

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

RSA.No. 851 of 2007

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AGAINST THE JUDGMENT IN AS 71/2005 of SUB COURT, KOZHIKODE DATED  
16-07-2007 (3<sup>rd</sup> ADDITIONAL SUB JUDGE)

OS 559/2001 of PRINCIPAL MUNSIFF COURT-I, KOZHIKODE

APPELLANTS/APPELLANTS/DEFENDANTS:

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1. M.P. SUNILKUMAR, S/O. M.P. ACHUTHAN,  
PARAMBATH HOUSE, KATCHERI AMSOM DESOM,  
KOZHIKODE TALUK.
2. M.P. ACHUTHAN, S/O. RARICHAN MASTERY,  
KOLAKKATTU PARAMBATH, KATCHERI AMSOM DESOM  
KOZHIKODE TALUK.

BY SRI.T.KRISHNAN UNNI (SENIOR ADVOCATE)

RESPONDENTS/RESPONDENTS/PLAINTIFFS 2 TO 6:

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1. K. SHOBHA, D/O. NARAYANAN,  
KOTTUKULAM VAYAL HOUSE, KATCHERI AMSOM DESOM,  
KOZHIKODE TALUK.
2. K. BABU, S/O. NARAYANAN,  
KOTTUKULAM VAYAL HOUSE, KATCHERI AMSOM DESOM,  
KOZHIKODE TALUK.
3. K. BABY, D/O. NARAYANAN,  
KOTTUKULAM VAYAL HOUSE, KATCHERI AMSOM DESOM,  
KOZHIKODE TALUK.
4. K. REENA, D/O. NARAYANAN,  
KOTTUKULAM VAYAL HOUSE, KATCHERI AMSOM DESOM,  
KOZHIKODE TALUK.
5. K. SUDHEER, S/O. NARAYANAN,  
KOTTUKULAM VAYAL HOUSE, KATCHERI AMSOM DESOM,  
KOZHIKODE TALUK.

BY ADV.SRI. MOHAMMED NIAS C.P.

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON  
18-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.BHAVADASAN, J.**

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**Regular Second Appeal No.851 OF 2007**  
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**Dated this the 18<sup>th</sup> day of June, 2015.**

**J U D G M E N T**

Challenging the concurrent findings that the defendants in O.S.No.559/2001 are mere licencees of the premises who are bound to surrender the premises on termination of licence and on demand by licensor, defendants in the suit have come up in appeal.

2. It is not in dispute that the premises in question belonged to the predecessor in interest of the plaintiffs. The plaint allegations are that the predecessor in interest of the plaintiffs namely, Narayanan and one Achuthan were thick friends and after the construction of the premises in question, on request made by Achuthan, the premises was let out on licence arrangement to Achuthan and he continued till 1994. Thereafter the 1<sup>st</sup> defendant took over. Even though the licence agreement expired in 1998, the premises had not been vacated and

ultimately in 2001, notice terminating the licence was issued and the premises was sought back.

3. The defendants resisted the suit. It is pointed out that the 1<sup>st</sup> defendant had nothing to do with the premises and the arrangement by which Achuthan was put in possession was lease arrangement and not licence arrangement and if that be so, defendants are entitled to the protection of Act 2 of 1965.

4. The court below raised necessary issues for consideration. The evidence consists of the testimony of PWs 1 to 3 and the documents marked as Exts.A1 to A12. The defendants examined DW1 and had Exts.B1 to B3 marked. Ext.X1 is the third party exhibit.

5. On appreciation of the materials before them, both the courts below came to the conclusion that Exts.A3 and A6 are sufficient to show that initially Achuthan was inducted as licensee and subsequently in 1994, the 1<sup>st</sup> defendant had taken over as licensee. Both the courts below also found that there was absolutely no evidence at all to establish the lease arrangement pleaded by the defendants. Emphasis was laid by the lower court

on the fact that the 2<sup>nd</sup> defendant who claims to have taken the property on lease did not go into the box to depose about the arrangement. Accordingly, suit was decreed which was confirmed in appeal.

6. Notice was issued on the following questions of law:

- "1. Whether on the evidence on record courts below were justified in holding that first appellant is in possession of the building under Ext.A3 licence.
2. When no relief is sought for against second appellant, whether adverse inference can be taken for his non examination.
3. Whether courts below were justified in granting a decree as against the second defendant when no relief was sought for".

7. Learned counsel appearing for the appellants contended that both the courts below have erred in law in coming to the conclusion that the defendants were in occupation on licence arrangement and they are bound to vacate on termination of licence. It is significant to notice, according to the learned counsel, that the defendants had specifically denied execution of

Exts.A3 and A6 to A9 alleging that there is no proof to show that they were executed by the respective parties. Further it is contended that from 1998 to 2001, no document has been executed extending the alleged licence arrangement. It is admitted that licensee continued to be in possession till 2001 when notice was issued. The continuation of possession can be only on the basis of holding over which is typical of a lease.

8. Learned counsel appearing for the respondents, on the other hand, pointed out that except for the oral vibrations made at the time of evidence, there is absolutely no material to show that there was any lease arrangement between the parties. As far as Exts.A3 and A6 are concerned, they are proved in accordance with law and they establish the fact that Ext.A6 is executed by Achuthan and Ext.A3 by 1<sup>st</sup> defendant though they denied the same. It is also contended that merely because from 1998 till 2001 onwards, there was no document evidencing further enlargement of licence, it does not mean that the arrangement is a lease arrangement.

9. Learned counsel appearing for the respondents reminded

this Court that both the courts below have appreciated the evidence in considerable detail and have come to identical conclusions. Exercising the jurisdiction under Section 100 of the Code of Civil Procedure, this Court may not be justified in interfering with the findings unless it is shown that they are perverse or contrary to evidence on record.

10. It must be said that the contention raised by the learned counsel for the respondents is justified. Both the courts below have concurrently, on appreciation of evidence, found that the initial induction of Achuthan in the premises by virtue of Ext.A6 is under a licence arrangement and denial of execution of Ext.A6 is without any basis.

11. It is significant to notice that the case put forward in the plaint as well as at the time of evidence of the plaintiffs is that initially Achuthan was the licensee and in 1994 the 1<sup>st</sup> defendant took over the licence arrangement. However, defendants pointed out that Achuthan continued to be in possession through out as the 1<sup>st</sup> defendant has no right over the property. It is here that the court below has laid emphasis on

the fact that the 2<sup>nd</sup> defendant felt shy from being examined and he kept away from the box. Even though he filed a written statement, his contentions remained unsubstantiated. Further when a person who has to speak about the essential features of the case keeps himself away from the box, it is well settled that an adverse inference needs to be drawn against him. Except for the sole instance of continued possession from 1998 till 2001 without any document, it is pointed out that the arrangement should be deemed to be a lease arrangement.

12. It is difficult to accept the said contention for more reason than one. First of all various documents and licences produced by the plaintiffs belie the case put forward by the defendants and Exts.A3 and A6 have been proved in accordance with law. Further, extreme reluctance of the 2<sup>nd</sup> defendant to mount the box adds to the misery of the defendants. The mere fact that from 1998 till 2001, there is no document showing extension of licence will not be of any benefit to the defendants especially when their plea of lease have not been established.

As rightly pointed out by the learned counsel for the

respondents, there is nothing to show that the courts below have either entered a perverse finding or have based their conclusion on the basis of irrelevant evidence or omitted to note the relevant aspects so to warrant interference under Section 100 of the Code of Civil Procedure.

This appeal is without merits and it is accordingly dismissed.

Sd/-

**P.BHAVADASAN  
JUDGE**

smp

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P.A. to Judge.