(1988) 03 MAD CK 0039

In the Madras High Court

The Dakshinamara Nadar Sangam APPELLANT

Vs

K. Darmar and Others RESPONDENT

Date of Decision : 28-03-1988

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12, 92

Citation : (1988) 2 MLJ 37

Hon'ble Judges : V. Ratnam, J

Bench : Single Bench

Judgement

V. Ratnam, J.—The plaintiff in O.S. No. 225 of 1976, District Munsif''s Court, Madurai Town is the appellant in this Second Appeal.

Briefly stated, the case of the appellant is as follows:- The suit property, which is a shop situate in door Nos. 9, 10 at North Veli Street, Madurai,

belongs to the appellant. Under an unregistered lease dated 4.5.1949, deceased Kayambu Pandithan became a tenant of the suit property for a

period of three years from 1.4.1949 to 31.3.1952 on a monthly rent of Rs. 10. The shop was taken on lease by deceased Kayambu Pandithan for

the purpose of running a barber shop and a refundable advance of Rs. 46 was also paid and he continued to be a tenant even after the expiry of

that period, though the rent was increased to Rs. 23 per month from 1.7.1972. Though the shop was initially let out to Kayambu Pandithan for

running a barber shop, the first respondent herein, who is the son of deceased Kayambu Pandithan, has been using that shop as a tea shop. From

April, 1975 to September, 1975, deceased kayambu Pandithan did not pay the rent and as the appellant required the building for its own use, the

appellant terminated the tenancy in favour of deceased Kayambu Pandithan by a notice dated 21.10.1975 in and by which deceased Kayambu

Pandithan and the first respondent were called upon to hand over vacant possession of the suit property by 1.12.1975. Claiming that the appellant

is entitled to the benefit of the exemption from the provisions of the Tamil Nadu Buildings (Lease and Rent Control), Act in view of G.O.MS. No.

2000, Home, dated 16.8.1976 and that the legal representatives of deceased Kayambu Pandithan, who are the respondents herein, are also liable

to pay damages at the rent of Rs. 55 per mensem to the appellant for use and occupation, the appellant laid the suit O.S. No. 225 of 1976 for

recovery of possession of the suit property from the respondents and for damages for use and occupation.

2. In the written statement filed by the respondents, they contended that the appellant is not entitled to the benefit of exemption as per G.O.Ms.

No. 2000, Home, dated 16.8.1976, as the appellant is not a public charitable trust and that the rents sent had been refused by the appellant and

thereupon a bank account had been opened into which the rents had been deposited and the appellant is, therefore, not entitled to the reliefs

prayed for in the suit.

3. Before the trial Court, on behalf of the appellants, Exs.A-1 to A-41 were marked and P.W.1 was examined, while, on behalf of the

respondents, Exs.B-1 to B-11 were filed and the first respondent gave evidence as D.W.1. On a consideration of the objects of the appellant--

Sangam, the learned District Munsif found that the appellant is a public charitable trust entitled to the benefit of exemption from the provisions of

the Tamil Nadu Buildings (Lease and Rent Control) Act as per G.O.Ms. No. 2000, Home, dated 16.8.1976, that the notice to quit is valid

whereunder the tenancy had also been properly terminated and that the appellant is entitled to the relief of recovery of possession and a sum of Rs.

184 towards arrears of rent for the period 1.4.1975 to 30.11.1975 and damages for use and occupation in a sum of Rs. 192.50 for the period

1.12.1975 to 16.3.1976. The further mesne profits was also determined at Rs. 55 per mense till the date of delivery of possession, though the

quantum was relegated to separate proceedings under Order 20, Rule 12, Code of Civil Procedure. Accordingly, a decree was granted in favour

of the appellant. Aggrieved by this respondents 1, 2 and 4 to 6 herein preferred an appeal in A.S. No. 259 of 1978 before the Sub Court, Madurai. The learned Subordinate Judge upheld the findings of the trial Court as regards the validity of the notice to quit and the termination of the

tenancy thereunder as well as the entitlement of the appellant to recover arrears of rent in a sum of Rs. 184 and Rs. 192.50 towards past damages

for use and occupation and to have the future mesne profit decided in the course of an enquiry under Order 20, Rule 12, Code of Civil Procedure.

However, the lower appellate Court was of the view that the appellant is not a public charitable trust and is, therefore, not entitled to the benefit of

exemption as per G.O.Ms. No. 2000, Home, dated 16.8.1976, and the proper remedy of the appellant would be to move the Rent Controller

functioning under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act seeking the eviction of the respondents under any one

of the grounds provided thereunder. In view of these conclusions, the suit was dismissed as regards the relief of recovery of possession of the suit

property from the respondents herein. It is the correctness of this that is challenged by the appellant in this second appeal, which has been

entertained on the following substantial question of law;

Whether the appellant is a public charitable institution?

4. There is no dispute that if the appellant establishes that it is a public charitable trust, then, it need not resort to any proceeding under the

provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, but can approach the civil Court claiming the benefit of the exemption in

G.O.Ms. No. 2000, Home, dated 16.8.1976, for recovery of possession of the suit property from the respondents. In order to ascertain whether

the appellant is a public charitable trust or not, it would be necessary to consider the purposes for which it had been constituted. There had been

an earlier litigation with reference to the appellant in O.S. No. 13 of 1942, Sub Court, Tirunelveli, the Scheme decree is which is marked as Ex.A-

7, dated 16.8.1943. To ascertain whether the appellant is a public charitable trust or not, a reference to some of the provisions of the scheme is

necessary. Under Clause 3 relating to definitions, the expression ""Dakshina Mara Nadu Nadars"" has been defined to mean and include the

community of Nadars, Hindus or Christians, or following any religion except Mohammedanism who have their homes in the territory situated within

the boundaries of Vaipar River in the North, the Western Ghats on the West, the

Bay of Bengal on the East and the Indian Ocean on the South.

Clause 3(b) states that the community means the community of Dakshina Mara Nadu Nadars. The aims and objects of the appellant are set out in

Clause 5 in the following terms:

(a) The proper management and administration of the properties set out in Schedule A hereunder and the buildings, temples, and Pettais thereon in

the manner most beneficial to the community.

(b) To arrange for the convenience of the traders, pilgrims, travellers, and students who belong to the community.

(c) To manage and administer the buildings, lands and other properties which are capable of yielding income by leasing them, subject to the rule

and regulations of the Sangam.

(d) To establish and maintain new rest houses, Pettais and chavadies wherever necessary in the interests of the community and to manage them.

(e) To afford increasing facilities for the advancement of education, industry trade, agriculture and co-operation among the members of the

community.

(f) To establish schools, reading-rooms, hospitals, libraries, orphanages, hostels, poor houses, to support and maintain such and similar established

institutions and to start news-papers and periodicals for the common good of the community.

(g) and (h) xxxxx xxxxx

(i) To promote, establish and administer banks and industrial undertakings and co-operative institutions for the benefit of the community and to

partake inuseful limited liability companies and institutions.

(j) To grant free scholarships and to advance loans free of interest to deserving and poor students of the community subject to the by laws that may

be made on that behalf by the Sangam.

(k) To improve mutual good will among members of the community by settlement of difference and disputes among them by conciliation or

arbitration by either the officers of the Sangam of Special Panchayats appointed for the purpose.

(l) To arrange for propagandas, lectures, conferences and publications of literature intended for the unification and welfare of the community.

(m) To impose and collect MAHAMAI, thandal, hundials, subscriptions and contributions from the members of the community and to secure

donations and other income for the purpose of carrying out the objects of this scheme and to encourage thrift and self-help among the members of

the community.

(n) To look after in general the interests and welfare of the community.

(o) To do all things that are necessary and expedient in the interests of, and for the advancement of the community; and

(p) To do all such other things as are incidental or conducive to the attainment of the above objects.

It is in the light of the aforesaid objects that the character of the trust has to be decided.

5. Before proceeding to consider the nature of the appellant-trust, it will be useful to refer to certain general principles which would be of guidance

in that regard. Public trusts are those founded or constituted for the benefit of either the public at large or of some considerable part of it answering

a particular description. Public trusts are also for public charities and for the general public good concerning the general and indefinite public On the

other hand, private trusts are those wherein the beneficial interest is vested absolutely in one or more individuals who are within a certain time may

be definitely identified or ascertained by and for their private conveniences and support. The purpose could- be illustrated by taking the example of

a person leaving a sum of money in trust. If the money is left in trust for the benefit of the inhabitants of a particular place, then, it would be a public

trust for the benefit of such inhabitants. If, on the other hand, the money is left in trust for the support of the children of A, B, etc. that would be a

private trust and a particular trust which the children could enforce. In the event of a breach of trust, in the case of public trust, the enforcement of

the trust obligations could be done by resorting to the remedy provided u/s 92, Code of Civil Procedure. In the case of a private trust, one or two

beneficiaries may sue on behalf of themselves as well as other CESTUIS QUE TRUSTENT, for the performance of the obligations under the trust.

Bearing in mind the aforesaid principles not only with reference to the objects of the trust, but also the mode of seeking redress in the event of a

breach of trust, the provisions in the scheme under EX.A7 may now be examined.

6. The objects of the trust have already been set out. Clause 5(d) relates to the establishment and maintenance of rest-houses, pettais and

chavadies in the interest of the community and manage them. Clause 5(e) refers to the affording of increasing facilities for the advancement of

education, industry, trade, agriculture and co-operation The establishment of schools, reading-rooms, hospitals, libraries, orphanages, hostels, poor

houses and support to similar institutions is one of the objects as could be seen from Clause 5(f). The grant of free scholarships as well as advance

of loans to poor students is also one of the objects of the trust. The collection of MAHAMAI, thandal, hundials, subscriptions and receipt of

contributions from the members of the community to carry out the objects of the trust is also provided for. The provision for rest-houses, schools,

hospitals, dispensaries, etc, is undoubtedly charitable and is the outcome of the well disposed persons who are responsible for the coming into

existence of the trust actuated by motives of philanthropy. The establishment of a hospital or a rest-house or a choultry denotes the public purpose

It is difficult to conceive of the founding of a hospital for the benefit of the founders or their heirs in perpetuity or for the benefit of the few

individuals only. Likewise, the provisions for rest-houses and chavadies, establishment of schools, reading rooms, libraries, hostels, etc, which are

all charitable cannot be considered to be meant exclusively either for the founders or their heirs. There is evidence to show that the trust has been

running schools and colleges even in Bombay and there is nothing on record to suggest that only the descendants of the founders had been

admitted therein excluding the other members of the community or other members of the general public. Undoubtedly therefore, the public or at

least a cross section of the public would be entitled to the benefits of such establishments. Further, the mere circumstances that the purposes of the

public charity are confined to a particular class of persons would not deprive it of its true character as, public charity. It will be useful in this

connection to refer to the following passages in Ganapathi Iyer''s Hindu and Mahomedan Endowments, Second Edition, pages 154, 155 and 156;

There may be a public charity the purposes of which are confined to a particular class. The question whether the charity is ''Public'' does not

necessarily depend on its being universal for a charity is not deprived of its public character merely because its objects are confined to a particular class (P. 154)

...There are public charities the purposes of which are confined to a particular class, as for instance, the institutions for the deaf, dumb and blind.

(P. 155)

... gifts for the benefit of poor members of a particular trade or of deserving literary men who have not been successful or of poor housekeepers or

of old decayed tradesmen or of reduced gentlewomen or of worn-out clerks of a particular firm or of the poor of particular religious denominations

have been upheld as charitable. (P. 156)

It is thus seen that merely because the beneficiaries belong to a particular section of the community, a charitable trust, which is otherwise public,

does not cease to be so. The Lower appellate Court, in the course of its Judgment, has been mainly influenced by the fact that the beneficiaries

belong to a particular section of the Community, namely, Dakshina Mara Nadu Nadars living within the boundaries set out earlier and that would

take the trust out of the category of a public charitable trust. The Lower appellate Court was in error in holding so, for, so long as the beneficiaries

form a cross section of the community at large, then, any member of that community living within the four boundaries would be benefitted by the

objects of the trust and not necessarily a few identified persons only within that community residing in those boundaries. This has been lost sight of

by the lower appellate Court. That Dakshina Mara Nadu Nadar Community constitutes a well defined cross section of the General Public cannot

be disputed and indeed was also not disputed. In that event, it follows that though the benefit of the objects of the trust, which is charitable, may

reach any member of that community residing within the four boundaries, that would not make what otherwise is a public charitable trust, a private

one. What is significant is that a reading of the objects of the trust shows that the benefits are not intended to reach only particular members of the

community living within the boundaries, but the benefits can be availed of by all persons of that community residing within the boundaries specified.

Thus, on a consideration of the objects of the trust and also the intention to benefit all the members of the community at large, though resident

within specified boundaries, the trust in question has to be held to be a public charitable trust.

7. It is precisely on the footing that the trust is a public charitable trust that the proceedings under Ex.A-7 in O.S. No. 13 of 1942, Sub-Court,

Tirunelveli, had been commenced and a scheme framed. Unless the trust is a public religious or charitable trust, recourse to Section 92, Code of

Civil Procedure, cannot be had. The very fact that the proceedings have been taken u/s 92, CPC as evidenced by Ex.A-7 shows that the trust in

question is only a public charitable trust and not a private one. It is seen from Ex.B-8, dated 21.10.1976 that with reference to another premises,

the appellant instituted O.S. No. 749 of 1975, District Munsif''s Court, Madurai Town, for recovery of possession of the property claiming the

benefit of the exemption on the ground that the appellant is a public charitable trust and that was disputed by the tenant in occupation. Upholding

the objection of the tenant, the suit was dismissed by the trial Court and that was also affirmed on appeal by the lower appellate Court as could be

seen from Ex.B-9, dated 15.11.1977. However, on further appeal to this Court in S.A. No. 2616 of 1977, this Court held that the Nadar

community is a cross section of the public and the elementary element in the conduct of schools, colleges, etc, for the benefit of the cross section of

the public indicated that the appellant would be a public charitable trust and the benefit of exemption would be available to it, Thus, in view of

Ex.A-7 as well as the decision of this Court in S.A. No. 2616 of 1977, the conclusion is inescapable that the appellant is a public charitable trust.

8. That this is so is also further supported by the exemptions obtained by the appellant, as a public charitable trust for purposes of Income Tax Act

and Tamil Nadu Urban Land Tax Act. The lower appellate Court has brushed aside the documents Exs.A-9, A-10, A-40 and A-41 with

reference to the exemption from Income Tax and Ex. A-38 with reference to urban land tax on the ground that orders have not been passed

granting exemption to the appellant holding that the appellant is a public charitable trust. The assessments under Exs.A-40 and A-41 have been

made only on the footing that the appellant is a public charitable trust. The application for registration as a public charitable trust has been filed

under Ex.A-9 and also registered under Ex.A-10, and on that footing assessments have been made. Likewise, the exemption from urban land tax

evidenced by Ex.A-38 also shows that the appellant had been recognised as a public charitable trust and the exemption granted on that footing.

These documents show that the concerned authorities, after scrutinising the objects of the appellant, have satisfied themselves that the appellant is a

public charitable trust and on that footing granted the exemption. These proceedings would also establish that the appellant had been accepted as a

public charitable trust for the purpose of these enactments and on that footing the exemption from the operation of these enactments as a public

charitable trust had been granted in favour of the appellant.

9. Thus, on a consideration of the objects of the trust and the prior proceedings u/s 92, Code of Civil Procedure, and the exemption granted in

favour of the appellant referred to earlier, it is clearly established that the appellant is a public charitable trust and would be entitled to the benefits

of G.O.Ms. No. 2000, Home, dated 16.8.1976 and this would enable the appellant to approach the Civil Court seeking the relief of recovery of

possession against the respondents. The lower appellate Court was, therefore, in error in directing the appellant to take proceedings under the

provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act and in dismissing the suit for recovery of possession, No arguments were

addressed either on the question of the validity of the notice to quit or the quantum of rent and damages for use and occupation, past and present.

Consequently, the second appeal is allowed and the judgment and decree of the lower appellate Court in so far as they declined to grant the relief

of recovery of possession to the appellant are set aside and the judgment and decree of the trial Court will stand restored. There will be, however,

no order as to costs in this second appeal.

10. The respondents are given three months'' time from today to vacate and hand over vacant possession of the premises in their occupation to the

appellant.

