

A SOUTHERN ROADWAYS LTD., MADURAI, BY
ITS SECRETARY.

v.

S.M. KRISHNAN

OCTOBER 5, 1989

B [K. JAGANNATHA SHETTY AND A.M. AHMADI, JJ.]

Indian Contract Act 1872: Sections 202, 205 and 221—Agent receiving property on behalf of Principal—Bound to keep it separate from that of others—Revocation of agency by Principal—Right of agent.

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D The appellant-company is engaged in the business of transport of goods and parcels in Southern India and for that purpose has appointed agents at various stations. The respondent was one such agent appointed at Madras. As provided in clause III of the Contract, the respondent was to arrange a suitable godown and engage employees. The Company took on lease a godown at No. 10, Srinivasan Road, T. Nagar, Madras and the same was put in possession of the respondent for the purpose of carrying on his agency business of the Company.

E During the course of the Company's audit, it transpired that the Respondent not only mismanaged the business but had misappropriated some of the income of the company. The appellant, therefore, terminated his agency with effect from 14.10.1988 in terms of clause XI of the Contract and informed him that the company would be taking possession of the Godwon-premises for carrying on the business on its own, as provided in the contract. Thereafter the respondent was
F informed by a letter that the company has taken possession of the Godown on 15.10.88 and another agent R. Sundarajan had been appointed in his place. But the respondent prevented R. Sundarajan and also the company from carrying on the business at the godown-premises. The company, therefore, filed a suit for declaration of its right to carry on the business in the premises and for a permanent
G injunction restraining the respodent from interffering with its possession on the ground that after the termination of the agency of the respondent, the company acquired a right to carry on the business of the company and further the company had since acquired the possession of the premises on 15.10.88. Pending decision of the suit, the appellant prayed for the issuance of a temporary injunction. The Trial Judge of
H the Madras High Court granted temporary injunction restraining the

respondent from interfering with the appellant's business but on appeal by the respondent the Division Bench of the Madras High Court vacated that temporary injunction. Hence this appeal by the appellant company.

Allowing the appeal, this Court,

HELD: Under law, revocation of agency by the Principal immediately terminates the agent's actual authority to act for the Principal unless the agent's authority is coupled with an interest as envisaged under section 202 of the Indian Contract Act. When agency is revoked, the agent could claim compensation if his case falls under section 205 or could exercise a lien on the Principal's property under section 221. The agent's lien on Principal's property recognised under section 221 could be exercised only when there is no agreement inconsistent with the lien. [416B-C]

In the present case, the terms of the agreement by which the respondent was appointed as agent, expressly authorise the company to occupy the godown upon revocation of agency. Secondly the lien, in any event, cannot be utilised or taken advantage of to interfere with Principal's business activities. [416C-D]

An agent who receives property or money from or for his Principal obtains no interest for himself in the property. When he receives any such property he is bound to keep it separate from his own and that of others. [416E]

(See *Foley v. Hill*, 2 HLC 28—1843-60 All E.R. Reprint 16 at 198;

It is not every agent who is in a fiduciary position vis-a-vis his principal. For example if 'A' appoints 'B' to be his agent merely to sign a memorandum and places no particular trust in 'B' the doctrine of fiduciary relations would not apply. Likewise where the Principal authorises an agent to do particular and specified acts, the doctrine of fiduciary relation may not arise. [418C-D]

In this case, the respondent's possession of the suit premises was on behalf of the company and not on his own right. It is, therefore, unnecessary for the company to file a suit for recovery of possession. The respondent has no right to remain in possession of the suit premises after termination of his agency. He has also no right to interfere with the Company's business. The case, therefore, deserves the grant of temporary injunction. [419F-G]

A *Smt. Chandrakantaben and Anr. v. Vadilal Bapalal Modi and Ors.*, [1989] 2 SCC 630 at 643; *Narayani Amma v. Bheskaran Pillai*, AIR 1969 Kerala 214; *Abdul Nabi Sahib v. Bajab Sahib & Anr.*, AIR 1944 Mad 221 and *Jamma v. Reghu*, AIR 1977 Orissa 12, referred to.

B CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4177 of 1989.

From the Judgment and Order dated 28.3.1989 of the Madras High Court in O.S.A. No. 48 of 1989.

C K.K. Venugopal, K. Chandra Mouli, Ms. Meenakshi Sundaram and K.K. Mani for the Appellant.

Dr. Y.S. Chitale, V.G. Pragasam, Satya Mitra Garg, V. Prakash and R. Venkataramani for the Respondent.

D The Judgment of the Court was delivered by

K. JAGANNATHA SHETTY, J. Special Leave granted.

E The question raised in this appeal is whether the agent after revocation of his authority is entitled to remain in possession of the premises of the principal and interfere with the business thereof. The learned single Judge of the Madras High Court in Original Suit C.S. No. 1317 of 1988 has granted temporary injunction restraining the respondent from interfering with the appellant's transport business. But the Division Bench by judgment delivered on March 28, 1989, vacated that temporary injunction. The present appeal is directed against the judgment of the Division Bench.

F The facts are substantially undisputed. The appellant-company under the name as Southern Roadways Ltd. is engaged in the business of transport of goods and parcels to different places in Southern India. It has appointed commission agents at various stations for the purpose of carrying on its business. S.M. Krishnan-respondent was one such agent appointed at Madras city. Clause III of the agreement by which he was appointed provides that the respondent should arrange a suitable godown and engage employees. Clause XI provides for his removal from service at any time without notice. It also provides that upon removal of the agent the company could occupy the godown. The company could also utilise the services of employees engaged by the respondent. As per the agreement perhaps at the

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suggestion of the respondent, the Company took on lease a godown at No. 10, Srinivasan Raod, T. Nagar, Madras. The godown was put in possession of the respondent for the purpose of carrying on his agency business of the company.

In the course of the company's audit, it was discovered that the respondent had mismanaged the business and misappropriated the income of the company. By letter dated October 13, 1988, the company terminated his agency with effect from October 14, 1988. He was informed that the company would be taking possession of the godown and carrying on the business on its own. By subsequent letter, he was also intimated that the company has taken possession of the godown on October 15, 1988 and another agent called R. Sundarajan was appointed in his place. The respondent however, prevented R. Sundarajan and also the company from carrying on business at the godown premises. The company, therefore, had to institute a suit for declaration of its right to carry on business in the said premises. Permanent injunction restraining the respondent from interfering was also sought for. The suit was based on two separate grounds. The first related to legal right of the company to carry on its business after termination of agency of the respondent; the second concerned the factum of taking actual possession of the premises on October 15, 1988.

Pending suit, the company moved the High Court for temporary injunction. The temporary injunction restraining the respondent from interfering with the possession of the premises and the business thereof. The learned single Judge (M. Srinivasan, J.) acceded to that request. The judge said:

"As pointed out already, in this case, there is no denial of the lease arrangement between the owner of the premises and the plaintiff. The defendant does not claim to be the owner of the premises nor does he put forward any rival title as against the plaintiff. The only claim of the defendant is that he is in possession and that he has been paying the rent to the owner. He does not claim that he took possession as a lessee from the owner. Though there is a specific averment in the plaint and the affidavit of the plaintiff that there is a lease arrangement between the plaintiff and the owner, there is no denial of the same by the defendant. In these circumstances, the defendant cannot claim that he is in possession pursuant to any right enured in him."

A As to the possession of the premises, he said:

B “The claim made by the plaintiff that it took possession on 15.10.1988 is acceptable in view of the fact that the defendant was never the lessee under the owner of the premises. The defendant was only looking after the business as an agent of the plaintiff and as such he was permitted to enter the premises and he cannot claim independent possession.”

Finally, he concluded:

C “In the circumstances of the case, there can be no doubt that the plaintiff has been in legal and actual possession of the premises on the date of suit. The fact that the business has been temporarily shifted to another place in view of the threat meted out to the plaintiff’s agent will not disentitle the plaintiff to get injunction. The plaintiff is certainly entitled to carry on its business at No. 10, Srinivasan Road, D T. Nagar, Madras-600017, having taken the premises on lease. It is not open to the defendant to prevent the plaintiff from carrying on such business.”

E The respondent was thus restrained by means of temporary injunction from interfering with the company’s transport business in goods and parcels at the suit premises.

F The respondent took up the matter in appeal before the Division Bench of the High Court. The Division Bench consisting of Sathidev and Padmini Jesudurai, JJ., accepted the appeal and vacated the temporary injunction. The conclusion of learned Judges is largely based on the actual possession of the premises claimed by the Company. They found it hard to accept that claim and observed:

G “The plaintiff will not be entitled to the relief sought for unless it establishes that its claim that possession of the property was handed over to it on 15.10.1984 is true. The defendant has consistently been contending that possession was not handed over to the plaintiff on 15.10.1984 and that he continues to be in actual and physical possession of the property even now. No material has been placed before the Court to substantiate the claim of the plaintiff that possession was taken over on 15.10.1984.”

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They continued:

"In the face of these documents and in the absence of any material to show that possession of the suit property was taken by the plaintiff on 15.10.1988, it would be impossible for this Court to grant the plaintiff, the relief of injunction."

As to the company's right to treat the respondent as trespasser, the Division Bench observed:

"Before the defendant could be characterised as a trespasser, the validity of the termination of the agency and the rights of the parties, following that, have also to be determined and this could be done only during trial."

At the outset, we may state that we are not so much concerned with the rival claims relating to actual possession of the suit premises. Indeed, that is quite irrelevant for the purpose of determining the rights of the company to carry on its business. Mr. Venugopal, learned counsel for the appellant also discreetly did not advert to that controversy. He, however, rested his case on certain facts which are proved or agreed. They may be stated as follows:

The company was and is the tenant of the suit premises and has been paying rent to the owner. The lease in respect of the premises has been renewed up to November 22, 1983. It was the company which has executed the lease and not the respondent. The respondent as agent was allowed to remain in possession of the premises. It was only for the purpose of carrying on company's business. His agency has been terminated and his authority to act for the company has been put an end to. These facts are indeed not disputed. On these facts the contention of counsel is that when the agency has been terminated, the respondent has no legal right to remain in the premises or to interfere with the business activities of the company.

The force of this argument cannot be gainsaid. Counsel, in our opinion, appears to be on *terra firma*. The principal has right to carry on business as usual after the removal of his agent. The Courts are rarely willing to imply a term fettering such freedom of the principal unless there is some agreement to the contrary. The agreement between the parties in this case does not confer right on the respondent to continue in possession of the suit premises even after termination of agency. Nor does it preserve right for him to interfere with the com-

A pany's business. On the contrary, it provides that the respondent could be removed at any time without notice and after removal the company could carry on its business as usual. The company under the terms of the agreement is, therefore, entitled to assert and exercise its right which cannot be disputed or denied by the respondent.

B Even otherwise, under law revocation of agency by the principal immediately terminates the agent's actual authority to act for the principal unless the agent's authority is coupled with an interest as envisaged under section 202 of the Indian Contract Act. When agency is revoked, the agent could claim compensation if his case falls under section 205 or could exercise a lien on the principal's property under section 221. The agent's lien on principal's property recognised under
C section 221 could be exercised only when there is no agreement inconsistent with the lien. In the present case the terms of the agreement by which the respondent was appointed as agent, expressly authorises the company to occupy the godown upon revocation of agency. Secondly,
D the lien in any event, in our opinion, cannot be utilised or taken advantage of to interfere with principal's business activities.

There is yet another significant factor to be borne in mind when we deal with the rights of an agent. An agent who receives property or money from or for his principal obtains to interest for himself in the property. When he receives any such property he is bound to keep it
E separate from his own and that of others. Long ago, Lord Cottenham, L.C. (*Foley v. Hill*, 2 HLC 28—1843-60 All E.R. (Reprint) 16 at 198) said:

F "... So it is with regard to an agent dealing with property; he obtains no interest himself in the subject-matter beyond his remuneration; he is dealing throughout for another, and though he is not a trustee according to the strict technical meaning of the word, he is quasi a trustee for that particular transaction for which he is engaged."

G Out of this practice there has emerged a rule, which is a normal incident of agency, that an agent cannot deny principal's title to property nor he can convert it into other kind or use. Fridman's Law of Agency (5th Edition page 150) also supports this view:

"Respect of Principal's title:

H "The agent cannot deny the title of the principal to goods,

money, or land possessed by the agent on behalf of the principal. The possession of the agent is the possession of the principal for all purposes, including the acquisition of title under statutes of limitation, even where in fact the agent, though in ignorance of his claim, is entitled to the land, unless the agent possesses not as agent but on his own behalf, in which event his possession will be personal and not for his principal."

As to the nature of agent's possession in respect of principal's property, this Court in a recent judgment rendered in *Smt. Chandrakantaben and Anr. v. Vadilal Bapalal Modi and Ors.*, [1989] 2 SCC 630 said at 643:

"It is well settled that the possession of the agent is the possession of the principal and in view of the fiduciary relationship defendant 1 cannot be permitted to claim his own possession. This aspect was well emphasised in *David Lyell v. John Lawson Kennedy*, [1889] 14 HL (E) 437 where the agent who was collecting the rent from the tenants on behalf of the owner and depositing it in a separate earmarked account continued to do so even after the death of the owner. After more than 12 years of the owner's death his heir's assignee brought the action against the agent for possession and the agent defendant pleaded adverse possession and limitation. The plaintiff succeeded in the first court. But the action was dismissed by the Court of Appeal. The House of Lords reversed the decision of the Court of Appeal and remarked: "For whom, and on whose behalf, were those rents received after Ann Duncan's death? Not by the respondent for himself, or on his own behalf, any more than during her lifetime." Emphasising the fiduciary character of the agent his possession was likened to that of trustee, a solicitor or an agent receiving the rent under a power of attorney. Another English case of *Williams v. Pott*, LR 12 Eq Cas 149, arising out of the circumstances similar to the present case was more interesting. The agent in that case was the real owner of the estate but he collected the rents for a considerably long period as the agent of his principal who was his mother. After the agent's death his heir claimed the estate. The mother (the principal) had also by then died after purporting by her will to devise the disputed lands to the defendants upon certain

A trusts. The claim of the plaintiff was dismissed on the plea of adverse possession. Lord Romilly, M.R., in his judgment observed that since the possession of the agent was the possession of the principal, the agent could not have made an entry as long as he was in the position of the agent for his mother, and that he could not get into possession without first resigning his position as her agent which he could have done by saying: "The property is mine; I claim the rents, and I shall apply the rents for my own purposes." The agent had thus lost his title by reason of his own possession as agent of the principal."

C We wish to add that it is not every agent who is in a fiduciary position vis-a-vis his principal. For example if A appoints B to be his agent merely to sign a memorandum and places no particular trust in B, the doctrine of fiduciary relations would not apply. Like wise, where the principal authorises an agent to do particular or specified acts, the doctrine of fiduciary relation may not arise. What we want to emphasise is, in all cases of general agency, the relation may be generally fiduciary, but in other kinds of agencies, the relation may vary with the confidence which the principal chooses to repose in the agent. It may also depend upon the power which the agent exercises over the subject matter under the terms of the contract of agency or by virtue of the incident of law and usage of the business which the relationship implies. Thus the fiduciary element in agency, though the key to much of the law governing this relation, is not the essential element in the relation. (See *Modern Law Review*, Vol. 17 pp. 31-32).

F The crux of the matter is that an agent holds the principal's property only on behalf of the principal. He acquires no interest for himself in such property. He cannot deny principal's title to property. Nor he can convert it into any other kind or use. His possession is the possession of the principal for all purposes. As the Kerala High Court in *Narayani Amma v. Bhaskaran Pillai*, AIR 1969 Kerala 214, observed at 217:

G "The agent has no possession of his own. What is called a caretaker's possession is the possession of the agent."

H So much is, we think, established law as regards agent's right to property belonging to the principal. Dr. Chitale, learned counsel for the respondent, however, cited in this context, two decisions: (i) *Abdul Nabi Sahib v. Bajab Sahib and Anr.*, AIR 1944 Mad 221 and (ii)

Jemma v. Raghu, AIR 1977 Orissa 12. In the former case of the Madras High Court, the suit was for a permanent injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit properties and performance of the religious services. The defendant admitted that he was agent of the plaintiff but set up title to the property in himself as donee. He has also set up title by adverse possession. On these claims, Kunhi Raman, J., observed:

"Since the plaintiff had not got possession of the property, it would not be sufficient to show that he was in constructive possession and the theory of constructive possession as between the principal and agent, cannot be relief upon by the principal for the purpose of meeting the contention of the description raised on behalf of the defendant, who is the agent."

If the defendant in the above case, has admitted that he was the agent of the plaintiff and yet set up title to the property of his principal, the above observation may not be consistent with the settled principle of law. We have already stated that the agent acquires no interest in the property of the principal and he cannot, therefore, non-suit the principal on the possessory title as agent.

The second case in *Jemma v. Raghu*, referred to us is the decision of the Orissa High Court. That case dealt with the general principle that the plaintiff who is not in possession of the suit premises is not entitled to relief of injunction. The plaintiff must ask for recovery of possession. But this principle has no application with regard to dispute between the principal and agent in respect of principal's property.

In this case, the respondent's possession of the suit premises was on behalf of the company and not on his own right. It is, therefore, unnecessary for the company to file a suit for recovery of possession. The respondent has no right to remain in possession of the suit premises after termination of his agency. He has also no right to interfere with the company's business. The case, therefore, deserves the grant of temporary injunction. The learned single Judge of the High Court in our judgment, was justified in issuing the injunction. The Division Bench of the High Court was clearly in error in vacating it.

In the result, we allow the appeal with costs. In reversal of the order of the Division Bench, we restore the temporary injunction granted by learned single Judge of the High Court.