

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 30.08.2017

PRONOUNCED ON: 30.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No. 843 of 2006 and Tr.CS.No.769 of 2008

CS.No. 843 of 2006:-

Vimala Raj

Plaintiff

Vs

The Board of Trustees of Sri Sakthivilas Siddah
Brahmapeeth, on its Mission on Sri Sakthivilas
Mission for Health and Consciousness
represented by its Founder and Chairman
Dr.E.Srikumar

Defendant

Tr.CS.No.769 of 2008:-

Dr.E.Srikumar

Plaintiff

Vs

Vimala Raj

Defendant

Prayer:- CS.No.843 of 2006 has been filed under Order IV Rule 1 of the Original Side Rules read with Order VII rule 1 of CPC for the reliefs as stated therein. Tr.CS.No.769 of 2008 came to be filed by transfer of OS.No.7361 of 2006 from the file of the V Assistant City Civil Court, Chennai, under Order VII Rules 1 and 2 of CPC, for the reliefs as stated therein.

For Plaintiff : Mr.S.V.Jayaraman, SC for
Mr.K.Thiagarajan-CS.843/2006

For Defendant : Mr.M.Kalyanasundaram, SC for
Mr.A.Siddique Ali, SC-CS.843/2006

JUDGEMENT

CS.No.843 of 2006 has been filed, seeking a direction against the Defendant to deliver vacant possession of the suit property, bearing Old Door No.7, New Door No.13, First Cross Street, Ramakrishna Nagar, Mandaveli, Chennai-28 and also for a direction against the Defendant to pay a sum of Rs.2,96,000/- towards the claim for damages for unlawful use and occupation and for future damages at the rate of Rs.30,000/- per month from the date of the plaint till the date of delivery of vacant possession and for costs of the suit.

2. The Plaintiff had stated that she had purchased the property by a registered sale deed dated 14.2.1973, bearing Document No.8987 of 1973 in the Office of the Sub Registrar, Mylapore and thereafter, obtained sanction plan from the Corporation for construction of a building. She had put up one drawing room cum dining room and two bed rooms with attached bathrooms and a kitchen. The Defendant, namely, the Board of Trustees of Sri Sakthivilas Siddah Brahmapeeth, on its Mission on Sri Sakthivilas Mission for Health and Consciousness, represented by its Founder and Chairman, Dr.E.Srikumar, had requested the Plaintiff to use the property. The Plaintiff gave her consent on 23.11.2000 for use of the property by the Defendant for the purpose of carrying its charitable activities for its Chennai branch. Permission was granted for a period of five years, which may be extended for a further period of five years on a written request by the Defendant. Permission was accepted by the Defendant. The Defendant had not requested in writing for extension of permission subsequent to 22.11.2005. Consequently, the permission granted on 23.11.2000 for five years had expired.

3. It has been stated that the Defendant is a trespasser in the suit premises and that the Defendant without obtaining planning permission from the Corporation of Chennai/CMDA had put up an additional construction. This additional construction was put up even without the written permission and consent of the Plaintiff. The Defendant was not using it for charitable purposes or in accordance with the object clause of the Trust or in accordance with the consent given on 23.11.2000. It has been stated that the Defendant had violated the terms of permission and therefore, is liable to surrender possession of the suit property to the Plaintiff.

4. It has been stated that the Plaintiff and her husband came to India to settle down in Chennai in the suit property. The Defendant offered two AC rooms in the first floor for their stay. Since the husband of the Plaintiff was a senior citizen aged about 76 years and had also undergone by pass surgery due to heart ailment, he could not climb to the first floor. Hence, he was allotted one bed room in the ground floor by the Defendant. The Plaintiff intended to settle in the suit property and requested the Defendant to deliver possession of the suit property to the Plaintiff. However, Dr.E.Srikumar, the Founder and Chairman of the Defendant Trust had filed OS.No.7361 of 2006 on the file of the V Assistant City Civil Court, Chennai, in his individual capacity, for the relief of permanent injunction, restraining the Plaintiff herein from infringing with his peaceful possession except by due process of law. He had also filed IA.No.16059 of 2006 for grant of interim injunction, which was also granted.

5. It has been stated that the Plaintiff is in occupation of two AC rooms in the first floor and one room in the ground floor. The Defendant herein

prevented the Plaintiff from enjoyment of other portions of the suit property. In OS.No.7361 of 2006, it was also stated by the Defendant herein that the Plaintiff had agreed to convey the suit property and he had therefore improved and developed the suit property by spending a sum of Rs.50 lakhs and he had also constructed portions in the suit property. Therefore, the Plaintiff in this suit, has also sought for damages. In these circumstances, the suit had been filed for a direction to deliver vacant possession and for damages for use and occupation.

6. In the written statement filed by the Defendant, it has been stated that the Plaintiff is a disciple of the Defendant from 1995 and she was a resident of New York, USA and her husband, NSV.Raj was also a trustee of the Defendant Trust. The Defendant is a public charitable trust with headquarters at New Delhi and branch Offices at New York and Chennai. The Chennai branch is at the suit premises. It has been stated that the Plaintiff's daughter had some matrimonial issues and consequently, the Plaintiff wanted to sell the suit property. This was conveyed to the Defendant when he visited USA in February 1998. The Plaintiff also gave a copy of the letter addressed to the State Bank of India in respect of termination of lease of the suit property. The Plaintiff was in urgent need of funds. The property was originally under the occupation of State Bank of India Security Staff Quarters. The Plaintiff had authorised the Defendant to initiate proceedings to evict the said tenant and secure vacant possession of the suit property in September 1998. Thereafter, the Defendant had negotiated for purchase of the property. The Defendant requested the Plaintiff to execute a General Power of Attorney in favour of

Dr.E.Srikumar and two General Powers of Attorney were executed on 7.10.1999 at USA. The Plaintiff gave consent for use of the property, consisting of one drawing cum dining room with attached toilets to Sri Sakthivilas Mission for Health and Consciousness represented by its Founder and Chairman, Dr.E.Srikumar for the purpose of carrying on charitable activities.

7. It has been further stated in the written statement that the Plaintiff gave a letter dated 5.5.1998, authorising Dr.E.Srikumar to evict the tenant. The Defendant also evicted the tenant and obtained vacant possession. A sale price was also fixed and the Plaintiff received a sum of one lakh USD in cash in USA to settle her daughter's problem and agreed to execute the deed of transfer of title in December 1998 in favour of the Defendant. The Plaintiff also participated in Yagnas conducted by the Defendant in 1998 and 2000. However, the Plaintiff did not execute the transfer of title deed, but attempted to evict the Defendant. Consequently, the Defendant had filed OS.No.7361 of 2006 on the file of the City Civil Court, Chennai. An interim order was also obtained. The order was restricted to one room in the ground floor and two rooms in the first floor. As against the said order, the Defendant herein had filed CMA.No.136 of 2006, but it was dismissed.

8. It has been further stated in the written statement that the present suit has been filed as if the Defendant was permitted to occupy the premises on leave and licence basis. It has been stated that the Plaintiff had sought for possession of the property without reference to the rights created in favour of the Defendant. It has been stated that the letters exchanged between the parties would reveal that there was a concluded agreement of sale and

purchase of the suit property. It had been denied that permission was granted only for five years from 23.11.2000 and it was further denied that the Plaintiff and her husband wanted to settle down in India permanently. It has been stated that the Defendant had never offered two AC bed rooms in the first floor for the stay of the Plaintiff and her husband. It had been further stated that the allegation that the Defendant had surrendered one room in the ground floor and two rooms in the first floor was false. The allegation that the Plaintiff had revoked the General Power of Attorney dated 7.10.1999 by effecting publication in Makkal Kural and Deccan Chronicle on 7.9.2006 also exposed the actual intention of the Plaintiff.

9. The Defendant had filed the written statement along with a counter claim, seeking specific performance of an agreement pursuant to the payment of one lakh USD, which is equivalent to Rs.55 lakhs and an additional expenditure of Rs.50 lakhs in putting up the additional construction in the suit property. Consequently, the Defendant along with the written statement preferred a counter claim for the relief of specific performance on the agreement of sale reached during September 1998 in respect of the suit property or for a direction to the Officer of the court to execute the sale deed in respect of the suit property and also for declaration that the revocation of General Power of Attorney dated 7.10.1999 executed by the Plaintiff is illegal and invalid and for a direction against the Plaintiff to deliver vacant possession of one room in the ground floor and two rooms in the first floor in the suit property.

10. The Plaintiff had filed a reply statement. It has been stated that

the Plaintiff and her husband were well placed in USA and they were never in need of funds and there was also no matrimonial problem for their daughter. There was also no necessity to sell the suit property. It has been stated that the State Bank of India vacated the premises and handed over vacant possession in September 1998. It has been further stated that she had executed the Power of Attorney for maintenance of the property by payment of Corporation tax and other statutory charges. The Power of Attorney was cancelled in 2006. It has been specifically stated that the Defendant did not take any steps to evict the Bank Staff from the suit property. It has been stated that the State Bank of India gave possession of the suit property to the Plaintiff's brother in law, Santhanam. It has been stated that the Plaintiff never received a sum, much less, Rs.55 lakhs from the Defendant. There is also no evidence for the same and it was also denied that the Defendant spent another sum of Rs.50 lakhs towards improvement of the suit property. It has been stated that due to construction of two rooms in the first floor, the entire building had been damaged. The Plaintiff stated that one room in the ground floor and two rooms in the first floor were under her custody. It has been stated that the Defendant is only a trespasser in the suit property. The other allegations in the written statement had been denied and the Plaintiff sought eviction of the Defendant and also claimed damages.

11. As stated above, the Defendant had filed OS.No.7361 of 2006 in the City Civil Court, Chennai. That suit was transferred to the file of this court and renumbered as Tr.CS.No.769 of 2008. The Plaintiff in the said suit was Dr.E.Srikumar, in his individual capacity and the Defendant was Vimala Raj. In

the plaint in the said suit, it has been stated that the Plaintiff was the Founder, Settlor and Chairman of Sri Sakthivilas Mission for Health and Consciousness, a registered charitable trust at New Delhi and Singapore and New York and also having a branch at the suit premises at Chennai. It has been stated that he used to stay at the premises of the Defendant at New York on monthly basis. It has been stated that the Defendant had conveyed her intention to sell the suit property at Door No.7, First Cross Street, Ramakrishna Nagar, Mandaveli, Chennai. The Plaintiff had vacated the tenants. The Defendant had received one lakh USD in cash to settle the problem of her younger daughter. She agreed to transfer title deeds of the suit property in December 1998. She gave possession of the suit property to the Plaintiff. However, she requested the Plaintiff that the transaction should not be in the knowledge of her husband. The Plaintiff had stated that he did extensive renovation in the ground floor of the Society by adding one extra master bedroom, balcony, kitchen and put bathroom ceramic tiles for the entire building, replaced all doors, windows, frames, with tinted glass and iron grill and wood varnish and raised all side walls to the superstructure, iron grills for bungalow's protection, deep underground water sump. He put tiles in the entire property with garden in front and porch area with lighting, new garage with kitchen and toilet. He also put up air conditioning of the house with 24 hours stand by High Power Noise Proof Generator. He had also engaged security guards. The Defendant also gave Power of Attorney dated 7.10.1999 and the entire renovation was done at a cost of Rs.50 lakhs. It has been stated in the plaint that the Defendant had evaded execution of the sale deed. The sale deed could not be executed and

the Defendant left for USA. Thereafter, it was informed that the Defendant wanted to settle down in Chennai and would stay in the suit property. The Defendant moved their personal belongings and occupied the ground floor bed room and demanded the Plaintiff to vacate the premises. A legal notice was issued on 30.8.2006. The Defendant lodged a police complaint with ulterior motive. Consequently, the suit has been filed, seeking permanent injunction against the Defendant from interfering with the Plaintiff's possession except by due process of law.

12. A written statement had been filed by the Defendant in the said suit, stating that the Plaintiff was in possession only on leave and licence basis. The Plaintiff was permitted to occupy the suit property on payment of property tax, water tax and other public charges only for carrying out the objects of the Trust and not for individual use. However, the Plaintiff started fast food and other businesses. It has been stated that there was no agreement or consent to sell the property to the Plaintiff. The Defendant had stated that she was in occupation of two AC rooms in the first floor and one room in the ground floor. It had been therefore stated that the suit should be dismissed.

13. On consideration of the pleadings, the following issues were framed:-

- (a) Whether the Defendant was only a permissive occupant of the suit Schedule property as contended by the Plaintiff?
- (b) Whether the Defendant was put in possession in pursuance of any agreement of sale as contended by the Defendant?
- (c) Whether the Plaintiff is entitled to recovery of possession from the Defendant?

- (d) Whether the Plaintiff is entitled to damages for use and occupation, past and future? If so, to what quantum?
- (e) Whether there was any verbal agreement of sale at all in favour of the Defendant?
- (f) Whether the Defendant is entitled to specific performance of an oral contract of sale as contended by him?
- (g) Whether the Defendant has paid a sum of one lakh USD as contended in the written statement?
- (h) Whether the Defendant has improved and renovated the suit property and if so, the amount spent by him on such improvement and renovation?
- (i) Whether the improvement or renovation said to have been made by the Defendant was with the consent of the Plaintiff?
- (j) Whether the Plaintiff is entitled to any relief?
- (k) Whether the Defendant is entitled to any relief?
- (l) Whether the Plaintiff is in possession of a part of the suit Schedule property?

14. Evidence was recorded in both the suits in CS.No.843 of 2006 and Tr.CS.No.769 of 2009. Both the suits were tried together and the evidence in CS.No.843 of 2006 was taken as the lead evidence. The Plaintiff in CS.No.843 of 2006, Vimala Raj gave evidence in both the suits. Similarly, the Defendant in CS.No.843 of 2006 gave evidence in both the suits. During the trial, Vimala Raj, was examined as PW.1 and she marked Ex.P1 to Ex.P8. On the side of the Defendant, Dr.E.Srikumar was examined as DW.1. Three other witnesses, namely, A.R.Balakrishnan, Jayalakshmi Manoharan and Narayanan were examined as DW.2 to DW.4 and Exs.D1 to D50 were marked.

15. The documents marked on the side of the Plaintiff included the copy of sale deed dated 14.2.1973 as Ex.P1, copy of the General Power of

Attorney dated 7.10.1999 as Ex.P2, copy of the acceptance letter from the Plaintiff to the Defendant dated 23.11.2000 as Ex.P3, papers publications in Makkal Kural and Deccan Chronicle as Ex.P4 and Ex.P5, the letter from the Plaintiff to the Defendant as Ex.P6 and the original plan of the building as Ex.P7 and the detail estimate of quantities for the house as Ex.P8.

16. The documents marked on the side of the Defendant included the letter from the Plaintiff to the State Bank of India, dated 5.5.1998 as Ex.D1, original acceptance letter from the Plaintiff to the Defendant, dated 23.11.2000 as Ex.D2, publications in Makkal Kural and Deccan Chronicle as Ex.D4 and Ex.D5, the notice from the Defendant counsel to the Plaintiff as Ex.D7, order in Cr.OP.No.4845 of 2007 as Ex.D8, photographs as Ex.D9 and D10, letter from Santhanam to the Defendant counsel as Ex.D11, copy of the settlement deed dated 24.10.2007 as Ex.D12, the copy of the sale deed dated 14.5.2007 as Ex.D13, tax receipts as Ex.D14 to D17, publications in Deccan Chronicle and Makkal Kural dated 7.9.2006 as Ex.D18 and Ex.D19, tax receipts as Ex.D20-23, details of passport of the Plaintiff as Ex.D24, letters from the Plaintiff as Ex.D25-27, copy of fax letter received from the Plaintiff's daughter as Ex.D28, copy of the letter from the Plaintiff's husband along with Power of Attorney as Ex.D29, fax copy of the letter from the Plaintiff's husband as Ex.D32, copy of fax letter from Plaintiff's daughter as Ex.D37, copy of the order in Cr.OP.No.4845 of 2007 as Ex.D41, complaint given to E4 Abhiramapuram Police Station as Ex.D44, telegram given by the Defendant counsel to E4 Abhiramapuram Police Station as Ex.D47, letter addressed to Jayalakshmi by the daughter of the Plaintiff as Ex.D48, floor plans of the property as Ex.D49

and as Ex.D50.

17. This court heard the learned senior counsel on either side and also perused the materials placed on record.

18. For the sake of convenience, the parties herein would be referred as they are arrayed in CS.No.843 of 2006, namely, the Plaintiff and the Defendant.

19. It is the contention of the learned senior counsel for the Plaintiff that the Plaintiff and the Defendant had cordial relationship originally. Subsequently, the Defendant, who is running a charitable institution, wanted to open a branch office at Chennai and the Plaintiff being the absolute owner of the suit property was approached by the Defendant, seeking permission to run his charitable institution in the suit property. Consent for this was given. There was no rent stipulated. The Defendant was permitted to utilise the suit premisses only for the object of the charitable purposes. Consent was given for a period of five years. This was on 23.11. 2000. The period has to be extended on request by the Defendant.

20. On the other hand, the learned senior counsel for the Defendant stated that the Defendant was in possession pursuant to an agreement of sale, which was oral in nature and pursuant to which, the Defendant had paid one lakh USD, which was equivalent to Rs.55 lakhs to the Plaintiff and consequently, he was in possession. It is also further contended that prior to taking possession, the Defendant had been instrumental in evicting the erstwhile tenant, namely, State Bank of India Employees Association and after evicting them, the Defendant took possession of the property. Since there was

an agreement to purchase the property, he also spent substantial amounts in renovating and improving the property. In the written statement, it has been stated that he had constructed additional rooms in the ground floor, built a servant quarters, put up a sump, dug a bore well, constructed the compound wall, changed the entire fixtures in the building, put up two additional rooms in the first floor and put up a over head tank and in all these, a sum of Rs.50 lakhs was spent. Consequently, the Defendant claimed to be in possession in his own right as having paid the entire sale consideration towards the suit property.

21. However, the above aspect has been countered by the learned senior counsel for the Plaintiff by stating that the Defendant has relied on an oral agreement of sale, without mentioning the date of agreement and the place of the agreement and the total consideration fixed under the agreement. The learned counsel vehemently denied that there was any agreement of sale or that there was payment of one lakh USD by the Defendant to the Plaintiff.

22. It is the further contention of the learned senior counsel for the Defendant that the Plaintiff suddenly came to India and decided to settle down in the suit property and started to give trouble to the possession of the Defendant. Consequently, he had filed the suit, which had subsequently been transferred to this court and renumbered as Tr.CS.No.769 of 2008, seeking injunction and protection of possession. Interim injunction was also granted. In so far as the present suit is concerned, the Defendant had also filed a counter claim, seeking specific performance of the oral agreement of sale.

23. In the light of the above arguments by the learned senior counsel on either side, the issues, which had been framed for consideration,

will have to be dealt with.

24. **Issue (a):-** The Plaintiff, Vimala Raj is the absolute owner of the suit property, which is situated at Old Door No.7, New Door No.13, First Cross Street, Ramakrishna Nagar, Mandaveli, Chennai-28. The Plaintiff had purchased the property by Ex.P1, which is the copy of the sale deed dated 14.2.1973. She has been in possession of the suit property. The husband of the Plaintiff was employed in USA. Ex.D24 is the passport details of the Plaintiff. This has actually been filed by the Defendant. It is seen that it was issued on 17.5.2001 at Charleston, USA for a period of five years with expiry date on 16.5.2011. Much earlier to the present suit, the Defendant had filed OS.No.7361 of 2006 in the City Civil Court, Chennai. In the said suit, the Defendant had claimed that he was the Founder, Settlor and Chairman of Sri Sakthivilas Mission for Health and Consciousness, which was duly registered charitable trust at New Delhi, Singapore and New York and also having branch office at Chennai. The branch office address was given as the suit property.

25. According to the averments made in the plaint, it has been stated that the Defendant herein was in possession of the suit property in his capacity as an agreement holder. It is evident that he did not give any date for the agreement of sale. On the other hand, he stated that he had given one lakh USD to the Plaintiff herein and further, it was "to settle the problem of her younger daughter." After giving such payment, the Defendant herein claimed that as return consideration, the Plaintiff had agreed to transfer title deeds of the suit property during her visit to Chennai. This raises two important issues.

26. The first issue is that even assuming that the claim of payment

of one lakh USD is taken to be true, it was not towards the sale of the property, but paid as a settlement for the problem of the younger daughter of the plaintiff. When that is the objective, taking the property as consideration for such payment would in fact render the agreement itself void. The Defendant herein appears to have taken advantage of the weakness of the Plaintiff and her anxiety in settling the issues of her daughter. He appeared to have helped her by giving one lakh USD, but at the same time, extracted a promise to convey the house. This renders the entire agreement void. However, the learned senior counsel for the Plaintiff did not press the above aspect, but stated that there cannot be and there was no agreement of sale since the Defendant herein had not given the date of agreement of sale and had also not given the total consideration for the premises and had also not given the details of the payment of advance amount. Merely stating that one lakh USD was paid can never be taken to imply that it was actually paid since there is no proof for the same. The learned senior counsel for the Defendant also admitted that there is no proof for payment one lakh USD in cash to the Plaintiff and there is absolutely no proof that it was paid towards purchase and sale of the suit property.

27. As a matter of fact, even according to the pleadings of the Defendant in Tr.CS.No.769 of 2008, which was originally filed as OS.No.7361 of 2007, the amount was paid only to settle the problem of the daughter of the Plaintiff. Therefore, by no stretch of imagination can it be stated that the said amount was paid towards sale consideration for the house. When that aspect is ruled out, the next aspect is the possession of the Defendant.

28. Admittedly, the Defendant is in part possession of the suit property. According to the Plaintiff, the Defendant is in possession by her consent. There are no records produced by either side to show that such possession was as a tenant or as a lessee. The only documents produced are Ex.D2 and Ex.D6, in which the Plaintiff herein had given her consent for the Defendant to be in occupation in possession of the house. Ex.D2 and Ex.D6 had been executed at USA. In the said documents, the Plaintiff written as follows:-

“As discussed with you, I am pleased to give my consent for the use of my property at No.7, First Cross Street, R.K.Nagar, Mandaiveli, consisting of one drawing cum dining room, two bedrooms with attached bathrooms of which I, Vimala Raj am the absolute and sole owner, to Sri Saktivilas Mission for Health and Consciousness for the purpose of carrying on its charitable activities as per the object clause of the Trust. I have no objection for the Mission using the property as its Chennai Branch.

It is further affirmed that I am giving right of use of the said property to the Trust without charging any rent or premium for its use which may be taken as donation to the Trust.

That all expenses for maintenance, taxes to be paid to the Local or Other Authorities having jurisdiction shall be the responsibility of the Mission. This property shall be used by the Mission for a period of five years which may be extended for a further period of five on written request of the Mission.”

29. With respect to this, during the cross examination DW.1, the following questions and answers were recorded:-

“Q: I put it to you the permission to use the premises granted for a period of 5 years expired by November 2005 and thereafter your occupation is unlawful and you are a trespasser illegally occupying the premises.

A: There is also a further clause in Ex.D2 to the effect that the permission may be extended for a further period of 5 years on the written request of the Trust. I have written a letter to her and

handed over in person in March 2000 at Singapore when she visited there, but I have not received any reply from her.

Ex.D35 is that letter which I handed over personally to the Plaintiff on 22.3.2005 at Singapore. There is no acknowledgement given by the Plaintiff for receipt of this letter Ex.D35.

Q; I put it to you that ExD35 is a fabricated letter prepared for the purpose of this case.

A. I deny the suggestion.

I have New Delhi about Ex.35 in my proof affidavit. It is correct to state that I have not stated in paragraph 17 of my proof affidavit that I handed over Ex.D35 letter in person to the Plaintiff when she was staying at my residence on 22.3.2005.

Q: I put it to you that Ex.D35 being a fake letter, your occupation of the premises after November 2005 is illegal and unlawful and is against the terms of the letter Ex.D2.

A: I deny the suggestion.

Q: I put it to you that under the letter of consent under Ex.D2, Sri Sakthi Vilas Mission was granted restricted permission to use the premises for charitable activities, but you are using the premises for your own purposes and you and your family members are living there.

A: Yes.”

30. With respect to the same, the Plaintiff was also cross examined

and she stated as follows:-

“I have permitted the trust to use two rooms with attached bath room and dining cum living hall. I have stated the fact in Ex.D6. For period of five years only Ex.D6 was executed. I do not know when the Defendant put up unauthorised construction. I came to know only in the year 2005 when I came to India.”

31. From the above, the following facts came into light:-

- i. The Plaintiff is the absolute owner of the suit property.
- ii. The Defendant is in possession of a portion of the suit property.

- iii. The Defendant had not produced any agreement of sale as contended by him or proof for payment of one lakh USD towards the agreement of sale.
- iv. The Defendant had also not produced any proof to show that he was paying any rent for the suit property.
- v. The Plaintiff had produced Ex.D2 and Ex.D6, which clearly show that the Defendant was given permission to reside in the suit property and use it for charitable purposes.
- vi. The Plaintiff came to India only in the year 2005 and at that time, came to know that the Defendant had put an additional construction over the suit property.
- vii. The Defendant had not produced any document to show that he applied for planning permission or obtained consent of the Plaintiff before putting up additional construction.
- viii. There is no document to show that the Defendant had actually handed over the letter in Ex.D35.

32. A summary of the above leads this court to come to the irresistible conclusion that the Defendant was only in permissive occupation. He did not pay any rent and did not produce any document to show that he was in occupation as a statutory tenant or under any other capacity.

33. 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."

34. A permissive occupation can be any occupation only till such time he is given permission to reside in the said place. Once the permission is revoked, the occupant is under an obligation to vacate and hand over vacant possession.

35. In the present case, the Plaintiff has specifically stated that the time granted for five years had expired by efflux of time. Consequently, the Defendant had no other option except to surrender possession. In answer to the above issue, I hold that the Defendant was only in permissive occupation of the suit property and permission was by way of Ex.D2 and Ex.D6 and this permission was for a period of five years from 23.11.2000 and had expired on 22.11.2005. Accordingly, this issue (a) is answered in favour of the Plaintiff.

36. **Issues (b), (e), (f) and (g):-** These issues relate to the alleged oral agreement of sale said to have been entered into between the Plaintiff and the Defendant. The Plaintiff had denied any agreement of sale, much less, oral agreement of sale. Consequently, the Defendant, who put up such a case, and who has also put up a counter claim, seeking specific performance, has an initial and complete burden of establishing that (1) there was an oral agreement of sale, (2) there was consensus ad idem, (3) the oral agreement was only for sale of the suit property, (4) date of the oral agreement of sale, (5) total consideration which was arrived at, (6) advance paid, (7) time limit within which

the sale deed should be executed and (8) witnesses to speak about the said oral agreement of sale.

37. In the present case, the Defendant has not established any of the above. All that he had stated was that he had paid a sum of one lakh USD, and again had stated that it was paid "to settle the problem of the Defendant's daughter". Here, the Defendant is the Defendant in Tr.CS.No.769 of 2008, who is the Plaintiff in CS.No.843 of 2006. Even if the extreme case of payment of one lakh USD is accepted by the court, then the Defendant by his own pleadings admitted that it was not for sale consideration.

38. A person cannot take advantage of making payment for settling problems of the Plaintiff's daughter and in turn ask for execution of the sale deed of the house. The entire object is unlawful. The Defendant therefore falls on his own plea. A very careful reading of the plaint in Tr.CS.No.769 of 2008 and the counter claim in CS.No.843 of 2006, reveals that the Defendant had not even fixed the year in which the alleged agreement of sale took place. There had been contradictory stands taken by him. He has not established the date of the agreement and he has not established the total consideration for the agreement of sale. He has not established that he had paid one lakh USD towards the agreement of sale. On the other hand, he has stated that he had paid one lakh USD for some other purpose and extracted the house as a consideration. To repeat it, the object is unlawful and the consideration is unlawful. The court cannot come to the assistance of such a kind of attitude of the Defendant.

39. As a matter of fact, when according to the Defendant he was put

in possession in pursuant to the agreement of sale, the Defendant had not even established any agreement of sale. On the other hand, by way of Ex.D2 and D6, the Plaintiff has established that the Defendant was put in possession of the suit property by permission only for a period of five years. He had entered into the house as a tenant and took possession of the entire house and only offered two rooms in the first floor and one bed room in the ground floor to the Plaintiff, who is the owner of the entire house. The Defendant does not deserve any consideration at all with respect to the pleas which he has taken. Consequently, I hold that the Defendant was not put in possession pursuant to any agreement of sale. As a matter of fact, there has been no agreement of sale and accordingly, there cannot be any specific performance in the absence of establishment of oral agreement of sale and the entire case of the Defendant has to be negated and this issue not only answers the issues (b), (e), (f) and (g) framed as above, but also answers the counter claim raised by the Defendant, seeking specific performance to the effect that there is no agreement at all entered into between the parties to specifically enforce.

40. In 1996 1 CTC 620 (Shoba Viswanathan Vs. D.P.Kingsley) in an Original Side Appeal, the Division Bench of this court, while considering a suit for specific performance, had observed that in an agreement of sale entered into with a non citizen and when it is transpired that permission had not been obtained from the Reserve Bank of India for sale, the relief for specific performance was discretionary and further since the purpose of the Foreign Exchange Regulations Act, which was prevalent at that point of time, was to ensure economic health of the Nation, the Court has to take into consideration

the statutory rights of the Reserve Bank of India and national interest and finally held that enforcement of a contract against the provisions of law will amount to enforcement of illegal contract. On those grounds, the Division Bench of this court had negated the claim seeking specific performance of the said agreement.

41. In the present case, the sale consideration was said to have been paid by way of one lakh USD, for which there is no proof that necessary permission had been obtained. Even if the agreement is accepted, it becomes unenforceable. Accordingly, these issues (b), (e), (f) and (g) are answered against the Defendant and in favour of the Plaintiff.

42. Issues (c) and (d):- The Plaintiff had permitted the Defendant to use the property for a period of five years only for charitable purposes. The five years period had expired on 22.11.2005. The Defendant was under an obligation to vacate and hand over possession. On the other hand, he continued to be in possession. The Plaintiff is the absolute owner of the property. The evidence of DW.2 to 4 will not be of any assistance to the Defendant since all of them spoke about the usage of the property by the Defendant. This usage is illegal after November 2005. Consequently, any evidence let in by the Defendant to support his case has to be negated by the court and the Defendant falls on his own pleading. He was only in permissive occupation. Time granted for occupation had expired and he has to vacate. If he continues in possession, he has to pay damages. Consequently, I hold that the Plaintiff is entitled for recovery of possession. Having been in illegal and unlawful possession, from 2005, it is only just that the Defendant has to pay

damages for use and occupation. The Plaintiff has claimed damages of Rs.30,000/- per month. It is for the Defendant to come and let in evidence with respect to the same. The Defendant failed to do so. Then, the Plaintiff is naturally entitled to claim damages. Consequently, the Plaintiff is entitled for damages for use and occupation of the suit property both past and future. These issues (c) and (d) are answered in favour of the Plaintiff.

43. **Issue (h):-** When the Defendant took possession of the suit property, there had been only one floor in existence and subsequently, he had constructed substantial portion of the ground floor and also put up first floor and also a over head tank. No man can take advantage of his own illegal action. He has not obtained any permission from the Plaintiff for putting up such constructions and he has put up such construction on his own will and wish. It was not the Plaintiff who required such construction. Basic courtesy requires that the Defendant should have informed the Plaintiff before putting up such construction. In fact, the Plaintiff has brought to the notice of this court Ex.P7, which is the original plan for the suit property. It shows that there was only ground floor in existence. Subsequently, having entered into the suit property as a permissive occupant, the Defendant had continuously started to put up construction. The evidence on the part of the Plaintiff is that she was in USA from 2000 to 2005 and when she came back to India in 2005, she saw that the Defendant had put up construction as stated by him in his written statement. The Defendant is not entitled to recover any money towards the construction put up. He has to fall because of his own illegal activities. As a matter of fact, the Plaintiff alone is entitled for damages as against the Defendant for putting

up such illegal construction. Consequently, I hold that the Defendant is not entitled for any amount spent by him for putting up such construction. He has also not produced any bills for such construction and not produced any proof that he had constructed the building by legal means. I am not inclined to agree with the contention of the Defendant in this regard. Accordingly, issue (h) is answered against the Defendant.

44. **Issue (I):-** Tr.CS.No.769 of 2008 was originally filed in the City Civil Court, Chennai, as OS.No.7361 of 2006 and that suit was filed by the present Defendant in CS.No.43 of 2006. He sought an order of interim injunction as against the present Plaintiff. Injunction was granted. Subsequently, the order was modified to the extent of injunction excluding the two rooms in the first floor and one room in the ground floor. Consequently, it is clear that the Plaintiff is in part possession of the suit property. The Defendant had filed an appeal as against the said modification and the appellate court also dismissed the appeal. Therefore, the Plaintiff is already in part possession of the suit property and I hold this issue (I) in favour of the Plaintiff.

45. **Issues (j) and (k):-** With respect to these issues, I hold that the Plaintiff is entitled to recovery of possession of the suit property, a sum of Rs.2,96,000/- towards damages for unlawful use and occupation of the suit property as on the date of the suit and a sum of Rs.30,000/- per month from the date of plaint till the date of delivery of vacant possession towards future damages. With respect to the counter claim of the Defendant, I hold that the Defendant is not entitled for any relief and accordingly, the counter claim is rejected and dismissed.

46. In the result, CS.No.843 of 2006 is decreed as prayed for with costs. Tr.CS.No.769 of 2008 is dismissed with costs.

30.10.2017

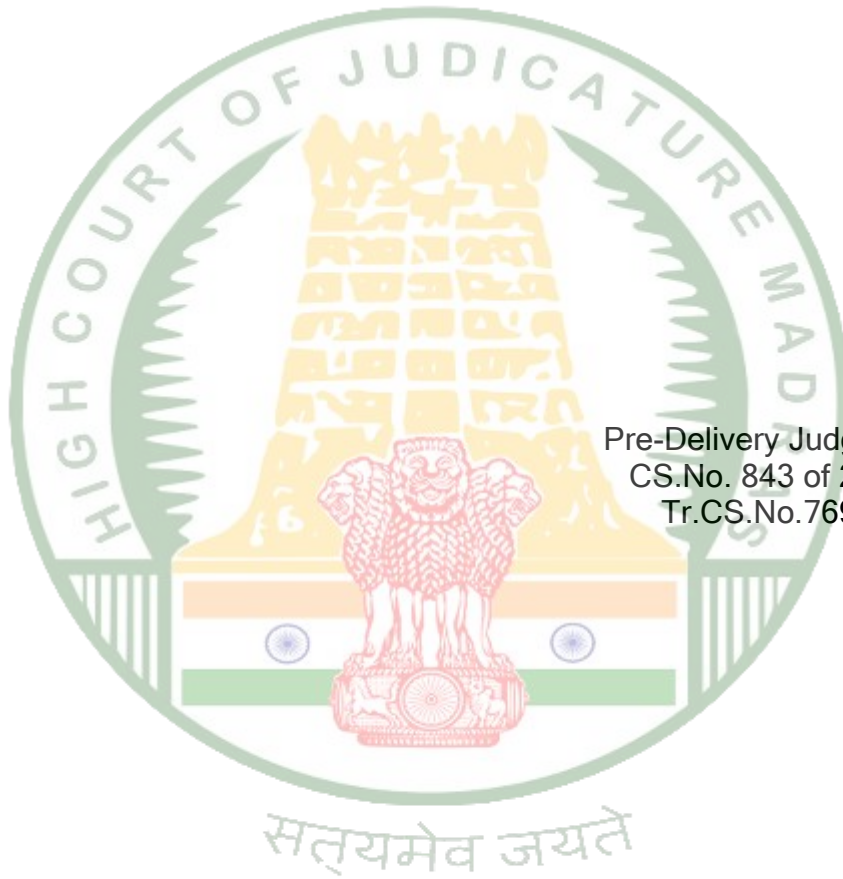
Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm

To:

1. The Record Keeper, VR Section, High Court, Madras



WEB COPY



Pre-Delivery Judgement in
CS.No. 843 of 2006 and
Tr.CS.No.769 of 2008

WEB COPY

30.10.2017