

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2017

CORAM

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A. No.747 of 2017
and
C.M.P.No.18686 of 2017

M/s.Bharath Petroleum Corporation Ltd
A Government Company within the
meaning of Companies Act,1956,
having its registered Office at Bharath Bhavan,
4 and 6 Curriabhoy Road,
Ball and Estate, Bombay 400 028 -
within outside the jurisdiction of this Court
and its territory office at No.35, Vaidyanathan
Street, Tondiarpet, Chennai 600 081
Represented by Territory Manager .. Appellant/Petitioner

vs

1. Udhayashankar
2. V.Kamalakannan
3. Glory Kumdhavalli
4. Arumugam
5. M.Jayavelu
6. R.Thiruvengadam
7. Venkatarathinam
8. Vedhachalam
9. Ganesan
- 10.Balakrishnan
- 11.Seshappan
- 12.Manohari Govindaraj
- 13.Yazha Veedhi Sathyanarayanan
- 14.Nandamoory Inerji
- 15.P.Shankar
- 16.Nandamoory Haribabu
- 17.B.Gopalakrishnan
- 18.B.Gurunathan
- 19.Seshayee
- 20.Ramchandra Agencies,

Rep by its partner Mr.Ramakrishnan,
RES.AT 1/524, GST ROAD, VANDALUR, CHENNAI 600 048.
(Respondents 2 to 19 dispensed with
in the lower Courts) .. Respondents/Defendants 1 to 20

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 30.08.2017 in A.S.No.24 of 2015 on the file of Principal District Judge of Kancheepuram District at Chengalpet reversing the judgment and judgment and decree dated 07.04.2015 made in O.S.No.97 of 2005 on the file of the Principal Subordinate Judge, Chengalpet.

For Appellant : Mr.O.R.Santhanakrishnan

For Respondent-1: Mr.Sathish Parasaran, Senior Counsel
for Mr.S.Parthasarathy

For Respondent-20: Mr.Hansharaj for
M/s.Raj and Raj Associates

For Respondents 2
to 19 : Given up

JUDGMENT

Being aggrieved against the Judgment in A.S. No.24 of 2015 on the file of the Principal District Judge, Kancheepuram, reversing the Judgment of the trial court in O.S.No.97 of 2005, the Plaintiff has preferred this Second Appeal.

2. The suit is filed for declaration that the plaintiff's right of renewal of the lease with regard to the suit property for a further period of 40 years from 01.09.2004 under the provision of Act 2 of 1976 from the defendants and for injunction.

3. The brief facts available for judging the plaintiff/appellant's claim are as follows:-

(i) The property originally belonged to one Smt.Rajeswari Vedachalam and the same was leased out to the plaintiff, namely, M/s.Burmah Shell Oil Storage and Distribution Company of India Limited. On 24.01.1976, the Government of India acquired the entire equity share holding in Burmah Shell Company and the same became a Government Company with effect from 24.01.1976. From that date, the right, title, interest and liabilities of the Burma Shell Oil Storage and Distribution Company of India Limited stood transferred to and vested in the Central Government by virtue of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976. The Original lessor Rajeswari Vedachalam died intestate and the first defendant Kamalakannan inherited the property by virtue of a Will left by the deceased. The plaintiff also attained the tenancy in favour of

the said Kamala Kannan. The lease was also renewed and extended for 20 years from 01.09.1984 by the said Kamalakannan. Though as per the lease deed dated 01.09.1964, 108 cents were leased out, the said Kamala Kannan had alienated the portion of the suit property to various purchasers from the year 1985 and they are made parties to the suit as defendants 2 to 19.

(ii) The second defendant is the purchaser of the major extent. The second defendant filed a writ petition in W.P.No.4129 of 2001 before this Court seeking delivery of possession of the extent purchased by him and the same was dismissed on 08.03.2001. Hence, a Civil suit in O.S.No.413 of 1992 was filed before the District Munsif, Chengleput and the same was also dismissed. The second defendant also approached the Divisional Revenue Officer, Kancheepuram for cancellation of No Objection Certificate issued under the Rules 144 of Petroleum Rules of 1976. The claim of the plaintiff is that he is entitled for renewal of lease as per the original lease agreement. As the defendants were trying to dispossess them, the suit has been filed for declaration and for permanent injunction.

4. The suit was resisted by the defendants by denying the facts leading to the cause of auction and contending that the lease period given to the plaintiff was over in the year 2004 itself. Though the Government had acquired rights by statute, it will not affect the legal title of the owner after the lease period. The extended period of lease was already over. The claim of the plaintiff of renewal for another 40 years is untenable. The City Tenants Protection Act is not applicable to this property and the plaintiff has got no right at all to get the lease executed/to execute the lease deed. The property is in possession with a rental Agent M/s.Ramachandra Agencies, who is the agent of the plaintiff and shown as 20th defendant.

5. The 20th defendant, who is the agent of the plaintiff, has also filed the written statement supporting the cause of auction of the plaintiff. It is stated that they have also invested the huge money in running the business and they have established as one of the top leaders in Petroleum products and they have also created a goodwill in their business. Hence, prayed for dismissal of the suit.

6. Based on the above pleadings, the trial court has framed appropriate issues. In order to prove the case, on the side of the plaintiff, one witness was examined as P.W.1 and as many as 11 documents have been exhibited as Ex.A1 to Ex.A.11. On the

side of the defendants, two witnesses were examined as D.W.1 and D.W.2 and as many as 24 documents have been exhibited as Ex.B.1 to Ex.B14.

7. Upon the oral and documentary evidence produced on either side, the trial Court had decreed the suit holding that the plaintiff is entitled to renewal of further period of 40 years from 01.09.2004 under the provisions of Act 2 of 1976. Aggrieved by the said decree, an appeal was preferred by the second defendant in A.S.No.24 of 2015. The lower Appellate Court had allowed the appeal by dismissing the suit. Aggrieved by the same, the second appeal has been preferred by the plaintiff.

8. At the time of filing of the appeal, this Court framed the following Substantial questions of law:

(i) Whether the plaintiff has got the statutory right to get the lease renewed for 40 years?

(ii) Whether the plaintiff is entitled for relief of permanent injunction?

9. Heard Mr.O.R.Santhanakrishnan, learned counsel for the appellant, Mr.Sathish Parasaran, learned Senior counsel appearing for Mr.S.Parthasarathy, learned counsel for the first respondent and Mr.Hansharaj, learned counsel for M/s.Raj and Raj Associates, appearing for the 20th respondent and perused the materials available on record.

10. Burmah Shell Oil Storage and Distribution Company of India Limited was taken over by the Government of India and it vested with M/s.Bharat Petroleum Corporation, a Government of India undertaking. The other admitted facts in the case are out of the original lease for an extent of 1 acre 8 cents, the appellant is in possession of only 7120 sq.ft as on date. However, the suit has been filed for 1.08 cents. Several parties have purchased the leasehold properties in portions, the appellant has not challenged the said alienations as null and void. In addition, there was also a Land Acquisition Proceedings by the Government for the purpose of expansion of National Highways. Even, the said Acquisition Proceedings has also not challenged by the appellant, as a person interested.

11. Mr.O.R.Santhana Krishnan, learned counsel appearing for the appellant contended that on 27.06.1984, the appellant exercised his option of renewal and the same was acknowledged on 05.07.1984 as per Ex.A-10. The appellant has also filed O.S.No.413 of 1992 for specific performance to renew the lease before the District Munsif, Chenglepet. It is stated that, it was pursuant to the contractual option available to the

appellant for renewing the lease. However, the said suit was dismissed on 29.12.2004. Learned counsel for the appellant further contended that when the Act 2 of 1976 came into force, the lease was in subsistence. Therefore, the appellant was entitled for a statutory option of renewal.

12. Whether the appellant had exercised his option of renewal either in terms of lease deed or in terms of Act has to be seen?

13. On the expiry of term mentioned in the lease deed provides for renewal of further term of 20 years to be renewed one month before the date of expiry. The appellant gave notice of renewal on 27.06.1984 and it was acknowledged and the term of lease came to end on 08.07.2004. The suit was filed on 30.05.2005. On the date, the appellant gave notice for renewal in terms of provisions of Clause 3(iii) of Ex.A-1, the Act was already in force. If that is so, the appellant could seek the renewal only in terms of the Act, which enable it to renew the deed as per Section 5(2) of the Act. Thus, the appellant had already exercised its statutory option of renewal. The renewal letter given by the appellant on 08.07.2004 seeking a renewal of further term of 40 years from 01.09.2004 was refused by the landlord/respondent.

14. Mr.Sathish Parasaran, learned counsel for the first respondent contended that Ex.A-3 is much after coming into force of the Act and the renewal is sought for the same terms, for the same period and for the same rental. Besides the letter under Ex.A3 did not carry the seal of the appellant. It is further contended that the act of the appellant is like ambushing the owner. If the renewal is said to be contractual, then there is already a refusal by the landlord. The suit also filed for specific performance by the appellant was also dismissed. Having laid the suit for specific performance and lost the same, the appellant / plaintiff is estopped from maintaining the suit.

15. Section 12 of the Specific Relief Act 1963 deals with the specific performance of a part of contract. Section 12(i) of the said Act specifically declares that the Courts shall not direct the specific performance of a part of a contract except as provided in Section 2 to 4. Sub Section (iii) of Section 12 of Specific Relief Act, 1963 provides that whether a party to a contract is unable to perform the whole of his part thereof is not entitled to obtain a decree for specific performance. If the part which must be left unperformed forms a considerable part of the whole.

16. As stated supra, the plaintiff had not challenged the alienation by various purchasers of the original extent leased out. The appellant had also not challenged the acquisition of the portion of the land by the National Highways. In spite of the above alienations, the suit is filed for the entire extent of the leased out property. It means that the appellant ought to have relinquished all claims to the performance of the remaining part of the contract and all rights to compensation either for the deficiencies or for the loss or damages sustained by him by default of the defendants. Therefore, the claim of the appellant / plaintiff has to be rejected on the simple ground that he has not exercised the option under Section 12 (iii) of the Specific Relief Act.

17. From the above conspectus of facts, it is clear that as per Section 5(2) of the Burmah Shell (Acquisitions of Undertaking in India Act, 1976), the plaintiff is entitled for a renewal only for one term. Even when the original lease was in subsistence, the Act had come into force. Therefore, after the original lease term got over in the year 1984, one renewal of lease period was done till 2004. Therefore, the claim of the plaintiff for renewal of 20+20 years on the same terms and conditions is unreasonable.

18. Learned counsel for the appellant placed his reliance on the decision of the Hon'ble Supreme Court in the case of in BHARAT PETROLEUM CORPORATION LTD -VS- P.KESAVAN AND ANOTHER [(2004) 9 SCC 772].

19. However, the reliance was placed by the learned counsel for the respondent on the decision of the Hon'ble Supreme Court in BHARAT PETROLEUM CORPORATION LIMITED -VS- RAMACHANDRASHEKHAR VAIDYA [(2014) 1 SCC 657], in which, P.Kesavan's case has been adverted to. It is useful to extract the relevant portions of the said judgment as follows:-

"7. The decision in P.Kesavan does not touch upon the issues raised by Mr.Sundaram and does not seem to have any application in the facts of this case. In P.Kesavan, this Court held that renewal of the lease in terms of Section 5(2) of the Act takes place by operation of law and the renewal is, therefore, not dependent upon the execution or registration of a fresh deed of lease. By virtue of Section 5(2), the terms of the earlier lease would be deemed to be renewed on the same terms and conditions on which the earlier lease or

tenancy was held regardless of the execution or registration of a fresh lease deed. This is not the question arising in the present case. But in Dolly Das, the Court did not adjudicate on the issues and gave certain directions having regard to the special facts and circumstances of the case. Dolly Das, too, therefore, is of no help in deciding this case. Therefore, the points urged by Mr.Sundaram need to be examined on their own merits.

12".....the question whether an extension of lease is permissible in the absence of any fresh deed for the simple reason that this is unquestionably a case of renewal of lease and not of extension of lease. Thus, in case renewal was claimed under a clause of the previous lease, the appellant has no case and the lessor cannot be faulted for terminating the tenancy by a notice under the Transfer of Property Act,1882.

13. The other possibility is that though in the renewal notice dated 17.10.1979 there is no reference to Section 5(2) of the Act, the renewal must be deemed to have taken place under that provision because the Act had come into force on 24.01.1976 and by virtue of Section 5(2) of the Act, the renewal clause of the existing lease stood superseded. If the "renewal" beginning from 01.03.1980 is to be deemed under Section 5(2) of the Act that would be a legally valid and correct renewal even in the absence of a fresh deed being executed between the parties, as was held in P.Kesavan. If that be the position, then the appellat has already exercised and exhausted its right under Section 5(2) of the Act and there can be no question of a second renewal in terms of the statutory provision. Thus, viewed from any angle, the appellant cannot claim any further renewal of lease beyond 28.02.2005.

20. In view of the above propositions also, the relief as claimed in the plaint, cannot be granted and the questions of law are answered accordingly.

21. In the result, the Second Appeal is dismissed and confirming the Judgment and decree dated 30.08.2017 passed in A.S.No.24 of 2015 on the file of the Principal District Court,

Kancheepuram, reversing the judgment and decree dated 07.04.2015 made in O.S.No.97 of 2005 on the file of the Principal Subordinate Court, Chengalpet. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

srn

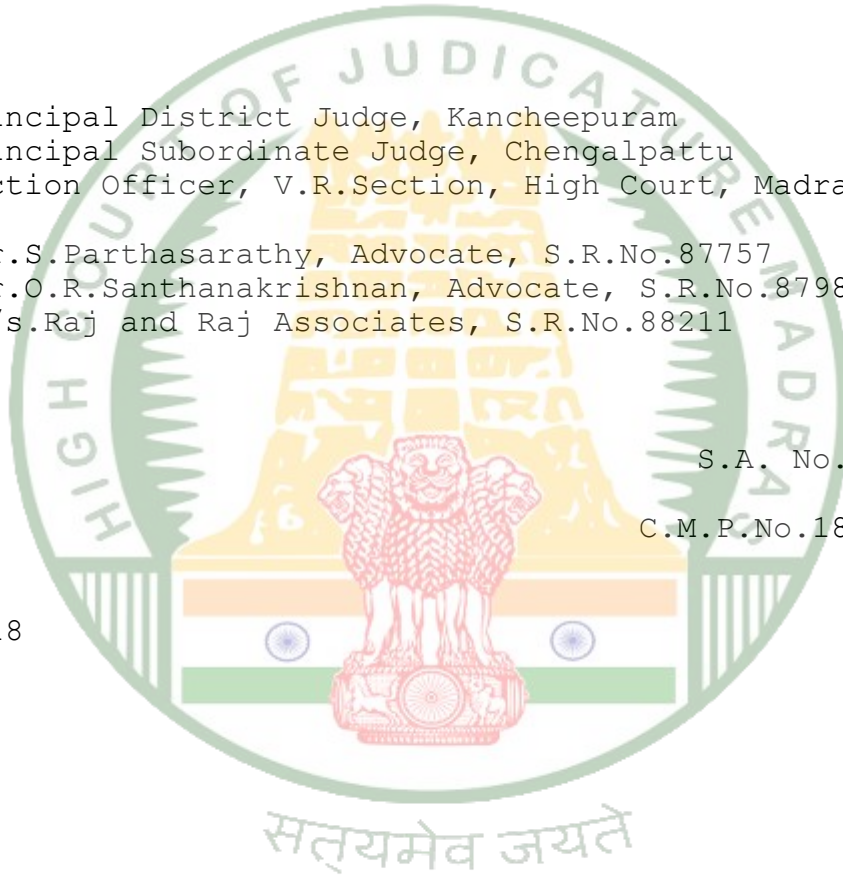
To

1. The Principal District Judge, Kancheepuram
2. The Principal Subordinate Judge, Chengalpattu
3. The Section Officer, V.R.Section, High Court, Madras

+1cc to Mr.S.Parthasarathy, Advocate, S.R.No.87757
+1cc to Mr.O.R.Santhanakrishnan, Advocate, S.R.No.87988
+1cc to M/s.Raj and Raj Associates, S.R.No.88211

S.A. No.747 of 2017
and
C.M.P.No.18686 of 2017

RJ(CO)
CS/22/01/18



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