

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 15TH DAY OF FEBRUARY 2017

THE HON'BLE MR. JUSTICE M.JAICHANDREN

A.Nos.2365 and 2366 of 2012

in

A.No.5274 and 5275 of 2016

in

C.S. No.204 of 1940

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In the matter of Trust
Estate of Mylai Kandappa
Chetty & Arunachla Chetty
Charities

and

In the matter of enhancement
of Descendant/beneficiary's
Payment of Maintenance
amount.

1.M.Singaravelu Chetty
"Saraswathi Vilas"
Santhome High Road,
Mylapore, Madras

2 M.V.Anbu Chetty
S/o.M.Veerappa Chetty,
New Fisherman Village Settlement,
Near Lloyds Road, Mylapore,
Madras

3.K.Ayyavoo Mudaliar
S/o.K.Angamuthu Mudaliar,
No.2/27, Irusappa Gramani Street,
Krishnampet, Triplicane, Madras.

4.K.P.Kothandarama Chetty
S/o.Ponnusamy Chetty,
Kottivakkam Village,
Near Thiruvannamur, Saidapet Taluk,
Chingleput District.

..Plaintiffs

VS

1.M.Munusami Chetty
S/o.M.Venkatachala Chetty,
Battumodu, Old Rifle Range,
Santhome High Road,
Mylapore, Madras.

2.M.Balaji Chetty
S/o.M.Munuswami
Assistant Inspector of Fisheries,
Mopaud, Nellore District.

3.M.Ramachandra Chetty
S/o.M.Munuswami,
Battumodu, Old Rifle Range,
Santhome High Road,
Mylapore, Madras ..Defendants

A.No.2365 and 2366 of 2012:-

The Official Trustee of Tamilnadu,
High Court, Chennai-104 ..Applicant

VS

1.V.L.Vivekanand
No.23, Hussain Maistry Street
Royapuram, Chennai-13

*2.Bhakya Chemicals
Represented by its Proprietor N.Ravindran
S/o.Natarajan, No.8/21, R.K.Nagar,
2nd Street, Korukkupet,
Chennai-600 021 ...Respondents

*(2nd respondent impleaded as per order dated 20.09.2013 in
A.No.5058 of 2012)

A.No.5274 and 5275 of 2016:-

Mr.V.L.Vivekanand,
S/o.K.V.Lakshmipathy,
No.5/3, Arathoon Road
Royapuram, Chennai-13. ..Applicant/Tenant

vs

Administrator General and
Official Trustee of TamilNadu
High Court Campus,
Chennai-104

..Respondent

A.No.2365 of 2012:

Application praying that this Hon'ble Court be pleased to direct the respondent to pay Rs.20,000/- (Rupees twenty thousand only) per month damages for use and occupation of the premises bearing old Door No.88 and New Door No.115 East Mada Street, Chennai-13, from the date of filing of this application, till the date of delivery of vacant possession.

A.No.2366 of 2012:

Application praying that this Hon'ble Court be pleased to direct the respondent to quit and deliver vacant possession of the premises bearing old Door No.88 and New Door No.115 East Mada Street, Chennai-13.

A.No.5274 of 2016:

Application praying that this Hon'ble Court be pleased to direct the respondent to transfer the tenancy created vide lease agreement dated 14.08.2005 in the applicant name to that of Mr.L.Muthazhagan.

A.No.5275 of 2016:

Application praying that this Hon'ble Court be pleased to permit the said Mr.L.Muthazhagan to carry out the repairs necessary at the premises bearing door No.5/3, Arathoon Road, Royapuram, Chennai-600 013 at his cost.

SCHEDULE

Premises bearing Old Door No.88 and New Door No.115 East Mada Street, Chennai-13, measuring about 2800 sq.ft bounded on the
North by:New No.116
South by:Bazaar Street
East by:East Mada Church Street
West by:House facing Bazaar Road.

This Application coming on this day before this court for hearing **the court made the following order:**

Heard the learned Deputy Administrator General and Official Trustee of Tamil Nadu, as well as Mr.N.Moorthi, the learned counsel appearing on behalf of the respondent in A.Nos.2365 and 2366 of 2012 and the applicant in A.Nos.5274 and 5275 of 2016.

2 Application No.2365 of 2012 has been filed by the Official Trustee of Tamil Nadu, seeking a direction to the respondent to pay Rs.20,000/-, per month, towards damages, for the use and occupation of the premises, bearing old Door No.88 and New Door No.115, East Mada Street, Chennai-600 013, from the date of the filing of the application till the date of delivery of its vacant possession.

3 Application No.2366 of 2012 has also been filed by the Official Trustee of Tamil Nadu, seeking a direction to the respondent to quit and deliver vacant possession of the above said premises.

4 Application No.5274 of 2016 has been filed by the applicant, V.L.Vivekanand, seeking a direction to the Administrator General and the Official Trustee to transfer the tenancy created, vide lease agreement, dated 14.8.2005, from the applicant's name to that of Thiru L.Muthazhagan.

5. Application No.5275 of 2016 has been filed by the applicant, V.L.Vivekanand, seeking permission to L.Muthazhagan, to carry out the repairs necessary to the above said premises.

6.The learned Official Trustee had stated, in the applications, that the Trust Estate of Mylai Kandappa Chetty and Arunachala Chetty is being administered by the office of the Official Trustee of Tamil Nadu. The first respondent, in A.Nos.2365 and 2366 of 2012, who is the applicant in A.Nos.5274 and 5275 of 2016, (hereinafter referred to as "applicant"), is a tenant in respect of a residential building, bearing Old Door No.88, New Door No.115, East Mada Street, Chennai-600 013. Since there was a default in making payment of rent, the Official Trustee had, earlier, filed applications, in A.Nos.5266 to 5268 of 2009, for quit and delivery of the vacant possession, arrears of rent and for future damages. As the applicant had cleared the arrears, pending applications, this Court, vide its order, dated 25.6.2010, had directed the applicant

to pay the enhanced monthly rent of Rs.10,000/- and to execute a lease agreement and those applications were closed, accordingly.

7 It had been further submitted by the learned Official Trustee that subsequent to the same, one Rajan, a third party, had filed an application, in A.No.1362 of 2012, seeking to cancel the said rental agreement, stating that the applicant had converted the tenancy from residential purpose to commercial purpose, in violation of the agreement of lease. To ascertain the real facts, the Assistant Engineer, attached to the office of the Official Trustee was deputed to inspect the premises, on 21.3.2012, and a report was submitted, in which it had been stated that the premises, measuring an extent of 2838 sq.ft., was more than 65 years old. It had been stated in the report that the entire premises was being used by M/s.Bhakya Chemicals, by setting up an office, using the same for commercial purpose, violating the agreement entered into between the Official Trustee and the applicant. Therefore, the Official Trustee has filed the present applications, seeking direction to quit and deliver the vacant possession of the premises in question and also seeking direction to the applicant to pay Rs.20,000/- per month, as damages, for the use and occupation of the above mentioned premises.

8 The applicant had stated that the applicant is the tenant in the premises in question and that since he is

having heart problem, he could not live in the tenanted premises, as the building is also in a dilapidated condition. It had been further stated by the applicant that his younger brother, namely, Muthazhagan, was living with him, as a joint family and that because of the dilapidated condition of the building, he is now living, separately. The applicant had further stated that due to his poor health condition, he had requested his younger brother to carry out the repair works in the building in question and that his brother had also promised him that he would repair the building and would bear the expenses for the same and had suggested that if the tenancy is transferred to his name, he would be able to get loan to carry out the repairs. Thus, the applicant had taken out the above two applications, in A.Nos.5274 and 5275 of 2016, as stated above.

9 The learned Official Trustee of Tamil Nadu had filed a report, dated 24.01.2017, stating that the Trust Estate of Mylai Kandappa Chetty and Arunachala Chetty has come under the control and administration of the Official Trustee, vide order of this Court, dated 11.3.1977, made in A.No.3783 of 1976. It had been further stated, in the report, that in the public auction conducted in the year 2005, the applicant was the successful bidder and therefore, the premises in question was leased out to the applicant. It had been further stated that, as the

applicant had violated the conditions of tenancy, the Official Trustee had sent a legal notice, dated 22.12.2008, to the applicant, stating that the tenancy had been terminated, with effect from 31.1.2009, and asking him to pay the rental arrears of Rs.1,32,700/- and to quit and deliver the vacant possession of the premises. The Official Trustee had also moved this Court, by filing applications, for quit and deliver the vacant possession and for a direction to the applicant to pay the rental arrears and damages. It had been further stated, in the report, that this Court had passed an order, dated 25.6.2010, in those applications, giving directions to renew the lease agreement, at the enhanced rent of Rs.10,000/-, per month.

10 It had been further stated by the Official Trustee, in the report, that on a complaint of one Rajan that the building was being used for commercial purpose, the premises in question had been inspected by the Assistant Engineer, attached to the office of the Official Trustee, on 21.3.2012. The Assistant Engineer had submitted a report, stating that the entire premises was in possession of one M/s.Bhakya Chemicals and the premises had been used for commercial purpose. Since the applicant had violated the conditions of tenancy, the Official Trustee had filed the above two applications, in A.Nos.2365 and 2366 of 2012, seeking direction to the applicant to quit

and deliver the vacant possession and also to pay the arrears of rent. It had been further stated, in the report of the Official Trustee, that the Official Trustee had filed an application, in A.No.5058 of 2012, in A.Nos.2365 and 2366 of 2012, to implead the said M/s.Bhakya Chemicals. However, pending application, the said company had vacated the premises.

11 It had been further stated, in the report, that pursuant to the letter received from one Rajan, on 19.9.2014, that the applicant was trying to get second E.B. Connection, the Assistant Engineer, attached to the office of the Official Trustee, had inspected the premises and had submitted her report, on 1.10.2014, stating that a portion was found to be occupied by one Muthazhagan, who was running an office, by name, "The Mecantile Container Cargo Trans", for commercial purpose and that a separate E.B. Connection was also found in the premises. It had been further stated that the Official Trustee had sent a notice, dated 7.11.2016, to the applicant, to produce documents, showing the relationship between the applicant and the said Muthazhagan. It had been further stated that the Assistant Engineer, attached to the office of the Official Trustee, had inspected the premises, on 5.11.2016 and had submitted a report, stating that the property is in occupation of the said Muthazhagan, for the past 8 years, and that the same was being used for commercial purpose, thereby, showing

that the property had been sublet to an another person. The learned Official Trustee had submitted that the applicant is paying the rent, regularly and if he himself wishes to continue in the premises, the rent may be increased, based on the report of the Engineer or if the applicant wants to transfer the tenancy in favour of another person, the tenancy may kindly be terminated.

12 In view of the submissions made by the learned Deputy Administrator General and the Official Trustee of Tamil Nadu, as well the learned counsel appearing on behalf of the applicant and in view of the reasons stated in the report filed by the Official Trustee of Tamil Nadu, this Court is not convinced with the reasons stated in the affidavit filed by the applicant, seeking a direction to the Official Trustee to transfer the tenancy from the applicant to Muthazhagan and also seeking to permit the said Muthazhagan to carryout the repair works in the premises in question. In the report filed by the learned Official Trustee, the learned Official Trustee had stated that the premises in question is being used for commercial purpose, which is in violation of the tenancy agreement.

13 In view of the above, this Court finds it appropriate to dismiss the applications filed by the applicant and is inclined to allow the applications filed by the Official Trustee.

Accordingly,

(i) The applicant is directed to quit and deliver the vacant possession of the premises, bearing old Door No.88, New Door No.115, East Mada Street, Chennai-600 013, to the Official Trustee, on or before 31.3.2017.

(ii) As the applicant had paid the rent upto February, 2017, the applicant is directed to pay a sum of Rs.10,000/- (Rupees ten thousand only) towards the monthly rent, for the month of March, 2017.

14 Application Nos.2365 and 2366 of 2012, filed by the Official Trustee, are allowed with the above mentioned terms. Application Nos.5274 and 5275 of 2016 filed by the applicant stand dismissed.

sd/.M.J.J
15.02.2017

//Certified to be a true copy//

Dated this the day of 2017

R.s/17.03.2017

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.