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S.A.No.1439 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.06.2024

PRONOUNCED ON : 19.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

S.A.No.1439 of 2010

and

M.P.No.1 of 2010

P.M. Viswanathan

...

Appellant

Vs.

1. Indian Oil Corporation,
represented by its
Divisional Retail Sales Manager
No8/1079, Avinasi Road,
Coimbatore.

2. A.R.Chinna Nachimuthu

...

Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree of the Subordinate Judge's Court at Gobichettipalayam dated 08.10.2010 in A.S.No.40 of 2009 partly Reversing the judgement and decree of the District Munsif Court at Gobichettipalayam dated 31.12.2008 in O.S.No.362 of 2006.



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For Appellant : Mr. P. Valliappan,
Senior counsel for
Mr.G.RM.Palaniappan,

For Respondents : Mr. Anand
for M/s.Anand Abdul Vinodh Associates
for R1

: Mr. C. Prabakaran,
for R2 – No appearance

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 08.10.2010 passed in A.S.No.40 of 2009 on the file of Subordinate Judge, Gobichettipalayam, reversing the Judgment and Decree dated 31.12.2008 passed in O.S.No.362 of 2006 on the file of District Munsiff, Gobichettipalayam.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. The plaintiff in O.S.No.362 of 2006 on the file of the District Munsiff Court, Gobichettipalayam is the appellant.



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4. The fact of the case is that the appellant/plaintiff is the owner of the plaint schedule properties. He leased out the plaint schedule properties as a vacant site to A.R.Chinna Nachimuthu, second respondent/first defendant, for the period of 25 years and 3 months, by way of a registered sale deed dated 03.04.2003 under document number 683 of 2003 and put him in possession of the said vacant site and also empowered him to lease out the aforesaid vacant land to Indian Oil Corporation, first respondent/second defendant for the purpose of putting up a retail out let. Thereafter, the second respondent/first defendant leased out the same to the Indian Oil Corporation, first respondent/second defendant on terms and conditions for the purpose of erecting petrol/diesel oil pumps vide Lease Deed dated 20.11.2003. On 14.10.2006, the plaintiff came to know that the second defendant with an ulterior motive attempted to remove first defendant from the suit property and to engage some other person in his place. Hence, the plaintiff filed the suit seeking to grant permanent injunction restraining the defendants from creating any kind of encumbrance by permitting another person or persons in the suit property or to sublease to any other third party without written consent and knowledge of the plaintiff besides seeking cost of the suit.



5. The defendants filed written statement and contested the suit. In the written statement, they denied the allegations raised in the plaint. They accepted the agreement entered into between them for the purpose of doing business in Petroleum products and further contended that the defendants were permitted by the plaintiff in all aspects to run the retail out let. The retail out let constructed in the suit property is currently operated by the dealers of the second defendant/Indian Oil Corporation Limited, namely, M/s. Muthu Corporation Kunnathur, in which, the first defendant is one of the partners. Therefore, the plaintiff cannot contend that the suit property was leased out to the first defendant alone. Since the plaintiff already agreed with the first defendant to lease the property to the second defendant to carry out the business, the suit is not maintainable and thus pleaded to dismiss with cost.

6. On the basis of the above said pleas set out by the respective parties, the following issues were framed by the trial Court for consideration:

- 1. Is it true that the 2nd defendant is not entitled to induct any 3rd party in the suit property as dealer ?***
- 2. Is the plaintiff entitled to the relief of permanent injunction as sought for ?***
- 3. To what reliefs ?***



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7. Before the Trial Court, in support of the plaintiff's case, the plaintiff examined himself as PW1 and one document was marked as Ex.A.1. On the side of the defendants, one Vijayaragavan, was examined as DW1 and 7 documents were marked as Ex.B.1 to Ex.B7.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Trial Court decreed the suit on 31.12.2008.

9. Aggrieved over the same, the first respondent/second defendant, Indian Oil Corporation filed an appeal in A.S.No.40 of 2009 before the Subordinate Judge, Gopichettipalayam. The First Appellate Judge, after considering the entire materials, by his Judgment and Decree dated 08.10.2010, partly allowed the appeal without cost and set aside the judgment and decree of the Trial Court in respect of granting injunction in favour of the plaintiff restraining the 2nd defendant from appointing dealers or agent without the consent of the plaintiff and modified to the effect that the first defendant is restrained by an order of injunction from sub-leasing the suit property to any third parties except the second defendant while the second defendant is restrained from sub-leasing the suit property to anybody without the written



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consent of the plaintiff. Now, challenging the same, the present Second Appeal has been filed.

10. The second appeal has been admitted on the following substantial question of law:

1. When the second respondent alone is entitled to claim right under Ex.A.1 lease deed dated 03.04.2003, executed by the appellant, whether the first respondent is entitled to appoint a new dealer/agent and still claim right under Ex.A.1 especially, since there is no privity of contract, between the appellant and the first respondent ?
2. Whether the lower appellate court is correct in law in holding that the power of first respondent to appoint a new dealer/agent is not curtailed by Ex.A.1 lease deed, particularly when the second respondent or his family members alone have been authorised to conduct the business in the suit property ?
3. When the right of the appellant under Ex.A1 lease deed to claim rent or seek eviction of the second respondent would be taken away by the proposed action of the first respondent, to appoint a new



dealer/agent, is the lower appellate court justified in law in permitting the first respondent do so, by misconstruing the recitals in Ex.A.1 lease deed in treating the same as incidental to Ex.B1 agreement ?

11. The contention of the learned counsel for the appellant is that the First Appellate Court erred in misconstruing the recitals contained in Ex.A1 Lease Deed dated 03.04.2003. As per Ex.A.1 Lease Deed, the second respondent could alter his business only with the family members of the first defendant. He further contended that the First Appellate Court has misconstrued Ex.B1 as though the same would form part of Ex.A1, by overlooking the fact that there is no privity of the contract between the appellant/plaintiff and the first respondent/second defendant. The First Appellate Court has also erred by permitting the first respondent/second defendant to appoint new dealer or agent and thereby deprived the appellant's right to claim the rent from the second respondent/first defendant and it is difficult to evict the first respondent/second defendant or new dealer and the learned counsel reiterated the other grounds raised in the grounds of appeal and thus, pleaded to allow this appeal.



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12. The learned counsel appearing for the respondents supported the judgment of the First Appellate Court and contended that in the Lease Deed Ex.A.1, dated 03.04.2003, the appellant permitted the second respondent/first defendant to lease the property to the first respondent/second defendant/ Indian Oil Corporation to run the business. The Indian Oil Corporation has liberty to appoint suitable dealer or agent, thus, to run the business. Apart from this, the second respondent/first defendant is also one of the partners at present in the business. There is no circumstances warranting for granting permanent injunction against the respondents/defendants and no merit in this Second Appeal. No substantial question of law involved in this appeal and thus, pleaded to dismiss the Second Appeal.

13. I have considered the matter in the light of the submissions made by the learned counsel on both sides and perused the materials available on records carefully.

14. From the records it is seen that the appellant/plaintiff has leased out the plaint schedule properties as a vacant site to A.R.Chinna Nachimuthu,/second respondent/first defendant for the period of 25 years and 3 months by way of a registered sale deed dated 03.04.2003 under document



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number 683 of 2003 and put him in possession of the said vacant site and also empowered him to lease out the aforesaid vacant land to Indian Oil Corporation/first respondent/second defendant for the purpose of putting up a retail out let. In turn, second respondent/first defendant, leased out the same to the Indian Oil Corporation/first respondent/second defendant on terms and conditions for the purpose of erecting petrol/diesel oil pumps vide Lease Deed dated 20.11.2003. Thereafter, only on 14.10.2006, the plaintiff came to know that the first respondent/second defendant with an ulterior motive attempted to remove second respondent/first defendant from the suit property and to engage some other person in his place. Hence, the plaintiff filed the suit in O.S.No.362 of 2006 before the District Munsif Court, Gobichettipalayam, seeking to grant permanent injunction restraining the defendants from creating any kind of encumbrance by permitting another person or persons in the suit property or to sublease to any other third party without written consent and the said suit was decreed on 31.12.2008, against which, the first respondent/second defendant filed an appeal in A.S.No.40 of 2009 on the file of the Subordinate Court, Gobichettipalayam. The First Appellate Court, by its judgment and decree dated 08.10.2010, partly allowed the appeal. Aggrieved over the same, the present Second Appeal has been filed by the plaintiff.



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15. On perusal of the Lease Deed Ex.A.1, it is noticed that the plaintiff and the first defendant had entered into agreement on 03.04.2003, in which it is stated hereunder:

“ மேலும் 2 லக்கமிட்டவர் நாளது தேதியில் கீழ்க்கண்ட சொத்தை தமது சுவாதீனம் பெற்றுக்கொண்டுள்ளார். 2 லக்கமிட்டவர் கீழ்க்கண்ட சொத்தில் பெட்ரோல்பங்க வைக்க, இந்தியன் ஆயில் கம்பெனியாருடன் பெட்ரோல் பங்க அமைப்பதற்காக மேற்படி இருபத்தி ஐந்து ஆண்டு கெடுவிற்கு விடவும் வாடகைத் தொகையை நிர்ணயிக்கவும் இது விஷயமாய் மேற்படி இந்தியன் ஆயில் கம்பெனியாருடன் உடன்படிக்கை செய்து கொள்ளவும் வாடகை அட்வான் தொகை பெறவும் ஒவ்வொரு மாதமும் வாடகை தொகையை பெற்றுக் கொள்ளவும் பின்னும் மேற்படி வாடகை சம்பந்தமாக மேற்படி இந்தியன் ஆயில் கார்ப்பரேஷனுடன் மேற்படி இருபத்தி ஐந்து ஆண்டு கால குத்தகைக்கு தேவைப்படும் எல்லா தஸ்தாவேஜுகளிலும் கையெழுத்திடவும் ஒப்புக் கொள்கிறோம்.

கீழ்க்கண்ட சொத்துக்குண்டான நகராட்சி சொத்து வரி நகராட்சியின் மற்ற வரி இனங்கள் மின்சாரக் கட்டணம் தண்ணீர்வரி மற்றும் தொலைபேசிக் கட்டணம் மற்றும் பெட்ரோல்பங்க நடத்தும் வியாபாரத்திற்கு தேவையான மற்ற வரிகள் மற்றும் லைசென்ஸ் தொகை இதரவகைகளை நம்மில் 1 லக்கமிட்டவரே எழுத்து மூலமான சம்மதம் இல்லாமல் பயன்படுத்தக் கூடாது.

நம்மில் 2 லக்கமிட்டவர் தன்னுடைய தனிப்பட்ட ஷேறாதாவில் அல்லது எதிர்காலத்தில் இந்த வியாபாரத்தை 2 லக்கமிட்டவர் கூட்டுநிறுவனமாக மாற்ற விரும்பும் காலத்தில் 2 லக்கமிட்டவரின் மனைவி மகன்கள் 2 லக்கமிட்டவரின் அண்ணன் பெண்மக்கள் மட்டும் அடங்கிய கூட்டு நிறுவனமாக மட்டும் நடத்திக் கொள்ள வேண்டியது. ”



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Oil Corporation from appointing agents or dealers without the consent of the plaintiff and allowed the appeal partly without cost and set aside the judgment and decree of the Trial Court in respect of granting injunction in favour of the plaintiff restraining the first respondent/second defendant from appointing dealers or agents without the consent of the plaintiff and modified to the effect that the second respondent/first defendant is restrained by an order of injunction from subleasing the suit property to any third parties. The First Appellate Court rightly decided the case, on fact, available on record and there is no perverse finding and it is in accordance with the evidence on record. Even though there is no privity of contract between the appellant/plaintiff and the first respondent/second defendant, in view of the consent given by the appellant/plaintiff to the second respondent/first defendant vide Ex.A.1 Lease Deed dated 03.04.2003 to sub lease to the Indian Oil Corporation(first respondent/second defendant), Indian Oil Corporation is having right to appoint new dealer or agent. There is no error in the findings of the First Appellate Court in holding that the power of the first respondent/second defendant to appoint a new dealer or agent is not curtailed by Ex.A1 Lease Deed. The appellant is entitled to claim rent and his right is not taken away in appointing new dealer or agent and the finding of the First Appellate Court is not perverse or against law and there is no ground for interference. Thus, the



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substantial questions of law formulated in the second appeal are, accordingly,
answered against the appellant/plaintiff.

18. For the aforesaid reasons, the second appeal fails and accordingly, is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes / No
Internet : Yes / No

19.07.2024

mrp

To

1. The Subordinate Court,
Gobichettipalayam.
2. The District Munsif Court,
Gobichettipalayam.



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V.SIVAGNANAM, J.

mrp

Pre-Delivery Judgment made
in S.A.No.1439 of 2010

19.07.2024