maharaj as trustee on the Board of Sri Keshavji Gaudiya Math, Dharmshala.

28. This Court in C.M. Writ Petition No. 45694 of 2007: Ashok Kumar and others vs. Sri Keshavji Gauriya Math Dharmshala Trust, Kansteela and others has considered clause 9 of the deed and has found that it was mentioned that the Board of Trustees should have the right to put the dharmshala to any religious or charitable purpose. In clause 10, it was also mentioned that trustees shall adopt

all such means as will enhance the income of dharmshala for its betterment and improvement and that property in dispute is a shop of dharmshala, which was subject matter of the aforesaid trust deed. According to the resolution of the Board of Trustees dated 31.3.1983, it has been resolved that there was a temple and the shop should get vacated and hospital must be constructed on their site for public purpose.

Operative portion of the order is as under:

"As mentioned above, tenant had admitted that there was a temple in the property in dispute. It is also mentioned in the judgments that through documentary evidence, that a temple was established on 3.11.1956. Learned counsel for the tenants petitioners has argued that the deed in question was got registered under Trusts Act and under Trusts Act, only private trusts can be registered, hence it must be presumed that the trust in question is private trust.

It is not disputed that after two years of execution of the trust deed, temple was constructed and in the trust deed itself, there was a provision that temple could be established. In view of this, the mere fact that trust deed was got registered under Trusts Act will not make much difference. Tenant admitted that there was a temple and it was public temple.

In view of the above, the institution in question is squarely covered by Section 2(1)(b b) of the Act.

Accordingly, there is no merit in this writ petition, hence it is dismissed.

Tenantspetitioners are granted six months time to vacate that provided

1. Within one month from today tenants file an undertaking before the J.S.C.C. Mathura to the effect that on or before the expiry of aforesaid period of six months they will willingly vacate and handover possession of the property in dispute to the landlordsrespondents.
2. For this period of six months, which has been granted to the tenantspetitioners to vacate, they are required to pay Rs.3,000/ (at the rate of Rs.500/ per month) as rent/damages for use and occupation. This amount shall also be deposited within one month before the J.S.C.C. Mathura and shall immediately be paid to the landlordsrespondents.
3. Within one month from today tenants shall deposit entire decretal amount due till date before J.S.C.C. Mathura for immediate payment to landlordsrespondents.

In case of default in compliance of any of these conditions tenantspetitioners shall be evicted through process of Court after one month. It is further directed that in case undertaking is not filed or decretal amount and Rs.3,000/ are not deposited within one month then tenantspetitioners shall be liable to pay damages at the rate of Rs.1,000/ per month since after one month till the date of actual vacation. Similarly if after complying with the above conditions shop in

dispute is not vacated on the expiry of six months then since after months till actual vacation tenants shall be liable to pay rent/damages for use and occupation @ Rs.1,000/ per month."

A perusal of the trust deed quoted in the body of the judgment establishes that the trust was created for improvement and better management of the Dharmshala whose management was entrusted to religious person who may be in a position to improve the condition of the Dharmshala. In furtherance of this pious intention Swami Bhakti Pojan Keshavji Maharaj and other members of Gaudiya Vedant Society were invited and made trustees in the trust committee, therefore, the notice given by Sri V.V. Narain Maharaj on behalf of Sri Keshavji Gaudiya Math as its trustee and uppradhan of Gaudiya Vedant Samiti is valid and even if there is any irregularity in description of the trustee, the notice would not be shred of its legal effect as intention conveyed by the notice is quite clear and unambiguous. I am inclined in this regard, the ratio laid down in Bhagwandas Agarwal (supra).

29. The tenancy of the shop is not disputed.

30. The notice would not become invalid as it was given on 23.8.1985, on the ground that tenancy is month to month and the rent would accrue at the end of the month. The notice does not say that petitioner has to vacate the shop on 23.8.1985 itself. On the other hand the petitioner has been informed well in time to enable him to make alternate arrangement. The petitioner has been paying rent to the Gaudiya Vedant Samiti as landlord whose members on the trust of Sri Keshavji Gaudiya Math are receiving the rent as its trustee.

The contention of the counsel for the petitioner that photo copy of the original trust deed was inadmissible in evidence which may now be considered. In the courts below as well as before this Court the petitioners have relied upon the photocopy of the trust deed itself in support of their contention to disprove the case of the respondent.

In para 14 of the judgment rendered in (2007) 13 SCC 476: Oriental Insurance Company Limited vs. Premlata Shukla and others, the court has laid down a preposition of law as under:

Para 14:"Once a part of it is relied upon by both the parties, the learned Tribunal cannot be said to have committed any illegality in relying upon the other part, irrespective of the contents of the document having been proved or not. If the contents have been proved, the question of reliance thereupon only upon a part thereof and not upon the rest, on the technical ground that the same had not been proved in accordance with law, would not arise."

31. The trust deed in question is a registered deed.

According to respondent its" photocopy had been filed and proved which is now disputed by the petitioner though the petitioner in the court below as well as in this writ petition has relied upon photocopy of the registered trust deed which

had been exhibited in the court below after having been examined by the witness.

32. The burden was therefore upon the petitioner to prove that the contents of the photocopy were not correct. This burden could have been discharged by the petitioner by filing the certified copy of the registered trust deed as the original is said to have been lost. The certified copy of the said trust deed would have been also brought on record in writ petition in support of the contention that the contents of the photocopy which was in the nature of secondary evidence were not same as in original registered trust deed. The petitioner does not dispute that trust deed had been executed on 13.12.1953 by which Baba Gharib Das had bequeathed his share in the property which is a two storied Dharmshala to the father of Sri Nand Kishore with whose assistance the Dharmshala was constructed. After the death of Baba Gharib Das, Sri Nand Kishor and his brother of the Hindu family became owners and came in possession of the Dharmshala in 1944.

33. A perusal of trust deed shows that Dharmshala was under management and control of 7 trustees out of whom 6 were religious persons and one of them namely Madan Lal was a family member of executant. The trust deed confers power on trustees to put the Dharmshala for any religious or charitable purpose and adopt all legal methods for fulfilment of such need as well enhancement of income for Dharmshala and its improvement. It also appears that by resolution dated 31.9.1983, the Board of Trustees resolved that shops in the Dharmshala be got vacated for conversion into a hospital for public. The trust deed also shows that admittedly there was a temple in the property in dispute which finds evidence in the document having been constructed within two years from the date of execution of saledeed. Hence it cannot be said that Dharmshala is not serving any public purpose as the temple was open to public. As regards question of proof of copy of trust deed is concerned, it is misconceived. The statement of Shri Purandar Brahmchari goes to show that he was told by Brahmchari that trust deed was lost and original trust deed was in the custody of Maharajji who was trustee on the Board and was managing the Dharmshala as its Uppradhan. In any case, if the petitioner had any objection to the statement of Shri Purandar Brahmchari the law provides that party can summon the person. The petitioner could have, therefore, summoned Shri Maharaj Ji if they had any doubt about the trust deed. Keeping in view of the fact that it was a registered document, its copy could always have been available to the petitioner. Therefore, statement of Shri Purandar Brahmchari cannot be discarded on the ground that the court below have not considered the provisions of Section 90 & 90A of Evidence Act for proof of document.

34. Thus, for all the reasons stated above and considering the fact that petitioner is paying rent in advance to the landlord it is apparent that notice was not invalid and it cannot be said that trust is a private trust and is working for the benefit of public in general.

The landlord is religious and charitable trust which factum is not only based on

oral and documentary evidence, but this fact is also supported in a manner in which it is managed and conducted, and as such, Act No. 13 of 1972 would not apply in this case. Hence, civil suit was not maintainable.

The writ petition is, accordingly, dismissed.