(2001) 03 MAD CK 0102

In the Madras High Court

Case No : S.A. No. 1761 of 2000

Vijayakumar APPELLANT

Vs

Roman Catholic Church RESPONDENT

Date of Decision : 16-03-2001

Acts Referred:

Citation : (2001) 03 MAD CK 0102

Hon'ble Judges : F.M. Ibrahim Kalifulla, J

Bench : Single Bench

Advocate : P. Prakash, for the Appellant; S. Parthasarathy, for the Respondent

Final Decision : Dismissed

Judgement

F.M. Ibrahim Kalifulla, J.—The question of law that has been framed for consideration in this Second Appeal is as follows:

Whether the Respondent Society is a Trust as defined under the Trust Act to fall under the purview of G.O. Ms. 2000 Home Department dated 16th August 1976, to be exempted from the provision of Tamil Nadu Building (Lease and Rent Control) Act, more particularly when it is registered as a society on 5.7.1922 under Societies Registration Act ?

The brief facts are that the respondent herein filed O.S. No. 200 of 1995 to direct the appellant to vacate and hand over the possession of the suit scheduled property which is a shop in which the appellant was inducted as a tenant to run a cycle shop. The appellant was running a cycle shop under the name and style of "Maruthy Cycle Mart". According to the respondent a notice to quit was given to the appellant on 27.4.1995 and inspite of the notice since the appellant failed to vacate and hand over the possession of the suit scheduled property the respondent was obliged to file the suit.

2. The said suit was resisted by the appellant contending that the suit was not maintainable, that though the suit scheduled property belonged to the

respondent, it is not correct to say that the respondent was in need of the suit scheduled property for its personal purposes.

3. According to the appellant, he himself filed the suit against the respondent for injunction in O.S. No. 339 of 1994. Both the suits, the one filed by the appellant as well as the present suit in O.S. No. 200 of 1995 were tried together and by a common judgment dated 27.3.1997, the trial Court decreed the suit in O.S. No. 200 of 1995 and O.S. No. 339 of 1994 confirming that the appellant could be evicted only under due process of law. As against the judgment and decree dated 27.3.1997 in O.S. No. 200 of 1995, the appellant preferred A.S. No. 432 of 1999.

4. It is relevant to note that in the decree granted in O.S. No. 200 of 1995, the appellant was directed to hand over the possession of the suit scheduled property on or before 27.06.1977. Against the dismissal of A.S. No. 432 of 1999 dated 18.07.2000 the petitioner has come forward with this Second Appeal.

5. The learned counsel appearing for the appellant raised two contentions, namely that the suit filed by the respondent itself was not maintainable, in as much as according to the learned counsel, the respondent is not a juristic person to maintain the suit. The learned counsel further contended that in the G.O. Ms. 2000 dated 16.8.1976 exemption had been granted only to Religious Public Trust and Public Charitable Trust, the respondent being only a society registered under the Societies Registration Act of 1960 was not entitled to claim the benefit of the said G.O. and on this sole ground the suit by the respondent was not maintainable.

6. Mr. Parthasarathy, the learned counsel appearing for the respondent would otherwise contend that the appellant having accepted the status of the respondent as its landlord as disclosed in his written statement filed in the suit and in the absence of any specific contention having been raised in the suit about the status of the respondent or its competence to maintain the suit, the courts below were fully justified in holding that the respondent was entitled to seek for eviction in its capacity as the owner of the suit scheduled property. The learned counsel further contended that when the appellant himself filed the suit against the respondent and thereby recognising the status of the respondent as the owner of the suit scheduled property, it is not open to the appellant to take a different stand. As regards the other contentions the learned counsel by relying upon the judgment of the Honorable Supreme Court reported in Mulla Gulam Ali and Safiabai D. Trust v. M/s. Deelip Kumar and. Co. (2001 I L.W.652=2001(I) CTC 688) and judgment of Justice Abdul Hadi, J. reported in Ranjan Devasahayam Vs. Hindustan Bible Institute of India, contended that what is to be seen is the object of the institution as to whether it was for the purpose of carrying on any public charitable cause and not the nature of its character.

7. Having heard the learned counsel for either side, I find that in the suit filed by the respondent it was claimed that the respondent is a minority institution and it is a religious and charitable institution entitled for the exemption under the

provisions of the Rent Control Act, and therefore the appellant was not entitled to the benefits of the said Act. It is also claimed that the suit scheduled property which was let out to the appellant was required by the respondent for its own use and for the purpose of providing pathway and space for taking its vehicle to its residence and for storing all material belonging to the Church. In the written statement it was contended that the suit was not maintainable though it was admitted that the suit scheduled property belonged to the respondent, Church. As stated earlier, the appellant himself filed the suit against the respondent as well as the Bishop, of Kumbokonam District Dioceses. In fact, an additional written statement has been filed on behalf of the appellant. Even in the said additional written statement, no contention was raised with regard to the character of the respondent, Church or its competence to maintain the suit.

8. There is a specific finding rendered by the Court below that apart from the absence of specific pleading relating to the competence of the respondent in maintaining the suit, the appellant failed to establish as to any other person who could have validly filed the suit on behalf of the respondent. In reaching the said conclusion, the trial Court also found that under Ex. A.2 it was provided that under the agreement, the appellant was obliged to hand over the possession on termination of the tenancy by 31.05.1995.

9. Having regard to the above said factual conclusions reached by the courts below, on the basis of the pleadings of the respective parties, it would be too late in the day for the appellant to insist that those factual findings should be ignored and on the basis of the contentions now raised in this Second Appeal by stating that the bye-laws of the Society did not empower the respondent to maintain the suit and the respondent should be non-suited. The appellant has virtually submitted to the authority of the respondent in maintaining the suit in its capacity as the owner of the suit scheduled property. In such a situation, it is not now open to the appellant to raise such a plea at this belated point of time as the appellant himself having admitted in the written statement specifically that the respondent is the owner of the suit scheduled property which has been stated so in the following terms:

After having recognised the ownership of the respondent in so many words, I am of the view that the appellant cannot be permitted to raise totally contradictory stand at this point of time. Therefore, the said contention raised on behalf of the appellant cannot even be considered in this Second Appeal.

9A. As regards the other contentions namely that the respondent cannot have the benefit of the exemption granted in G.O. Ms. 2000 dated 16.8.1976, I wish to be guided by the judgment of the Honorable Supreme Court reported in Mulla Gulam Ali and Safiabai D. Trust Vs. Deelip Kumar and Co., wherein the Honourable Supreme Court was pleased to draw the distinction while assessing the character of an institution in the context of its functions of its religious nature and its charitable character. The Honorable Supreme Court has held that when it comes to the question of assessing the character of an institution in the context of its functions of its charitable nature, one should be guided by the object and purpose for which the institution was formed and not the basic character of the institution even if it is religious one. In paragraph 4 of the said judgment their lordships have set out the above principle which reads as under:

The question whether the temple has a public character or a private character cannot be determined except by reference to the control exercised by the trustees in relation to the temple i.e. if the trustees have total control over the institution and do not permit public as a matter of right to perform pooja, entry to the temple or other sevas, the inference is obvious that it is not a public temple. That principle could not have been adopted in the case of present kind. It is clear from the trust deed that objects of the trust are to give donations to educational and charitable institution; to open and maintain schools and colleges for imparting general or technical education; to give scholarship to poor and deserving students studying in schools and colleges to enable them to prosecute further or higher studies, to donate to hospitals, maternity and medical homes, or centers established for the benefit of the public to give medical aid or assistance to poor people especially to deaf and dumb, widows destitute or orphans; to establish pilgrim centers at important places of public worship and maintain the same; to donate for feeding during important public festivals such as Ramzan or Moharrum etc., and /or during times of natural calamities such as floods, fire or famine; to help the poor, whether male or female, adults or children for education or higher studies and to continue for such other charitable purposes which tend to promote international welfare ensuring to the benefit of the public and public institutions for the benefit of the public.

In fact in that judgment the conclusion reached by the learned Judge of this Court was reversed, wherein the learned Judge was of the view that the Courts below were wrong in holding that the appellant in that case was a public charitable Trust solely on the ground that the public are the beneficiaries without considering the vital question of control and management of the Trust which was vested in a group of persons belonging to one particular family. The learned Judge in fact appeared to have reached that conclusion by adverting to various objects set out in the decision of the Supreme Court in relation to findings as to whether the temple was a private temple or a public trust. While repelling such a conclusion reached by the learned Judge of this Court, the Honorable Supreme Court has stated the law in paragraph 4 of the judgment.

10. Therefore, applying the said ratio to the facts of this case I find the bye-laws of the society the objects have been set out in paragraph 1 and it would be relevant to extract those objects in extenso which reads as under:

1. Name: The name of the society is "The Kunbakonam Diocese Society":

Objects: The objects for which the society is established are:

(a) to undertake all activities and works that will promote and propagate Roman Catholic Religion.

(b) to undertake and promote advancement of general and technical education in all its branches subject to all rules and regulations of the Department of Education without prejudice to Minority Rights provided in the constitution.

(c) to support and promote medical aid to all people.

(d) to engage in social service, cultural and charitable activities aimed at improving the living conditions and general welfare of all people.

Note : The above objects are to be implemented for the benefit of all people, irrespective of caste, creed, race or community or social status.

(e) to take over and administer all or any part of movable properties now or hereafter to be vested in the Bishop of Kumbakonam Diocese or vested in Parishes or Institutions of the Kumbokonam Diocese, excepting properties belonging to Religious Congregations relating to both men and women functioning in the Diocese.

(f) For the promotion and achievement of the above objects it shall be competent to the society:

1. ESTABLISHMENTS:

(a) To establish Religious places of worship, pastoral centres, Boarding Houses, to ensure promotions of Roman Catholic Religion.

(b) Colleges, Higher Secondary Schools, High Schools, Higher Elementary Schools, Elementary Schools, Kindergarten schools, Nursery Schools, Industrial Schools, Technical Institutes, Training Centres, Hostels, Boarding Houses for students both male and female, Non-formal education, schools for the Handicapped and Residential Quarters for the staff.

(c) Hospitals, Dispensaries, Clinics, Maternity Centres, Nursing Homes, Leprosy Centres, Family Life Centres, Health Centres, Training Centres, Cultural Centres, Residential Quarters to meet the needs of the staff and the stick.

(d) Social Service Centres, Clubs, work guilds, Homes for the children and Homes for the Aged, Handicapped and Neglected, Recreational Centres, Orphanages etc., to render social and charitable services to the community.

(e) To take over all control of all the institutes under the jurisdiction of the Kumbokonam Diocese Society with full powers to regulate their running, control their activities and give directions as regards their functions. Acquisition or disposal of properties of all such institutions shall not be done by their Respective Heads without prior permission of the president of the society:

11. From a close reading of the various purposes which have been sought to be achieved by the respondent trust it can be safely concluded that the benefits are to be conferred not on any particular group or section but irrespective of caste, creed, race, community or even assuming the status the respondent intended to provide all kinds of service to all people of the society at large. Such being the

laudable object of the society in which the respondent is a part, it can be safely concluded that the main purpose was charitable in character. The very purpose of granting exemption in G.O.Ms. 2000 dated 16.8.1976 being to benefit such institutions it would be puerile if such benefits are to be denied on some hypertechnical basis such as the one raised now on behalf of the appellant. Therefore, I am unable to accept the contention of the appellant that the respondent being not a trust as registered under the Indian Trusts Act, it cannot claim the benefit of the exemption under G.O. Ms. 2000 dated 16.08.1976. In this context a useful reference can be made to the judgment of his Lordship Mr. Justice Abdul Hadi, J. rendered in Ranjan Devasahayam Vs. Hindustan Bible Institute of India, wherein an identical question came up for consideration as to whether a society can be construed as a trust in order to claim the benefits provided under G.O. Ms. 2000 dated 16.8.1976. In paragraph 8A and 8B the learned Judge has extracted the objects of the Society and a comparison of those objects with that of the one found under Ex. A.I, I find it is far more beneficial to the public at large than the one found in para 8B referred to in the above stated judgment. The learned judge has ultimately held that the society was legally entitled for the benefits of the G.O. Ms. 2000 dated 16.8.1976 in conclusion. Therefore looked at from any angle, there is no scope to hold that the respondent is not entitled for the benefits of G.O. Ms. 2000 dated 16.8.1976. The conclusions of the courts below are therefore fully justified. The only question of law that is raised on behalf of the appellant having been answered against him this Second Appeal fails and the same is dismissed. No costs. Consequently, the connected C.M.P. No. 16533 of 2000 is also dismissed.