(2011) 06 MAD CK 0360

Madras High Court

Case No: S.A. No. 85 of 2006 and C.M.P. No''s. 504 to 506 of 2011

Haridason		APPELLANT
	Vs	
Janakiram Banthalu Trust		RESPONDENT

Date of Decision: June 30, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 92
- Evidence Act, 1872 - Section 116
- Religious Endowments Act, 1863 - Section 20

Hon'ble Judges: G. Rajasuria, J

Bench: Single Bench

Advocate: Ashok Menon, for Menon and Goklaney Associates, for the Appellant; N. Nagushah, for the Respondent

Final Decision: Dismissed

Judgement

G. Rajasuria, J.

These two Second appeals are focussed by the original Defendant, animadverting upon the common judgment and decrees dated 28.10.2005 passed in A.S. Nos. 18 and 19 of 2004 by the learned Subordinate Judge at Maduranthakam, confirming the common judgment and decrees of the learned District Munsif, Maduranthakam in O.S. Nos. 478 of 1998 and 129 of 1999 respectively. The parties are referred to hereunder according to their litigative status and ranking before the trial Court.

2. The epitome, and the long and short of the relevant facts absolutely necessary and germane for the disposal of these two Second Appeals would run thus:

(a) The Respondent/Plaintiff filed two suits.

(i) O.S. No. 478 of 1998 was filed seeking the following relief:

To direct the Defendant to quite and deliver possession of the suit property to the Plaintiff and on his failure to evict the Defendant through the process of this

Honourable Court;

(ii) To direct the Defendant to pay a sum of Rs. 1,000/-per month as damages from August 1997 or use and occupation till the date of delivery; and

(iii) for costs. (extracted as such)

One K.V. Kuppusamy represented the Trust as its Managing Trustee.

(b) O.S. No. 129 of 1999 was filed seeking the following reliefs:

(i) For permanent injunction restraining the Defendants, his men, agents, representatives, servants and legal heirs from any way put up further construction in the suit property;

(ii) For permanent injunction restraining the Defendant from any way alienating the suit property into third parties;

(iii) For permanent injunction restraining the Defendant from any way sub-leasing the suit property to the 3rd parties; and

(iv) For costs. (extracted as such)

The said K.V. Kuppusamy and one Elumalai represented the Trust as its Trustees.

(c) The Appellant/Defendant filed respective written statements resisting the suits.

(d) Whereupon the trial Court framed the issues.

(e) During joint trial, the Plaintiff examined himself as P.W.1 and Exs.A1 to A13 were marked. The Defendant examined himself as D.W.1 and Ex.B1 was marked. Exs.C1 and C2 were marked as Court documents.

(f) Ultimately the trial Court decreed the suits as against which appeals were filed for nothing but to be dismissed by the appellate Court, confirming the judgment and decrees of the trial Court. However, before the first appellate Court four additional documents were filed by the Defendant and got them marked as Exs.B2 to B5.

3. Being aggrieved by and dissatisfied with the judgment and decrees of both the Courts below, these Second two Appeals have been filed by the Defendant on various grounds and also suggesting the following substantial questions of law:

(1) Whether the learned lower appellate Court Judge erred in overlooking that the suit was not maintainable?

(2) Whether the learned Lower Appellate Court Judge erred in overlooking that the Managing Trustee K.V. Kuppusami having ceased to function on account of efflux of time, put up the entire superstructure was entitled to benefits of the City Tenants Protection Act and initiate legal proceedings against the Appellant herein?

(3) Whether the Learned Lower Court Judge erred in overlooking that the Appellant was entitled to the benefit of the City Tenants Protection Act, especially as the Appellant has put up the superstructure and only vacant land had been let out to him.

(4) Whether the Learned Lower Court Judge had erred in concluding that the Appellant was in rental arrears, especially when there was nobody on behalf of the Respondent Trust who was competent to claim the same from the Appellant and consequently no demand had been made on the Appellant for the same?

(extracted as such)

4.C.M.P. No. 504 of 2011 was filed to receive additional grounds in S.A. No. 85 of 2006.

5.C.M.P. No. 505 of 2011 was filed for reception of additional evidence in the form of following documents in Second Appeal No. 85 of 2006.

01. 18.10.1996F.M.B. Sketch issued by the Village Administrative Officer. [Original] 02. 19.10.1996Chitta Adangal issued by the Village Administrative Officer in favour of Durga Bhavan Hotel..[Original] 2 19.10.1996 Certificate issued by the Village Administrative Officer in favour of the Appellant. [Original] 3 10.01.1997 Proceedings of the Inspector, [Town Survey Office], Maduranthakam to the Appellant. [Original] 4 07.02.1997 Ownership Certificate issued by the Tahsildar Town Survey Department, Maduranthakam in favour of the Appellant. [Original] 5 10.02.1997 Ownership Certificate issued by the Tahsildar, [Land Survey, Maduranthakam] in favour of the Appellant. [Original] 6 03.11.1997 Sanctioned Plan for construction issued by Commissioner, Maduranthakam Municipality; [Original] 7 04.12.1997 Letter issued by the Village Administrative Officer to Appellant. [Original] 8 26.04.2001 S.L.R. Copy issued by Additional P.A. to Collector, Kancheepuram. [Original] 10. 12.12.2006Water charges Receipts [2 Nos.] and issued by Maduranthakam Municipality in 09.03.2010 fabvour of Appellant [Original] 11. 09.02.2007Profession Tax issued by Maduranthakam Municipality in favour of Appellant. [Original] 9 08.03.2007Property Tax Receipts [2 Nos.] issued by and Maduranthakam Municipality 10.11.2009 in favour of Appellant. [Original]"
6.C.M.P. No. 506 of 2011 was filed to receive additional grounds in S.A. No. 86 of 2006.

7. Heard both sides.

8. At the outset I fumigate my mind with the principles as found enshrined in the following decision:

Vijay Kumar Talwar Vs. Commissioner of Income Tax, Delhi, ; certain excerpts from it would run thus:

19. It is manifest from a bare reading of the section that an appeal to the High Court from a decision of the Tribunal lies only when a substantial question of law is involved, and where the High Court comes to the conclusion that a substantial question of law arises from the said order, it is mandatory that such question(s) must be formulated. The expression "substantial question of law" is not defined in the act.

Nevertheless, it has acquired a definite connotation through various judicial pronouncements.

23. A finding of fact may give rise to a substantial question of law, inter alia, in the event the findings are based on no evidence and/or while arriving at the said finding, relevant admissible evidence has not been taken into consideration or inadmissible evidence has been taken into consideration or legal principles have not been applied in appreciating the evidence, or when the evidence has been misread.

9. A mere poring over and perusal of those excerpts including the whole judgment would reveal that perversity or illegality in the findings of the Courts below or failing to apply the correct law or mis-reading or non-reading of the evidence would warrant interference in Second Appeal.

10. It is therefore just and necessary to find out as to whether there is any substantial question of law is involved in these matters.

11. The pith and marrow of the arguments as put forth and set forth on the side of the Appellant/Defendant would run thus:

(a) The Plaintiff Trust and for that matter the said K.V. Kuppusamy, who claims to be representing the said Trust, is having no locus standi to file this suit.

(b) Janakiram Banthulu Trust is not at all the owner of the suit property.

(c) K.V. Kuppusamy is not the Managing Trustee as claimed by him. Without any appointment from the District Court concerned which formulated a Scheme decree in the suit O.S. No. 1 of 1953, he cannot pose him as a Trustee. The one other Trustee Elumalai also had no right to maintain any suit as he is no more a trustee.

(d) As per the Scheme Decree, a Trustee appointed by the Court could continue only for five years. After the expiry of five years, his trusteeship automatically comes to an end. Here the said K.V. Kuppusamy, who allegedly represents the Trust was appointed by the District Court long ago and his quinquennial period got expired, so to say long prior to the filing of the suits. The same is the position with Elumalai also. In such a case, the suits are not maintainable.

(e) The Defendant owing to mistake of fact, at one point of time thought Janakirm Banthulu Trust was the owner of the suit property, but it was turned out to be far from reality. Whereupon, he took steps to get his name mutated in the revenue records as owner and he raised a new construction after demolishing the old

structure. He is running his hotel under the name and style ''Durga Bhavan'' and other commercial activities are also going on in the said building.

(f) A de facto trustee should be in actual effective control of the Trust and then only he could file any suit so as to safeguard the property of the Trust. But in this case, there is no iota or shred, molecular or miniscule extent of evidence to show that the Managing Trustee, namely K.V. Kuppusamy or Elumalai is in effective control of the administration of the Trust.

(g) No accounts and no correspondence with the Government, produced and in such a case, they cannot project themselves as the person competent to represent the Trust and file the suits.

(h) In the Scheme Decree there is no reference to this suit property at all. Only an immovable property measuring an extent of 26 acres is found referred to in the Scheme Decree. Whereas, the suit property is a Natham poromboke. As such, in the absence of any evidence to show that the suit property belongs to the Trust, the soi distant Trustees K.V. Kuppusamy and Elumalai cannot file the suits as set out supra.

(i) Mere mistake of fact on the part of the Defendant cannot be pitted against him by the Plaintiff and try to achieve success in the litigative process.

(j) Both the Courts below miserably failed to take into consideration the real purport of the written statements and the pleas raised by the Defendant, warranting interference in the Second Appeals.

(k) There is no explanation, much less plausible explanation as to what prevented K.V. Kuppusamy or Elumalai or any other person to approach the District Court, which formulated the Scheme Decree to get appointed himself as the Trustee.

(l) The provisions of the City Tenants'' Protection Act were not taken into consideration at all by both the Courts below.

(m) Both the Courts below ignored the fact that there was no one competent to receive the rental arrears from the Appellant/Defendant.

(n) During the pendency of the appeals, I.A. No. 41 of 2005 was filed seeking permission to file certain documents by way of additional documents, which would reveal that mutation was got effected in the revenue records to the effect that the Appellant herein acquired title over the suit property.

Accordingly, the learned Counsel for the Appellant/Defendant would pray for setting aside the common judgment and decrees of both the Courts below and for dismissing the original suits or in the alternative for remanding the matters to the trial Court for adducing additional evidence.

12. In a bid to torpedo and pulverise, and to make mince meat of the arguments as put forth and set forth on the side of the Appellant/Defendant, the learned Counsel

for the Respondent/Plaintiff would advance his arguments, the gist and kernel of them would run thus:

(a) The written statements filed by the Appellant/Defendant pellucidly and palpably indicate and connote that the Defendant recognised the Plaintiff as the landlord. In such a case, the Defendant in the Second Appeals cannot veer round and take a plea quite antithetical to what he committed himself in black and white in the written statements.

(b) The Defendant approached the District Court during the year 1991 seeking permission to get demolished the old structure, which was leased out to him by the Trust so as to raise new construction. However, the District Court which passed the Scheme Decree earlier rejected his application. The application for getting the lease in his favour extended for a period of thirty years also was rejected. After meeting with his waterloo, in his attempt, he subsequently as an afterthought, joined hands with his friends i.e., business men and started laying claim as owner in respect of the suit property. However much latter, so to say during the year 2003, when the written statement was filed, he made a categorical admission therein that the Plaintiff Trust is the actual landlord of the demised premises concerned.

(c) The prevaricative stands of the Defendant would speak by themselves that he is not having a consistent case of his own and every now and then he tries to indulge in prevarication, meriting no consideration by this Court.

(d) Even after the lapse of five years period of the Trusteeship of K.V. Kuppusamy, he has been continuing as a de facto trustee and till new trustees come and take over the administration, it is his legal as well as moral duty, to see that the property of the Trust is not dissipated or taken away or grabbed by any person, including the Defendant. Hence the law is clear on the point that persons like K.V. Kuppusamy could very well maintain the suits like the ones which he filed before the lower Court. The same factual and legal positions enure to Elumalai the one other trustee also.

(e) A perusal of the entire evidence and pleadings would demonstrate and display that the Defendant candidly and categorically admitted the ownership of the Plaintiff Trust over the suit property.

(f) The contention on the side of the Defendant that in the Scheme Decree, the suit property was not included is neither here nor there, because the Trust is owning several properties, including the suit property and so far these suits are concerned, the very admission and acknowledgment made by the Defendant that the Plaintiff Trust is the owner and under whom the Defendant was occupying as a tenant, would be much more than sufficient to pass decrees in the suits filed by the Plaintiff.

(g) The Defendant also at one point of time tried to set up title in Mangammal, the wife of the original founder of the Trust, by projecting as though Mangammal was

the original owner. As such, every now and then he changed his stand, so as to grab the property of the Trust.

(h) The question of invoking the City Tenants'' Protection Act, would not arise at all for the reason that, what was admittedly leased out by the Trust to the Defendant was a building and not a vacant plot or land, over which he was allowed to raise the construction.

As such, the learned Counsel for the Respondent/Plaintiff, would pray for the dismissal of the Second Appeals.

13. I would like to discuss the substantial questions of law suggested by the Defendant in seriatim.

14. The indubitable and indisputable, or atleast the undeniable facts would run thus:

The Defendant herein filed the written statements candidly admitting that he entered into the suit property, as a tenant. Certain excerpts from the written statements would run thus:

This Defendant submits that is true that the suit property belongs to M/s Janakiram Banthula Trust, Maduranthakam and it is equally true that the suit property has been 1st leased out to the Defendant for non-residential purpose for running a Hotel under the name and style of ''Durga Bhavan'' in the suit property. This Defendant has been regular in payment of rent and has not committed wilful default nor is in arrears of rent....

(emphasis supplied)

15. I hark back to the maxim:

Judicisest judicare secundum allegata et probata - It is the duty of a Judge to decide according to the facts alleged and proved.

16. En passant, I would like to refer fruitfully to the precedent of the Hon''ble Apex Court in Shri Udhav Singh Vs. Madhav Rao Scindia, , which clearly by referring to the aforesaid maxim held that in a litigation, a party should not be allowed to litigate by giving go bye to his pleadings. Here the gamut and scope of the suits filed by the Plaintiff should be seen. The Plaintiff instituted both the suits as set out supra, as against the Defendant, narrating that the Defendant was its tenant and in respect of the same, the Defendant without any reservation admitted that he happened to be the tenant under the Trust. Hence, it is quite obvious and axiomatic that the Defendant himself got attracted as against him Section 116 of the Indian Evidence Act, which is extracted hereunder:

No tenant of immovable property or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable

property; and no person who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given.

17. A plain reading of the said Section would indicate that a tenant cannot dispute the ownership of his landlord or the capacity of the landlord to lease out the premises concerned to him. Hence, the contentions raised before this Court in the Second Appeals and that too, to some extent based on the additional documents are all untenable and the tenant/Defendant cannot, in view of the aforesaid Section 116 of the Indian Evidence Act raise such pleas.

18. As has been correctly pointed out by the learned Counsel for the Plaintiff, the Defendant unsuccessfully and frivolously during the year 1991 tried all his level best to get permission from the District Court which earlier passed the Scheme Decree, so as to enable him to effect major modification in the building and also for getting extended his lease period after thirty years.

19. Ex.A8, the certified copy of I.A. No. 1111 of 1991 and the order passed thereon and Ex.A12, the certified copy of the decreetal order in I.A. No. 1195 of 1991, would cumulatively show that I.A. No. 1111 of 1991 was filed by Haridason seeking certain reliefs; certain excerpts from it would run thus:

3. The Petitioner is the tenant of the property of the Respondent morefully and particularly described in the schedule hereunder, on a monthly rent of Rs. 350/-. He is running a hotel business at the premises. His father was running the hotel business previously and the Petitioner is continuing the same after his father. They have been and are the tenants of the trust for over 40 years.

5. The Petitioner intends improving the construction by suitable alternation and additions. Such alternations and additions which will give better appearance and amenities will improve the hotel business.

6. The rough estimate for such improvements stands at Rs. 4,00,000/-(Rupees four lakhs only). The Petitioner has applied for necessary loan to the Karnataka Bank, a scheduled Bank at Madras. The bank authorities insist on a long term lease of the property so that they may advance the required funds.

20. The I.A. No. 1195 of 1991 was filed by one Amirthavalli Ammal claiming to be the Managing Trustee of the Trust, seeking permission of the District Court so as to enable her to lease out the suit property for a period of thirty years. Both those applications were dismissed during the year 1991. It is therefore crystal clear that the Defendant wanted to make major alterations and additions to the building leased out to him by the Trust and after he having failed to get necessary permission from the District Court concerned that passed Scheme Decree, the Defendant throwing winds the Court order as well as the law governing pendency, demolished as per his own version the old building and raised new building. As

such, the conduct of the Defendant was found fault with by both the Courts below in unmiserable terms. The conduct of the Defendant was totally against law and in Second Appeals he cannot try to project himself as though he is having a case of his own capable of being canvassed before this Court.

21. As such by his conduct also, the Defendant clearly projected himself as the tenant of the Trust concerned. It is abundantly clear that the additional documents sought to be filed, all emerged subsequent to the year 1991, which are having no probative force of their own. Ex facie and prima facie, those documents are not legally tenable. The certificates issued by the Karnam or some other Revenue officials certifying as though the Defendant happened to be the owner of the premises are not at all legal as they do not possess the authority to declare the alleged ownership of he Defendant over the suit property and such documents cannot be countenanced and upheld as valid documents. Wherefore, the question of entertaining additional evidence as prayed for in M.P. is next to impossibility.

22. The contentions on the side of the Defendant that he demolished the old building which he took it from the Plaintiff and raised a new building after obtaining plan approval from the administrative authority, extinguished the right of the trust, over the leased out property, are in my opinion, far fetched arguments, which even by phantasmagorical thoughts or by one''s own wildest imagination, cannot be upheld as correct. If a tenant comes to the Court and says as against the landlord that the building which he took on lease was demolished by him and he raised a new one and therefore the landlord should simply lose his right over the property leased out, certainly the Court should condemn such attitude and contention of the tenant in unmistakable terms. The tenant was not expected to raise such new construction without the permission of the landlord or without obtaining permission from the District Court, which passed the Scheme Decree and in fact the District Court dismissed the tenants'' application as set out supra. It appears, even after that, the tenant did choose to demolish the old building and raise a new one for which he has to blame himself and he is not entitled to get any relief on that ground and in fact he has to leave the plot and the building raised by him thereon to the landlord without any demur.

23. The landlord''s right to seek for eviction from the said plot and building cannot be denied at all and it is quite obvious and axiomatic.

24. My mind is redolent and reminiscent of the following maxim:

Allegans contraria non est audiendus - On alleging contrary or contradictory things (whose statements contradict each other) is not to be heard.

25. Here the above narration of facts would unambiguously and unequivocally, display and demonstrate that every now and then the Defendant tried his level best to change his stand. At one point of time, he admitted his status as that of a tenant and he tried to obtain certain orders from the District Court concerned; however he

failed. Subsequently, the Defendant bending over backwards, with the help of other business men, tried to lay claim over the suit property as owner and thereupon also, he could not succeed. Subsequently, while filing the written statements he candidly admitted that he happened to be tenant under the Plaintiff Trust. In paras 25 and 26 of the common judgment of the Appellate Court, the nebulous and dubious nature of documents Exs.B2 to B5 and the belligerent attitude of the Defendant, were correctly highlighted by the first appellate Court. In such a case, trying to file further additional documents in Second Appeal to fortify the Defendant''s untenable plea is unjustifiable. A tenant cannot question the landlord''s title and the Appellant/Defendant''s attempts would expose and project his attitude as totally unbecoming of a tenant.

26. Section 92 of CPC which the Appellant tried to invoke in his favour, is extracted hereunder for ready reference:

92. Public charities.

(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the [leave of the Court] may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a Aectee,-

(a) removing any trustee;

(b) appointing a new trustee;

(c) vesting any property in a trustee;

(cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;

(d) directing accounts and inquires;

(e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863 (20 of 1863) or by any corresponding law in force in the territories which, immediately before the 1st November, 1956, were comprised in Part B States, no suit claiming any of the reliefs specified in Sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with provisions of that Sub-section.

[(3) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cy pres in one or more the following circumstances, namely:-

(a) where the original purposes of the trust, in whole or in part,-

(i) have been, as far as may be, fulfilled; or

(ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust;

(b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or

(c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or

(d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or

(ii) ceased, as being useless or harmful to the community, or

(iii) ceased to be, in law, charitable, or

(iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.]

27. Scope of Section 92 of CPC is found dealt with in various decisions which would be referred to infra. Section 92 of CPC is not applicable relating to a suit instituted by the Trust, so as to evict its tenant and also to obtain injunction.

28. The learned Counsel for the Appellant/Defendant relied on the following decisions:

(i) The decision of this Court in the case of Vedakannu Nadar and Others Vs. Nanguneri Taluk Singikulam Annadana Chatram through its huktdars Medai Dalavoi Ranganatha Mudaliar and Others, , is on the point that de facto trustee has no locus standi to maintain suit on behalf of a trust.

(ii) An excerpt from the decision of this Court in Atmaram Rao''s Charity estate rep. by its trustee, Vasudeva Rao v. Packiri Mohammad Rowther, reported in AIR 1944 Mad 171; would run thus:

I am bound by the decision in Vedakannu Nadar and Others Vs. Nanguneri Taluk Singikulam Annadana Chatram through its huktdars Medai Dalavoi Ranganatha Mudaliar and Others, , which lays down a principle of general application. The Plaintiff here claims to have acquired the office by virtue of a will and a transfer; and it would seem to be wrong that he should be permitted to maintain a suit without proving that he had acquired a right to the office of trustee which would entitle him to represent the institution. In the Privy Council cases above referred to, there was no question about who should hold the office or as to who was the person entitled to bring the suit. The persons who filed the suits could alone have represented the institution and brought the suits. There was nobody else to do so. The lower appellate Court was therefore right. The appeal is dismissed with costs.

(iii) In Satya Charan Sarkar and Others Vs. Mohanta Rudrananda Giri and Others, , the Calcutta High Court held as under:

It has already been decided in many decisions not only of this Court but of other Courts as well that the trustees mentioned in Section 92 need not be ''de jure'' trustees - ''de facto'' trustees will sufficiently attract the operation of the section. Therefore as the Settlement Record shows that Abhoy Sarkar was in custody on behalf of the deity, that is, he was a ''de facto'' trustee whatever may be his legal right to hold the position of a trustee, Section 92 will apply. In the present case, as no sanction was taken u/s 92, Civil P.C. and the suit was brought under O.1, R.8 of the Code the suit was not maintainable and therefore the suit was rightly dismissed by the learned Munsif and the learned Subordinate Judge wrongly reversed that decision. It is not necessary for me, as no sanction at all was taken by anybody, to go into the next question whether sanction should be taken by the villages of that locality or can be taken by other (sic) as well as being interested as actual workers of the deity.

29. The learned Counsel for the Respondent/Plaintiff would cite the following decisions:

(i) The Full Bench decision of this Court in Sankaranarayanan Iyer Vs. Sri Poovananathaswami Temple and Others,

(ii) The decision of the Hon''ble Apex Court in Gopal Krishnaji Ketkar Vs. Mahomed Jaffar Mohamed Hussein and Another,

(iii) The decision of this Court in Bibijan and 49 Ors. v. Anwarsha Idgah & Mosque Avuila Durgah, Panruti and 70 Ors., [2008 (8) MLJ 365]

30. A bare perusal of the aforesaid judgments would show that the earlier view was that after the expiry of the term of a trustee, he was having no right to continue as a

trustee, but subsequently the Full Bench decision of this Court in Sankaranarayanan Iyer Vs. Sri Poovananathaswami Temple and Others, ; held virtually to the effect that anyone in effective control of the administration of the Trust, could be termed as a de facto trustee, who could file suit to safeguard the trust property. Certain excerpts from it would run thus:

ORDER OF REFERENCETO A FULL BENCH. This appeal brings into prominence a conflict of decisions as regards the maintainability of suits filed by so-called de facto trustees for recovery of possession of property alleged to belong to the trust or institution concerned. The learned District Munsif following the decision in Atmaram Rao''s Charity v. Packiri Mohammed, by Horwill, J., who followed Vedakannu Nadar v. Ranganatha Mudaliar, a bench decision by Abdul Rahman and Venkatasubba Rao, JJ, dismissed the present suit holding that a suit by a de facto trustee was not maintainable. The learned Subordinate Judge has remanded the suit following another line of decisions holding that if the Plaintiff-Devasthanam were to prove that it is a de facto trustee and is in possession and management of the other properties of another Devasthanam it can maintain this suit. Subsequent to the bench decision in Vedakannu Nadar v. Ranganatha Mudaliar there is a decision by Wardsworth J., in Subramania Gurukkal v. Srinivasa Rao in which this bench decision is nowhere considered and in which it was clearly held following two other decisions, Appasami Pillai v. Ramu Thevar and Kasi Chetty v. Devasikamony Nataraja Dikshitar, that a suit by a de facto trustee was maintainable.

Prior to the bench decision, Vedakannu Nadar v. Ranganatha Mudaliar, there appears to have been a wealth of authority to support the position that a de facto trustee who was in actual possession and was administering the trust in the interests of the institution was entitled to file a suit to recover possession of the trust property from persons into whose hands it had gone wrongfully. There are two Privy Council decisions which appears to lend support to this legal position One is Mahadeo Prasad Singh v. Karia Bharti, which laid down that as the Plaintiff was in actual possession of the Math he could maintain the suit for its benefit.

The only decision which took a contrary view is the decision of Venkatasubba Rao and Abdur Rahman, JJ., in Vedakannu Nadar v. Ranganatha Mudaliar. The learned Judges held that a de facto trustee as such had no locus standi to maintain an action on behalf of the trust even if the action was taken to have been instituted for the benefit of the trust. He was really no better than a trustee do son tort, unless on the facts of each case a presumption could be raised in his favour of being a trustee de jure. The leading judgment was delivered by Abdur Rahman, J. He came to the conclusion that a trustee de facto was really no other than what is known to law as a trustee de son tort, and his position did not improve by describing him to be a trustee de facto. As a trustee de son tort, he could not be held to confer a right on himself to maintain suits on behalf of the trust, even if they were taken to have been instituted for the benefit of the trust. It is quite evident that the learned Judge,

discussed the question entirely from a conception familiar to us in English Law, and in the law of private trusts. A trustee is either a lawful trustee, in which case the title to the property concerned would vest in him, or he is an intermeddler, a person who has come into possession of trust property without legal title, and therefore a wrongdoer, a trustee de son tort. This doctrine is always applied with reference to a property as such. In whom does the title to a property vest ? If it is trust property, then it must vest in the de jure trustee. That is the foundation of the doctrine. How inapplicable and foreign this conception is to the case of Hindu and Muhammadan religious endowments, will be apparent, if the nature of such endowments is borne in mind. In the case of these endowments the so-called trustee is not really a trustee, in the technical sense, in whom the property is vested. He is really a manager (even in cases where he also has a beneficial interest in the usufruct) and the title always is vested in the idol or the institution. In either case, the analogy is to that of an individual having a manager to carry on the administration of his affairs and properties. Viewed in this light, the position reduces itself to this. In some cases, the manager has a rightful claim to the office of manager, in other cases, his only claim is that he is in actual possession of the office. "De facto" means, " by the title of possession" in antithesis to "do jure" ie., "by the title of right". So long as an action is for the benefit of the real owner, namely, the idol or the mutt, and the person bringing the action is the only person who is in management of the affairs of the idol or the mutt for the time being, there is no reason why such person should not be allowed to maintain the action on behalf of the idol or the mutt. In deference to the opinion expressed by the two learned Judges in Vedakannu Nadar v. Ranganatha Mudaliar, we would have dealt at greater length with their reasoning, but we think such a course unnecessary, in view of two decisions of the Judicial Committee, which unfortunately do not appear to have been brought to their notice. The first of these is Mahant Ram Charan Das v. Naurangi Lal. The suit was for recovery of 70 acres of land belonging to the Paliganj math. One Rampat Das was the Mahant in 1909, when he executed a permanent lease of about 70 acres of land, and in 1911 he executed a sale deed of the land, subject to and with the benefit of the lease. Neither the lease, nor the sale, was executed for legal necessity, nor was it for the benefit of the Math. Rampat Das died in July 1913, and on his death, one Sant Das took possession of the Math, claiming to be the Mahant. But, on 20th February, 1916, by registered deed, he surrendered all his rights to the Plaintiff, who was then the Mahant of another Math at Ramdih Baga. The Plaintiff claimed that as Rampat Das had died without leaving behind him any disciple, he as the Mahant of Ramdih Baga Math, was entitled to take possession of the Paliganj Math and the properties appertaining to it. He therefore instituted a suit against the lessee and purchaser for possession of the 70 acres alienated by Rampat Das. Though the Plaintiff rested his right to maintain the suit on title also their Lordships observed that they were not concerned with any question of title, because both the Courts below has found that the Plaintiff was

the person in actual possession of the Paliganj Math and as such entitled to maintain a suit to recover property not for his own benefit for the benefit of the Math.

To understand the implication of these observations of their Lordships, it is useful to refer to the judgment of the High Court in Naurangi Lal v. Mahant Ram Charan Das from which it is clear that the competency of the Plaintiff to maintain the suit was directly in issue. Fazl Ali, J., after referring to the description by the learned Subordinate Judge of the Plaintiff, as the de facto Mahant of Paliganj, an expression which he characterizes as not very happy, disposed of the objection regarding the locus standi, of the Plaintiff to bring the suit in the following words:

... in my opinion, it is enough for this purpose to show that the Plaintiff is not claiming the property in suit as his own property but as the property of the Math or the idols installed in the Math or and that he being in the actual possession of the Math is as competent to maintain the suit as any person who may sue as the next friend of the idols or the judicial person known as the Math.

It is this view that was confirmed by their Lordships.

The next decision in Mahadeo Prasad Singh v. Karia Bharti is more instructive. In that case, a suit was brought for recovery of possession of a village alleged to appertain to a Math at Kanchanpur. The Plaintiff claimed to be its lawful Mahant, having been installed as such upon the death of one Rajbans Bharati, who was admittedly a Mahant and who had sold the village to the Defendants without necessity. The alienees denied that the Plaintiff had been installed as Mahant and pleaded that the suit was not therefore maintainable. The learned Judges of the High Court held that although the Plaintiff has not been installed as Mahant, he had been de facto Mahant, and as such, he could maintain the suit. The competency of the Plaintiff to maintain the suit was again questioned before their Lordships of the Judicial Committee, who accepted the finding of the trial court and the High Court that the Plaintiff was neither the chela of Rajbans, the previous Mahant, nor appointed to be the head of the institution; and also accepted the finding that the Plaintiff, though not duly installed,was in fact the Mahant of the Math. On these findings their Lordships answered the question whether the Plaintiff could maintain the suit to recover the property, thus,

There can be little doubt that Karia (Plaintiff) had been managing the affairs of the institution since 1904, and has since the death of Rajbans been treated as its Mahant by all the persons interested therein. The property entered in the revenue records in the name of Rajbans was, on his death mutated to Karia, and it is not suggested that there is any person who disputes his title to the office of the Mahant. In these circumstances their Lordships agree with the High Court that Karia was entitled to recover for the benefit of the Math the property which belonged to the Math and is now wrongly held by the Appellants. They are in no better position than

trespassers. As observed by this Board in Mahant Ram Charan Das v. Naurangi Lal a person in actual possession of the Math is entitled to maintain a suit to recover property appertaining to it, not for his own benefit, but for the benefit of the Math.

Though the question was not actually decided it was apparently assumed in Iswar Ram Chandra v. Bengal Duars Bank that the two decisions were authority for the position that a person in possession of a temple or Math was entitled to maintain an action to recover the properties belonging to the temple or math. In the face of these two decisions of the Privy Council, it is impossible to accept Vedakannu Nadar v. Ranganatha Mudaliar as laying down the correct law on the point. With respect to the learned Judge, we do not agree with Horwill, J., that in spite of these two decisions, the decision in Vedakannu Nadar v. Ranganatha Mudaliar should be considered to be good law. (Vasudeva Rao v. Packiri Mohammed Rowther). It may not be accurate to say that, in the Privy council cases above referred to,

there was no question about who should hold office or as to who was the person entitled to bring the suit.

It is quite clear that the competence of the persons who brought the suit was expressly challenged.

The rationale of the rule permitting a de facto trustee in possession and management of a temple or a Mutt to bring a suit for the recovery of properties belonging to the institution and to take such other action as may be necessary in the interests of the trust can be stated thus in the words of Wadsworth, J., in Subramania Gurkkal v. Abbinava Poornapriya A. Srinivasa Rao Sahib.

it is the duty of the court to protect trust property from misappropriation and diversion from the objects to which it was dedicated. When trust property is without a legal guardian owning to any defects in the machinery for the appointment of a trustee or owning to the unwillingness of the legal trustee to act, it would be a monstrous thing if any honest person recognized as being in charge of the institution and actively controlling its affairs in the interests of the trust should not be entitled, in the absence of any one with a better title to take those actions which are necessary to safeguard the objects of the trust.

It may be mentioned that, once before, the question now referred to us was placed before a Full Bench, at the instance of Chandrasekhara Aiyar, J., but the learned Judges who formed the Full Bench considered that the question did not arise on the facts of the case, because that was not a case where de facto trustees, in the absence of de jure trustees, took action with regard to the property of the trust in the interests of the trust. It was a case where persons who had no manner of right to be in possession of trust property wrongfully kept the lawful trustees out of possession Pattabhirama Reddi v. Balarami Reddi.

In my opinion, the learned Subordinate Judge was right in holding that if the Plaintiffs were to prove that it is in possession and management of the Swarnamali Kadiresan temple and its other properties and therefore is its de facto trustee it can maintain the suit.

which would unambiguously and unequivocally highlight and spotlight the fact that even a de facto trustee could institute a suit, so as to recover the properties from others, as otherwise, the property of the Trust could not be protected.

31. Subsequently, the Hon''ble Apex Court also virtually in commensurate and in allignment with the verdict of the said Full Bench in Gopal Krishnaji Ketkar Vs. Mahomed Jaffar Mohamed Hussein and Another, , held as follows:

30. Now a de facto manager or a trustee ''de son tort'' has certain rights. He can sue on behalf of the trust and for its benefit to recover properties and moneys in the ordinary course of management. It is however one thing to say that because a person is a ''de facto'' manager he is entitled to recover a particular property or a particular sum of money which would otherwise be lost to the trust, for and on its behalf and for its benefit, in the ordinary course of management; it is quite another to say that he has the right to continue in de facto management indefinitely without any vestige of title, which is what a declaration of this kind would import. We hesitate to make any such sweeping declaration.

32. The learned Counsel for the Appellant/Defendant would mainly rely upon the virtually over ruled decision which emerged anterior to the aforesaid Full Bench decision of this Court and the Hon''ble Apex Court. The following maxims:

(i) Stare decisiset non quieta movere - To adhere to precedents, and not to unsettle things which are established.

(ii) Judicia posteriora sunt in lege fortiora - The later decisions are the stronger in law

(iii) Judiciis posterioribus fides est adhibenda - Faith or credit is to be given to the later judgments. should not be lost sight by the Defendant''s side. The Full Bench decision of the Madras High Court cited supra, settled the legal position by laying down the law that even a de facto trustee, who had no connection with the Trust earlier, but gained control over the Trust, could institute legal proceedings, so as to safeguard the property of the Trust.

33. The learned Counsel for the Defendant would argue out that there is nothing to indicate and exemplify that K.V. Kuppusamy of Elumalai, infact as on the date of the filing of the suits, was in effective control of the administration of the Trust and he would try to distinguish and differentiate on facts, the decision rendered by the Full Bench of this Court referred to supra. According to him, the decisions of the Full Bench of the Madras High Court and the Hon''ble Apex Court are not pertaining to de jure trustees appointed by the Court continuing in office after their period got expired. Whereas in this case, the factual proven position is that de jure trustees

continue after expiry of their quinquennial period of appointment.

34. A mere poring over and perusal of the entire judgment of the Full Bench decision of this Court would unambiguously and unequivocally indicate and demonstrate that even a third party who assumes control over the Trust, could institute the proceedings, and by that it has to be understood that even a de jure trustee who continues after the expiry of his period of trusteeship, as de facto trustee could institute proceedings so as to safeguard the properties of the Trust, from being not dissipated or grabbed by any one. The Full Bench decision of this Court is not distinguishing and differentiating between third parties figuring as de facto trustees, and de jure trustees, after their original period of appointment, acting as de facto trustees. The distinction sought to be made by the learned Counsel for the Defendant is one that of tweedledum and tweedledee; rock and hard place; six of the one and half a dozen of the other, but not one that of chalk and cheese.

35. This is an a fortiori case, Wherefore, I hold that there is and for that matter there can be no distinction between a de jure trustee becoming de facto trustee and a third party becoming a de facto trustee. If any such distinction as sought to be made by the learned Counsel for the Defendant is accepted, it would amount to ignoring the decision of the Full Bench decision of this Court as well as the Hon''ble Apex Court decision cited supra. I am of the firm view that the decision rendered by the Full Bench of this Court took into consideration all the earlier judgments including the decision of the Privy Council and rendered its judgment which is binding on this Court.

36. The learned Counsel for the Appellant/Defendant would submit that after the dismissal of the application in I.A. No. 2151 of 1998 in O.S. No. 478 of 1998 by the District Munsif Court, the suit concerned itself should have been dismissed, but it was kept in abeyance. In the meanwhile, the other suit referred to supra was also filed. In para No. 22 of the common judgment of the appellate Court, the relevant details relating to filing of the I. As. and the orders passed are found set out.O.S. No. 478 of 1998 referred to supra was filed for eviction of the tenant and in that I.A. No. 2151 of 1998 filed by the Plaintiff was dismissed as though the Munsif Court had no jurisdiction, whereupon the second suit for injunction referred to supra was filed in District Court concerned, but it returned the matter to be filed in District Munsif Court. Consequently, the District Munsif Court took up the O.S. No. 129 of 1999 for injunction and dealt with I.A. Nos. 580 of 1999, 581 of 1999 and 582 of 1999 and passed orders, as against which CMA Nos. 7 of 1999, 8 of 1999 and 9 of 1999 respectively were filed and the appellate Court in those proceedings ordered that the District Munsif Court had jurisdiction to deal with such sort of suits. Section 92 of CPC was virtually held to be not applicable to such sort of suits and as against such order of the appellate Court, was not challenged and ultimately the Munsif Court proceeded with the suits and decreed the same correctly. The law is pellucidly and

glaringly clear that for the Trust to file a suit to evict its tenant, Section 92 CPC does not come into play.

37. The learned Counsel for the Appellant/Defendant cited the following three decisions:

(i) The decision of the Bombay High Courtreported in Shrinivas R. Acharya and Others Vs. Purshottam Chaturbhuj and Others, ;

(ii) The decision of the Allahabad High Courtreported in Baba Suraj Gir and Others Vs. B. Bramh Narain Advocate and Others, ;

(iii) The decision of the Gujarat High Courtreported in AIR 1965 Guj 181 [ShahJagmohandas Purshottamdas and Anr. v. Jamnadas Vrajlal Gandhi and Ors.] ;

and try to project the case that in view of the dictum found laid in those decisions, unless the consent or permission from the District Court concerned which passed the Scheme Decree u/s 92 of CPC is obtained by the competent person concerned, the question of evicting the tenant would not arise; after the expiry of the quinquennial period of trusteeship, as contemplated under the Scheme Decree, fresh appointment u/s 92 of the CPC is required so as to maintain the suit. However, in view of the Full Bench decision of this Court and the subsequent decision of the Hon''ble Apex Court cited supra, those three decisions cannot be treated as binding precedents on the point in issue.

38. The District Court in the Scheme Decree passed in O.S. No. 1 of 1953 appointed with effect from 04.10.1993 the said K.V. Kuppusamy and Elumalai for quinquennial period as per the terms and conditions of the Scheme Decree. Even after such expiry of quinquennial period, they continued as trustees as per the Plaintiff''s contention. Whereas, the Defendant would contend otherwise that they are not the trustees continuing in the administration.

39. As against the contention on the side of the Defendant that the trustees have not proved that they are in effective management of the said Trust, the learned Counsel for the Plaintiff invited the attention of this Court to various exhibits including Exs.A4, A5 and A7 correspondences and pointed out that those documents would reveal that those de facto trustees have been in effective control of the Trust. No doubt, the accounts and other correspondences were not filed before this Court. Had the Defendant specifically raised before the trial Court such contentions, the matter would have been different and the trustees could have produced additional evidence before the trial Court itself. Here the grounds raised in these two Second Appeals, in my opinion are having no nexus with the stand taken by the Defendant before the trial Court. Civil jurisprudence would indicate that a litigant at the second appellate stage cannot raise for the first time anything anew giving a go bye to the plea taken before the trial Court. The pleas raised by him in these two Second Appeals are quite antithetical to the stand taken by the Defendant and contested

the matter before the lower Court. The poring over and perusal of the entire records would reveal that the Defendant virtually waged pitched battles for acquiring ownership over the suit property by focussing his attention as against the de facto trustees and in such a case, holus bolus, he cannot be heard to contend that the de facto trustees are not in effective control of the Trust. In such a case, the Plaintiff cannot be found fault with for having not filed any better evidence to show that the said K.V. Kuppusamy of Elumalai was in effective control of the Trust.

40. The pleas on the side of the Appellant/Defendant that Mangammal, the wife of the original founder trustee, was the owner of the property; some how or other, the trustees concerned with the Trust annexed the suit property also as the Trust property, are not at all sound pleas to be considered, as the scope and gamut of the present suits, is entirely different as highlighted supra.

41. The contention raised by the Defendant that he is entitled to the benefits under the Madras City Tenants Protection Act once again falls fowl of his own contradictory pleas. Furthermore, the Madras City Tenants Protection Act is not applicable to a tenant who took on lease a building from the landlord and as such, on that ground itself the pleas based on Madras City Tenants'' Protection Act have to be rejected.

42. The contention to the effect that K.V. Kuppusamy or Elumalai did not take steps to get his period of trusteeship extended as Trustee and get himself appointed as Trustee cannot be raised in these suits, for the reasons already adverted to supra.

43. It is therefore clear that the Defendant every now and then took prevaricative stands so as to retain his possession over the suit property. Even the Advocate Commissioner''s report would reveal as to how he made frantic efforts to acquire ownership over the suit property with his bag of trickeries. Both the Courts below considered specifically the conduct of the Defendant and his pleadings and held that the Defendant was not entitled to resist the suit with his load of baloney.

44. The learned Counsel for the Defendant at one point of time ventured to argue that unwittingly the Defendant took certain pleas fearing that if he did not admit the ownership of the Plaintiff, then that itself would be a ground for eviction etc.

45. The written statement was filed only in the year 2003, but the above narration of his earlier conduct would reveal that even almost a decade and a half he was having such prevaricative stands and hence he cannot be heard to say that owing to mistake of fact he has filed such written statements admitting the ownership of the Plaintiff.

46. In view of the rationcination adhered to supra, the necessity of entertaining additional evidence does not arise.

47. In the result, I am of the considered view that there is no question of law much less substantial question of law is involved in these Second Appeals. I could see no perversity or illegality in the decisions rendered by both the Courts below who au

fait with law and au courant with facts decided the lis.

Accordingly, both the Second Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.