



S.A.No.319 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 28.03.2024

PRONOUNCED ON : 29.05.2024

CORAM

THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

S.A.No.319 of 2006

Sree Muthuvinayakar

Kamakshiamman Ekambareshwarar Devasthanam,
represented by its Secretary,
C.P.Devaraj,
Coimbatore Town.

... Appellant

VS

1.K.P.Subbiah (Deceased)
2.K.Gopi Achary
3.S.R.Balasubramaniam
4.P.G.Shanmugavaradhan
5.B.Rajan
6.Radha Subbiyan
7.Ramani Vijayan

8.Certified Goldsmith Association,
represented by its Managing Trustee,
K.P.Subbiyan,
Coimbatore.

...Respondents

(Respondents 6 and 7 were recorded as legal heirs of the deceased first respondent vide order, dated 06.03.2019)



S.A.No.319 of 2006

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree, of Principal District Judge's Court at Coimbatore, dated 15.07.2004 in A.S.No.179 of 2001 reversing the judgment and decree of the III Additional Subordinate Court at Coimbatore, dated 31.07.2001 in O.S.No.656 of 1991.

For Appellant	:Mr.S.Mukunth Senior Counsel for Ms.T.R.Gayathri for M/s.Sarva Bhauman Associates
R1	:Died
For R2, R3, R5 and R7	:Mrs.Chitra Sampath Senior Counsel for Mr.S.Kadarkarai
For R4 and R8	:No appearance

JUDGMENT

This Second Appeal is filed challenging the judgment and decree of the Principal District Court, Coimbatore, dated 15.07.2004, in A.S.No.179 of 2001, reversing the judgment and decree of the III Additional Subordinate Court at Coimbatore, dated 31.07.2001 in O.S.No.656 of 1991.

2.The plaintiff is the appellant herein and the defendants 1, 3, 6 to 11 are the respondents herein. The defendants 2, 4 and 5 died pending trial.



During the pendency of the appeal, the first respondent/first defendant also died and the sixth and seventh respondents were recorded as his legal heir.

3.For the sake of convenience, the parties are referred to as per their ranking before the trial court.

4.According to the plaintiff, Sree Muthuvinayagar Sree Kamatchiamman Ekambareswara Devasthanam is a Trust and the suit property belongs to the plaintiff Devasthanam. The defendants are Managing Trustees of “Certified Goldsmith Association”, “Sri Visweswara Trust” and “Lakshmiammal Educational Trust”. On 10.07.1979, the plaintiff Devasthanam and the Certified Goldsmith Association entered into an agreement to promote the social, religious, arts, educational and general welfare of the Viswakarma community. Again on 13.02.1985, the plaintiff Devasthanam entered into another agreement with the defendants.

5.As per the earlier agreement, the Certified Goldsmith Association was allowed to make construction in the suit property after preparing a plan, obtaining approval from the Devasthanam and sanction from the Municipal



S.A.No.319 of 2006

Corporation and use it without paying any rent. As per the second agreement, the Association can build new construction as agreed thereon, but, however, 50% of the rental income realized from 4 shops, should be paid to the Devasthanam. Pursuant to the agreements, buildings were constructed in the suit property and in fact, Sri Visweswara Vidyalaya School and four shops were constructed. The first defendant being the Managing Trustee of Sri Visweswara Trust is receiving the rent from the four newly constructed shops and paid a sum of Rs.1,000/- per month being 50% of the rent and also received receipts from the Devasthanam. When, as per the agreement, the defendants should account for the total rents, they have failed to do so. Also, the induction of the tenants should have been done only after the consultation with the Devasthanam. The first defendant had inducted tenants without the knowledge and consent of Devasthanam and also received Rs.50,000/- per shop as advance for the four shops, which has not been accounted for. The agreement contemplates that the Municipal Corporation taxes, water, land taxes and charges have to be paid in the name of the plaintiff Devasthanam but however, the first defendant has paid in his name and is retaining the receipts. Since the activities of the first defendant is prejudicial to the interest of the Devasthanam, the object of the



agreements is not fulfilled and hence, both the agreements have become automatically cancelled.

6.In fact, on 28.02.1991, the defendants have entered into a further agreement among themselves without the consent of Devasthanam, thereby, the defendants have violated the terms of the agreements and as the defendants 1, 9 and 10 are slowly attempting to convert the Devasthanam properties into their properties and further, the plaintiff Devasthanam has not been informed about the formation of Sri Visweswara Trust and Lakshmiammal Educational Trust, the plaintiff issued notice on 21.03.1991 to the defendants calling them to revoke the agreement, but since an evasive reply notice was issued, the plaintiff issued a rejoinder notice and filed the suit for declaration to declare the agreement as void and for permanent injunction and recovery of possession.

7.The defendants resisted the suit by filing written statement contending that the plaintiff Devasthanam is a denominational Temple belonging to Viswakarma Community of Coimbatore Town, as declared by the judgment and decree, dated 18.02.1980, in A.S.No.79 of 1989 on the file



S.A.No.319 of 2006

of the I Additional Subordinate Court, Coimbatore. The Viswakarma community consists of five sub-sects, viz., (1)Blacksmith (Manu), (2)Carpenters (Mayan), (3)Kannar (Durusta), (4) Sculptures (Silpis) and (5)Goldsmith (Diswakiya) and also the community is having several organizations. The Certified Goldsmith Association is a Society registered under the Tamil Nadu Societies Registration Act, 1975, having 1037 life members. But the plaintiff Devasthanam, which also belongs to the said Viswakarma community, has no scheme for its administration and the properties and therefore, the plaintiff, who has verified the plaint, has no *locus standi* to file the suit.

8.In fact, Viswakarma community people have filed an application before the Deputy Commissioner, HR & CE Department, for formation of a scheme for the administration of the plaintiff Devasthanam and its properties under Section 64 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, in O.A.No.25 of 1991 and the same is still pending. Apart from several properties, the plaintiff Devasthanam owns a vacant site measuring an extent of 5141 sq.ft., in Sukrawarpet Street in Coimbatore Town in T.S.Nos.7/221 to 227 of Block-11 and another extent of 1754 sq.,ft.,



S.A.No.319 of 2006

totally, 6895 sq.ft., which is bounded on the west by the land belonging to Lakshmiammal Educational Trust and on the eastern side by the land belonging to Sri Visweswara Trust. This portion of the land is called “Jambu Savari Mandapam”, which had some dilapidated buildings.

9.The Certified Goldsmith Association has objects to run a School and therefore, the plaintiff Devasthanam entered into agreement and granted licence in respect of the land measuring 5141 sq.ft., by a registered agreement, dated 10.07.1979, whereby, the Association was permitted to carry out its objects by constructing a School in the site. Thereafter, the Certified Goldsmith Association by creating a Trust under the name and style of “Sri Visweswara Trust” with effect from 26.03.1978, as declared by an instrument of Trust, dated 15.12.1983, purchased the adjacent site measuring 1137 sq.ft., and have put up a School building thereon under the name and style of “Visweswara Vidyalaya” occupying the said site and part belonging to the plaintiff Devasthanam. For the purpose of further expansion of the School, the plaintiff Devasthanam granted a further licence in respect of the remaining site area of 1754 sq.ft, under a registered agreement, dated 13.02.1985. As at the time of executing the second agreement, there was a



dilapidated building and there were several occupants, the Association had evicted them by spending considerable expenses and also have demolished the dilapidated building and constructed a new building by providing quarters for Archakars, as contained in the agreement. It is specifically mentioned in the agreements, dated 10.07.1979 and 13.02.1985 that the said licences are irrevocable, as it has been entered into for the purpose of carrying the common object of the plaintiff Devasthanam and the Certified Goldsmith Association, as both are functioning for the benefit of Viswakarma community.

10. While so, as the first defendant and his wife and daughter, who are the defendants 9 and 10 had created a Public Charitable Trust in the name and style of “Lakshmiammal Educational Trust” under a registered trust deed, dated 19.08.1988, with the same avowed object, they purchased a site in T.S.No.217 and put up a construction for the expansion of the Sri Visweswara Vidyalaya in a larger scale with the funds mobilized by them. As it was suggested that the management of Visweswara Vidyalaya should be transferred to the said Lakshmiammal Educational Trust, as it got resources to expand the School, with the consent of the plaintiff



S.A.No.319 of 2006

Devasthanam and the Certified Goldsmith Association, a plan was submitted for putting up a construction in the lands purchased in T.S.No.217 along with the lands in T.S.Nos.221 to 227 covered under the two agreements and also including the lands in T.S.No.7/233, belonging to the Sri Visweswara Trust and approval was obtained from the Coimbatore City Municipal Corporation on 10.05.1989 and construction has been put up at the cost of Rs.11,55,000/- by securing loans from the Bank. After the completion of the construction in May 1990, the said Visweswara Vidyalaya, became a recognized Matriculation School in June 1990.

11.As such, the building put up by the Lakshmiammal Educational Trust, in all now consist of three floors, viz., ground plus two floors. In the ground floor, there are seven shops, which are situated on the east and north-south entrance gate and five shops are situated on the east entrance. As per the agreement, two residential quarters have been constructed in the Devasthanam land for Archakars of the plaintiff Devasthanam and provided to them and further four shops have been constructed and rented out and 50% of the rents, as per the agreement, are paid to the plaintiff Devasthanam. Further, as the entire building of the School is lying as a



single unit, the tax assessment for the property stands in the joint names of Lakshmiammal Educational Trust and the plaintiff Devasthanam. Lakshmiammal Educational Trust is only established for convenience and it is a delegate of the Certified Goldsmith Association.

12. Additional written statement was also filed contending that the suit is bad for non-joinder of necessary parties and that the suit filed without making Certified Goldsmith Association, Sri Visweswara Trust and Lakshmiammal Educational Trust, as parties, is not maintainable to sustain the relief and the plaintiff has not paid the proper Court fee, for the relief claimed in the suit.

13. After nearly nine years from initiating the suit, the 11th defendant was impleaded in the suit and the 11th defendant filed additional written statement contending that as the suit property was dealt with under two separate agreements and the conditions contained therein are also separate and distinguishable, the suit filed by the plaintiff by clubbing the two cause of actions, is not sustainable. The fact remains that the School is run in the property, which is commonly enjoyed by three entities, where the middle



S.A.No.319 of 2006

portion known as Jambu Savari Mandapam is owned by Devasthanam, the western portion is owned by Lakshmiammal Educational Trust and the eastern portion is owned by Sri Visweswara Trust. The main entrance for the School for this property is through the property of the plaintiff Devasthanam. The staircases on the eastern side and on the western side lies in the property belonging to Lakshmiammal Educational Trust and Sri Visweswara Trust and therefore, the property is inseparable and form a single unit. The extent of lands owned by Lakshmiammal Educational Trust is 4283 sq.,ft and the extent owned by Sri Visweswera Trust is 1337 sq.ft., and the extent owned by the plaintiff Devasthanam is 5141 sq.,ft covered under the first agreement, dated 10.07.1979 and 1754 sq.ft., covered under the second agreement, dated 13.02.1985, in all, an extent of 6895 sq. ft., and the building has been constructed in all the three portions as a single unit.

14.As the property is indivisible, if the relief of possession is granted, the property has to be divided by breaking open the building. The total constructed area of the School building is 14,613.75 sq.ft., having 4396 sq.ft., in ground floor, 4985 sq.ft., each in the first and second floor, apart from the staircase. The School building is completely furnished having a



S.A.No.319 of 2006

strength of around 1200 students along with 52 Teachers. About half of the students are girl students and the School is having 100% results consecutively for the past three years in both 10th and 12th standards. The School is taking care of the interest of the community and out of the total number of students, about 65% of them are from Viswakarma community being benefited from the School, which is evident that the interest of the community is being taken care of by the School.

15. In fact, earlier due to dilapidated building and encroachment made by huts and encroachments, even the practice of Deity being stationed at Jambu Savari Mandapam during procession once in a year had to be stopped. But, however, after the same was demolished by the defendants and constructions were made, the practice has been revived and now the Deity is stationed at Jambu Savari Mandapam during procession and in fact, expenses are made by the defendants and contributions are also made substantially to upkeep the Temple. Only as funds were not available and temporary constructions could be made, for the object of expanding the School and obtaining approval, the internal arrangement of forming of the Trust was undertaken not with any third parties but within the trustees and



S.A.No.319 of 2006

thereafter, the buildings have been constructed by incurring huge expenses and now the full-fledged School is running by promoting the developments of Viswakarma community. Therefore, as the conditions, for which the agreements were executed, have not been violated, they sought for dismissal of the suit.

16.During trial, the Secretary of the plaintiff Devasthanam was examined as PW-1 and marked Ex-A1 to Ex-A18 and on the side of the defendants, the first defendant was examined as DW-1 and marked Ex-B1 to Ex-B13.

17.The trial Court, after analyzing the documents and evidence, decreed the suit. The trial Court found that, as only licence has been issued in favour of the 11th defendant, the same could not have been transferred. The trial Court also found that the plaintiff Devasthanam was not consulted during the induction of the tenants and the transfer to Lakshmiammal Educational Trust is wrong and in violation of agreements and the defendants have filed rental receipts only from 1991 to 2001 in Ex-B1 series, which is after filing of the suit and further, since it is admitted in the written



S.A.No.319 of 2006

statement that the tax receipts are jointly issued in favour of the Devasthanam and the Society, which is violative of the conditions contained in Ex-A4 and Ex-A5 agreements and further, as the plaintiff Devasthanam is represented by the *de-facto* Trustee/ Secretary, the suit is maintainable and thereby, directed to restore the possession to the plaintiff within a period of three months. Aggrieved, the defendants filed an appeal in A.S.No.179 of 2001 on the file of Principal District Court, Coimbatore.

18.The lower appellate Court, after re-appraising the evidence, by judgment and decree, dated 15.07.2004, allowed the appeal and set aside the decree of the trial Court. The lower appellate Court found that as per the conditions in the agreements in Ex-A4 and Ex-A5, the Devasthanam cannot unilaterally cancel the same and further, the plaintiff had not come up with any claim, as to from which date, there was default in payment of rent and for which period, there is default. The lower appellate Court mainly found that since even from the admitted case that the building is lying jointly in the lands belonging to Lakshmiammal Educational Trust, Sri Visweswara Trust and Devasthanam, the suit is bad for non joinder of necessary parties, as the Lakshmiammal Educational Trust and Sri Visweswara Trust has not been



impleaded, as party to the suit. Aggrieved, the plaintiff is before this Court on appeal.

19.This Court, by order, dated 30.03.2006, admitted the Second Appeal and framed the following substantial questions of law:

“(1)Whether the lower appellate Court is correct in law in reversing the well considered judgment and decree of the Additional Subordinate Judge and non-suiting the plaintiff only on the ground of non-joinder?

(2)Whether the Lakshmiammal Education Trust and Visveshwara Trust are proper and necessary parties to the suit, as contemplated under Order 1 Rule 9 CPC?

(3)Whether the lower appellate Court is correct in law in non-suit the appellant on the ground of non-joinder as a mere plea made by the respondents in their additional written statement filed nearly seven years after the filing of the original written statement?

(iv)Whether the lower appellate Court is correct in law in taking up the issue of non-joinder especially when the trial Court had not raised this issue and the same has not been questioned by the respondents even in their grounds of appeal?”

20.Mr.S.Mukunth, learned Senior Counsel appearing for the appellant argued that as the defendants violated the terms and conditions of the agreement contained in Ex-A4 and Ex-A5, the purpose for which the agreements were executed got lost and therefore, the plaintiff has come up with the suit for declaration and for recovery of possession. When the agreement specifically contemplates that the plaintiff Devasthanam has to be



S.A.No.319 of 2006

consulted while inducting tenants and fixing the rent, the defendants have unilaterally inducted the tenants and have collected advance and have not accounted the same. Further, 50% of the rents collected by them from the tenants has not been paid to the Devasthanam, as contained in the agreements and as such, there is a clear violation in the terms and conditions of the agreements and therefore, the plaintiff is entitled to seek for cancellation of the agreements and recovery of possession.

21.The learned Senior Counsel further contended that when the defendants can only pay the taxes and charges and obtain receipts in the name of plaintiff Devasthanam, in clear violation of the clause, the defendants have paid the taxes and obtained joint receipts by including their name, which shows their real intention to slowly usurp the property of the plaintiff Devasthanam. The learned Senior Counsel further contended that when the defendants claim that they have paid the rents, the onus is on the defendants to produce the receipts to prove that the rents were paid. Admittedly, the rental receipts filed in Ex-B1 series, are all pertaining to the period after 1991 and when they were able to file receipts after the suit, nothing prevented the defendants to file the receipts obtained prior to the



filing of the suit. As such, it could be inferred that no receipts were available with them, as the rents were not paid.

22.The learned Senior Counsel further contended that even though the licence was granted in favour of the 11th defendant, whereby, permission was granted to construct the building for the purpose of the School, the 11th defendant have unilaterally created Sri Visweswara Trust and also Lakshmiammal Educational Trust and the buildings have been transferred to Lakshmiammal Educational Trust. As the suit property was only handed over to the 11th defendant, subsequent transfers of the Visweswara Vidyalaya School run by Sri Visweswara Trust and Lakshmiammal Educational Trust are illegal, which is in clear violation of the conditions of the agreements in Ex-A4 and Ex-A5 and since, the transfer has been unilaterally done without the consent of the plaintiff through Ex-B10, the plaintiff Devasthanam is not bound by those transfers and they are merely sub tenants from the 11th defendant and therefore, they are not necessary parties to the suit. When the lands belonging to the plaintiff Devasthanam have been given to the 11th defendant for a noble object for running a School, the two Trusts have been created and transfer of properties has been made and further since the



agreements were violated by not paying the rent and also unilaterally inducing the tenants, in view of the violation of the agreements, through which the licence was granted automatically get cancelled and the plaintiff has rightly filed the suit for recovery of possession. The plaintiff Devasthanam being the owner of the property always has the right to seek for possession of the property, as per Section 5 of the Transfer of Property Act, 1882.

23.The learned Senior Counsel further contended that the plaintiff being *dominus litis* is free to decide the parties against whom the suit has to be proceeded and when the agreements in Ex-A4 and Ex-A5 has been executed only with the 11th defendant, even though the suit was originally filed against the defendants 1 to 10, later the 11th defendant has been rightly impleaded in the suit, but however, the lower appellate Court erroneously allowed the appeal by reversing the decree on the ground that the suit filed without impleading Lakshmiammal Educational Trust and Sri Visweswara Trust, who are only delegates/sub tenants is bad and therefore, the judgment and decree of the lower appellate Court is perverse and sought for allowing the appeal.



S.A.No.319 of 2006

24.The learned Senior Counsel also relied on the judgments of the Hon'ble Supreme Court in the case of *Chevalier I.I.Iyyappan and another -vs- Dharmodayam*, reported in *AIR 1966 SC 1017*, for the proposition that there cannot be an irrevocable licence and the licence get abandoned when it has become impracticable due to the action of the party; *Balvant N.Viswamitra and others -vs- Yadav Sadashiv Mule and others*, reported in *(2004) 8 SCC 706*, for the proposition that sub tenants need not be made as party to the suit; and the judgment passed by this Court in *S.A.(MD)No.698 of 2021*, dated 12.11.2021, in the case of *Thiruvengadam -vs- Panchanathan*, for the proposition that the onus is lies always on the tenant to prove that he has paid the rent without default.

25.*Per contra*, Mrs. Chitra Sampath, learned Senior Counsel appearing for the contesting respondents argued that the suit, as such framed without giving clear description of the property, is not sustainable. The learned Senior Counsel contended that when 5141 sq.ft., of land was given to the 11th defendant by agreement in Ex-A4 and further an extent of 1754 sq.ft., was given through Ex-A5, in all, for a total extent of 6895 sq.ft., the present suit has been filed only claiming for possession in respect of 5645



S.A.No.319 of 2006

sq.ft. As 1250 sq.ft., of balance extent of land has not been included in the suit property and it is not clear as to which portion of the property, the plaintiff is seeking recovery and even if the suit is decreed, the same will become in-executable.

26.The learned Senior Counsel further contended that when the conditions contained in the first agreement are entirely different, which has been executed only for the sole purpose of promoting the School for the development of Viswakarma community, in fact, for free rent, only the second agreement, which is for further development of the School, contains conditions for construction of four shops and two Archakars quarters and therefore, the plaintiff could not have clubbed both the agreements together and sought for a common relief on the ground that the condition in the agreement has been violated. In fact, the second agreement also was executed on condition that the 11th defendant on their own funds will vacate the encroachments and put up constructions and hand over two quarters for Archakars at free of cost and pay 50% of the rents collected to the Devasthanam. When absolutely there was no violation in the conditions contained in the agreements, as per the very clause in the agreement, there



cannot be any unilateral cancellation of the same and the suit filed is only with *mala fide* motive and not sustainable.

27.The learned Senior Counsel further contended that when the plaintiff Devasthanam has issued notice under Ex-A9, dated 21.03.1991, only to defendants 1 to 10 and not to the 11th defendant, in whose favour the licence was granted and further the suit was filed only as against the members and only after a period of nine years, the 11th defendant has been impleaded in the suit and therefore, the very initiation of the suit without issuing any notice to the 11th defendant, is not maintainable. Further, when the plaintiff has alleged default in payment of rent, no prayer has been made for payment of arrears of rent in the suit.

28.The learned Senior Counsel further contended that the suit filed by the plaintiff represented by PW-1, as Secretary cannot be sustained, as PW-1 in his evidence has admitted that other Trustees are available and the suit filed without impleading the other Trustees, as parties, cannot be sustained. Further, when admittedly, no resolution has been passed to file a suit, as against the 11th defendant and further, when it is admitted that the whole



School building is a single unit and the festival is also happening in which contributions are made by the 11th defendant, absolutely there is no violation of the conditions in the agreements and when there is no violation, the plaintiff ought to have at least issued notice by providing details to the 11th defendant, if there is any violation.

29.The learned Senior Counsel further contended that the properties have not been transferred to any third parties and in fact, Sri Visweswara Trust and Visweswara Vidyalaya School are all contained in the agreement in Ex-A5 itself and Lakshmiammal Educational Trust and Sri Visweswara Trust are only the delegates, to whom only the management of the School is handed over. The very object of running of the School and development of the Viswakarma community is consistently maintained and followed and when admittedly, the School building is jointly lying in the lands belonging to Sri Visweswara Trust and Lakshmiammal Educational Trust along with the plaintiff Devasthanam, they are proper and necessary parties to the suit and therefore, the lower appellate Court has rightly considered the evidences in a proper prospective and allowed the appeal, which needs no interference and sought for dismissal of the appeal.



30.Heard the learned Senior Counsels on either and perused the materials available on record.

31.Admittedly, the suit property belongs to Sree Muthuvinayagar Sree Kamatchiammal Ekambareswara Devasthanam and also the Temple belongs to the Viswakarma community people in Coimbatore. It is also the admitted case that the 11th defendant is a Society registered under the Tamil Nadu Societies Registration Act, 1975, formed for the development of the Viswakarma community people in Coimbatore Town. Since both the plaintiff Devasthanam and the 11th defendant Society belonged to Viswakarma community people of Coimbatore town and both have been formed for the avowed object of promoting the interest and development of the Viswakarma community, they have entered into agreements in respect of one of the properties.

32.Out of several properties belonging to the plaintiff Devasthanam, the vacant land measuring an extent of 5141 sq.ft., in Sukrawarpet Street in Coimbatore Town in T.S.Nos.7/221 to 227 of Block-11 and another extent of 1754 sq.ft., along with old dilapidated constructions with huts and



encroachments also belonged to the plaintiff Devasthanam. The plaintiff Devasthanam wanted to make use of those vacant lands by constructing a School, which would be beneficial for the interest and development of the Viswakarma community.

33.As the 11th defendant has also been formed for the same object, the plaintiff Devasthanam and the 11th defendant entered into a registered agreement dated 10.07.1979 in Ex-A4, whereby, the vacant land measuring an extent of 5141 sq.ft., in T.S.No.7/221 was handed over to the 11th defendant and licence was granted by permitting them to construct a building and run a School. In fact, the agreement was entered into and licence was granted free of rent and the intention of the parties could be ascertained by the very clauses contained in the agreement under Ex-A4. The agreement contains six clauses along with further nine terms and conditions. Clauses 4 to 6 are extracted hereunder for ease reference, which would reveal the actual intention of the parties:

“(4)தேவஸ்தானம், சங்கம் ஆகியவற்றில் நிர்வாகங்களில் ஏற்படும் எம்மாறுதலும் இந்த ஒப்பந்தத்தை எவ்விதத்திலும் பாதிக்காது என்பதைத் தவிர இந்த ஒப்பந்தத்தின் ஷரத்துக்கள்படியோ அல்லது சட்டப்படியோ, இந்த ஒப்பந்தம் இருதரப்பும் சேர்ந்து ரத்து செய்யப்பட்டாலொழிய தேவஸ்தானமோ, சங்கமோ இதன் நிர்வாகிகளோ இந்த ஒப்பந்ததிலிருந்து பிறழ முடியாது.

(5)தேவஸ்தானமும், சங்கமும் விஷ்வபிராமன மஹா



S.A.No.319 of 2006

ஐனங்களால் தோற்றுவிக்கப்பட்டு, அவர்களின் சமூக சமயாச்சார, பொருளாதார, கல்வி, கலை, வளர்ச்சிக்காக மேற்படி மஹா ஐனங்களின் உதவியைக் கொண்டு நடத்தப்பட்டு வரும் நிறுவனங்கள் ஆதலாலும் மேற்படி நோக்கங்கள் நிறைவேறவும், தேவஸ்தானத்தின் சார்பிலும் சங்கத்தின் சார்பிலும் இந்த ஒப்பந்தம் செய்து கொள்ளப்படுகிறது.

(6)மேற்படி நோக்கங்கள் நிறைவேற, இந்த ஒப்பந்தத்திற்கு பாதகம் அற்ற முறையிலும் இந்த ஒப்பந்தத்தை ஒட்டி போடப்படும் திட்டங்களை விரைவுபடுத்தும் வகையிலும் இருதரப்பாரும் அவ்வப்போது பரஸ்பரம் பேசி இருதரப்பாரின் சம்மதத்துடன் இந்த ஒப்பந்தங்களின் ஷரத்துக்களை மாற்றி கொள்ளலாம் என ஒப்புக்கொண்டுள்ளோம்."

34.As per clause-4, any change either in the Devasthanam or Sangam will not affect the agreement and this agreement cannot be unilaterally cancelled even either by the conditions contained in the agreement or legally. Clause-5 also specifically states that both the Devasthanam and Sangam have been formed by the people of Viswakarma community for the purpose of social, economical, educational and cultural development and both are run by the contributions made by the people of Viswakarma community and only for the purpose of fulfilling the objects, the agreement is entered into. Further, as per clause-6, for the purpose of fulfilling the objects, the plan made by this agreement can be further extended and changes could be also made by joint discussion between the parties. Therefore, both the parties, at the time of entering into the agreement in Ex-A4, were very conscious that at no point of time or due to any external factors, any disturbance could be created for the laudable object of running

25/48



the School, which is solely for the development of the above aspects of the Viswakarma community people.

35.Further, the conditions contained in the agreement in Ex-A4 are extracted hereunder:

“(2)சமூக, கல்வி, கலை, பொருளாதார, சமயாச்சார, நல்வாழ்வை அடிப்படையாக கொண்டு, காலியிடத்தில் சங்கம் தன் செலவிலும், பொறுப்பிலும் கட்டிடங்கள் கட்டிக்கொள்ளவும், அதற்கான இதர ஏற்பாடுகளைச் செய்து கொள்ளவும் இந்த ஒப்பந்தத்தின் மூலமாக அனுமதி வழங்கப்படுகிறது. இந்த ஒப்பந்தத்தை முன்னிட்டு ஏற்கனவே சங்கம், தேவஸ்தான நிர்வாகத்தின் அனுமதி பெற்று வரைபடம் வரைந்து, நகராட்சியின் அனுமதி பெற்று கட்டிடங்கள் கட்டி வருவதையும் இன்ன பிற சார்பு நடவடிக்கைகளுக்கும் இந்த ஒப்பந்தத்தின் மூலமாக தேவஸ்தானம் ஒப்புதலளிக்கிறது.

(3)சங்கத்தால் கட்டப்படும் கட்டிடத்தின், சமூக மேம்பாட்டை கருத்தில் கொண்டு நர்சரி பள்ளியிலிருந்து, உயர்நிலைப் பள்ளி வரை நடத்தவும் மற்றும் மருத்துவ மனை, விளையாட்டு அரங்கம் இன்ன பிற பொதுப் பணிக்கான நிறுவனங்களையும் ஏற்பாடுகளையும் செய்ய தேவஸ்தானம் சங்கத்திற்கு அனுமதியளிக்கிறது.

(4)விஷ்வபிராமன மஹா ஜனங்களிடமிருந்து நன் கொடைகளைத் தவிர, வேறெந்த வகையிலும் கட்டிடங்களைப்போ அல்லது காலியிடத்தையோ வாடகைக்கோ அல்லது உள் வாடகைக்கோ விட்டு சங்கம் எத் தொகையையும் வசூல் செய்யக்கூடாது.

(5)இந்த அனுமதி ஒப்பந்தத்தில் குறிப்பிடப்பட்டுள்ள விஷ்வ பிராமன சமூகத்தின் மேம்பாட்டிற்கான நோக்கங்களை நிறைவேற்ற இயலாது, சங்கம் இந்த ஒப்பந்தத்தை இரத்து செய்து சொத்துக்களை தேவஸ்தானத்திற்கு மறு சுவாதீனம் செய்யும்போது கட்டிடங்களுக்காவோ வேறு சார்பு ஏற்பாடுகளுக்காவோ தேவஸ்தானத்திடமிருந்து எத் தொகையையும் கோரும்பாத்தியம் சங்கத்திற்கு கிடையாது.

(6)இந்த ஒப்பந்தத்தில் குறிப்பிடப்பட்டுள்ள ஷரத்துகளுக்கு உட்பட்டு, சங்கம் பணிபுரிந்து வரும்போதோ அல்லது சமூக நன்மைக்கான விஸ்தரிப்பு பணிகளில் ஈடுபட்டிருக்கும்போதோ முன் அறிவிப்ப கொடுத்தோ அல்லது கொடுக்காமலோ எவ்வகையிலும் கட்டிடங்களை காலி செய்து மறு ஸ்வாதீனம் கோரும் பாதையையோ இந்த ஒப்பந்தத்தை ஒரு பட்சமான ரத்து செய்யும் அதிகாரமோ தேவஸ்தானத்திற்கு கிடையாது.

(7)மேலே குறிப்பிடப்பட்டுள்ள ஆறாவது ஷரத்திற்கு மாறாக தேவஸ்தானம் மறு ஸ்வாதீனம் செய்து கொடுக்கும்படி



S.A.No.319 of 2006

சமூகத்தினரை வற்புறுத்தினால் கட்டிடங்களுக்காக சங்கம் செலவு செய்த தொகைகளையும் சங்கத்திற்கு ஏற்படும் கஷ்ட நஷ்டத்திற்கும் ஈடு செய்யும் முறையில் முழு தொகையையும் தேவஸ்தானம் சங்கத்திற்கு கொடுத்துவிட வேண்டியது.

(8)இந்த அனுமதியையொட்டி, தற்பொழுது கட்டப்பட்டு வரும் கட்டிடங்களைத் தவிர, மேற்கொண்டு கட்டிடங்கள் கட்ட வேண்டியது அவசியம் சங்கத்திற்கு ஏற்பட்டால், தேவஸ்தான நிர்வாகிகளை கலந்து கொண்டு அவர்களின் அனுமதி பெற்று செய்ய வேண்டியது. தவிர மேலே குறிப்பிட்டுள்ள குழந்தைகளின் நர்சரி பள்ளி முதல் உயர்நிலைப் பள்ளி வரையிலும் மற்றும் மருத்துவமனை விளையாட்டு அரங்கம் இன்ன பிற பொதுப் பணிக்கான நிறுவனங்களையும் நடத்துவதென்று தீர்மானிக்கப்பட்டு வை கட்டிடம் கட்டப்படுகிறது. வை திட்டங்களானது தெய்வீகமாகவோ, ராஜியமாகவோ நின்றுவிட்டால் வை கட்டிடத்தை வேறு எந்தவிதமாகவும் சங்கத்தார் உபயோகப்படுத்தாமல் தேவஸ்தானத்தாரிடம் ஒப்படைத்து விட வேண்டியது. இதற்கு மாறாக சங்கத்தால் செயல்பட்டால் அதனால் தேவஸ்தானத்திற்கு ஏற்படும் சகல கஷ்ட நஷ்டத்திற்கும் சங்கத்தார் பாத்தியப்பட வேண்டியது.

(9)சங்கத்தின் சுவாதீனத்தில் விடப்படும் காலியிடம் அதில் கட்டப்படும் கட்டிடங்கள் சம்பந்தமான முனிசிபல் சொத்துவரி, மின் கட்டணம், குழாய் கட்டணம் இன்ன பிற சர்க்கார் அல்லது நகராட்சிக்கு செலுத்தப்பட வேண்டிய சகல வரிகளையும் கட்டணங்களையும் சங்கமே செலுத்திட வேண்டியது.”

36.The perusal of the above conditions clearly indicate that the Sangam at their own cost can put up a construction and the land can be used for running a School from Nursery to High School and further, for running a hospital and playground for the betterment and development of the Viswakarma community. Only if the Sangam is not able to continue with the purpose, for which it is granted and the Sangam on its own, hand over the property back to the Devasthanam, then the Sangam cannot claim any compensation for the building. But if the Sangam is involved in the extension of the School and running the School by complying with the



S.A.No.319 of 2006

terms, then the Devasthanam shall not have any right to unilaterally cancel the agreement and claim possession either by issuing prior notice or without the same. If the Devasthanam claims possession in contravention of condition-6, then Devasthanam shall pay the cost of the building and damages to the Sangam. It is also specifically found in condition-8 that apart from the building constructed, if further buildings are to be constructed for development, the same also can be undertaken by the Sangam after consulting with the Devasthanam and the Sangam on their own shall pay all the taxes and charges for the suit property.

37.As such, from the very agreement under Ex-A4, which is executed between the Society and the Devasthanam of the same community, they were only interested to carry on development for the betterment of that community. As both of them belong to same community, care had been taken by the parties to the document that further developments have to be carried on and also, it has been ensured that no disturbance is caused to the School, that is run in the premises, as it is for the sole object of the development of the community.



S.A.No.319 of 2006

38.Later, since other portion of the property measuring 1754 sq.ft., along with dilapidated buildings with huts and encroachments was lying vacant and also it has been the practice that Idol was to be brought and placed here at the time of festival, but it was discontinued due to the huts and encroachments, it could be seen that since the 11th defendant had undertaken the construction works, the plaintiff Devasthanam thought it fit to hand over this portion of the lands also to the 11th defendant.

39.As such, a second registered agreement, dated 13.02.1985, in Ex-A5 has been executed, whereby, the possession of 1745 sq.ft., of land was handed over to the Sangam. In the agreement in Ex-A5, the earlier agreement in Ex-A4 has also been referred to and the licence is granted for the purpose of constructing the extension of the building for Visweswara Vidyalaya School. This agreement also contains similar clauses, as contained in Ex-A4 and as per this agreement, the Sangam has to demolish dilapidated buildings and vacate the huts and encroachments at their own cost and undertake the construction of the building also at their own cost. While doing so, two quarters measuring 20x10 feet has to be constructed behind the two shops which is also to be constructed, adjoining the entrance of two



S.A.No.319 of 2006

sides for the purpose of Archakar quarters. After completion of the construction, out of the rents to be fixed by Devasthanam and Sangam, excepting Archakars quarters, in respect of the four shops, after retaining 50% of the rent for the development of Visweswara Vidyalaya School, balance 50% has to be paid to the Devasthanam.

40.As such, only in Ex-A5, where also the Sangam was allowed to demolish the dilapidated building and evict the encroachments on their own cost and was allowed to make construction by providing two quarters for Archakars and in respect of the four shops, 50% of the rent fixed can be retained for the development of the Visweswara Vidyalaya School and the balance 50% of the rent alone shall be paid to the Devasthanam. Even from the averments made in the plaint, it could be seen that 50% of the rents were admittedly paid to the Devasthanam for some period and later, there has been some default.

41.The plaintiff has come up with the suit mainly on the ground that after construction of four shops, the Sangam had unilaterally inducted the



S.A.No.319 of 2006

tenants and also received advance of Rs.50,000/- from them, which has not been accounted for and the 50% of the rents collected has not been paid to the Devasthanam. The plaintiff Devasthanam also claimed that violating the clauses in the agreements, the Sangam had obtained tax receipts in the joint names, which should have been obtained in the name of Devasthanam alone. The plaintiff also contended that since the School was handed over to Sri Visweswara Trust and subsequently an agreement has been entered into in Ex-B10 with Lakshmiammal Educational Trust, there is violation of the agreements in Ex-A4 and Ex-A5.

42. When it is the admitted case of the plaintiff that after completion of building and induction of tenants, 50% of the rent was paid for some time and subsequently, there has been default, the plaintiff has not furnished the details from which date, the rent was paid to the Devasthanam and exactly from which date, the default has been committed in paying 50% of the rent and while so, the plaintiff has also not prayed for payment of arrears of rent. When the plaintiff claims that initially 50% of the rents were paid to them, it is not made clear then as to how they claim that tenants have been inducted unilaterally by the Sangam and why the Devasthanam has not questioned the



S.A.No.319 of 2006

same and remained silent and on the contrary, were receiving the rents.

Further, there is no condition in Ex-A5 in respect of collection of advance to be paid to the Devasthanam.

43.As referred earlier, in respect of 5141 sq.ft., of the property, which is the vacant land for which, Ex-A4 agreement was executed for free of rent, admittedly, the School has been constructed and the School is also being run. It could be seen from the records, evidence and the written statement that nearly 1200 students are studying in the School and out of which, 50% are girl students and the School is taking care of the interest of the Viswakarma community, as more than 65% of the students studying in the School belong to Viswakarma community, as such the suit filed for recovery of possession on the ground of non payment of rent and obtaining tax receipts in joint names, alleging violation of the agreement under Ex-A4, cannot be sustained.

44.Further, when Ex-A5 has been executed in respect of 1754 sq.ft., of land and admittedly, as per clauses contained in the agreement, the



S.A.No.319 of 2006

dilapidated buildings has been demolished and also the construction as covered under the agreement has been made by constructing four shops and two Archakar quarters and also the same has been handed over free of rent to the Archakars. Further, even from the evidence of PW-1, the School is run and the festivals are now conducted, whereby, the Idols are brought and kept at the Jambu Savari Mandapam, as per the original practice and also the defendants are contributing to the festivals and also to the Temple, it is not clear, as to how the defendants have acted prejudicial to the interest of the Devasthanam. Even from the evidence, it could be seen that earlier the rents have been paid through cheques and subsequently, rents have also been paid for which receipts have been filed in Ex-B1 series. The suit has been filed by the plaintiff knowing fully well that the School building, which is constructed in three lands as a single unit, will have to be demolished, whereby, the running of the School will be jeopardized, which will go against the very execution of the Ex-A4 and Ex-A5 and the real intention of the original Trustees of the Devasthanam belonging to Viswakarma community. Still the present suit is proceeded on the flimsy ground that this 50% of rent for the four shops ie. Rs.1000/- out of the total rent of Rs.2000/- (Rs.500 for each shop) have not been paid, prior to the filing of the suit for



S.A.No.319 of 2006

some period.

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45.The further case of the plaintiff that when lands were handed over to the 11th defendant, subsequent handing over of the School to Sri Visweswara Trust and the Lakshmiammal Educational Trust is detrimental to the interest of the Devasthanam cannot be sustained for the simple reason that even when the agreement in Ex-A5 was executed, it has been clearly entered that the constructions can be undertaken for running of the Visweswara Vidyalaya School by Sri Visweswara Trust and in fact, the very recitals, in respect of four shops, which read that after collecting the rents, 50% of the same should be retained for the development of Visweswara Vidyalaya School and only thereafter, 50% shall be paid to the Devasthanam, would show that under Ex-A5, the Trustees of Devasthanam was conscious that already Visweswara Vidyalaya School is run by Sri Visweswara Trust, as they were very much interested in the development of the School. Further, from the pleadings and the evidence filed, it can be seen that Sri Visweswara Trust owned an extent of 1337 sq.ft., lands and Lakshmiammal Educational Trust owned an extent of 4283 sq.ft., of lands and the School had been constructed as a single unit along with the lands of



S.A.No.319 of 2006

the Devasthanam in the 6895 sq.ft., of land covered in Ex-A4 and Ex-A5.

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46.Further, the School building has been constructed by incurring huge cost and totally an extent 14613.75 sq.ft., have been constructed, which has not been disputed, consisting of ground plus two floors. Admittedly, the two staircases of the School is situated one in the land belonging to Sri Visweswara Trust and one in the land belonging to Lakshmiammal Educational Trust and the entrance to the School is through the land of the Devasthanam covered under Ex-A5. When the plaintiff is aware that a building as a single unit has been constructed in the lands of Devasthanam, Lakshmi Ammal Trust and Visweswara Trust and the School building has to be demolished to carve out the portion of building constructed in the land belonging to the Devasthanam, then the Lakshmiammal Educational Trust and Visveshwara Trust, which is formed by the members of the same Vishwakarma community people, are also proper and necessary parties to the suit, as they are the joint owners of the common School building.

47.When the plaintiff has come forward with a suit for declaration, permanent injunction and recovery of possession, initially, the trial Court



framed five issues and also later, framed two additional issues. But however, when the suit was taken up for hearing, issue nos.3 and 4, which were originally framed and the two additional issues were deleted and the issues were re-framed only in respect of the relief of permanent injunction and recovery of possession, as it was conceded by the plaintiff that the relief in respect of declaration cannot be sought.

48. When the suit has been confined to the relief of injunction and recovery of possession, it could be seen that the suit property pertains to an extent of 5645 sq. ft. When the property covered under Ex-A4 is for 5141 sq.ft of land and the land covered under Ex-A5 is for 1754 sq.ft., which comes totally to an extent of 6895 sq.ft., the present suit is filed only in respect of 5645 sq.ft., leaving the balance extent of 1250 sq.ft., and as such it is not clear, as to in respect of which portion of the property, the plaintiff is seeking for relief. As rightly contended by the learned Senior Counsel for the respondents, even if a decree is granted, it would be inexecutable, as the exact area of the property, that is sought for in the suit, cannot be identified.

49. Further, the plaintiff had issued the notice, dated 21.03.1991 under Ex-A9 to some of the members. Admittedly, the notice under Ex-A9 has not



S.A.No.319 of 2006

been issued to the 11th defendant and in fact, no pre-suit notice has been issued to the 11th defendant cancelling the agreement and calling for surrender of possession of the property. In fact the suit itself has not been instituted as against the 11th defendant initially but only after a period of nine years, the 11th defendant was impleaded in the suit. When it is the specific case of the plaintiff that the 11th defendant has committed default in payments of the rent and also collected advance from the tenants and thereby, violated the agreement, the present suit filed by the plaintiff without even issuing notice to the 11th defendant cancelling the agreement, cannot be sustained.

50. When admittedly, both the agreements in Ex-A4 and Ex-A5 contain different and distinct terms, particularly, when the agreement in Ex-A4 has been executed in respect of vacant land for free of rent and the agreement in Ex-A5 has been executed with several conditions and if the plaintiff claims that there has been violation of the clauses, it could only pertain to the lands covered under Ex-A5 and the suit filed by the plaintiff by clubbing both the properties covered under Ex-A4 and Ex-A5 together would be fatal to the claim of the plaintiff.



S.A.No.319 of 2006

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51.The plaintiff has even averred in the plaint that the building has been constructed for the Visweswara Vidyalaya School along with 4 shops, Archarka quarters and the defendants are the Managing Trustees of the Certified Goldsmith Association, which is later impleaded as 11th defendant, as a party to the agreement, and particularly, even in Ex-A5, the Visweswara Vidyalaya School has been recognized, which is run by Sri Visweswara Trust and admittedly, the School has been constructed as a single unit in the properties of the Devasthanam and the Trusts, necessarily Visweswara Trust and the Sri Lakshmiammal Educational Trust are necessary parties to the suit. When it is not the case of the plaintiff that the property has been transferred to any third parties, whereby, the interest of the Devasthanam has been compromised and the properties has not been put to use for the intended purpose for which it was granted and admittedly, the Trustees in the 11th defendant, Sri Visweswara Trust and the Trustees in the Lakshmiammal Educational Trust are all belonging to Viswakarma community and admittedly, the School is also run and now, having classes up to 12th standard and having a strength of more than 1200 students by achieving 100% results, it cannot be said that the terms in the agreement has been violated.



S.A.No.319 of 2006

WEB COPY

52. In fact, if the relief claimed is granted, it will be go detrimental to the interest of the members of the Viswakarma community and the Devasthanam, which will defeat the very laudable intention and object of the original Trustees, who had entered into an agreement in Ex-A4 by handing over the property free of rent with the specific clause to ensure that the agreement is not cancelled and no prejudicial step is taken, which will disturb the running of the School.

53. From the evidence of PW-1, it could be seen that there shall be at least 5 trustees in administration of the plaintiff Devasthanam for a period of 3 years and the present trustees were elected on 14.09.1969, which was extended for another period of 3 years and admittedly no meeting was ever convened after the year 1972 and further PW-1 admits that he is not aware as to the numbers of members available as of now, for the plaintiff Devasthanam and only if a meeting is convened the exact number of members available will be made known. Further he had deposed that, only since permanent constructions were made in the year 1980 and as the condition was violated, it lead to the differences with the 11th defendant but



in the later part of his evidence, he admits that the constructions have been made as per the agreement. PW-1 also admits that the tax receipts are in the name of Devasthanam and they had received the rents through cheque and in the resolution in Ex.A3, no mention of advance or rental issues have been mentioned and also the resolution does not deal with in respect of filing of any suit. Further, when Ponnappa Asari, Trustee had died and PW-1 has claimed that as a power agent of Ponnappa Asari through Ex.A2, he had been given power to deal with the present issues and also as an administrative committee, he had filed the suit, when few of the trustees had died and the term had not been extended and further, from the evidence, it could be seen that the HR & CE Department is in control of the affairs of the Devasthanam, as the accounts are audited and signed by the Department, it is not made clear as to whether the suit has been initiated with proper authorization from the competent persons, as the decision to vacate the School, goes against the interest and real intent conveyed in Ex.A4 and Ex.A5. The relevant portions of the evidence of PW1 are extracted hereunder:

“....இப்பொழுது உள்ள கட்டிடங்களுக்கு கோவிலின் பெயரில் தான் வரிவிதிப்பு விதிக்கப்பட்டுள்ளது. கதவு எண்.494க்கான மாநகராட்சியில் இருந்து பெற்று தாக்கல் செய்யப்பட்டுள்ள சொத்து வரி பதிவேட்டின் எடுகுறிப்பு எக்.எ.6. தேவஸ்தான இடத்தில் கட்டப்பட்டுள்ள பள்ளிக்கு



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S.A.No.319 of 2006

விஸ்வேஸ்வர வித்யாலயம் என்று பெயர். அதனுடைய நிர்வாகத்தை லட்சுமியம்மாள் அறக்கட்டளைதான் செய்து வருகிறது.

....மொத்தம் குறைந்தபட்சம் 5 அறங்காவலர்கள் தேர்ந்தெடுக்கப்படுகிறார்கள். அறங்காவலர்கள் பார்த்து அவர்களுக்கு உதவி செய்வதற்காக கமிட்டிகளும் அமைத்துக்கொள்கிறார்கள்.

.... 14.9.1969ம் தேதியில் எங்களைத் தேர்ந்தெடுத்தார்கள். 1969ம் வருடத்திலிருந்து 3 வருடத்திற்கு பிற்பாடு எங்களுடைய அறங்காவலர் பணி நீடிக்கப்பட்டது என்பதைக் காண்பிப்பதற்கு எங்களிடம் ஆவணங்கள் உள்ளன. 1972ம் வருடத்திற்கு பிற்பாடு நாங்கள் மகாசபை கூட்டம் எதவும் போடவில்லை.

.... நான் எக்.எ.2 படி பொன்னப்ப ஆசாரியின் பவர் ஏஜென்ட் என்ற முறையிலும் நிர்வாகக் கமிட்டியின் சார்பிலும் நான் இந்த வழக்கைத் தாக்கல் செய்திருக்கிறோம்.

.... எக்.எ.2 பவர் பத்திரம் எழுத்திக்கொடுக்கப்பட்ட காலத்தில் இந்த வழக்கு தாக்கல் செய்யப்படவில்லை.

.... ஆனால் சான்றிதழ் பெற்ற பொற்பணியாளர்கள் சங்கத்தினர் 1980ம் வருடத்திலேயே நிரந்தரமான கட்டிடம் கட்டி நடத்திவந்தார்கள். அவர்கள் தாற்காலிகமாக கட்டிடம் கட்ட வேண்டும் என்று வாய்மொழியாக ஒப்பந்தம் சொல்லப்பட்டது. அவ்வாறு எக்.எ.4 ஒப்பந்தத்தில் எழுதப்படவில்லை. அதனால் ஒப்பந்தத்தை மீறி அவர்கள் 1980ம் வருடத்தில் நிரந்தரமான கட்டிடங்கள் கட்டிவிட்டார்கள் என்பதனால் அவர்கள் மீது எங்களுக்கு ஒரு குறை இருந்தது என்று சொன்னால் குறை இருந்தது. அவர்கள் செய்தது ஒப்பந்தத்தை மீறக்கூடிய ஒரு செயல்.

....பள்ளிக்கூட மெயின் கேட் தேவஸ்தான கட்டிடத்தில் இருக்கிறது. பள்ளிக்கட்டிடங்களுக்கு ஏறிப்போகக்கூடிய மாடிப்படிகள் மேல்புறமுள்ளது லட்சுமியம்மாள் டிரஸ்டில் உள்ளது. கிழப்புமுள்ளது விஸ்வேஸ்வரா டிரஸ்ட் இடத்தில் உள்ளன.

....இப்பொழுது எங்களுடைய மகாசபையில் எத்தனைபேர் இருக்கிறார்கள் என்று எங்களுக்குத் தெரியாது. மகாசபையைக் கூட்டினால் தான் தெரியும். மகாசபையில் எத்தனை பேர் இருக்கிறார்கள் என்று பட்டியல் எதுவும் நாங்கள் தயாரிக்கவில்லை.

....அந்த இடத்தில் அதற்கு பிறகு சுவாமி ஊர்வல செலவு, நெய்வேத்திய செலவு, பூஜை செலவு ஆகியவற்றை 1 மற்றும் 11ம் பிரதிவாதிகளும் தருகிறார்கள்.

....இந்த வழக்கு தாக்கல் செய்யப்படுவதற்கு முன்னால் மேற்படி ஒப்பந்தத்தை மீறிவிட்டதாக நாங்கள் சான்றிதழ் பெற்ற பொற்பணியாளர்கள் சங்கத்திற்கு அறிவிப்பு கொடுத்திருக்கிறோம். அந்த அறிவிப்பை ஒப்புவிக்க முடியும்.

....ஆனால் அவர்கள் வாடகையில் 50% தொகை செலுத்தவில்லை. வாடகை முன்பணம் தருவதில்லை. அவர்கள் கொடுத்த தொகையை தேவஸ்தானத்திற்கு நஷ்டம் ஏற்படக்கூடாது என்பதற்காக பெற்றுக்கொண்டு ரசீது கொடுத்துவருகிறோம். வாடகையில் 50% பகுதியை செலுத்தவேண்டும் என்ற சரத்து 2வது ஒப்பந்தத்தில்தான் எழுதப்பட்டுள்ளது. முதல் ஒப்பந்தத்தில்



S.A.No.319 of 2006

எழுதப்படவில்லை.

....எக்.எ.3 தீர்மானத்தில் தலைவரின் அபிப்பிராயப்படி வாடகையின் முன்பணத்திற்கு பாதியை கொடுக்கவேண்டும் என்று வாய்மொழியாக பொற்பணியாளர்கள் சங்க மேனஜிங் டிரஸ்டிடம் நேரடியாக சொல்லிவிட்டதினால் அது தேவையில்லை என்று கருதி எக்.எ.3 தீர்மானத்தில் அதுபற்றிக் குறிப்பிடவில்லை. எக்.எ.3 தீர்மானத்தை எங்கள் தலைவர் சொன்னபடி போட்டுவிட்டோம். அந்த தீர்மானத்தை 11ம் பிரதிவாதி சங்கத்தின்பேரில் வழக்கு தாக்கல் செய்யப்படவேண்டும் என்று நாங்கள் தீர்மானம் போடவில்லை. எங்களுடைய எக்.எ.3 தீர்மானத்தில் 1ம் பிரதிவாதியைத் தவிர 2 முதல் 10 பிரதிவாதிகளின் பேரில் தாவா தாக்கல் செய்யப்படவேண்டும் என்று தீர்மானம் போடப்படவில்லை.

....

....மேற்படி 4 கடைகளிலும் ஒவ்வொரு கடைக்கும் என்ன வாடகை வருகிறது என்று எனக்குத் தெரியாது. ஒவ்வொரு மாதமும் கொடுக்கவேண்டிய தொகையை அவர்கள் காசோலை மூலமாகத் தான் செலுத்தி வருகிறார்கள்.

....தாவா சொத்துக்களுக்கான சொத்துவரி முதலில் கோவிலின் பெயரில் வந்து கொண்டிருந்தது. பிற்பாடு லட்சுமி அறக்கட்டளையின் பேரிலும், 1ம் பிரதிவாதியின் பெயரிலும் வந்துகொண்டிருந்ததினால் தான் அது ஒப்பந்த மீறலாக கருதி நடவடிக்கை மேற்கொள்ளப்பட்டது. எனக்கு காண்பிக்கப்பட்ட சொத்துவரி கேட்பு அட்டை முத்துவிநாயாகர், காமாட்சி அம்மன் ஏகாம்பரேஸ்வரர் தேவஸ்தானத்தின் பெயரில் தான் உள்ளது. தாவா சொத்துக்களுக்கு சொத்துவரி தாக்கியது எப்படி வருகின்றது என்று நான் போய் சரிபார்த்ததில்லை.”

54.The School is admittedly run and also as per the old customary practice, Idols are brought during festivals and are placed at Jambu Savari Mandapam, since the encroachment has been cleared and construction has been made, as per the agreements and also admittedly, the defendants are also contributing for the festival. Further, when admittedly, there are several Trustees, who are in the administration of the Devasthanam, those Trustees has not been made as parties to the suit and also when no resolution has been



S.A.No.319 of 2006

passed by the authorized persons for filing of the suit as against the 11th defendant and the suit originally had been filed as against some of the members and the 11th defendant has been impleaded only after nine years, even without issuing any pre suit notice to them, it can be safely concluded that the proceedings initiated is due to some personal rivalry and not for the over all interest of the Devasthanam.

55. Agreement has been entered into between the parties in Ex.A4 in respect of the vacant land with certain conditions, which if closely looked reveals that proper care has been taken by the parties, particularly the Trustees of the plaintiff Devasthanam that the running of the School is not disturbed and they were very much interested in the development of the School which will be beneficial for the development of their community. In the agreements entered into in Ex.A4 and Ex.A5, license has been granted for construction of the School building and running of the school. As referred earlier, it cannot be said that the conditions have been violated when the main object for which the land was given has been put to proper use and there is no complaint or allegation in the suit in respect of the running of the School, except some allegations against the 1st defendant who had also died



during the pendency of the appeal. As such, the judgment in Chevalier I.I. Iyappan's case relied on by the appellant is not relevant for the facts of the present case, when the purpose for which it was granted had not been abandoned. Further, the other judgment relied on in Balvant N Viswamitra's case for the proposition that the sub tenants are not necessary parties to the suit is not relevant to the facts of the present case as the 1st defendant is the Trustee in the 11th defendant Sangam, Sri Visweswara Trust and the Lakshmiammal Educational Trust, which are all formed admittedly by the members of the Viswakarma community, to meet the statutory requirements for the purpose of obtaining the permission and running of the School up to 12th standard and therefore, they cannot be considered as sub tenants. Further, the School is run in a common joint building, which is a single unit and the Visweswara Trust was running the School even when the agreement in Ex.A5 was entered into as reflected from the agreement.

56. When the terms contained in the agreement in Ex.A4 and Ex.A5 conveys the real intention of the parties, whereby, they wanted the School to be run without any disturbance or hindrance and sufficient safeguards were made in the very agreement itself and even in respect of the payment of the 50% rent from the 4 shops as mentioned in Ex.A5, the plaintiff



Devasthanam made it clear that 50% of the rent first has to be retained for the development of the School and only the balance 50% of rent (Rs.1000/-) has to be paid to the Devasthanam and even from the evidence of PW-1, it is admitted that earlier rents were paid through cheque and later paid and obtained receipts in Ex.B1 series, I am not inclined to allow the School to be demolished and vacated, merely on the allegations made against the deceased 1st defendant and thereby, defeat the laudable object of the original Trustees of the plaintiff Devasthanam, who wanted the School to flourish.

57. When it was put to the learned Senior Counsels, as to whether they could sort out the issues by mediation without disturbing the running of the School, as the very agreement in Ex.A4 itself envisages the same, it is informed that already proceedings are pending for framing a Scheme before the Joint Commissioner, HR & CE Department in respect of the administration of the plaintiff Devasthanam and there is no consensus as of now between the parties. Therefore, as and when the Trustees are appointed, there is every possibility for the issues to get sorted out without disturbing the running of the School, as they all belong to the Viswakarma community and all their objects are only in respect of the development of the members



S.A.No.319 of 2006

of the Viswakarma community.

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58.The lower appellate Court had arrived at a finding based on the materials available on record and there is no illegality or perversity in the judgment of the lower appellate Court. The substantial questions of law are answered against the appellant and in favour of the respondents.

59. In the result, the **Second Appeal** stands dismissed. However, there shall be no order as to costs.

Internet :Yes/No
Index :Yes/No
NCC :Yes/No
cmr

29.05.2024

To

1.The Principal District Judge,
Coimbatore,

2.The III Additional Subordinate Judge at Coimbatore.

3.The Record Keeper,
Vernacular Section,

46/48



Madras High Court, Chennai.

WEB COPY



S.A.No.319 of 2006



WEB COPY



S.A.No.319 of 2006

G.ARUL MURUGAN, J.

cmr

Judgment made in
S.A.No.319 of 2006

29.05.2024