

(2011) 09 MAD CK 0267

In the Madras High Court

Case No : S.A. No's. 654 and 655 of 2000 and C.M.P. No's. 7047 of 2000 and 3418 of 2002

Sivakasi Hindu Nadar Uravinmurai Magamai Fund

APPELLANT

Vs

S. Prakasam

RESPONDENT

Date of Decision : 26-09-2011

Acts Referred:

Evidence Act, 1872 — Section 102, 4, 40, 41, 42

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 2, 29

Transfer of Property Act, 1882 — Section 106

Citation : (2012) 2 MLJ 64

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : R. Muthukumarasamy, for P. Seshadri, for the Appellant; K.V. Anantha Krishnan, for the Respondent

Judgement

S. Nagamuthu, J.—There are two Second Appeals before this Court filed by one and the same appellant as against one and the same respondent. The appellant claims to be a Public Charitable Trust and also a Registered Society under the Societies Registration Act. There are two schedules of property mentioned as "A" and "B" in O.S. No. 131 of 1995. The appellant herein filed the said suit for recovery of possession of both "A" and "B" schedule properties from the defendant. The trial Court dismissed the suit in respect of "A" schedule property, but decreed the suit as prayed for in respect of "B" schedule property. As against the dismissal of "A" schedule property, an appeal was preferred by the plaintiff in A.S. No. 70 of 1998 before the learned Principal District Judge, Tiruvannamalai. As against the decree granted in respect of "B" schedule property, the respondent herein preferred an appeal in A.S. No. 77 of 1998 before the same Judge. In respect of the very same property, the respondent herein (the Society) filed a suit in O.S. No. 1489 of 1994, which was later on, on transfer, renumbered as O.S. No. 61 of 1997 on the file of the learned Subordinate Judge, Tiruvannamalai against the appellant herein. That was a suit filed for permanent

injunction to restrain the appellant herein (Society) from in any manner interfering with the peaceful possession and enjoyment of the property. The learned Subordinate Judge, Tiruvannamalai dismissed the suit in part thereby declining to grant injunction in respect of the property which is the "B" schedule property in the other suit and granted injunction in respect of the property which is the "A" schedule property in the other suit. As against the injunction granted in respect of "A" schedule property, the appellant herein filed an appeal in A.S. No. 78 of 1998 and as against the dismissal of the suit in respect of "B" schedule property, namely, the vacant site, the respondent herein filed an appeal in A.S. No. 17 of 1998 on the file of the learned Principal District Judge, Tiruvannamalai.

2. All the four appeals were heard together by the learned Principal District Judge, Tiruvannamalai. By a common judgment dated 28.7.1999, the learned Judge dismissed the appeal in A.S. 71 of 1998 and allowed A.S. No. 78 of 1998. Similarly, the lower appellate Court dismissed the appeal in A.S. No. 70 of 1998 and allowed the appeal in A.S. No. 77 of 1998. In effect, the lower appellate Court dismissed the suit in O.S. No. 131 of 1995 and decreed the suit in O.S. No. 61 of 1997. As against the common judgment in respect of A.S. Nos. 71 and 78 of 1998 the defendant has come up with the Second Appeal No. 655 of 2000 and in respect of the common judgment in A.S. No. 70 and 77 of 1998 the appellant has come up with S.A. No. 654 of 2000. That is how, both the appeals are before this Court for disposal. Since these two appeals are interconnected, I have heard these appeals together and dispose of the same by this common judgment.

3. Admittedly, there are two items of properties described as "A" and "B" schedule in O.S. No. 131 of 1995. "A" Schedule property is admittedly a building portion whereas "B" schedule property is a vacant site situated by the side of "A" Schedule property. According to the appellant, it is a Society registered under the Societies Registration Act. At the same time, it is also a Public Charitable Trust. The suit "A" schedule property in O.S. No. 131 of 1995, according to the appellant, was leased out to the respondent/defendant. In respect of "B" schedule property, since it was lying vacant, the respondent trespassed into the same and started to occupy. Since in respect of "A" schedule property, the respondent did not comply with the terms and conditions of the lease, a notice as required u/s 106 of the Act terminating the lease was issued by the appellant and thereafter, O.S. No. 131 of 1995 was filed for recovery of possession. In respect of "B" schedule property, according to the appellant, since the respondent is a trespasser, the plaintiff is entitled for recovery of possession and accordingly, the relief of recovery of possession was sought for in the same suit in respect of both the items.

4. In O.S. No. 131 of 1995, the respondent herein filed a written statement contending that the suit is not maintainable in respect of "A" schedule property because the appellant is not a Public Charitable Trust so as to fall within the ambit of exemption granted under G.O. Ms. No. 2000. According to the respondent, the remedy for the appellant is to approach the Rent Controller as

per the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act. In effect, the contention of the respondent was that the suit in O.S. No. 135 of 1995 is not maintainable in respect of "A" schedule property because the civil Court jurisdiction has been ousted expressly by the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, and in respect of "B" schedule property, the contention of the respondent was that the respondent is not a trespasser and he is only a permissive occupier. Therefore, his possession is legal. Thus, according to the respondent, he is entitled to be in possession of "B" schedule property and therefore, the suit for recovery of possession is not sustainable.

5. In the meanwhile, the respondent herein filed the suit in O.S. No. 1489 of 1994 before the learned District Munsif, Tiruvannamalai which was later on transferred to the learned Subordinate Judge, Tiruvannamalai and renumbered as 61 of 1997. The suit properties which are the subject matters in O.S. No. 131 of 1995 are the suit properties in O.S. No. 61 of 1997 also. In this case, the respondent herein prayed for permanent injunction to restrain the appellant herein from in any manner interfering with peaceful possession and enjoyment of the respondent.

6. In O.S. No. 61 of 1997, the appellant herein in his written statement submitted that the respondent herein is not entitled for injunction as prayed for in view of the fact that the respondent is liable to hand over vacant possession of both "A" and "B" schedule properties as prayed for in O.S. No. 131 of 1995.

7. Based on the above pleadings, the trial Court framed appropriate issues in both the suits and joint trial was conducted. On the side of the appellant, one witness was examined as many as 19 documents were exhibited. On the side of the defendant two witnesses including the defendant were examined and one document was exhibited. An advocate Commissioner was appointed and his reports were marked as Exhibits C-1 and C-2.

8. Having considered all the above materials, the trial Court dismissed the suit in O.S. No. 131 of 1995 in respect of "A" schedule property but granted a decree in respect of "B" schedule property as prayed for. As against the dismissal of the suit in respect of "A" schedule property, the plaintiff preferred an appeal in A.S. No. 70 of 1998. Similarly, as against the decree granted in respect of "B" schedule property, the respondent herein filed an appeal in A.S. No. 77 of 1998 before the learned District Judge, Tiruvannamalai.

9. The lower appellate Court decreed the suit in O.S. No. 61 of 1997 for injunction in respect of "A" schedule property and dismissed the same in respect of "B" schedule property. As against the decree granted in respect of "A" schedule property, the appellant filed an appeal in A.S. No. 71 of 1998 and as against the dismissal of the suit for injunction in respect of "B" schedule property (vacant site) the respondent herein filed an appeal in A.S. No. 78 of 1998. All the four appeals came to be heard by the learned Principal District Judge, Tiruvannamalai and accordingly, the appeals were disposed of as enumerated in

the first paragraph of this judgment. As against the same, these two appeals have been preferred by the appellant.

10. When the Second Appeals were admitted, this Court framed the following substantial questions of law;

"(i) Whether the finding of the lower appellate Court that the defendant trust is not public charitable trust is right?

(ii) Whether the lower appellate Court is right in holding that the tenant is not party to the proceedings under Exhibits P-1 and P-19 and that the said document is not inter parties and not binding on the tenant?

(iii) Whether the finding of the lower appellate Court that B schedule vacant land forms part of the lease under Exhibit P-6 is right:

(iv) Whether the lower appellate Court is right in holding that termination of the tenancy is not valid in law?

(v) Whether the lower appellate Court is right in holding that only the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act along will apply and that tenant could be vacated only under the provisions of the said Act?"

11. I have heard the learned counsel on either side and also perused the records carefully.

12. Admittedly, "A" Schedule property is a building, which was leased out by the appellant to the respondent. So far as "B" schedule property, namely, the vacant site is concerned, it is the contention of the appellant that the respondent is a trespasser. But, it is the contention of the respondent that he is not a trespasser but only a permissive occupier. In order to prove the permission granted, the respondent relies on a letter. Exhibit B-1 dated 28.8.1990 written by the President of the appellant Society. A perusal of the said letter would go to show that the appellant has recited in the said letter that the respondent was occupying a portion measuring 20 ft X 12 ft which belongs to the appellant on his own. This, according to the respondent, amounts to permission. But, the appellant states that the letter will not amount to grant of permission to the respondent to occupy the vacant site, namely, "B" schedule property. In my considered opinion, assuming that the said letter namely Exhibit B-1 amounts to permission granted by the appellant to the respondent to occupy the vacant site, namely "B" schedule property, even then, in law, there is no legal obligation for the appellant to continue the permission forever. It is absolutely the will and pleasure of the owner of the land to withdraw the permission at any stage. Assuming that Exhibit B-1 amounts to permission to occupy, now by filing the suit in O.S. No. 131 of 1995, the appellant is deemed to have withdrawn the said permission. Therefore, the defendant is only a trespasser. In such view of the matter, there can be no impediment for granting a decree for recovery of possession in respect of "B" schedule property. It is not at all the case of the respondent that he has been paying any rent or he has got any other vested

interest over "B" Schedule Property. According to his own case, he is only a permissive occupier. Therefore, as I have already concluded, there can be no legal impediment for grant of a decree in respect of "B" schedule property, namely, vacant site as prayed for in O.S. No. 131 of 1995. Accordingly, the suit in O.S. No. 61 of 1997 needs to be dismissed in respect of the vacant site.

13. Now, coming to the "A" schedule building, the contention of the respondent is that the jurisdiction of the civil Court is ousted in view of the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act. But, the contention of the appellant is that the appellant is a Public Charitable Trust and the same has been exempted from the purview of the Tamil Nadu Buildings (Lease and Rent Control) Act as per G.O. Ms. No. 2000, Home, dated 16.8.1976. The said G.O. reads as follows:

"In exercise of the powers conferred by Section 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 (Tamil Nadu Act 18 of 1960) and in supersession of the Home Department Notification No. II(2)/HO/3811/74 dated the 12.8.1974, published at page 111 of Part II Section 2 of the Tamil Nadu Government Gazette, dated the 12.8.1974, the Governor of Tamil Nadu hereby exempts all the buildings owned by the Hindu, Christian and Muslim religious public trusts and public charitable trusts from all the provisions of the said Act."

14. The contention of the respondent is that the said G.O. does not cover the appellant at all because the appellant is not at all a Public Charitable Trust. Therefore, according to the respondent, the suit is not maintainable. But, it is the contention of the learned senior counsel appearing for the appellant that the appellant/plaintiff is a Public Trust though it has been registered under the Societies Registration Act and therefore, the suit is very much maintainable in view of the exemption granted by G.O. Ms. No. 2000.

15. In order to prove the nature of the trust, the appellant relies on only two documents, namely, Exhibits A-3 and A-19. Exhibit A-3 is the bye-law of the appellant-Society, namely, the Trust. A perusal of the same would go to show that the appellant was a registered as a Society under the provisions of the Societies Registration Act on 31.8.1966. Exhibit A-3, would indicate the objects of the Society. Bye-law 2(8) shows that one of the objects of the society is to extend scholarship and financial assistance to the students, who are meritorious for the purpose of their further education. According to bye-law 2(9), yet another object of the Trust is to establish a hospital for the benefit of the poor patients and to maintain the hospital which have already been established for the benefit of poor patients besides extending monetary help for the well being of the patients. By law 2(10) states that one of the objects of the Society is to establish a hospital for destitute or orphan children of both sex, aged people, physically challenged person etc. and to extend monetary help for their welfare. 2(11) states that yet another object of the Society is to extend monetary help to other institutions which also serve the welfare of the nation and for the people of the town and also for constructing temples. Taking me through Exhibit A-3, the

learned counsel for the appellant would submit that the bye-laws would go a long way to show that it is a Public Charitable Trust.

16. But, the learned counsel for the respondent would submit that though the organisation has been registered as a Society under the Societies Registration Act, the appellant is not a Public Charitable Trust at all. In order to substantiate his contention, the learned counsel would submit that though there are certain clauses in Exhibit A.3 as though it is for the benefit of the General Public, in fact, the appellant Society has not extended any service for the well-being of the Society and therefore, it is not a Public Charitable Trust. For this purpose, the learned counsel would take me through the resolution passed in the Society and other documents. In order to substantiate the said contention, the learned counsel placed reliance on certain judgments about which I would make reference at the appropriate stages of this judgment.

17. Whether a trust is a Public Charitable Trust or not is to be seen from the objects of the Trust. In some cases, the object of the Trust can be inferred from the Trust Deed itself. In all the cases, the object of the Trust can be inferred from the bye-laws of the Trust. In the case on hand, Exhibit A-3 shows that the plaintiff is a registered organisation and it is governed by bye-laws. As I have already extracted, the bye-laws are very clear to go to indicate that it is only a Public Charitable Trust. It is immaterial whether all these objects of the bye-laws have been carried out strictly and scrupulously by the appellant or not. It may be true that in practice, the appellant cannot execute some of the objects enumerated in the bye-laws. But that by itself will not change the character of the Trust. As I have already stated, the nature of the Trust is known from the objects of the Trust and not from the actual subsequent working of the Trust. Therefore, from Exhibit A-3, there can be no hesitation to hold that it is only a Public Charitable Trust.

18. The learned counsel for the respondent would submit that there was no exemption granted for the appellant/plaintiff Trust under Income Tax Act which would go to show that it is not a Public Charitable Trust. In my considered opinion, the question whether the Trust has obtained exemption from payment of tax from the Income Tax Department or not is totally irrelevant to know the nature of the Trust. Therefore, this argument only deserves to be rejected.

19. Nextly, the learned counsel for the appellant relies on the judgment rendered by this Court in S.A. No. 1577 and 1578 and 1613 of 1982 dated 20.9.1985. In those appeals, the fight was between the appellant herein and other persons who were the defendants in those suits. In that case also, a plea had been taken by the contesting parties that the appellant herein/plaintiff is not a Public Charitable Trust and it is only a Society. In those proceedings also, it was contended that the suits were not maintainable, in view of the bar contained in the Tamil Nadu Buildings (Lease and Rent Control) Act. After having considered the rival contentions, this Court held that the appellant herein is a Public Charitable Trust. The said judgment of this Court has been marked as Exhibit A-19.

20. The learned senior counsel appearing for the appellant would place reliance on the judgment of this Court in *S. Govindasamy (died) and 4 Others v. Gowthiya Sangam, Nagore* rep. by its Secretary, M.A.A. Sathakathullalh 2007 (5) CTC 136 : LNIND 2007 Mad 1376 : (2007) 6 MLJ 1657, wherein this Court has held that though, as rightly contended by the learned counsel for the appellants, the principle of *res judicata* may not apply as the appellants were not a party to the proceedings in which the said judgment has been rendered, yet the judgment rendered by this Court in a Second Appeal arising out of a suit for eviction instituted by the same plaintiff against another tenant of a property belonging to it is a binding precedent. The above view taken is supported by the decision of this Court in *K.M. Rathinam Nadar v. Arulmigu Hanumantharavar Bhajanai Madam alias Hamtmar Kovil* rep. by its Hereditary Trustee Tmt. L. Papdamavathiammal, (1996) TLNJ 131 : LNIND 1996 Mad 1089, wherein, Mr. Justice M. Srinivasan (as he then was) has held as follows:

"Learned counsel for the respondent has drawn my attention to the judgment of the Supreme Court in *Sahu Madho Das and Others Vs. Mukand Ram and Another*, That case related to construction of a Will. The Supreme Court held that where a Privy Council had construed certain document viz. A Will, though the decision is not binding on a person not a party to that litigation, yet the decision operates as a judicial precedent. It is argued by learned counsel that in the present case, the judgment of the High Court in *K. Lakshmi Venkatrama Rao Vs. The Commissioner, Hindu Religious and Charitable Endowments*, should be construed as a judicial precedent, even if it is not a judgment in rem. In support of this proposition, learned counsel refers also to *Virupakshayya Shandarayya Vs. Neelakanta Shivacharya Pattadadevaru*, The relevant portion of the judgment reads as follows (Omitted) The above judgment of the Supreme Court places the matter beyond doubt. Even if the judgment of this Court in the prior proceedings cannot be treated as a judgment in rem, it can certainly be treated as a precedent inasmuch as it decides the character of a temple. It should be noticed that the question whether a temple is a private or a public one is essentially between the person who claim it to be private temple and the Hindu Religious and Charitable Endowments Department. Once as between them the said question has been decided one way or other, that should be treated as a precedent in a subsequent case if the question arises between some third parties and one of the parties to the earlier proceeding.

In this case, I have already pointed out that there is ample evidence to support the finding of fact that it is a public temple and it cannot be also held that the judgment rendered by this Court in *K. Lakshmi Venkatrama Rao Vs. The Commissioner, Hindu Religious and Charitable Endowments*, is a binding precedent."

21. In view of the above judgment, the learned counsel would submit that since in the judgment Exhibit A-19, this Court has once for all held that the plaintiff is a Public charitable Trust, the said finding is binding on this Court and therefore, it

is not legally permissible for this Court to take a different view. Before appreciating the said argument, let us have a look into Sections 42 and 43 of the Evidence Act, which read as follows:

""Section 42: Relevancy and effect of judgments, orders or decrees, other than those mentioned in Section 41: Judgments, orders or decrees other than those mentioned in Section 41, are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

43. Judgments, etc., other than those mentioned in Sections 40 to 42, when relevant: Judgments, Orders or decrees, other than those mentioned in Sections 40, 41 and 42 are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provisions of this Act."

22. A perusal of Section 42 would go to show that it is an exemption to Section 41 of the Evidence Act. Section 42 makes it very clear that the judgments which do not fall within the ambit of Section 41 are relevant provided they relate to matters of a public nature relevant to the enquiry. It further states that such judgments are not conclusive proof of that it states. A close reading of the same would make one to understand, without any doubt, that to make a previous judgment between third parties as relevant it is necessary that it has got some public nature. In the case on hand, the Trust is a Public Charitable Trust or not, has an element of public nature and therefore, it satisfies the first limb of Section 41 of Evidence Act and thus, Exhibit A-19 is relevant and he same is admissible in evidence. To this extent, there is no difference of opinion between the counsel on either side before this Court.

23. Whether the said judgment is binding or not is the next question to be answered. The answer is readily available in the last limb of Section 42 of the Evidence Act, which says that it will not amount to conclusive proof under the Evidence Act. As per Section 4 of the Evidence Act, the Court shall not allow evidence to be given for the purpose of disproving a fact which has been conclusively proved. Here, in this case, since Section 42 makes it clear that the previous judgment does not amount to conclusive proof, the respondent is at liberty to let in evidence to disprove the fact that the plaintiff Trust is not a public Charitable Trust. Since Exhibit A-19 is relevant and since according to Exhibit A-19 the appellant-Trust is a Public Charitable Trust, the onus to disprove the same shifts on the respondent, as per Section 102 of the Evidence Act. But, in this case, the learned counsel for the respondent would submit that the burden is upon the appellant to prove that it is a Public Charitable Trust. In my considered opinion, the said contention cannot be countenanced at all. As I have already stated, in view of Exhibits A-3 and A-19, the appellant has proved that the plaintiff is a Public Charitable Trust and thereafter, the burden is upon the respondent/defendant to disprove the same. But, the respondent has failed to discharge his burden by letting in evidence. Except making certain comments about Exhibits A-3 and A-19, the learned counsel for the respondent is not in a

position to show any evidence on the side of the respondent to discharge the burden to disprove that the plaintiff is not a Public Charitable Trust.

24. The learned counsel for the respondent would rely on a judgment of the Hon"ble Supreme Court in Deoki Nandan v. Murlidhar and Others (1957) 1 MLJ 28, a judgment of this Court in Subramania Asari (died) and Others v. Pitchai Asari (1987) TLNJ 143 : LNIND 1986 Mad 430 and a judgment of the Bombay High Court in Commissioner of Income Tax, Bombay City, Bombay Vs. Walchand Diamond Jubilee Trust, A perusal of these judgments would go to show that according to these judgments, a Trust will become a Public Charitable Trust provided the purpose and object of the Trust is to render service to the Public. Even if it is to a Section of the Public it is a public trust, In this case, as I have already referred to, Exhibit A-3 clearly contains that the beneficiaries are not identified and it is only General public who will get assistance for education, medical aid etc., and therefore, applying the principles enumerated in the judgments it goes only to prove that the appellant is a Public Charitable Trust.

25. Since I hold that the appellant is a Public Charitable Trust, there can be no difficulty in holding that the same would fall within the exemption granted under G.O. Ms. No. 2000 and thus, the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act are not applicable to the appellant-Society. Therefore, the provisions of the Transfer of Property Act are applicable and thus, the suit in O.S. No. 131 of 1995 is maintainable.

26. The learned counsel for the respondent would submit that the resolution for filing a suit for eviction was made subsequent to the filing of the suit and therefore, it does not satisfy Section 106 of the Transfer of Property Act. In my considered opinion, it is the internal affair of the plaintiff Society and the respondent can have no concern for the same. The only relevant question is whether Section 106 of the Transfer of Property Act has been complied with or not in this case. The learned counsel for the respondent has not pointed out anything to show that Section 106 of the Transfer of Property Act was not complied with. A perusal of the records would go to show that the lease was terminated in accordance with Section 106 of the Transfer of Property Act and after the expiry of the time so prescribed, the present suit was filed. Therefore, the appellant is entitled for recovery of possession of "A" Schedule property from the respondent. To that extent, the decree and judgment of the lower appellate Court in both the suits require interference at the hands of this Court. Accordingly, all the substantial questions of law are answered. In the result, both the Second Appeals are allowed; the decree and judgment of the Courts below in respect of "B" schedule property in O.S. No. 131 of 1995 is restored and the dismissal of the said suit in respect of "A" schedule property is set aside and the said suit shall stand decreed as prayed for in respect of "A" schedule property also. The decree and judgment of the trial Court in O.S. No. 61 of 1997 declining to grant injunction in respect of the vacant site ("B" schedule property in O.S. No. 131 of 1995) is restored and the injunction granted in favour of the

respondent in respect of the building is set aside and the suit in O.S. No. 61 of 1997 is dismissed. In nut shell, both the appeals are allowed and the suit in O.S. No. 131 of 1995 on the file of the learned Subordinate Judge, Tiruvannamalai is decreed as prayed for and the suit in O.S. No. 61 of 1997 on the file of the learned Subordinate Judge, Tiruvannamalai stand dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Connected miscellaneous petitions are closed.