

IN THE HGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 7TH DAY OF SEPTEMBER 2016

THE HON'BLE MR. JUSTICE M.M.SUNDRESH

O.A.No.537 of 2016

and

A.Nos.3893, 3240, 3241, 4122 of 2016

in

C.S.No.409 of 2016

- 1 V.Gurusamy Age 54
S/o.A.Vellaian,
C 2/7 Chettinad House Staff Qtrs
Rajah Annamalaipuram
Chennai 600028
- 2 K.Palaniappan Age 51
S/o.A.Kandavel
A-9 Chettinad House Staff Qtrs
Rajah Annamalaipuram
Chennai 600028
- 3 K.Subramanian Age 48
S/o.M.Kuppusamy
B-7, Chettinad House Staff Qtrs
Rajah Annamalaipuram
Chennai 600028
- 4 L.M.Yadaiah Age 50
S/o.L.Meeraiah,
C 2/4 Chettinad House Staff Qtrs
Rajah Annamalaipuram
Chennai 600028
- 5 V.Lakshmanan Age 49
S/o.Vellaichamy,
C 3/14 Chettinad House Staff Qtrs
Rajah Annamalaipuram
Chennai 600028

- 6 G.Raman Age 50
S/o.Gurusamy,
C 1/7 Chettinad House Staff Qtrs
Rajah Annamalaipuram
Chennai 600028
- 7 S.P.Murugan Age 49
S/o.S.Subramanian
C 3/12 Chettinad House Staff Qtrs
Rajah Annamalaipuram
Chennai 600028
- 8 K.N.Subramani Age 55
S/o.K.S.Neelakandan
C1/10, Chettinad House Staff Qtrs
Rajah Annamalaipuram
Chennai 600028
- 9 A.Murugesan Age 53
S/o.AndiGounder
C1/4, Chettinad House Staff Qtrs
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Chennai 600028
- 10 C.Pandiyar, Age 51
S/o.V.Chinnaiah,
C1/13, Chettinad House Staff Qtrs
Rajah Annamalaipuram
Chennai 600028
- 11 V.Baskaran, Age 56
S/o.Veerasamy
C-15, Chettinad House Staff Qtrs
Rajah Annamalaipuram
Chennai 600028
- 12 K.R.Raju Age 51
S/o.Karupaiah
C2/8, Chettinad House Staff Qtrs
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- 13 R.Rangan, Age 48
S/o.R.Ragavan,
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Rajah Annamalaipuram
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- 14 S.Saravanan Age 50
S/o.K.Srinivasan,
A-14, Chettinad House Staff Qtrs
Rajah Annamalaipuram
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- 15 C.Murugan, Age 48
S/o.M.Chellappan
C1/14, Chettinad House Staff Qtrs
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- 16 J.Kathikeyan Age 54
S/o.M.Jagannathan
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- 17 HussainSarif Labe, Age 53
S/o.MohamedSarif Labe,
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- 18 D.Venkatesham Age 56
S/o.D.M.Veeraiah
A-6, Chettinad House Staff Qtrs
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Chennai 600028
- 19 N.shanmugam Age 52
S/o.K.Narayanan
C1/8, Chettinad House Staff Qtrs
Rajah Annamalaipuram
Chennai 600028
- 20 B.Nagarajan Age 55
S/o.A.Balu
C1/5, Chettinad House Staff Qtrs
Rajah Annamalaipuram
Chennai 600028
- 21 B.Aathiyan Age 51
S/o.AL.Pamban
C-13, Chettinad House Staff Qtrs
Rajah Annamalaipuram
Chennai 600028

The plaintiffs 2-21 herein are
all Represented by their
Authorized V.Gurusamy

...Applicants/Plaintiffs
(O.A.No.538 of 2016)

Vs

1. South India Corporation Private Limited,
(Also Known as: Chettinad South India Corporation)
Represented by its President,
5th Floor, 603, Anna Salai,
Chennai 600 006.

2. RaniMeyyammai Achi (of Chettinad) Memorial Charitable
Trust
Represented by its Trustee
5th Floor, 603, Anna Salai,
Chennai 600 006

3. M.A.M.R.Muthiah
S/o. Shri M.A.M.Ramasawamy
Rani Seethai Hall,
5th Floor, 603 , Anna Salai, Chennai 600 006.

...Respondents/Defendants
(O.A.No.538 of 2016)

O.A.No.537 of 2016:-

Original Application praying that this Hon'ble
Court be pleased to issue order in particular AD-Interim
injunction restraining the respondents their men or agents
or any one claiming though them herein from interfering
with the peaceful possession and enjoyment of the
respective residential premises in the possession
enjoyment of the applicants as mentioned in the schedule
pending the disposal of the above suit.

A.No.3893 of 2016:-

1. South India Corporation Private Limited,
 (Also Known as: Chettinad South India Corporation)
 Represented by its President,
 5th Floor, 603, Anna Salai,
 Chennai 600 006.

..Applicant

Vs

- 1 V.Gurusamy Age 54
 S/o.A.Vellaian,
 C 2/7 Chettinad House Staff Quarters
 Rajah Annamalaipuram
 Chennai 600028
- 2 K.Palaniappan Age 51
 S/o.A.Kandavel
 A-9 Chettinad House Staff Quarters
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- 3 K.Subramanian Age 48
 S/o.M.Kuppusamy
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 Rajah Annamalaipuram
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 S/o.Vellaichamy,
 C 3/14 Chettinad House Staff Quarters
 Rajah Annamalaipuram
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- 6 G.Raman Age 50
 S/o.Gurusamy,
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S/o.V.Chinnaiah,
C1/13, Chettinad House Staff Quarters
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S/o.Veerassamy
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S/o.R.Ragavan,
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- 14 S.Saravanan Age 50
S/o.K.Srinivasan,
A-14, Chettinad House Staff Quarters
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- 21 B.Aathiyar Age 51
S/o.AL.Pamban
C-13, Chettinad House Staff Quarters
Rajah Annamalaipuram
Chennai 600028.
- ..Respondents/Plaintiffs

The respondents 1-21 herein are
all Represented by their
Power Agent, V.Gurusamy ..Respondents/Plaintiffs

22.Rani Meyyammai Achi (of Chettinad)
Memorial Charitable Trust
Represented by tis Trustee,
5th Floor 603, Anna Salai,
Chennai 600 006.

23.M.A.M.R.Muthiah,
S/o.Shri M.A.M.Ramaswamy
Rani Seethai Hall,
5th Floor 603, Anna Salai,
Chennai 600 006.

Respondents 22 & 23/
Defendants 2 & 3

Application praying that this Hon'ble Court be
pleased to reject the Plaint.

A.No.3240 of 2016

- 1 V.Gurusamy
S/o.A.Vellaian,
C 2/7 Chettinad House Staff Qtrs
Rajah Annamalaipuram
Chennai 600028
- 2 K.Palaniappan
S/o.A.Kandavel
A-9 Chettinad House Staff Qtrs
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S/o.L.Meeraiah,
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Rajah Annamalaipuram
Chennai 600028

- 5 V.Lakshmanan
S/o.Vellaichamy,
C 3/14 Chettinad House Staff Qtrs
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S/o.Gurusamy,
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S/o.V.Chinnaiah,
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...Applicants/Plaintiffs

Vs

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3. M.A.M.R.Muthiah
S/o. Shri M.A.M.Ramasawamy
Rani Seethai Hall,
5th Floor, 603 ,
Anna Salai, Chennai 600 006.

...Respondents/Defendants

A.No.3240 of 2016

Application praying that this Hon'ble Court be
pleased to permit us to remit the rents payable in
respect of the respective premises leased to us to the
credit of the above suit.

A.No.3241 of 2016:-

Application praying that this Hon'ble Court be
pleased to issue a direction directing the 1st respondent

to remove the over-lock which has been illegally fixed on the applicants apartments mentioned in the schedule hereunder .

A.No.4122 of 2016:-

Rani Meyyammai Achi (of Chettinad) Memorial Charitable Trust
Represented by its Trustee
5th Floor, 603, Anna Salai,
Chennai 600 006. ..Applicant/2nd
Defendant

Vs

- 1 V.Gurusamy
S/o.A.Vellaian,
C 2/7 Chettinad House Staff Quarters
Rajah Annamalaipuram
Chennai 600028
- 2 K.Palaniappan
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- ..Respondents/Plaintiffs

The respondents 2-21 herein are
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..Respondents 1 to 21 /
Plaintiffs

22.South India Corporation Private Limited
Also known as :Chettinad South India Corporation)
Represented by its President
5th Floor 603, Anna Salai,
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23.M.A.M.R.Muthiah,
S/o.Shri M.A.M.Ramaswamy
Rani Seethai Hall,
5th Floor 603, Anna Salai,
Chennai 600 006.

Respondents 22 & 23/
Defendants 1 & 3

Application praying that this Hon'ble Court be
pleased to reject the plaint.

This Original Application along with application
coming on this day before this court for hearing the court
made the following order:

Suit has been laid for the following reliefs:

"(a) For a declaration, declaring that the
plaintiffs are the tenants of the second
defendant Trust, in respect of their
respective residential premises under their
occupation, as set out in the Schedule
hereunder.

(b) For a permanent injunction restraining
the defendants, their agents or any one

claiming through or under them, in any manner interfering with the peaceful possession and enjoyment of the schedule mentioned residential premises by the respective plaintiffs."

2. Pending the suit, O.A.No.537 of 2016 and A.No.3240 of 2016 have been filed by the plaintiffs seeking the relief of permanent injunction qua possession and payment of rent.

3. Application No.3241 of 2016 has been filed by the plaintiffs seeking the relief in favour of the plaintiffs 5, 14, 15 and 17.

4. The defendants in the suit have filed Application Nos.3893 and 4122 of 2016 seeking rejection of the plaint.

5. All these applications have been taken up and disposed of by way of a common order.

6. For the sake of brevity, the parties are referred to as they are in the suit.

7. As plaintiff Nos.2, 20 and 21 vacated their respective premises in favour of the defendants, these applications stand dismissed as against them.

8. All the plaintiffs are the employees of the first defendant. They are stated to have been appointed by the then Chairman late Dr.M.A.M.Ramaswamy on various dates. After the death of the late Chairman, certain disputes have arisen resulting in the plaintiffs filing a suit in C.S.No.561 of 2014. As against the order passed in Application No.5443 of 2014, an appeal was filed in O.S.A.No.22 of 2015 in which, the following order was passed on 16.03.2015:

"3. During the course of the hearing of the appeal, an endeavour was made to resolve the controversy, but the final settlement in a sense could not take place. However, to a limited extent, there was agreement on one issue - that the appellants are willing to work and the respondents had not issued any transfer order as alleged by them, albeit orally. We made it clear by our last order dated 04.03.2015 that in view of larger issues inter se the management of the company, these employees cannot suffer and the salary dues outstanding from January, 2014

to February, 2015 ought not to be retained so as to pressurise these people and all these amounts of arrears being paid and communication for reporting for duty being issued, the appellants would be bound to report for duty and if they are not desirous of continuing the service, it was always open to them to terminate the arrangement of service in accordance with law and norms.

4. Learned Senior Counsel appearing for the respondents states today that he has brought cheques for the amounts due right up to 6 February, 2015, which have been collectively handed over to the learned counsel for the appellants. Simultaneously, the communication dated 16.08.2014 had been issued by the respondents, which has been received and acknowledged by the counsel for the appellants on behalf of the appellants, also giving details of calculation and calling upon them to report at the place where the respondents seek them to work.

5. The aforesaid being the position, the learned counsel for the appellant states that all the appellants want to continue to work, they would report accordingly.

6. As far as the suit is concerned, the relief has worked itself out, the appellants have already been

granted the amounts for which they have actually sued. We are not inclined to grant any interest in the situation or costs of the proceedings.

7. Needless to say that qua the relief of not denying the appellants their salaries, the appellants should be paid the amounts as per 7 the entitlement subject to their reporting for work at the place where they have been called upon to work. There can be no other relief in the suit. The questions of law decided in the suit are left open. 8. The Original Side Appeal accordingly stands disposed of in terms of the aforesaid, leaving the parties to bear their own costs. Decree be drawn accordingly. Consequently M.P.No.1 of 2015 is closed."

9. Thereafter, orders were passed in respect of transfers and postings. The plaintiffs raised a dispute under Section 2(k) of the Industrial Disputes Act. In view of the objections raised by the statutory authority, a writ petition in W.P.No.30331 of 2015 was filed. The plaintiffs also sought for protection from evicting them from their respective premises. An order was passed by this Court on 11.01.2016, which reads as under:

"7. A perusal of the order under

challenge would show that absolutely no reasons have been assigned. Therefore, on this score alone, this Court is inclined to set aside the same. Furthermore, the petitioners have not been heard. Hence, this Court is inclined to set aside the order impugned by giving liberty to the petitioners to represent the papers within a period of four weeks from the date of receipt of a copy of this order and on receipt of the same, the 1st respondent shall issue notice of hearing to the petitioners and thereafter, appropriate final orders will have to be passed by giving sufficient reasons in support of the decision to be arrived at on the question of maintainability. The said decision will have to be made within a period of eight weeks from the date of receipt of the papers to be represented by the petitioners. 8. Law is equally settled that no interim order obtained is independent to the main writ petition. Therefore, this Court is unwilling to go into the inter se dispute sought to be raised over the same by the 7 petitioners on the one hand and the private respondents on the other hand. Suffice it is to state that this order is passed in the main Writ Petition. Consequently, the interim applications are closed, giving liberty to the parties to work out their

remedy in the manner known to law establishing their case, if so advised.

This Writ Petition is disposed of accordingly. No costs."

10. Thereafter, the present suit is filed by the plaintiffs inter alia contending that the late Chairman has inducted the plaintiffs as tenants of the defendant No.2, which is a charitable trust. These inductions were made as leases from the second defendant by taking note of their employment with the first defendant. They are not quarters, having nexus to the employment, but independent leases. The plaintiffs have been in possession and enjoyment of the respective premises for a few decades by making a meagre payment of rent between Rs.135/- and 400/-. Pursuant to the dispute, they have made payment to the second defendant since defendants 1 and 3 have refused to receive them. Notices have been issued to the plaintiffs to vacate the premises on the ground of their alleged refusal to the communications sent to work at different places, other than the one they were working hitherto, since their services are no longer required in the residence of the former group Chairman. Thus, under those circumstances, the present suit has been filed before

this Court by calculating the Court fee payable by all the plaintiffs.

11. The case of the defendants as submitted by the learned Senior Counsel in nutshell is as follows:

There is no landlord and tenants relationship between the second defendant and the plaintiffs. There is no cause of action in the suit. The cause of action, if any, is distinct to each of the plaintiffs and therefore, there cannot be any joint plea by the plaintiffs. There is no pecuniary jurisdiction since three out of the four plaintiffs have given consent letters to the defendants to vacate the premises and accordingly, vacated them, though after the date of filing, but before presentation - 20.04.2016 and 20.06.2016. The first plaintiff cannot represent others. The averments in the plaint are very vague. There is no material to substantiate the so called threat of eviction. The document dated 14.09.2015 has not been marked in support of the alleged eviction. Each cause of action is different to each plaintiff. There is no document evidencing the lease. The lease under Section 107 of the Transfer of the Property Act, 1882, mandates lease of immovable property beyond 11 months to be registered. The alleged rent receipt filed cannot create a

relationship of the landlord and the tenant. Even if it is a charitable measure in favour of the plaintiffs, the same would not be termed as lease. Therefore, the applications filed for rejection of the plaint will have to be allowed and consequently, the suit and the other applications filed by the plaintiffs will have to be dismissed. In support of their contention, the learned counsel has relied on the following decisions:

- (1) K. JAYALAKSHMI RAO V. DASAPARAKSH PARADISE ((2015) 2 CTC 159);
- (2) MARIA MARGARIDA SEQUEIRA FERNANDES AND OTHERS V. ERASMO JACK DE SEQUEIRA ((2012) 5 Supreme Court Cases 370);
- (3) (PAMUR) ATCHI REDDI AND OTHERS V. NELATURU VENKATA RANGACHARLU AND ANOTHER (AIR 1926 MAD. 1140);
- (4) RAMRAMESHWARI DEVI AND OTHERS V. NIRMALA DEVI AND OTHERS ((2011) Supreme Court Cases 249);
- (5) THAMIRAPARANI INVESTMENTS PVT. LTD., V. META FILMS PVT. LTD., ((2006) 1 CTC 270)
- (6) A. SHANMUGAM V. ARIYA KSHATRIYA RAJAKULA VAMSATHU MADALAYA NANDHAVANA PARIPALANAI SANGAM ((2012) 5 MLJ 618);
- (7) T. ARIVANDANDAM V. T. V. SATYAPAL AND ANOTHER ((1977) 4 Supreme Court Cases 467); and
- (8) CHURCH OF CHRIST CHARITABLE TRUST AND EDUCATIONAL CHARITABLE SOCIETY V. PONNIAMMAN EDUCATIONAL TRUST ((2012) 8 Supreme Court Cases 706).

12. The learned Senior Counsel appearing for the plaintiffs made the following submissions:

The suit is maintainable in law in view of the

provisions contained in Order I Rule 3, Order III Rule 12 and Order II Rule 3(2) of the Code of Civil Procedure. Clauses 12 to 14 of the Letters Patent are to be read in consonance with each other. For considering the application under Order VII Rule 11 of C.P.C., the averments in the plaint alone are relevant. There are sufficient averments in support of the contention that the premises are let out on lease and thus, they are not licences qua the employment. The erstwhile Chairman was managing both the defendants 1 and 2. The payment of rent along with the receipt qua the second defendant would establish the case of the plaintiffs that the relationship is one of the landlord and tenant. Earlier, rent was deducted by the first defendant and thereafter, it was sent directly to the second defendant on refusal. Cause of action has to be seen on a whole reading of the plaint and there is no bar under any law. Thus, clauses "a" and "d" of Order VII Rule 11 of the C.P.C., are satisfied. In this case, the defendants are trying to remove the plaintiffs from their respective premises by linking to the other issues pertaining to the employment. The defendants are not different but the same person is acting in different capacities. In support of the contentions, the following decisions have been relied upon:

- (1) SARALA VASU V. BELAIR CORPORATION PRIVATE LIMITED ((2015) 4 CTC 747);
- (2) INDIAN CABLE COMPANY LTD. V. SMT. SUMITRA CHKRABORTY (AIR 1985 CALCUTTA 248);
- (3) THE MADRAS RACE CLUB, REP. BY ITS SECRETARY GUINDY V. M.VICTOR AND OTHERS ((2013) 6 CTC 481);
- (4) SIR TUKOJIRAO HOLKAR V. SOWKABAI PANDHARINATH RAJAPURKAR (MANU/MH/170/1928);
- (5) THE FOOD CORPORATION OF INDIA, ETC., V. M/S MAYAVARAM FINANCIAL SYNDICATE, ETC., ((1993) 2 Law Weekly, 453);
- (6) PREM LALA NAHATA & ANOTHER V. CHANDI PRASAD SIKARIA ((2007) 4 LAW WEEKLY 1).

13. By way of reply, the learned counsel appearing for the defendants submit that without prejudice to the contentions raised, this Court can take judicial note of the fact that the premises situated in the heart of the city of Chennai. Therefore, the plaintiffs will have to be directed to pay the market rent. The application filed in A.No.3241 of 2016 is not maintainable as the four plaintiffs are not in possession. Hence, the prayer for injunction is not maintainable as against mandatory injunction, which is also not permissible as the same would amount to granting a

decree without final adjudication on merit.

14. The learned counsel appearing for the third defendant submits that the said defendant is neither necessary nor a proper party and therefore, both the suit and application will have to be dismissed insofar as the third defendant is concerned.

15. For the aforesaid, the learned Senior counsel appearing for the plaintiffs submits that this Court can fix the reasonable rent pending the suit to be payable by the plaintiffs. However, while doing so, the attending situation will have to be taken into consideration.

16. Admittedly, the plaintiffs were working under late Chairman for many number of years at the Palace. He was the person incharge of defendants 1 and 2. The problem has arisen apparently after his demise. The plaintiffs were also inducted by the late Chairman. The deduction made from their salary towards the rent is also not in dispute. The premises having been belonging to the second defendant is also an admitted fact. Now, the dispute between the parties is pending before the statutory authority is also factually correct. With the aforesaid factual background, let us deal

with the applications filed.

17. The Court delineate an exhaustive procedure qua a civil dispute. Thus, it is the procedural enactment with few substantive provisions. A cause of action has not been defined neither under the Civil Procedure Code nor under the Letters Patent. Considering the abovesaid issue, in **MYTRAH ENERGY (INDIA) LIMITED V. GAMESA RENEWABLE PRIVATE LIMITED AND OTHERS** ((2016) 4 LAW WEEKLY 86), this Court has held as follows:

"8. Cause of Action:-

8.1. Before going in to the merits of the case, let us deal with the word "cause of action". The word "cause of action" has not been defined either under the Civil Procedure Code or under the Letters Patent. A cause of action has to be seen in the context of territorial jurisdiction available to the Court while entertaining a suit. It is the basis for the maintainability of a suit. It is the foundation of a suit, around which, the other provisions of the Civil Procedure Code revolve. While dealing with the cause of action, the Courts are concerned with the material facts required to be established in support of the right of the

party to get a judgment. Such a material fact may be a fact in issue or a relevant fact. It has got no relationship with the case of a defendant. Such a fact shall not be equated with the evidence, which is necessary to prove a fact. A cause of action would include not only the right of the plaintiff, but also, the facts disclosing the infringement of its right. Therefore, the facts which are in support of its right and leading to infringement would form cause of action. Thus, what is important is that a fact will have to be material to the suit and the relief. Therefore, all facts, which are not material, would not constitute cause of action. There has to be an existence or infraction coupled with the right.

8.2. It is nothing but bundle of facts, which, when added with the law applicable provide the adequate right to the plaintiff 's relief. In a suit relates to a breach of contract, the making of a contract and its breach would be the proper cause of action. Therefore, the place in which it occurred would be very relevant. Thus, the fact which is remotely connected to another which forms a cause of action cannot be one, just for the purpose of giving jurisdiction to a Court. Similarly, termination of a

contract would certainly create a part of cause of action and therefore, the place in which it takes place gives jurisdiction to the Court. The legal position aforesaid has been reiterated by the Division Bench of this Court in **D. LAKSHMINARAYANA CHETTIAR AND ANOTHER ((1954) AIR Madras 594)** in the following manner.

"41. There is no definition of 'cause of action' in the Civil Procedure Code; but it is the fundamental pivot around which many of the provisions of the Civil Procedure Code revolve. It is the basis for the maintainability of the suit. It is the foundation for the adding up of parties, and it is an important ingredient in working out the principle of res judicata and that embodied in Order 2, Rule 2, Civil P.C. It has, therefore, necessarily become the subject of judicial scrutiny. Bretts J. defined it in -- 'Cooke v. Gill', (1373) 8 CP 107 (Z1) a leading case on the subject, to mean 'every fact which is material to be proved to entitle the plaintiff to succeed, every fact which the defendant would have a right to traverse.' In -- 'Bead V. Brown', (1889) 22 QBD 128 (Z2), Lord Esher adopted the same definition, but expressed it in more felicitous language as follows:

"Every fact which it would be necessary for the plaintiff to prove, if traversed, in order to

support his right to the judgment of the court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved."

Lord Watson in 'Chandkour v. Partab Singh', 16 Cal 08 (PC) (Z3) approved of the definition, but added a rider that

"the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff."

Subsequent decisions have followed the lead given by the earlier decisions.

48. In 'Gangi v. Ramaswami', 12 Mad LJ 103 (Z.7), Bhashyam Aiyangar J. struck a different note which is more in consonance with the later view regarding the meaning of the word "cause of action." There a first suit was brought by the plaintiffs for the recovery of some land which was in the possession of the defendant on the ground that they succeeded to the father's estate, and that the alienation made by the mother during her lifetime was bad. They obtained a decree therein, but subsequently they filed another suit to recover possession against another defendant in respect of another item which they claimed as part of the same inheritance. It was contended that the later suit was barred by Section 43,

Civil P. C. In dealing with that contention, Bhashyam Aiyangar J. made the following pertinent remarks at p.105 :

"The former suit was instituted against the de-fondant therein, by reason of his wrongfully withholding from the plaintiffs, on the death of their mother, possession of the land in Schedule B, and the present suit is brought on the defendants herein similarly withholding the land comprised in schedule A, the defendants in both the cases having respectively come into possession of the lands comprised in schedules B and A under separate alienations made by the mother in favour of each on a different occasion. It will thus be seen that though the ground of title is one and the same in both the suits and the cause of action in respect of both arose at the same time, viz., the date of the mother's death, yet the persons who wrongfully withheld the land in schedule A are quite different and there was no manner of combination or privity between them in respect of the lands which they severally withheld.

"The words 'cause of action' have fill along been held to mean 'every fact which it is material to be

proved to entitle the plaintiff to succeed; every fact which the defendant would have a right to traverse' and have no relation whatever to the defence, but refer entirely to the grounds set forth in the plaint as the cause of action:

(1873) 6 CP 107 (Z1), -- 'Shankar Baksh v. Daya Shankar', 15 Ind App 66 (PC) (Z8), 16 Cal 98 (PC) (33).

"Though the ground of title on both suits are founded in one and the same and the causes of action also arose at the same time, yet the properties comprised in the two suits are different and the persons who severally withheld the same are also different. A reference to Section 50, C. P. C. clearly shows that in every suit the plaintiff must show that the defendant is or claims to be interested in the subject matter and that he is liable to be called upon to answer the plaintiff's demand. This clearly shows that the cause of action is not an abstraction, something independent of the defendant, but that the plaint should disclose a cause of action against the defendant."

We respectfully agree with the aforesaid observations of the learned Judge, and this

passage clearly brings out the distinction between the ground of title and the cause of action. A cause of action is something more than a ground of title. It not only includes the facts necessary to support the plaintiff's title, but also the facts which entitled him to relief against a particular defendant.

49. An interesting and instructive discussion, if we may say so, on the question raised is found in -- 'Bahadur Singh v. Sultan Husain Khan', AIR 1922 Oudh 171 (Z9). Syed Wazir Hasan A. J. C. held that,

"A revisioner has a separate cause of action in respect of each alienation made by the widow, and a suit to recover property comprised in one alienation is not barred by Order 2, Rule 2, C. P. C. by reason of a proper suit for the recovery of property comprised in another alienation."

The learned Judge traced the history of the meaning of the words "cause of action" and then made some weighty observations to the following effect at p. 175 ;

"Though the cause of action has no relation to the defence which may be set up by the defendant, yet it would be an error to suppose that it has no relation to the defendant and his acts preceding the suit. A 'cause of action' is not a theoretical term

entirely picked up from text books and placed on a plaint. In cases of torts, the right of the plaintiff and its infringement by the defendant will generally make up the 'cause of action'. In --'Williams v. Morland', (1824) 107 ER 620 (210), cited by Bowen L. J. in -- 'Bransden v. Humphrey', (1885) 14 QBD 141 (211), Little-dale J. said 'Generally speaking, there must be a temporal loss or damage accruing from the wrongful act of another, in order to entitle a party to maintain an action on the case.' Order 7, Rule 5 (Act 5 of 1908) is based on the same principle. It is as follows : 'The plaint shall show that the defendant is or claims to be interested in the subject matter and that he is liable to be called upon to answer the plaintiff's demand. 'Now in the present case the defendants' connection with the land in suit is wholly different from his connection with the lands covered by the other sales both in point of time and the subject matter of the alienations. Their act of infringement of the plaintiffs' right qua the property in suit is ' different from their act or acts of

infringement of the plaintiffs' right qua one or the other of the properties previously in suit."

It would be seen from the aforesaid decisions that though under Act 3 of 1859 this court was inclined to take the view that the unity of title was synonymous with cause of action, the later decisions clearly laid down that cause of action was something more than unity of title, and that it would include not only the right of the plaintiff but also the facts disclosing the infringement of that right.

8.3. A similar view has been taken by the Apex Court in **A.B.C. LAMINART PVT. LTD., AND ANOTHER V. A.P. AGENCIES, SALEM (1989 AIR 1239)**, in which, the following passage would be apposite.

"A cause of action means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can

possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."

18. Order I of the Code of Civil Procedure deals with parties to the suits. Under Order I (1) of the Code, all the persons may be joined in one suit as plaintiffs where --

(a) Any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and

(b) If such persons brought separate suits, any common questions of law or fact would arise.

19. Therefore, it is not necessary that the suit can be restricted to single plaintiff against the same defendant. When the reliefs are same, right claimed is similar coupled with the facts governing the parties are identical or similar involving commonality qua law of fact, such a suit is maintainable.

20. As per Order I Rule 12 of the Code, in a case where there are more plaintiffs in existence, any one may be authorised by the others to appear, plead and act. Under Order II Rule 3 of the Code, where causes of action are united, the jurisdiction of the Court as regards the suit shall depend upon the amount or value of the aggregate subject matters at the date of institution of the suit. Thus, the causes of action pertaining to the plaintiffs combined and valued accordingly, it can be taken into account for the pecuniary jurisdiction. It is also not the case of the defendants that Order I Rule 12 of the Code has not been complied with.

21. The scope and amplitude of Order VII Rule 11 of the Code does not require any elaboration. In a suit filed under the original side of this Court, the rejection can be done only under Order VII Rule 11(a) and (d). For the aforesaid purpose, a Court is required not to traverse beyond the averments and documents in the plaint.

22. Clause 12 of the Letters Patent deals with the original jurisdiction of this Court. While exercising the power under Clause 12, Sections 15 and 20 of the Civil Procedure Code do not have an application as mandated under Section 120. The High Court has jurisdiction to entertain the suit where several causes of action joined together resulting with the aggregate value above Rs.25,00,000/-. The assessment of the value has been done by the plaintiffs. While the Court can see the bona fides on the valuation, there is no general rule which can be laid down. The High Court also retains concurrent jurisdiction with the City Civil Court. Therefore, it is not as if, the High Court is bound to transfer the case to the City Civil Court only on the ground of pecuniary jurisdiction in all cases. An useful reference can be made to the following judgments.

1. **FOOD CORPORATION OF INDIA, ETC., V. M/S MAYAVARAM FINANCIAL SYNDICATE, ETC., ((1993) 2 Law Weekly, 453);**
2. **H.M.MAHESH, In re (1992) 2 MLJ 444; and**
3. **V.RAMAMIRTHAM, SOLE PROPRIETOR , GLORIOUS PICTURES V. RAMA FILM SERVICE, (1951) 2 MLJ 121 (FB)**

23. In the abovesaid factual matrix and the legal position analysed, let us deal with the applications.

24. The first plaintiff indeed represents the others. Order I Rule 12 of the Code prescribes such a mode. Under Order I Rule 1 as well as Order II Rule 3(2) of the Code, different plaintiffs having the same causes of action against the very same defendants involving the same issues of fact of law can maintain the suit together. The sum and substance of the plaintiffs as a whole is that they are asked to vacate the respective premises in view of the ongoing tussle between the parties. As the cause of action is associated with a material fact in relation to the relief sought for, the case on hand thus come within the purview of the abovesaid provisions of the Court. Therefore, the contentions raised on the authorisation of the first

plaintiff to represent the others and join all the causes of action is hereby rejected.

25. Order VII Rule 11 of the Code deals with one of the preceding paragraphs applies to a suit filed on the file of this Court with respect to Clause (a) and (d) alone. Thus we are concerned with the availability of the cause of action and the bar of law. Certainly, on a cursory reading of the plaint as a whole, it is seen that causes of action are available and there is no bar of any enactment. The submission made on the pecuniary jurisdiction by the learned Senior Counsel also cannot be accepted. At the time of filing the suit, all the plaintiffs are in the same position. It is only according to the defendants that some of the plaintiffs have given letter prior to the suit evidencing the vacation of the premises held by them in favour of the defendants. There is nothing on record to show that these plaintiffs have informed the others. Further more, this lack of pecuniary jurisdiction cannot be a ground for Order VII Rule 11(d) of the Code. Even in the judgment relied upon by the learned Senior Counsel appearing for the first defendant, in **THE FOOD CORPORATION OF INDIA, ETC., V. M/S MAYAVARAM FINANCIAL SYNDICATE, ETC., ((1993) 2 Law Weekly, 453)** it has been held that a Court

of unlimited jurisdiction does have jurisdiction to entertain the suit below the value. Further more, there is no dispute at the time of presentation of the suit on 20.06.2016. The factual position qua of the plaintiffs was the same. Hence, the said contention is accordingly rejected.

26. It is a specific case of the plaintiffs that the relationship *inter se* the parties, namely, the plaintiffs and the second defendant is one of tenants and the landlord, whereas it is a case of the first defendant that it is one of licence. The second defendant merely states that there is no relationship of landlord and tenant. One thing is clear, the plaintiffs have been inducted by the then Chairman being the employees of the first defendant. Certain amounts have been deducted from their salary towards rent. They have also been in possession for quite a number of years. Therefore, the question as to whether the possession of the plaintiffs is as a lessee or licensee is a matter of adjudication at the appropriate time. There is no contradiction available in the stand of the plaintiffs. The issue involved in the writ petition filed in W.P.No.30331 of 2015 is totally different. Even in the affidavit filed in M.P.No.1 of 2015 in W.P.No.30331 of 2015,

it has only been stated that the second respondent therein viz., first defendant before this Court issued letters asking the petitioners therein to vacate the premises. Similarly, the question as to whether the occupation of the plaintiffs is only in the nature of the charity or not and if so, what is the consequence that would flow out of it, especially, when a rent is being calculated, though nominal, is a matter for adjudication at a later point of time. Suffice it to state that the dispute between the parties pending before different forums are interconnected. Prima facie, it appears that all the defendants are placed on one side and so is the case of the plaintiffs. These issues can be gone into if there is an earlier adjudication on the other proceedings pending before the other statutory authorities. The balance of convenience apart from prima facie case also lies with the plaintiffs in view of their continuity as tenants over the years. Therefore, this Court is convinced on the discretion conferred under Order XXXIX Rules 1 and 2 of C.P.C., to be exercised in favour of the plaintiffs.

27. The learned Senior Counsel appearing for the defendants submits that an application filed in A.No.3241 of 2016 is not maintainable and thus, liable to be dismissed.

It is their case that the four plaintiffs mentioned therein have vacated on their own. This stand is opposed by the plaintiffs stating that for personal reasons, they went away by locking their premises and on their return, they found the houses being over locked. The factum of over locking is not disputed. The factum of handing over possession to the defendants is also not proved. The four plaintiffs are otherwise placed in the similar situation as that of the others is also factually correct. They are also part of the on going dispute with the defendants. The learned Senior Counsel appearing for the plaintiffs also produced documents evidencing electricity payment to discredit the statement made by the learned Senior Counsel appearing for the defendants that hitherto they were promptly paid but prevented from doing so after the lock was put up. A specific assertion has been made that the entire materials are kept within the respective premises. Considering the above, this Court does not find any reason in not allowing the application as prayed for. The general principle governing the mandatory injunction does not have an application to the case on hand. In this case, according to the aforesaid four plaintiffs, they were living in their respective premises. That is the reason why, they filed a suit along with others. Therefore, there is no difference

between them and others. When the relief is given in favour of the other plaintiffs, the same cannot be denied to four of them. Possession does not mean physical possession alone. If a party goes out and thereafter, comes back, finds the premises being locked, then the possession though constructive continues to lie with it. Hence, the technical objection of the defendants is hereby rejected.

28. The learned Senior counsel appearing for the defendants raised yet another contention that there is no registration of the lease deed as mandated under Section 107 of the Transfer of Property Act, 1882 and thus Sections 17 and 49 of the Registration Act would come into play. This contention is also liable to be rejected. It is not the case of the plaintiffs that the tenancy has been fixed for a fixed period. There can be a lease for a similar period less than 11 months, which can be extended from time to time orally in which no registration is required. As discussed above, the prolonged possession of the plaintiffs, prima facie, appears to be disturbed in view of the subsequent developments.

29. There is one other incidental issue which is to be dealt with with regard to the just rent liable to be

paid by the plaintiffs. The learned Senior Counsel appearing for the defendants submits that a prevailing valuation of the market rent would be Rs.15,000/-, keeping in mind the strategic location of the premises. The learned Senior counsel for the plaintiffs submits that a reasonable amount may be fixed, taking into consideration the situation in which the plaintiffs are in. Admittedly, the plaintiffs have been paying only a nominal amount. The nature of location of the premises is not in dispute. However, another on-going dispute between the parties, might affect the ability of the plaintiffs to pay the market rent. There has been no attempt over the years to enhance the rent. Thus, taking note of the above said facts and applying the ratio laid down by the Apex Court in **MARIA MARGARIDA SEQUEIRA FERNANDES AND OTHERS V. ERASMO JACK DE SEQUEIRA ((2012) 5 Supreme Court Cases 370)** and **A.SHANMUGAM V. ARIYA KSHATRIYA RAJAKULA VAMSATHU MADALAYA NANDHAVANA PARIPALANAI SANGAM, REP. BY ITS PRESIDENTS ETC., ((2012) 5 MLJ 618 (SC))**, a sum of Rs.5,000/- has been fixed as rent irrespective of nature of the extent of the premises in which the plaintiffs are residing. This amount will have to be paid by the plaintiffs starting from the month of September 2016 payable during the first week of every month, of course, subject to the suit and other orders if any, pending suit and without prejudice to the contentions

raised.

30. The decisions relied upon by the learned counsel appearing for the defendants have not dealt with the issue specifically, as the principle governing them have been dealt with in general. After all, the decisions will have to be applied to the facts of this case. While there is no difficulty in appreciating the ratio laid down therein, this Court is of the view that there is no necessity to go into each one of them in the light of the factual findings and the discussions made above.

31. This Court finds sense in the apprehension expressed by the learned Senior Counsel appearing for the defendants that disposal of the suit will take some time and it will cause prejudice to them. Hence, it is hereby observed that it is well open to the parties, including the defendants to file such applications based upon the fact situation by invoking the provisions contained in Order XXXIX Rule 4 of C.P.C. In the alternative, they can also seek to expedite the trial of the suit.

32. In the result, Application Nos.3893 and 4122 of 2016 are rejected. Injunction granted in Application No.537 of 2016 is made absolute. Application No.3240 of

2016 is ordered as indicated above on condition that the plaintiffs shall pay a sum of Rs.5,000/- towards rent starting from the month of September, 2016, and payable during the first week of every month in favour of the second defendant, subject to further orders to be passed in the suit. Application No.3241 of 2016 is also ordered.

sd/.M.M.S.J

07.09.2016

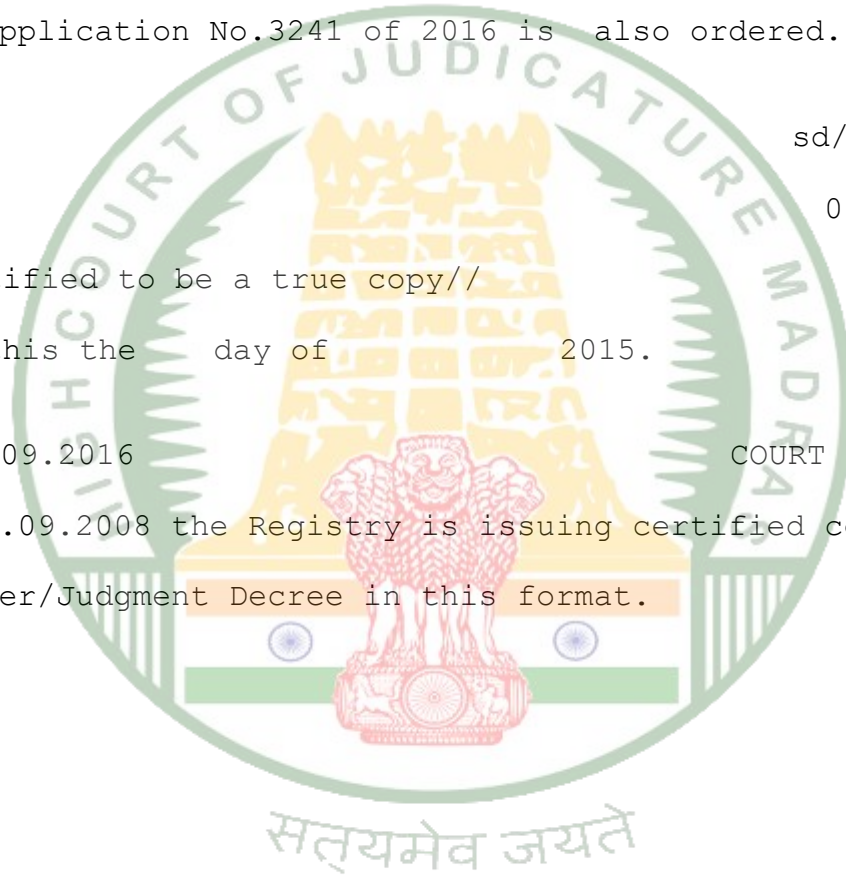
//Certified to be a true copy//

Dated this the day of 2015.

S.s/23.09.2016

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