IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

OP(C).No. 3988 of 2013 (O)

AGAINST THE JUDGMENT IN CMA 19/2013 of SUB COURT,KOCHI-5.
I.A.1251/12 IN O.S. 164/12 OF MUNSIFF COURT, KOCHI.

PETITIONER(S):

PORTA BREEZA HOTELS PRIVATE LIMITED,
OFFICE AT N17/1, GREEN PARK EXTENSION,
NEW DELHI - 110 016, REPRESENTED BY ANEEL SACHDEV,
AGED 70 YEARS, S/O.LATE GURU DUTT, RESIDING AT
L31/9, DLF PHASE 2, GURGAON, HARYANA - 122 022.

BY ADVS.SRI.K.RAMAKUMAR (SR.)
SRI.S.M.PRASANTH
SRI.T.U.ZIYAD
SMT.ASHA BABU
SMT.AMMU CHARLES

RESPONDENT(S):

1. SRI. DOMINIC JOSEPH, S/O.M.D.JOSEPH,
AGED 54 YEARS, MANNIPARAMBIL, PALAMPRA PO.,
KANJIRAPALLY, KOTTAYAM - 686 518.

2. SRI.SAMUEL GEROGE,, AGED 51 YEARS,
RESIDING AT GRANCE COTTAGE, PATHIYOOR PO.,
ALAPPUZHA - 695 011.

ADDL. R3 IMPLEADED.

3. M/S/ PORTA BREEZA HOTELS PRIVATGE LIMITED,
OFFICE AT N17/1, GREEN PARK EXTENSION,
NEW DELHI - 110 016, REPRESENTED BY ITS MANAGER
& AUTHORISED OFFICER SAMUEL GOERGE,
RESIDING AT KOONAMKULANGARA, ALAYAM,
PERINGALA VILLAGE, MAVELIKKARA TALUK,
PATHIYOOR P.O., ALAPUZHA 690 508.

ADDL. R3 IMPLEADED AS PER ORDER DATED 22.6.2015
IN I.A.15799/2013.

R1 BY ADV. ANEESH PAUL
R2 & ADDL. R3 BY ADV. SMT.SUMATHY DANDAPANI (SR.)
R2 & ADDL.R3 BY ADV. SRI.MILLU DANDAPANI

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 22-06-2015, ALONG WITH O.P.(C). 469/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 3988 of 2013 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 : TRUE COPY OF I.A.NO.1251 OF 2012 IN OS NO.164 OF 2012 ON THE FILE OF THE MUNSIFF'S COURT, KOCHI

EXHIBIT P2 : TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONER IN I.A.NO.1251 OF 2012 IN O S NO.164 OF 2012 ON THE FILE OF THE MUNSIFF'S COURT, KOCHI

EXHIBIT P3 : TRUE COPY OF THE APPEAL - CMA 19 OF 2013 ON THE FILE OF THE SUBORDINATE JUDGE'S COURT, KOCHI

EXHIBIT P4 : TRUE COPY OF ORDER DATED 11.10.2012 IN I A NO.1920/2012 IN O S NO.164 OF 2012 ON THE FILE OF THE MUNSIFF'S COURT, KOCHI

EXHIBIT P5 : TRUE COPY OF THE ORDER DATED 08.10.2013 IN CMA NO.19 OF 2013 ON THE FILE OF THE SUBORDINATE JUDGE'S COURT, KOCHI

EXHIBIT P6 : TRUE COPY OF ORDER DATED 20.07.2013 IN I.A.NO.1251 OF 2012 IN OS NO.164 OF 2012 ON THE FILE OF THE MUNSIFF'S COURT, KOCHI

RESPONDENT(S)' EXHIBITS

EXT. R2(a) : PHOTOCOPY OF THE ARTICLES OF ASSOCIATION OF PORTA BREEZA HOTELS PRIVATGE LTD. CO.

EXT. R2(b) : PHOTOCOPY OF THE ANNUAL RETURNS FOR THE FINANCIAL YEAR 2010-2011 OF PORTA BREEZA HOTELS PRIVATE LTD. COMPANY.

EXT. R2(c) : PHOTOCPY OF E-MAIL LETTER DATED 1.5.2012 SENT TO PORTA BREEZA HOTELS PRIVATE LTD. BY THE PETITIONER.

EXT R2(d) : PHOTOCOPY OF CERTIFIED COPY OF FORM 32 RECEIVED FROM THE REGISTRAR OF COMPANIES, DELHI.

EXT.R2(e) : PHOTOCOPY OF I.A. NO. 1533 OF 2012 IN O.S. NO. 188 OF 2012 FILED BY THE PETITIONER BEFORE THE MUNSIFF COURT, KOCHI ON 13.7.2012.

EXT. R2(f) : PHOTOCPY OF ORDER DATED 11.10.2012 IN I.A.

NO. 1533 OF 2012 IN O.S. BO. 188 OF 2012 RENDERED BY MUNSIFF COURT, KOCHI.

EXT. R2(g) : PHOTOCOPY OF REPLY AFFIDAVIT FILED BY THE 12TH RESPONDENT IN COMPANY PETITION NO. 26(ND)/2013 BEFORE THE COMPANY LAW BOARD, NEW DELHI.

EXT. R2(h) : PHOTOCPY OF ORDER DATED 28.6.2013 IN C.P. NO. 26(ND) 2013 OF THE COMPANY LAW BOARD, NEW DELHI.

EXT. R2(i) : TRUE COPY OF THE FORM NO. 32.

EXT R2(j) : TRUE COPPY OF THE ARTICLES OF ASSOCIATION OF PORTA BREEZA HOTELS PVT. LTD.

//True copy//

P. BHAVADASAN, J.

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O.P.(C). Nos. 3988 of 2013
469 of 2015

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Dated this the 22nd day of June, 2015.

JUDGMENT

O.P.(C) 469 of 2015 arises out of the order in C.M.A.No.19 of 2013 of Sub Court, Kochi which reversed the order in I.A. No. 1251 of 2012 in O.S. No. 164 of 2012 of Munsiff Court, Kochi. O.P.(C) No. 3988 of 2013 is directed against the very same order by another aggrieved person.

2. The facts absolutely necessary for the disposal of these Original Petitions are as follows:

The facts as available in O.S. 164 of 2012 is being referred to for the purpose of convenience. On the basis of an alleged agreement for sale, the plaintiff in O.S. 164 of 2012 claimed to have been put in possession of the suit property. Complaining of unauthorised interference with his possession by some strangers, he laid the suit for injunction.

3. The claim made in O.S. 164 of 2012 was that as per Ext.B1 agreement for sale, the Company owner agreed to sell the Company to the plaintiff in the suit for a total consideration of Rs.7,50,00,000/- and it is claimed that Rs.15,00,000/- was paid towards advance sale consideration.

4. The plaintiff therefore claimed to be entitled to be in possession as he had been put in possession pursuant to the agreement for sale.

5. The Company entered appearance and disputed the claim. They pointed out that the agreement for sale, on which considerable reliance is placed, has no lawful effect and that has been entered into by an incompetent person without authority. They also contended that the agreement is a bogus one and the plaintiff in the suit had never been in possession of the suit property. However, according to them, after getting an interim injunction in O.S. 164 of 2012, the plaintiff in the suit

trespassed into the property and reduced it into his possession. They contended that he had no authority to be in possession and his possession was illegal.

6. The Company in turn laid O.S. 188 of 2012 whereby they wanted to injunct the plaintiff in O.S. 164 of 2012.

7. Since common issues arose for consideration in the two suits, the I.As filed for temporary injunction namely, I.A.1440 of 2012 in O.S. 188 of 2012 and I.A. 1251 of 2012 in O.S. 164 of 2012 were jointly tried. It may be remembered here that there was an interim order in favour of the plaintiff in O.S. 164 of 2012 as per the order in I.A. 1251 of 2012. For the purpose of the interlocutory applications, the plaintiff in O.S. 164 of 2012 had Exts.A1 to A3 marked. The contesting respondents had Exts.B1 to B14 marked. The trial court, after elaborate consideration of the materials, found that there is strong evidence in the plaintiff in O.S. 1564 of 2012 being in possession made the

interim order in I.A. 1251 of 2012 absolute. Consequently, I.A. 1449 of 2012 in O.S. 188 of 2012 was dismissed.

8. The aggrieved defendants in O.S. 164 of 2012, who is also the plaintiff in O.S. 188 of 2012, preferred two C.M.As as C.M.A. No. 18 of 2013 and 19 of 2013 before the Sub Court, Kochi. The Sub Court, Kochi, on an independent consideration of the materials before it, found that the plaintiff in O.S.164 of 2012 cannot take aid of Section 53A of the Transfer of Property Act since the agreement on which reliance was placed on by the plaintiff in the said suit was an unregistered one. Mainly on that basis, the lower appellate court reversed the finding and allowed the C.M.As in both the suits. The consequence was that I.A. 1251 of 2012 in O.S. 164 of 2012 stood dismissed and I.A. 1440 of 2012 in O.S. 188 of 2012 stood allowed.

9. Learned Senior Counsel Shri. Ramesh Chander appearing for the petitioner in O.P.(C) 469 of 2015 contended that the court below has misdirected itself both

on facts and in law. Referring to the plaint in the case, it was contended that even the defendant in the suit, namely, the Company has admitted the possession of the plaintiff in the suit as would be evident from the pleadings in the case and also from the fact that they had filed a suit under Section 6 of the Specific Relief Act to regain possession as per that provision. The person named Samuel George who claims himself to have the authority to represent the Company does not have such authority and the documents produced by him are not authoritative. The claim that by virtue of the interim order in his favour in I.A. 1251 of 2012 in O.S. 164 of 2012, the plaintiff has trespassed into the property is not correct. It cannot be disputed, according to the learned Senior Counsel that at the time when the relevant sale agreement was entered into, namely, Ext.A1, the person who represented the Company had authority to do so. It was also contended that the mere fact that the agreement is not registered does not mean that the agreement cannot be used for any purpose. May be that by virtue of the provision under the Registration Act, it cannot be made use of to take aid of Section 53A of the Transfer of Property Act. But as far as Section 49 of the Indian Registration Act is not consequently amended, the said document can be used for collateral purposes. A reading of Ext.A1 and the subsequent conduct shows that the plaintiff in O.S. 164 of 2012 had been put in possession of the property and he is entitled to continue in possession unless duly evicted under law. Referring to the order in C.M.As, it is pointed out that in one portion of the order the petitioner in the O.P. is restrained from entering the property and in another portion of the order, he is restrained from removing the furniture, fixtures etc. in the building and these two are inconsistent and contrary to each other. Accordingly, it is contended that there has not been proper application of mind by the lower appellate court and that has resulted in a wrong order being passed. It is therefore prayed that the said order be set aside and the order of the Munsiff Court may be restored.

10. Smt. Sumathi Dandapani, learned Senior Counsel appearing for the contesting respondents contended that the order passed in the C.M.As. is just, fair and reasonable. It is significant to notice, according to the learned Senior Counsel that there is no mention in Ext. A1 about any resolution having been passed by the Company authorizing the so-called person to represent the Company and to enter into any sort of transaction with anybody, and the very agreement for sale is non-est and not binding on the Company. It is also pointed out by the learned counsel that a reading of Ext.A1 would show that it is open to serious doubt going by the terms of the document. Unusual terms are incorporated in the document in favour of the vendee and that itself would show that the Company's interests are not protected. It is also pointed out by the learned Senior Counsel that later on the person who

represented the Company in entering into the agreement ceases to be the Director. Learned Senior Counsel then went on to point out that the document produced by the Company before the trial court would clearly show that the Company was always in possession especially the document produced would show that the Company had let out the property for the shooting of a film for twenty days. Learned Senior Counsel was fair enough to say that for a short period the plaintiff in O.S. 164 of 2012 might have been in possession by virtue of the interim order in their favour. But that cannot be treated as possession in the eye of law. They are mere trespassers. It is also pointed out by the learned Senior Counsel that going by the statement of accounts, it is seen that so-called Rs.15,00,000/- alleged to have been paid has not come into the account of the Company. These facts cannot be overlooked and therefore, the claim made by the plaintiff in O.S. 164 of 2012 that he is in possession as on the date of the suit cannot be countenanced.

11. After having heard learned Senior Counsel for the parties and after having perused the records, there is considerable force in the submission made by the learned counsel for the contesting respondents. True, there is an agreement for sale Ext.A1 produced in the case dated 1.9.2009. Total consideration for the sale was fixed as Rs.7,50,00,000/-. The claim made by the proposed vendee is that in pursuance to the agreement for sale, he was put in possession. He then complains of forcible dispossession at the hands of some hooligans.

12. A look at Ext.A1 itself would show that it is open to serious doubt. As rightly pointed out by the learned Standing Counsel for the respondent, there is no mention of any resolution having been passed by the Company to sell the Company's property or authorizing any person to enter into any sort of agreement with any person. This is quite conspicuous in the sense that in Ext.B1, by which the

Company purchased the property, it is clearly stated that the Company had by virtue of a resolution decided to purchase the property and authorized a person for the same. So, it is clear that the procedure that had to be followed was known to the Company.

13. May be that the person who entered into the agreement on 1.9.2009 was the Director of the Company. But that does not mean that he is authorized to enter into a contract for sale. It has come out from the records that he ceased to be the Director on 1.5.2012. Except for saying that in pursuance to Ext.A1 agreement, the vendee had been put in possession, there is absolutely no evidence in the case to show that he was absolutely in possession.

14. At best what the plaintiff in O.S.164 of 2012 could rely on is some sort of an admission by the plaintiff in the other suit that after obtaining the interim order in O.S.164 of 2012, the plaintiff in the said suit trespassed into the property and in possession. That necessitated the

Company to file O.S. 188 of 2012 seeking an injunction against the plaintiff in O.S. 164 of 2012. Apprehending that if they may not succeed in the suit and as already an order of injunction was passed against them, probably they by way of abundant caution had filed O.S. 231 of 2012 under Section 6 of the Specific Relief Act for recovery of possession. Of course that would mean that the other party is in possession as the plaintiff in O.S.231 of 2012 is seeking recovery of possession from the other person.

15. But the conduct of the Company in instituting the suit under Section 6 of the Act will be viewed in the facts and circumstances of the case. It has already been said that there is absolute want of evidence to show that the plaintiff in O.S. 164 of 2012 had ever been in possession of the property. As already stated, the very agreement itself is suspicious. It must be remembered that purchase was in the year 2006 for an amount of Rs.7 Crores. It is difficult to believe that in the year 2009 the Company would have

agreed to sell the property for a sum of Rs.7,50,00,000/-. Whatever that be, one glaring aspect is the lack of authority of the person who claims himself to be the Director of the Company to enter into an agreement. It is not shown whether the Company was ever aware of the agreement at all. It is here one has to notice that there is no evidence to show that the sum of Rs.15,00,000/- has been credited into the account of the Company. It is important to notice that there is not even a scrap of paper produced by the plaintiff in O.S. 164 of 2012 to prove that any amount was ever paid pursuant to Ext.A1.

16. In this context, the documents produced by the respondent have some significance. No doubt, it is true that they are in the name of the Company. But, if as a matter of fact, the plaintiff in O.S. 164 of 2012 was in actual physical possession of the property, he would have some documents to show his possession. He had produced none. On the other hand, during the relevant period, the receipts

for having paid tax for the property and the building, receipts issued by Electricity Board and other documents have been produced by the defendant in O.S. 164 of 2012.

17. It may be possible to say that even assuming that Section 53A of the Transfer of Property Act cannot be taken aid of by the plaintiff in O.S. 164 of 2012, that may not help the defendant in that suit. As long as Section 49 of the Registration Act is not consequently amended, it may still be possible for the person who holds such a document to use it for collateral purpose.

18. In this case, probably, the plaintiff in O.S. 164 of 2012 would contend that even assuming that he could not resist or advance the claim on the basis of Section 53A of Transfer of Property Act, he can certainly show that his possession is not that of a trespasser and he has come into possession legally.

19. The question is whether the plaintiff in O.S. 164 of 2012 was in actual physical possession of the

property.

20. As rightly noticed by the lower appellate court, there is absolutely no evidence at all to show that the plaintiff in O.S. 164 of 2012 was ever in possession of the property.

21. Considerable arguments were advanced regarding the competency of the person who laid O.S. 188 of 2012 to institute the proceedings, the authority to represent the Company etc. Those aspects need not be gone into in depth at this point of time. What the court needs to look into is whether there is prima facie material to show that the person who claims to be in possession of the property is in actual physical possession. Except for the so-called admissions made by the company, which has already been referred to, there is absolutely nothing to show that the plaintiff in O.S. 164 of 2012 had been put in possession pursuant to Ext.A1 agreement which at the risk of repetition may be viewed with suspicion.

22. Even assuming that there is some inconsistency in the concluding portion of the judgment of the lower appellate court, that cannot help the petitioner before this Court.

23. In the light of the fact that there is want of convincing evidence to show that the petitioner in I.A. 1251 of 2012 in O.S. 164 of 2012 was put in possession pursuant to Ext.A1 agreement for sale, the court below was justified in reversing the order granted by the trial court and granting an injunction in O.S. 188 of 2012.

The result is that these Original Petitions are without merits and they are liable to be dismissed. I do so. There will be no order as to costs.

P. BHAVADASAN,
JUDGE

sb.