



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.01.2019

DELIVERED ON : 16.04.2019

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THE HONOURABLE MRS. JUSTICE R. THARANI

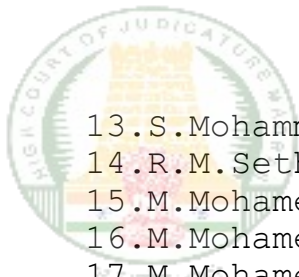
A.S.(MD)Nos.12 to 14 of 2018

A.S.(MD)No.12 of 2018:

1. Hindustan Petroleum Corporation,
Represented by its Managing Director and another,
Having its Regional Manager Office at
Thalamuthu Natarajan Building,
Gandhi Irwin Road, PB No.3045,
Egmore, Chennai-600 008.
2. Hindustan Petroleum Corporation,
Represented by its Southern Regional
Manager, Having office at
SIDCO, Kappalur,
Madurai-625 008.
3. Hindustan Petroleum Corporation,
Represented by its Chief Regional,
Manager and Duly Constituted
Attorney, Tiruchirappalli Division,
Having its office at Bharathidasan,
Salai, Cantonment,
Tiruchirappalli.
(Amended as per order in
I.A.No.496 of 2015 dated 03.09.2015) ... Appellants/Plaintiffs

Vs.

- 1.A.Mahaboob Basha
- 2.Kathoon Begam
- 3.Noorjahan
- 4.Salima Bibi
- 5.Ammeerunisa
- 6.Mohamed Yusuff
- 7.Gul Mohammed
- 8.Jan Basha
- 9.Dilshath Begum
- 10.Asia Begum
- 11.Abbas
- 12.Abdullah



13.S.Mohammed Kalanjiam (Since Dead)
14.R.M.Sethu
15.M.Mohamed Mansoor
16.M.Mohamed Ubayathulla
17.M.Mohamed Arif
18.M.Samseena
19.M.Usmaniyakani

... Respondents/Defendants

(Respondents/Defendants 15 to 19 added as party to the proceedings as they are the legal heirs of deceased 13th defendant as per order in I.A.No.479/2014 dated 10.01.2014 Amended as per order in I.A.No.675/2014 dated 06.11.2014)

Prayer :Appeal Suit has been filed under Section 96 of Civil Procedure Code r/w. Order 41 Rule 1 of C.P.C., to set aside the Judgment and Decree dated 19.12.2016 in O.S.No.24 of 2008 on the file of the 1st Additional District Court (PCR), Tiruchirappalli.

For Appellants : Mr.Subbiah, Senior Counsel
For Mr.M.Sridher
For Respondents 1 to 13 : No appearance
For Respondents 14 to 19 : Mr.K.S.Vamsidhar

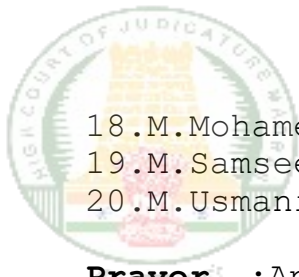
A.S. (MD)No.13 of 2018:

Hindustan Petroleum Corporation,
Represented by its Managing Director,
Having its Regional Manager Office at
Thalamuthu Natarajan Building,
Gandhi Irwin Road, PB No.3045,
Egmore, Chennai-600 008.

... Appellant/Defendant

Vs.

1.A.Abdul Khader (Died)
(Amended as per order in I.A.No.236 of 2002)
2.A.Mahaboob Basha
3.Kathoon Begam
4.Noorjahan
5.Salima Bibi
6.Ammeerunisa
7.Mohamed Yusuff
8.Gul Mohammed
9.Jan Basha
10.Dilshath Begum
11.Asia Begum
12.Abbas
13.Abdullah
14.S.Mohammed Kalanjiam (Since Dead)
15.R.M.Sethu
16.M.Mohamed Mansoor
17.M.Mohamed Ubayathulla



18.M.Mohamed Arif
19.M.Samseena
20.M.Usmaniyakani

... Respondents/Plaintiffs

Prayer :Appeal Suit has been filed under Section 96 of Civil Procedure Code r/w. Order 41 Rule 1 of C.P.C., to set aside the Judgment and Decree dated 19.12.2016 in O.S.No.110 of 2010 on the file of the 1st Additional District Court (PCR), Tiruchirappalli.

For Appellant	: Mr.Subbiah, Senior Counsel For Mr.M.Sridher
For Respondents 2 to 13, 20	: No appearance
For Respondents 14 to 19	: Mr.K.S.Vamsidhar
For 1 st Respondent	: Died

A.S.(MD)No.14 of 2018:

Hindustan Petroleum Corporation,
Represented by its Managing Director,
Having its Regional Manager Office at
Thalamuthu Natarajan Building,
Gandhi Irwin Road, PB No.3045,
Egmore, Chennai-600 008.

... Appellant/Defendants

Vs.

S.Mohammed Kalanjiam (Since Dead)
1.R.M.Sethu
2.M.Mohamed Mansoor
3.M.Mohamed Ubayathulla
4.M.Mohamed Arif
5.M.Samseena
6.M.Usmaniyakani

... Respondents/Plaintiffs

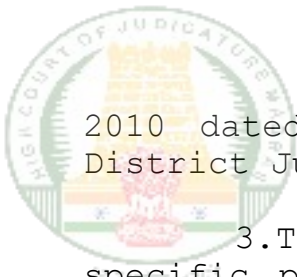
Prayer :Appeal Suit has been filed under Section 96 of Civil Procedure Code r/w. Order 41 Rule 1 of C.P.C., to set aside the Judgment and Decree dated 19.12.2016 in O.S.No.137 of 2010 on the file of the 1st Additional District Court (PCR), Tiruchirappalli.

For Appellant	: Mr.Subbiah, Senior Counsel For Mr.M.Sridher
For 1 st Respondent	: No appearance
For Respondents 2 to 6	: Mr.K.S.Vamsidhar

COMMON JUDGMENT

Heard the learned counsel appearing on either side.

2.The trial Court has taken all the three cases together and passed a common judgment. This appeal is filed against the common Judgment and Decree passed in O.S.Nos.24 of 2008, 110 and 137 of



2010 dated 19.12.2016 on the file of the learned 1st Additional District Judge, Tiruchirappalli.

3.The suit in O.S.No.24 of 2008 was filed for a prayer of specific performance directing the defendants to execute the sale deed in favour of the plaintiffs by receiving the sale price of Rs.14,40,000/-. The trial Court dismissed the suit and against which, this appeal in A.S.No.12 of 2018 has been preferred.

4.The suit in O.S.No.110 of 2010 was filed for a prayer of recovery of possession and for mesne profits. After trial, the trial Court decreed the suit and aggrieved by that judgment and decree, this appeal in A.S.No.13 of 2018 has been filed before this Court.

5.The suit in O.S.No.137 of 2010 was filed for a prayer of permanent injunction and the suit is decreed. Against which, this appeal in A.S.No.14 of 2018 has been preferred before this Court.

6.The case of the plaintiffs in O.S.No.24 of 2008 is that the property belong to one N.Rahamath Bibi who leased out the property as a vacant site to M/s.Caltex (India) Ltd., under a registered lease deed dated 30.09.1970 for a period of 20 years. M/s.Caltex (India) Ltd., has established a petrol pump in the suit property. Subsequently the lease hold right of M/s.Caltex (India) Ltd., has been transferred to Hindustan Petroleum Corporation Limited registered under Indian Caltex Act, 1956. The plaintiffs herein stepped into the shoes of M/s.Caltex (India) Ltd., and has been continuing the lease hold rights on the same terms and conditions as per Section 7 of the Caltex (India) Act, 1977.

7.By exercise of the statutory option, the lease was renewed from 01.10.1990 till 31.07.2010 on the same conditions. In the meanwhile, the defendants 1 and 2 who are the legal heir of the deceased Rahamath Bibi filed a suit for recovery of possession in O.S.No.169 of 1999 on the file of the learned District Munsif, Lalgudi. As per Clauses 3(i) and 4(f) of the lease deed dated 30.09.1970, if the lessor apt to sell the property, option to exercise the right of purchase is available to the plaintiffs. The defendants step into the shoes of the lesser and are bound by the terms and conditions of the lease. If they venture into an idea of sale then they are bound to grant an option of purchase to the plaintiffs herein, before an offer to any other persons. The defendants 13 and 14 entered into a sale deed along with the defendants 1 to 12 and the plaintiffs came to know about the same through the suit in O.S.No.211 of 2005. The execution of sale deed without notice is invalid which has no force of law and the transaction is void and it is not binding upon the plaintiffs. The sale deed in favour of the defendants 13 and 14 does not bind upon the plaintiffs and it is invalid. The plaintiff Corporation is ready to pay the sale consideration which is said to have been paid by the defendants 13 and 14. The defendants are liable to execute a sale deed in favour of the plaintiff Corporation. In the sale deed dated

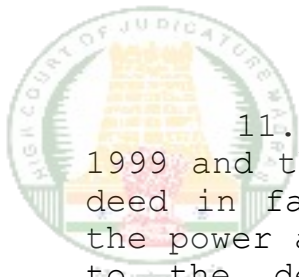


19.03.2005, the value has been fixed for the building, electricity connection, petroleum installations and other products. Actually those installations had been put up by the plaintiff Corporation and it is worth about more than Rs.15,00,000/- . Those developments cannot be brought as a subject matter of the sale and including the same as subject matter of the sale deeds would amount to fraud. The plaintiffs issued a notice on 28.12.2005 to the defendants 13 and 14. The defendants 13 and 14 sent a reply on 05.01.2006 whereas the defendants 1 to 12 did not sent any reply and the defendants 15 to 19 are added as parties to the proceedings as they are legal heirs of deceased 13th defendant.

8.The averments made in the written statement filed by the defendants 13 and 14 is that originally the suit property belong to their predecessor in title namely Rahamath Bibi. Rahamath Bibi entered into a lease agreement on 30.09.1970 with M/s.Caltex (India) Ltd., Subsequently it was taken over by the Government of India and later its name was changed to the plaintiff's corporation. The plaintiffs stepped into the shoes of M/s.Caltex (India) Ltd., and that the terms and conditions of lease agreement are applicable to the plaintiffs and the lease was for a period of 20 years from 01.08.1970. The lease of the suit property to the lessee viz., the plaintiff Corporation expired on 31.07.1990. The rent payable by the plaintiffs for the second ten years of the lease period was Rs.250/- per month. The plaintiff Corporation is in possession of the suit property even after the expiry of the lease period.

9.After the expiry of the lease period, Rahamath Bibi demanded the plaintiffs to vacate the suit property and to hand over vacant possession of the suit property. Rahamath Bibi died on 30.04.1996 and her husband Abdul Rasheed pre-deceased her. The property was divided by the legal heirs of Rahamath Bibi. They requested the plaintiffs to give back the vacant possession of the suit property. The possession of the suit property by the plaintiffs is against the wishes of and without the consent of the legal heirs of Rahamath Bibi is highhanded and unlawful. The legal heirs of Rahamath Bibi issued a notice dated 20.04.1999 calling upon the plaintiffs to vacate and to handover vacant the premises on or before 31.05.1999 and to pay damages for use and occupation. The plaintiffs neither complied with the demand nor cared to reply.

10.The legal heirs of Rahamath Bibi filed a suit in O.S.No.169 of 1999 on the file of the learned District Munsif, Lalgudi for recovery of possession of the suit property, mesne profits and cost. This plaintiffs filed a written objection in which it has admitted that the lease agreement expired on 31.07.1990. Pending suit, Abdul Khadar one of the sons of Rahamath Bibi died leaving behind his legal heirs. The legal heirs of Abdul Khadar were also impleaded as parties to the suit and when the suit was in trial stage, the plaintiffs herein remained exparte and an exparte decree as prayed for in the suit, was passed on 20.01.2004.



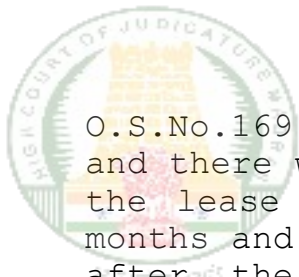
11. On 08.12.2004, the plaintiffs in the suit in O.S.No.169 of 1999 and the defendants 1 to 12 herein executed a power of attorney deed in favour of Mohammed Arif. By exercising the power given to the power agent, the power agent Mohamed Arif sold the suit property to the defendants 13 and 14 herein on 19.03.2005 through a registered sale deed. On application by the plaintiffs herein, the ex parte decree passed in the suit in O.S.No.169 of 1999 was set aside by the District Musnif, Lalgudi on 09.08.2005.

12. In view of the sale of the suit property in favour of the defendants 13 and 14, the defendants 13 and 14 herein are entitled to proceed with the suit in O.S.No.169 of 1999 against the plaintiff herein. The defendants 13 and 14 herein filed a petition to implead them as plaintiffs in the suit in O.S.No.169 of 1999, the petition had been allowed and the defendants 13 and 14 are conducting the suit in O.S.No.169 of 1999. When the plaintiff herein had admitted in its written objection in O.S.No.169 of 1999 that the lease period expired on 31.07.1990, the plaintiff herein had no right to put up constructions against the interest and without the consent of the landlord and that too when the suit for recovery of possession against the plaintiffs herein is pending before the competent Court. The location of the suit property is at the very centre of business activities and it is situated in the prime area at No.1 Tollgate with valuable right of access from National Highways on its eastern and western sides and it could easily fetch a rent of not less than Rs.10,000/- per month. The plaintiff has no right to put up a wall preventing the right of access that too without getting permission either from this defendants or from the panchayat.

13. Hence, a suit in O.S.No.211 of 2005 before the learned District Munsif, Lalgudi for permanent injunction was filed. As the lease period expired on 31.07.1990, no option can be claimed by the plaintiff. There is no automatic renewal clause in the lease agreement. The lease was not renewed by mutual consent. The defendants 13 and 14 who invested their hard earned money by purchasing the suit property is having every right to retain the same. The plaintiff has no locus standi against the bonafide purchaser.

14. The substance of the written statement filed by the 15th defendant adopted by the defendants 14, 16 to 19:

(i) In Article 97 of the Limitation Act, the suit ought to have been filed within one year from the date of sale that is on or before 19.03.2006. The plaintiffs were aware of the sale even on 23.08.2005 and the suit ought to have been filed on or before 23.08.2006 but the suit was filed only in the year 2008 and the suit is barred by limitation. The plaintiff claimed automatic right of renewal under Section 7 of Act 17 of 1977 for a period of 20 years from 01.10.1990 to 31.09.2010. Under Section 7(3) a positive act of the intention for such renewal is necessary. In the present case, there is not such intention. No such renewal was communicated to the land owners. On the contrary, even in the written statement in



O.S.No.169 of 1999, it has been admitted that the lease had expired and there were negotiations for renewal of the lease. Clause 4(e) of the lease deed provides that in case rent remains unpaid for two months and continuous to remain unpaid for the period of thirty days after the demand of payment by the lessor, the lease shall terminate.

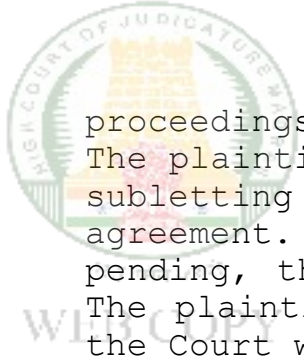
(ii) In this case, the rent was unpaid from 01.10.1990 onwards. The owners issued a notice to quit on 20.04.1999 and arrears of rent was also demanded but the rent was not paid within thirty days. Only after several years, the rent was deposited in the Court. Hence, the lease automatically terminated.

(iii) Clause 2(e) of the lease deed prohibits assignment of the premises without the previous written consent of the lessor. The plaintiff Corporation is not operating the petrol pump and it has sublet it to third parties. The owner's consent was not obtained for this. There has been a breach of contract. As per Clause 4(e) the lease deed was automatically terminated.

(iv) As per clause 3(i) of the lease deed, the right of pre-emption would arise only in the case where the lease was subsisting. As there was no subsisting lease when the defendants 13 and 14 have purchased the property, there is no question of claiming a right of pre-emption or preferential right of purchase by the plaintiff Corporation. The plaintiff Corporation has not deposited the sale consideration in the Bank. There is no bonafide intention on the part of the plaintiffs.

15. The substance of the reply statement of the plaintiffs are as follows:

The right of pre-emption is in respect of pure and simple lease which is not governed under Article 97 of the Indian Limitation Act and the suit is maintainable and not barred by limitation. As per Section 7(3) of Act 3 of 1997, a positive intention for renewal of lease is not available is wrong and renewal is implied. It need not be communicated. Even in the notice dated 30.04.1999, there is no whisper as to the termination of the lease. The Corporation vide letter PAS/LEG dated 16.04.1990 has exercised statutory option of renewal of the lease for a period of 20 years from 01.08.2019 till 31.07.2010. The renewal was postponed by the original lessee Rahmath Bibi in order to fix an enhanced rate of rent. But the intention of the Corporation was exercised only for statutory renewal on the same terms and conditions of the lease. There is no automatic termination of the lease. Only the extension of lease is automatic not the termination. Notice dated 20.04.1999 was sent demanding Rs.800/- as rent which is not at the agreed rate. The statutory renewal was executed by the plaintiffs as per the terms and conditions of the original lease. Since the rent was refused to be received and the plaintiff deposited the same in the Court. They defendants denied the plaintiff's right of pre-emption. Without putting the plaintiff on notice, during the pendency of the



proceedings, the defendants 13 and 14 have purchased the property. The plaintiff Corporation is operating the pump by itself and is not subletting the same to third parties. There is no breach of lease agreement. When the dispute regarding the statutory renewal is pending, the purchase by the defendants 13 and 14 is not bonafide. The plaintiff Corporation is ready to deposit the sale price into the Court which is not a *sine quo non* to file the suit.

16. Based on the above pleadings and documents, the following issues were framed by the trial Court:

(1) Whether the plaintiffs are entitled for the relief of specific performance that the defendants have to execute the sale deed for a price of Rs.14,40,000/- or in case of refusal by defendants, through process of Court and to direct the defendants to deposit the sale price under sale deed dated 19.03.2005 into the Court.

(2) Whether the plaintiffs are entitled for permanent injunction against the defendants as prayed for?

(3) Whether the sale deed dated 19.03.2005 is null and void?

(4) To what other reliefs?

17. Additional Issues framed in O.S.No.24 of 2008 are as follows:

(1) Whether the suit is barred by limitation?

(2) Whether there was an automatic renewal of lease for 20 years from 30.09.1990 to 30.09.2010?

(3) Whether the lease was subsisting when the defendants 13 and 14 purchased the suit property?

(4) Whether the plaintiffs have preferential right to purchase the suit property?

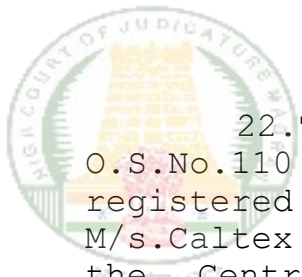
18. The case of the plaintiff in O.S.No.110 of 2010 is that the suit property belonged to the mother of the plaintiffs 1 to 9. Rahamath Bibi entered into a lease agreement on 30.09.1970 with M/s.Caltex (India) Ltd. Then M/s.Caltex (India) Ltd., was taken over by the Government of India and later changed its name to the defendant Corporation, the terms and conditions of the lease agreement is applicable to the defendants. The lease period was for 29 years from 01.08.1970 to 31.07.1990. The rent for 10 years is Rs.250/- per month. After the expiry of the lease period, the defendant is not paying the rent to the owner from August 1990. The lease deed was not renewed as per the law.

19. After the expiry of the lease period, Rahamath Bibi demanded the defendant to vacate the suit premises and to hand over the premises to the her. Rahamed Bibi died on 30.04.1996 and her husband, Abdul Rasheed pre-deceased her. The legal heirs of Rahamed Bibi demanded the defendants to hand over the vacant premises of the suit property. The defendant is holding the property against the wishes and without the consent of the plaintiffs 1 to 9, which is high handed and unlawful. The plaintiffs 1 to 9 issued a notice dated 20.04.1999 calling upon the defendant to vacate and handover

the vacant the premises on or before 31.05.1999 and to pay the damages for the use and occupation. The defendant neither complied with the demand nor cared to reply.

20. The legal heirs of Rahamath Bibi filed a suit in O.S.No.169 of 1999 on the file of the learned District Munsif, Lalgudi for recovery of possession of the suit property, mesne profits and cost. Pending the suit, the first plaintiff died on 04.01.2002 leaving behind his legal heirs, the plaintiffs 10 to 13. The legal heirs of Abdul Khadar were also impleaded as plaintiffs 10 to 13 in the above suit. On 08.12.2004, the plaintiffs 2 to 13 executed a power of attorney deed in favour of Mohammed Arif. By exercising the power, the power agent of the plaintiffs 2 to 13 sold the suit property to the plaintiffs 14 and 15 herein on 19.03.2005 through a registered sale deed. In view of the sale of the suit property in favour of the plaintiffs 14 and 15, they are entitled to proceed with the suit in O.S.No.169 of 1999 against the defendant herein. The 14th plaintiff died on 12.08.2013, leaving behind him, the plaintiffs 16 to 20 as legal heirs. They are entitled to step into the shoes of the deceased 14th plaintiff and to continue the suit.

21. The averments made in the written objections in O.S.No.110 of 2010 is that the suit is hit under the Calcutta Ordinance 1970. The lease agreement expired by 31.07.1990. It is true that the lessor died on 30.04.1996 and it is totally false to state that the said Rahamath Bibi demanded the defendant to vacate the suit property and to hand over the vacant possession. Actually Rahamath Bibi was making arrangement for execution of fresh lease deed in favour of the defendant. The defendant invested several lakhs of Rupees in order to establish the petrol pump. Rahamath Bibi has been asking for an enhanced lease amount from the defendant and the defendant being a company permission has been sought for from the Head Office to fix the lease amount. In the mean while, Rahamed Bibi expired and the legal heirs of Rahameth Bibi agreed to extend the lease since Rahamed Bibi is not having any intention for the defendant to vacate the premises and she has not taken any steps even after the lease period was over. After three years from the date of death of Rahamath Bibi, the plaintiffs have taken steps to file this suit and the defendant is under the impression that the lease period is extended. The defendant is ready and willing to pay the enhanced lease amount and the defendant is in enjoyment of the property only with the implied consent of the plaintiffs. The plaintiffs have no right to terminate the tenancy. Actually the defendant offered to purchase the property as per the prevailing market rate. It is Rahamath Bibi who was postponing to receive the rent. Likewise, the plaintiffs are also postponing the receipt of the lease amount. The plaintiffs and the predecessors of Rahamath Bibi had agreed to extend the lease period and the defendant is not liable to vacate the property.



22. The averments made in the additional written statement in O.S.No.110 of 2010 is that the Rahamath Bibi entered into a registered lease dated 13.09.1970 for a period of 20 years with M/s.Caltex (India) Ltd. M/s.Caltex (India) Ltd., was transferred to the Central Government of India under Caltex (India) Ltd. Subsequently it was re-named as the Defendant's Company. The defendant exercise the statutory option as per the Section 5 and 7 of the Caltex Act and renewed the lease for a further period of 20 years from 01.08.1970. The lease is valid till 31.07.2010. Under Section 73 of the said Act, the lease was automatically renewed for a further period of 10 years on the same terms and conditions of the lease. The notice dated 20.04.1999 issued by the plaintiffs cannot be a valid notice of termination, in view of the above Act. The defendant is expressing his willingness to purchase the property. Any sale behind the back of this defendant and without allowing the defendant to exercise option of purchase is not binding upon this defendant and the same is invalid and illegal. The defendant is having the right of pre-emption. The defendant came to know about the sale only in view of the suit in O.S.No.211 of 2005. The defendant invested more than Rs.25,00,000/- in establishing the petrol pump. Since the plaintiffs refused to receive the rent, the rent was deposited in the Court. The plaintiffs' demand for vacant possession for personal use and occupation is false. The sale in favour of the parties will prove the bonafide requirement of the suit property. The defendant is ready and willing to pay the reasonable enhanced rent. The defendant is ready and willing to pay the sale price of the property. The defendant is not liable to pay any damages.

23. During the trial based on the pleadings and documents, the following issues were framed:

1. *Whether the lease period expired on 30.09.1990 ?*
2. *Whether the plaintiffs are entitled to the relief of possession of the suit property as prayed for ?*
3. *Whether the plaintiffs are entitled to the relief of mesne profits as prayed for ?*
4. *What other reliefs ?*

24. The case of the plaintiffs in O.S.No.137 of 2010 is that the suit property belonged to the one Rahamath Bibi. Rahamath Bibi entered into lease agreement on 30.09.1970 with M/s.Caltex (India) Ltd. M/s.Caltex (India) Ltd., was taken over by the Government of India and later changed its name to the defendant Corporation. The terms and conditions of the lease agreement is applicable to the defendants. The lease period was for 20 years from 01.08.1970 to 31.07.1990. The rent for 10 years is Rs.250/- per month. After the expiry of the lease period, the defendant is not paying the rent to the owner from August 1990. The lease deed was not renewed as per the law. After the expiry of the lease period, Rahamath Bibi demanded the defendant to vacate the suit premises and to hand over the premises. Rahamed Bibi died on 30.04.1996 and her husband, Abdul Rasheed pre-deceased her. The legal heirs of Rahamed Bibi demanded



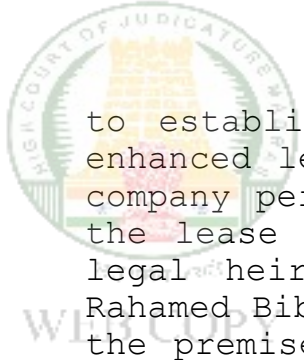
the vacant possession of the suit property. The defendant is holding the property against the wishes and without the consent of the legal heirs of Rahamath Bibi. The legal heirs of Rahamath Bibi issued a notice dated 20.04.1999 calling upon the defendant to handover the vacant premises on or before 31.05.1999 and to pay the damages for the use and occupation. The defendant neither complied with the demand nor cared to reply.

25.The legal heirs of Rahamath Bibi filed a suit in O.S.No.169 of 1999 on the file of the learned District Munsif, Lalgudi for recovery of possession of the suit property, mesne profits and cost. Pending suit, one Abdul Khadar, one of the sons of Rahamath Bibi died leaving behind his legal heirs. The legal heirs of Abdul Khadar were also impleaded in the suit and when the suit was in the trial stage, the plaintiffs herein remained exparte and an exparte decree was passed on 20.01.2004. On 08.12.2004, the plaintiffs in the suit in O.S.No.169 of 1999 and the defendants 1 to 12 herein executed a power of attorney deed in favour of Mohammed Arif. By exercising the power, the power agent Mohammed Arif sold the suit property to the plaintiffs 1 and 2 herein on 19.03.2005 through a registered sale deed. In view of the sale of the suit property in favour of the plaintiffs 1 and 2, the plaintiffs are entitled to proceed with the suit in O.S.No.169 of 1999 against the defendant herein. The defendant is bound to deliver the suit property with all rights of access. The decree for permanent injunction restraining the defendant on the western side of the property is to be granted. The first plaintiff died on 12.08.2013 and the plaintiffs 3 to 7 are impleaded as his legal heirs. They are entitled to step into the shoes of the deceased 1st plaintiff and to continue the suit.

26.The averments made in the written statement of O.S.No.137 of 2010 is as follows:

(i)The property belong to one N.Rahamath Bibi who leased out the property as a vacant site in favour of M/s.Caltex (India) Ltd., under a registered lease deed dated 30.09.1970 for a period of 20 years. M/s.Caltex (India) Ltd., has established a petrol pump in the suit property. Subsequently the lease hold right of M/s.Caltex (India) Ltd., has been transferred to Hindustan Petroleum Corporation Limited registered under the Indian Caltex Act, 1956. The defendant herein stepped into the shoes of M/s.Caltex (India) Ltd., and is having lease hold rights on the same terms and conditions as per Section 7 of the Caltex (India) Act, 1977.

(ii)By exercise of the statutory option, the lease was renewed for a futher period from 01.10.1990 till 31.07.2010 on the same terms and conditions. It is true that the lessor died on 30.04.1996 and it is totally false to state that the said Rahamath Bibi demanded the defendant to vacate the suit property and to hand over vacant possession. Actually Rahamath Bibi was making arrangement for execution of a fresh lease deed in favour of the defendant. The defendant invested several lakhs of Rupees in order



to establish the petrol pump. Rahamath Bibi has been asking for enhanced lease amount from the defendant and the defendant being a company permission has been sought for from the Head Office to fix the lease amount. In the mean while, Rahamed Bibi expired and the legal heirs of Rahameth Bibi agreed to extend the lease since Rahamed Bibi is not having any intention for the defendant to vacate the premises and she has not taken any steps even after the lease period was over. After three years from the date of death of Rahamath Bibi, the plaintiffs have taken steps to file this suit and the defendant is under the impression that the lease period is extended.

27. The defendant is ready and willing to pay the enhanced lease amount till 20.04.1999 and the defendant is in enjoyment of the property only with the implied consent of the plaintiffs. The defendant is ready and willing to pay the rent. In the meanwhile, the legal heir of the deceased Rahamath Bibi filed a suit for recovery of possession in O.S.No.169 of 1999 on the file of the learned District Munsif, Lalgudi and an option to exercise the rights of purchase is available to the plaintiffs. The defendant filed an application in I.A.No.597 of 2001 to pay the rent into the Court. The defendant has paid the rent of Rs.33,000/- by way of challen dated 28.11.2003 and also continue to pay the rent till date by depositing before the Court. On the date of filing of the suit, there was no exparte decree as against this defendant in O.S.No.169 of 1999. In O.S.No.169 of 1999, the defendant has expressed his willingness to purchase the suit property as per the prevailing market rate. As per the terms of the lease agreement dated 01.08.1970, the lessor viz. Rahamath Bibi or her legal heirs have no right either to terminate the lease or to sell the property to third parties ignoring the rights of HPCL as per clause 4(f) of the lease agreement dated 30.09.1970. This defendant had been denied their rights of pre-emptive option of purchase clause.

28. As per the terms and conditions of the lease, this defendant is having every right to put up the construction. This defendant has put up constructions to safeguard the interest of the lease hold rights. The petroleum products which are highly inflammable needs some extra protection. The defendant is entitled to take all the safeguarding measures which is permitted as per the lease agreement. The plaintiffs cannot treat them to be a trespasser since the defendant is a statutory tenant. By constructing a wall the right of pathway is neither abolished nor relinquished. The defendant has no intention to prevent the right of access.

29. During the trial based on pleadings and documents, the following issues were framed:

1. Whether there is a subsisting lease in favour of the defendants ?

2. Whether the plaintiffs are entitled to a relief of permanent injunction as prayed for ?

3. To what other reliefs the plaintiffs are entitled ?



30. Since the issue involved in all these cases are identical, they were heard together and were disposed of by a common Judgment. On the side of the plaintiffs, P.W.1 was examined and Exs.A1 to A9 were marked. On the side of the defendant, D.W.1 was examined and Exs.B1 to B3 were marked.

31. The learned trial Judge, heard the arguments advanced on both sides and considered the pleadings and evidence, dismissed the suit in O.S.No.24 of 2008 and decreed the suits in O.S.Nos.110 and 137 of 2010 with cost. Against the Judgement and Decree, the present appeal has been filed on various grounds set out in the memorandum of grounds of appeals.

32. The grounds of appeal in all this appeals are the same. The brief substance of grounds of appeals as follows:

In all the grounds of appeals, it is stated that the renewal from 01.08.1990 was by virtue of the statutory power of the renewal contained in the Central Act 17 of 1977. The provisions of the said Central Act 17 of 1977 enabling statutory renewal have been upheld as legal and valid and coming under the Protective umbrella of the Directive Principles enshrined in the Constitution. The terms of the renewal was also communicated to N.Rahamath Bibi wife of Abdul Rasheed by letter dated 16.04.1990. The renewal is automatic and the same has been upheld in a catena of decisions of the Hon'ble Apex Court. The terms and conditions of the lease deed dated 30.09.1970 is not noted. As per Clause 3-I of the agreement, the lessor is not entitled to sell the land without offering to the lessee by issuance of a notice. The appellant Corporation was also interested to purchase the property did not make such offer. The sale in favour of the 14th and 15th respondent is not valid. The appellant had not subsisting lease and hence the respondents are not entitled to a decree for delivery of possession. Admittedly the lease was extended by virtue of Act 17/1977 and hence, the lease period has to be construed till 2010. Hence, the prayer for Recovery of possession and Mesne profits ought to have been dismissed. The lawyer notice dated 20.04.1999 (Ex.B2) does not satisfy the ingredients of Section 106 of the Transfer of Property Act. Further the said notice is vague and bereft of details and the same cannot be construed as a valid notice to Quit and ought to have dismissed the suit for recovery of possession and mesne profits. The appellant had expressed their desire to purchase the demised premises only after the termination of the lease. Assuming for a moment that the lease came to an end only on 31.07.2010 by virtue of automatic renewal then the same has to be accepted and all the suits ought to have been decided in favour of the Oil Corporation.

33. The points that arise for consideration in A.S.No.12 of 2018 in the appeal are:

"1) Whether there was an automatic renewal of lease for a period of 20 years from 30.09.1990 and 30.09.2010?"

2) Whether the appellant has preferential right to purchase



the suit property?

3) Whether the plaintiffs are entitled for specific performance?

4) Whether the sale deed dated 19.03.2005 is null and void?

5) Whether the suit is barred by limitation?

6) Whether the appeal is to be allowed?"

34. The points that arise for consideration in A.S.No.13 of 2018 in the appeal are:

"1) Whether the lease period was expired on 30.09.1990?

2) Whether the respondents are entitled to the relief of recovery of possession and for a relief of mesne profits?

3) Whether the appeal is to be allowed?"

35. The points that arise for consideration in A.S.No.14 of 2018 in the appeal are:

"1) Whether there is subsisting lease in favour of the appellant?

2) Whether the respondents are entitled for a relief of permanent injunction?

3) Whether the appeal is to be allowed?"

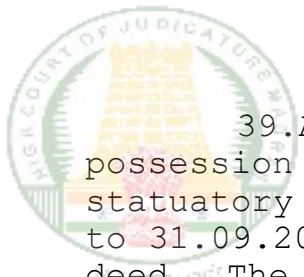
36. A.S(MD)No.12 of 2018 is taken as the lead case. The word 'appellants' will denote the appellants in A.S.No.12 of 2018 and the word 'respondents' will denote the respondents in A.S.No.12 of 2018.

37. The parties to the suit in all the three cases are almost the same and the property is the same. The facts in brief in all these case are as follows:

The property belonged to one Rahamath Bibi. She entered into lease agreement with M/s.Caltex (India) Ltd., on 30.09.1970 in respect of suit property for a period of 20 years. Later M/s.Caltex (India) Ltd., was taken over by the Government of India as per Act 17 of 1977. The lease was transferred to the Hindustan Petroleum Limited. Rahamath Bibi died on 30.04.1996 and her husband pre-deceased her. The defendants 1 to 12 are the legal heirs of Rahamath Bibi.

Issue No.1 in A.S.Nos.12 to 14 of 2018:

38. It is seen that the legal heirs of Rahamath Bibi filed a suit for recovery of possession before the learned District Munsif, Lalgudi in O.S.No.169 of 2009 which was later transferred to the trial Court and was re-numbered as O.S.No.110 of 2010. During the pendency of the suit, the defendants 13 and 14 had purchased the suit property from the legal heirs of Rahamath Bibi and the defendants 13 and 14 filed a suit in O.S.No.211 of 2005 before the learned District Musnif, Lalgudi against the appellants corporation for the relief of permanent injunction and the suit was later transferred and re-numbered as O.S.No.137 of 2010. Subsequent to the filing of the above said suits, the appellants herein filed a suit in O.S.No.24 of 2008 for the relief of specific performance.



39. According to the appellants, the lessee hold right of possession has been automatically renewed by the exercise of the statutory option for a further period of 20 years from 01.10.2009 to 31.09.2010 on the same terms and conditions of the original lease deed. The contention of the appellants is that the appellants Corporation had expressed its desire to renew the tenancy to the original owner and she had agreed for the same. But after her demise, the legal heirs filed a suit for recovery of possession and the lease was not terminated either by the original owner or by the legal heirs. It is further stated that even in the notice dated 20.04.1999, there was no whisper regarding the termination of the lease deed. The contention of the appellants is that the tenancy is still subsisting between the parties.

40. On the side of the respondents, it is stated that the appellants Corporation have not exercised its desire for automatic renewal of lease before the expiry of the lease period in the year 1990 and that after the expiry of the lease period, the appellants Corporation continued to be in possession as the tenant holding over and that the appellants Corporation had been enjoying the suit property without paying any rent as agreed upon after the expiry of the lease period. It is stated that the legal heirs of the original owner issued a notice Ex.B2 directing the appellants Corporation to vacate the premises and to hand over vacant possession and to pay damages at the rate of Rs.8,000/- (Rupees Eight Thousand only) per month. It is stated that after the expiry of the lease period that is on 31.07.1990, the appellants Corporation failed to pay the rent from 1990 till 1999 and the arrears of rent was deposited by the appellants Corporation only in the year 2003. The appellants Corporation can be named only as a trespasser or an encroacher. It is further stated that as per Clause (e) of the lease deed, the lease was terminated for non payment of rent and there is no subsisting lease after the termination of the lease for non payment of rent.

41. On the side of the appellants, it is stated that under Section 3(1) of the Transfer of Property Act, a notice is necessary and there is no notice for termination. On the side of the appellants, it is stated that as per Ex.B1, the tenancy has not come to an end after the expiry of the lease period. In view of the provisions under Section 111 of the Transfer of Property Act, the tenancy was still alive and the tenancy does not come to an end under clause (a) to (g) of the 111 of Transfer of Property Act. The lessee company is holding the tenancy, and such continuance of holding the tenancy does not put an end to the lease itself and the lease had been deemed to be continued. The suit in O.S.No.110 of 2010 was filed for recovery of possession on the basis of the relationship of landlord and tenant. On the side of the appellants Corporation, it is stated that in Ex.A5, notice, calling upon the appellants Corporation to vacate and hand over the possession and Ex.A5 is not in conformity with the provisions of 106 and 111 (h) of Transfer of Property Act and 15 days notice was not given in Ex.A5



calling upon for payment of arrears of rent denotes that the period of lease was extended. Ex.A5 is defective and invalid.

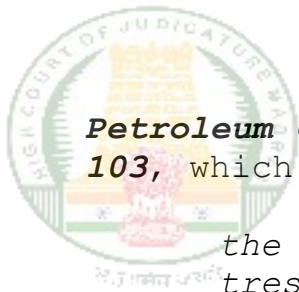
42. On the side of the respondents, it is stated that the lease was expired on 30.07.1990 and that the appellants Corporation did not exercise the right of extension before the expiry of the lease period. After the demise of Rahamath Bibi, her legal heirs sent a notice asking to pay the arrears of rent and to vacate the premises on or before 31.05.1999. Even after the receipt of the notice, the appellants Corporation did not pay the rent or vacate the premises and did not even issue any reply. The renewal cannot be automatic and it is clearly stated that "if so desire by the Central Government". There should be positive act on the part of the Central Government to renew the lease. There is no expression of desire either on the part of Central Government or by the appellant to renew the lease deed. Even the pleading of the appellants Corporation clearly reveals that there is no such exercise of option for automatic renewal. In the written statement filed in O.S.No.169 of 1999, the appellant company has stated that after the expiry of the lease period, Rahamath Bibi is making arrangement to make a fresh lease deed in favour of the plaintiffs Corporation and it is stated that after the expiry of the lease period, negotiations was going on for execution of a fresh lease deed and that the deceased was demanding for enhancement of lease amount from the plaintiffs corporation and that the plaintiffs being a Corporation, permission was sought for from the Head Office to fix the lease amount and the legal heirs of Rahamath Bibi also agreed to extend the lease and that the wordings of the appellants Corporation clearly reveals that the lease was already expired and it was not extended and that there is no automatic renewal.

43. On the side of the respondents, it is stated that no automatic renewal is permitted and it is the duty of the lessee or the Central Government to express the desire for the extension of the lease. In support of his contention, the Judgment passed in the case of **Manohar Singh and another v. Caltex Oil Refining (India) Ltd., and others** reported in **AIR 1981 Madhya Pradesh 123 (1)** is cited, which reads as follows:

"The language used in S.7(3) does not support this construction. The desire expressed by the letter dated 24th April, 1978 issued by the Caltex (India) cannot therefore, be taken to be premature. Indeed it is desirable that there should be reasonable notice to the lessor by the Central Government or the Government company that it is going to exercise its power for renewal or continuation of the lease under S.7(3). The notice should normally, therefore, be issued before the expiry of the lease. The notice issued in this case cannot be said to be premature."

<https://hcservices.ecourts.gov.in/hcservices/>

44. The learned counsel appearing for the respondents relied on the Judgment passed in the case of **Dolly Das v. Hindustan**



Petroleum Corporation Ltd., and another reported in **AIR 1994 ORISSA 103**, which reads as follows:

"continuing possession even after the expiry of the first term of renewal-Its possession is that of trespasser"

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45.The learned counsel appearing for the respondents relied on the Judgment passed by this Court in the case of **S.Sivakumar and 4 others v. Bharat Petroleum Corporation Ltd.**, reported in **1997 3 L.W. 520**, which reads as follows:

"exercise of option to renew necessary-mere desire to renew not sufficient

.... by not expressing its intention to re-course under the Statute, it must be deemed to have been waived... The first defendant is not entitled to have the same renewed, and it is also not entitled to the benefits of Section 53-A of the Transfer of Property Act.

32.On a reading of Sub section (2) of Section 5 of the Act, referred to above, it is clear that if a desire to renew a lease has to be expressed on the expiry of the term, that means, the expiry of the lease and the desire to have renewal will be intimately connected. The desire to have a renewal cannot be long after the expiry. I do not think till the suit was filed, first defendant Corporation showed its inclination to have a statutory renewal."

46.The learned counsel appearing for the respondents relied on the Judgment passed by this Court in the case of **T.B.Nath and two others v. Hindustan Petroleum Corporation Ltd.**, reported in **1999 2 L.W. 552**, which reads as follows:

"expiry of renewed period of the lease during the pendency of the proceedings in Court- Relief of ejectment can be granted in the same proceedings, instead of driving the plaintiff to file another suit-power of Court to mould the relief according to circumstances."

47.The learned counsel appearing for the respondents relied on the Judgment passed by the Hon'ble Supreme Court in the case of **Depot Superintendent, H.P. Corpn. Ltd., and anr v. Kolhapur Agri. Market Committee, Kolhapur** reported in **2007 AIR SCW 4378**, which reads as follows:

"Fact that lessee Corporation had exercised option of renewal before expiry of earlier lease in year 1978 at that provision of Act of 1977 were already enforced- No material placed before Court to show that there was any desire to renew lease by Central Government thereafter -Second renewal could not be



granted-Lessee Corporation directed to handover possession"

48. The learned counsel appearing for the respondents relied on the Judgment passed by the Hon'ble Supreme Court in the case of **Ram Bharosey Lal Gupta (D) by Lrs and Ors. v. Hindustan Petroleum Corp. Ltd and Anr.** reported in **AIR 2014 SC (SUPP) 1020**, which reads as follows:

"clause requiring lessee to send notice for renewal to lessor-demised property mortgaged by lessor-notice for renewal in circumstances had to be sent to mortgagee and not to lessor-mortgagor-notice sent by lessee only to lessor-Not in compliance with renewal clause-Finding of deemed renewal unjustified-Lessee an instrumentality of State-Ought to act fairly and reasonably-Holding over of demised premises by lessee after expiry of lease is totally unfair, arbitrar and as trespasser"

49. On the side of the respondents, it is stated that there cannot be an automatic renewal and the appellants Corporation has not exercised that option for renewal. The lease deed provides for termination of the lease deed. In clause 2(e) of the lease deed, it is clearly stated that without the previous consent in writing of the lessor, the lessee is not to assign the premises or any part thereof and such consent is not to be withhold unreasonably. It is stated that in the evidence of P.W.1, it is clearly admitted that no prior consent of the lessor is obtained and the petrol outlet situate in the suit property is run by the authorized licensee or dealer. On the side of the respondents, it is stated that the appellant Corporation is not using the property and the property is used only by the authorised licensee or the dealer and that there is a breach of condition in the assignment by the appellants.

50. In the clause 4(e) of the lease deed, it is stated that "if any rent hereby reserved shall remain unpaid for two months after becoming due and shall continue to remain unpaid for a period of thirty (30) days after a demand for the same has been made by the lessor and the lessee shall continue to do so for thirty days after written notice thereof, the lessor may re-enter forthwith upon the desired premises or upon any part of thereof in the name of the whole and the lessee shall thereupon to determine but without prejudice to any claim which either of the portion hereto may have against the other in respect of any breach, non-performance or non-observance of any of the covenants or conditions herein contained."

51. It is stated that the rent remains unpaid for more than two months and is not paid despite notice and that the lease is terminated and that no rent was paid after 31.07.1990 and the appellants Corporation received the notice dated 20.04.1999 and 23.04.1999 and P.W.1 has admitted that notice was sent for claiming arrears of rent or to vacate the premises and the appellants



Corporation has not paid the rent even after the receipt of notice and that even if there was an automatic renewal, the lease was terminated in view of the breach of the contract and for failure of payment of rent despite of the notice, the lessor has got the right of re-entry.

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52. On the side of the respondents, it is stated that the lessor is having the right to re-entry the premises on non performance of the condition in the lease deed. The rent was not paid from the date of expiry of the lease I.e. 30.07.1990. The respondent sent notice on 31.05.1999. Even after the receipt of the notice, the rent was not paid within 30 days I.e. that ends on 30.06.1999. The rent was deposited only in the year 2004 and P.W.1 has admitted that there is no document to show that there was dealings regarding the fixation of rent. He has further stated that from 1990 onwards, the appellant was sending rent to the original owner Rahamath Bibi and she has refused to receive the same and the rent was deposited in the year 2003 before the Court and he has further admitted that the appellant has not filed any document to show that rent was sent to Rahamath Bibi.

53. It is seen that the lease period ended on 31.07.1990. As per the clause 2(e) of the lease deed, it is for the Central Government to express its desire for the continuation of the lease period and no document is filed on the side of the appellants Corporation to show that such a offer letter was sent to the original owner regarding the desire to extend the lease period. Though the appellants Corporation claimed that there is a clause for automatic renewal, that clause is subject to the expression of desire on the part of the Central Government which is missing in this case.

54. The appellants themselves have admitted in the written statement in O.S.No.169 of 2005 that the lease period expired in the year 1990 and there was negotiations between the original owner Rahamath Bibi and the appellants Corporation regarding the rent. When there is negotiations going on, there cannot be an automatic renewal.

55. On the side of the appellants, it is stated that the appellants Corporation is entitled for the automatic renewal. The lease was extended till 2010. Admittedly before the expiry of the lease period, the appellants Corporation have not expressed their desire for extension of the lease period and no fresh lease deed was prepared. Admittedly there is a question of enhancement of rent that is not decided between the parties which caused doubt upon the automatic renewal as stated by the appellants Corporation.

56. The claim of the respondents is that there are violations of the lease conditions and without any express consent of the owner in writing, the appellants has handed over the suit property to its authorised dealer which is against the terms and conditions of the



lease deed. No document is filed on the side of the appellants Corporation to prove that they obtained the consent of the lessor. It is admitted that the appellants Corporation handed over the possession of the property to its dealer without the consent in writing from the original lessor.

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57. Even if the contention of the appellants Corporation is acceptable, it is the duty of the appellants Corporation to pay the rent as per the terms and conditions of the original lease deed but P.W.1 has admitted that the rent was deposited only in the year 2003. From 1999 till 2003, the rent was not paid to the original lessor or her legal heirs. The legal heirs sent a notice claiming arrears of rent in the year 1999. The appellant has not taken any efforts to pay the rent even after the expiry of 30 days, from the date of notice. It is seen that only after the filing of the suit, the appellants Corporation have come forward to deposit the rent in the Court. No document is filed on the side of the appellants Corporation to prove that the rent was sent to Rahamath Bibi or to the legal heirs of Rahamath Bibi.

58. Since the appellants Corporation did not express the desire to renew the rent before the expiry of the lease period, there was no renewal of rent agreement. Since the appellants Corporation failed to pay the rent from 1993 till 2003 and as the appellants Corporation has admitted that the lease deed expired in the year 1990 and as the appellants Corporation admitted that there was negotiations going on between the original owner and the appellants Corporation regarding the fixation rent, it is clear that the option of automatic renewal was not utilised by the appellants as per law. Hence, it is decided that there is no automatic renewal of lease for 20 years from 30.09.1990 to 30.09.2010.

59. The defendants 13 and 14 purchased the property from the respondents 1 to 9 on the basis of a sale deed dated 19.03.2005. The case of the appellants Corporation is that the lease deed was renewed automatically and the lease was binding upon the defendants 13 and 14.

60. On the side of the respondents, it is stated that the lease was not automatically renewed and there is no subsisting right of tenancy for the appellants Corporation. On the side of the appellants, it is stated that the tenancy was still existing under Section 111 of the Transfer of Property Act and the lease is deemed to have been continuing. Even in the notice Ex.A1, the tenancy was not terminated and the tenancy is in existence at the time of purchase by the respondents 13 and 14 and the lease is binding on the defendants 13 and 14. It is further stated that no notice for termination under 106 of Transfer of Property Act was given to the appellants and that Ex.A5 notice is invalid.

61. On the side of the respondents, it is stated that the defendants 1 to 13 who are the legal heirs of the Rahamath Bibi



issued a notice on 20.04.1999 demanding the arrears of rent and demanded the possession of the premises which amount to notice of termination. Even if there was an automatic renewal, the lease was terminated for non payment of rent and for assigning the lease hold right to a third party.

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62. On the basis of the above discussion, it is decided that there is no automatic renewal of the lease after the expiry of the lease deed. The premises was handed over by the appellants to the dealer. There was non payment of rent and that lease conditions are violated. Hence, it is decided that there is no lease hold right subsisting at the time of purchase of the property by the respondents 13 and 14.

Issue no.2 in A.S.No.12 of 2018:

63. On the side of the appellants, it is stated that the appellants Corporation are entitled for the right of pre-emption to purchase the suit property before the sale of the land to the respondents 13 and 14. The offer should be made to the appellants Corporation which is holding the right of tenancy and as per the clause 4(e) and 4(f) of the lease deed, the appellants Corporation is entitled for a relief of specific performance.

64. On the side of the respondents, it is stated that under Clause 3(1) of the lease deed, it is stated that "the lessor hereby grants on to the lessee an exclusive right at the lessee's option to purchase the desired premises on the terms and conditions subject however to the marketability of the title of the lessor and at the same price as any bonafide offer for the desired premises received by the lessor. The option to purchase hereby granted into the lessee shall be pre-emptive and continuing and shall be binding on the lessor and her heirs and legal representatives and successors in title."

65. On the side of the respondents, it is stated that the period of limitation for filing of the suit for pre-emption is one year as per Article 97 of the Limitation Act. The respondents 14 and 15 purchased the property on 19.03.2005 and filed an application for impleading them as parties in O.S.No.166 of 1999 on 23.08.2005. But the appellant has filed a suit for right of pre-emption only in January 2008 and that there is no such preferential right to purchase the property.

66. On the side of the respondents, it is stated that since the lease period is already expired on 31.07.1990, there is no need to terminate the lease and that once the lease expired and is not renewed, it becomes a lease from month to month and that as per Section 106 of Transfer Property Act, this lease can be terminated by giving 15 days notice in writing and that a notice was issued on 20.04.1999 which is received by the appellants Corporation on 23.04.1999 and that the notice was issued to vacate the premises and the notice was proper under Section 106 of the Act. On the side of



the respondents, it is stated that notice to vacate the premises was issued giving sufficient time till 31.03.1999.

67. In support of his contention, a Judgment passed by the Hon'ble Supreme Court in the case of **Bhagabandas Agarwalla v. Bhagawandas Kanu and others** reported in **AIR 1977 SUPREME COURT 1120** is cited, which reads as follows:

"a notice to quit must be construed, not with a desire to find faults in it, which would render it defective but it must be constructed "but resmagis valeat quam perat".... it must not be read in a hyper critical manner it must be construed in a common sense way"

68. In support of his contention, another Judgment passed by the Allahabad High Court in the case of **Jaggoo and another v. Sardar Gurmukh Singh and other** reported in **AIR 1974 ALLAHABAD 250** is cited, which reads as follows:

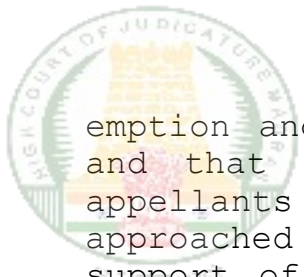
"notice that landlord was no longer willing to continue tenancy and tenant should vacate the premises on expiry of 38 days, failing which a suit for ejectment would be filed, is a valid notice"

69. In the earlier issues, it is decided that there is no automatic renewal of lease deed. The appellants Corporation failed to show that there was subsisting lease at the time of purchase of the property by the respondents 14 and 15. Clause 3(1) of the lease deed confers the right of pre-emption during the subsistence of the lease and not afterwards. Moreover the lease property was handed over to a third party by the appellants Corporation and the appellants Corporation who is not in possession of the lease property cannot claim a right of pre-emption. For the above reason, it is decided that there is no right of pre-emption available to the appellants Corporation at the time of the purchase of the property by the respondents 14 and 15.

Issue no.3 in A.S.No.12 of 2018:

70. On the side of the appellant, it is stated that the appellant is having the right for specific performance under Clause 3(1) and 4(f) of the lease deed which is marked as Ex.B1. It is stated that a right is given to the appellants Corporation to exercise its option to purchase the land. In the event of the lessor desire to sell away the land. An offer should be given to the lessee Corporation as referred to in clause 4(f) of the lease deed and it is the bounden duty of the lessor or her legal heirs to inform the appellants' Corporation of any such offer so as to enable the lessee company either to offer a price and to exercise the right of purchase and no such offer was made by the lessor.

71. It is stated that the tenancy will not come to an end immediately on the expiry of the lease period and that unless and until the lease is terminated, the lessee is having the right of tenancy and that there is no difference between a right of pre-



emption and an agreement so as to demand for specific performance and that as the respondents have not offered the land to the appellants before the sale of the suit property, the appellant has approached this Court with the prayer of specific performance. In support of his contention, the Judgment passed by the Kerala High Court in the case of **Karichori Raman Nair v. Kodoth Krishnan Nair and another** reported in **1976 AIR (Kerala) 22** is cited, wherein it is stated that there is no much difference between the right of pre-emption and the agreement so as to lead for specific performance.

72. On the side of the respondents, it is stated that the period of limitation for filing a suit for pre-emption is one year and in order to overcome the issue, the appellants Corporation have filed a suit for a prayer of specific performance. Under clause 3(1) of the lease deed it is stated that the option to purchase hereby granted into the lessee shall be pre-emptive and that only a pre-emptive right is given to the appellants Corporation and the suit for specific performance is not correct as there is no agreement for sale and that a preferential right to purchase is available only during the subsistence of the lease and that already lease period expired on 31.07.1990. Once the lease expired and was not renewed, it can be terminated by giving 15 days notice. And that notice was issued on 20.10.1999 and that the lease was not subsisting and the appellants are not having any right for pre-emption or for specific performance.

73. There is no agreement of sale between the parties and the appellants had only a right of pre-emption under clause 3(1) of the lease deed wherein specific wording given is "pre-emptive". As stated earlier, there is no subsisting lease at the time of purchase of the property by the respondents 14 and 15 and hence, there is no question of right of pre-emption. Moreover a suit can be filed on the basis of a right of pre-emption within a period of one year and the suit property was sold on 19.03.2005 and the respondents 14 and 15 impleaded themselves in the suit in O.S.No.110 of 2010 on 23.08.2005 and the appellant has to file a suit within one year from 23.8.2005 i.e. on or before 23.08.2006. Only to overcome the issue of limitation, the appellants Corporation has filed a suit for specific performance. In the above circumstances, it is decided that the appellants Corporation is not entitled for a relief of specific performance.

Issue No.4 in A.S.No.12 of 2018:

74. On the side of the appellants, it is stated that sale deed executed in favour of the respondents 14 and 15 dated 19.03.2005 is null and void as no notice was given to the appellants Corporation before the sale and the appellants Corporation is having the right of pre-emption under Clause 3(1) of the lease deed.

75. On the side of the respondents, it is stated that the lease was not renewed after the date of expiry of the lease deed and that the possession of the appellants Corporation become that of the



trespasser and that the lease conditions are violated and that the appellants Corporation had not paid the rent from 1990 till 2003 and the appellants Corporation handed over the possession to a third party who is a dealer and the right of pre-emption can be available only when the lease was subsisting and not afterwards.

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76. In the earlier issues, it is already decided that the lease is not automatically renewed and the conditions of the lease are violated and there is no subsisting lease at the time of purchase of the suit property by the respondents 14 and 15 and that there is no right of pre-emption available to the appellants. In view of the above decision, it is decided that the sale deed dated 19.03.2005 is valid and that the appellants had failed to prove that the sale deed is null and void.

Issue No.5 in A.S.No.12 of 2018:

77. On the side of the appellants, it is stated that the suit for specific performance is maintainable and the same is not barred under Article 54 of the Limitation Act. It is stated that within three years from 19.03.2005, the suit was filed and the suit is within the period of limitation. It is stated that right of tenancy will not come to an end immediately on the expiry of the lease period and that the tenancy is valid till it is terminated.

78. On the side of the appellants, it is stated that there is no difference between the right of the pre-emption and a right of specific performance and that as the defendants have not offered the land before the sale of the suit property. The right of pre-emption cannot be claimed and that a suit for specific performance alone maintainable.

79. On the side of the respondents, it is stated that limitation for filing a suit for a right of pre-emption is one year and to overcome the issue, a suit for specific performance is filed by this appellants Corporation and the specific averments in clause 3(1) of the lease deed, the option to purchase hereby granted into the lease shall be "pre-emptive" and the appellants is not a based and not in possession and cannot claim a right of pre-emption.

80. On the side of the respondents, it is stated that the suit is barred under Article 97 of the Limitation Act and in support of his contention, the following Judgment are cited:

(i) Article 97 of the Limitation Act, 1963

(ii) AIR 1950 Allahabad 632

(iii) AIR 1958 Supreme Court 838

(iv) AIR 1960 Supreme Court 1368

(v) AIR 1961 Supreme Court 1747

(vi) AIR 1971 Supreme Court 1158

(vi) AIR 1972 Punjab and Haryana 354

(vii) AIR 1985 Delhi 307

(viii) AIR 1985 Punjab and Haryana 361

(ix) 2012 4 MLJ 775



(x) AIR 2013 Gauhati 60

81. It is seen that the appellant is claiming right over the property on the basis of a lease deed. Clause 3(1) of the lease deed clearly reveals that the character of the right is only a pre-emptive. Only Article 97 of the Limitation Act is applicable to this case. The defendants 14 and 15 purchased the property on 19.03.2005 and an impleading petition was filed on 23.08.2005 and the limitation for a right of pre-emption expired on 23.08.2006. To overcome the question of limitation, the appellant has filed a suit for specific performance which is not maintainable. A right of pre-emption can be available to the appellants only during the subsistence of the lease. But the lease is not subsisting at the time of purchase by the respondents 14 and 15. Even a right of pre-emption is not available to the appellants at the time of filing of the suit, there is no agreement of sale and there is no question of a right of specific performance. Hence, it is decided that the suit is barred by limitation under Article 97 of the Limitation Act.

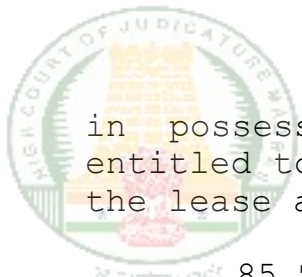
Issue no.2 in A.S.No.13 of 2018:

82. On the side of the respondents, it is stated that the respondents 14 and 15 are entitled for a relief of possession. The respondents 1 to 13 are the legal heirs of the original owner of Rahamath Bibi and they sold out the suit property to the respondents 14 and 15. It is already decided that the respondents have no right of pre-emption and the lease period was already over. Hence, it is decided that the respondents 14 and 15 are entitled for the relief of recovery of possession. The respondents 1 to 15 are entitled to take separate steps for mease profits according to their respective share in the property for the respective period of ownership.

Issue no.2 in A.S.No.14 of 2018:

83. On the side of the Respondent, it is stated that the appellants have constructed a wall in the suit property depriving the right of access. It is stated that the suit property is located in a prime locality having access from the highways on the eastern and western sides and after the expiry of the lease period, the possession of the appellants is that of the trespasser. When the suit for delivery of possession is pending without getting prior permission from the owners and without getting approval from the panchayats, the appellants Corporation with a malafide intention to reduce the value of the property has put up a wall on the western side of the suit property on 27.08.2005, thereby relinquishing the right of access attached to the suit property on its western side and the plaintiff is bound to deliver the suit property with all rights of access.

84. On the side of the appellants, it is stated that the appellants Corporation is running a petrol pump and since petrol is highly inflammable, proper protection is needed and the appellant is making arrangements to construct a wall on the side of the Salem Highway and Madras Highway and that as the appellants Corporation is



in possession of the property, the appellants Corporation is entitled to take all the safeguard measures which is permitted under the lease agreement.

85. The averments of the appellants reveals that the appellants Corporation has constructed a wall along the western side of the suit property. The contention of the appellants is that the appellants Corporation have constructed a wall as per the lease agreement. As the agreement already expired and as there is no subsisting lease agreement, the appellants Corporation is not entitled to put up any construction without the prior permission from the original owners. In the above circumstances, it is decided that the respondents 14 and 15 are entitled for a prayer of permanent injunction.

Issue Nos.6 in A.S.No.12 of 2018, 3 in A.S.No.13 of 2018 and 3 in A.S.No.14 of 2018:

86. Considering the decisions made in the above issues, it is decided that there is nothing sufficient enough to interfere in the orders of the trial Court. Hence, it is decided that these appeals are to be dismissed.

87. In the result, all the three appeals are dismissed and the common Judgment and decree passed by the trial Court is hereby confirmed. The appellants Corporation is directed to deliver the property within a period of nine months from the date of receipt of copy of this order. No Costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

The 1st Additional District Judge(PCR), Tiruchirappalli.

Copy to:

The V.R.Section, (2 copies)
Madurai Bench of Madras High Court,
Madurai.

+3 CC to Mr.M.SRIDHER, Advocate, SR-61370,61371,61372

+2 CC to Mr.K.S.VAMSIDHAR, Advocate (SR-61492[F] dated 22/04/2019)

A.S.(MD) Nos.12 to 14 of 2018

16.04.2019