

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2017

CORAM

THE HONOURABLE MR.JUSTICE N. KIRUBAKARAN

A.S. No.58 of 2013
and M.P. Nos.1 & 2 of 2013

1. M/s.Hindustan Petroleum Corporation Limited
Rep.by the Chief Regional Manager,
No.17, Jamshadyi, Tatabad Road,
Mumbai.
 2. M/s.Hindustan Petroleum Corporation Limited
Rep.by its Senior Regional Manager,
H.P House, 18/3, Big Bazaar Street,
Coimbatore – 641 001.
- ... Appellants

Vs.

1. Avinashi Charities
Rep.by its Trustee
Mr.S.K.Mohan Ram
No.31, Vincent Colony, R.S.Puram,
Coimbatore – 641 002.
 2. M.K.P & Sons
Dealers in Hindustan Petroleum Products,
C/o.Hindustan Petroleum Company,
NH-47, Chennai – Ernakulam NH Road,
Coimbatore District.
- ... Respondents

Prayer: The appeal filed under Section 96 of the Civil Procedure Code
to set aside the Judgment and Decree passed in O.S. No. 618 of 2009

dated 29.11.2011 on the file of the I Additional District Judge, Coimbatore.

For Appellants : Mr. M.Vijayan
For Respondents : Mr.S.V.Jayaraman
Senior Counsel,
Assisted by
Mrs.Anna Shobana Premila
for R1

ORDER

The appeal has been preferred by the defendants who have unsuccessfully contested the suit filed by the first respondent seeking for delivery of vacant possession and for damages for use and occupation to the tune of Rs.6,00,000/- and future damages at Rs.5,000/- in respect of the first suit property and a sum of Rs.1,000/- per month as damages in respect of the second suit property.

2. The first respondent is the owner of the property viz., vacant land situated in Survey No.86, 87/1 and 88 of Avinashi Village located on the National Highway. The said land was leased out to the predecessor of the appellants viz., Caltex (India) Limited, on 01.07.1960 for a period of 10 years. The said company was amalgamated with the appellants/Hindustan Petroleum Corporation Limited in 1977. After expiry of lease period, the appellants did not

renew the lease compelling the first respondent to file O.S. No.112 of 1983 for fixation of rent before Sub-Court, Tiruppur and a sum of Rs. 450/- per month was fixed as rent by the Trial Court and it was enhanced to Rs.500/- per month by the District Court in A.S.No.39 of 1985. The appellants filed second appeal before this Court and the same was dismissed.

3. Thereafter on 01.07.1998, a fresh lease agreement was entered into between the appellants and the first respondent for ten years, on a monthly rent of Rs.5,000/- per month for the first five years and then at the rate of Rs.5,500/- per month for the next five years. The lease commenced from 01.07.1998 and expired on 30.06.2008. Even after expiry of the lease on 30.06.2008, the appellants did not hand over possession making the first respondent to approach the Civil Court by filing O.S. No.618 of 2009 seeking for delivery of possession and for damages for use and occupation. The appellants were arrayed as first and second defendants and a sub lessee under the appellants was added as the third defendant, who remained ex-parte before the Trial Court.

4. The appellants contended before the Trial Court that their predecessors in interest were the tenants of the suit property and they had put up valuable super-structure thereon, which are permanent in nature. Further, they contended that they are not liable to surrender possession and pay damages as claimed. They also pleaded that the National Highways Authorities were making arrangements to acquire the property and the property which is under the occupation of the appellants is very small.

5. On the above pleadings, the following issues were framed:

- (1) Whether the plaintiff is entitled for the recovery of possession as prayed for?
- (2) Whether the plaintiff is entitled for damages as prayed for?
- (3) To what other relief, the plaintiff is entitled to?

As far as the first issue is concerned, the Trial Court held that the first respondent/plaintiff is entitled for recovery of possession as prayed for. As far as the second issue is concerned, the Trial Court determined the damages at Rs.3.50 per sq. ft. and decreed the suit. The said judgment is assailed before this Court.

6. Heard, Mr. M.Vijayan, learned counsel appearing for the appellants and Mr.S.V.Jayaraman, learned Senior Counsel on behalf of first respondent, assisted by Mrs.Anna Shobana Premila for the first respondent.

7. The only question to be decided is whether the Trial Court rightly passed the decree after properly appreciating the pleadings and evidence on record. There is no dispute with regard to the landlord - tenant relationship. The appellants predecessor M/s.Caltex (India) Limited was the original lessee and that got amalgamated with the appellant - Corporation. The facts of the case would reveal that, right from the beginning, the appellants have been defiant and they were not discharging their obligation as a lessee. Though, originally the lease was from 01.07.1960 and it was renewed up to 30.06.1980, fresh lease amount was not agreeable to the appellants, forcing the first respondent to approach the Civil Court to determine the lease amount. The Trial Court in O.S.No.112 of 1983 determined the rent at Rs.450/- per month and on appeal, it was enhanced to Rs.500/- per month by the District Court in A.S.No.39 of 1985. The Second Appeal preferred by the appellants was also dismissed confirming Rs.500/- per

month as rent as determined by the First Appellate Court.

8. On 01.07.1998, a new lease agreement was entered into for a period of ten years by which the appellants agreed to pay a sum of Rs.5000/- initially for a period of five years and Rs.5,500/- thereafter for the rest of five years. The lease expired on 30.06.2008. After 30.06.2008, the appellants did not come forward to hand over the possession. The last lease deed has been marked as Ex.A2 and after expiry of lease period on 30.06.2008, there is no subsisting right under the lease agreement to the appellants and the appellants are bound to hand over possession to the first respondent/landlord. One more interesting fact is that, the lease also provided for purchase option by the lessees /appellants at the market rate. Even though the first respondent /plaintiff offered the property for sale to the appellants, they did not show any interest to buy the same. After exchange of notices, the suit has been filed. As already observed, there is no subsisting lease and as soon as the lease expires by efflux of time, the appellants are duty bound to surrender the possession of the property, which the Trial Court rightly answered in favour of the first respondent against the appellants. Therefore, the issue regarding delivery of possession was rightly decided by the Trial Court and the

same is confirmed .

9. As far as the issue regarding damages is concerned, the Trial Court found that the lessee is in unauthorized occupation and is bound to pay a sum of Rs.3.50/sq. ft. As far as the first item property is concerned, it is under the occupation of the appellants and the second item of property is under the occupation of the second respondent/ third defendant, who was inducted as a tenant by the appellants. The said property measures 87 sq. ft. Ex. A18 is the lease agreement between the appellants and the second respondent /third defendant. The Trial Court considered the rent payable by the second respondent at Rs.3.04/sq. ft. taking into consideration the property is located on the National Highways and considering the greater rental value, the business carried on by the appellants viz., running of Petroleum outlet, the Trial Court found that the property is capable of fetching higher value if the property is put to best use.

10. Though the Trial Court found that Rs.3.04/sq. ft. being the rent as per Ex. A18 which is dated 26.11.2008, the Trial Court for the first schedule property rightly determined the rent at Rs.3.50/sq ft. Though Ex-A18 property is a smaller property, which cannot be

compared with the larger extent of property under the possession of the appellants, taking into consideration the running of Petroleum outlet that to on the National Highway, the Trial Court rightly determined the damages for use and occupation at Rs.3.50/ sq. ft. for unauthorized use and occupation.

11. The Trial Court also rightly observed that fixation of damages requires an element of approximation and it cannot be with precision. Taking into consideration that as far as extent of property is concerned, PW1 stated that the property is measuring about 12 cents. If the property measures 12 cents, the total extent would be 5208 sq. ft. PW1, who deposed regarding the extent, was not cross-examined by the appellants nor any denial has been made in the pleadings. Therefore, the Trial Court rightly took the extent as 5200 sq. ft. and valued the damages at Rs.7500/- at the rate of Rs.3.50/ sq. ft.

12. As far as the second respondent is concerned, a sum of Rs.1000/- was fixed as damages from 01.08.2009 till he surrenders his possession which has to be upheld. Similarly, the damages at the rate of Rs.17,500/- has to be paid by the appellants from 01.07.2008 i.e. after the expiry of the lease period on 30.06.2008, as per Ex.A2

dated 16.11.1998.

13. For the reasons stated above, the Trial Court rightly decreed the suit by ordering delivery of possession of first item property by the appellants and the second item of property by the second respondent besides paying Rs.17,500/- per month by the appellants from 01.07.2008 and paying a sum of Rs.1000/- per month by the second respondent from 01.08.2009 till surrender of possession, after removing of the super-structures put up on the suit property.

14. in the result, the First Appeal fails and the same is dismissed.
No costs.

15. The Trial Court has granted four months time to deliver vacant possession of the property from the appellants to the first respondent. In view of that, this Court grants four months time from the date of receipt of a copy of this order to the appellants to deliver vacant possession of the property.

16. The appellants shall file an affidavit stating that they have handed over the possession of the property and paid the damages by

31.10.2017. For compliance, call the matter on 01.11.2017.

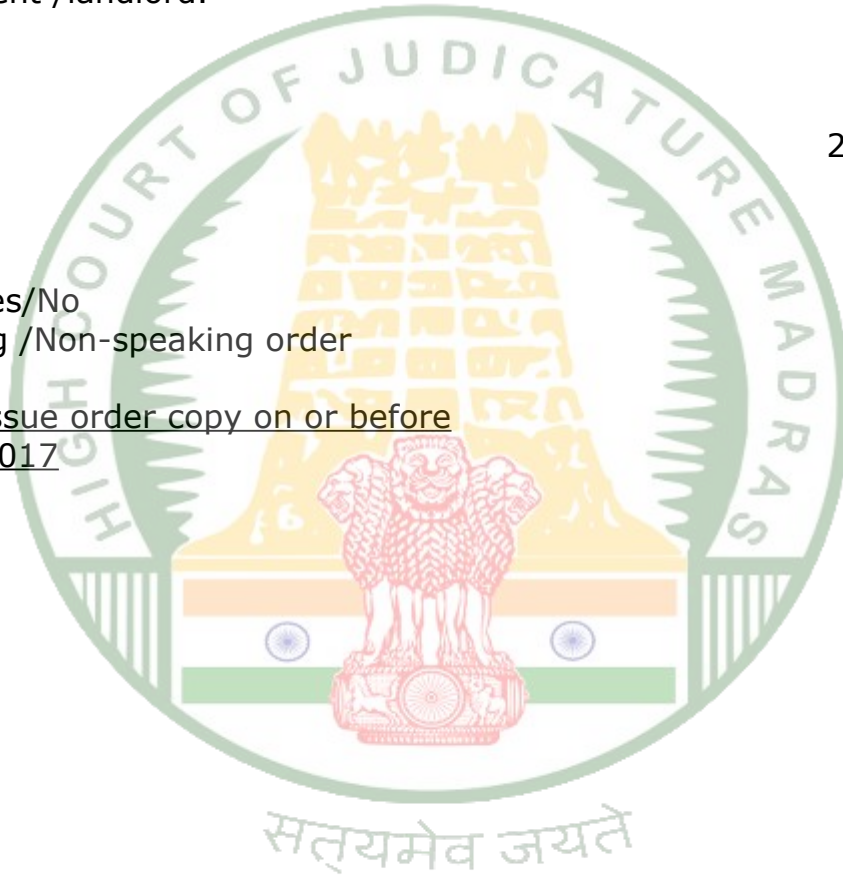
17. In case if the compliance is not reported, this Court will be constrained to make the Superintendent of Police, Tiruppur as a party and direct him to take possession and hand over the same to the first respondent /landlord.

20.06.2017

maya/at

Index:Yes/No
Speaking /Non-speaking order

Note : Issue order copy on or before
26.06.2017



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N.KIRUBAKARAN, J.

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