

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2018

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH
ORIGINAL SIDE APPEAL NOS.256 TO 259 OF 2018

DR.P.DURAI

... APPELLANT/PLAINTIFF
IN OSA.NO.256 OF 2018

B.ASHOKKUMARJAIN

... APPELLANT/PLAINTIFF
IN OSA.NO.257 OF 2018

M.BABY

PROPRIETRIX.B.V.MANAVALAN & SONS

REP BY HER POWER OF ATTORNEY AGENT M.ASHOKAN

... APPELLANT/PLAINTIFF
IN OSA.NO.258 OF 2018

SP.PALANIAPPAN

PROPRIETOR INDIA OPTICALS,CHENNAI.

... APPELLANT/PLAINTIFF
IN OSA.NO.259 OF 2018

.VS.

1.VINCENT ASOKAN

2.WEST TOP INVESTMENT(INDIA) PVT.LTD.,

REP.BY DIRECTOR GANASKYANHEMDEV,

73, NUNGAMBAKKAM HIGH ROAD,

NUNGAMBAKKAM, CHENNAI-600 034.

..RESPONDENTS/DEFENDANTS
IN ALL OSAS

The above Original Side Appeals are filed under Order 36 Rule 1 of O.S.Rules R/W Clause 15 of the Letter Patent to set aside the judgment and decree dated 21.11.2017 in C.S.Nos.375 to 378 of 2004.

For Appellant
(for all OSAs)

: Mr.PL.Narayanan

For Respondents : Mr.K.Harishankar
(for all OSAs)

COMMON JUDGMENT

(Judgment of the Court delivered by N. ANAND VENKATESH, J)

These four intra Court appeals have been filed by the plaintiffs, aggrieved by the dismissal of their respective suits by the learned Single Judge by judgment and decree dated, 21.11.2017.

2.The appellants are the tenants in the suit property. It is the case of the appellants that the first respondent had orally agreed to grant lease of the Shops, which is the subject matter of the suit property, for a period of 99 years by way of oral agreement.

3.Subsequently, the first respondent went back on oral agreement and sold the suit property in favour of the second respondent. The first respondent directed the appellants to pay the rents directly to the second respondent since the property has been conveyed to the second respondent. The appellants issued a notice dated 25.11.2003 to enforce the oral agreement. Since the lease deed was not executed in favour of the appellants as per the oral agreement, the appellants filed independent suits for the relief of Specific Performance to execute a registered lease deed for a period of 99 years based on the oral agreement and also for a permanent injunction not to interfere with their possession and enjoyment of the suit property.

4.The learned Single Judge after analysing the oral and documentary evidence came to a categorical finding that the appellants have not established the oral agreement and in fact the appellants did not even have a lease deed in their favour. Therefore, the learned Single Judge held that mere production of a purported lease will not give rise to any cause of action to the appellants. The learned Single Judge also found that the appellants are not paying any rents for the portion under their occupation. Therefore, the learned Single Judge dismissed the suits filed by the appellants.

5.The learned counsel for the appellants reiterated the contentions made before the learned Single Judge. Even in these appeals, the appellants are not able to establish the so called oral agreement. The only document that has been relied upon was a receipt for a sum of Rs.50,000/- [Rupees Fifty Thousand Only] said to have been paid by the respective appellants. The

receipt does not reveal for what purpose this amount has been paid and it does not even talk about any lease. From this receipt, this Court cannot come to any inference that the amount was paid as an advance towards the oral agreement for granting lease for 99 years.

6. Even the lease deed marked in the suits, does not connect the suit property with the lease deed. There is absolutely no evidence on the side of the appellants to show that there was an oral agreement with the first respondent.

7. The learned Single Judge has considered the entire issue in detail after referring to the oral and documentary evidence. This Court does not find any ground to interfere with the judgment and decree passed by the learned Single Judge.

8. The learned counsel for the appellants would submit that the appellants are in possession of the suit property for a very long time and are having their shops through which they are eking their livelihood and hence may be granted one year time to vacate and hand over the suit property to the respondents. The learned counsel for the respondents do not have any serious objection for granting time subject to the condition that the appellants should be directed to file an affidavit of undertaking and the appellants must also be directed to pay the contractual rent every month till they vacate and hand over possession of the suit property.

9. Even though this Court does not find any merits in these appeals, taking into consideration the fact that the appellants have been running their shops in the suit property for a long time, sometime must be given to them to vacate and hand over the property in order to enable them to locate a new place.

10. The Original Side Appeals are disposed of as follows:

(a) The judgment and decree of the learned Single Judge is hereby confirmed.

(b) The appellants are directed to file an affidavit of undertaking within a period of one week from today, undertaking to vacate and hand over the suit property to the respondents on or before 31.08.2019.

(c) The appellants are further directed to pay the contractual rent to the respondents on or before 5th of every month till they vacate and handed over possession of the suit property to the respondents.

(d) In the facts and circumstances of the case there will be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kp

Copy to:

1.The Sub. Asst. Registrar,
Original Side, High Court
Madras.

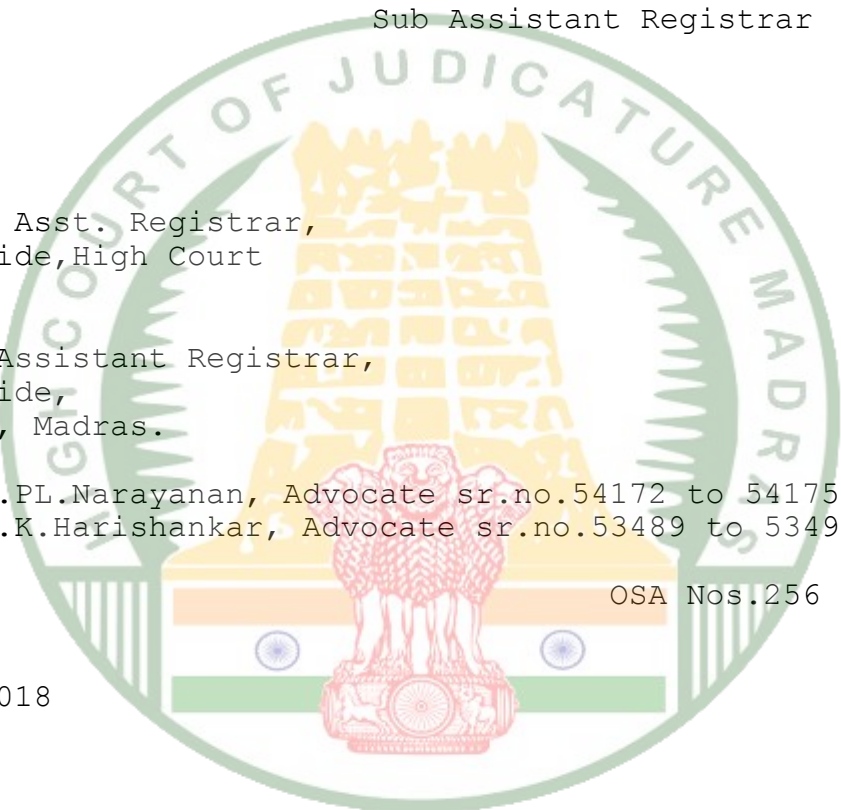
2.The Sub Assistant Registrar,
Judicial Side,
High Court, Madras.

+4cc to Mr.PL.Narayanan, Advocate sr.no.54172 to 54175

+4cc to Mr.K.Harishankar, Advocate sr.no.53489 to 53492

OSA Nos.256 to 259/2018

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nr 18/09/2018

The seal of the High Court of Judicature Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. Below the gopuram is a red lion capital on a base. The entire emblem is set against a background of horizontal stripes (orange, white, green) with a red border. The text 'HIGH COURT OF JUDICATURE MADRAS' is written in a circle around the emblem. Below the emblem is the motto 'सत्यमेव जयते' in Devanagari script.

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