



S.A.No.996 of 2003

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.04.2023

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

**S.A.No.996 of 2003
and
C.M.P.No.8962 of 2003**

M/s.Sundaram Agencies
Rep.by its Partner
R.M.Sivasamy
No.5, Railway Compound,
Kumbakonam Railway Station,
Kumbakonam Taluk.

... Appellant

Vs.

1.Southern Railway,
Rep.by its General Manager,
Chennai.

2.Southern Railway
Rep. by its Divisional Railway Manager,
Divisional Office Works Branch,
Tiruchirapalli.

... Respondents



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PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 17.02.2003 in A.S.No.56 of 2001, on the file of the Additional Subordinate Court, Kumbakonam confirming the judgment and decree dated 17.1.1994 in O.S.No.154/1988, on the file of the Additional District Munsif, Kumbakonam.

For Appellant : Mrs.AL.Gandhimathi
Senior Counsel
for Mr.T.Ponramkumar
For Respondents : Mr.K.R.Laxman

J U D G M E N T

The appellant is the plaintiff in O.S.No.154 of 1988 on the file of the Additional District Munsif Court, Kumbakonam. The appellant, who is the plaintiff, filed the above suit against the respondents/defendants for declaration declaring that the order dated 13.11.1981 fixing the license fee at Rs.20,215/- is null and void and not enforceable and till the fixation of the fair rent, the possession and enjoyment should not be denied. The trial Court after trial, decreed the suit.



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2. Challenging the said judgment and decree passed by the trial Court, the respondents/defendants filed an appeal before the Additional Subordinate Court, Kumbakonam in A.S.No.56 of 2001. The lower appellate Court after hearing the arguments and re-appreciated the evidence, allowed the appeal and set aside the judgement and decree passed by the trial Court.

3. Challenging the said judgment and decree passed by the lower appellate Court, the appellant/plaintiff has filed the present second appeal by raising the following substantial questions of law:-

“1. Whether the Court below is correct in reversing the judgment and decree of the trial Court without any valid reasons therefore?

2. Whether the Court below is correct in finding that as the writ petition filed by the plaintiff is dismissed, the suit ought not to have been decreed?

3. Whether the increase in licence fee was made after proper notice?



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4. Whether the Court below erred in not considering the fact that no evidence was placed by the defendants to show the basis for such an exorbitant increase?”

4. The case of the appellant/plaintiff is that the property belongs to the Railways. The appellant/plaintiff is the licensee. The father of the appellant/plaintiff during his life time put up a superstructure in the suit property and doing Kerosene business at No.5 Railway compound for the past 40 years. After the life time of his father, the appellant/plaintiff has been paying the licence fee for the site at the rate as and when fixed by the respondents/defendants for all these years. Lastly, the licence fee for the site was fixed at Rs.1015.45/- paise. By letter dated 02.07.1982 the appellant/plaintiff deposited the said money with the bank. The second respondent/second defendant has also received the demand draft on 03.07.1982. The acknowledgment is also filed.

5. All of a sudden, the second respondent/second defendant sent a communication dated 13.11.1981 increasing the fee to Rs.20,215/- and also



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called the appellant/plaintiff for security deposit of another sum of Rs. 20,215/-. The total demand was Rs.40,430/-. The said increased amount was high and it is arbitrary and illegal. Therefore, the appellant/plaintiff filed a writ petition before the Principal Bench of this Court at Chennai in W.P.No.4389 of 1982 to cancel the order of the second respondent/second defendant dated 13.11.1981 and this Court directed the respondents/defendants to reconsider the said order of increasing the fee. The levy fixed by the second respondent/second defendant is nearly 20 times of the existing fee. Further, the license fee is asked only for the site. The order of the second respondent/second defendant fixing the enhanced licence amount of Rs.20,215/- is highly exorbitant, arbitrary and unreasonable. Therefore, the said order dated 13.11.1981 is unenforceable.

6. The appellant/plaintiff is entitled to have the reasonable licence amount to be fixed by the Court. The prevailing rate for site in that locality is only Rs.150/- per month. The reasons given for increasing the licence fee in the order dated 13.11.981 are not sound and sustainable. The basis



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adopted by the second respondent/second defendant that the appellant/plaintiff should pay a fixed percentage on the market value of the land. The second respondent/second defendant can only claim proper and reasonable fee for the land used by the appellant/plaintiff. Merely because power is given under the contract to claim enhanced fee, does not mean that the respondents/defendants can claim any amount without basis. The appellant/plaintiff has no objection to pay the reasonable fee for the land. Therefore, he challenged the said order dated 13.11.1981 and the writ petition also filed before the High Court and the High Court also directed the respondents/defendants to reconsider the same. The order of enhancing the security deposit and also the licence fee is highly arbitrary, therefore, it is to be set aside and directed to fix the reasonable fee, till then, the plaintiff should not be vacated or disturbed by the respondents/defendants or their men or successor.

7. The case of the respondents/defendants is that the appellant/plaintiff is only a licensee and he is bound by terms of the contract



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between the parties. The appellant/plaintiff is not entitled to claim any right as a tenant and what is payable to the Railways is only a licence fee and not rent. The appellant/plaintiff is bound by the agreement dated 06.01.1976. The site was already licensed to one ESSO, Eastern Encorporation, Madras and only at the request of the appellant/plaintiff under his letter dated 13.01.1974, the licence was transferred to the appellant/plaintiff. The land was taken over by the appellant/plaintiff under the said agreement dated 06.01.1976. As per the agreement, the appellant/plaintiff is a licensee and the fees payable by him is only a licence fee and not rent. The fees is payable annually. Under the said agreement, the respondents/defendants/Railways is entitled to revise the fee periodically. Accordingly, from 01.04.1981 it was revised. The appellant/plaintiff was also duly informed of the same by the Railways by its letter dated 15.04.1981.

8. The Railways have got every right to raise the licence fee and the enhancement has been made after taking into the consideration the



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increase in the market value of the land, after ascertaining the same from the Revenue Authorities and from the Register of documents. The appellant/plaintiff has not paid the licence fee so far and he has arrears of Rs.10,107.50/- and Rs.2,02,530/- for the years 1983-84 to 1986-88. Without paying the said amount, the appellant/plaintiff cannot ask this Court to prevent the respondents/defendants from taking the possession of the property as a chronic defaulter. The respondents/defendants have got power to enhance the fees. If the appellant/plaintiff feels that fee is very high, he is at liberty to vacate the premises. The appellant/plaintiff has got no right to be in possession for more than one year. Under Clause 25 of the Agreement, the Railway has got the right to re-enter upon the land and re-take and absolutely retain the possession. The appellant/plaintiff has expressed his willingness to vacate the premises under the letter dated 15.04.1982. As per Clause 27 of the Agreement, the appellant/plaintiff's only remedy is to refer the matter to the General Manager for Adjudication. Therefore, the suit is not maintainable and the same is liable to be dismissed.



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9. While admitting the second appeal, this Court has formulated the following substantial questions of law:-

“(i).Whether the Court below is correct in reversing the judgment and decree of the trial Court without any valid reasons therefore?

(ii). Whether the Court below is correct in finding that as the writ petition filed by the plaintiff is dismissed the suit ought not to have been decreed?

(iii) Whether the increase in licence fee was made after proper notice?”

10. The learned Senior Counsel appearing for the appellant/plaintiff would submit that the appellant/plaintiff and his predecessor were in possession of the suit property over and above 40 years and had been using the property for kerosene business at No.5 Railway compound. The licence fee was fixed at Rs.1015.45/- paise. The appellant/plaintiff has also deposited the same with the Bank and he also received the acknowledgment of the same. All of a sudden, the appellant/plaintiff has received the communication from the second respondent/second defendant that the respondents/defendants have



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increased the licence fee to Rs.20,215/- and also further made a demand for security deposit of another Rs.20,215/- which is highly arbitrary and illegal. Challenging the same, he filed a writ petition in W.P.No.4389 of 1982 before the High Court, Madras. This Court directed the respondents/defendants to re-consider the same. The levy of licence fee made by the second respondent/second defendant was increased to Rs. 20,215/- is nearly 20 times of the existing fees of Rs.1015.45/- without any basis and also the prevailing market value is arbitrary. Even without giving any opportunity to the appellant/plaintiff, the respondents/defendants fixed the exorbitant licence fees, which is arbitrary and unreasonable. Further, the learned Senior Counsel appearing for the appellant/plaintiff would submit that the appellant/plaintiff had already vacated the premises and now, the Railways directed the appellant/plaintiff to pay a sum of Rs.8 lakh fees after vacating premises, which is unreasonable and arbitrary. The appellant/plaintiff is ready to pay any reasonable fee fixed by this Court. Pending appeal, the appellant/plaintiff vacated the premises and surrendered the possession to the respondents/defendants.



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11. The learned counsel appearing for the respondents/defendants would submit that the appellant/plaintiff now admitted that he has already vacated the premises. Therefore, as far as the injunction is concerned the relief granted by the trial Court has become infructuous. Further, he would submit that the appellant/plaintiff is bound by the agreement dated 06.01.1976. Originally, the licence was granted to one ESSO, Eastern Encorporation, Madras and only at the request of the appellant/plaintiff under his letter dated 13.01.1974, the licence was transferred to the appellant/plaintiff. The land was taken over by the appellant/plaintiff under the said agreement dated 06.01.1976. As per the agreement, the fee payable is only licence fee and not rent. Therefore, even the enhancement rent is only based on the prevailing market rate in and around the locality and also the guideline of the Sub-Registrar. As per the agreement, the appellant/plaintiff is bound to pay the licence fee as and when the defendants/railways fixed. But the appellant/plaintiff is not agreeable for that and he is only a licensee for a period of one year. He can easily vacate



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the premises and he has no right to file the suit. Even otherwise as per the clause 27 of the Agreement, the only remedy available to the appellant/plaintiff is to refer the matter of difference or dispute to the General Manager for Adjudication. Filing of the suit is violating the Clause 27 of the Agreement and the suit is not maintainable.

12. Heard the learned counsel appearing for both sides and perused the materials available on record.

13. The substantial questions of law are answered as follows:-

It is admitted that the suit site belonged to the respondents/defendants and the appellant/plaintiff was in possession of the property for running kerosene shop and the fee payable to the respondents/defendants for using the site is only a licence fee and not rent. The appellant/plaintiff has not denied the agreement dated 6.1.1976. Though the appellant/plaintiff has stated that the enhancement of licence fee of Rs.20,215/- is arbitrary, the same is exorbitant. As contended by the



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learned counsel for the respondents/defendants that it is not a lease agreement or the amount payable by the appellant/plaintiff are not rent. It is only a licence fee. If the appellant/plaintiff also agreed to pay the licence fee as fixed by the respondents/defendants as and when it was increased, he is liable to pay the same. Though the appellant/plaintiff has stated that last payment of licence fee was Rs.1015.45/- but it is not mentioned in the plaint or in the written statement. It is seen from the evidence that they have not stated from which date onwards they are paying Rs.1015.45/- as licence fee. The appellant/plaintiff admitted that he was in possession for more than 40 years and doing business and the appellant/plaintiff has not specifically stated in the plaint that from what date Rs.1015.45/- was paying as a licence fee and how the money was paid. Though as per the document and the letter dated 02.07.1982 with the Bank demand draft for Rs.1015.45/- has received, subsequently, the second respondent/second defendant sent a letter dated 13.11.1981 to pay a licence fee of Rs.20,015/-. Though the appellant/plaintiff filed a writ petition, this Court ordered to consider the same, subsequently the appellant/plaintiff has also vacated and surrendered



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the premises, now, the only question is whether the licence fee fixed by the respondents/defendants at Rs.40,430/- is reasonable or arbitrary. The appellant/plaintiff has not stated on what way it was arbitrary or exorbitant or unreasonable. Therefore, the substantial questions of law are answered in favour of the respondents/defendants.

14. As contended by the learned counsel for the respondents/defendants, as per the agreement, the appellant/plaintiff has to pay the licence fee. If he is aggrieved the same, as per Clause 27 of the Agreement, he has to file an appeal before the General Manager for Adjudication and filing the suit seeking declaration of the letter dated 13.11.1981 is null and void as arbitrary and the appellant/plaintiff has not stated on what way it is arbitrary and unreasonable and what was the contract between the appellant/plaintiff and respondents/defendants. The appellant/plaintiff has not stated on what date he is paying the existing licence fee and if he aggrieved over, what was the remedy available. The appellant/plaintiff without following the due terms and without giving any



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valid reason in order to retain the possession, in a hurried manner, he had approached the Court. The appellant/plaintiff has not come to the Court with clean hands and suppressed the material facts regarding the agreement and terms and conditions of the agreement and more so, the fee fixed by the respondents/defendants is only a licence fee and if the appellant/plaintiff is not amenable to the licence fee, he can very well vacate the premises and surrendered the possession. Though the trial Court has failed to appreciate the oral and documentary evidence and materials, the appellate Court has rightly re-appreciated the oral and documentary evidence and rights of the parties. Since the counsel for the appellant/plaintiff himself now admitted that the appellant/plaintiff was not in possession of the property and he is liable to pay the licence fee fixed by the respondents/defendants, this Court finds that the appellant/plaintiff has not convinced the Court that what way the order dated 13.11.1981 is arbitrary and unreasonable. The party entered into the contract and they agreed with the terms and conditions of the contract there cannot be beyond the terms of contract and cannot be allowed to act against the terms and conditions of contract. The appellant/plaintiff



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has not proved the arbitrariness and unreasonableness and the licence fee fixed by the respondents/defendants is an exorbitant. The appellant/plaintiff has to prove his case and he cannot take advantage of the loopholes left by the respondents/defendants. This Court finds from the oral and documentary evidence that the appellant/plaintiff has not proved his case and further the second relief seeking for granting a decree for injunction is concerned, since the appellant has already vacated the premises, the same has become infructuous.

15. As far as payment of arrears of licence fee is concerned, since the appellant/plaintiff has not proved his case as to how the licence fee fixed by the respondents/defendants is arbitrariness and it is unreasonableness and he has not exercised the remedy under the Clause 27 of the Agreement and even without exhausting the remedy, he approached the Civil Court by suppressing the material facts and also not proved the case especially, the arbitrariness and unreasonableness. Therefore, there is no perversity in the findings of the lower appellate Court and there is no merit in this appeal.



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Hence, the second appeal is liable to dismissed and accordingly it is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No

Speaking Order : Yes / No
am/skn

21.04.2023

To

- 1.The Additional Subordinate Court,
Kumbakonam.
- 2.The Additional District Munsif,
Kumbakonam.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J.

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