

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 22.07.2019

DELIVERED ON: 02.08.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRP (NPD) No.3707 of 2008

Parameshwari Devi ... Petitioner

Vs.

Oriental Hotels Ltd.,  
Owning Taj Coromandel Hotel,  
represented by Direcotr (Operates) cum G.M.,  
No.17, Nungambakkam High Road,  
Chennai 600 034. ... Respondent

**PRAYER:** Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the decree and judgment dated 28.09.2006 passed in O.S.No.11909 of 1996 by the XV Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.T.P.Sankaran  
For Respondent : Mr. P.Chandrasekaran

**ORDER**

The civil revision petitioner is the plaintiff in O.S.No.11909 of 1996 on the file of the XV Assistant Judge, City Civil Court, Chennai. She filed the above suit to pass a decree and judgment directing the defendant to put the plaintiff in possession of the shop bearing No.12-A, or the portion where the shop bearing No.12-A was located in the shopping arcade at Taj Coromandel Hotel at No.17, Nungambakkam High Road, Madras-34.

2. The case of the plaintiff in nut shell is as follows.

The defendant is the owner of Taj Coromandel and with a view to provide shopping facilities to their residents, customers, tourists and visitors in the hotel, let out various shop portions in the hotel to outside people. The plaintiff was allotted and put in possession of Shop No.12-A at Taj Coromandel Hotel at No.17, Nungambakkam High Road, Madras to carry on her business in selling jewellery and other handicrafts items in the name and style of Santhosh Jewellery. The plaintiff also executed an agreement dated 01.11.1984 through her husband, who was her power agent. The plaintiff was paying a sum of Rs.1,275/- per month besides other charges in all amounting to Rs.2,801.60. The plaintiff has also deposited a sum of Rs.40,950/-. The defendant used to give receipts for the payments made by the plaintiff. However, at one stage, the defendant refused to receive the amount tendered by the plaintiff, which forced the plaintiff to open a

separate bank account to deposit the monthly amounts payable by her. Thereafter, the defendant increased the amounts payable by the plaintiff. Though the plaintiff has been paying all the amounts due to the defendant without fail, the defendant exerted pressures on her to vacate and deliver vacant possession of Shop No.12-A. Subsequent to the agreement dated 01.11.1984, no fresh agreement was entered into between the plaintiff and the defendant. On 10.06.1991, the plaintiff received a letter from the defendant alleging that they proposed to renovate their hotel extensively for a period of three years and that the shop should be vacated by the plaintiff. They also informed that the plaintiff should not sell her goods in the shop from 16.07.1991 onwards and further directed to remove all the goods. Therefore, the plaintiff filed a suit in O.S.No.649 of 1991 before this court for declaring that she is a lawful tenant at shop No.12A of shopping arcade in the hotel premises and also for a consequential relief of permanent injunction restraining the defendant from interfering with her peaceful possession and enjoyment of the suit property except under due process of law. In the said suit, an order of interim injunction was granted in O.A.No.549 of 1991 in favour of the plaintiff, against which the defendant preferred an appeal in OSA No.233 of 1992 before this court. The said appeal was allowed in favour of the defendant setting aside the order of interim injunction granted in O.A.No.549 of 1991. Merely because the

order of injunction was vacated, the defendant would not be entitled to vacate the plaintiff unlawfully. The defendant sent a telegram on 31.03.1994 alleging that they already sent a communication on 30.03.1994 informing that they were going to exercise their right of re-entry and would start removing the articles by the security staff. After the receipt of the telegram dated 31.03.1994, the plaintiff sent a reply telegram denying the receipt of any communication as alleged in the telegram. She further stated in the reply telegram that she was going to move the Supreme Court against the orders passed in OSA No.233 of 1992. However, the plaintiff received a communication dated 05.04.1994 from the defendant stating that the plaintiff's goods and articles were removed on 31.03.1994 by them after taking a detailed inventory and the articles were kept in the store room. Thus, the defendant had dispossessed the plaintiff without due process of law. She had therefore, filed the suit under Section 6 of the Specific Relief Act for recovery of possession of the shop bearing No.12A in the hotel premises.

3. The defendant resisted the suit on the following grounds.

- (i) The plaintiff was not put in physical possession of the shop by handing over or delivering the shop to the plaintiff.
- (ii) The legal possession always remained with the defendant as they had the control over all the shops in the hotel premises.

(iii) The agreement dated 01.11.1984 entered into by the plaintiff and the defendant is a leave and license agreement.

(iv) The plaintiff is only a licensee, who has been permitted to vend her articles in the vending area in the prescribed manner on payment of license fee.

(v) The defendant started renovating the hotel from April 1990 onwards.

(vi) As per the agreement, the license was granted to the plaintiff only upto 13.12.1990.

(vii) The defendant never threatened the plaintiff to vacate the premises.

(viii) It is totally false to contend that the key of the shop remained only with the plaintiff and in fact, the defendant also had duplicate keys.

(ix) The right of the parties are governed by the agreement and the agreement being the leave and license, the plaintiff is liable to vacate the premises on the expiry of the license period.

(x) The steps taken by the defendant are quite lawful and the plaintiff cannot improve upon her position or elevate herself to the position of a lessee from that of a licensee, as there was no transfer or interest in the property to the plaintiff.

(xi) Therefore, the defendant prayed for dismissal of the suit.

4. The learned XV Assistant Judge, City Civil Court, Chennai, after framing necessary issues and after full contest, dismissed the suit vide his decree and judgment dated 28.09.2006.

5. Mr.T.P.Sankaran, learned counsel appearing for the revision petitioner contended that as per the agreement dated 01.11.1984 (Ex.B7) entered into by the plaintiff and the defendant, the plaintiff was put in possession of the shop in the hotel premises and that she cannot be dispossessed except under due process of law. He would also contend that even a trespasser cannot be dispossessed or thrown out, without taking remedies available under law.

6. He relied on the following decisions.

**(i) Ram Rattan and others V. State of Uttar Pradesh reported in (1977) 1 SCC 188**

**(ii) Puran Singh and others Vs. The State of Punjab reported in (1975) 4 S.C.C. 518**

**(iii) Lallu Yeshwant Singh V. Rao Jagdish Singh and others reported in AIR 1968 SC 620 and**

**(iv) Krishna Ram Mahale (dead) by his LRs V.**

**Shobha Venkat Rao reported in(1989) 4 SCC 131.**

and contended that law respects possession even if there is no title to support it and that it will not permit any person to take the law in his own hands to dispossess a person, who is in actual possession, without having recourse to law. He would further contend that in India persons are not permitted to take forcible possession and they must obtain such possession only through a court of law.

7. He also relied on the decision in **East India Hotel Ltd. V. Syndicate Bank reported in 1992 Supp (2) SCC 29** and contended that

(i) a person, who dispossessed is entitled to succeed by showing that he has been in possession of the suit premises.

(ii) He has been dispossessed by the defendant.

(iii) The dispossession is not in accordance with law and

(iv) The dispossession took place within 6 months of the suit.

8. At this juncture, it relevant to point out that **a Division Bench of this court in OSA 233 of 1992 in its judgment dated 30.03.1994** has clearly held that the respondent is a licensee in the petition premises. It is

further held that the present revision petitioner/plaintiff has not been able to establish her settled possession of the premises in question.

9. Mr.P.Chandrasekaran, learned counsel appearing for the respondent contended that as per the agreement dated 01.11.1984 entered into by the parties, the petitioner is a licensee and the period of license automatically comes to an end on the date of expiry of the lease and therefore, there is no question of dispossession of the petitioner/ plaintiff unlawfully. He also contended that as per Section 62(c) of the Indian Easements Act 1982, a license is deemed to be revoked, where it has been granted for a limited period. He would further contend that merely because a notice was issued by the defendant requiring the plaintiff to vacate the premises, would not indicate the transaction as a lease agreement, as alleged by the plaintiff.

10. He also relied on the decision in ***M.N.Clubwala and another Vs. Fida Hussain Sahed and others reported in 1964 SCR (6) 642***, and contended that the essence of the license is that it is revocable at the will of the grantor. He also stressed that mere reading of Clause 5 of the agreement (Ex.B7) would go to show that the licensor had retained the lawful possession of the shop.

11. Reliance was also placed upon the decision in *M/s Miscellenary marketers Pvt. Ltd. Vs. M/s Sun-N-Sand Pvt. Ltd* in *C.R.A.331 of 2013 with Civil Application No.295 of 2015*, wherein at paragraph No.18, the Bombay High Court has held thus.

*Apart from the aforesaid evidence which is vital, the attendant circumstances also assume importance in so far as the present case is concerned. As indicated above, the shops are situated in the lobby of the hotel building, amongst which is the suit shop. It is an undisputed position that there is only one entrance to the hotel building and if the said entrance is locked then the suit premises cannot be accessed from outside. There is also a internal locking system to the main gate and the keys of the main gate remain with the plaintiffs. The said fact therefore proves that the total control was that of the plaintiffs in the matter of entry to the hotel premises. It is also required to be noted that the plaintiffs were also levying hotel expenditure tax on the defendants which tax is levied on the guests residing in the hotel. The receipts issued by the plaintiffs for the amount received from*

*the defendants as and by way of consideration also show that the amounts were shown as compensation and not rent. As indicated above, the license granted to the defendants was for selling merchandise in the hotel for which space was provided by the plaintiffs. The suit premises therefore assume secondary importance and the licence granted can therefore in no way create any right or interest in the defendants in so far as the shop premises is concerned.*

12. At this juncture, it is relevant to extract Sections 52, 53, 54 and 60 of the Indian Easements Act, 1982.

**52 "License" defined.** -Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.

**53 Who may grant license.** -A license may be granted by any one in the circumstances and to the extent in and to which he may transfer his interests in the property affected by the license.

**54.** *Grant may be express or implied.-The grant of a license may be expressed or implied from the conduct of the grantor, and an agreement which purports to create an easement, but is ineffectual for that purpose, may operate to create a license.*

**60.** *License when revocable.-A license may be revoked by the grantor, unless-*

**(a)** *it is coupled with a transfer of property and such transfer is in force;*

**(b)** *the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution.*

13. Section 105 of the Transfer of Property Act defines lease, which is extracted hereunder.

**" 105. Lease defined**

*A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.*

*Lessor, lessee, premium and rent defined : The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent."*

As per Section 107 of the Transfer of Property Act, 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 a registered instrument.

14. It is also relevant to extract certain relevant portions of the leave and license agreement dated 01.11.1984 (Ex.B7), which reads thus.

*The agreement made at Madras this the first day of November 1984 between ORIENTAL HOTELS LIMITED, a public limited company incorporated under the Companies Act, 1956 and having its Registered Office at Taj Coromandel Hotel, 17 Nungambakkam High Road, Madras 600 034, India (hereinafter called "The Licensor" which expression shall, unless repugnant to the context or meaning thereof, include and be*

*deemed to include its successors and assigns in Business of the one part and Mrs. Parameswari Devi Sahadev, Proprietrix, "Santhosh Jewellers", residing at No.5, Veerappan Street, Madras 600 079 (herein after called the Licencee) of the other part.*

*Whereas the Licensor is the owner of the Taj Coromandel Hotel hereinafter referred to as "The Hotel" and is desirous of providing amenities and facilities to the residents, customers and visitors of the Hotel.*

*And whereas the licensee is desirous of obtaining the privilege, and has approached and applied to the Licensor for permission of the Licensor, for using, keeping and maintaining a shop under the control and supervision and administration of the Licensor with the object of providing amenities and facilities to the residents, customers and visitors of the Hotel.*

*And Whereas the licensor is willing to accede to the request of the licensee and has hereby agreed to grant to the licensee such leave and license in respect of shop No.12A measuring 175 sq.ft. (herein after*

*called "The shop"). situated on the of the hotel for the purpose of displaying and selling goods and wares mentioned in the schedule attached hereto and forming part of this agreement.*

*And whereas the licensee has agreed to take the shop subject to the terms and conditions hereinafter contained:*

*NOW IT IS HEREBY MUTUALLY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:*

*1. This license is granted for a period of 60 months commencing from 02.08.1984 to 01.08.1989 or from the date on which the shop is handed over to the licensee subject to the provisions for earlier termination and withdrawal of the license as hereinafter contained.*

*2. It is hereby acknowledged that the licensee has deposited with the licensor a sum of Rs.40,950/- by way of shop security deposit fees of interest for the due and faithful performance and observance of the terms and conditions contained herein. If the licensee commits breach of any of the terms and conditions*

herein contained, the licensor shall be at liberty to forthwith terminate the license and without prejudice to any other right of the licensor to forfeit the security deposit either in whole or in part as the licensor may deem fit. On the termination of the license and on the handing over the shop to the licensor, the security deposit or such part thereof as has not been appropriated as aforesaid, shall be refunded to the licensee after adjustment of all moneys and outstandings due by the licensee under this license and or otherwise or in law.

3(a) The licensee shall pay to the licensor a sum of Rs.2,275/- only per calendar month as and any way of license fee. The license fee shall be paid in advance on or before the fifth day of every calendar month for which the license fee is due and payable.

(b) It is also expressly agreed by the licensee that by virtue of the licensor's business, if the licensor attracts any levy, tax or surcharge by his act of granting the license to the licensee, then such tax, levy or surcharge shall be intimated by the licensor

*separately to the licensee who shall pay the same immediately to the licensor as a compensation over and above the license fee, electricity and telephone charges.*

*4. The licensor shall be entitled at any time during the subsistence of this agreement to call upon the licensee by giving him/her 15 days notice in writing to shift his/her/its business to any other shop made available by the licensor and the licensee shall comply with such requisition. The licensee agrees to enter into an agreement in respect of such alternative accommodation offered to it/hi/her upon terms mutatis mutandis to those contained in this agreement.*

*5. It is expressly agreed that a purely personal privilege by way of license is being given to the licensee to use the shop with the object of providing facilities and amenities to the residents, customers and visitors of the Hotel and the Licensee shall not transfer or otherwise allow anyone else to avail the license given to it/him/her. It is further expressly agreed that no interest or demise of any kind whether by way of*

*tenancy or otherwise is being granted or created in favour of the licensee, in the shop or any part thereof. It is agreed that the shop shall at all times be under control and supervision of the licensor and the licensor shall retain dominion and lawful possession of the shop and shall have the right to direct the mode and manner of the use of the shop so as to effectively provide for facilities and amenities to residents, customers and visitors of the Hotel, keeping in line with the decor and standard of the licensor's Five Star Hotel reputation."*

15. A reading of the agreement discloses that the defendant has granted license to the plaintiff to carry on business of selling of jewellery and handicrafts within the hotel premises. The shop in which the plaintiff was carrying on business is a part of lobby of the hotel and it proves that the allotment of space or premises to carry out business under the license was exclusively within the domain of the defendant and hence no interest was created in respect of the particular place in the defendant's hotel.

16. A perusal of the leave and license agreement dated 01.11.1984 (Ex.B7) further shows that the renewal of the deed was at the will of the licensor. As already observed, a Division Bench of this court has held in S.A.233/1992 that the plaintiff is only a licensee to carry out business within the hotel premises. It is also admitted that there is only one entrance to the hotel building and if the said entrance is locked, then the suit premises cannot be accessed from out side. The keys of the main gate also remained with the defendant and therefore, the total control of the entire place was with the defendant. If the main entrance is locked, then the lobby of the hotel cannot be accessed from outside by any person, including the plaintiff and her customers.

17. As indicated above, the license granted to the revision petitioner/ plaintiff was for selling certain goods in the hotel lobby for which a space was provided by the defendant. The suit premises therefore assumes secondary importance and the license granted infavour of the revision petitioner/plaintiff would no way create any right or interest to the plaintiff in so far as the shop premises is concerned. By no stretch of imagination, it can be concluded that the plaintiff had exclusive possession over the suit shop. Merely because Clause 32 of the agreement states about the issuance of one month notice before terminating the licence, it cannot

be held that the agreement between the parties is only a lease in view of the reasons stated by me. The placement of shop in the lobby and the evidence adduced on both sides also indicate that the parties had no intention of creating a lease.

18. All the observations made by the learned XV Assistant Judge, City Civil Court, Chennai are perfectly in order and therefore, does not warrant any interference by this court.

19. In the result,

(i) The civil revision petition is dismissed. No costs.

(ii) The decree and judgment dated 28.09.2006 passed in O.S.No.11909 of 1996 by the XV Assistant Judge, City Civil Court, Chennai is upheld.

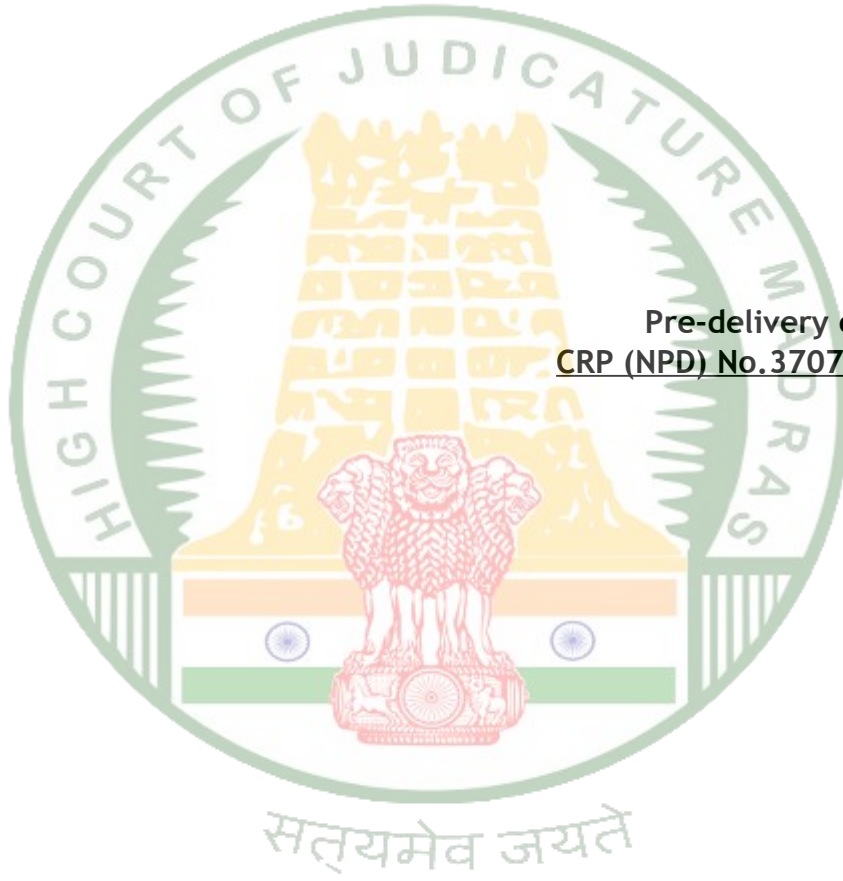
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To

The XV Assistant Judge,  
City Civil Court, Chennai.

R.HEMALATHA,J.  
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Pre-delivery order in  
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