

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.09.2017

Delivered on : 25.10.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

O.S.A.Nos.19 and 20 of 2012
and Cross Objection No.27 of 2012

O.S.A.No.19 of 2012

M/s.Bharat Petroleum Corporation Ltd.
By its Territory Manager (Retail), V.Nagarajan,
No.35, Vaidyanathan Street,
Tondiarpet, Chennai – 600 081. ...Appellant/Plaintiff

vs.

- 1.Friend-in-need Society,
Having its Registered Office at No.29,
Poonamallee High Road,
Chennai – 600 003.
- 2.G.Sydenham, Hony.President,
Friend-in-need Society,
No.141, Perambur Barracks Road,
Chennai – 600 003.
- 3.Dr.Geoffrey K Francis, Hony. President,
Friend-in-need Society,
Poonamallee High Road,
Chennai – 600 003.
- 4.Gerry F Briggs, Hony. Secy.,
Friend-in-need Society,
Poonamallee High Road,
Chennai – 600 003.

5. John W Francis, Hony. Treasurer,
Friend-in-need Society,
Poonamallee High Road,
Chennai – 600 003.

6. NLC Fernandez, Hony. Secy.,
Friend-in-need Society,
Poonamallee High Road,
Chennai – 600 003.

7. EMD Rozario, Hony. Treasurer,
Friend-in-need Society,
Poonamallee High Road,
Chennai – 600 003.

...Respondents/Defendants

Prayer:

Appeal filed under Order XXXVI Rule 1 of O.S. Rules read with Clause 15 of the Letters Patent praying to set aside the Judgment and Decree dated 20.06.2011 & 30.06.2011 passed in Tr.C.S.No.1155 of 2009.

For Appellant : Mr. Krishna Srinivas
for Mr. S. Ramasubramaniam Associates

For Respondents : Mr. N. D. Bahety for R1
R2 to R7 given up vide order dated
28.03.2012

O.S.A.No.20 of 2012

M/s. Bharat Petroleum Corporation Ltd.
By its Territory Manager (Retail), Chennai.
Regional Office at No.35, Vaidyanathan Street,
Post Box No.1152, Tondiarpet, Chennai – 600 081.

...Appellant/Defendant No.1

vs.

1. The Friend-in-need Society,
Rep. by its Hon. President,
Mr. H. E. Wilkins,
Office at No.29, Poonamallee High Road,
Periamet, Chennai – 600 003.

...Respondent/Plaintiff

2.M/s.Padma Petrol Agency,
Business at No.29, Poonamallee High Road,
Periamet, Chennai – 600 003.

...Respondents/Defendant No.2

Prayer:

Appeal filed under Order XXXVI Rule 1 of O.S. Rules read with Clause 15 of the Letters Patent praying to set aside the Judgment and Decree dated 20.06.2011 & 30.06.2011 passed in C.S.No.59 of 2006.

For Appellant : Mr.Krishna Srinivas
for Mr.S.Ramasubramaniam Associates

For Respondents : Mr.N.D.Bahety for R1
R2 to R7 given up vide order dated
28.03.2012

Cross Objection No.27 of 2012

The Friend-in-need Society,
Rep.by its Hon.President,
Mr.H.E.Wilkins.

...1st Respondent/Cross-objector

VS.

1.M/s.Bharat Petroleum Corporation Ltd.
by its Territory Manager (Retail), Chennai.

...Appellant/Respondent

2.M/s.Padma Petrol Agency

...2nd Respondent

Prayer:

Cross Objection filed under Order 41 Rule 22 CPC pray to allow this Cross Objection, and fix the monthly damages payable by the appellant to the Cross-Objection at Rs.2 lakhs per month.

COMMON JUDGMENT**ABDUL QUDDHOSE, J.**

These Intra Court Appeals in O.S.A.Nos.19 and 20 of 2012 have been filed by the appellant against the Common Judgment and Decree dated 20.06.2011 passed by the learned Single Judge of this Court in C.S.No.59 of 2006 and Tr.C.S.1155 of 2009. Cross Objection No.27 of 2012 in O.S.A.No.20 of 2012 has been filed by the 1st respondent.

2.O.S.A.No.19 of 2012 arises out of C.S.No.59 of 2006 and O.S.A.No.20 of 2012 arises out of Tr.C.S.1155 of 2009.

3.C.S.No.59 of 2006 was filed by the first respondent against the appellant and M/s.Padma Petrol Agency, a dealer of the first respondent for a judgment and decree against them jointly and severally directing them to:

(a)quit and handover vacant possession to the appellant, the land at No.29, Poonamallee High Road, Periamet, Chennai – 600 003, hereinafter referred to as 'the suit schedule property'.

(b)to pay a sum of Rs.70,00,000/- as damages for the illegal use and occupation of the suit schedule property commencing from 01.01.2003 onwards till delivery and possession is handed over to the 1st respondent at Rs.2,00,000/- (Rupees two lakhs) per month.

(c)to pass an order of mandatory injunction directing the defendants in the suit to remove any buildings, erections, pumps,

pipelines or any other fixtures/structures erected or placed on the plaint schedule property.

4.Tr.C.S.No.1155 of 2009 was filed by the appellant against the first respondent and its office bearers originally before the XIVth Assistant Judge, City Civil Court, Chennai which was earlier numbered as O.S.No.5033 of 2003 for the following reliefs:

a)to pass a decree for specific performance of the agreement of lease directing the defendants to register the lease for a period of 50 years from 01.01.2002 with an advance of Rs.20 lakhs to be adjusted as under:

Period	Rent per quarter	Adjustment of Advance	Net rent payable per quarter
01.01.2002 to 31.12.2006	18,000	3,000	15,000
01.01.2007 to 31.12.2011	22,500	3,000	19,500
01.01.2012 to 31.12.2016	28,125	3,000	25,125
01.01.2017 to 31.12.2021	35,156	9,000	26,156
01.01.2022 to 31.12.2026	43,945	9,000	34,945
01.01.2027 to 31.12.2031	54,932	9,000	45,932
01.01.2032 to 31.12.2036	68,665	16,000	52,665
01.01.2037 to 31.12.2041	85,831	16,000	69,831
01.01.2042 to 31.12.2046	1,07,288	16,000	91,288
01.01.2047 to 31.12.2051	1,34,110	16,000	1,18,110

b)to grant a decree for permanent injunction restraining the defendant, its office bearers, men and agents from interfering with the peaceful possession and enjoyment of the suit property.

5.The suit in O.S.No.5033 of 2003 which was earlier filed before the XIV Assistant Judge, City Civil Court, Chennai was transferred by orders of the learned single Judge of this Court to the file of this Court and re-numbered as Tr.C.S.No.1155 of 2009.

6.A joint trial was conducted for both the Suits C.S.No.59 of 2006 and Tr.C.S.No.1155 of 2009 and a Common Judgment and Decree dated 20.06.2011 was passed by the learned single Judge of this Court. Under the Common Judgment and Decree dated 20.06.2011, the learned Single Judge of this Court decreed the suit in C.S.No.59 of 2006 with costs directing the second defendant in the suit to vacate the plaint schedule property within six months. The defendants in the suit were also directed to pay Rs.1,00,000/- per month to the plaintiff towards damages for the use and occupation of the suit premises from 01.01.2003 till the date of delivery. The suit in Tr.C.S.No.1155 of 2009 filed by the appellant was dismissed with costs.

7.Aggrieved by the common judgment and decree dated 20.06.2011 passed in C.S.No.59 of 2006 and Tr.C.S.No.1155 of 2009, the appellant/1st defendant has preferred these appeals. The second defendant in the suit C.S.No.59 of 2006 who is the dealer of the

first respondent has not preferred any appeal, even though, the impugned judgment directs them to vacate the suit premises within six months and further directs both the defendants to pay a sum of Rs.1,00,000/- per month towards damages for the use and occupation of the suit premises from 01.01.2003 till the date of delivery. Insofar as, the second defendant in the suit in C.S.No.59 of 2006 is concerned, the judgment and decree dated 20.06.2011 has become final since no appeal has been filed by them.

8.Cross Obj. No.27 of 2012 in O.S.A.No.20 of 2012 has been filed by the 1st respondent/plaintiff under Order 41 Rule 22 of the Code of Civil Procedure, 1908 against the common judgment and decree dated 30.06.2011 of the learned single Judge, reducing the damages sought for by the first respondent/plaintiff from Rs.2,00,000/- per month and to Rs.1,00,000/- per month.

9.Since the appeals arise out of a common judgment and decree, the appeals in O.S.A.Nos.19 and 20 of 2012 are disposed of by way of this common judgment.

10.The factual matrix in C.S.No.59 of 2006 are as follows:

a)The plaintiff under a Deed of Lease dated 06.03.1996 let out a portion of its vacant land in the northern side its property in Door No.29, Poonamallee High Road, Periamet, Chennai 600 003 and

on the main Poonamallee High Road, to an extent of 510 sq.metres or 5,490.07 sq.ft., for a period from 01.01.1993 to 31.12.2002, on a rent of Rs.9000/- per quarter, equivalent to Rs.3000/- per month, as agreed and covenanted under Clause 1 of the said Lease Deed to the 1st respondent. The second defendant as the retail outlet agent of the 1st defendant from the plaint schedule land carrying on its business.

(b)The basic object of the plaintiff's society is to relieve the deserving poor and to suppress the mendacity among European and Anglo Indian Christians of every denomination, providing Home for the aged and destitute in which they are freely lodged, clothed and supplied with the necessities for health and comfort, allotment of pension maintenance of workshop for women, establishment of a labour yard for men and women etc.,

(c)As the period of lease of the suit land with the 1st defendant was to expire on and with 31.12.2002, and as the plaintiff did not want to renew the said lease, as it wanted to expand its activities of the Home for the aged, destitute, etc., issued notice through its counsel on 12.11.2002 determined and cancelled the said lease on and with the expiry of 31.12.2002, further calling upon the defendant to quit and deliver vacant possession by then and to also remove any buildings, erections, pumps, installations, pipe lines or any other fixtures/structures erected or placed on the suit land as contemplated under Clause 4(ii) of the Lease Deed, also further

calling upon the 1st defendant to pay a sum of Rs.2,00,000/- per month as damaged for the illegal use and occupation of the suit and by the defendants from 01.01.2003 and after the termination of the 1st defendant's said lease.

(d) To the said notice dated 12.11.2002, the 1st defendant sent a reply dated 28.11.2002, raising untenable contentions, such as, that the erstwhile president of the plaintiff Dr.G.K.Francis had committed in writing to execute a renewal lease not only of the extent of 5,490.07 sq.ft., but with further additional land of 2,366 sq.ft., total extent being of 7,856.07 sq.ft., from 01.01.2002 for a period of 50 years together with an advance of Rs.20 lakhs to be adjusted against rentals as per the proposition agreed etc., and to which the plaintiff through its counsel had sent a rejoinder dated 04.12.2002 denying any such concluded contract of lease and to which no reply was sent by the first defendant.

(e) The erstwhile president Dr.G.K.Francis, as well as the General Committee then headed by him, were by the order of interim injunction of High Court dated 20.06.2002 were restrained from in any way conveying by way of sale/lease/gift or otherwise any further portion of the plaintiff's premises and the same had also been made absolute by order dated 30.07.2002, that while there was no finally concluded contract of lease entered into acted upon, executed and registered by the plaintiff with the 1st defendant and this could not be

done in view of the order of injunction by this Court, that even the very proposal to renew the lease of the 1st defendant, leave aside the giving of additional land on lease to the 1st defendant, had been terminated and cancelled by the plaintiff through its counsel's notice dated 12.11.2002, that in the General Body Elections held and conducted on 28.09.2002, the said Dr.G.K.Francis and the General Committee headed by him were defeated and rooted out and the newly elected office bearers and the General Committee of the plaintiff society had assumed office.

(f)The plaintiff has received the rent from 1st defendant only upto 31.12.2002 and after the determination and cancellation of the lease, though the 1st defendant after a lapse of over 10 months first defendant sent the alleged rent upto the month of July 2003, the plaintiff through its counsel's letter dated 07.08.2003 refused and returned the amount as it was tendered by way of rent, instead of damages, that thereafter also the plaintiff has not accepted the various amounts sent and tendered by the 1st defendant till date, that in the meanwhile the first defendant also filed O.s.No.5033 of 2003 agasint the plaintiff before the City Civil Court, Madras (which is now transferred and renumbered as Tr.C.S.No.1155 of 2009) and that the plaintiff has not received any amount from the defendants from 01.01.2003 onwards till date and is entitled to damages for the illegal use and occupation of the suit land by the defendants.

11. In the written statement filed in C.S.No.59 of 2006 by the 1st defendant, the following are averred:-

(a) The President of the plaintiff society Mr.J.C.Rice had executed the registered lease deed of the suit premises for the fourth time for a term of 10 years from 01.01.1993 and quarterly rent of RS.7500/- for first 5 years and Rs.9000/- thereafter, the President of the plaintiff society Dr.G.K.Francis had offered to renew the lease of the suit site with an additional extent of 2366 sq.ft. for a further period of 50 years commencing from 01.01.2002 with an advance of Rs.20 lakhs to be adjusted against the rentals given in their letter dated 31.08.2001, that on the basis of the written commitment the said G.K.Francis had executed a Lease Agreement in favour of the 1st defendant corporation for 50 years from 01.01.2002, that in response to the plaintiff's notice dated 12.11.2002 this defendant sent a reply wherein it was made clear that the 1st defendant are neither liable to pay damages nor their occupation be termed as illegal, that the claim of the plaintiff that by his counsel's notice dated 12.09.2002 the lease in favour of the first defendant had been determined and cancelled is totally untenable and the cancellation is illegal and cannot bind the first defendant, that the further claim of the plaintiff that the 1st defendant has to pay Rs.2 lakhs per month as damages is fanciful and untenable and that the defendant is in no way liable to pay the amount claimed by the plaintiff.

(b) Having executed the Lease Agreement for 50 years from 01.01.2002, the plaintiffs are estopped from back tracking their commitments due to their inter se disputes within the plaintiff society, that once the contract has been concluded between the parties, it is not open to the plaintiff to resile from the terms of contract, that the plaintiffs have no option to comply with the terms of lease agreement with the parties executed on 01.01.2002, that the first defendant was not a party to the temporary injunction alleged to have been obtained by the plaintiff from the High Court in C.S.No.396 of 2002, that the order in C.S.No.396 of 2002 does not absolve the plaintiffs from complying with the Lease Agreement executed by the plaintiff with this defendant, that the first defendant is not a party in C.S.No.396 of 2002 and it is not aware of the order said to have been passed in O.A.No.373 of 2002 in C.S.No.396 of 2002 on 20.06.2002 and that at any rate, the injunction order and the subsequent order dated 30.07.2002 making the interim order absolute is not binding on this defendant who was not a party to that suit.

(c) There is no valid termination and cancellation of the Lease Agreement dated 01.01.2002 between the plaintiff and the 1st defendant, that in any event, the subsequent office bearers are bound by the Lease Agreement in favour of the first defendant entered into by previous president Dr.G.K.Francis, that due to the inability of the plaintiff to register the lease in view of the proceedings in C.S.No.396

of 2002, the first defendant could not effect the rental from 01.01.2003 to June 2003, that the plaintiff neither returned the cheques sent by the First defendant towards rent nor accepted the cheques under protest, that the lease agreement for 50 years from 01.01.2002 with an advance of Rs.20 lakhs was executed by Dr.G.K.Francis in the capacity as the Honorary President of the plaintiffs with an undertaking to include its executors, administrators, legal representatives and assigns in the cause title, that the plaintiff being the successors-in-interest of the former President Dr.G.K.Francis are bound by the lease executed by him granting lease of the suit property to the defendant during his tenure as Honorary President, that the defendants are entitled to the specific performance of the agreement of lease dated 01.01.2002, that any claim contrary made by the plaintiff will be illegal and violate the terms of tenancy agreement between the parties and that the suit may be dismissed with exemplary costs.

12.The second defendant has adopted the written statement filed by the first defendant.

13.The factual matrix of the plaint in Tr.C.S.No.1155 of 2009 are as follows:-

a)The Secretary of the 1st defendant society R.D.Gallowry had executed a registered lease deed dated 15.05.1963 for an extent of 5490 sq.ft. of vacant land for a period of 7 years from 01.10.1962,

with option to renew the lease for a further term of 7 years in favour of the predecessor-in-interest of the plaintiff, that by the subsequent lease deed dated 25.05.31969 the lease was extended for a further period of 14 years from 01.01.1969 with an option to extend the lease for 6 years on its expiration on a mutually agreed rent, that the defendant had registered the lease deed on 25.03.1969 in favour of the Burmah Shell Oil Company, the predecessor-in-interest of the plaintiff, that the Burmah Shell Oil Company was renamed as M/s.Bharat Refineries Limited on 12.02.1976 and subsequently, the same was changed into Bharat Petroleum Corporation, the plaintiff herein by a fresh certificate of incorporation under the Indian Companies Act, that the defendant society executed a registered lease deed on 28.05.1985 for a further term of 10 years from 01.01.1983 in favour of the plaintiff with an option to extend the lease for a term of 10 years from its expiration.

(b)The defendant society had agreed to demise an additional land of an extent of 2366 sq.ft on lease to enable the plaintiff corporation to carry out total reorganisation of the facilities at the rear side of the Retail outlet on a long term lease in their letter dated 31.08.2001, that a fresh agreement for the lease of total extent of 7856 sq.ft was executed by the defendant society represented jointly by the Hony.President, Hony.Secretary and Hony.Treasurer (defendants 3,4,5) for a term of 50 years from

01.01.2002 on rental terms with an advance rent of Rs.20 lakhs to be adjusted against the rental as Rs.20 lakhs to be adjusted against the rental as incorporated in the document, that due to the inter se dispute between the office bearers of the defendants the plaintiff could not pay the revised rental/advance from 01.01.2003 in the name of the defendant society.

(c) An advocate notice dated 12.11.2002 was received by the plaintiffs to hand over vacant possession of the premises, for which suitable reply was sent to the defendant society in which it is pointed out that the defendant society President Mr.G.K.Francis had committed in writing to execute a renewed lease to the total extent of 7856.07 sq.ft from 01.01.2002 for a period of 50 years, that on 04.12.2002 the defendant sent a rejoinder wherein it was stated that the lease agreement entered by its previous president is not binding on the first defendant society that the defendant society having agreed to renew the lease of the total extent of 7856.07 sq. ft from 01.01.2002 for a period of 50 years cannot go back on the agreement and threaten to dispossess the plaintiff corporation, that the document signed by the defendants on 31.08.2001 is only an agreement to extend the lease for a further period of 50 years and not a regular lease deed, that it was agreed that the full fledged document will be registered, that the defendant society cannot resile from the agreement executed by its President, secretary and

treasurer with the plaintiff Corporation and that the plaintiff corporation is entitled to file a suit for specific performance of agreement to lease the suit property entered into between the plaintiff corporation and defendant society and for permanent injunction restraining the defendant society, its men and agents from interfering with the plaintiff's peaceful possession and enjoyment of the suit property and for other consequential reliefs.

14. In the written statement filed by the 1st, 6th, 7th defendants, the allegations raised in the plaint are categorically denied by reiterating the pleadings in the plaint in C.S.No.59 of 2006.

15. The learned single Judge, while disposing of the suits in C.S.No.59 of 2006 and Tr.C.S.No.1155 of 2009, framed the following issues:-

"1. Whether the registered lease deed dated 06.03.1996 between the plaintiff and the defendants of the plaintiff's land in the premises No.29, Poonamallee High Road, Periamet, Chennai - 600 003 and more fully described in the plaint schedule, been validly and legally terminated?"

2. Whether there has been any valid and legally binding renewal, in the absence of registration, of the said lease by the plaintiff in favour of the defendant, especially under the alleged Letter dated 31.08.2001 written by the erstwhile president of the plaintiff to the defendant and has any consideration therefor ever been paid by defendant to the plaintiff?"

3. Whether the plaintiff has been estopped by the interim order dated 20.06.2006 passed in O.A.No.373 of 2002 in C.S.No.396 of 2002 and further made absolute on 30.07.2002 from further leasing out the plaintiff's said land to the defendant?

4. Whether the defendant is liable to quit and hand over vacant possession to the plaintiff, of the plaintiff said land more fully described in the plaint schedule?

5. Whether the defendant is liable to pay damages to the plaintiff @ Rs.2,00,000/- (Rupees Two lakhs) per month for the defendant's illegal use and occupation of the said plaint schedule land?

6. Whether the defendant is liable to pay the plaintiff a sum of Rs.70,00,000/- as damages for the illegal use and occupation of the plaint schedule land, commencing from 1.1.2003 onwards till delivery and possession is handed over by the defendant to the plaintiff calculated @ Rs.2,00,000/- (Rupees Two lakhs) per month?

7. Whether the plaintiff is entitled to an order of mandatory injunction directing the defendants to remove any buildings, erections, pumps, installations, pipe-lines or any other fixtures/structures ordered or placed on the plaint schedule land as contemplated under Clause 4(ii) of the registered lease deed dated 06.03.1996?

8. To what relief are the parties entitled to?"

16. The second defendant in the Suit C.S.No.59 of 2006 did not let in any oral and documentary evidence. Both the suits C.S.No.59 of 2006 and Tr.C.S.No.1155 of 2009 were tried together.

After considering the pleadings, deposition and after hearing the arguments on both sides, the learned single Judge decreed the suit in C.S.No.59 of 2006 as prayed for by the first respondent/plaintiff directing the second defendant in the suit to vacate the plaint schedule property within six months and further directed that the defendants in the suit in C.S.No.59 of 2006 shall pay a sum of Rs.1,00,000/- per month towards damages for the use and occupation of the suit premises from 01.01.2003 till the date of delivery. The learned Single Judge dismissed Tr.C.S.No.1155 of 2009 filed by the appellant with costs.

17. In the common judgment passed by the learned Single Judge in C.S.No.59 of 2006 and Tr.C.S.No.1155 of 2009, the learned single Judge has considered at the first instance issue Nos.1 to 3 in C.S.No.59 of 2006 and issue Nos.1 & 2 in Tr.C.S.No.1155 of 2009. The learned Single Judge has given the following findings on those issues:-

a) Ex-D9 being the lease document which is sought to be specifically enforced by the appellant cannot be enforced since the lease period exceeding one year requires compulsory registration.

b)The appellant was not ready and willing to perform its part of the contract under Ex-D9 by paying Rs.20 lakhs as there is no material to indicate proof of such payment.

c)In order to determine whether there is a lease between the parties or not, there must be assent at any time between the parties for continuation of the lease. In the case on hand, there is no consent given by the first respondent/plaintiff for continuation of the lease and the rent after the expiry of the lease was also not received by the first respondent/plaintiff.

d)The alleged Ex-D9 lease document is a lease for 50 years and is an unregistered documents. It does not have any evidentiary value. The appellant prior to the filing of the suit in Tr.C.S.No.1155 of 2009 did not assert that Ex-D9 instrument is an agreement to enter into lease. The non registration of Ex-D9 vitiates the validity of the same and it cannot be cured by any means. Section 107 of the Transfer of Property Act provides that a lease of immovable property from year to year or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument.

e)It was not the stand of the appellant that prior to the filing of the suit in Tr.C.S.No.1155 of 2009, Ex-D9 is not a lease deed and it is only an agreement for lease. The appellant has not issued

any pre-suit notice or any communication to the 1st respondent calling upon them to perform their part of the contract. In Ex-D7, the then President of the 1st respondent-Society Dr.G.K.Francis while addressing the appellant has stated that Ex-D9 is the lease deed and that the appellant had to arrange registration of lease at an early date. But no reply was sent by the appellant stating that Ex-D9 was only an agreement for lease and that first respondent has to execute a registered lease deed. Further, Ex-D9 is a classical lease deed, not an agreement to enter into lease.

f)The notice to quit and deliver vacant possession of the plaint schedule property issued by the plaintiff society being valid, the termination of the tenancy by 31.12.2002 is legally valid.

18.Based on the above findings on issue Nos.1 to 3 in C.S.No.59 of 2006 and issue Nos.1 and 2 in C.S.No.1155 of 2009 referred to supra, the learned single Judge has given a clear finding in paragraph No.29 of the impugned judgment that there is no question of passing a decree for specific performance of contract as prayed for by the appellant in Tr.C.S.No.1155 of 2009.

19.The learned single Judge then considered issue Nos.5 and 6 in C.S.No.59 of 2006. The learned single Judge fixed the

damages for use and occupation by the appellant after expiry of the lease period at Rs.1,00,000/- per month based on the no objection certificate-Ex.D8 from the Income Tax Department. Under Ex-D8, the sale consideration was mentioned as Rs.1,98,70,440/-. Based on Ex-D8, the learned single Judge fixed the damages at Rs.1,00,000/- per month and rejected the claim of the 1st respondent at Rs.2,00,000/- per month which is based on the market value of the plaint schedule property vis-a-vis other properties in and around the locality. Issue Nos.5 and 6 in C.S.No.59 of 2006 were answered accordingly by the learned single Judge.

20.The learned single Judge, then considered issue Nos.4, 7 and 8 in C.S.No.59 of 2006 and issue No.3 in Tr.C.S.No.1155 of 2009. The learned single Judge gave his finding for the above referred issue in the following manner:

"A conspectus of all the materials in this case, in the light of the judicial pronouncements as shown that Ex-D9 lease for 50 years being unregistered is not valid in the eye of law; that the notice to quit in Ex-P3 by the plaintiff to the defendant is valid and the tenancy was duly terminated by 31.12.2002, that the lease for 50 years and Ex-D9 is not valid in the eye of law and that the defendants have to pay a sum of Rs.1,00,000/- per month as damages for use and occupation to the plaintiff from 01.01.2003 till the date of delivery, in addition to vacate the Suit property. The plaintiff in C.S.No.59 of 2006 is entitled for the reliefs as

prayed for. The suit in Tr.C.S.No.1155 of 2009 is liable to be dismissed. The learned single Judge answered the issues accordingly.

21.After having considered the issues framed for both the suits in C.S.No.59 of 2006 and Tr.C.S.No.1155 of 2009, the learned single Judge decreed the Suit C.S.No.59 of 2006 in favour of the 1st respondent directing the 2nd defendant who is the dealer of the appellant in occupation of the plaint schedule property to vacate the suit premises within six months. The learned single Judge also directed the defendants jointly and severally to pay a sum of Rs.1,00,000/- per month towards the damages for the use and occupation of the suit premises from 01.01.2003 till the date of delivery and dismissed Tr.C.S.No.1155 of 2009 with costs.

22.Aggrieved by the judgment and decree dated 20.06.2011 passed by the learned single Judge referred to above, the appellant has preferred these appeals, the first respondent has also filed his Cross Objection as the learned single Judge has disallowed its claim of fixing the damages for the use and occupation at Rs.2,00,000/- per month instead, the learned single Judge had fixed the damages payable by the appellant at Rs.1,00,000/- per month.

23.Mr.Krishna Srinivas, learned counsel appearing for the appellant submitted that Ex-D9 is an agreement of lease and it is not a lease deed and therefore, the appellant is entitled to specifically

enforce Ex-D9. He would further submit that the appellant is a lessee under the first respondent ever since 15.05.1963 and the lease has been renewed periodically by registered lease deeds and the last of such registered lease deed was on 06.03.1996 by which the lease was renewed by the first respondent upto 31.12.2002.

24.The learned counsel drew our attention to a letter dated 31.08.2001 of the first respondent marked as Ex-D6, by which the first respondent has agreed for renewal of the lease commencing from 01.01.2002 for a period of 50 years and rent payable during the said period was agreed upon by the first respondent under Ex-D6. The first respondent has also requested the appellant to send agreement papers for signature and make arrangement for registration of the lease at an early date. Ex-D6 was signed by Dr.G.K.Francis, the President of the first respondent. Learned counsel appearing for the appellant further submitted that after receiving Ex-D6, the appellant also applied for income-tax clearance certificate from the office of the Income Tax Department on 02.02.2002 in order to register the lease deed in its favour. Ex-D7 is a certificate issued by the appropriate authority in the Income Tax Department under Section 269 U L (1) of the Income Tax Act which reveals the plaint schedule property was agreed to be let out by the first respondent to the appellant. The date of agreement and the apparent sale consideration was also disclosed in the Income Tax certificate issued

by the Appropriate Authority.

25. According to the learned counsel, after obtaining No Objection Certificate from the Appropriate Authority, Income Tax Department, the first respondent and the appellant entered into the lease agreement Ex.D-9, by which, the first respondent has agreed to let out the plaint schedule property to the appellant for a period of 50 years commencing from 01.01.2002 and ending on 31.12.2051. In consideration of the lease, the appellant had also issued a cheque dated 18.04.2002, bearing No.12961, for a sum of Rs.20 lakhs in favour of the first respondent and the said amount was adjusted over the 50 years period as disclosed in the lease agreement Ex-D9. The relevant paragraph in Ex-D9 disclosing the rent payable by the appellant to the first respondent and the receipt of the cheque for a sum of Rs.20 lakhs as advance rentals by the first respondent is reproduced hereunder:-

<i>Period</i>		<i>Rent per quarter</i>	<i>Adjustment of Advance</i>	<i>Net rent payable per quarter</i>
01.01.2002 31.12.2006	to	18,000	3,000	15,000
01.01.2007 31.12.2011	to	22,500	3,000	19,500
01.01.2012 31.12.2016	to	28,125	3,000	25,125
01.01.2017 31.12.2021	to	35,156	9,000	26,156
01.01.2022 31.12.2026	to	43,945	9,000	34,945

<i>Period</i>		<i>Rent per quarter</i>	<i>Adjustment of Advance</i>	<i>Net rent payable per quarter</i>
01.01.2027 31.12.2031	to	54,932	9,000	45,932
01.01.2032 31.12.2036	to	68,665	16,000	52,665
01.01.2037 31.12.2041	to	85,831	16,000	69,831
01.01.2042 31.12.2046	to	1,07,288	16,000	91,288
01.01.2047 31.12.2051	to	1,34,110	16,000	1,18,110

26.Ex-D9 was signed by Dr.G.K.Francis, the President of the first respondent and he has also signed a letter-Ex.D6, dated 31.08.2001 on behalf of the first respondent agreeing to let out the plaint schedule property for 50 years. Learned counsel appearing for the appellant would submit that the appellant was a lessee under the first respondent ever since 1963 and the lease has been periodically renewed by the first respondent. After execution of the lease agreement-Ex-D9, the first respondent through its lawyer's notice dated 12.11.2002 which is marked as Ex-P3 terminated the tenancy on its expiry, on 31.12.2002 and called upon the appellant to quit and hand over vacant possession of the plaint schedule property to the 1st respondent on 31.12.2002 being the date of expiry of the lease. By the same notice, the first respondent has also cautioned the appellant that if it failed to hand over the vacant possession on or before 31.12.2002, the appellant would be liable to pay damages for illegal

use and occupation of the plaint schedule property at the rate of Rs.2,00,000/- per month.

27. According to the learned counsel, the appellant was shocked to receive the notice dated 12.11.2002 from the counsel for the first respondent. Immediately, the appellant issued a reply dated 28.11.2002 informing the first respondent that Dr.G.K.Francis, by letter dated 31.08.2001 had agreed to renew the lease for a total extent of 7856.07 sq.ft. from 01.01.2002 for a period of 50 years. In the reply, the appellant has also informed the first respondent that based on their commitment for renewal of lease, the appellant had also applied for income-tax certificate from the Appropriate Authority under Section 269 U L (1) of the Income Tax Act which is also issued on 26.12.2001. Therefore, the learned counsel appearing for the appellant would submit that the first respondent has failed to keep up its promise as per the lease deed Ex.D9.

28. Learned counsel appearing for the appellant drew our attention to the rejoinder dated 04.12.2002 which is marked as Ex-P5 sent by the first respondent's counsel that Mr.G.K.Francis, the President of the 1st respondent was not authorized to execute lease agreement dated -nil- marked as Ex-D9 in favour of the appellant. In the rejoinder dated 04.12.2002, the first respondent informed the

appellant that Dr.G.K.Francis, Ex-President who is not authorized to execute Ex-D9 lease agreement dated -nil- in favour of the appellant. As per the rejoinder dated 04.12.2002, Ex-D6 and Ex-D9 are fabricated documents. In the rejoinder dated 04.12.2002, the first respondent informed the appellant that there is an order of injunction against Dr.G.K.Francis who had executed Ex-D9 lease agreement dated -nil- from acting on behalf of the first respondent. Learned counsel submitted that through the rejoinder dated 04.12.2002, it is for the first time, the appellant has been informed that Dr.G.K.Francis is not the authorized representative of the first respondent.

29.Even though, the lease and the previous lease deeds dated 06.03.1996 marked as Ex-P2 expired on 31.12.2001, only for the first time in its rejoinder dated 04.12.2002, the 1st respondent has informed the appellant that Dr.G.K.Francis is not the authorized representative of the first respondent. If really, the statement of the first respondent has to be believed, the first respondent could have very well approached the appellant through its authorized representative requesting them to quit and deliver the vacant possession of the plaint schedule property immediately on the expiry of lease i.e. on 31.12.2001 itself. But, on the other hand, only through their legal notice dated 12.11.2002, the 1st respondent called upon the appellant to quit and deliver the vacant possession of the plaint schedule property to them.

30. According to the learned counsel, all these factors will clearly reveal that the first respondent has agreed to let out the plaint schedule property to the appellant for a further period of 50 years commencing from 01.01.2002. Learned counsel appearing for the appellant further submitted that the appellant was always ready and willing to perform their part of the contract under the lease agreement Ex.D9.

31. Even though there is no specific averment in the plaint filed by the appellant in Tr.C.S.No.1155 of 2009 seeking specific performance of the lease agreement that they are ready and willing to perform their part of the contract, surrounding factors will clearly establish that the appellant was always ready and willing to perform their part of the contract under the lease agreement.

32. Learned counsel appearing for the appellant would further submit that the finding given by the learned single Judge that the appellant was not ready and willing to perform their part of the contract is not correct. Relying upon the decision of the Hon'ble Supreme Court reported in **(1999) 6 SCC 337 (Syed Dastakir Vs. T.R.Gopalakrishna Setty)**, learned counsel appearing for the appellant submitted that the compliance of "readiness and willingness" has to be in spirit and substance and there need not be a mechanical reproduction of the exact words contained in the statute

and therefore, even though the plaint in Tr.C.S.No.1155 of 2009 contains no averments to the effect that the plaintiff was always ready and willing to perform the contract in substance, the appellant has demonstrated its readiness and willingness to perform by having a signed cheque for Rs.20 lakhs payable as advance to the first respondent and they have also approached the Income Tax Department and obtained approval under Section 230-A of the Income Tax Act.

33.Learned counsel appearing for the appellant further submitted that the defence of the first respondent that the office bearers who are signatories to Ex-D9 are not authorized by them and this Court granted an order of interim injunction on 20.06.2002 in O.A.No.373 of 2002 in C.S.No.396 of 2002 and subsequently, it was made absolute on 30.07.2002, restraining them from acting on behalf of the first respondent cannot be accepted. According to the learned counsel, the order of injunction was brought to the knowledge of the appellant belatedly by which time, the appellant had already taken steps to ensure that the lease is renewed for a further period of 50 years on the terms and conditions prescribed by the then office bearers of the first respondent. In this regard, learned counsel appearing for the appellant has relied on the Doctrine of Indoor Management as the appellant had conducted business only with the

Management Committee of the first respondent comprising of the President, the Secretary and its Treasurer in terms of the Section 15 of the Tamil Nadu Societies Registration Act, 1975.

34. Learned counsel appearing for the appellant placed reliance on the judgment of this Court reported in **(1968) 38 Company Cases 884** wherein the doctrine has been explained in a case of a company. If a company, through its Directors, holds out an officer of the company as an agent for a particular purpose and ratifies his acts, they cannot subsequently dispute acts done by him within the scope of such agency. According to the learned counsel, the same doctrine shall also be applicable to a registered society. In the case on hand, the appellant had first entered into lease in the year 1963 and thereafter renewed the lease on four occasions after the year 1966 and all such renewals were done by the President of the society. Therefore, the appellant continued to follow the same practice by discussing with the Committee Members of the first respondent, namely, the President, the Secretary and the Treasurer for renewal of the lease for a further period of 50 years. By the time the appellant was informed of the order of the injunction, the appellant and the first respondent society had already executed Ex-D9.

35.Learned counsel for the appellant would further submit that Ex-D9 is an unregistered document. Applying the Doctrine of Part Performance under Section 53-A of the Transfer of Property Act, the first respondent cannot disturb the appellant's lawful possession of the plaint schedule property. According to the learned counsel, the first respondent has taken a completely new plea while arguing the appeals that Ex-D9 is a fabricated document and specific performance of such document cannot be granted by this Court. According to the learned counsel, the stand taken by the first respondent that Ex-D9 is a fabricated document was never raised by the first respondent before the trial Court either in the pleadings or during the trial.

36.Learned counsel appearing for the appellant further submitted that as regards cross objection filed by the first respondent challenging the grant of Rs.1,00,000/- as damages instead of Rs.2,00,000/- as prayed for in the plaint has not raised any ground that Ex-D9 is a fabricated document and therefore, prayed that both the appeals are liable to be allowed and the relief of specific performance of undated agreement Ex-D9 should be granted.

37.Per contra, learned counsel appearing for the first respondent submitted that the first respondent never agreed for renewal of lease in favour of the appellant for a further period of 50

years from 01.01.2002. According to him, Ex-D9 is a back dated and fabricated document and it is not valid and enforceable for the reason that the consideration of Rs.20 lakhs mentioned in Ex-D9 was never paid to the first respondent. This is also admitted by DW-1 in his cross examination. He drew our attention to the relevant portion of the cross-examination of the DW-1 to substantiate his arguments which is reproduced hereunder:

"I go only by records and so I cannot say what is the reason for not giving the date in Ex-D9. Though the cheque number, date of the cheque and also the bank's name and other particulars for Rs.20 lakhs is mentioned in Ex-D9, in spite of repeated reminders, the plaintiff has not come forward to register the lease deed and that was why the cheque was not given to the plaintiff."

38. According to the learned counsel for the first respondent, since no consideration received by the first respondent, Ex-D9 is not a valid contract. He would further submit that there are various inconsistencies in Ex-D9 namely, (a) No specific date of execution, (b) Date of purchase is not given on the stamp paper, (c) date of the alleged cheque, all of which indicate the fact that Ex-D9 has been back dated and fabricated. Further, the lease agreement based on which the IT clearance under Ex-D8 was obtained is on a different date, all of which would go to show that Ex-D9 is not a valid and unenforceable document. He would further submit that that though in Ex-D9 it was stated that it was concluded and executed in

January 2002, it cannot be true, as subsequent thereto in May 2002, under Ex-P6 an additional clause is asked to be added and in Ex-P7, the Committee had resolved to keep the lease on hold, indicative of the fact that Ex.D9 was never a concluded contract and had been back dated and fabricated, just to get over these obstacles, as even the signatories of all these documents are the same, being the President/Secretary/Treasurer.

39.Learned counsel appearing for the first respondent drew our attention to Ex.P8. The Court Order restrained the conveyance of property, thereby making Ex-D9 total unenforceable, and even the credibility of the erstwhile President of the first respondent was questioned which will be evident from the orders of the Court under Ex-P9 and Ex-P10. He would further submit the termination under Ex-P3 has been challenged and the lease was terminated in accordance with the Transfer of Property Act.

40.As regards, the fixation of damages for unlawful use and occupation of the plaint schedule property by the appellant, the learned counsel drew our attention to Ex-D8 which is the certificate issued by the Appropriate Authority of the Income Tax Department under Section 269 U L (1) of the Income Tax Act. He would further submit that the agreed value under the Income Tax certificate was fixed at Rs.1,19,70,440/- for the extent of 7856.07 sq.ft. and the annual return thereof at 12% works out to about Rs.1,523/- per sq.ft.

and the monthly rental thereof works out to about Rs.127/- per sq.ft. whereas the prayer of the first respondent is for damages at about Rs.36.50 per sq.ft. per month owing to its financial inability to pay more court fees for a higher claim. Therefore, learned counsel for the first respondent submitted the claim of Rs.2,00,000/- per month as damages in the suit is much below the market rent and therefore, the suit is liable to be decreed directing the appellant to pay Rs.2,00,000/- per month as damages for unlawful use and occupation and prayed for the dismissal of the appeals and to allow the Cross Objection filed by the first respondent.

41. We have considered the pleadings and depositions, the judgment of the learned single Judge and the rival submissions made on either side.

42. Admittedly, the appellant has not pleaded in the plaint its readiness and willingness to perform its part of the contract. The evidence on record would also reveal that the appellant was not ready and willing to perform its part of the contract as per the alleged lease deed Ex.D.9. It is settled position of law that grant of decree for specific performance of contract is not an automatic and is one of discretion of the Court and the Court has to consider whether it will be fair, just and equitable to grant the relief of specific performance. The Court is guided by principles of natural justice, equity and good conscience. Section 20 of the Specific Relief Act, specifically provides

that the Court's power to grant specific performance is discretionary and not arbitrary.

43. Based on the materials placed on record and the rival submissions made by the respective counsels, we observe the following:

(a) The appellant seeks specific performance of Ex.D9 which is an unregistered document. Since the renewal of the lease, is for a period of 50 years, the document requires registration as per Section 107 of the Transfer of Property Act.

(b) The Ex.D.9 is undated and the alleged date of agreement is doubtful and creates suspicion.

(c) The date mentioned in income-tax clearance certificate issued under Section 269 UL (1) of the Income-tax Act and the date of Ex.D.9 as alleged by the appellant are different.

(d) The appellant has not paid a sum of Rs.20 lakhs as advance to the first respondent as per Ex.D.9 which is an admitted fact. Therefore, no consideration was received by the first respondent for the alleged lease deed Ex.D.9.

(e) As seen from the records, there was no board resolution passed by the first respondent in favour of Dr.G.K.Francis to execute the alleged lease Ex.D.9 in favour of the appellant. Further, by an order dated 20.06.2002 in O.A.No.373 of 2002 in C.S.No.396 of 2002, Dr.G.K.Francis was restrained from acting on behalf of the

first respondent and the interim order of injunction already granted which was made absolute on 30.07.2002.

(f) The ostensible authority comes about where the principal, by words or conduct has represented that the agent has the requisite actual authority, and the party dealing with the agent has entered into a contract with him in reliance on that representation. In other words, the principal must have placed the agent in a position which in the outside world is generally regarded as carrying authority to enter into transactions on behalf of the principal. In the instant case, as seen from the records, Dr.G.K.Francis was never given authority to execute the alleged lease agreement (Ex.D.9), in favour of the appellant. In fact, as per Ex.P.7, being the minutes of the meeting of the first respondent society held on 30.05.2002, the committee had resolved to keep the lease in favour of the appellant on hold. The first respondent through its counsel's notice dated 12.11.2002 (Ex.P.3) has also informed the appellant that the lease has been terminated. It is therefore evident that Dr.G.K.Francis in his individual capacity without any authority from the first respondent society, has allegedly signed the undated agreement (Ex.D9). Therefore, the decision relied upon by the learned counsel for the appellant reported in **(1968) 38 Company Cases 884** will not apply to the facts and circumstances of the instant case. The doctrine of ostensible authority will not apply for the instant case as

Dr.G.K.Francis was never authorized to act on behalf of the first respondent to renew the lease in favour of the appellant and the records will clearly establish that the conduct of the first respondent society would have never made the outside world to believe that Dr.G.K.Francis had the authority to act on behalf of the first respondent society at the time of the alleged agreement Ex.D9.

(g)No rent has been received by the first respondent from the appellant from 01.01.2003 being the date on which the termination of lease became effective.

(h)The agreed value furnished to the Income-tax Department, even according to the appellant, for applying income-tax certificate was fixed at Rs.1,19,70,440/- for the extent of 7858.07 sq.ft. If the annual return at 12% on the agreed value is calculated, it works out to Rs.1,523/- per sq.ft. and the monthly rental works out to Rs.127/- per sq.ft, whereas the first respondent seeks only Rs.2 lakhs per month as damages. If it is calculated per sq.ft, it works out to Rs.36.50 per sq.ft. Therefore, the damages claimed by the first respondent is much less than the damages, if calculated as per the value declared by the appellant before the income-tax Department.

(i)The appellant is a tenant under the first respondent ever since 15.05.1963 and is an old tenant. The property is situated in a prime commercial area at the heart of Chennai.

44. In view of the above observations made by us, we are in conformity with the reasons assigned by the learned single Judge for decreeing the suit in C.S.No.59 of 2006 and for dismissing the suit in Tr.C.S.No.1155 of 2009. However, a sum of Rs.1 lakh per month fixed as damages for the use and occupation of the suit premises from 01.01.2003, till the date of delivery by the learned single Judge is modified and it is enhanced as prayed for by the first respondent in Cross Objection No.27 of 2012 to Rs.2 lakhs per month which the appellants are directed to pay the same to the first respondent from 01.01.2003 till the date of delivery of vacant possession of the suit premises.

45. In the result, the O.S.A.Nos.19 and 20 of 2012 are dismissed with costs and Cross Objection No.27 of 2012 is allowed with costs.

सत्यमेव जयते (R.S.A.,J)

(A.Q.,J.)

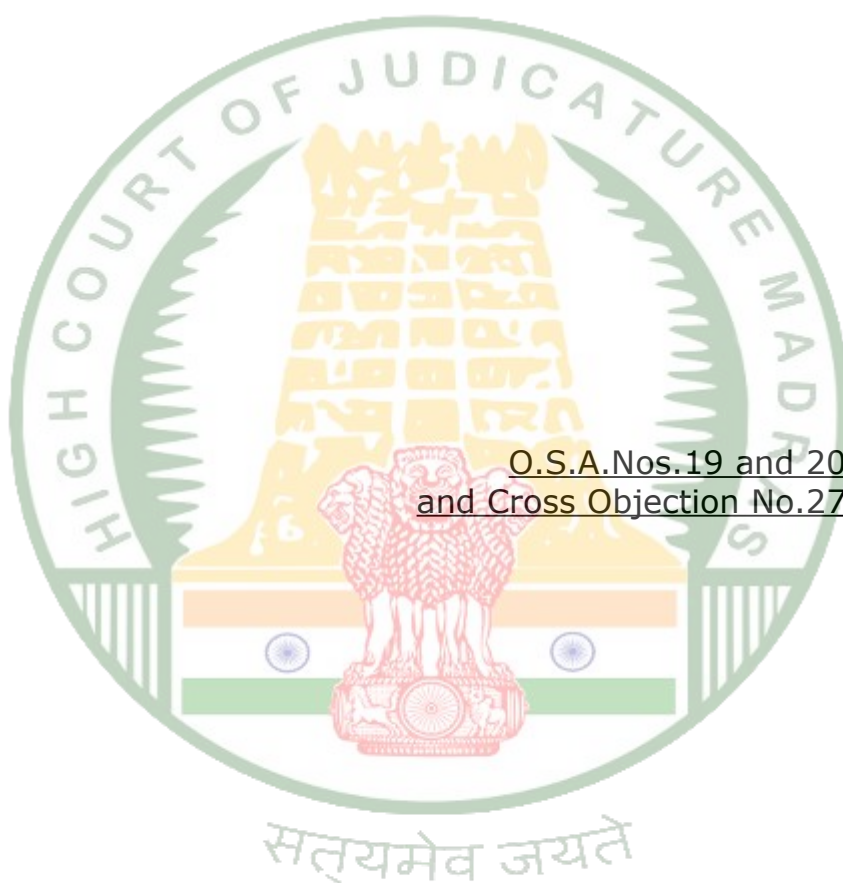
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RAJIV SHAKDHER,J
and
ABDUL QUDDHOSE,J

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O.S.A.Nos.19 and 20 of 2012
and Cross Objection No.27 of 2012

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