

(2010) 08 GUJ CK 0236

In the Gujarat High Court

Case No : Civil Revision Application No. 270 of 1995

Gopinathji Dev Mandir Trust thru its trustee-Kothari and
Others

APPELLANT

Vs

Ishwarbhai Dhirajlal Parekh

RESPONDENT

Date of Decision : 16-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 14
Trusts Act, 1882 — Section 48

Citation : (2010) 3 GLH 327

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Dipak M. Thakkar, for the Appellant; R.C. Kakkad, for the Respondent

Final Decision : Allowed

Judgement

Mr. K.A. Puj, J.—The petitioners - original plaintiffs have filed this Civil Revision Application u/s 29 (2) of the Bombay Rent Act challenging the judgment and order dated 06.01.1994 passed, by the learned Assistant Judge, Bhavnagar in Regular Civil Appeal No. 129 of 1986 setting aside the judgment and decree passed by the learned Joint Civil Judge (J.D.), Botad on 30.09.1986 in Regular Civil Suit No. 73 of 1981. This Civil Revision Application was admitted and rule was issued on 23.02.2005.

2. Mr. Dipak M. Thakkar, learned Advocate appearing for the petitioners has submitted that the petitioner No. 1 -Trust and its Trustees have filed Regular Civil Suit No. 73 of 1981 before the learned Civil Judge (J.D.), Gadhda against the respondents for obtaining the decree of eviction on the ground of acquisition of alternative suitable accommodation and non-user of the said suit premises. The said suit was filed by the then Trustees of the Trust. He has further submitted that the respondent appeared in the said suit and filed his written statement. After filing of the suit, the election of the Trust took place on 15.04.1984 and the new Trustees were elected therein. As a result of the said change in the new

Trustees, the present petitioners were brought on record of the suit vide application dated 21.06.1984. After hearing the parties and considering the evidence on record, the learned Trial Judge has passed the decree and judgment on 30.09.1986 on the ground of acquisition of alternative suitable accommodation by the respondent u/s 13 (1) (d) of the Act.

3. Being aggrieved by the said judgment and decree passed by the learned Trial Judge, the respondent preferred Regular Civil Appeal No. 129 of 1986 before the learned District Judge, Bhavnagar. The learned District Judge vide his judgment and order dated 06.01.1994 allowed the said appeal and quashed and set aside the eviction decree on the sole and single ground that the plaintiffs whose names are appearing in the plaint as Trustees have not signed the plaint nor they have given any Power of Attorney nor the plaintiff Nos. 2 to 7 have signed the plaint nor they have given any Power of Attorney to one Shri Purani Devnandan Das Guru Ghanswarupdasji and since the said person is not the Trustee of the Trust on the date of the suit, the same is not maintainable.

4. It is this order of the learned District Judge of 06.01.1994 in Regular Civil Appeal No. 129 of 1986 which is under challenge in the present Civil Revision Application.

5. Mr. Thakkar further submitted that the learned District Judge has acted with material irregularity and has committed an illegality in passing the impugned judgment and order and, therefore, the same is required to be quashed and set aside. He has further submitted that the learned District Judge has exercised the jurisdiction not vested in him and he has thus committed serious jurisdictional error and on this ground also, the impugned judgment and order is required to be quashed and set aside. He has further submitted that the learned District Judge has materially erred in not deciding all the issues in controversy and has thus committed a serious jurisdictional error in quashing and setting aside the eviction decree by allowing the appeal only on single ground. He has further submitted that the learned District Judge has grossly erred in allowing the appeal and thereby setting aside the decree of eviction on the ground that the same is not maintainable for the reasons mentioned in the judgment. The learned District Judge has failed to appreciate that there is no specific pleading to the said effect in the written statement filed by the respondent, nor any issue has been raised to the said effect. Despite the same being the fact, the learned District Judge has grossly erred in allowing the appeal beyond the issues in controversy. The approach adopted by the learned District Judge is not at all legal and valid and, therefore, the impugned judgment and order is required to be quashed and set aside. He has further submitted that the present petitioners have been brought on record only because of the fact that during the pendency of the suit and as a result of the elections held on 15.04.1984, there has been a change in the management of the Trust as the present petitioners have been elected as new Trustees and, therefore, there was no question of the present petitioners requiring to sign the plaint at the time when the suit was instituted. There is no

dispute about the fact that all the petitioners were not at all Trustees when the suit was instituted. He has further submitted that all the then Trustees when the suit was instituted are on record as the plaintiffs and all of them have been joined as such and, therefore, the suit has been validly instituted.

6. Mr. Thakkar has further submitted that the learned District Judge has not correctly appreciated and interpreted the ratio laid down by this Court in the case of *Atmaram v. Gulamhussain* -reported in 13 GLR 828 and he has wrongly allowed the appeal and set aside the eviction decree only on the basis of such a wrong interpretation of the judgment of this Court. He has further submitted that this Court has very categorically laid down that the decision to determine the tenancy by giving notice to quit must be taken by all Co-Trustees, unless, of course, instrument of trust otherwise provides, or the beneficiaries being competent to contract consent, or in any particular case, it is established that on the peculiar facts obtaining in that case, the delegation of the power to determine the tenancy was necessary. The Court has also made it clear that the tenancy must be determined by all Co-Trustees would mean that the decision to terminate the tenancy must be taken by all the Co-Trustees. The formal act of giving notice to quit pursuant to the decision taken by all the Co-Trustees may be performed by one Co-Trustee on behalf of the rest. The notice to quit given in such a case would be a notice given with the sanction and approval of all the Co-Trustees and would be clearly a notice by all Co-Trustees. He has further submitted that as per the ratio of the judgment of this Court, all the then Trustees when the suit was filed have been joined as plaintiffs and they are on record before the Court. However, it may be that the actual signing and verification of the plaint may be done by one of the Trustees as laid down by this Court in the said decision that the formal act of giving notice to quit may be performed by one of the Co-Trustees on behalf of the rest. He has, therefore, submitted that the judgment and order passed by the learned District Judge is absolutely illegal, erroneous and against the evidence on record and hence, the same is required to be quashed and set aside.

7. Mr. R. C. Kakkad, learned Advocate appearing for the respondent, on the other hand, has submitted that the plaint itself makes it clear that all the Trustees have not signed the plaint of the suit. The names are indicated in the cause title of the suit and Trustees are at Sr. Nos. 2 to 7. However, all these Trustees have not signed the plaint nor their names are written in the rubber stamp. Thus, the plaint is not signed by all the Trustees of the Trust and Shri Purani Devnandan Das Guru Ghanswarupdasji is not one of the Trustees. He has further submitted that the Trustees cannot delegate their powers to even Co-Trustees. Hence, the suit filed by the present Trustees are absolutely illegal and not maintainable. He has further submitted that the learned District Judge has rightly relied on the full bench Judgment of this Court which clearly lays down the proposition of law that all the Trustees of the Trust should be joined as plaintiffs in the suit. If any of the Trustees is not available or is not agreeable to file a suit on behalf of the Trust in such case, the said Trustee may be joined as defendant in the suit. He has

further submitted that the provisions of Section 48 of the Indian Trust Act are very clear. It says that when there are more Trustees than one, all must join in the execution of the Trust, except where the instrument of the Trust otherwise provides. It is not the case of the plaintiffs that the instrument of Trust is otherwise providing. He has further submitted that though it is not held in the decision of this Court that the plaint is signed by all the Trustees, it is, however, a statutory requirement as contained in the Civil Procedure Code. Order VI, Rule 14 of the CPC specifically states that every pleading shall be signed by the party and is pleader (if any), provided that whether the party pleading is, by reason of absence or for other reason, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue and defend on his behalf. He has further submitted that combined reading of the provisions of Order VI, Rule 14 as well as the Full Bench Judgment of this Court, makes it abundantly clear that all the plaintiffs must sign either by themselves or by their Power of Attorney, the plaint of the suit. It is not the case here as the plaintiff Nos. 2 to 7 have neither signed the plaint themselves nor by their Power of Attorney Holder. The suit is, therefore, not maintainable and the learned District Judge has rightly set aside the judgment and decree passed by the Trial Court. He has further submitted that when the suit itself is not maintainable, there is no question of going into the issue as to whether the defendant has acquired any alternative suitable accommodation or whether there is any bonafide requirement of the plaintiffs. He has, therefore, submitted that no interference is called for in the judgment and order passed by the learned District Judge and the Civil Revision Application deserves to be dismissed.

8. Having heard learned Advocates appearing for the parties and having gone through the impugned judgments and orders passed by the Courts below and having considered the documentary evidence as well as records and proceedings of the Courts below, the Court is of the view that the learned District Judge has committed very serious error in arriving at the conclusion that the suit is not maintainable on the ground that all the Trustees of the Trust have not signed the plaint. The explanation canvassed on behalf of the plaintiffs was not at all considered by the learned District Judge. It is a specific case of the plaintiffs that at the time when the suit was filed, the Trustees of the Trust have signed the plaint through their Power of Attorney. However, subsequently because of the election, Trustees were changed and hence, amendment was sought for and the present Trustees were impleaded as parties to the proceedings. Hence, at the time when the suit was filed, the present Trustees are not the Trustees of the Trust. It is, therefore, but natural that there would not be any signature of the present Trustees. Even otherwise, as per the Full Bench decision of this Court, all the Trustees of the Trust are parties to the proceedings and hence, there is no violation of any rule or the provisions of the Indian Trust Act. The present Trustees, in all subsequent proceedings have put their signatures. Even the present appeal was filed by them authorizing their Advocate and they have also signed the Vakalatnama in favour of their Advocate. The learned Trial Judge has

considered at length the issue regarding acquisition of alternative suitable accommodation by the defendant and also the bonafide requirement of the Trust. The appeal was filed by the defendant only on these two issues before the lower Appellate Court. The issue regarding maintainability of the suit was not at all raised either before the Trial Court or before the lower Appellate Court. Even no ground was taken in the memo of appeal before the lower Appellate Court. The lower Appellate Court has also not framed any specific issue to this effect. Only for the first time, it is reflected in the judgment. It is true that arguments are canvassed to that effect but even before the Court, it was strongly urged on behalf of the plaintiffs that the plaint was signed by the Trustees through their Power of Attorney Holder and hence, the suit cannot be said to be non-maintainable. The learned District Judge has, therefore, clearly committed an error of law as well as of facts in quashing and setting aside the judgment and decree passed by the Trial Court. The judgment of Full Bench of this Court helps the plaintiffs rather than it helps the defendant. There is also no violation of the provisions contained in Order 6, Rule 14 of the CPC as the Trustees who are there at the time of institution of the suits have signed the plaint through their Power of Attorney Holder and subsequently by virtue of election, new Trustees were brought on record and they are pursuing the present proceedings.

9. Taking overall view of the matter and after examining the evidence, oral as well as documentary on record, the Court is of the view that the suit was properly filed by proper persons and there is no infirmity therein. The learned District Judge is, therefore, not right in holding that the suit is not maintainable for want of signatures on the plaint by the Trustees of the Trust. Since other two issues on merits are already decided in favour of the plaintiffs and the said finding has not been gone into nor it has been disturbed by the lower Appellate Court, the Court allows this Civil Revision Application and holds that the judgment and order passed by the lower Appellate Court deserves to be quashed and set aside and it is accordingly quashed and set aside.

10. This Civil Revision Application is accordingly allowed by restoring the judgment and decree passed by the learned Trial Judge and the defendant is liable to evict the suit premises. This Civil Revision Application is accordingly allowed without any order as to costs.