

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.12.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

Tr.C.S.No.728 of 2018
and A.No.8381 of 2018
and O.A.No.973 of 2018

Mr.A.Arul Rajan, S/o.Mr.Aruputham,
 Proprietor of "Arul Traders"
 No.T/B 92, Anna Fruit Market,
 Koyambedu, Chennai 600 092.

.. Plaintiff

Vs.

1.Mr.V.S.K.Kumaran,
 S/o.V.S.Kuppan,
 No.104, First Cross Street,
 Chinmaiya Nagar,
 Chennai - 600 092.

2.Mr.K.Venugopal,
 S/o.C.Krishana Gounder,
 Plot No.235, 10th Street,
 Karpaga Nagar,
 Ko-Puthur,
 Madurai - 625 007.

.. Defendants

This Civil Suit is preferred, under Order VII Rule - 1 of Civil Procedure Code, 1908; Praying to

a) Declaration declaring the lease agreement dated 22.01.2018 entered between the defendants, registered as document number 273/2018 on the file of the Sub Registrar Office, Anna Nagar is illegal, void and not binding on the plaintiff and thus render justice;

b) For a permanent injunction restraining the defendants, their men, agent, servant or anybody acting on behalf of them in any manner disturbing and interfering with the peaceful possession and enjoyment of the plaintiff and in any manner disposes the Plaintiff from the suit schedule property except due process of law and thus render justice;

c) Direct the Defendants to pay the cost of the suit; and

d) To Pass such further or other suitable orders as this Court may deem fit and proper.

For Plaintiff : Mr.V.Lakshminarayanan for
Mr.Kingsly Soloman, J.

For Defendants : Mr.R.Ramasubramaniam Raja for D2
D1 Set Ex-parte

JUDGMENT

There is a sole plaintiff and there are two defendants in this suit.

2. This suit was originally filed as O.S.No.1394 of 2018 on the file of XII Assistant Judge's Court, City Civil Court, Chennai.

3. Pursuant to orders of this Commercial Division dated 05.10.2018 in A.No.6371 of 2018 *interalia* in exercise of powers under Clause 13 of Letters Patent, aforesaid suit on the file of XII Assistant Judge's Court, City Civil Court, Chennai was transferred to this Court and has now been assigned the number Transfer C.S.No.728 of 2018.

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4. Mr.V.Lakshminaraynan, learned counsel representing the counsel on record for sole plaintiff and Mr.R.Ramasubramaniam Raja, learned counsel on record for second defendant are before this Commercial Division.

5. Both learned counsel bring to the notice of this Commercial Division

that first defendant has been duly served with suit summons but, has not entered appearance. Name called out aloud thrice. No response. First defendant is set exparte.

6. Counsel on record for plaintiff, submits that he is not pressing prayer as contained in sub paragraph (a) of the prayer paragraph. To be noted, prayer paragraph is an unnumbered paragraph, which follows paragraph No.23 and therefore, it is to be presumed that prayer paragraph is paragraph No.24.

7. Learned counsel on record for plaintiff has made an endorsement in the suit file, which reads as follows:

'Since defendant is not interested in possession of the suit schedule property, the prayer (a) is withdrawn.'

8. Reacting to the aforesaid endorsement, Mr.R.Ramasubramaniam Raja, learned counsel on record for second defendant submits that he would not be interfering with the peaceful possession and enjoyment of the plaintiff, *dehors* due process of law, qua suit schedule property i.e., a shop at Door N.T/B-92, Anna Fruit Market, Koyambedu, Fruit wholesale market, consisting of 600 sq.ft., built up area in ground floor and 600 sq.ft in first floor, Koyambedu Village, Egmore-Nungambakkam Taluk, Chennai District, wherein this Commercial Division is informed that plaintiff is carrying on business in name

and style 'Arul Traders'.

9. Aforesaid narrative douses the anxiety of all the parties concerned.

10. The aforesaid narrative will make it clear that nothing survives in the lis. Plaintiff is also not insisting on costs as sought for in sub-paragraph (c) and does not insist on any relief under the residuary limb i.e., sub-paragraph (d).

11. Both learned counsel refer to Order XIII-A of amended 'The Code of Civil Procedure, 1908' ('CPC' for brevity) as amended by 'The Commercial Courts Act, 2015' ('said Act' for brevity) and submit that the second defendant has no real prospect of successfully defending the claim as the second defendant, who is before this Commercial Division, has made it clear that it is the stated position of second defendant that he would not disturb the possession of plaintiff dehors due process of law. Axiomatically, plaintiff has no real prospect of succeeding on other claims as plaintiff sub paragraphs (a), (c) and (d) have been given up. Saying so, drawing the attention of the Commercial Division specifically to Rule 3 and sub clauses (a) and (b) therein of Order XIII-A of amended CPC as amended by said Act, both learned counsel submitted that this is a fit case for summary judgment in terms of prayer as in sub paragraph (b) of the prayer paragraph alone without recording oral evidence. It is also

pointed out by both learned counsel that there is no other compelling reason as to why such a course should not be adopted. On a conspectus view of the trajectory of the hearing, this Commercial Division carefully considered the obtaining position and this Commercial Division comes to the conclusion that there is no difficulty in accepting this common plea of learned counsel for plaintiff and second defendant.

12. In the light of what has unfurled in the hearing today, this suit is decreed in terms of sub-paragraph (b) of the prayer paragraph alone and all other sub-paragraph namely (a), (c), and (d) are given up.

Suit is decreed on above terms. There shall be no order as to costs. Consequently, connected interlocutory applications are closed.

11.12.2018

Speaking Order/Non-Speaking Order

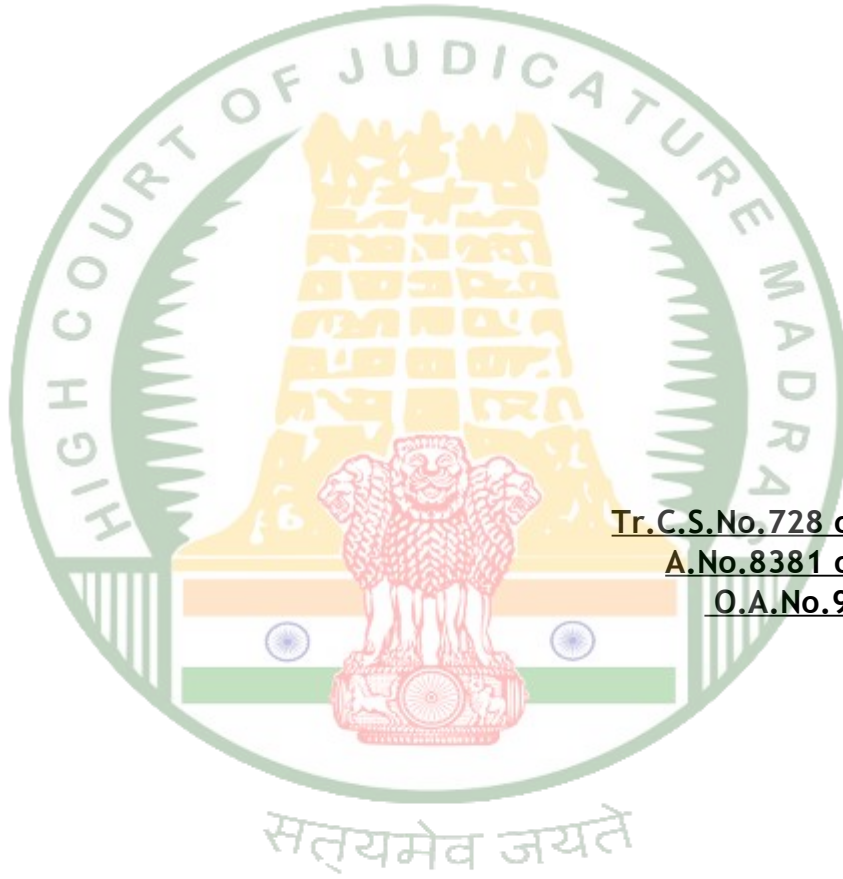
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M.SUNDAR, J.

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