

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 08.11.2016

PRONOUNCED ON: 09.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.529 of 2010

The Madras Seva Sadan by its
Honorary General Secretary C.Prema Kumar

Plaintiff

Vs

Dr.N.V.Rao @ Nicolas Vincent Rao

Defendant

Prayer:- This Civil Suit is filed under Order VII Rule 1 of CPC read with Order IV Rule 1 of the Original Side Rules for the reliefs as stated therein.

For Plaintiff : Mr.Yashodhvardhan, SC

For Defendants : Mr.M.K.Kabir, SC for Mr.T.Jayaraman

JUDGEMENT

This civil suit has been filed to pass a judgement and decree, against the Defendant:-

- a) directing the Defendant or any other person claiming through him to quit and deliver vacant possession of the property viz. 12A, New Giri Road, T.Nagar, Chennai-17 and more particularly described in the schedule.
- b) directing the Defendant to pay mesne profits of Rs.54,00,000/- (Rupees Fifty Four Lakhs Only) at the rate of Rs.1,50,000/- per month till this date.
- c) directing the Defendant to pay mesne profits at Rs.1,50,000/- per month from the date of the plaint till the date the Defendant delivers vacant possession of the suit property to the Plaintiff.
- d) directing the Defendant to pay the costs of the suit to the Plaintiff.

2. The Plaintiff is the Madras Seva Sadan, a Society, registered under the Societies Registration Act, 1860 and represented by its Honorary General Secretary, Mrs.C.Prema Kumar and the Defendant Dr.V.N.Rao alias Nicolas Vincent Rao is her own brother.

3. It had been stated in the plaint that the suit property at No. 12-A, New Giri Road, T.Nagar, Chennai-600 017 had been acquired by the Plaintiff under two Sale Deeds, both dated 02.02.1976 and both registered on 09.02.1976 as Document Nos.593 and 594 of 1976 in the office of the Registrar, North Madras. The first Sale Deed related to land to an extent of 8 grounds and the second Sale Deed is related to land of 4 grounds. A building to an extent of about 2 grounds is on the Eastern portion and the rest of the 12 grounds are vacant lands.

4. It had been further stated in the plaint that the Plaintiff Society is running an Institution under the name 'The Madras Seva Sadan Unit Sir M.Venkatasubba Rao Matriculation Higher Secondary School and Mr.N.V.Rao, the father of the Defendant was the Honorary Correspondent of the said Institution and after his demise on 07.09.1992, the Defendant was appointed as the Honorary Correspondent from 15.03.1993. The father of the Defendant was also the executor of the Will of the erstwhile owner of the property, Mrs.Mutha Andalamma, also known as Lady M.Venkatasubba Rao, wife of late Sir M.Venkatasubba Rao, former Judge of the Madras High Court.

5. It had been further stated that during his tenure as Honorary Correspondent, the Defendant was permitted to occupy a portion of the building on the ground floor at Sir M.Venkata Subba Rao Matriculation Higher

Secondary School premises. It had been further stated that due to certain activities that did not augur well for the Institution, the Governing Body, by its resolution, dated 29.10.1998, removed the Defendant from the post of Honorary Correspondent and he was requested to move out from the premises and to move to the suit property, viz. 12-A, New Giri Road, T. Nagar, till he found alternate accommodation.

6. It had been further stated that the Governing Body, in their meeting on 11.6.1999, had permitted the Defendant to stay till October 1999 and by another resolution dated 22.9.1999, permitted him to stay till 30.9.2000. Since the Defendant did not vacate, the Plaintiff, by letter dated 9.11.2000, called upon him to vacate the premises. Further time was granted by the resolution dated 12.12.200, since the son of the Defendant had pleaded to permit them to stay till his wedding in January 2001.

7. It had been further stated that the Defendant failed to keep up his commitment to vacate. Finally, by letter dated 2.3.2001, he was asked to quit and deliver vacant possession. The Defendant had sent a reply dated 10.3.2001, refuting the stand of the Plaintiff and continued to occupy the premises, in spite of withdrawal of the permission granted to him.

8. The Plaintiff quantified the mesne profits for three years prior to the filing of the suit at Rs.54,00,000/- at the rate of Rs. 1,50,000/- per month, which they claimed was a reasonable estimate measure of the fair rent. Future mesne profits at the same rate was also claimed in the suit. The suit had, therefore, been filed for the reliefs as stated above.

9. In the Written Statement filed by the defendant, it had been

claimed that the plaint is bad in law for non-joinder of his two brothers, since they are also the owners of the property and that the Defendant also claimed ownership to the property.

10. It had been stated in the written statement that the Defendant was the grand-nephew of Mrs.Mutha Andalamma. He claimed to be one of the family members of the beneficiary under her Will. He claimed that his father, N.V. Rao was the executor of her Will, dated 23.04.1967 and claimed that a bare reading of the Will would show that the suit property belongs to him, his two brothers and the signatory to the plaint, who is his sister.

11. The Defendant claimed that he was in possession of the property through the Will and had been living there from his birth. The property was originally to an extent of about 24 grounds, where there was also a house, where Sir M.Venkatasubba Rao and Lady Mutha Andalamma resided. Thereafter, about 12 grounds were sold to Alacrity Foundations Pvt. Limited and the Defendant claimed that he was in possession for himself and his two brothers in capacity as owner. He claimed to have served the Plaintiff Society from 1980 to 2000 and further claimed that the signatory to the plaint was attempting to grab the property under the guise of the Society. He specifically stated that the Plaintiff Society has nothing to do with the suit property and the suit had been filed on the basis of sham documents, propelled by the ill will of the signatory to the plaint.

12. The Defendant further claimed that it has now come as a surprise to him to know that his father had also created documents to show sale of the property to the Madras Seva Sadan, for which he himself was the

President. He claimed that there was no such document. He further claimed that he had never given power of attorney to his father to deal with his share of the suit property at any point of time. He further claimed that the signatory to the plaint, who was actually his sister, was attempting to grab the property for herself and her family members and she wanted to rid him off from the Society. He further claimed that all the members of the Governing Body of the Society were aware that the properties bequeathed by Lady Mutha Andalamma were to be enjoyed by the Defendant and his brothers and was not for the benefit of the Society. He specifically alleged that the signatory to the plaint has no intentions of honouring the spirits of the founders of the Society, but is only attempting to convert the Society into her family property. He further alleged that the complete control exercised by the signatory to the plaint and her family members had rendered the Governing Body of the Society irrelevant.

13. The Defendant further claimed that his mother also lived in the suit property along with him. He further claimed that the Plaintiff never questioned the Defendant or his mother or his brothers from 1976 till the time of filing the suit, but have now come up with sham documents to evict him. The Defendant specifically claimed that he and his mother were living in the suit property as owners and consequently payment of rent can never arise. He further specifically claimed that the Plaintiff ought to have filed a suit for declaration and possession at the earliest point of time and had not done so, since they knew that the Defendant and his brothers are the owners of the property.

14. The Defendant further specifically claimed that since his

brothers have not been shown as party-Defendants, the suit is not maintainable and also specifically claimed that the Plaintiff had not shown how they became the owners of the suit property. The Defendant denied the allegations in the plaint and specifically averred that he had not executed a Power of Attorney in favour of his father to sell his share in the suit property. He stated that the sale deeds referred in the plaint are sham and have been created by the Plaintiff out of nowhere.

15. The Defendant further admitted that he was the Honorary Correspondent of the School, but denied that he had to move out because of certain activities that did not augur well for the Institution. He denied that he was asked to vacate from the suit property. He claimed that some rowdy elements, claiming to be under the instigation of the signatory to the plaint, attempted to enter into the suit property forcefully and the Defendant had to give a police complaint in this regard on 30.3.2001. He claimed that he is not in occupation as a permissive occupant, but as owner and consequently denied liability to pay mesne profits and finally claimed that the reliefs sought in the plaint will have to be negated.

16. On perusal of the pleadings of the parties, by order dated 04.02.2014, the following issues were framed:-

1. Whether the possession of the Defendant is on the basis of the Will of the year 1969 to the knowledge of the Plaintiff?
2. Whether the Defendant has any right to continue the possession of the suit property?
3. Whether the Defendant was permitted to use the suit property in his official capacity as the Honorary Correspondent of Sir M.Venkata Subba Rao Matriculation Higher Secondary

School?

4. Whether the Plaintiff is entitled for the relief claimed in the plaint?
5. Whether any other party other than the Plaintiff has any interest in the suit property and whether any such claim has been made by any party?
6. To what other relief the Plaintiff is entitled to get?

17. Both the parties, to substantiate their rival claims, had let in oral and documentary evidence. On the side of the Plaintiff, C.Prema Kumar, the Honorary General Secretary of the Plaintiff Society and N.Venkatnarain Rao, the Correspondent of the Sir M.Venkata Subba Rao Matriculation Higher Secondary School and also a Member of the Governing Body of the Plaintiff Society, were examined as PW.1 and PW.2 and Exs.P1 to P15 were marked. On the side of the Defendant, the Defendant examined himself as DW.1 and marked Ex.D1 to D7.

18. Ex.P1 and Ex.P2 are the Sale Deeds registered as Document Nos.593 of 1976 and 594 of 1976, through which the Plaintiff Society claimed title to the suit property. Ex.P3 to Ex.P7 are the Board Resolutions of the Governing Body of the Plaintiff Society and letter relating to the permission granted and extended for the occupation of the Defendant in the suit property.

Ex. P.8 is the letter dated 2.3.2001, calling upon the Defendant to hand over vacant possession and Ex. P.9 dated 10.3.2001 is the reply sent by the Defendant refusing to accede to the demand of the Plaintiff and claiming ownership to the property. Ex.P10 is the authorisation of the Governing Body of the Plaintiff Society to PW.1 to tender evidence in the suit. Ex.P11 to

Ex.P14 are the extracts from the ledger books of the Plaintiff Society for the years 1975-1976, 1976-1977 and 1977-1978 and also the Balance Sheet as on 31.3.1976. Ex.P15, marked during the cross examination of D.W.1 is the birth certificate of the daughter of the Defendant.

19. Ex. D1 is the Memorandum of Association of the Plaintiff Society. Ex. D.2 is the copy of the Board Resolution dated 15.3.1993. Ex.D3 is the letter dated 29.7.1993 sent by PW.1 to the Defendant. Ex. D4 and Ex.D5 are the letters from the hostel boys of the school to the Defendant and from the Defendant to P.W.1 enclosing the same. Ex.D6 and Ex. D.7 are the copies of the complaint given by the Defendant to the Police and its receipt given by the Police.

20. This court heard the learned senior counsel on either side and considered their rival submissions and also perused the materials placed on record.

21. This Court was privileged to hear scholarly arguments, as has always been their forte and reputation, presented by Mr.Yashod Vardhan, learned senior counsel for the Plaintiff and by Mr. M.K.Kabir, learned senior counsel for the Defendant. They were ably assisted by Mr. Krishna Ravindran, Mr. Subramaniam Balaji and Mr.T.Jayaraman, Advocates.

22. Sir M.Venkatasubba Rao was the then Judge of the Madras High Court from 1921 to 1938. In **1938 (1) MLJ (JS) 145** at 148, the Editor, Madras Law Journal had this to say while noting the retirement of the learned Judge:-

“His qualities as a Judge gave an idea of the man also, but few know him fully outside the small circle of his intimate friends. He is warm-hearted and generous. Humanitarian work attracts

him. He took up the Madras Seva Sadan and refused to hand it over to any outside management, however efficient. It required both strength and devotion to assume all the responsibilities the assumption of management meant. In this Sir Mutta and Lady Venkatasubba Rao have shown a grit and tenacity rare in South India.”

In **48 LW (JS) 1**, the Editor, Law Weekly, had this to say, and ended with a rhetoric. A prophesy perhaps :-

“The greatest side of his character, is, his patriotism, and love of his country. His work, and his very outlook on men and things, have always been coloured and shaped by this great quality. By nature a great fighter, he has always fought against injustice and social tyranny. He has never hesitated to animadvert, often very strongly, from his eminent place, on the hardships caused by the administration of a superannuated system of law which had long outlived its environments. His judgements, noted for their thoroughness and lucidity, will ever remain monuments of learning and wisdom, to guide and instruct succeeding generations of lawyers and judges.

“Socially he was rather reticent of appearing in the limelight, preferring to devote his leisure moments in helping his wife in her great and noble life-work. Who does not know the service and sacrifices of Lady Venkatasubba Rao in the cause of the Seva Sadan ?”

Sadly, very sadly indeed, the '*service and sacrifices*', now seek justice in the corridors of the very court where Sir M. Venkatasubba Rao strode magnificently, dispensing and securing justice.

23. All the issues are interlinked. This court will necessarily have to give findings on the basis of the pleadings and the oral and documentary evidence adduced during the trial on the aspects relating to the possession of the Defendant, his claim to title based on the Will of the year 1969 of Lady Mutha Andalamma as opposed to the claim of the Plaintiff that the Defendant had only been permitted to occupy the property till he found suitable alternative

accommodation. Even though this is not a suit seeking relief of declaration of title, the Court will also have to examine the bona fide of the Defendant in claiming title, though he has not sought a separate declaratory relief in his written statement and though he has not valued such relief and paid necessary court fees.

24. The suit has been filed by the Madras Seva Sadan, represented by its Honorary General Secretary against the Defendant for the reliefs as stated above for a direction, directing the Defendant to vacate and deliver vacant possession of the suit property at No.12A, New Giri Road, T.Nagar, Chennai-17 and for past and future mesne profits and for costs.

25. The Plaintiff rests the suit on the strength of the Sale Deeds, marked as Ex.P1 and Ex.P2 and on the Board Resolutions, permitting the Defendant to occupy the suit property only as a permissive occupant.

26. The properties described in the schedule in the plaint were part of a larger area of property which had originally been purchased by Lady M.Venkatasubba Rao, who had purchased them, by two sale deeds dated 18.4.1946. Lady M.Venkatasubba Rao also known as Mutha Andalamma had given her life, blood and sweat for the upliftment and upkeep of the Madras Seva Sadan started by her late husband Justice Sir M.Venkatasubba Rao. Subsequently, since they did not had any issues, she had appointed the father of the Defendant, N.V.Rao, son of late N.Venkatrama Chetty as the Executor of her Will. She died on 12.10.1969. The Will was dated 23.4.1967. The said N.V.Rao was her nephew and also the sole Executor of the Will. He had filed OP.No.159 of 1972 and this court, by order dated 7.7.1972, had granted

probate of the Will. Originally the property measured 20 grounds. By two settlement deeds dated 31.3.1972, the said N.V.Rao settled 5 grounds in favour of each of his sons, the Defendant N.V.Rao and PW.2, N.Venkatanarain Rao. By sale deed dated 2.2.1976, out of the said entire property, both the Defendant and his brother transferred 3 1/2 grounds each and late N.V.Rao also transferred the balance land in favour of the Madras Sevan Sadan. On the same day, another sale deed was also executed by N.V.Rao, in his capacity as the Power of Attorney Agent of his son and consequently, the suit property came to be vested with the Madras Seva Sadan. The entire property now measures 12 grounds.

27. The father of the Defendant N.V.Rao was the Honorary Correspondent of Sir M.Venkatasubba Rao Matriculation Higher Secondary School, which was run by the Madras Sevan Sadan. After his death on 7.9.1992, the Defendant herein was appointed as the Honorary Correspondent from 15.3.1993. However, it has been stated in the plaint that the activities of the Defendant did not augur well for the Institution and consequently, the Governing Body, by its resolution dated 29.10.1998, removed the defendant from the post of Honorary Correspondent. It had been further stated that during the said period, he was permitted to stay at the ground floor at Sir M.Venkatasubba Rao Matriculation Higher Secondary School premises. However, after his removal, he was asked to move out and occupy the premises at 12A, New Giri Road, T.Nagar, Chennai-17 till he found alternate accommodation. The said board resolution dated 29.10.1998 had been marked as Ex.P3 and in the same, it is seen that in the meeting dated 29.10.1988 of the

Governing Body of the Madras Seva Sadan, in which the Defendant also participated, it was resolved as under:-

"Resolved to replace Dr.N.V.Rao as the Correspondent of the Sir M.Venkatasubba Rao Matriculation Higher Secondary School, T.Nagar, as of 29.10.1998."

In the said resolution, it was further resolved as follows:-

"Resolved that Dr.N.V.Rao shift over to the hostel premises with immediate effect and Mr.N.Venkatnarain Rao shift to the quarters at the school presently occupied by Dr.N.V.Rao"

It is the contention of the Plaintiff that it was in these circumstances that the Defendant came to occupy the suit premises.

28. The Defendant, in his written statement, has contended that a bare reading of the Will dated 23.4.1967 of Lady Mutha Andalamma would show that the suit property belongs to him and his two brothers and also to the signatory to the plaint, who is his sister. He had further contended in paragraph 4 of the written statement that he had been living in the said place from his birth. He had further stated that the Plaintiff Society has nothing to do with the suit property and that the suit has been filed on sham documents.

29. In effect, the Defendant claims that the Madras Seva Sadan is not the owner of the suit property and that the sale deeds dated 2.2.1976 marked as Ex.P1 and P2 are sham documents and they are sham documents because he had not given Power of Attorney in favour of his father late N.V.Rao, who was the vendor of the property to the Plaintiff Society. He had further contended that the plaintiff had never questioned him or his mother or his brother from 1976 and that he and his mother were living in the property as

owners.

30. In this connection, we will have to look at the documents produced before this court. Ex.D2 dated 15.3.1993 is the minutes of the meeting of the Governing Body of the Madras Sevan Sadan, in which the Defendant and the signatory to the plaint also participated. In the said minutes, it had been resolved that the Defendant would be the Honorary Correspondent of the Sir M.Venkatasubba Rao Matriculation Higher Secondary School. Ex.P3 is the resolution by which he was removed as Correspondent of the School. By Ex.P4, which is the minutes of the meeting held on 11.6.1999, in which also the Defendant participated, it had been resolved as follows:-

"Dr.Rao was given time till end of October to find alternate accommodation and hand over the premises. He was informed that the Seva Sadan will not be incurring any more expenses of any kind on the premises including electricity, commitment on Electricity charges after verification regarding the disputed bills will be borne by the Seva Sadan upto end of April as the hostel has been closed from April 20th."

It is, thus, seen that the occupation of the Defendant at the suit premises, which was incidentally the hostel premises of the school, was only permissive in nature and his stay was extended from time to time.

31. By Ex.P5, which is yet another minutes of the meeting of the Governing Body of the Plaintiff Society, dated 22.9.1999, in which also he participated, it was further resolved as under:-

"2. **Ref: II.A4.** A letter was received from Mr.N.V.Rohn Rao, stating that his share of Rs.13,733/- may be handed over to Dr.N.V.Rao. Therefore, the total commitment to Dr.Rao is Rs.1,01,733/- of this Rs.50,000/- has been paid. A further amount of Rs.30,000/- was decided to be paid. The balance will be paid only when Dr.Rao vacates the hostel premises. He was given time for a further period from 6 months to a year:

- a. He will not have to leave before 1.4.2000.
- b. He can on no account stay on later than 30.9.2000.

It is, thus, seen that at successive intervals, the 1st Defendant's stay at the suit premises was extended by resolutions of the Plaintiff Society. At no point of time in the said resolutions, though he participated in that, did he ever object with respect to the grant of permissive occupation and extension of permissive occupation. He never raised any issue that he was staying at the suit premises as a owner.

32. By Ex.P6 dated 9.11.2000, the signatory to the plaint in her capacity as Honorary General Secretary has stated as follows:-

"I, therefore, request you to handover the premises at your earliest. Most probably the CHIFA will be demolishing all the structures there as we find that none of them have been approved. I may add that none of them were built during my tenure.

33. By Ex.P7 dated 12.12.2000, in the minutes of the Governing Body of the Plaintiff seniority, it had been recorded as follows:-

"h. A letter has been addressed to Dr.N.V.Rao about vacating the premises at Giri Road. He has not replied, but his son has requested permission to stay on till his wedding in January 2001. This was allowed."

It is, thus, seen that again and again, the occupation was only with the specific permission of the Plaintiff Society. Permission was further granted since the wedding of the son was fixed in January 2001.

34. Finally, by Ex.P8, dated 2.3.2001, the Plaintiff issued a notice to quit and vacate the premises. The entire letter is reproduced as follows:-

“Dear Dr.Rao,

At the meeting of the Governing Body held on 11.6.1999, in your presence with your concurrence, it was resolved that you may stay at the hostel premises on Giri Road till October 1999.

Again at the Governing Body meeting held on 22.9.1999 you requested for extension of time and it was granted for a further period of one year and you were required to vacate not later than 30.9.2000.

Again, vide my letter dated 9.11.2000 you were requested to vacate the hostel premises. Your son Mr.David Rao requested that we allow you to extend your stay till his wedding in January 2001. He said that he had printed invitations to the effect that the wedding reception was to be held at the hostel premises. Therefore, the Governing Body decided at the meeting on 12.12.2000 that you can be permitted to stay till the wedding was over. This was intimated to your son Mr.David Rao.

We have been patiently awaiting news of your vacating the hostel premises, but to date, we have no indication of the same. I request you to kindly do the needful at the earliest and hand over the premises to the Madras Seva Sadan and oblige.”

35. It was only to this by Ex.P9 that the Defendant wrote the letter and he had put up a claim to title as follows:-

“ I trust that you realize that I have not been idle these past three years, but on the other hand have been accessing enough evidence to support my statements. Your above notice is not based upon facts and at no point of time have our mother, my son or myself have agreed to vacate the premises. As you are aware the house we are living in is not the Hostel premises and has been in fact our residence for the past 50 years. Our mother is 72 years old and it is not possible for her to find any other suitable accommodation, more so she is legally entitled to stay in the present premises for her life time.

The above notice has been sent only to harass the members of my family and our mother with ulterior motives. Any action taken by you to evict us unlawfully will be resisted and you will be held responsible for the same.”

In this connection, the signatory to the plaint C.Prema Kumar was examined as PW.1 and with respect to the devolution of the properties, she stated about the Will of the Lady Andalamma during the cross examination by the learned senior counsel for the Plaintiff as follows:-

“The Institution was registered under the Societies Act around the year 1940. Justice Venkatasubba Rao died on 30.12.1960. He left behind his last Will and Testament. Lady Andalamma died on 12.10.1969. She also left behind her last Will and Testament.”

Further, during the cross examination, ledger books of the Society were produced and marked and she has stated as follows:-

“The ledger book shown to me is the ledger book maintained by the seniority for the year 1975-76. The photocopies of the pages 83-85 are marked as Ex.P10 (marked after comparing and verifying with original). In pages 83-85, in all these pages, it is mentioned that the amount due to be paid to N.V.Rao, N.Venkatram Rao and N.Venkatnarian Rao under sale deed dated 2.2.1976. It is correct to state that Mr.N.V.Rao, M/s.Rama Sakthi Mission and N.Venkatram Rao and N.Venkatnarian Rao are shown as sundry creditors in the accounts maintained for the year 31st March 1976. ”

In this connection, the learned senior counsel for the Defendant had challenged the sale deeds Ex.P1 and Ex.P2 and stated that the Madras Seva Sadan was not represented by any one and consequently, it was the case of the vendor selling the property to himself and it had been further stated that the sale deed should be struck down since the consideration was not paid on the very same day. It is seen that while consistently upholding the sale to Alacrity Foundations, the Defendant has not recognised the sale to the Madras Seva Sadan.

36. At this juncture, it is relevant to refer to the provisions of Section 55(4)(b) of the Transfer of Property Act and it reads as follows:-

“55. Rights and liabilities of buyer and seller:- In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:

(4) The seller is entitled

(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, any transferee without consideration or any transferee with notice of the non-payment], for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part from the date on which possession has been delivered.”

It is seen that the vendor can have only a charge over the property. During the cross examination, DW.1 had admitted as follows:-

“After 1978, I was residing at No.36, Thirumalaipillai Road, T.Nagar, till 1988. In 1988 I moved to the house where my mother was residing and where I am presently residing. I was a member of the Governing Body from 1980 to 2000. In between there was a break for 5 years from the year 1983-1988 approximately.

I lived in Kottivakkam for about 3 years. I lived in Nungambakkam for less than one year.”

It is thus seen that the statement in his written statement that he continuously stayed in the suit property is not correct. Further, with respect to the suit property, the question and answer are as follows:-

“Q: Can you tell us who is paying the statutory dues for the suit property?

A: Earlier my father was taking care of everything. After his demise, I am not paying any dues.”

It is seen that the Defendant has not exercised any semblance of the ownership over the property. He claimed ownership, but did not pay any statutory dues attached to ownership. He only wanted to reap the benefits, but was never prepared to expend money for the maintenance of the property. His claims are indeed hollow and there is a clear touch of enjoyment without any inclination to pay for it. Again, during the cross examination, he had admitted as follows:-

“Yes, my father has sold the suit property to the Plaintiff Society but I have objections. Yes, I had given General Power of Attorney to my father because I was not residing in Chennai and I was a student and it was not by choice. I came to know about the sale in the year 1988 when I along with my brother and father sold a portion of the larger extent of property adjoining the suit property to M/s.Alacrity. My father passed away in the year 1992.

After the demise of my father, I have not taken any steps to challenge the same.”

With respect to the consideration, he had stated as follows:-

“Q: Did you receive any money for the sale of the suit property?

A: I do not remember? ”

He had not denied the receipt of consideration, but only stated that he does not remember whether he had received any consideration.

37. From the above, it is clear that the Defendant was aware of the minutes Ex.P5 and Ex.P7, but he has not challenged the same. I hold that the sale deeds Ex.P1 and Ex.P2 are valid documents. They are dated 2.2.1976 and the sale deeds are registered sale deeds. Till date, the said sale deeds have not been challenged in any court of law. Even in these proceedings the

Defendant only laid claims without substance. He had not sought for declaration of ownership and had not paid court fees for the said relief. The Defendant has admitted to the sale deeds and also to the Power of Attorney in the cross examination. He was the Honorary Correspondent between 1993 to 1998 and was originally permitted to reside in the school premises. Subsequently, he was removed as Honorary Correspondent by Ex.P3 and was permitted to reside in the suit premises. Extensions were granted only till alternate arrangements were made as acts of grace, by Ex.P4, Ex.P5 and Ex.P7. Finally by Ex.P8, he was asked to vacate. It was only at that time that by Ex.P9 he had stated that he is the owner of the property. It is inconceivable how and under what document he claims to be the owner. When he claims to be the owner, the burden is on him to prove the title. He has also not sought any relief of declaration by way of counter claim that his title has to be declared. A mere statement that he is the owner of the property cannot bring about any legality to his claim.

38. In this connection, in **2012 5 SCC 370 (Maria Margarida Sequeira Fernandes and others Vs. Erasmo jack detenue Sequeira (Dead) by LRs)** it had been held as follows:-

“64. There is a presumption that possession of a person, other than the owner, if at all it is to be called possession, is permissive on behalf of the title-holder. Further, possession of the past is one thing, and the right to remain or continue in future is another thing. It is the latter which is usually more in controversy than the former, and it is the latter which has seen much abuse and misuse before the Courts.

65. A suit can be filed by the title holder for recovery of possession or it can be one for ejectment of an ex-lessee or for mandatory injunction requiring a person to remove himself or it

can be a suit under Section 6 of the Specific Relief Act to recover possession.

66. A title suit for possession has two parts - first, adjudication of title, and second, adjudication of possession. If the title dispute is removed and the title is established in one or the other, then, in effect, it becomes a suit for ejectment where the defendant must plead and prove why he must not be ejected."

39. In **1999 3 SCC 573 (Vidhyadhar Vs. Manikrao and Another)**, it had been held with respect to Section 55(4)(b) of the Transfer of Property Act, after extracting said Section by the Honourable Supreme Court as follows:-

"41. Clause (b) extracted above provides that where the ownership of the property is transferred to the buyer before payment of the whole of the sale price, the vendor is entitled to a charge on that property for the amount of the sale price as also for interest thereon from the date of delivery of possession. Originally, there was no provision with regard to the date from which interest would be payable on the amount of unpaid purchase money. The Special Committee which suggested an amendment in this Section gave the following reason:

"This clause is also silent as to the date from which the interest on the unpaid purchase money should run. It seems fair that it should run from the date when the buyer is put in possession."

It was on the recommendation of the Special Committee that the words "from the date on which possession has been delivered" were inserted into this clause by Section 17 of the Transfer of Property (Amendment) Act, 1929 (XX of 1929).

42. This clause obviously applies to a situation where the ownership in the property has passed to the buyer before the whole of the purchase money was paid to the seller or the vendor. What is contained in this clause is based on the English Doctrine of Equitable Lien as propounded by Baron Rolfe in *Goode and Anr. v. Burton* (1847) 74 RR 633 : 1 Ex. 189. This clause confers statutory recognition on the English Doctrine of Equitable Lien. As pointed out by the Privy Council in *Webb and Anr. v. Macpherson* 30 Indian Appeals 238, the statutory charge under this paragraph is inflexible. The charge does not entitle the seller to retain possession of the property as against the buyer but it positively gives him a right to enforce the charge by suit. (See: *Venkataperumal Naidu v. Rathnasabhpathi*

Chettiar ; Shobhalal Shyamlal Kunni v. Sidhelal Halkelal Bania AIR (1939) Nagpur 210 and Basalingaya Revanshiddappa v. Chinnaya Karibasappa AIR (1932) Bombay 247.

43. In view of the above, the High Court was wholly in error in coming to the conclusion that there was no sale as only a sum of Rs. 500 was paid to defendant No. 2 and the balance amount of Rs. 4,500 was not paid. Since the title in the property had already passed, even if the balance amount of sale price was not paid, the sale would not become invalid. The property sold would stand transferred to the buyer subject to the statutory charge for the unpaid part of the sale price.”

40. The learned senior counsel for the Defendant, on the other hand, has stated that there was no resolution granting permissive occupation to anyone in the Plaintiff's family and consequently, the signatory to the plaint is only attempting to grab the property. He further stated that the Defendant had not signed in any of the resolution. He particularly challenged the sale deeds Ex.P1 and Ex.P2 and stated that the said document will not confer title since the entire consideration had not been paid at the time when the deed was executed. This position is not correct since as stated above in the decisions of the Honourable Supreme Court, even if a part consideration alone had been given, the sale will not be void. It had been further pointed out that even though the notice was issued on 2.3.2001 in Ex.P8 calling upon the Defendant to vacate the premises, the suit was filed in the year 2010. However, it has to be stated that the relationship among the parties is also to be considered. This court finds no infirmity in the suit having been filed seeking possession. In Ex.P1 and Ex.P2 sale deeds, there is a clear averment that the possession had been handed over to the Plaintiff Society. From the above, this court finds that the property had been originally purchased by Lady M.Venkatasubba Rao. She wrote a Will and appointed the father of the Defendant as the Executor of

the Will. The Defendant in his own words had answered his avocation at around the time of Ex.P1 and Ex.P2 as follows:-

“I have passed M.B.B.S Degree in the year 1977-78. I started the course in June 1968. I did not practice Medicine but I completed my intern ship. I was the owner of an estate and I had a Kalyana Mandapam. I was living from the income received from these two properties. I also had fixed deposits in the bank. I know what is the prayer in the suit. I have not filed any case against the Plaintiff Society. The suit has been filed by the Plaintiff Society represented by my sister. I have two brothers and one sister.”

41. It is seen that he never had any fixed income. I hold that N.V.Rao, the father of the Defendant, who was the Executor of the Will, sold the property back to Madras Seva Sadan, which was an Institution found by late Justice M.Venkatasubba Rao, by valid sale deeds conferring absolute title on the Plaintiff. The conduct of PW.2, also reveals that he did not also have inspiring academic career. These are factors which should have inspired the Executor of the Will to consolidate the property back to Madras Seva Sadan. In his cross examination, PW.2 had very clearly stated that he had received consideration at the time of the sale. I hold that the Defendant had laid a false claim of ownership. The Defendant cannot also lead oral evidence against a registered document and is precluded by Section 92 of the Indian Evidence Act.

42. The learned senior counsel for the Defendant pointed out Ex.D3 and Ex.D4. Ex.D3 is a letter allegedly written by the students of the school hostel and they have stated that they are being continuously disturbed from their studies by PW.2 and therefore, they sought justice. This letter was sent by the Defendant to the signatory to the plaint by Ex.D4, letter dated 12.10.1988. He had given the letter through the Head Master, Mr.David Packianathan. In

this connection, the learned senior counsel stated that since the message was delivered by the school Principal Mr.David Packianathan, much credibility must be given to the same. This court holds that reducing a school Head Master and that too renowned educationalist as Mr.David Packianathan to the role of a messenger also exposes the conduct and avarice of the Defendant.

43. The Defendant has also stated that he had not paid any statutory dues towards the suit property. He has not done so, because he is not the owner of the property. On the one hand, when he is asked to vacate the premises, he claims ownership. It is clearly established that the Defendant is only in permissive occupation and has no right to continue to be in occupation. As permissive occupation has been terminated by the Plaintiff, the Defendant has to vacate the premises and hand over possession of the same. In these circumstances, this court holds that the Defendant has to quit and vacate the premises.

44. The Plaintiff has also claimed mesne profits. This has been challenged by the learned senior counsel for the Defendant by stating that the amount fixed, namely, Rs.1,50,000/- per month as mesne profits has no basis at all and there has been no evaluation by any Engineer and the value has not been proved. This is not a litigation to fix the fair rent of the premises. The Plaintiff values the loss of mesne profits at Rs.1,50,000/- per month. In fact, there is no cross examination of PW.1 on these aspects. There being no cross examination and there being no direct denial by the Defendant, it is to be taken that they have also accepted to the value given by the Plaintiff. At any rate, the Plaintiff being the owner of the property has every right to value the property as

it feels just and correct.

45. In this case, the Plaintiff has valued the property at Rs.1,50,000/- per month as notional rent and loss in profit owing to the continued occupation of the Defendant. As determined above, the Defendant had not even paid any statutory charges. In fact in Ex.P6, it had been very clearly mentioned that the constructions in the suit property also are illegal. It is, therefore, seen that the Plaintiff is entitled to recover past and future mesne profits. The quantum of profit has to be fixed at the rate at which the Plaintiff seeks and there cannot be any quarrel over the same since the Defendant has also not objected to the said amount. Therefore, this court holds that the Defendant has to pay the mesne profits as claimed in the suit. Accordingly, all the issues are answered in favour of the Plaintiff.

45. In the result, this civil suit is allowed and decreed in respect of the reliefs (a) to (b) as prayed for, with costs. Time to vacate is three months.

09 .12.2016

Index:Yes/No
Web:Yes/No
Srcm

To:

The Record Keeper, VR Section, High Court, Madras

C.V.KARTHIKEYAN, J.

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Pre-Delivery Judgement in
CS.No.529 of 2010

09.12.2016