

Secretary, Taliparamba Education Society

Vs

Moothedath Mallisseri Illath M.N. and Others

Civil Appeal No. 1872 of 1997

(K. Ramaswamy, G. T. Nanavati JJ)

03.03.1997

ORDER

1. Leave granted.

2. This appeal by special leave arises from the judgment of the learned Single Judge of the Kerala High Court, made on 24-6-1996 in SA No. 2 of 1993.

3. The short question that arises for consideration is whether the respondents are entitled to terminate the lease granted to the appellant. Clause 6 of the lease deed reads as under :

"The lessee need not surrender and the lessor cannot claim to recover the property or the management of the institution from the Society so long as it is used for the purpose of an educational institution. But if it ever happens that the site and buildings are used for purposes other than those for which they are intended and/or the lessee finds it not possible to manage the institution as an educational institution, the lessor will have the absolute right of re-entry."

4. In exercise of the right under the said covenant, notice of termination was given by the respondents. Resultantly, the respondents filed a suit. Though elaborate contentions were raised for the grant of relief, namely, user of the property for cultural purposes and receipt of the amount from such user, to allow others to trespass into the property and make use thereof as grounds to terminate the lease, they were negatived by civil court. Incidentally, it was also a lease of the management of the institution. The trial court as well as the appellate court negatived the contentions and concurrently upheld the claim of the appellant that there was no breach of the covenant. But in the second appeal, the learned Judge on appreciation of evidence has held that the respondents had allowed the property to be trespassed, used the property for purposes other than the one for which it was intended and, therefore, the respondents are entitled to terminate the lease. Consequently, he decreed the suit. Thus, this appeal by special leave.

5. Shri Vaidyanathan, learned Senior Counsel for the appellant, has contended that in view of the concurrent findings recorded by the courts below, the view taken by the High Court is wholly unjustified. We find the contention is well founded. Shri Vishwanathan Iyer, learned Senior Counsel for the respondents, has contended that in view of the finding recorded by the High Court, the various points discussed and the finding recorded by the courts below, the claims made out by the respondents to have the lease terminated is correct. Initially, under the lease a right of property was actually granted. It was argued that since the property was misused by the management which was handed over to the appellant, the respondents are entitled to terminate the lease. We find no force in

the contention. The question whether the property was allowed to be trespassed was gone into by the trial court and a finding was recorded that they did not acquiesce to the trespass and in fact there was no trespass. It has not been established that user of the property was for purposes other than those for which it was intended. It is true that the shops were constructed on some portion of the land but the rent derived therefrom is being used for the maintenance and running of the educational institution. Therefore, the user was not detrimental to the purpose for which lease was granted. It is also an admitted position that some of the rooms were let out for cultural purposes and marriage purpose, but that is not detrimental to the running and imparting of education to the students. Obviously, these acts are done to augment the funds of the Society for proper management. Under those circumstances, the trial court and the appellate court came to the concurrent conclusion that there is no misuser or contravention of covenant 6 of the lease. The High Court was grossly in error in trenching upon the appreciation of evidence under Section 100 CPC and recording reverse finding of fact which is impermissible.

6. The appeal is, accordingly allowed. The judgment of the High Court is set aside. The decrees of the trial court and the appellate court stand confirmed but without costs.