

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 26.06.2018

Judgment Pronounced on : 05.10.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A..No.961 of 2018
and CMP. Nos.7840 & 10141 of 2018

1.Aascar Entertainment Private Limited
A Registered Company under the
erstwhile Companies At 1956
U74990TN2010PTC075397 - Corporate Identification
Having its registered address at :
No.9, 10th Avenue, Ashok Nagar
Chennai - 600 083.
Represented by the Whole time Director
V.Ravichandran

2.V.Ravichandran Appellants/Defendants 2 & 4

Vs

1.A.Chandrasekaran
2.K.Chidambaram

3.Sri Kumaran Films
A partnership firm represented by K.Chidambaram
Having their Operation Office at :
53-B, Priya Complex, Gopalapuram II Street,
Coimbatore - 18.

... Respondents/Plaintiff &
Defendants 1 & 3

Prayer :- Civil Miscellaneous Appeal filed under Order 41 Rule 1 and Section 104 of CPC, to set aside the petition and order passed in I.A.No.102/2018 in O.S.No.100/2018 dated 10.04.2018 on the file of the II Additional District Court, Salem.

For Appellants : Mr.V.Raghavachari
for Mr.M.Narayanaswamy

For Respondents : Mr.B.Ravi [R1]

JUDGMENT

The fourth and the second defendants (who respectively are, a Private Limited Company and its Director) have approached this Court challenging the exparte order of interim injunction granted by the II Additional District Court, Salem in I.A.No.102 of 2018 in O.S.No.100 of 2018, on 10.04.2018. For the sake of convenience, the first respondent would be referred to by his rank in the suit.

2. The foundational facts on which the interim injunction was sought by the plaintiff/ first respondent are referable to his pleadings in the plaint, and the material facts disclosed by are:

- The suit property, a multiplex complex that goes by the name ARK Complex at Salem, was purchased by the first appellant (fourth defendant) Aascar Entertainment Pvt Ltd., Vide sale deed dated 17.5.2010. The second appellant (second defendant) was one of its Directors. However, the said cinema theater could not be run till 2016.
- Plaintiff inter alia has his business in film production, distribution and in running cinema theaters. He operates from Salem. In a scenario where ARK complex was non-operational, at the request of the second defendant (second appellant herein), plaintiff forged a commercial alliance between the second defendant, (and hence the fourth defendant-company referred to above), and the first defendant, an outsider to the fourth defendant-company, and one who heads a partnership firm (arrayed as the third defendant) on the request of the second defendant. The plaintiff has had earlier acquaintance with the first defendant. The commercial alliance which the plaintiff could bring about between the fourth defendant and the third defendant had resulted in the fourth defendant executing a lease deed in favour of the third defendant as regards the suit property, the ARK Complex. This lease agreement was dated 09.12.2016.
- In order the multiplex became operational, both the first and second defendants requested the plaintiff to make use of his resourcefulness for it to happen. Plaintiff was required to obtain necessary power connection from TANGEDCO and enabled obtaining the license in 'C' Form under the provisions of The Tamil Nadu Cinemas (Regulation) Act, 1955 in favour of the fourth defendant-company. As a quid pro quo, plaintiff was agreed to be paid 25% of the profit for running the theatre, and should there be any loss, the third defendant would be paid nothing. It was also agreed that the fourth defendant would assign the licence, which was granted to it in terms of Rule 120 of the Tamil Nadu

Cinemas Regulations Rules, 1957.

- On 05.01.2017, the possession of suit property (ARK complex) was handed over to the plaintiff, and a document too was executed for this purpose. Thus the plaintiff became the authorised representative of the owner of the complex to fulfill the above objects of the agreement, and consequently, the authorised signatory of the fourth defendant, with which he entered into a necessary agreement with TANGEDCO for obtaining electricity connection. Further a document issued by the District Collector in Form-B has been handed over to the plaintiff. To sum up the plaintiff's effort, it was solely and essentially due to his solitary efforts, the cinema theatre has become operational. Towards this end, he had incurred an expenditure of Rs.5.0 crores
- Be that as it may, the suit became necessitated because the defendants, who are duty bound to assign the licence to the plaintiff for exhibiting cinematography in the suit property (as a consideration for plaintiff expending considerable amounts for bringing the cinema theater complex operational), the second defendant attempted to take forcible possession of the property. To be specific, on 27.03.2018 some persons claiming to be the agents of the first and second respondents attempted it with the spare keys in their possession. These attempts are outrageous and are plainly unlawful.

The suit is therefore laid inter alia for (a) declaration that the defendants have no right to operate the multiplex theater in the suit property as per the licence granted to them dated 16.03.2008, and (b) for a mandatory injunction, directing them to assign the said licence in favour of the plaintiff.

3.1 On the line of the aforesaid allegations in the plaint, the plaintiff has moved the trial Court in I.A.No.102 of 2018 for an order of ad-interim prohibitory injunction for restraining the defendants from intervening with his peaceful possession and enjoyment of the property, or to give effect to the licence issued under Form-C and also for granting police protection for the removal of the illegal movement of the defendants.

3.2 On 10.4.2018, the learned trial Judge had passed an order of ad-interim injunction restraining the appellants from interfering with the peaceful possession and enjoyment of the suit property by the plaintiff.

4.1 Describing the impugned order as a shocking departure from the settled principles of law, the leaned counsel for the

appellants argued that it is a case where the suit itself should not have been taken on file, for it does not disclose a cause for the action instituted, and, having taken on file, it deserves to be rejected. After all the plaintiff, by his own description, claims himself only to be a representative of the owner of the property, which does not vest in him a jurisprudentially recognised legal character for holding possession to the exclusion of the owner of the theater complex. A representative may at the best be termed as an agent but at any rate no better than a caretaker of the suit property. And, even if his entire allegations in the plaint were to be presumed to be true, then his role may be that of a facilitator and no more. Nowhere in law, a representative or a caretaker or a commercial facilitator of an owner of an immovable property obtains a right to exclude the very owner who he represents. But this plaintiff claims a right to exclude the very owner from possessing the multiplex and also from working the licence to screen the cinematographic films granted to the latter. An attempt is now made to shake the very jurisprudential principles that forms the basic structure of law of rights that Courts of law have come to recognise. Unfortunately, the trial court has fallen in error in believing that he has a right that deserves protection in law. Here the plaintiff relies on a document dated 05-01-2017, but it does not transfer any right over the suit property in the manner that law prescribes, in order the plaintiff could claim a right to exclude the owner of the property from possession.

4.2 The first limb of the triple criteria, whose existence the Courts are required to examine for grant of interim injunction, is the existence of a strong prima facie case. This is founded on a prima facie assessment of the character of the legal-right, to remedy whose violation the suitor institutes an action. With no legally recognisable right in him, the plaintiff has approached the Court and has obtained an order of interim injunction, which is unsustainable in law, and is plainly unjust. Every unjust order, even if the same is passed exparte is appealable. Reliance was placed on Shanita Holdings SDN & Another Vs. Shanita Hotel Trichy Pvt. Limited [2009 (2) CTC 210], The Bengal Club Ltd., Vs. Susanta Kumar Chowdhary [AIR 2003 CALCUTTA 96], M/s.Aristo Printers Pvt. Ltd., Vs. M/s.Purbanchal Trader Centre, Guwahati [(1992) 1 Gauhati Law Reports 81].

4.3 Inasmuch as the character of plaintiff's title is either that of an agent or a caretaker or a facilitator, a factor ignored or overlooked by the trial Court, he is not entitled to exclusive possession, and consequently a right to injunct the owner of the property from possessing it. The authorities in Maria Margarida Sequeira Fernandes and Others Vs.Erasmo Jack De

Sequeira (Dead) Through Lrs [(2012) 5 SCC 370], Mahadeo Savlaram Shelke and Others Vs. Pune Municipal Corporation and Another [(1995) 3 SCC 33], M.Gurudas and Others Vs. Rasaranjan and Others [(2006) 8 SCC 367], and Ajay Mohan and Others Vs. H.N.Rai and Others [(2008) 2 SCC 507] were relied on for fortifying the same.

4.4 Stretching the argument further, it was contended that since the plaintiff has instituted a suit without any legal character, both as to his title as well as to the nature of his possession, there is no cause of action for the suit within the meaning of Order VII Rule 11(a) CPC. Any continued existence of the suit in the dockets of the Court will constitute abuse of judicial process, and as this could be attributed to the trial court's failure to alert itself at the point of institution, this court in exercise of its power of superintendence over the courts below, should withdraw the suit to its file and reject the same in exercise under Article 227 of the Constitution. The ratio in Church of Christ Charitable Trust and Educational Charitable Society, Rep. by its Chairman Vs. Ponniamman Educational Trust, Rep by its Chairperson/Managing Trustee [(2012) 8 SCC 706]; Abdul Rahman Vs. Prasony Bai and Another [(2003) 1 SCC 488]; Surya Dev Rai Vs. Ram Chander Rai and Others [(2003) 6 SCC 675]; Ranbir Yadav Vs. State of Bihar [(1995) 4 SCC 392]; T.Arivandandam Vs. T.V.Satyapal and another [(1977) 4 SCC 467]; Southern and Rajamani Transport Private Limited, Rep by its Director & Others Vs. R.Srinivasan & Others [2010 (4) CTC 690]; Tamil Nadu Handloom Weavers Co-operative Society, Rep by its Managing Director, Chennai [(2009) 8 MLJ 991]; Ranipet Municipality, Rep by its Comer. and Special Officer, Ranipet Vs. M.Shamsheerkhan [1998 (I) CTC 66], Renuka Devi Vs. D.Manoharan [1997 (III) CTC 567], Thiruchirapalli District Central Co-operative Bank Ltd., Rep. By its Secretary and another Vs. M.Krishnasami [1994-2-L.W.266] were relied on.

5.1 Reacting equally strongly, the learned counsel for the first respondent/plaintiff argued that it is a case where plaintiff has invested huge money for making the theater operational, and that he admittedly has been in possession of the property given the fact that he has the keys of the building. This would not have been possible unless he has a right to occupy the same. Placing reliance on the document dated 05.01.2017 as evidencing possession, the learned counsel argued that till it is proved

otherwise, prima facie this possession has to be protected and should not be let to be disturbed by taking recourse to illegal methods.

5.2. The learned counsel also submitted that an exparte order of

interim injunction has not been extended by the Court below, and in addition submitted that the appellants herein have filed an application before it for rejecting the plaint under Order VII Rule 11 CPC. So far as this Court's power to invoke Article 227 of the Constitution is concerned, the same is permissible only if a Civil Revision is preferred, and the same cannot be invoked in a Civil Miscellaneous Appeal filed under Order XLIII Rule 1 CPC. In all the cases which the counsel for the appellants has relied on, proceedings are revision in character. This apart that power under Article 227 should be sparingly used, lest Courts will be flooded with petitions invoking it, and that will render redundant Order VII Rule 11 CPC. He placed reliance on *Gian Chand and Others Vs. York Exports Limited and Another* [(2015) 5 SCC 609]; *Himalayan Coop. Group Housing Society Vs. Balwan Singh and Others* [(2015) 7 SCC 373]; *Babu Lal and Others Vs. Vijay Solvex Limited and Others* [(2014) 16 SCC 680]; *Champalal Jain and another Vs. Thattikunda Rajamannar Trust by its Secretary and others* [(1995) 1 MLJ 589].

6.1 When rival submissions are assessed for their preponderating probable merit, this Court finds greater merit in the arguments of the appellants' counsel, that a representative of an owner of an immovable property has no independent legal character to exclude such owner from enjoying the property. Besides his pleading, the only significant piece of evidence that the plaintiff relies on is a scribbled statement in a piece of paper dated 05-01-2017 attributed to certain Mani, who describes himself as representing the fourth defendant/first appellant. Assuming the contents are true and are granted any evidentiary value (which is essential for deciding the existence of a strong prima facie case), still does it have the effect of conveying any right to the plaintiff which can be considered as one derived from the right of ownership over the suit property?

6.2 The criterion for seeking protection in law for securing possession of an immovable property is not the mere factum of its possession, but the legal character that goes to define it. In the instant case, even if the plaintiff's assertion that he had expended a few crores of rupees for reviving the theater complex to its operational level is considered true, the point is, does it create any right or interest over the land? The point to be addressed in every case where a suitor, or a defendant seeks an order of injunction to protect his possession, is to investigate if there inheres in them a right in the immovable property, the title that law seeks, which is capable of excluding others from possessing it, and to ascertain the said title on a preponderance of probability by appreciating the pleadings and evidentiary material. Accordingly, a possessory mortgagee can exclude the mortgagor of latter's right to be in immediate possession, and so is a lessee who can

exclude the lessor, since their rights are derived from the right of ownership, which in law creates an

independent right or interest in their favour. The primacy of the right of ownership, or title to be in immediate possession in the context of exclusion of possession is best exemplified in cases involving the right of a co-sharer or of a co-owner of an immovable property. In this class of cases, law does not generally sanction exclusion of a co-sharer or a co-owner by another co-sharer or a co-owner of his right to be in immediate possession. This is founded on the principle that among the co-owners or co-sharers, everyone will have a fractional title to be in possession, all of which are identical in character, irrespective of the extent of right the fraction may represent. Therefore, to injunct one co-owner to secure the possession of another co-owner may imply granting one fractional right holder a preferential treatment over the other. There are however, couple of exceptions to this general rule. The bottom line is, let not the holder of a title of a superior variety be injuncted from enjoying all that the title confers in him. That a trespasser, though in possession, is not granted protection in law is also founded on this. Can it be now said, that a suitor, who by his own statement is a mere representative of the owner of an immovable property, is entitled to claim that he has a title greater than the owner to exclude the latter's right to be in immediate possession? This, precisely should have been the point or principle which the trial Court ought not to have ignored when it granted an order of interim injunction, but here it has lost its way. Given the nature of plaintiff's pleading, the proximate description, or the slot in which plaintiff's claim of right of possession may be fitted in, is that of a representative, an agent, or may be that of a caretaker, but none of which clothe him with a right to exclude the owner of the property from possessing it. In Maria Margarida Sequeira Fernandes and Others Vs. Erasmo Jack De Sequeria (Dead) Through LRs [(2012) 5 SCC 370], the Hon'ble Supreme Court has held that a caretaker of a property has no vested right to seek injunction against the owner of the property, which when translated into a legal notation would mean that he who does not have a title to be in immediate possession of an immovable property, or anything signifying a right in the property, cannot exclude one who has a right or title to it. The plaintiff in this case, did not appear to trouble the defendants/appellants in his litigious pursuit, and made easy their job with his own pleadings as he walked into the zone of no-rights-in law voluntarily. The injunction granted deserves to be vacated.

6.3 It might be that the injunction may not have been extended by the trial Court, but it makes no relevance here, as that which is incapable of being granted in law should not be let to

occupy the judicial space and adds to the congestion in litigations. Therefore, this Court holds the very application for interim injunction itself is ill-conceived, and that the same is liable to be dismissed.

7. Turning to the second leg of the appellants' contention regarding invoking Article 227 of the Constitution is concerned, the argument of the respondent's counsel that only in proceedings specifically instituted under

Article 227 of the Constitution this Court can invoke it, appears extraordinarily fallacious. The power of superintendence that the Constitution has vested in the High Court is intended to keep the Courts subordinate to it within their bounds. It is not portfolio specific, but transcends beyond it. In what category a case may be received and registered by the Registry is procedural, but it does not affect the Constitutional power enjoined to the functioning of the High Court in ensuring that the Courts subordinate to it do not deviate from their lanes. Therefore, the argument of the respondent's counsel may not be countenanced unless this Court surrenders its power to perform a greater Constitutional duty of keeping the Subordinate Courts in their tracks in exercise of its power of superintendence. What next follows is to state the obvious: The argument is plainly untenable.

8. So far as the need to consider if this court should now exercise its power under Article 227 in this proceeding is concerned, it remains as an indisputable fact that the appellants have preferred an application under Order VII Rule 11 CPC. Since they have preferred an alternate mode, statutorily prescribed, there is no present need to visit this issue under Article 227 of the Constitution.

9. With the above observation, this appeal is allowed and the order passed in I.A.No.102/2018 in O.S.No.100/2018 dated 10.04.2018 on the file of the II Additional District Court, Salem is set aside. No costs. Consequently, connected miscellaneous petitions are closed.

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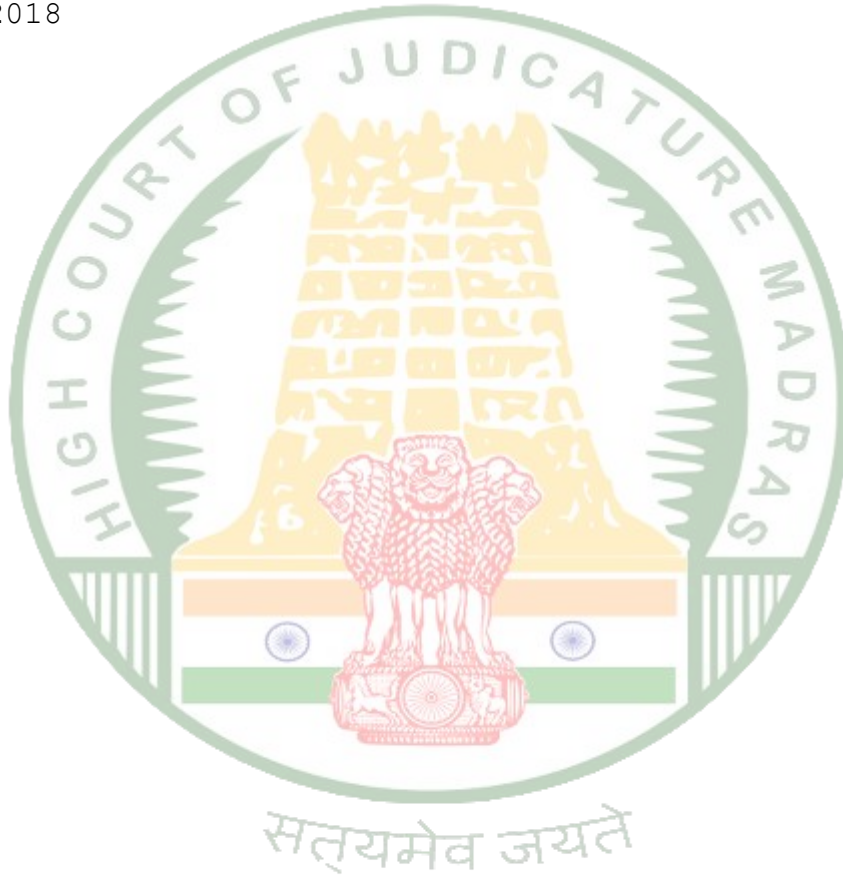
To:

- 1.The II Additional District Judge, Salem.
- 2.The Section Officer, VR Section, High Court, Chennai.

+1cc to M/S.R.Subramanian, Advocate, S.R.No.69056
+2cc to Mr.M.Narayanaswamy, Advocate, S.R.No.68774

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