

CASE NO.:
Appeal (civil) 6888 of 1999

PETITIONER:
A.V.G.P. CHETTIAR & SONS & ORS.

Vs.

RESPONDENT:
T. PALANISAMY GOUNDER

DATE OF JUDGMENT: 08/05/2002

BENCH:
R.C. Lahoti & Ruma Pal

JUDGMENT:

RUMA PAL, J.

This is an appeal filed by tenants against an order passed by the High Court at Madras upholding the decision of the Rent Controller ordering the eviction of the appellants under the Tamil Nadu Buildings (Lease and Control Act) Act, 1960 (hereinafter referred to as 'the Act').

The appellants have assailed the decision of the High Court primarily on three grounds:

- i) that the suit premises belongs to a religious charitable Trust and, therefore, the provisions of the Act were not applicable to the suit premises, and
- ii) that there was no relationship of tenants and landlord between the appellants and the respondent and
- iii) the denial of the respondent's title by the appellants was bona fide and as such the Rent Controller had no jurisdiction to try or determine the suit.

Before considering the submissions of the parties, the background in which the issues before us arise needs to be stated.

In 1900, one Mandi Venkata Naicker endowed his property in Trust for religious and charitable purposes by a registered deed dated 7th September 1900. A supplementary deed was executed by the said Venkata Naicker on 12th April 1911 transferring further properties to the Trust from the income of which various rituals were to be carried on. According to the appellants the suit property was one of such Trust properties. The second appellant was inducted as a tenant in the suit premises by the Trust in

1942. Subsequently, the second appellant formed a partnership firm together with his sons. The firm is the first appellant before us and the remaining appellants are its partners. The appellants' case is that they have continued as tenants under the Trust and the suit premises still belongs to the Trust.

According to the respondent, the said premises belonged to S. Gowthaman, an heir of the said Venkata Naicker. The respondent claims that the appellants had acknowledged Gowthaman as their landlord and paid rent to him without protest. Gowthaman sold and conveyed the suit property to the respondent by a registered deed dated 15th July 1988. This fact was intimated to the appellants by Gowthaman who attorned the tenancy in favour of the respondent by letter dated 19th July, 1998. On 5th December, 1998 the respondent sent a registered notice to the appellants demanding payment of rent. The appellants refused to pay rent to the respondent on the ground that the property belonged to the Trust and that no right, title or interest could pass under the alleged sale by Gowthaman to the respondent.

The appellants then filed an application before the Subordinate Judge at Erode under Section 92 of the Code of Civil Procedure for leave to institute a suit to obtain a declaration that the alienation of the suit property by Gowthaman to the respondent was null and void and not binding on the trust and for framing of a proper scheme for the enforcement of the trust. Both Gowthaman and the respondent were made parties to this application.

While this application was pending the respondent filed a petition in the Court of the Rent Controller for eviction of the appellants from the suit premises on four separate grounds under Sections 10 (2)(i), 10 (2) (vii), 10 (3)(iii), and 14 (1)(b) (2)(b) of the Act. Section 10(2)(i) provides for eviction on the ground of default in payment of rent. The proviso to Section 10(2) allows the Controller, if he is satisfied that the tenant's default is not wilful, to give the tenant a reasonable time, not exceeding fifteen days, to pay or tender the up to date rent due by him to the landlord. If the tenant avails of this opportunity the application of the landlord "shall be rejected". The Explanation to the sub section defines wilful default as default which continues after the issue of two months' notice by the landlord claiming rent.

Section 10(2) (vii) allows the landlord to ask for eviction of the tenant on the ground: "that the tenant has denied the title of the landlord or claimed a right of permanent tenancy and that such denial or claim was not bona fide."

Under the second proviso to Section 10(1) if the Controller decides that the tenant's denial of the title of the landlord or the claim to permanent tenancy is bona fide, then the landlord is entitled to sue for eviction of the tenant in a Civil Court which would have the jurisdiction to pass a decree for eviction on any of the grounds mentioned in Section 10, 14, 15 and 16 of the Act, "notwithstanding that the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded". It is clear from the language of this proviso, that the Rent

Controller has only to decide whether there is a bona fide dispute as to the landlord's title and has no jurisdiction to decide the issue of title himself. That would be within the exclusive jurisdiction of the Civil Court.

This was also held in J.J. Lal Pvt. Ltd. & Ors v. M.R. Murali and Anr where this Court having examined the relevant scheme of the Act construed the second proviso to sub-Section (1) of Section 10 and clause (vii) of sub-Section (2) of Section 10, in the following words:

"The legislative intent appears to be that denial of title can be decided by the Controller for the limited purpose of finding out whether a ground of eviction is made out but the questions of title should be left to be determined by the Civil Court. Once a question of title has arisen between a landlord and a tenant and such dispute is bona fide, the doors of Civil Court are let open to the landlord and therein adjudication, on grounds of eviction otherwise within the domain of the Controller, is also permitted so as to avoid multiplicity of suits and proceedings. All the disputes between the landlord and tenant would be settled in one forum and the need for prosecuting two separate proceedings before two fora would be eliminated".

The third ground for eviction was under Section 10 (3) (iii) which allows the landlord to sue for eviction: "in case it is any other non-residential building, if the landlord or (any member of his family) is not occupying for purposes of a business which he or (any member of his family) is carrying on, a non-residential building in the city, town or village concerned which is his own".

The fourth ground on which the respondent sought the appellants' eviction was under Section 14 (1) (b) which reads:

14 (1) (b) "that the building is bona fide required by the landlord for the immediate purpose of demolishing it and such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished".

According to the appellants none of these provisions are applicable to the suit property because it was a religious endowment and religious endowments have been exempted from the Act. If this question is decided against the appellants and we hold that the Act is applicable to the suit property, even so it is not necessary for the purpose of this judgment to refer to the pleading or the evidence of the respondent in support of the first, third and fourth grounds for eviction because the High Court confined its decision to the second ground namely whether the appellants could be said to have denied the landlord's title

and if so was the denial bona fide. Therefore we limit the narration of facts to those which are relevant to these issues.

In the eviction petition the respondent claimed that the suit premises belonged to S.Gowthaman and that the respondent had purchased the suit premises on 15th July, 1988 from the said S. Gowthaman since which date the respondent "has become the absolute owner of the said building". The appellants filed a counter in which, apart from denying the grounds urged for eviction, it was claimed that the property belonged to the said Trust and not to the respondent as Gowthaman could not have sold the property to the respondent and that in accordance with G.O.No.2000 dated 16th August, 1976, religious endowments like the suit property were exempted wholly from the operation of the Rent Control Act. It was also stated that an application under Section 92 CPC had been filed by the appellants for leave to file a suit in respect of the Trust properties including the suit premises.

By an order dated 21st September, 1990, the appellants' application under Section 92 CPC was granted and the appellants' suit was numbered as O.S. No.539 of 1990 before the Subordinate Judge, Erode. The appellants brought this fact to the notice of the Rent Controller by filing an additional counter on 17th January, 1991.

The respondent impugned the order granting leave under Section 92 before the High Court under Section 115 CPC. The High Court allowed the Revisional Application by an order dated 23rd August, 1991 and held that the trust was a religious endowment and religious charity within the meaning of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 and that Section 92 of the Code of Civil Procedure had ceased to apply to Hindu Religious Institutions and Endowments by virtue of Section 5 of that Act. The order granting leave under Section 92 was accordingly set aside and the application of the appellants under Section 92 CPC was dismissed as not maintainable.

On 4th November 1991 the Rent Controller allowed the petition of the respondent and directed the eviction of the appellants from the suit premises. He upheld each of the grounds of eviction urged by the respondent. The specific issue viz., "whether the respondents (the appellants before us) are justified in denying the title of the petitioner (the respondent before us) to the petition building" was decided against the appellants on four grounds:

- 1) The appellants recognised the said Gowthaman as the owner of the building and remitted rents to him.

- 2) From the decree passed in O.S.No.311/85 Sub Court, Erode, it could be understood that the petition-building had belonged to the said S. Gowthaman.

- 3) The said S. Gowthaman had written a letter dated 18.7.1988 to the appellants intimating to

them that he had sold the building to the respondent and that future rents might be paid by the appellants to the respondent.

4) The said S. Gowthaman had sold the petition-building on 15.7.1988 to the respondent.

The Rent Controller refused to go into the question whether Gowthaman had the right to transfer the suit property to the respondent because:

"This is Rent Controller (sic) proceeding. In this summary proceedings it is not necessary to find whether S. Gowthaman was previously entitled to the petition-building".

The appellants preferred an appeal from the Rent Controller's decision before the Appellate Authority. The Appellate Authority allowed the appeal. It found prima facie that the suit property was covered by the trust which was a religious public trust and that in terms of G.O. No. 2000 dated 16th August 1976 the Rent Controller had no jurisdiction to entertain the respondent's application under the Act. It was also held that the Rent Controller erred in deciding that the property belonged to S. Gowthaman both as a matter of fact and of jurisdiction. The Appellate Authority held that the denial of title of the respondent by the appellant was bona-fide and that the respondent should have been directed to establish his claim for eviction before the Civil Court.

The respondent challenged the decision of the Appellate Authority before the High Court by way of a revisional application under Section 115 CPC. By its judgment dated 17th November, 1998 the High Court reversed the decision of the Appellate Authority and restored the decision of the Rent Controller solely on the issues relating to the Rent Controller's jurisdiction. The judgment then records:

"Learned counsel for the respondents request time so as to enable the tenants to vacate the premises. Accepting the same, six months' time is granted to the respondents from this date on condition that the respondents should file an affidavit of undertaking stating that they would vacate and hand over the vacant possession of the premises to the landlord on or before the said period, without making the landlord to go to the court for taking possession. Such an affidavit should be filed on or before 30.11.1998. If such an affidavit is not filed within the said period, the order of eviction will come into operation with immediate effect".

The appellants did not file any undertaking. Instead they impugned the decision of the High Court by filing a

special leave petition under Article 136 of the Constitution on 8th December, 1998. By an order dated 18th January 1999, this Court issued notice to the respondent and passed an interim order protecting the possession of the appellants. After hearing the parties, leave was granted on 29th November, 1999 and interim relief granted earlier was directed to continue pending the disposal of the appeal.

Before considering the correctness of the decision of the High Court, we take up for consideration a preliminary objection raised by the appellants that the appellants were estopped from impugning the High Court's decision because they had requested for time to vacate the suit premises and such request had been granted by the High Court. The objection is unsustainable. First, an objection to the maintainability of the appeal, like other points of demurrer, may be relevant at the time of the admission of the appeal. Once the appeal is admitted without reserving the issue of maintainability and the matter is heard on merits, such a preliminary objection does not survive. Second, the appellants had no doubt requested for a stay of the execution of the decree. That had been granted by the High Court subject to furnishing of an undertaking by the appellants to vacate the premises within a period of six months. The appellants did not in fact give any such undertaking. Even if they had, they could not be denied the right to appeal to this Court on any principle of estoppel unless the respondent could show that the appellants had thereby gained an advantage which was otherwise not available to them; for example, if the appellants had given an undertaking and obtained a stay of the order of eviction beyond the period allowed for preferring the appeal or if the landlord had consented not to execute the decree of eviction in consideration of the appellants' undertaking to vacate. If such or other like circumstances exist, this Court may have refused to exercise discretion in favour of the tenant under Article 136 of the Constitution. Otherwise merely giving an undertaking does not foreclose a tenant from availing of any statutory remedies available to him by way of appeal or revision or under the Constitution.

In this case, no undertaking was in fact given by the appellants. The question of deriving any advantage by the appellants on the basis of such undertaking therefore did not arise at all. In fact the application under Article 136 was filed well within the period of limitation. The preliminary objection raised by the respondent is misconceived and is accordingly rejected.

On the merits, we are of the view that the decision of the High Court cannot be sustained. The basic question to be decided (and which should have been decided by the High Court) was whether the Rent Controller could have determined his own jurisdiction finally not only with regard to the applicability of the Act to the suit premises but also with regard to title of the respondent to the premises.

As we have already noted it was and is the appellants' case that the suit property belonged to and still belongs to a religious trust. This assertion forms the basis not only of their contention that the Act does not apply to the suit property but also of their denial of the respondent's title to it. In the case before us, the Rent Controller did not address himself at all to this basic fact. Consequently,

he did not express any view on the question of the applicability of the Act to the suit premises. The Appellate Authority no doubt filled in the lacuna by holding, albeit prima facie, that the suit property belonged to the Trust and that the Act did not apply to the suit premises. The High Court erred in reversing this prima facie view.

The High Court in the impugned judgment has found that the suit property was covered by the Trust deeds in the following words: (wherein the appellants are referred to as the respondents and the respondent as the petitioner)

"Though the learned Senior Counsel for the petitioner has initially raised a dispute that the property in question is not the subject matter of the trust deed, after the clarification by the learned senior counsel for the respondents that the property has been included in the trust deed, the learned senior counsel for the petitioner is not in a position to substantiate his stand with respect to the same."

The Trust deeds in question had been construed by the Madras High Court itself while allowing the revision application filed by the respondent against the order granting leave to the appellants to sue under Section 92 in respect of the suit property. It had been held that the Trust deeds showed that "the endowment is a religious endowment or religious charity within the meaning of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959".

Under the Endowments Act, the supervision and administration of "religious endowments" are vested in a hierarchy of officials consisting of the Commissioner, Joint Commissioner, Deputy Commissioner and Assistant Commissioner. The Endowments Act contains elaborate provisions inter-alia for the maintenance and alienation of immovable property of a religious endowment. Section 5 of the Endowments Act provides for certain Acts not to apply to Hindu Religious Institutions and Endowments. The excepted enactments include Section 92 of the Code of Civil Procedure, 1908. Section 108 of the Endowments Act provides:

"Bar of suits in respect of administration of management, or religious institutions, etc. No suit or other legal proceedings in respect of the administration or management of a religious institution or any other matter or dispute for determining or deciding which provision is made in this Act shall be instituted in any Court of Law, except under, and in conformity with, the provisions of this Act".

In other words, by Section 5 and 108 of the Endowments Act, the jurisdiction which would otherwise have vested in the Civil Courts to grant relief under Section 92 CPC in respect of public, religious or charitable

trusts has been taken away and vested in authorities constituted under the Endowments Act.

Perhaps because of the special procedure to be followed in respect of religious endowments, a notification was issued by the State Government in exercise of powers under Section 29 of the Act to exempt any building or class of buildings from all or any of the provisions of the Act. The notification was issued on 16th August, 1976 and reads as follows:

"(G.O. Ms No.2000, Home, August 16, 1976) No. II(2)/HO/4520/76.- 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 suppression of the Home Department Notification No. II(2)/HO/3811/74, dated August 12, 1974, published at page 444 of Part II Section 2 of the Tamil Nadu Government Gazette, dated August 12, 1974, the Government 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."

The constitutional validity of this notification has been upheld by this Court in *S. Kandaswamy Chettiar V. State of Tamil Nadu* and Another 1985 (1) SCC 290. But, say the respondents, this did not mean that the suit property was exempt from the provisions of the Act, because there was nothing on record to show that the Trust created by Venkata Naicker was a Public Trust within the meaning of the exemption notification. The submission is unacceptable. There was on record the two Trust deeds as also the earlier decision intra-partes on the effect and scope of the deeds. Since the High Court had, on a construction of the Trust deeds, held that the Trust was a "religious endowment" or "religious charity", within the meaning of the Endowments Act, it cannot be said without more having regard to the definition of those words in the Endowments Act, that the claim of the appellants to be covered by the said exemption, notification was patently wrong or unfounded.

'Religious endowment' has been defined in Section 6(17) of the Endowments Act, as follows:

"'Religious endowment' or 'endowment' means all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity; and includes the institution concerned and also the premises thereof; but does not include gifts of property made as personal gifts to the archakas, service-holders or other employees of a religious institution."

"Religious charity" has been defined in Section 6(16) as:

"religious charity" means a public charity associated with a Hindu festival or observance of a religious character, whether it be connected with a math or temple or not"

In the judgment impugned before us, the High Court relying upon three decisions came to the conclusion that in the earlier decision, no issue had been raised and therefore no decision had been taken with regard to the nature of the Trust so as to operate as res judicata between the parties. According to the High Court:

"The issue raised in the decision in 1992-I-MLJ-109 (supra) is only as to whether the respondents are entitled for leave to file the suit, and that was rejected, and the apex court also confirmed the said order and so it cannot be said that the learned Judge has decided as to whether the trust in question is a public trust or not".

This conclusion proceeds on a misreading of the earlier decision. In the revision application, it was the respondent who had specifically raised the issue that the Trust was covered by the Endowments Act and, therefore, Section 92 CPC did not apply. The High Court accepted this submission. The High Court was of the view that there was no necessity for any other evidence to be led for the purpose of deciding the character of the Trust as it was a pure question of law which depended on the terms of the Trust deed. It was because the High Court came to the conclusion that the Trust was a religious endowment or religious charity within the meaning of the Endowments Act that it dismissed the application filed by the appellants for leave under Section 92 of the Code of Civil Procedure. In fact, the only basis for rejecting leave under Section 92 CPC was that the Trust documents created a 'religious endowment' or 'religious charity' within the meaning of Endowments Act and, therefore, the provisions of the Endowments Act and not Section 92 of the CPC would apply. The decision on the construction of the deeds of Trust is res adjudicata and binds the parties. The three decisions referred to by the High Court for arriving at a contrary conclusion are inapposite and do not support the conclusion reached by the High Court. The first was a decision of the Full Bench of the Punjab and Haryana High Court on Article 141 of the Constitution. The second was the minority view expressed at paragraph 55 of the Report and the third was not a decision on the principles of res judicata at all.

In any event and at the very least, the earlier decision of the High Court on the construction of the Trust deeds could be said to have established a real possibility of the suit property being covered by the exemption notification and, therefore, outside the ken of the Rent Controller. However, it is also not for us in this appeal to decide the issue as to the applicability of the Act to the suit property finally. It is sufficient for the purposes of allowing

the appeal on this issue to hold that there was prima facie support for the stand taken by the appellants in the form of the unimpeached documents relating to creation of a Trust, the admitted inclusion of the suit property in those documents and the unchallenged decision intra-partes that the suit property was part of a religious endowment or religious charity within the meaning of the Endowments Act.

Our decision on the second and third questions raised by the appellants relating to the denial of the respondent's title to the suit property under Section 10(2)(vii) of the Act follows to a large extent from the discussion in the previous paragraphs. If the suit property was covered by the Trust deeds, as the High Court itself has held, the next step would necessarily be to find out how the suit property came to be in the hands of Gowthaman. What the appellants were challenging was not only the immediate title of the respondent but also the title of his predecessor-in-interest, Gowthaman, to the suit property. This they were entitled to do without offending Section 10(2)(vii).

This Court has recently held that Section 10(2)(vii) is based on "the rule of estoppel contained in Section 116 of the Evidence Act which estops the tenant from denying the title of the landlord at the commencement of the tenancy and the estoppel continues to operate so long as the tenant does not surrender possession over the tenancy premises to the landlord who inducted him in possession. The tenant is not estopped from denying the title of the landlord if it comes to an end subsequent to the creation of the tenancy nor is he estopped from questioning the derivative title of a transferee of his landlord" . (Emphasis added)

It is nobody's case that the appellants were inducted by Gowthaman from whom the respondent derived his interest in the property. The High Court noted that "the rent receipts were given originally in the name of E. Venkata Naicker Trust, Erode/E.V. Krishasami Sons (management)". Therefore, the appellants were inducted as tenants by the Trust. If the suit property was part of the Trust, the appellants could validly raise the questions viz. how did the property come to be transferred by the Trust to Gowthaman? What was the validity of the transfer, if any? What was the nature of the interest which Gowthaman had in the suit property? Was it qua trustee or qua owner? If it was that of a trustee, could he have, legally and in terms of the Trust deed, transferred the suit property to the respondent? Yet the Rent Controller refused to go into any of these questions although they were squarely raised by the appellants before him. Instead he decided the title of Gowthaman on the basis of a partition deed between the heirs of Venkata Naicker and rent receipts granted to the appellants by Gowthaman as proprietor. The Rent Controller could have only decided (i) whether there was a dispute regarding the landlord's title raised by the tenant and (ii) whether the dispute was bona-fide the bona fides being established prima facie, by evidence in support of the tenant's stand. The Rent Controller could not have ignored the questions relating to the derivative title of the respondent. He could not have finally decided the issue of title of the respondent to the suit property, nor could he have, on that basis, find that the appellants' denial of the respondents title not bonafide.

"To operate against the tenant as proving a ground for eviction under Section 10 of the Act, a mere denial of the title of the landlord is not enough; such denial has to be "not bona fide". "Not bona fide" would mean absence of good faith or non-genuineness of the tenant's plea".

The High Court upheld the title of the respondent on the basis of the definition of "landlord" in the Act which reads:

" 'landlord' includes the person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of another or on behalf of himself and others or as agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent if the building were let to a tenant."

The impugned judgment is erroneous. It failed to consider that the appellants had denied the derivative title of the respondent and that this would not afford a ground for eviction under Section 10(2)(vii) of the Act. The High Court also failed to examine the issue from the perspective and from within the confines of the Rent Controller's limited jurisdiction.

The High Court found that:

"admittedly, from 1984, accepting the said Gowthaman as the proprietor of the property the rent has been paid"

and therefore came to the conclusion that:

"In view of the abovesaid specific definition under the said act, the said Gowthaman either as a person who is entitled to receive the rent or as the trustee, should be construed as the landlord, and he issued the notice to the tenants to pay the rent to the petitioner, and so notwithstanding the sale in favour of the petitioner in respect of the property in question, the petitioner should be construed as the landlord as he has been authorised to receive the rent by a notice dated 18.7.1988 issued to the tenants by the said Gowthaman, and thereby he is entitled to maintain the eviction petition in the capacity as landlord".

The High Court's reasoning was far removed from the pleadings of the respondent. The respondent had claimed that Gowthaman was the absolute owner of the suit property and that such absolute interest had been purchased by the respondent. Given this pleading the respondent could not be allowed to set up a different case and take shelter behind the definition of 'landlord' in the Act. The definition of 'landlord' is an enabling provision in the sense that it enables persons who are not the owners

to ask for eviction under the Act. But it does not mean that a person who has claimed to be the landlord qua owner can jettison his case as pleaded in his eviction petition and establish his claim on the basis that he was otherwise entitled to claim as landlord of the suit premises. As held in M/s Trojan & Co. V. RM N.N.Nagappa Chettiar. "It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found".

To sum up: we hold that there was a bona fide dispute as to title raised by the appellants and, therefore, the Rent Controller did not have jurisdiction to hear and finally adjudicate upon the application filed by the respondent before it. However we clarify that this finding is limited to the issue of the Rent Controller's jurisdiction and shall not preclude the respondent from approaching a competent Civil Court for determination of the issue finally and no observations made in this judgment will prejudice the trial of this or any other issue that the respondent may raise on merits. Subject to this observation, for all the reasons stated earlier, we set aside the impugned decision of the High Court and allow the appeal. There will be no order as to costs.

J.
(R.C. Lahoti)

..J.
(Ruma Pal)

May 8, 2002