IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	18.06.2021
Delivered on	02.07.2021

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MS.JUSTICE R.N.MANJULA

O.S.A.Nos.188, 189 and 362 of 2018
& C.M.PNos.21271, 9872, 21275, 9891, 21276 of 2018

O.S.A.Nos.188, 189 and 362 of 2018

The Board of Trustees,
Sri Sakti Vilas Siddha Brahmapeeth,
On its Mission on Sri Sakthivalas Mission
for Health and Consciousness,
represented by its Founder and
Chairman Dr.E.Srikumar,
No.13/7, 1st Cross Street, Ramakrishna Nagar,
Mandavelli, Chennai-600 028. ...Appellant/Defendant

Vs.

Mrs.Vimala Raj ...Respondent/Plaintiff

C.S.No.843/2006

Mrs.Vimala Raj ...Plaintiff

Vs.

The Board of Trustees,
Sri Sakti Vilas Siddha Brahmapeeth,
On its Mission on Sri Sakthivalas Mission
for Health and Consciousness,
represented by its Founder and
Chairman Dr.E.Srikumar,
No.13/7, 1st Cross Street, Ramakrishna Nagar,
Mandavelli, Chennai-600 028. ...Defendant

Tr.C.S.No.769 of 2008
Dr.E.Srikumar ...Plaintiff

Vs.

Mrs.Vimala Raj ...Defendant

Common Prayer: These Original Side Appeals are filed under Order XXXVI Rule 9 of O.S.Rules read with Clause 15 of amended Letters Patent 1805, against the common judgment and decree dated 30.10.2017 made in C.S.No.843 of 2006 and the counter claim and Tr.C.S.No.769 of 2008, dated 30.10.2007 respectively.

For Appellant	..	Mr.M.Babu for Mr.K.S.Govinda Prasad
For Respondent	..	Ms.S.P.Arthi

COMMON JUDGMENT

R.N.MANJULA, J.

These three Original Side Appeals have been preferred against the common judgment and decrees passed by a learned single Judge of this Court in C.S.No.843 of 2006 and its counter claim and Tr.C.S.No.769 of 2008, dated 30.10.2007.

2. The Appellant was the defendant in O.S.843/2006. Since the parties to the lis, issues vis-a-vis facts are common, these appeals are taken up together and disposed vide a common judgment.

3. The brief facts of the case from which the present appeals have been filed, in brief, are stated as under:

The Appellant claims to be the Founder and Chairman of a charitable trust by name Sri Sakthivilas Siddha, Brahmapeeth on its Mission on Sri Sakthivilas Mission for Health and Consciousness. The respondent is the owner of the suit property situated at Mandavelli, Chennai, in which she has built a house. When she was residing in U.S.A. along with her husband, she allowed the property to be used by the Appellant for the purpose of carrying charitable activities of the trust in Chennai. On 23.11.2000, the respondent had given a written permission for a period of five years which may be extended for a further period of five years on a written request from the Appellant. The Appellant continues to remain in the occupation of the premises. After occupying the premises, the Appellant put up some additional structures and made improvements in the suit premises. The respondent decided to come back to India and settle down and came to India with her husband. During that time, the Appellant offered two AC rooms in the 1st floor, one room in the ground floor for the use and occupation of the respondent and her husband. Since the respondent disturbed the possession of the appellant, he filed a suit against the respondent in O.S.No.7361 of 2006 before the Vth Assistant Judge, City Civil Court, Chennai in his individual capacity for permanent injunction and for damages against the respondent and that got transferred to this Court and renumbered as Tr.C.S.No.769 of 2008.

4. The respondent has a different cause of action for filing the suit in O.S.No.7361/2006. According to the pleadings of the respondent, she permitted the Appellant trust to make use of the suit property for the purpose of running its charitable activities. But the Appellant did not use the property for the said purpose. When the respondent was residing in U.S.A, she gave a power of attorney to the Appellant for maintaining the suit property. Since the respondent had expressed her intention to settle in India with her husband, she requested the Appellant to vacate and deliver the possession of the suit property. But she could only stay in a portion of the suit property. The Appellant without considering the request of the respondent, filed a suit in O.S.No.7361 of 2006 before the Vth Assistant Judge, City Civil Court, Chennai in his individual capacity for permanent injunction and for damages (transferred to this Court subsequently and renumbered as Tr.C.S.No.769 of 2008). Since the Appellant disturbed the respondent and went against her interest in the suit property, she cancelled the Power of Attorney given to the Appellant in the year 2006 by way of giving publications in Tamil and English Dailies. The respondent filed a suit in C.S.No.843 of 2006 against the Appellant for recovery of possession and damages of Rs.2,96,000/- towards unlawful use and occupation of the suit property and also for future damages at the rate of Rs.30,000/- per month from the date of plaint till the date of delivery of vacant possession.

5. The Appellant has filed a written statement with a counter claim. He stated that in the year 1998 itself, the respondent agreed to sell the suit property to him for one lakh U.S. dollars and he was inducted into the suit property in pursuance of the sale agreement and he made a counter claim claimed decree for specific performance in respect of the suit property and also for declaration that the revocation of the General Power of Attorney dated 7.10.199 executed by the respondent is illegal and invalid and also for a direction to deliver the vacant possession of one room in the ground floor and two rooms in the first floor situated in the suit property. He claimed that the respondent did not abide by the terms of the sale agreement and did not execute the sale deed, after

receiving the entire sale consideration, he is entitled to the relief of specific performance.

6. The following issues were framed in the suit basing on the above pleadings:-

> “(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?”

7. Since the suit filed by the Appellant in O.S.No.7361 of 2006 before the City Civil Court, Chennai, was transferred to

the file of this Court and renumbered as Tr.C.S.No.769 of 2008 and tagged with C.S.No.843 of 2006 for conducting joint trial, C.S.No.843 of 2006 was taken as the lead case to record evidence. And the respondent was examined as PW.1 and on the side of the respondent, Exs.P1 to P8 were marked. On the side of the Appellant, four witnesses including the Appellant have been examined as DW1 to DW4 and Exs.D1 to D50 were marked.

8. After the conclusion of the trial and after hearing both parties, the learned Single Judge decreed the suit filed by the respondent in C.S.No.843 of 2006 and dismissed the counter claim of the Appellant. The suit filed by the respondent in his personal capacity in Tr.C.S.No.769 of 2008 was also dismissed. Aggrieved over the same, the Appellant have filed three Appeals.

9. The main grounds which the Appellant has raised in these Appeals are that the learned single Judge is not right in holding that his possession over the suit property is illegal; the Court should have held that the revocation of power of attorney executed in favour of the Appellant by the respondent is illegal and that the learned single Judge has omitted to consider the amount spent and the improvements made by the appellant in the suit property. It is submitted that the learned Single judge has not appreciated the evidence on record properly and it is not correct to hold that the Appellant is not entitled to the reliefs prayed by him.

10. From the grounds raised by the Appellant, the following points for consideration would arise for discussion:-

1. Whether the possession of the Appellant in the suit property is legal?

2. Whether the Appellant has proved the oral sale agreement between himself and the respondent and payment of sale consideration?

3. Whether the Appellant is entitled to get a decree for specific performance?

4. Whether the legality of the cancellation of power of attorney given to the Appellant by the respondent would impact the result of the case in favour of the appellant?

5. Whether the evidence of the Appellant has not been properly appreciated by the learned Single Judge?

6. Whether the Appellants are entitled to the reliefs as prayed for?

11. Points 2 and 3:- It is submitted by the Appellant that he is the founder and Chairman of Sri Sakthivilas Mission for

Health and Consciousness, a registered charitable trust which has branches at Chennai, Singapore and New York and also at New Delhi. The respondent and her husband were residing in U.S.A. The Appellant claims that the respondent was the disciple of the Appellant from the year 1994 and the Appellant is her family guru. He used to stay at the house of the respondent whenever he visited U.S.A and the husband of the respondent is also a trustee and he is involved with the branch in U.S.A. It is the contention of the Appellant that the respondent wanted to sell the suit property in the year 1998 itself, as she had some financial urgency due to her daughter's marital issue. It is stated by the Appellant that the respondent discussed with the Appellant about selling the property and it was orally agreed between the Appellant and the respondent to sell the suit property to the Appellant for one lakh U.S. dollars. It is further stated by the Appellant that the said sale consideration equalling to 55 lakhs of Indian Rupees have been paid to the respondent on 3 or 4 occasions and only in view of that oral agreement for sale, the Appellant was put into possession of the suit property after the previous tenant, State Bank of India had vacated. And further the respondent has executed a Power of Attorney in favour of the respondent to manage the property.

12. According to the respondent there was no agreement of sale as alleged by the Appellant though he was known to her through the trust activities; and she just allowed the premises to be used for the purpose of performing the charitable activities of the Trust for a period of 5 years and thereafter, the permission can be renewed for an another period of 5 years. However, she did not give any permission for the Appellant to use the property after 5 years and she herself was in need of the same. And it is further submitted by the respondent that the Appellant went beyond his limits and put up construction in the premise without her consent and without getting proper plan approval.

13. The facts that the Appellant is the Founder of a Trust and the respondent and her family was in cordial terms with the Appellant during the year 1998 and sometime thereafter, were not denied. Since the Appellant trust has branch at USA and the respondent's family were also residing at USA, the Appellant used to stay at their house whenever he visited United States. Since the respondent was the absentee landlord, she believed that the Appellant would take care of the property and she entrusted the maintenance of the property with the Appellant and to that effect she has also executed a power of attorney in favour of the Appellant.

14. It is claimed by the Appellant that he only managed to vacate the erstwhile tenant State Bank of India from the premises at the request of the respondent. Ex.D1, which is a

letter wrote by the respondent from USA, shows that it had been addressed to State Bank of India. In the said letter, the respondent had requested SBI to vacate the premises and hand over it to her brother in law. This letter was dated 05.05.1998.

15. The Appellant has pleaded that the respondent conveyed him her intention to sell the property during March 1998 itself and agreed to sell the same to the Appellant himself. However, in the counter claim filed by the Appellant it is alleged that the understanding to sell was arrived in the month of September 1998 and that the respondent agreed to execute the sale deed in the month of December 1998. Despite of this difference in the dates of these alleged events, the fact remains that the Appellant visited U.S.A in the month of February 1998 and the respondent did not visit India during December 1998. These facts have been admitted by the Appellant himself.

16. The Appellant has filed an another letter of the respondent dated 12.03.1999, in which the respondent has requested the Corporation Tax Collector to send the tax request to the Appellant. In that letter, the respondent has admitted that the premises was in occupation of the Appellant. Though this document would show that the property was in possession of the Appellant, the burden is on him to prove that he was inducted into the premises by virtue of the alleged oral sale agreement between himself and the respondent.

17. Admittedly, the Appellant is not the tenant of the suit property, as he was not paying any rent. Though a hefty sum of 55 lakhs of rupees equalling to one lakh U.S, dollars is said to have been transferred to the respondent towards the sale consideration, no proof is produced to show the same. The pleadings and evidence of the Appellant is silent as to the mode in which and the source through which the above said sale consideration was paid. It is not stated whether the above said amount was the personal money of the Appellant or the money of the trust. If it is the personal money of the Appellant that has to be shown through his accounts. Because the Appellant cannot transfer such heavy amounts to anyone without a bank transaction. If the money is claimed to be the money of the trust, then also it should be proved through the trust accounts. And it should also be proved that it was done in consultation with and with the approval of other trustees of the trust. But the Appellant has not proved any of these facts in order to proof his contentions with regard to the agreement for sale. Neither the Appellant had taken any steps or initiated any proceedings to compel the respondent to execute the sale deed, after her trip to India for that alleged purpose, was cancelled during December 1998.

18. In fact, the respondent has executed a power of attorney on 07.10.1999 and sent that from U.S.A to the Appellant in which, she had authorised him to maintain and manage the suit property. Even in that document there was no mention about the oral sale agreement or that the possession of the Appellant over the property was in pursuance of a sale agreement.

19. Another important document which is admitted and marked by both the Appellant and the respondent, is the notarised permission letter dated 14.11.2000 executed and sent by the respondent from U.S.A to the Appellant. The Appellant relies this as a vital document on his side and marked it as Ex.D2. In the said letter, the respondent has permitted the property to be used for carrying out the charitable activities of the trust and for which, she did not reserve any rent or cost to be paid. In fact, she has specifically stated that her permission to make use of the property is a donation to the trust for a limited period. And it has been accepted by the Appellant on behalf of the trust. In this letter also there is no mention about the alleged sale agreement. While accepting the permission, the Appellant also did not reserve any right with regard to the alleged sale agreement. It is to be noted that the Appellant's acceptance to the above permission granted by the respondent is on behalf of the trust and in his capacity as the trustee only.

20. Apart from the above mentioned documents, it is to be seen whether the Appellant has examined any witness in order to prove the alleged oral sale agreement. No witness has spoken about it and in fact, the Appellant himself did not claim that the alleged discussion about the sale of the property was held in the presence of any witnesses. Interestingly, it is stated by the Appellant that the respondent wanted the sale agreement not known to her husband and hence it cannot be within the knowledge of her husband. It is strange to believe that an agreement of sale of a property for a consideration of one lakh U.S. dollars was kept as a secret deal, despite the husband of the respondent was also a trustee and involved in its activities at USA.

21. In the absence of any proof for paying the part or full sale consideration and in the absence of proof to show that the possession of the Appellant was due to the part-performance of the alleged sale agreement, the Appellant cannot claim that he had produced sufficient evidence to prove that there is an existence of a sale agreement and the Court ought to have granted him the relief of specific performance. Even if it is accepted for the sake of argument that the Appellant was put into the possession of the property in pursuance of an agreement of sale, that being a part of performance of a contract, it should be compatible to the terms of Section 53-A of the Transfer of Property Act, 1882. One of the essential

requirements under Section 53-A is that there should be a written and signed contract between the parties. Since the Appellant has stated that there is no written agreement, he cannot claim any legal validity to his possession even if he was put into the possession by virtue of an oral sale agreement.

22. Since the Appellant has not proved that he is the agreement holder of the suit property and he has paid the entire sale consideration and his possession over the suit property is in pursuant to a sale agreement, the learned single judge has rightly denied him the relief of specific performance. Thus points 2 and 3 are answered against the Appellant.

23. Point No.1:- Since the oral agreement for sale and payment of sale consideration was not proved by the Appellant, the only document through which he can claim lawful possession over the suit property can be Ex.D2. Admittedly, Ex.D2 is a permission letter given by the respondent to the Appellant for a specific period for a specific purpose. It is submitted by the Appellant that there is no proper revocation of permission and the learned single Judge did not appreciate the same.

24. So far as permissive occupation is concerned, there is no rule that the permission should be revoked by the owner in any prescribed manner. It is sufficient if the intention of the owner to revoke the permission is conveyed to the occupant in a manner understandable by him. Unlike a tenancy where the jural relationship between the landlord and the tenant cannot be terminated without any valid ground and a statutory notice, the termination of permissive occupation does not require any mandates. The reason being the permissive occupant could be in possession of the property only at the sweet Will and pleasure of the owner. Once the owner is not happy, it is always open to her to demand the permissive occupant to vacate and hand over the possession. It is sufficient to make the occupant to understand that the owner is not pleased to allow the permissive occupant to continue his occupation any further.

25. In the case in hand, as per Ex.D2, the Appellant had been permitted to occupy the suit property for a limited period of five years for the purpose of carrying out charitable activities of the Trust and it can be renewed at the written request of the Appellant for an another 5 years. As stated already, the cordiality between the Appellant and the respondent began to sour and even the Appellant did not make any request for renewal of permission. Obviously, the Appellant himself had felt it is not conducive to place a request for renewal of permission in the midst of such misunderstandings developed between himself and the respondent. So it is within the knowledge of the Appellant that his permissive occupation over the suit property had come to an automatic end due to efflux of

5 years period, which ended in 2005. Unless the permission is extended, the Appellant cannot claim that he has a legal right to continue to be in possession of the suit property.

26. In fact, the parties were giving complaints to police against each other. On a lighter note, it can be seen from the evidence of PW.1 that the police officials who were handling the complaints of both the appellant and the respondent, have told that they should have a separate police station just to handle their complaints. So all these would show that the respondent has conveyed the revocation of permission given to the respondent in a very clear and louder tone. Despite the same, the Appellant cannot claim that he has a legal right to be in possession of the suit property. It has already been held that the alleged oral sale agreement between the Appellant and the respondent was not proved and that the permissive possession had also come to an end. Under such circumstances, every moment of the Appellant's possession over the suit property after the revocation of permission coupled with its termination due to efflux of time is an illegal occupation only. Hence the learned Single Judge is perfectly right in rendering a finding on this score against the Appellant. Since the Appellant continued to be in illegal possession, the respondent is entitled to claim damages and future damages/profits of the suit property and the learned single Judge has rightly appreciated the claim of the respondent on the basis of the potential nature and location of the property and allowed the said relief.

27. In fact, in Ex.D2 permission letter the Appellant had endorsed his acceptance only on behalf of the trust. Hence, he cannot claim any right over the suit property in his individual capacity. Since the respondent did not intend to use the property for the personal use of the Appellant and the Appellant also accepted it only for the trust, he cannot maintain a suit for injunction in his personal capacity. For this sole reason alone, the suit filed by the Appellant deserves a threshold rejection. Hence the Appellant cannot claim either in his personal capacity or in his capacity as a trustee of the trust that he is in lawful possession of the suit property. Thus, point No. 1 is answered against the Appellant.

28. Points 4 to 6:- According to law of possession, a person who is in settled possession cannot be evicted without due process of law even if his possession is illegal. Since the Appellant refused to vacate the suit property and continued to occupy the same, the respondent has rightly approached the Civil Court and filed a suit seeking for recovery of the possession. Such action on the part of the respondent is nothing but invoking due process of law for the purpose of recovering the possession of her property. So, the Appellant cannot contend that his possession over the suit property was disturbed by the

respondent and he is entitled to a decree for injunction against the true owner. On the contrary, it is the Appellant who continues to be in occupation of the property by bothering the respondent.

29. In fact, the respondent has come down to India from USA with an intention to settle in India and revealed that intention also to the Appellant. The Appellant has accepted that and he had accommodated a portion of the suit property for occupation of the respondent. When the owner has expressed her wish to return from USA and to settle in India and wanted the suit property for her own use, then the Appellant should have been co-operative and vacated the suit property by peaceful means at the earliest possible time.

30. The Appellant has claimed that he has put up several structure and has many improvements in the suit property. The respondent has submitted that all those structures and other features in the suit property were done by the Appellant at his own risk without even getting the required building plan approval from the authorities and also without the consent of the respondent. When there is no contract between the Appellant and respondent to erect certain structures or to establish certain features in the suit property, the Appellant cannot make the respondent liable for its value. Had the Appellant incurred those expenses from the funds of the trust with or without the approval of the other trustees, he is liable to the trust. But he cannot make the respondent liable for what is done by him in an illegal manner and without her consent.

31. The constructions are said to have been made unlawfully without getting the required permission from the authorities concerned. The Power of Attorney given to the Appellant by the respondent during the year 1999 was for the purpose of maintaining the property by paying tax and other dues and not for putting up any construction without the approval of the Corporation. No principal can give power to his/her agent to do any activities in the premises which is contrary to law. Even if such permission is granted, that will be against the public policy and it cannot be a valid contract.

32.It is stated by the respondent that the power of attorney given to the Appellant has been cancelled by her and she has given publication about it in the English and vernacular dailies. It is claimed by the Appellant that the cancellation of the power of attorney is not legal. No power agent can claim an eternal right to maintain the property and say that the power given cannot be cancelled. Again it is at the Will of the Appellant to cancel the power. An irrevocable power of attorney is unknown to law. The Appellant claimed that revoking the power through publication is illegal. Even without such publication the power would come to an end by act of parties. Once the owner herself occupies and started to look after the maintenance of the property by herself, the power given to the Appellant ends by itself. So there is no illegality in revoking of power of attorney given to the Appellant by the respondent. Even if there is any presumed illegality, given the nature of the suits and the prayers made by them, it will not have any impact in the result of the suits.

33.Whatever may be the case, the respondent has revealed her intention to occupy the suit property and to be in its possession of the same. Both the respondent and her husband are senior citizens and they had intended to spend their last phase of their life in their home country. At the time when the trust was started the respondent and her husband might have got impressed with the spiritual activities and prompted to give the suit property for the purpose of carrying out the charitable activities. Once the relationship between the Appellant and the respondent has soured, it is up to the respondent either to allow the Trust to be in possession or to terminate the permission already granted. As the owner of the suit property, she has exercised her option to vacate the trust from her property and that cannot be denied to her. In fact, the Appellant himself has stated in his evidence that he has taken away valuable statues and Lingams and other things from the suit property and performing the Pooja in a hotel room, by keeping the lingam there.

34. The respondent has also deposed that the Appellant had almost vacated the property and he has left only a few things there. This will show that the Appellant actually did not have any intention of continuing the trust activities in the premises and he has taken away all his valuables and shifted to a room in a hotel. These facts would make it clear that the charitable activities of the trust are no more conducted in the suit property. So not only the permission granted by the respondent has come to an end, but the object for which it was granted also ceased to exist. Under such circumstances, the Appellant cannot claim that he has a legal right either in his personal capacity or as a trustee of the Appellant trust and retain the possession of the suit property. The learned single Judge has appreciated the facts and evidence placed before him in proper perspective and rightly denied the reliefs claimed by the Appellant. Hence points 4 to 6 also answered against the Appellant.

In view of the above discussion, we do not find any reason to interfere with the well considered findings and decision of the learned single Judge. In the result, all the three Original Side Appeals in O.S.A.Nos.188, 189 and 362 of 2018 are dismissed. The parties shall bear their own costs. Connected civil miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CS)

True Copy

Sub-Assistant Registrar

suk

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+1cc to Mr.K.S.Govinda Prasad, Advocate, Sr.30774

Pre-delivery Judgement made in
O.S.A.Nos.188, 189 and 362 of 2018

PVS[co]
NSK 26/08/2021