

M. Krishnaswamy Vs. Sadras Venkatarama Chetty Charities Under the Management of S.K.P.D. and Charities Represented by Its Hereditary Dharmakartha and Trustees and ors.

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Court : Chennai

Decided On : Jul-20-1995

Reported in : (1996)1MLJ23

Appellant : M. Krishnaswamy

Respondent : Sadras Venkatarama Chetty Charities Under the Management of S.K.P.D. and Charities Represented by It

Judgement :

Abdul Hadi, J.

1. The defendant in O.S. No. 6077 of 1985 on the file of VIII Assistant City Civil Judge, Madras is the appellant in this second appeal against the reversing judgment, which decreed the abovesaid suit (for possession of suit building, filed by the respondent-plaintiff against its tenant, the appellant herein), setting aside the dismissal of the suit by the trial court.

2. The plaintiff is Sadras Venkatarama Chetty Charities under the management of Sri Kanyaka Parameswari Devasthanam Charities, represented by its Trustees.

3. The only point urged before me by learned Counsel for the appellant is that the plaintiff cannot claim exemption under G.O.Ms. No. 2000, Home, dated 16th August, 1976, which 'exempts all the buildings owned by the Hindu.... Religious Public Trust and Public Charitable Trust from all the provisions of 'The Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and that, therefore the relief claimed in the suit can be had only under the abovesaid Act and not by way of a civil suit. To this argument, there are two limbs. One is that, even assuming that the plaintiff - Trust which is said to have been created under Ex. A-30, dated 26.10.1939, is not a public Trust, but only a private trust. This limb of the argument though accepted by the trial court, which consequently dismissed the suit, was not accepted by the first appellate court, which has held that the plaintiff Trust is only a public trust coming under the said Government Order and that hence the suit is maintainable in the civil court.

4. Thus, regarding this limb of the arguments, the terms of Ex. A-30 have to be considered. After going through Ex. A-30, I do not see any error in the construction placed on it by the lower appellate court, despite the contention of learned Counsel for the appellant that the disposition made under Ex. A-31 was only in favour certain family members of the settlor, viz., Sadras Venkatarama Chetty (who admittedly died in 1956) and hence it is only a private trust. The relevant recitals in Ex. A-30 are as follows:..of late owing to serious difference between myself and my sons and my wife I have had to live separately from them alone.... On account of the attitude evidenced by my sons.... I desire to make a disposition in praesenti of the several properties belonging to me with a view to make the income of the said properties...available for the performance of charities. With the said intention I hereby execute this deed of Trust.... I hereby settle the said properties...on me for my life with liberty to apply the net income...at my discretion on such objects or purposes as may seem best to me including my maintenance and after my life time or earlier, when I relinquish my interest therein, on the Trustees mentioned below, on Trust, for applying the net income therefrom as undermentioned.... The Trustees shall be...the Committee of Management...of the Sri Kanyaka Parameswari Devasthanam Charities.... The net proceeds of the income...shall be utilised for the following purposes: (a) Payment to each of Rs. 2,000 for the marriage expenses...of daughters of my elder son...daughter of my

younger son...provided that in the event of my dying after making provision for all or any of such girl or girls.... (b) Payment of Rs. 15...per mensem to my elder daughter...and of Rs. 15 per mensem to my younger daughter...for their life time only, provided that in the event of the said daughters...getting any share in premises No. 582... then the said allowance shall not be paid...to them, (c) Payment of Rs. 10 per mensem to my sister...for her lifetime for the support of herself and her husband...and Rs. 8,...per mensem to the Bandaram Subbaiah Chetty, should he survive his wife...(d) For paying school or college fees or cost of books to Arya Vysya Student of both sexes of Madras, preference being given to residents of Triplicane, and then to girls who are residents of Madras, outside Triplicane, provided that they are really needy in the opinion of such Trustees. In case my sons or grandsons by sons apply for help of the above nature for their children their request shall be given preference over everyone else.

[emphasis supplied].

5. The contention of learned Counsel for the appellant is that in view of the abovesaid Clauses (a), (b) and (c), the Trust should be construed only as private charitable trust. But, in construing such a document, the primary or dominant purpose of the settlor in creating such a trust has only to be seen, in order to find out whether it is a public charitable trust or private charitable trust. Vide: *Saraswathi Ammal v. Rajagopal Ammal* : [1954]1SCR277 and *Commissioner of Income Tax v. Andhra Chamber of Commerce*, : [1965]55ITR722(SC) . It is clear that the primary or dominant purpose of the abovesaid deed is to create a Trust for the educational purposes mentioned in Clause (d) above for the benefit of Arya Vysya students of Madras, who are indeed a section of public. It is also settled law that when a section of the public is thus to benefit by the Trust, it can be termed only as public Trust. Vide: *Commissioner of Income Tax v. Andhra Chamber of Commerce* 55 I.T.R. 722 (S.C.) followed by *Commissioner of Income Tax v. Textile Manufacturers' Association* . No doubt, as already indicated, Clauses (a) and (b) provide for some payments to be made to certain relatives of the settlor. But, even there, it is provided that in the event of the settlor dying after making relevant provisions as to the said relatives, the trustees need not make those payments to the said relatives. In so far as Clause (c) is concerned, it only says

that a small sum of Rs. 10 per mensem has to be paid to the said sister of settlor and that too for her lifetime only for the support of herself and her husband Bandaram Subbiah and that another small sum of Rs. 8 per mensem has to be paid to the said husband, should he survive his wife. These small provisions by themselves will not make the Trust a private trust. Further, it must be noted that insofar as the abovesaid Clause (d), no amount as such has been prescribed regarding the quantum that has to be spent towards the said charities (the above referred to education purposes). The properties dedicated are three valuable house properties in Madras. Therefore it goes without saying that a substantial portion of the income of those properties would go only to the abovesaid educational purposes, benefiting a section of the public. In this connection, I must also state that the decision in Trustees, G.G.F. Trust v. Commissioner of Income Tax, Bombay : [1973]88ITR47(SC) , relied on by the learned Counsel has no application since, there on facts, it was held that the Trust was created primarily for the benefit of the members of the settlor's family. But, here, as I have already stated, it is clear that the Trust has been created primarily for the abovesaid education purposes, benefiting a section of the public.

6. Further, incidentally it should also be noted that only the committee of management of Sri Kanyaka Parameswari Devasthanam Charities have been made the Trustees of this Trust. Further, it must also be stated that simply because some preference has to be given while performing the charities under Clause (d) above to the sons or grandsons of the settlor, in case they apply for help, the Trust would not become a private Trust. Vide: Trustees of Charity Fund v. Commissioner of Income Tax 36 I.T.R. 513 (S.C).

7. The decision cited by learned Counsel for the appellant viz., Venkatachalapathi Aiyar v. Chakrapani Aiyar 15 L.W. 279, has no application to the present case. On facts, there, it was held that there was no dedication or transfer of property to the Trust. But it is clear from the abovesaid deed in the present case that there is transfer of title in the abovesaid properties to the Trust. The other decisions cited by him viz., Himansu Kumar v. Hasem Ali Khan : AIR1938 Cal818 , has no application to the present case for the same reason.

8. The next limb of the argument of learned Counsel for the appellant is that the said G.O.Ms. No. 2000 does not give exemption with reference to the buildings owned by 'charitable institutions' as was done in the earlier G.O.Ms. No. 1998, but only gives exemption with reference to 'Public Charitable Trust'. He also points out that the plaint itself describes the plaintiff only as 'public charitable institution' and not 'Public Charitable trust'. But, this contention has no merit. Though there may be some imperfection in the description found in the plaint, it is clear after going through Ex. A-30 that only a trust is created by Ex. A-30 and not an institution.

9. Therefore, the case does not involve any substantial question of law. Accordingly, the second appeal is not admitted, but dismissed. C.M.P. No. 7902 of 1995 for stay is consequently dismissed.

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