IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
18~10~2019	31~10~2019

CORAM:

THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**

C.S.No.953 of 2008

Mr.G.Ravindra
Son of Late G.Vardappa
Old Door No.15, New Door No.12,
Moores Road, Thousand Lights,
Chennai 600006. ... Plaintiff

Vs.

1.M/s. Indian Oil Corporation Limited,
represented by its Chief Divisional Manager,
Chennai Divisional Office,
No.500, Anna Salai, Teynampet,
Chennai 600018.

2.M/s.Sri Krishna Sweets,
Door No.7, Nungambakkam High Road,
Chennai 600034. ... Defendants

Civil suit filed under Order IV Rule 1 O.S. Rules read with order VII Rule 1 of CPC, directing the defendants to quit and deliver vacant possession of the Plaint schedule property to the Plaintiff, directing the 1st Defendant to pay at Rs.28,00,000/- towards damages for wrongful use of the suit property from

01.02.2008 to 30.08.2008 and to pay future damages at the rate of Rs.4,00,000/- per month for wrongful use and occupation of the suit property from 01.09.2008 till the date of delivery of the vacant possession with costs.

For Plaintiff : Mr. S. Vasudevan

For Defendants : Mr. Abdul Hameed for
M/s. Anand Abdul & Vinodh for D1
Mr.R. Parthasarathy for D2

JUDGMENT

This suit has been filed for recovery of possession and also damages of Rs.28 lakhs for wrongful use and occupation of the suit property from 01.02.2008 to 30.08.2008 and future damages of Rs.4,00,000/- per month from 01.09.2008 till the date of delivery of vacant possession with costs.

2. The First Defendant is the Indian Oil Corporation Limited. They approached the Plaintiff to lease the Plaint Schedule Property for the purpose of carrying on Petroleum and allied product businesses. Originally lease was entered on 13.09.1991

for a period of five years. Thereafter, fresh Lease dated 08.01.2003 was entered for a period 25 years from 15.02.2003 between the Plaintiff and the First Defendant. The rent payable for the first to 60th month, 61st to 120th month, 121st to 180th month, 181st to 240th month and 241st to 300th month was fixed at Rs.16,666/-, Rs.20,333/-, Rs.26,041/-, Rs.32,551, Rs.40,689/- per month respectively.

3. Under the lease agreement First Defendant was given a right to install, erect and maintain in and upon and underneath the Schedule property petrol and/or High Speed Diesel Oil Pumps, Storage Tanks, Service, Lubricating Stations, Roads, Culverts and erection, ancillary thereto and together also with the right for the First Defendant to use the premises only for the business of the defendant. Contrary to the condition mentioned in the lease deed, First Defendant has unauthorisedly let out a portion of the Plaint Schedule Property without the consent of the Plaintiff to M/s. Sri Krishna Sweets (2nd Defendant herein) for sale

of eatables. Thereby, the First Defendant breached the covenants of the Agreement dated 08.01.2003. First defendant clearly violated the conditions of the lease deed. The Plaintiff issued three month legal notice. There again First Defendant sent a reply dated 29.01.2007. Hence the suit.

4. Admitting the lease deed, it is the contention of the First Defendant that the present market conditions, customers/consumers are expecting world class facilities from every supplier in tandem with international companies and other domestic competitors. Therefore, First Defendant has an indispensable obligation to fulfill the avowed requirements of the customers in the interest of business and one of such requirements is of providing refreshment to them at the retail outlet itself. The above arrangement is only for the purpose of promoting the business of the First Defendant and it is also well within the terms and conditions contained in the Lease Deed dated 08.01.2003. First Defendant improved the business by

providing refreshment facilities to the customers for the beneficial and enjoyment of the demised property and to promote the value added facilities in the retail outlet and acted only in accordance with the terms and conditions of the Lease Deed dated 08.01.2003. Therefore, they claimed for damages without any damages.

5. The Second Defendant submitted that they are in occupation of 240 sq.ft. for the purpose of running a sweet stall under the name “SRI KRISHNA SWEETS”, to cater the needs of the customers of the First Defendant who came to the fuel station. It is his further contention that in any event, the lease deed executed by the Plaintiff in favour of the First Defendant gives power to the First Defendant to sub-let, under-let or part with possession of any portion of the leased property in favour of any person whomsoever. Hence, the suit may be dismissed.

6. Based on the above pleading, the following issues have been

framed :

1. Whether the defendant has committed breach of the lease deed dated 08.01.2003 by subletting the portion of the leased premises to the Second Defendant?

2. Whether the usage of the leased premises by the Second Defendant for the supply of refreshments is for a different purpose other than that for which the property was leased to the first defendant under the lease deed dated 08.01.2003?

3. Whether the First Defendant is liable to deliver vacant possession of the Schedule property to the Plaintiff?

4. Whether the First Defendant is liable to pay Rs.28,00,000/- towards damages for the wrongful use and occupation?

5. Whether the First Defendant is liable to pay Rs.4,00,000/- towards future damages from 01.09.2008 till delivery of possession?

6. Whether the terms of the Lease Deed prevails *over the provisions of the Transfer of Property Act?*

7. Whether t he business of the Second Defendant is allied to the business of the First Defendant?

8. Whether there exist privity between the plaintiff and the second defendant?

9. Whether there is any cause of action against the Second Defendant in the present suit?

10. To what other reliefs are the parties entitled to?

7. On the side of the Plaintiff P.W.1 Mr.G.Ravindra was examined and Ex.P.1 to Ex.P.10 were marked. On the side of the Defendants D.W.1 was examined and Ex.D.1 to Ex.D.2 were marked.

<u>Exhibits produced on the side of the plaintiff:</u>

S.No.	Date	Description of documents	Exhibit
1.	13.09.1991	Original Lease Deed bearing Doc.No.491/1991, registered at SRO, Thousandlights.	P-1
2.	080103	Certified copy of the lease deed bearing	P-2

S.No.	Date	Description of documents	Exhibit
		Doc.No.18/2003, registered at SRO, Thousand Lights	
3.	29.01.2007	Copy of legal notice sent by plaintiff's counsel to the first defendant.	P-3
4.	16.02.2007	Original reply notice received by the Plaintiff from the First Defendant's counsel.	P-4
5.	061007	Copy of legal notice sent by plaintiff's counsel to the first defendant's counsel	P-5
6.	26.03.2007	Copy of the application to the first defendant to furnish particulars of second defendant under Right to Information Act.	P-6
7.	26.04.2007	Original reply notice received from the first defendant by plaintiff	P-7
8.	28.11.2011	Notice.	P-8
9.	100112	Reply Letter	P-9
10.	---	Memorandum of Association.	P-10

Exhibits produced on the side of the defendant:

S.No.	Date	Description of documents	Exhibit
1.	---	Photocopies of the correspondences and legal notices between the plaintiff and IOC	D-1 Series
2	110811	Xerox copy of Power of Attorney	D-2

8. It is the contention of the learned counsel for the Plaintiff that under Ex.P.1 Lease Deed, First Defendant was given a lease of the vacant land of the Plaintiff for the business purpose of erecting petrol and/or High Speed Diesel Oil Pump and for using

the said land. The lease has given only for the purpose of erection of pump services and lubricating stations and storage of the above said products and the business of the Lessee. Clause (g) of the lease deed clearly indicate that the Lessee shall not use or carry on or permit to be used and carried on the demised premises or any part thereof any particular covation, business or manufacture which may not be permitted by the Municipal or other public body or authority. Whereas, the First Defendant has given licence to the Second Defendant to run Sweet Stall which is contrary to the lease deed. In respect of which a notice also issued. Now it is the contention of the learned counsel, the lease also come to an end by efflux of time on 14.2.2018 and the tenant First Defendant has not paying any rent from April 2019. Therefore, the Plaintiff is certainly entitled to recovery of possession.

9. In support of his contention he relied upon the following judgments:

1.Shyamlal Agarwala vs. Smt.Nanda Rani Dassi ***[AIR 1988 Cal 133]***

2. Hindustan Petroleum Corporation Ltd., vs. Gem Paper Company and others ***[2011(1) MWN (Civil) 1]***

3. M/s. Sugesan and Co.Pvt.Ltd., vs. Pachaiyappa's Trust and Scheduled Public Trust and Endowments and another ***[1998 (II) CTC 572]***

4. Smt. Shanti Devi vs. Amal Kumar Banerjee ***[(1981) 2 SCC 199]***

5. Gopal Krishnaji Ketkar vs. Mohamed Haji Latif & others ***[(1968) 3 SCR 862: AIR 1968 SC 1413]***

6. Vidhyadhar vs. Manikrao and another ***[(1999) 3 SCC 573]***

7. Bay Berry Apartments (P) Ltd. and another v. Shoba and others ***[(2006) 13 SCC 737]***

10. The learned counsel for the First Defendant submitted

that the First Defendant for the purpose of development of his business taken steps to cater the needs of the consumers. Therefore, mere providing a space for refreshment under License Agreement, it cannot be said that there is a violation of conditions in the lease deed. Providing refreshment to the customers is also part of the business of the First Defendant. Hence it is the contention that no conditions has been violated. However, it is the condition of the First Defendant that though the lease has been expired by efflux of time they are trying to renew the leases by mutually. Hence, submitted that no damage can be awarded. However, the learned counsel for the First Defendant could not refute the submission of the learned counsel for the Plaintiff towards the non payment of rent from April 2019. In support of his contention he relied upon the judgment in *M/s. Sree Krishna Sweets P. Ltd., vs. Udumalpet Municipality and another* ***[2009 SCC Online Mad 2297]***

11. The learned counsel for the Second Defendant

submitted that in the event of eviction of the First Defendant, since the Second Defendant has set up retail sweet stall by investing huge amount, reasonable time to be granted for the vacating the premises.

Issue Nos.1, 2 and 7

11. It is not in dispute that the First Defendant originally entered a lease agreement on 13.09.1991. Ex.P.1 has been marked in this respect. On a careful perusal of the above lease deed, 4200 sq.ft. of the vacant land was leased out to the First Defendant for the purpose of erecting Petrol and High Speed Diesel Oil Pump and for using the said land for storage and use of oil petroleum and other products, on a monthly rent of Rs.5,000/-. Clause (g) and (h) of the Lease Agreement reads as follows:

> *(g) The Lessee shall not use or carry on or permit to be used and carried on the demised premises or any part thereof any particular covation, business or manufacture which may not be permitted by the Municipal or other public body or authority and will comply with the*

requisitions and demands of the Municipal or other public body or authority in that behalf.

(h) This Lease shall be free to use and the Lessor shall permit the use of the demised premises for itself and for all its associated concerns. The Lessee shall also be entited to use the said premises for their agents, sales representatives, customers and all other authorised persons and shall be free to assign, transfer, sub-let, under-let or part with possession of the same or any part thereof to any persons whomsoever he chooses without the consent of the Lessor. The Lessee shall be expressly entitled to appoint, remove, re-appoint, change and substitute any dealers, agents, licences and other authorised representatives on and in respect of the demised premises, without the consent of the Lessor.

13. A combined reading of the above clauses makes it clear that other than the business of the First Defendant. Clause (h) makes it very clear that without the consent of the Plaintiff, the First Defendant can sub-let, under-let or part with possession of the subject matter of the property for associated concerns. Ex.P.2 Lease Deed dated 08.01.2003 also contained the similar clauses. In Ex.P.2, Clause (g) makes it very clear that the Lessee

shall be free to use and the Lessor shall permit the use of the demised premises for itself and for all its associated concerns. Only in the process of the business they are free to assign transfer, sub-let, under-let or part with possession of the same or any part thereof to any persons whomsoever it chooses without the consent of the Lessor. The above Clause is also makes it very clear that in the same business for which the lease is granted the lessee have a right to sub-let not for unconnected business.

14. Ex.P.2 also stipulated that any breach, three months notice to be given. The legal notice was issued by the Plaintiff under Ex.P.3 which was replied by the First Defendant under Ex.P.4. Again Ex.P.5 legal notice was issued by the Plaintiff terminating the tenancy by giving three months notice as per the agreement ending on 31.01.2008, which was also replied by the First Defendant. Ex.P.10 Memorandum of Association of Indian Oil Corporation has filed by the First Defendant to show that the primary business of the First Defendant is only all kinds of

petroleum and Petroleum products, oil, gas and other volatile substances etc., From the conjoint reading of Ex.P.1 and Ex.P.2 makes it clear that the Lessee has been given power to sub-let only in respect of their own business. Further Ex.P.1 makes it clear that without consent of the Landlord possession should not be parted with. But Ex.P.2 the agreement dated 08.01.2003 Clause (g) makes it very clear that the Lessee has been given power to sub-let and under-let or part with possession of the same or any part thereof to any persons whomsoever it chooses without the consent of the Lessor. Therefore, it cannot be said that when the Lessee for the purpose of his business taken steps to cater the needs of consumer and provide some facilities like ATM, STD Booth, Sweet shop etc., such businesses are in fact only for the purpose of improving the business of the First Defendant. Providing such services to the customers is in fact associated with the business. Therefore, it cannot be said that there is a breach of contract. In the Lease Deed itself provide such power to the Lessee to sub-let or part with possession without consent of the Landlord.

15. Mere refreshment shop set up and giving licence to third party to run a sweet shop to cater the need of customers to augment the business of the First Defendant, it cannot be said that there is breach of covenants of the agreement. Though mere licence was granted to 240 sq.ft. to the Second Defendant, the entire control of the land has not been parted with. The Lessee has retained the control over the possession of the demised premises. Further P.W.1 also in his evidence has admitted that lease is not restricted to only storage of petroleum and diesel. It applies to any business if they want and also admitted that First Defendant is service industries. Such being the position, this Court is of the view that the contention of the Plaintiff that the provisions have been violated by sub-letting the portion of the leased premises and such supply of refreshment cannot be said to be a different purpose altogether. It can be construed only associated with the First Defendant business.

Accordingly, Issue Nos.1,2 and 7 are answered against the Plaintiff.

Issue Nos.3, 8 and 9:

16. Admittedly the lease has been now expired by efflux of time on 14.02.2018 which is not in dispute. From the date of expiry of lease, the parties have not taken any steps to renew the lease. It is also stated by the Plaintiff that the First Defendant has not paid rent from April 2019 which also not been refuted by the First Defendant. Though expiry of lease by efflux of time is not the issue before this Court, this Court cannot ignore the change of circumstances during the pendency of the suit. Ex.P.2 was executed on 08.01.2003 for a period of 25 years from 15.2.1993. The period of 25 years have as rightly contended by the Plaintiff has already ended on 14.02.2018. Once the period has already ended by efflux of time and the First Defendant is not able to show that he is still continue as tenant by holding over, they have no right in the suit property except to deliver the vacant possession of the suit property. Admittedly, the lease has

come to an end by efflux of time. Such being the position, this Court is of the view that the First Defendant is liable to surrender the vacant possession of the property to the Plaintiff. Since the Second Defendant is the licencee under the First Defendant, he has no better right than the First Defendant. He is also liable to surrender the vacant possession. Accordingly, Issue Nos.2,8 and 9 are answered against the First and Second Defendants.

Issue Nos.4 and 5:

17. Admittedly, the lease has come to an end by efflux of time on 14.02.2018. It is submitted by the Plaintiff that from April 2019 there is no rent paid by the First Defendant. In view of the above since the entire lease come to an end, the Defendants occupation is nothing but a trespasser. Such being the position, certainly the Plaintiff is entitled to damages. Admittedly, the monthly rent at the relevant point of time i.e. when the lease come to an end was Rs.40,689/- besides First Defendant is also collecting a sum of Rs.34,000/- as Licence Fee from the Second

Defendant, as per the admission of D.W.1. Therefore, considering the nature of the property the location situated, the First Defendant is liable to pay a sum of Rs.1,00,000/- (Rupees one lakh only) per month as damages, from May 2019 till the date of handing over the possession. Hence, the damage at Rs.1,00,000/-(Rupees one lakh only) per month from May 2019 is ordered to be paid by the First Defendant till the date of handing over the possession. Accordingly Issue Nos.4 and 5 are answered.

Issue No.6:

18. Since the issue is irrelevant for the present lis, no discussion is required. Accordingly, the same is struck off.

19. In the result, Suit is decreed for eviction of the suit premises. The First and Second Defendants shall handover the possession of the properties to the Plaintiff within the period of three months from the date of this day without fail and the First Defendant is liable to pay a sum of Rs.1,00,000/- (Rupees one

lakh only) per month as damages to the Plaintiff, from May 2019 till the date of handing over the possession of the vacant land along with costs.

31.10.2019

Index :Yes/No
Internet :Yes
Speaking/Non-speaking order
ggs

N. SATHISH KUMAR, J.

ggs

Judgment in
C.S.No.953 of 2008

31..10..2019