
(1993) 03 BOM CK 0067

In the Bombay High Court

Case No : Writ Petition No's. 2434 and 2773 of 1982

Nagar Wachan Mandir, Pandharpur and Another

APPELLANT

Vs

Akbaralli Abdulhusen and Sons and Others

RESPONDENT

Date of Decision : 04-03-1993

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(3)(a)
Societies Registration Act, 1860 — Section 6
Trusts Act, 1882 — Section 47, 48

Citation : (1994) 2 BomCR 251

Hon'ble Judges : Bhimrao N. Naik, J

Bench : Single Bench

Advocate : A.K. Abhyankar, for K.J. Abhyankar, in W.P. No. 2434 and R.S. Apte, in W.P. No. 2773 of 1982, for the Appellant; A.K. Abhyankar, for K.J. Abhyankar, for respondent Nos. 1 and 2 in W.P. No. 2773 of 1982 and R.S. Apte, for respondent Nos. 1A to 1D, 2 and 4 in W.P. No. 2434, for the Respondent

Final Decision : Dismissed

Judgement

Bhimrao N. Naik, J.—Writ petition No. 2434 of 1982 is the petition filed by the plaintiffs-trust challenging the dismissal of the suit filed against respondents on the ground of non-payment of rent.

2. Few facts which are relevant for the purpose of this petition are as under:-

The petitioners-plaintiffs filed Regular Civil Suit No. 276 of 1975 in the Court of Civil Judge, Junior Division, Pandharpur for possession on the ground of non-payment of rent under the provisions of Bombay Rent Act. The plaintiff-Society is registered as per the provisions of Societies Registration Act so also it is registered under the provisions of Bombay Public Trust Act. Suit property in dispute is owned by the plaintiff-Society. It appears that the plaintiff-Trust held meeting of its Karyakari Mandal on 28th May, 1961 and passed Resolution to lease out the suit property to defendant-Firm for 60 years since 10th October, 1961. In pursuance of the said lease deed possession was handed over to the

defendants. The registered lease deed was executed by the defendants in favour of the plaintiffs. The lease deed appears to have been signed by plaintiff Nos. 1 and 2 on behalf of the plaintiff-Society and also by deceased defendant No. 1 on behalf of the defendant firm. Since the defendant failed to pay the rent, the plaintiffs were required to issue a notice of demand and they filed Regular Civil Suit No. 152/68. This suit was compromised on 14-10-1970 and compromise decree was passed. Thereafter, the defendants paid rent upto 10th October, 1970 and since 11th October, 1970 they remained in arrears, and notwithstanding the demands made by the plaintiffs, tenants were not paying the rent. As per the conditions, they were required to pay Rs. 2,000 per annum since 11th October, 1970 for a period of one year and thereafter defendants were required to pay of Rs. 3,000/- per year since 11th November, 1971. Since defendants failed to pay this amount since 11th October 1970 upto 10th October, 1974, Notice of Demand was issued and on 10th October, 1974 the suit was filed, for recovery of the amount of Rs. 8,000/- after deducting the amount of Rs. 3,000/- paid by the defendants on 1-6-1972 and the amounts paid on 2nd February, 1973 and 13th September, 1973 of Rs. 1,000 each.

3. The defendants appeared in the suit and they filed their written statement. Initially written statement was filed by defendant No. 3 which was adopted by other defendants. The main contention raised by the defendants was that the plaintiff-Trust is registered under the Public Trust Act and since all the Trustees have not filed the suit, the suit as filed only by the Chairman and the Secretary as the Trustees is not maintainable and the same is liable to be dismissed. They denied the fact that they are defaulters. They insisted on fixation of standard rent.

4. The learned Civil Judge, Junior Division on merits recorded a finding that the defendants were defaulters and they were liable to pay the rent as claimed i.e. rent of Rs. 2000/- for the year 11th October, 1970 to 10th October, 1971 and Rs. 3000/- thereafter and the standard rent was also fixed at Rs. 2000/- per year upto 10th October, 1971 and Rs. 3000/- per annum thereafter. It is not in dispute that all the trustees have not been joined as parties. This was the main issue which was contested. The trial Court relied upon the Full Bench decision reported in *Atmaram Rachhodbhai Vs. Gulamhusein Gulam Mohiyaddin and Another*, , also arising under the Rent Act, and held that the suit filed only by Chairman and one of the Trustees i.e. Secretary is not maintainable.

5. The contention raised by the petitioner that the petitioner-Trust in any event is registered under the provisions of Societies Registration Act and in view of the provisions of section 6 of the Societies Registration Act, 1860 the Chairman and the Secretary are entitled to file the suit and hence the suit would not be bad in view of the provisions of Order 31 of the C.P.C. was negatived by the learned Civil Judge, Junior Division by relying upon the definition of Public Trust in section 2(13) of the Bombay Public Trust Act and held that from the definition of the Public Trust it is very clear that the Society registered under the provisions of

Societies Registration Act, 1860 is also included in the definition of Public Trust. In view of this the suit was dismissed holding that it was not maintainable. However, on merits landlords established the fact that the tenants were in arrears and, therefore, they were clearly defaulters.

6. Being aggrieved and dissatisfied by the aforesaid judgment and decree, the petitioners filed Regular Civil Appeal No. 299 of 1980. The petitioners reiterated the same grounds which were agitated before the learned Civil Judge, Junior Division and the Appellate Court also relied upon *Atmaram Rachhodbhai Vs. Gulamhusein Gulam Mohiyaddin and Another*, and it considered the provisions of section 6 of the Societies Registration Act and negated the contentions of the petitioners and confirmed the findings recorded by the learned Civil Judge, Junior Division. It appears that being aggrieved by the findings recorded on merits, the tenant also filed Civil Appeal No. 527 of 1980 and the said appeal was also dismissed and the findings recorded on merits were confirmed by judgment and order dated 23rd September, 1981. Aggrieved by findings on merits defendants filed W.P. 2773 of 1982.

7. Being aggrieved and dissatisfied by the aforesaid judgment and decree, the petitioners have filed present writ petition under Article 227 of the Constitution of India. The learned Counsel Shri Abhyankar appearing for the petitioners points out that error is committed by the two courts below in holding that the suit filed only by the Chairman and the Secretary of the Trust which is registered under the Societies Registration Act is not maintainable. He contends that in plaint para 2, the plaintiffs have specifically stated that the plaintiff-Institution is registered Society under the Societies Registration Act though it is also registered under the provisions of Bombay Public Trust Act. He led emphasis on section 6 of the Societies Registration Act, 1860 and pointed out that as per section 6 the Chairman and the Secretary is authorised and they are entitled to file such a suit and in such a case the general provisions of the C.P.C. under Order 31 cannot be an obstacle. Hence he argued that section 6 of the Societies Registration Act, 1860 is present and it ought to have been held that the suit filed through Chairman and Secretary is maintainable.

8. Section 6 of the Societies Registration Act, 1860 reads as follows :-

"Every society registered under this Act may sue or be sued in the name of President, Chairman or principal secretary or a trustees as shall be determined by the rule and regulation of the society and in default of such determination in the name of such persons as shall be appointed by the governing body for the occasion, provided that it shall be competent for any person having a claim for demand against the society to sue the president or chairman or a principal secretary or the trustee thereof, if one the application to the governing body some other officer or a person be not nominated to be the defendant".

In view of this Shri Abhyankar contends that the suit as filed by the Chairman and Secretary is maintainable.

9. As against this Shri Apte, learned Counsel appearing for respondents places heavy reliance upon two sections of the Indian Trust Act, 1882. He relies upon section 47 and 48 of the Act. Section 47 is as follows :-

"A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless (a) the instrument of trust so provides, or (b) the delegation is in the regular course of business, or (c) the delegation is necessary or (d) the beneficiary, being competent to contract, consents to the delegation.

Explanation:--The appointment of an attorney or proxy to do an act merely ministerial and involving no independent discretion is not a delegation within the meaning of this section."

Section 48 is as follows :-

"When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides".

Placing reliance on these two sections, Mr. Apte points out that instrument of the trust is not produced on the record and it is nobody's case that the instrument of the trust provides any delegation as referred in section 47. It is also not the case of the petitioners that the delegation is in regular course of business or the delegation is necessary and hence Shri Apte points out that in view of the provisions of section 47 and 48 the suit filed only by two trustees is not maintainable. In order to further substantiate his contention Shri Apte relies upon Full Bench decision reported in *Atmaram Rachhodbhai Vs. Gulamhusein Gulam Mohiyaddin and Another*, , and he points out that decision making by co-trustees must be joint in absence of severality in the Trust deed, though mere formal act by one is permissible. Thus he contends that unless the instrument of Trust provides, all co-trustees must join in filing the suit to recover the possession of the property from the tenant. He pointed out that almost all the major High Courts have consistently taken a view that suit filed by some of the trustees without exoneration of this, is not maintainable. *A.I.R.1949 Cal 519 Ramesh Chandra Roy v. Hemendra Kumar Roy*, has also taken identical view as expressed by the Full Bench in *Atmaram Rachhodbhai Vs. Gulamhusein Gulam Mohiyaddin and Another*, . He also points out that the view expressed by Full Bench is also followed by Justice Shri S.K. Desai in *Special Civil Application 3107 of 1975* though in a different context and hence he points out that the reasoning assigned by the two courts below in holding that the suit is not maintainable is correct and no interference is called for of this Court in exercise of its power under Article 227 of the Constitution. He also supports the finding of the two courts below and the interpretation of section 6 of the Societies Registration Act, 1860 and he rightly points out that in view of the definition of section 2(13) the society registered under the Societies Registration Act, 1860 is also included in the definition of the said Public Trust. In view of this he contends that both the judgments should be confirmed.

10. So far as writ petition filed by Shri Apte challenging the findings of the merits

bearing No. 2773 of 1982 is concerned, he contends that the courts were in error to record a finding that the tenant was in arrears and that they were defaulters within the meaning of Rent Act. Thus, he challenged the finding even on merits.

11. After hearing both the learned Counsels I am not inclined to accept the submission of Shri Abhyankar whereas I am inclined to accept the contentions of Shri Apte as I find that the Full Bench Decision of Gujrat reported in *Atmaram Rachhodbhai Vs. Gulamhusein Gulam Mohiyaddin and Another*, is directly on the point and arises under the Rent Act. It has been held by the Full Bench of Gujrat that unless instrument of trust otherwise provides all co-trustees must join for filing a suit to recover the possession of the property from the tenant. It is nobody's case in this matter that the instrument of the Trust provides otherwise. In fact, instrument of the Trust is not even produced on the record, and on the proper construction of section 47 and 48 of the Indian Trust Act which are reproduced above, the contention raised by Shri Apte is correct. Section 47 clearly deprives the trustee from delegating his office in any of his duties to co-trustee or to a stranger unless conditions mentioned in the said section are complied with. It is not in dispute in this matter that the conditions referred to in section 47 are not complied with by the plaintiffs. When one reads both section 47 and section 48, it would not be difficult to record a finding that the present suit filed by the two trustees is not maintainable. The second submission with reference to section 6 of the Societies Registration Act, 1860 cannot be accepted in view of the definition of Public Trust given in section 2(13) of the Bombay Public Trust Act. Section 2(13) of Public Trust Act reads as follows :-

"Public Trust means an express or constructive trust for either public religious or charitable purpose or both and includes a temple, a Math, Wakf, Church, Synagogue, aviary or other place of public religious worship a dharmada or any other religious or charitable endorsement and the Society either for religious or charitable purpose or for both and registered under the Societies Registration Act, 1860."

Considering the said definition of the Public Trust, it is very clear that the society registered under the provisions of Societies Registration Act, 1860 is also included in the definition of the said Public Trust and hence suit filed only by two trustees will not be maintainable. Granting of a lease is a matter which cannot be delegated by a trustee and, therefore, it must follow as a necessary corollary that determination of a lease also cannot be regarded as a matter which can be delegated by a co-trustee to another co-trustee or to any one else. The power and function to determine the lease is of the same nature and as the power and function to grant a lease cannot be delegated, equally other cannot be. Both the functions are effected with beneficiary's judgment. All the co-trustees are bound to exercise their judgment and no one co-trustee can delegate these functions to his co-trustee or to any other person. These observations made by the Full Bench apply to the facts of the present case and for the same reasoning I refuse to accept the contention raised by Shri Abhyankar.

12. I do not find any substance in the contentions raised on merits by Shri Apte. Shri Apte could not persuade me to take a different view on merits than the view which was taken by the two authorities below. Moreover, I find that in view of the non-maintainability of the suit one need not go into this question but since the matter is argued, I do not find any substance in the matter and I refuse to interfere under Article 227 of the Constitution of India and this cross-petition filed by tenant also deserves to be dismissed. In view of this, both the petitions are rejected. Petitions dismissed, Rule discharged. However, in fact facts and circumstances of the case, there shall be no order as to costs.