

***HON'BLE SRI JUSTICE R.KANTHA RAO**

+ Second Appeal No.540 of 2006

% Date: 08.04.2011

Between:

Borugadda Martin Luther

...Petitioner

And

\$ Andhra Evangelical Lutheran Church,Guntur
rep. by its President and others

...Respondents

! Counsel for appellant: Sri Raja Reddy Koneti

^ Counsel for respondents: Sri Masthan Naidu Cherukuri

< GIST:

>HEAD NOTE:

? Cases referred:

1 AIR 2008 SC 2291

2 AIR 2007 SC 900

HON'BLE SRI JUSTICE R.KANTHA RAO

SECOND APPEAL No.540 of 2006

Date:08-04-2011

Between:

Borugadda Martin Luther ...Appellant

And

Andhra Evangelical Lutheran Church,Guntur
Rep. by its President and others

...Respondents

HON'BLE SRI JUSTICE R.KANTHA RAO

SECOND APPEAL No.540 of 2006

-

-

JUDGMENT:

This second appeal is directed against the judgment and decree dated 06.04.2006 passed by the Additional Senior Civil Judge, Narsaraopet in A.S.No.60 of 2003 whereby and whereunder the learned Additional Senior Civil Judge reversed the judgment and decree dated 10.02.2003 passed by the learned Principal Junior Civil Judge, Sattenapalli in O.S.No.303 of 1998.

I have heard the learned counsel appearing on either side.

For convenience sake, the parties will be referred as "the plaintiff and the defendants".

The plaintiff instituted the suit for specific performance of lease agreement dated 06.12.1996 and for permanent injunction against the defendants. The defendants are the representatives of the governing

body of Andhra Evangelical Lutheran Church, Guntur. According to the plaintiff the said unregistered lease agreement was executed in his favour by the members of the executive council of Andhra Evangelical Lutheran Church, Guntur. According to the plaintiff, the lease agreement was executed by treasurer and one of the trustees of the Church who are authorized to do so, on behalf of the Church. It is said that the lease is for a period of 49 years i.e. 07.12.1996 to 06.12.2045 on certain agreed rent. It is submitted by the plaintiff that subsequently a registered lease deed was agreed to be executed with the approval of the executive council. The agreement is marked as Ex:A-24 and according to the plaintiff subsequently the registered lease deed was executed and the said registered lease deed was marked as Ex.A-12. The plaintiff withdrew the relief of specific performance of agreement of lease dated 06.12.1996. Therefore, the plaintiff only pressed for the relief of permanent injunction and the question arose for consideration before the trial court was only whether the plaintiff was entitled for permanent injunction as prayed for against the defendants.

The defendants stoutly opposed the claim made by the plaintiff on the ground namely that as per the Article 6 (2) of the Constitution of the

church, all the documents relating to the property of Church shall be executed by the treasurer of the church and one of the other trustees for and on behalf of the Church. The case of the defendants is that K.Nathanial who is said to be one of the executants of Ex.A-24 lease agreement in favour of the plaintiff was not the president of the church on the said date. In the judgment in Civil Appeal No.19087 of 1997, the copy of which is marked as Ex.B-1 by the defendants, it is clearly held by the Supreme Court that K.Nathanial acted as President in the year 1993 and he ceased to be the Vice-President on the expiry of two years period and in his place one G.I. Immanuel was elected as Vice President. According to the defendants, therefore, the term of G.I. Immanuel as Vice-president expired some time in May, 1997 and thus, as per the judgment of the Supreme Court K. Nathanial is not the President and not even the office bearer on the date of execution of Ex.A-24. The defendants therefore contended before the learned trial Court that the persons who joined as executants of Ex.A-24 unregistered lease agreement are not at all office bearers at relevant time and the documents said to have been executed by them in favour of the plaintiff are void *ab initio* and the plaintiff had not required any right or interest in the property and in fact he is also not in possession

of the property.

The learned trial Court, however, repelling all the contentions urged by the defendants, decreed the suit on the premise that under Ex.A-24 the possession of the schedule property was handed over to the plaintiff. Aggrieved by the said judgment and decree, the defendants preferred A.S.No.60 of 2003 which was heard and disposed of by the Additional Senior Civil Judge, Narsaraopet.

The learned Additional Senior Civil Judge Narsaraopet took into consideration the factors namely no documentary evidence has been placed by the plaintiff in proof of his possession over the schedule mentioned property, the witnesses examined on his behalf also did not specifically state about the actual possession of the plaintiff over the schedule mentioned property and the nature of his possession. The learned first appellate Court mainly took into consideration the judgment of the Supreme Court in Civil Appeal No.19087 of 1997 according to which the executants of Ex.A-24 agreement are not the members of the executive council of the Church at relevant time and therefore,

Ex.A-24 as well as Ex.A-12 registered lease agreement which was

executed basing on Ex.A-24 are the documents void *ab initio* and they do not confer any rights on the plaintiff. In **MANDALI RANGANNA AND OTHERS ETC. v.**

T. RAMACHANDRA AND OTHERS^[1] it was held that while granting or refusing relief of injunction the courts besides considering basic elements required for grant of temporary injunction also should consider the conduct of the parties. The Supreme Court said that the grant of injunction being equitable relief, such relief cannot be granted to a person whose conduct is suspicious and who failed to prove that he at any point of time had exercised any act of possession over the subject matter of the dispute. Similarly in **RAMJI RAI AND ANOTHER v. JAGDISH MALLAH (DIED) THROUGH L.Rs. AND ANOTHER**^[2] it is held by the Supreme Court that when the plaintiff failed to make out the prima facie case of possession in his favour, the suit filed by them for grant of permanent injunction is liable to be dismissed.

In the instant case, admittedly the church is the owner of the property for which the defendants 1 and 2 are the members of the executive council. As per the judgment of the Supreme Court in Civil

Appeal No.19087 of 1997 the executants of Ex.A-24 unregistered lease agreement are not office bearers of the defendants' church at relevant time. The plaintiff also failed to adduce convincing evidence saying that under the said unregistered lease agreement he took possession of the property and he is continuing the possession of the same on the date of the suit.

For all the aforementioned reasons, the learned first appellate Court rightly dismissed the suit for permanent injunction filed by the plaintiff by reversing the decree and judgment passed by the learned trial Court. The findings recorded by the first appellate court are based on evidence and reasoning and they do not call for any interference in the second appeal. The finding of fact arrived at by the 1st appellate Court are final. This court in the second appeal will interfere with such findings only when they are not based on evidence on record or perverse. Moreover, this case does not involve any substantial question of law for consideration in the second appeal which is *sine qua non* for exercising jurisdiction by this Court to entertain the second appeal.

The second appeal, therefore fails and the same is dismissed.

There shall be no order as to costs.

R. KANTH RAO,J

Date:08-

04-2011

-

Note:

L.R. copy to be marked.

B/O

CCM

HON'BLE SRI JUSTICE R.KANTHA RAO

SECOND APPEAL No.540 of 2006

Date:08-04-2011

[\[1\]](#) AIR 2008 SC 2291

[\[2\]](#) AIR 2007 SC 900