

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.12.2018
Pronounced on : 03.01.2019
Coram

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
C.M.A.No.3188 of 2017
and C.M.P.Nos.19586 & 19587 & 21945 of 2017
and C.M.P.No.15309 of 2018

M/s.Kaveri Cinema Kovai Private Limited
A Company incorporated under the
Companies Act having Registered Office
At No.796, Cross Cut Road, Gandhipuram
Coimbatore - 641 012, carrying on business
At No.167, 100 Feet Road,
Gandhipuram, represented by its Managing
Director Mr.P.L.Subbu,
Son of Late S.P.Palaniappan ... Appellant

vs.

M/s.Karpagam Theatres Private Limited,
A Company incorporated under the
Companies Act, having Registered Office
At No.9, Ragupathy Layout II, Saibaba Colony,
Coimbatore - 641 011, rep. by
its Director Mr.N.Sivaprakasam ... Respondent

Prayer : Civil Miscellaneous Appeal filed under Order 43,
Rule w of Code of Civil Procedure, against the fair and
decretal order dated 21.08.2017 in I.A.No.415 of 2017 in
O.S.No.169 of 2015, on the file of the First Additional
District Judge, Coimbatore.

For Appellant : Mr.AR.L.Sundaresan, Senior Counsel
for Mr.A.Thiyagarajan

For Respondent : Mr.P.Valliappan

JUDGMENT

The relief sought for in the Civil Miscellaneous
Appeal is to set aside the order made in I.A.No.415 of 2017
in O.S.No.169 of 2015, on the file of the learned I
Additional District and Sessions Judge, Coimbatore.

2.The relief sought for in the Petition in C.M.P.No.
15309 of 2018 is to permit the respondent carry out
improvements and alterations in the suit property.

3.I heard Mr.AR.L.Sundaresan, learned Senior Counsel for Mr.A.Thiyagarajan, learned counsel for the appellant and Mr.P.Valliappan, learned counsel for the respondent and perused the entire materials available on record.

4.The defendant in the suit is the appellant herein. The respondent filed the suit in O.S.No.169 of 2015, for the following reliefs:

a) Directing division of the common areas and facilities in the theatre complex called 'Karpagam Complex' more fully set out and described in the schedule hereunder in the ratio 60:40, preferably in the manner as set out in the plans appended hereto, and allot and deliver the 60% share in the same to and in favour of the plaintiff.

b) directing the defendant to pay the plaintiff a sum of Rs.90,694/- towards arrears of property tax payable towards their 40% share for the theatre Karpagam and common areas and facilities in the theatre complex along with interest at 18% p.a. from the date of suit till date of payment.

c) directing the defendant to pay the plaintiff a sum of Rs.16,53,583/- towards arrears in payment of electricity charges bill towards usage for the theatre Kaveri, along with interest at 18% p.a. from the date of suit till date of payment.

d) directing the defendant to pay the plaintiff a sum of Rs.5,77,733/- (defendant's 40% share) towards reimbursement of amount spent on upgradation of common areas and facilities in the theatre complex, along with interest at 18% p.a. from the date of suit till date of payment.

5.In the abovesaid suit, the appellant filed the petition in I.A.No.415 of 2017 for interim injunction to restrain the respondent from altering or modifying the common areas such as two wheeler and car parking, corridor, lobby, balcony, common toilet, canteen, etc. After contest, the said application was ultimately dismissed on 21.08.2017. Aggrieved over the same, the present Civil Miscellaneous Appeal came to be filed.

6.The respondent, as plaintiff, filed the suit in O.S.No.169 of 2015 claiming that the suit property is a Cinema Theatre Complex called Karpagam Complex situate in land measuring a total extent of 43,240 sq.ft. According to the respondent, the said land was purchased under two Sale Deeds dated 28.02.1979 and 29.04.1979 and that Karpagam

Theatre Pvt. Ltd. was incorporated in the year 1979 consisting of S.Subbiah Chettiar, his wife S.P.Meenakshi Achi, two sons S.P.Palaniappan and S.P.Shanmugam and their respective wives. It is stated that the Theatre Complex was constructed in the year 1982 consisting of three Theatres Ganga, Yamuna and Kaveri. Ganga and Yamuna in the ground, first and second floors and Kaveri in the third floor. Subsequently, S.Subbiah Chettiar is said to have made arrangements for an amicable settlement between his sons S.P.Palaniappan and S.P.Shanmugam, so as to avoid disputes after his lifetime. Ganga and Yamuna Theatre along with 60% undivided share in the land as well as common areas and facilities were allotted to younger son S.P.Shanmugam and Kaveri Theatre along with 40% undivided share in the land as well as common areas were allotted to share of S.P.Palaniappan. The abovesaid arrangement was reduced into writing under a deed of family arrangement dated 26.02.2005, later confirmed by decree dated 15.03.2006 passed by the learned District Munsif Court at Coimbatore in O.S.No.2074 of 2005. After implementation for the said arrangement, the respondent had taken over S.P.Palaniappan branch and is running the theatres. It is the further case of the respondent that the tax assessment stands in the name of the respondent and appellant and regarding the electricity service connection, a sub meter has been fixed at Kaveri Theatre belonging to the appellant and it was agreed that maintenance of common areas would be jointly borne by the respondent and appellant. It is the further case of the respondent that till about middle of 2013 there was no problem between the parties and that only thereafter, problems arose. It is the specific case of the respondent, that it has invested several crores of rupees in upgradation and modernising his Theatres Ganga and Yamuna, whereas the appellant has neither invested any money nor modernised his Theatre Kaveri. The respondent further contended that though it had requested the appellant to cooperate for modernising the common areas and facilities, the appellant did not cooperate or contribute anything. Therefore, the respondent had to spend several lakhs on upgradation of common areas and facilities. It is the further case of the respondent that the appellant has not even paid the electricity charges or its share of property tax. To avoid sealing of the Theatre Complex and disconnection of electricity service connection, the respondent had paid the property tax and electricity charges. Since the appellant has not even reimbursed those amounts and continued to default and was also not cooperative with regard to common areas and facilities, the respondent has come forward with the suit for division of the common areas and facilities.

7.The appellant filed written statement denying the plaint averments and resisted the suit on the grounds that partition had already taken place, that there cannot be partition of common areas, that the mode of division suggested by the respondent is not proper, that the relief claimed in the plaint is not concrete and that the compromise decree in O.S.No.2074 of 2005 cannot be questioned. It was stated further that the respondent had not spent crores of rupees as claimed, that the respondent refused to receive the electricity charges and that the respondent is not entitled to the suit reliefs.

8.Under such circumstances, the appellant filed the petition for injunction to restrain the respondent from altering or modifying the physical features of the common areas and facilities. The appellant sought for injunction by reiterating his stand in the written statement and claiming that the intention of the respondent is to grab the entire property, by giving all sorts of problems to give it. According to the appellant, the respondent failed in his illegal attempts to grab the entire property and consequently came forward with the present suit. It was the further case of the appellant that the respondent started demolition in the common areas and removed the glass windows, due to which police complaint dated 17.04.2017 was given before the C1- Katoor Police Station, Coimbatore and that it never gave consent to carry out improvements in the common areas. It was further stated that there was no need to demolish the structure in the common areas and that the alleged improvement of common area is only to harass them.

9.The respondent filed counter statement denying the allegations made in the affidavit filed by the appellant and claiming that even originally the brothers S.P.Palaniappan and S.P.Shanmugam were maintaining the common areas and facilities by improving the same from time to time, since they became old and worn out, that without upkeep, theatres were losing patronage and that the theatre complex requires regular upkeep and renovation so as to sustain business. It was further stated that merely renovating the theatre without making improvements in the common areas will be of no avail. Since the appellant was non cooperative, it started carrying out renovation work in February 2017 by investing rupees one crore and that the appellant did not raise any objection. Only after two months, the appellant started raising objections and in April 2017, lodged a police complaint. It is the further contention of the respondent that it had carried out improvements without asking the appellant to bear the same. In fact, the common relative Mr.Pl.Subbu is stated to have brought rapprochement between the parties and the same was

evidenced by agreement dated 27.04.2017. It is the further case that the respondent is only improving the existing facilities and that the appellant is not entitled to stall the renovation work after permitting the respondent by executing agreement dated 27.04.2017. It was also stated that the renovation work would greatly benefit the appellant.

10.The learned District Judge found that the renovation work, which was initially permitted by the appellant was completed and that the respondent did not seek to recover the cost of the same from the appellant. It was further held that the appellant cannot question the renovation or modification inside the theatre. The learned District Judge found that it was only with an intention to modernise and attract patronage, improvements were made without altering the permanent structures and subsequently found that the right of the appellant in the common areas was not affected by the improvements made by the respondent. Ultimately the learned District Judge found that the act of the appellant after opposing the renovation work after giving consent was not proper and that there is no need to injunct the respondent. The learned District Judge also permitted the respondent to complete the renovation work as per the scheme of renovation dated 08.08.2017 and appointed Advocate Commissioner to note down the physical features in the common areas with regard to improvements made by the respondent.

11.The respondent had filed the petition in C.M.P.No.15309 of 2018 under Section 151 of the Code of Civil Procedure for modifying the order dated 15.12.2017 in C.M.P.No.21945 of 2017 by permitting it to carry out improvements and alterations mentioned in the schedule.

12.Both side advanced arguments in the Civil Miscellaneous Appeal as well as the in the interim petition filed by the respondent.

13.On hearing the arguments of both the Counsels, it is clear that admittedly the respondent is the owner of Ganga and Yamuna Theatres located in the ground, first and second floor with 60% undivided share in common areas and facilities and that the appellant is the owner of Kaveri Theatre located in the third floor with 40% undivided share in common areas and facilities. There is no dispute between the parties with regard to the same and recording of the Memorandum dated 26.02.2005 confirmed by the learned District Munsif of Coimbatore in O.S.No.2074 of 2005. It is also not disputed that the respondent carried out improvements in common areas and facilities based on the

agreement with the appellant dated 27.04.2017. It is vehemently contended by the Counsel for the respondent that the appellant has not even paid its share of the electricity charges, which has been paid by the respondent and the appellant had not bothered to reimburse. It is also contended that more than Rs.45 lakhs is due towards arrears of electricity charges (including interest) of the appellant, which was paid by the respondent only to avoid disconnection.

14.This Court while deciding an application for injunction will have to consider three factors namely prima facie case, balance of convenience and irreparable injury, by reason of not granting such order. Further injunction being an equitable remedy, a party who seeks equity should not be guilty of acting against equitable principles. The claim of the respondent that electricity charges to the tune of several lakhs from the appellant, is due, has not been seriously refuted by the appellant. The conduct of the appellant in not even paying the electricity charges for the use of electricity would disentitle it from seeking any equitable remedy.

15.Both parties are entitled to common areas and facilities and being a cinema theatre, for successful running, patronage is very important, and the theatre has to equip itself with best facilities to attract patronage. The theatre cannot remain in the same position for years, in the light of stiff competition from other modern theatres. Only at the time of disposal of the suit, common areas would be allotted to the respective parties and admittedly the appellant is having a canteen in the third floor and the respondent is having canteens in the first and second floor for more than 13 years. By making alterations and improvements on a short-term basis, the right of the appellant will not be jeopardised. A close perusal of the claim made by the respondent would indicate that it only wants to make alterations and improvements without involving any civil work, provide additional car parking, improve the floor, installing generator, providing a small smoking shown, put up play areas where its Yamuna theatre is located, close cut out atrium for safety of children, restrict the entry of drunk people, put up false ceiling and increase size of its box office are all temporary alterations which will not affect the right of the appellant. It was specifically argued by the Counsel for the respondent that no prejudice would be caused to the appellant and that they will not claim amount. The Learned Senior Counsel for the appellant was not able to point out any prejudice that would be caused to the appellant by making such improvements. It is well known that the

partition suit involves a long drawn process and till finality is reached, the parties cannot maintain status-quo especially since it is a theatre complex. What are all sought by the respondent relate to basic needs for carrying on day-to-day activities. The entire case of the appellant appears to be that it will neither make any improvement nor allow the respondent to make any improvement. This Court finds that there is no justification in such a stand taken by the appellant. The respondent has already made it clear that it will not claim any amount towards improvements and on the contrary the appellant has not even paid its share of property tax or electricity charges. Hence there would not be any prejudice to the appellant by allowing the petition in C.M.P.No.15309 of 2018 by permitting the respondent to carry out the schedule mentioned improvements without affecting the right of the appellant and on condition that it will not claim any amount towards improvements.

16.The appellant has failed to establish that it has prima facie case and the balance of convenience is not its favour. The appellant was also not able to prove that it would suffer irreparable injury if injunction is not granted.

17.In view of the above, considering the nature and circumstances of the case, in the interest of justice, this Court is inclined to pass the following order:

a) This Civil Miscellaneous Appeal is dismissed by confirming the order dated 21.08.2017 made in I.A.No.415 of 2017 in O.S.No.169 of 2015, on the file of the learned I Additional District and Sessions Judge, Coimbatore;

b) The petition in C.M.P.No.15309 of 2018 is allowed permitting the respondent to carry out the schedule mentioned improvements without affecting the rights of the appellant and on condition that it would not claim an amount towards improvements;

c) Since the pleadings are completed, the learned I Additional District and Sessions Judge, Coimbatore is directed to dispose of O.S.No.169 of 2015, within a period of six months from the date of receipt of a copy of this order. Both the parties are directed to give their fullest co-operation for early disposal.

Consequently connected miscellaneous
petitions are closed. No costs.

Sd/-
Assistant Registrar(CS viii)

//True Copy//

Sub Assistant Registrar

vs

To

The I Additional District and Sessions Judge,
Coimbatore.

+1cc to Mr. A.Thiyagarajan, Advocate SR.No. 450

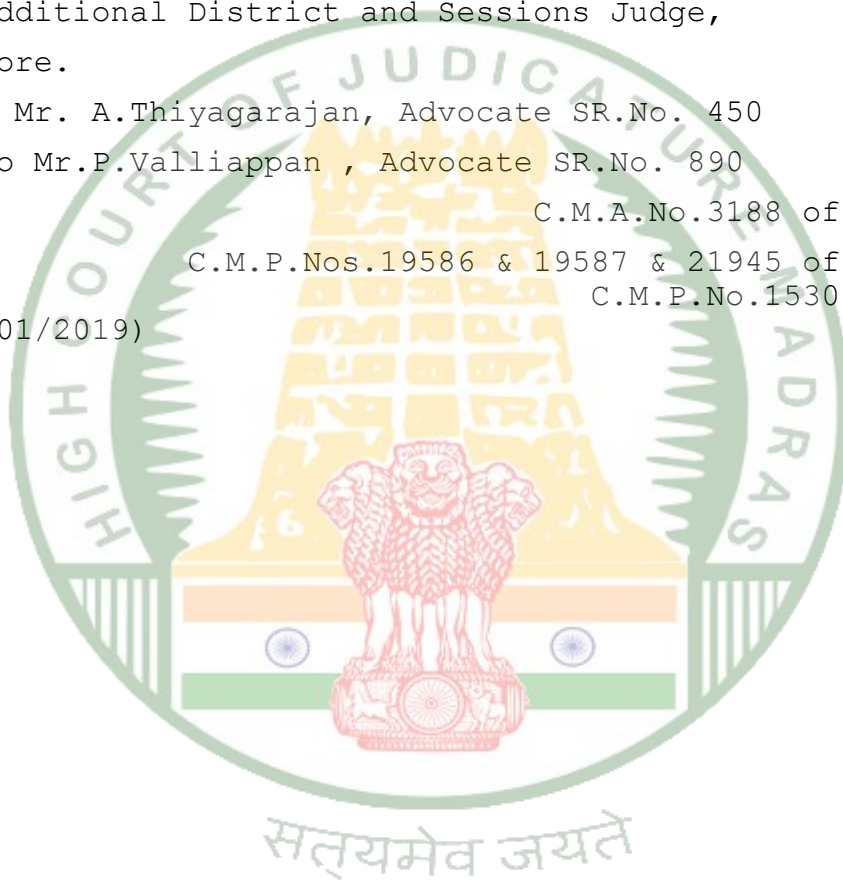
+4ccs to Mr.P.Valliappan , Advocate SR.No. 890

C.M.A.No.3188 of 2017 and

C.M.P.Nos.19586 & 19587 & 21945 of 2017 and

C.M.P.No.15309 of 2018

ASK(07/01/2019)



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