

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 18.09.2017

PRONOUNCED ON: 21.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.375 of 2004

Dr.P.Durai

Plaintiff

Vs

1. Vincent Asokan

2. West Top Investment (India) Pvt Limited
by its Director Ganshyam Hemdev
Chennai-34

Defendants

Prayer:- These Civil Suits are filed under Order IV Rule 1 of the Original Side Rules read with order VII Rule 1 of CPC for the reliefs as stated therein.

For Plaintiff

Mr.P.L.Narayanan

For Defendant

M/s.Rank Associates-D1
Mr.Harishankar-D2

COMMON JUDGEMENT

CS.No.375 of 2004 has been filed by the tenant in the property at No.56, Kodambakkam High Road, T.Nagar, Chennai-17.

2. The 1st Defendant was the erstwhile owner of the said property. The 2nd Defendant is the purchaser of the said property. All the four suits had been filed, seeking a direction against the 1st Defendant to execute and register lease deeds with respect to the shops under occupation by each one of

the four Plaintiffs for a period of 99 years commencing from 9.3.2000 and to direct the 1st Defendant to specifically perform the oral agreement for lease dated, 9.3.2000, reduced into writing and filed as document along with the plaints and in default, to direct execution and registration of the said lease deed by a person to be appointed by this court and for permanent injunction restraining the Defendants or anybody acting under them from interfering with their respective shop portions of each one of the four Plaintiffs and for further direction against the 1st Defendant to pay damages of Rs.48,300/- to each one of the Plaintiffs and continue to pay damages at the rate of Rs.1610/- p.m until the date of payment of Rs.2,25,000/- in respect of each one of the four suits and for costs.

3. Plaint:-

a. The Plaintiff, Dr.P.Durai, claimed that he is a tenant in a portion of the building at Door No.56, Kodambakkam High Road, T.Nagar, Chennai-17 and he is having a Clinic under the name and style of SV.Clinic. He commenced it in February 1987. At the time of commencement, he paid Rs.3150/- as deposit amount. The rent had been increased periodically and at the time of institution of the suit, the rent was fixed at Rs.1610/- p.m. the 1st Defendant is Vincent Asokan. At the time of institution of the suit, the property belonged to the family of Asokan. However, the actual owner of the portion, in which the Plaintiff was a tenant, was the elder brother of the 1st Defendant by name, Amalraj Asokan. However, Amalraj Asokan was suffering from mental ill health.

b. The 1st Defendant was the Manager and Guardian pursuant to the

orders of this court. Consequently, he was collecting the rents. It has been stated that the 1st Defendant was finding it difficult to maintain the suit property. He wanted to sell the portion allotted in his favour and also the Northern portion which he was administering for his brother Amalraj. The Plaintiff was interested in purchasing the shop under his occupation. Since Amalraj was a person of unsound mind, it was suggested that a lease deed for 99 years can be entered into. The total consideration was fixed at Rs.2.75 lakhs.

c. There were several rounds of discussions between the Plaintiff and the 1st Defendant and his Manager, Gopalakrishnan. Finally, there was a discussion on 9.3.2000 in the residence of the 1st Defendant. It was stated that during the said discussion, it was agreed among the parties that a lease deed for 99 years shall be entered into for a total sum of Rs.2.75 lakhs. An advance of Rs.50,000/- should be paid. The tax arrears must be cleared before registration of the lease deed. A contractual rent of Rs.1610 shall be paid till the payment of entire Rs.2.75 lakhs and thereafter, for 99 years, there will be no payment of rent. There were also other clauses with respect to managing the shop as a owner without affecting other occupants of the building. Stamp duty and registration cost were to be borne by the Plaintiff. There was no time limit fixed for completion and registration of the lease deed.

d. It has been stated that Gopalakrishnan wanted a sum of Rs.2750/-. The Plaintiff paid a sum of Rs.2000/-. Subsequently, the Plaintiff issued a cheque for Rs.50,000/- drawn on Canara Bank, Habibullah Road Branch, bearing No.351667 in favour of A.Amalraj. Thereafter, the 1st Defendant evaded execution of the lease deed. A draft lease deed was

prepared in the middle of 2001 which was the actual terms already agreed upon. Another draft lease deed was sent in February 2002. There were exchange of advocate notices in this regard. In February 2002, the Plaintiff called upon the 1st Defendant to execute and register the lease deed. At that time, the 1st Defendant informed that he had to obtain permission from the court since technically A.Amalraj was the owner and he was a person of unsound mind. Thereafter, A.Amalraj died in October 2002. The 1st Defendant became the absolute owner of the property. An advocate notice was sent by the Plaintiff on 25.11.2003, calling upon the 1st Defendant to execute and register the sale deed.

e. It has been stated that the Plaintiff was always willing and ready to perform his part of the agreement. However, the 1st Defendant did not send any reply. The 2nd Defendant had purchased the property. It has been stated that the 2nd Defendant is not the bona fide purchaser. He had taken a huge risk in purchasing the suit property. In these circumstances, the suit has been filed, seeking direction to the 1st Defendant to execute lease deed and for permanent injunction and for damages.

4. Written Statement of the 1st Defendant:-

The 1st Defendant denied all the allegations contained in the plaint. It has been stated that the 1st Defendant had sold the property to the 2nd Defendant and consequently, there cannot be any relief against the 1st Defendant. The suit had been filed against the 1st Defendant only to harass him. It has been stated that he had not authorised his Manager, Gopalakrishnan to discuss with the Plaintiff any issue regarding lease. It has

been stated that since he is not the owner of the suit property, he cannot be called upon to execute the lease deed. It has been stated that a sum of Rs.50,000/- was paid towards alleged agreement of lease. It has been stated that the Plaintiff had not been paying any rent at all. It has been stated that the suit should be dismissed as against the 1st Defendant.

5. Written Statement of the 2nd Defendant:-

The 2nd Defendant also denied all the allegations stated in the plaint. It has been stated that originally the property belonged to the brother of the 1st Defendant. After the death of the brother, the 1st Defendant became lawful owner of the suit property. It has been further stated that this Defendant purchased the property in November 2005. It has been stated that the 1st Defendant had categorically informed that there was no oral agreement of lease with the Plaintiff and consequently, it has been stated that all such allegations are false. It has been further stated that the Plaintiff in collusion with the erstwhile Manager of the 1st Defendant, namely, Gopalakrishnan is attempting to grab the property. It has been stated that the portions under the occupation of the brother of the 1st Defendant was purchased after applying to the court seeking permission to sell. It has been stated that there was no question of paying damages. There was no occasion to prepare any lease deed. It has been further stated that from 2003 onwards, no rent has been paid. The Plaintiff had not paid any rent even after this Defendant had purchased the property in November 2005. It has been stated that the 2nd Defendant is the bona fide purchaser and the suit should be dismissed.

6. On consideration of the pleadings, the following issues were

framed:

1. Whether the Plaintiff is entitled to a decree directing the 1st Defendant to execute and register the lease deed for 99 years commencing from 9.3.2000 in respect of land, building, bearing Door No.56/1, Kodambakkam High Road, T.Nagar, Chennai-17, Shop No.G4, in the ground floor in the plaint Schedule property in terms of the oral agreement dated 9.3.2000 as prayed for?
2. Whether the Plaintiff is entitled to get an order of permanent injunction restraining the Defendants, their men from in any manner interfering with Plaintiff's use, occupation and enjoyment of the property and also from dispossessing the Plaintiff from Door No.56, Kodambakkam High Road, T.Nagar, Chennai-17, Shop No.4 in the ground floor as prayed for?
3. Whether the Plaintiff is entitled to a decree for Rs.48,300/- towards damages as prayed for?
4. Whether the Plaintiff is entitled to get damages at the rate of Rs.1610/- per month until the date of payment of Rs.2,25,000/- as prayed for?
5. Whether the suit is bad for misjoinder of parties?
6. Whether the Plaintiff has any cause of action to file the suit?
7. Whether the court fee paid on the plaint is correct?
8. Whether the suit is barred by limitation?
9. To what relief, the Plaintiff is entitled?

7. During the trial, the Plaintiff was examined as PW.1. The 1st Defendant, Vincent Asokan let in evidence as DW.1 Similarly, on behalf of the 2nd Defendant, Ganshyam Hemdev had let in evidence as DW.2.

8. The Plaintiff marked Ex.P1 to Ex.P6. Ex.P1 is the rental receipt and Ex.P2 is the letter from the Plaintiff to A.Amalraj. Ex.P3 is the receipt from the 1st Defendant. Ex.P4 and Ex.P5 are deed of lease and indenture of lease.

Ex.P6 is the legal notice issued by the Plaintiff's counsel to the 1st Defendant.

9. The 1st Defendant did not file any document. The 2nd Defendant filed Ex.D1, which is the copy of the sale deed dated 16.2.2005 executed by the 1st Defendant in favour of the 2nd Defendant.

10. This court heard the arguments of the learned counsel on either side and also perused the materials placed on record.

11. The learned counsel for the Plaintiff took the court through the pleadings. According to the learned counsel, the Plaintiff was the tenant in the suit property. The shop was abutting the Kodambakkam High Road. The suit property originally belonged to the famous film Actor, 'Asokan'. On 5.6.1982, he had executed a settlement deed with respect to Northern portion of the suit property to his son Amalraj. Unfortunately, Amalraj was a person having mental illness. Accordingly, his younger brother, who is the 1st Defendant, namely, Vincent Asokan was his Manager and Guardian. He was collecting the rents from the Plaintiff. The learned counsel further stated that some time in January/February 2000, Vincent Asokan required funds and wanted to sell the property and he offered the respective shops under occupation of the Plaintiff for sale. However, it was felt that since Amalraj was a person suffering from mental illness, permission must be obtained from the court and consequently, as an interim measure, it was decided among the parties to entered into a lease deed for a period of 99 years.

12. There was an oral discussion wherein the Manager of the 1st Defendant, namely Gopalakrishnan also participated. The oral agreement to

entered into a lease was concluded in the residence of the 1st Defendant on 9.3.2000. It was stated that the lease would be for 99 years and the total lease amount would be Rs.2.75 lakhs. The Plaintiff consequently paid as advance a sum of Rs.50,000/- by cheque. Thereafter, they signed a draft lease deed for approval. This was not approved. In the mean while, the 1st Defendant sold the property to the 2nd Defendant. The learned counsel for the Plaintiff pointed out this fact and also very emphatically stated that the 2nd Defendant cannot be termed as a bona fide purchaser and wondered how the 2nd Defendant could have purchased the property when did not even visit the property and did not make any enquiry. The learned counsel stated that had he enquired, the tenants would have informed them about the existing concluded contract for lease for 99 years. The learned counsel therefore stated that a notice was issued on 25.11.2003. The 2nd Defendant demanded possession subsequent to his purchase. It was on that occasion that the Plaintiff came to file the suit.

13. The learned counsel for the Plaintiff also pointed out the written statement, filed by the 1st Defendant, wherein he had stated that he does not require money for his brother, but in cross examination, stated that he received Rs.50,000/- for his brother and not for rental arrears or maintenance. The learned counsel also stated that it cannot be mere coincident that the Plaintiff would have paid Rs.50,000/-. The learned counsel stated that the 2nd Defendant did not take possession of the suit property. The learned counsel stated that the receipt had been filed for payment of Rs.50,000/- and it had been marked as Ex.P3. The learned counsel, therefore, stated that since there was an existing agreement for lease, the Plaintiff is entitled for specific

performance. The learned counsel also stated that the Plaintiff's possession must be protected and the Plaintiff is also entitled for damages as claimed.

14. The learned counsel for the 1st Defendant stated that he had sold the property by way of a sale deed, which was marked as Ex.D1 through DW.2. He stated that there was no agreement for lease, much less, an agreement for 99 years. He denied all the allegations made in the plaint. He stated that since the 1st Defendant was no longer the owner of the property, the court cannot grant any relief as against the 1st Defendant.

15. The learned counsel for the 2nd Defendant stated that the Plaintiff is the tenant in the shop portions in Kodambakkam High Road. The learned counsel pointed out the receipt, which had been marked by the Plaintiff and stated that in the said receipt for Rs.50,000/-, there is no mention about the purpose for payment of Rs.50,000/-. There is no reference to any property. There is no mention about the lease deed for 99 years and the schedule of the suit property is also not given. The learned counsel stated that the identity of the property had not been given at all. He had also stated that any lease deed must be put down to writing before it could be enforced and stated that the terms of the lease deed are imaginations by the Plaintiff. With respect to indenture of lease, which had also been marked as document, the learned counsel has stated that it is undated and unsigned. There is no proof that it was sent for approval. The learned counsel also stated that the alleged oral agreement had not been proved. He denied that there was any oral agreement on 9.3.2000. The learned counsel also stated that the suit had been filed much after the period of limitation and consequently, the suit has to be dismissed.

16. I have considered the rival arguments of the learned counsel on either side.

17. Issue (1):- The Plaintiff has come to court on a specific stand that there was an oral agreement of lease entered into between the Plaintiff with the 1st Defendant on 9.3.2000. The Plaintiff had filed the suit in the year 2004, seeking enforcement of the lease deed. However, the oral agreement of lease has been denied by the Defendants. A perusal of the documents filed shows that primarily, the Plaintiff relied on Ex.P3 receipt. The said receipt is as follows:-

RECEIPT

Received a sum of Rs.50,000/- (Fifty thousands only) by cheque no.351667, dated 9.3.2000 favouring Canara Bank, from Dr.P.Durai, S/o.Late A.N.Perumal, located at No.56/1, Ashokha Tower, Kodambakkam High Road, T.Nagar, Madras - 600 017."

18. A perusal of the said receipt reveals that the portion occupied by the Plaintiff has not been given. The purpose, for which the receipt was given, is not given. It is also not mentioned that it is towards an advance for agreement of lease. Period of lease has not been given. It is simply a receipt issued by the landlord to a tenant. The court cannot come to any inference on the basis of the said receipt that the receipt for was for an advance and that the total lease amount was Rs.2.75 lakhs and that the lease period was for 99 years and towards the such lease this was the advance amount. In the absence of any legally acceptable evidence, I hold that the receipt will not help

the case of the Plaintiff.

19. The learned counsel for the Plaintiff relied on deed of lease, which had been marked as Ex.P4. A perusal said document reveals that it is not dated and it is of the year 2001, whereas the Plaintiff has to come court stating that originally the oral agreement was on 9.3.2000. The address of the land lord is not given, the name of the father and age and the residence address of the tenant was not given and it had not been signed. It is also relevant to point out that the schedule alone is given on a Rs.50 stamp paper and in the said document, the same schedule has been given. Stamp paper has been produced in the name of Mrs.Saraswathy It also has the page no.11. As a matter of fact, the stamp paper had been purchased in the year 1982. It has been signed by Saraswathy It is very improbable to connect this schedule with the lease deed. Consequently, I hold that these documents will also not come to the rescue of the Plaintiff.

20. The Plaintiff has further relied on the indenture of lease, which had been marked as Ex.P5. A perusal of the said document again reveals that the date is not given. The age of A.Amalraj is not given and his address/name of the lessee is not given. It has not been signed. In the schedule, shop number is not given. There is no signature. There is no covering letter and there are no signatures of the witnesses. The court cannot rely on such document to hold that there was an oral agreement of lease subsequently written down in writing. Even other wise, it is seen according to the Plaintiff that the oral agreement was of the year 9.3.2000. First deed of lease was in the year 2001 and the month is not given. Stamp paper had been purchased in the

year 1982. I hold that even assuming that there is an oral agreement of lease, the conduct of the Plaintiff in not calling upon the 1st Defendant to reduce the same into writing exposes the fact that there is no oral agreement of lease. In the plaint, it has been stated that the brother of the 1st Defendant died and therefore, the Plaintiff did not take any steps, but it seen that the brother of the 1st Defendant died in October 2002, which was nearly two years and six months subsequent to the alleged oral agreement of lease. Consequently, even these documents will not come to the rescue of the Plaintiff.

21. With respect to the evidence on record, PW.1, during his cross examination, had admitted as follows:-

“In the year 2003, I paid the rent last. I have not filed any documents before this Hon'ble Court to show that I paid rent upto November 2003. The 1st Defendant sent a notice to me that he sold the property to the 2nd Defendant. Therefore, I have not paid the rent to the 1st Defendant thereafter. I have not paid rent to the 2nd Defendant from December 2003.....

Ex.P3 does not refer to the sum received for as advance consideration for leasing the property. Ex.P3 refers to the date and number of the cheque. Ex.P3 also does not reveal the purpose for which it was given.....

I am not sure about as to from where last page of 5th Petitioner was taken. The last page of Ex.P5 appears to have been signed by one Mrs.Saraswathy. Saraswathy is not a party to the suit. There is no mention about advance amount of Rs.50,000/- alleged to have been paid by the Plaintiff in Ex.P5.”

22. It is very clear that the Plaintiff has produced the document, which did not substantiate his pleadings. Moreover, all the documents are xerox copies and are totally inadmissible in a court of law. They are neither relevant nor proved in a manner known to law. They did not have relevant details and are also unsigned. They cannot be taken note of and they have to

be rejected.

23. It is also seen that the Plaintiff has also stated that though Amalraj is mentally unsound person, permission had not been obtained from the court with respect to any lease and at the same time, admitted that the Plaintiff knew that permission from the court is necessary. The Plaintiff has not made out any case to hold that there was an oral lease agreement, much less lease deed. The court cannot grant any relief to the Plaintiff.

24. The learned counsel for the Plaintiff relied on decision of the Honourable Supreme Court reported in 2000 6 SCC 402 (R.K.Mohammed Ubaidullah and others Vs. Hajee C.Abdul Wahab (D) by LRS and others) with respect to the bona fide purchaser. In this case, primarily the Plaintiff has to establish that he has lease deed in his favour before he can point a finger at the 2nd Defendant. The Plaintiff has not established that there is oral lease deed in his favour. Consequently, I hold that the issue of the 2nd Defendant having purchased the property would be an irrelevant factor. For all the reasons stated above, I hold that the Plaintiff has to suffer an order of dismissal. Accordingly, issue (1) is answered against the Plaintiff.

25. Issue (5):- This issue relates to misjoinder of parties. This issue has been framed fundamentally on the ground that the Manager of the 1st Defendant, Gopalakrishnan was not made a party to the suit proceedings. However, with respect to the whether he has to be made a party to the proceedings or not, the answer to Issue (1) has effectively decided that the Plaintiff is not entitled to any relief with respect to execution of lease deed. It is the case of the 2nd Defendant that the said Gopalakrishnan is in collusion with

the Plaintiff.

26. Order 1 Rule 9 of CPC is as follows:-

“9. Misjoinder and nonjoinder:- No suit shall be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it:

Provided that nothing in this rule shall apply to nonjoinder of a necessary party.”

27. It is clear that by misjoinder of parties, the suit is not bad. Consequently, I hold that the suit is not bad on the ground of misjoinder of parties. Accordingly, issue (5) is answered.

28. Issue (6):- This issue has been framed based on the fact that the Plaintiff has come to court based on an oral agreement of lease. The Plaintiff has not exactly, explained that the said oral agreement had been reduced into writing and signed by all the parties. Mere production of indenture of lease or a purported lease will not give any rise to cause of action to the Plaintiff. Consequently, the Plaintiff had no cause of action to institute the suit. Accordingly, issue (6) is answered against the Plaintiff.

29. Issue (7):- This issue relates to whether the court fee is correct. The issue relating to court fee becomes redundant as the suit has been filed seeking specific performance and the Plaintiff had valued the suit and also paid the court fee in accordance with the value of the suit. Even other wise, under the Original Side Rules, if the Defendants have raised any issue regarding the payment of court fee or insufficient court fee, the matter will have to be referred

to the Taxation Officer for adjudication. The Defendants have not let in any oral or any documentary evidence with respect to the same. Consequently, I hold that the Plaintiff cannot be non suited on the ground of incorrect court fee. Accordingly, issue (7) is answered in favour of the Plaintiff.

30. Issue (8):- This issue is with respect to the law of limitation. Though the Plaintiff claims that the suit has been filed based on the agreement to execute the lease deed dated 9.3.2000, the Plaintiff has specifically stated that he was given a draft lease deed and consequently, he had filed the suit within the period of limitation. This issue had been taken as routine matter by the Defendants. I hold that the suit is not barred by limitation. Accordingly, issue (8) is answered in favour of the Plaintiff.

31. Issues (2), (3) and (4):- These are all the issues with respect to the reliefs sought in the plaint. However, the primary issue with respect to the lease deed had been answered against the Plaintiff. Consequently, I hold that the Plaintiff is not entitled to an order of permanent injunction against the Defendants as prayed for and the Plaintiff is also not entitled for damages either for Rs.48,300/- as sought or at the rate of Rs.1610/- per month. As a matter of fact, it has come out in evidence that the Plaintiff is not paying any rent for the portion under his occupation and he continue to remain in occupation. Consequently, the Defendants cannot be mulcted with the burden of paying damages. Accordingly, issues (2), (3) and (4) are answered against the Plaintiff.

32. Issue (9):- For all the reasons, the suit is to be dismissed with costs.

C.V.KARTHIKEYAN, J.

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33. In the result, CS.No.375 of 2004 is dismissed with costs.

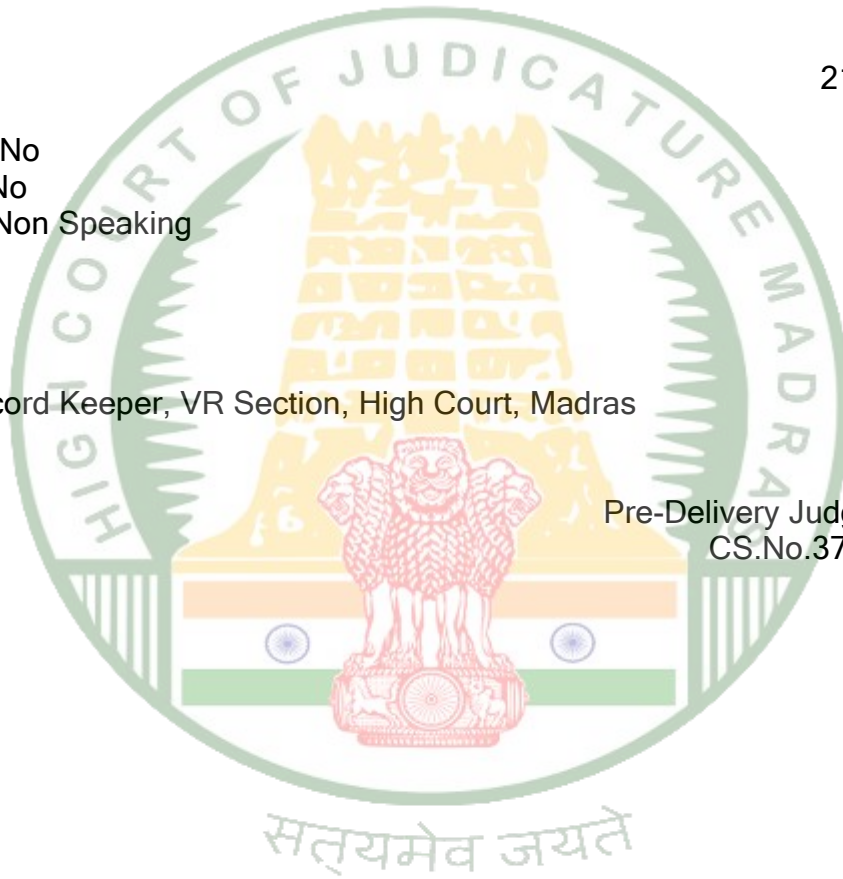
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Index:Yes/No
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To:

1. The Record Keeper, VR Section, High Court, Madras

Pre-Delivery Judgement in
CS.No.375 of 2004



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