

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 17.12.2020

Pronounced on: 22.12.2020

Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

C.R.P.(PD).No.1176 of 2018
& C.M.P.No.6062 of 2018

1. Bharat Petroleum Corporation Ltd.,
Rep. by its General Manager,
No.35, Vaidiya Nathan Street,
Tondiarpet, Chennai – 600 081.
 2. The Chief Divisional Manager,
Bharat Petroleum Corporation Ltd.,
No.1, Ranganathan Gardens 11th Main Road,
Anna Nagar, Chennai – 600 040.
 3. Territory Manager (Retail),
Bharat Petroleum Corporation Ltd.,
No.35, Vaidiya Nathan Street,
Tondiarpet, Chennai – 600 081.
- ... Petitioners

/versus/

1. P.Umapathy,
2. P.Gopikrishnan,
3. Madana Gopal,
4. Madana Gopal,
5. P.Kumar,
6. P.Ananda Kumar (died),
7. A.Aruna,
8. A.Monika,

WEB COPY

Respondents 7 & 8 brought on record as deceased R6th viz., P.Ananda Kumar vide Court Order dated 27.11.2019 made in C.M.P.No.24991 of 2019 in C.R.P.(PD).1176 of 2018 (RSKJ).
... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decreetal order dated 24.10.2017 passed in I.A.No.279 of 2016 in O.S.No.50 of 2015 on the file of the Subordinate Court, Ponneri.

For Appellants : Mr.M.S.Krishnan, Senior Counsel,
for Mr.N.R.Anantha Ramakrishnan
For Respondents : Mr.V.Ravi.

ORDER

(The case has been heard through video conference)

The respondents herein filed the Suit in O.S.No.50 of 2015 on the file of Subordinate Court at Ponneri, for recovery of possession. The revision petitioners herein as defendants filed I.A.No.279 of 2016 and prayed to reject the plaint alleging the suit is barred by Order II Rule 2 (3) of C.P.C. The Trial Court, after considering the submissions of both side, dismissed the interlocutory application holding that the application is misconstrued and not maintainable. Challenging the said order, the Revision Petition is filed under Article 227 of the

Indian Constitution by the defendants.

2. The revision petitioner is one of the Public Sector Undertaking having its outlets across the Country. One Mr.S.K.Kannaiah Naidu the predecessor-in-title of the suit property leased out the suit land to M/s.Burmah Shell Oil Storage and Distributing Company India Limited for 30 years lease commencing from 01.11.1963 under a registered document No.444 of 1963 registered at the Office of Sub-Registrar at Sembium. Later, M/s.Burmah Shell Oil Storage and Distributing Company India Limited merged with M/s.Bharat Petroleum Corporation Ltd and Mr.S.K.Kannaiah Naidu died during the pendency of lease period. His legal heirs authorised Smt.Sarawathi ammal, the widow of S.K.Kannaiah Naidu, to receive the rent and same was paid to her. The respondents herein as the legal heirs of S.K.Kanniah Naidu, after the demise of Saraswathi became the landowners. When the lease period expired in the year 1993, based on the automatic renewal clause, the revision petitioner initially filed a suit for specific performance in O.S.No.340 of 1997 before the District Munsif Court at Thiruvothiyur. The said suit was dismissed on 14.07.2009. As leasee holding over, the revision petitioners continue to occupy the leased premises. After the demise of Saraswathi ammal on 06.10.2009, one of the legal heirs

S.K.Paramanadham offered renewal of lease for 30 years commencing from 01.01.2012 to 31.12.2041 on a monthly rent of Rs.66,000/- with 20% increase every 5th years. This offer did not fructify into a concluded contract. The landowners, who are the respondents herein caused quit notice demanding the revision petitioners to vacate the property and handover the vacant possession on or before 31.12.2014. On receipt of the notice, the revision petitioners have sent a reply dated 07.07.2014 expressing their desire to renew the lease.

3. Narrating all these fact, the respondents herein first filed a suit C.S.No.626/2014 before The High Court of Judicature at Madras on its Civil Original side, for past and future damages at the rate of Rs.66,000/- per month from 01.01.2012 the date from which the revision petitioners agreed to pay rent at Rs.66,000/- per month, till 31.05.2014 and thereafter, at a rate of Rs.4,00,000/- per month, being the estimated market rate of rent.

4. In the plaint at paragraph No.14, the plaintiffs (the respondents herein) had stated that the suit for damages filed reserving the right to initiate legal proceedings for recovery of possession of the property, in case the defendants (the revision petitioner herein) fail to surrender possession of the leased property.

Thereafter, the suit in O.S.No.50 of 2015 filed at the Sub-court in Ponneri, for recovery of possession by the landowners.

5. On receipt of the suit summons, the revision petitioners filed petition to reject the plaint. I.A.No.279 of 2016 filed alleging that though in C.S.No.626 of 2014 the respondents have stated that they reserve their right to file suit for recovery of possession, no leave was granted by High Court. On the date of filing C.S.No.626 of 2014 for damages, the plaintiffs were also entitled for the relief of recovery of possession. Having omitted to claim the relief for recovery of possession which had arisen on the same cause of action as stated in the notice dated 14.05.2014 and the respondents (land owners) were well aware from the reply notice dated 07.07.2014 given by the Corporation (revision petitioners) that they had no intention to hand over the vacant possession for the reasons stated in the reply, the subsequent suit is not maintainable since both the reliefs ought and might have sought in the previous suit.

WEB COPY

6. Relying on the judgment of the Hon'ble Supreme court rendered in *M/s.Virgo Industries (Eng) Private Limited -vs- M/s.Venture Tech Solutions Private Limited* reported in (2013) 1 SCC 625, the petition to reject the plaint was

filed claiming that the later suit for the relief of vacant possession is contemplated only with the leave of High court. In the absence of leave granted by the Court, the suit O.S.No.50 of 2015 is hit by the provisions of Order II Rule 2 (3) C.P.C.

7. The Trial Court, after analysis of Order II Rule 2(3) of C.P.C, the purpose for which the said provision is in the statute and the case laws relied by the Counsels on either side, held that the cause of action for the suit for recovery of damages arose the moment notice given to the tenant holding over claiming damages for use and occupation. Whereas, the cause of action for eviction arose only on expiry of period for handing over the vacant possession mentioned in the quit notice. Since the cause of action for the prior suit C.S.No.626 of 2014 and the cause of action for the subsequent suit O.S.No.50 of 2015 are different, the suit O.S.No.50/2015 is not hit by Order II Rule 2(3) of C.P.C.

8. The Trial Court further observed that, the suit for damages filed before the High Court, since the defendants Company is situated within the territorial limits of High Court and part cause of action arose within the jurisdiction of High Court. Relief for recovery of immovable property situated outside the territorial jurisdiction of the High Court limit cannot be entertained by

the High Court for want of territorial jurisdiction. Hence, the suit for recovery of possession filed before the Court whose territorial jurisdiction the property situated. The cause of action for these two suits are different, relief sought are different and the court which has jurisdiction to try the suits are different, hence the subsequent suit is not hit by Order II Rule 2 (3) of C.P.C.

9. The Learned Senior Counsel appearing for the revision petitioners submitted that, the law on this point is very clearly stated in *Virgo Industries case cited supra*. In case of omission to claim one out of many reliefs that could have been claimed in the prior suit, under Order II Rule 2 (3) C.P.C., the subsequent suit is barred in the absence of leave to file the subsequent suit. In the present case, the cause of action for the relief sought in both the suits is one and the same. The moment, the Corporation informed the landowners that they had no intention to hand over the vacant possession, cause of action to file the suit for vacant possession arisen. It is incorrect to say that the cause of action for recovery of possession arose only after the time for eviction expired on 31.12.2014.

10. The Learned Counsel for the landowners/respondents submitted that, the suit land was leased out to M/s.Burmah Shell Company Limited, in the

year 1963 for a period of 30 years. The rent paid was Rs.1,200/- per quarter. The specific performance suit filed by the Corporation O.S.No.340 of 1997 seeking renewal of lease dismissed on 14.07.2009. Nearly 35 members of the respondents/plaintiffs family are depending on this land and they have decided to use the land to augment better income. The mighty Corporation cannot force the landowners to lease the land, which the landowners not inclined. The frivolous petition to reject the plaint was filed and same was dismissed. Instead of proceeding with the trial, the present revision petition is filed invoking the superintend power of the High Court over the subordinate judiciary only to protract the proceedings and to deprive the landowners their due right of enjoying their property as enshrined under the Constitution of India. The renewal of lease is not automatic. In this case, the 30 years lease period came to end as early as 1993 and even after lapse of 27 years, the land owners are not able to utilise the land the manner they desire. सत्यमेव जयते

11. The Learned Counsel for the landowners further submitted that, the suit O.S.No.50 of 2015 filed for recovery of possession after causing due notice. The time to evict and hand over vacant possession was granted till 31.12.2014. In the reply notice dated 07.07.2014, the Corporation expressed their

desire to renew the lease. The cause of action to file the suit for eviction commences only after the leasee refused or fail to vacate and hand over the possession by the time specified in the quit notice and not earlier. If any suit filed prior to 31.12.2014 it would have questioned as premature suit. When C.S.No.626 of 2014 filed before the High Court on 31.07.2014, for damages the cause of action for suit for recovery of possession did not arise and therefore, same was mentioned in the plaint and right to file the suit for recovery of possession was reserved. For suits which arise under the same cause of action alone leave of the Court is contemplated under Order II Rule 2 (3) of CPC and not otherwise.

12. Distinguishing the facts in the instant case and the facts involved in the *Virgo case* the Learned Counsel for the respondents submitted that, the Hon'ble Supreme Court in *Virgo case* held that prior suits for permanent injunction restraining the vendor from alienating or encumbering the suit property which is subject matter of agreement of sale, without relief for specific performance and latter suits for specific performance will suffer the bar under Order II Rule 2 (3) of C.P.C. Whereas the facts of the present case, the prior suit was for damages for use and occupation of the land holding over and the later suit is for recovery of vacant possession. The cause of action for these two suits are not

one and the same.

13. Heard the Learned Senior Counsel for the petitioners and the Learned Counsel for the respondents.

14. To reject a plaint, the Court should satisfy itself that the plaint suffers any one or more defect mentioned in Clauses (a) to (f) under Order VII Rule 11 of C.P.C. According to the revision petitioners, a person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits, to sue for all such reliefs, he shall not afterwards sue for any relief omitted, except with the leave of the Court. The respondents were entitled to seek for vacant possession along with relief of damages when they filed the suit for damages. Without obtaining leave prior suit filed for damages alone. Therefore, the subsequent suit for vacant possession is hit by Order II Rule 2(3) of C.P.C. Referring the bar under Order II Rule 2 (3) of C.P.C and clause (d) of Order VII Rule 11 of C.P.C which says plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law, it is contended that the suit has to be rejected and the application filed to that effect was wrongly dismissed by the Court.

15. In support of the above submissions, the decision of *Virgo* case cited supra is relied by the revision petitioners.

15.1. In *Virgo* case, the foundation of the suits is an agreement to sale of immovable property. Prior suit is for permanent injunction not to encumber the subject property. The subsequent suit is for specific performance. The High court of Madras held that there is no bar to file the subsequent suit for specific performance even if the earlier suit is only for permanent injunction, since cause of action for the subsequent suit arise only after the expiry of the period fixed for completion of the contract. This judgment was reversed by the Supreme Court, holding that the cause of action to file suit for specific performance was in existence when the suit for Injunction filed. Though leave of the court sought to file suit for specific performance at a later stage, same was not granted. The plaintiff need not wait for expiry of due date for performance of agreement for filing suit for specific performance, if plaintiff anticipates breach of agreement by overt acts of defendant.

15.2. A scrutiny of *Virgo* Case, distinction between the case in hand and the facts of the *Virgo* case could be palpably seen. The foundation for the litigation in *Virgo* case is the agreement for sale. The prior suit is for injunction

and later suit is for specific performance. The ingredient to lay a suit for specific performance is the agreement and the plaintiff ready and willing to pay the sale consideration. Once the refusal of the vendor to execute the sale deed made explicit, the cause of action for specific performance arise, even if the period for completing the contract does not expire.

15.3. In Virgo case, under the agreement for sale, 6 months time to complete the contract was fixed. Before expiry of the said 6 months, apprehending alienation of the property suit for injunction filed. Thereafter, suit for specific performance filed. When injunction suit filed, there was no mandatory bar for the plaintiff to file the suit for the relief of specific performance also along with the suit for injunction. Therefore, relying upon Full Bench judgment of the Hon'ble Supreme Court rendered in *Vithalbhai (P) Ltd -vs- Union Bank of India case* reported in **2005 (4) SCC 315**, the Apex Court in Virgo case held that the subsequent suit without leave under Order II Rule 2 (3) C.P.C is barred.

16. As in the instant case, the commencement of cause of action was the issue in Vithalbhai (P) Ltd. In this case, the suit for eviction was filed before the expiry of lease period, immediately after the reply to quit notice received,.

When the defendant took a plea at a later stage that the suit barred as prematurely initiated before the date of maturity of cause of action, the Three judges Bench of the Supreme Court, laid the guidelines when such plea will lead to rejection of suit. The relevant portion of the judgment is extracted below for proper appreciation of the law laid in Virgo case:-

A suit of a civil nature disclosing a cause of action even if filed before the date on which the plaintiff became actually entitled to sue and claim the relief founded on such cause of action is not to be necessarily dismissed for such reason. The question of suit being premature does not go to the root of jurisdiction of the Court; the Court entertaining such a suit and passing decree therein is not acting without jurisdiction but it is in the judicial discretion of the Court to grant decree or not. The Court would examine whether any irreparable prejudice was caused to the defendant on account of the suit having been filed a little before the date on which the plaintiff's entitlement to relief became due and whether by granting the relief in such suit a manifest injustice would be caused to the defendant. Taking into consideration the explanation offered by the plaintiff for filing the suit before the date of maturity of cause of action, the Court may deny the plaintiff his costs or may make such other order adjusting equities and satisfying the ends of justice as it may deem fit in

its discretion. The conduct of the parties and unmerited advantage to plaintiff or disadvantage amounting to prejudice to the defendant, if any, would be relevant factors. A plea as to non-maintainability of the suit on the ground of its being premature should be promptly raised by the defendant and pressed for decision. It will equally be the responsibility of the Court to examine and promptly dispose of such a plea. The plea may not be permitted to be raised at a belated stage of the suit. However, the Court shall not exercise its discretion in favour of decreeing a premature suit in the following cases : (i) When there is a mandatory bar created by a statute which disables the plaintiff from filing the suit on or before a particular date or the occurrence of a particular event; (emphasis added) (ii) when the institution of the suit before the lapse of a particular time or occurrence of a particular event would have the effect of defeating a public policy or public purpose; (iii) if such premature institution renders the presentation itself patently void and the invalidity is incurable such as when it goes to the root of the Court's jurisdiction, and (iv) where the lis is not confined to parties alone and affects and involves persons other than those arrayed as parties, such as in an election petition which affects and involves the entire constituency. (See: Samar Singh v. Kedar Nath and Ors. 1987 Supp. SCC 663).

17. Later the Apex Court in ***Inbasagaran and others -vs-***

S.Natarajan reported in **2015 (11) SCC 12**, referring Virgo case after distinguishing it on facts held that, in case the intending purchaser put in possession as part performance and if he apprehend dispossession, prior suit for bare injunction founded on imminent threat of dispossession and subsequent suit for specific performance on the strength of sale agreement will not be hit by Order II Rule 2 C.P.C.

18. The Learned Judges in *Inbasagaran case* added a word of caution to the Courts how the ratio decidendi principle to be applied. Borrowing the words of Lord Denning the Court held that:-

“29. In the instant case, as discussed above, suit for injunction was filed since there was threat given from the side of the defendant to dispossess him from the suit property. The plaintiff did not allege that the defendant is threatening to alienate or transfer the property to a third party in order to frustrate the agreement.

30. It is well settled that the ratio of any decision must be understood in the background of the facts of that case. The following words of Lord Denning in the matter of applying precedence have been locus classicus.

“Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.”

31. In the case of Bharat Petroleum Corpn. Ltd. and Another vs. N.R. Vairamani and another, (2004) 8 SCC 579 at page 584, this Court observed :-

“9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid’s theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear [pic]to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define.

Judges interpret statutes, they do not interpret

judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton 1951 AC 737 (AC at p. 761) Lord MacDermott observed: (All ER p. 14 C-D)

“The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge, ...”

32. Having regard to the facts and evidence of the instant case, we are of the view that the issue decided in Virgo Industries (supra) is not applicable in this case.

19. As far as facts of the present case, the land in dispute was leased to the Corporation and there is mandatory bar to institute suit for recovery of leased immovable property without causing notice under Section 106 of Transfer of Property Act. The notice under Section 106 of Transfer of Property Act was given on 14.05.2014 to vacate the suit property on or before 31.12.2014. The Corporation, through its reply dated 07.07.2014 expressed its desire to renew the lease. In the three page reply, there is no indication that they will not vacate the premises, contrarily they have urged the Counsel who caused notice on behalf of

the landowners to advise the landowners the correct legal position and to extend their full Cooperation to BPCL (revision petitioner) to conclude the renewal of lease. This reply will not give any cause of action to file the suit for recovery of possession prior to 31.12.2014.

20. The object of Order II Rule (2) C.P.C is to avoid multiplicity of litigation on the same cause of action. The object is not to throw the genuine litigant at threshold on fanciful and illusionary argument. Anticipating such arguments, the framers of the law had explained Order II Rule 2 (3) C.P.C with illustration. The High Court of Uttar Pradesh by a State Amendment had gone to an extent of giving further explanation and illustration to the existing explanation and illustration.

21. The explanations and illustrations are to understand the main provisions. Though the explanation brought in by State amendment by Uttar Pradesh is not binding to Tamilnadu in strict sense, they are meaningful and helpful to interpret Order II Rule 2 (3) C.P.C. Hence the main provision, explanation and illustration along with the UP state amendment are extracted below to expose the fallacy in the submission of the revision petitioners.

Order II Rule 2 with its sub rules and illustration reads as follows:

"2. Suit to include the whole claim. - (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) **Relinquishment of part of claim.** - Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) **Omission to sue for one of several reliefs.** - A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation. - For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

Illustration: A lets a house to B at a yearly rent of Rs.1200. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid. A sues B in 1908 only for the rent

due for 1906. A shall not afterwards sue B for the rent due for 1905 or 1907."

State Amendment- (Uttar Pradesh) *In its application to the State of Uttar Pradesh in Order II, Rule 2 -*

(a). the existing Explanation shall be numbered as Explanation I, and after Explanation I, as so numbered, the following Explanation II shall be inserted, namely-

"Explanation II – For the purposes of this rule a claim for the ejectment of the defendant from immovable property let out to him and a claim for money due from him on account of rent or compensation for use and occupation of that property, shall be deemed to be claims in respect of distinct causes of action";

(b). for the Illustration, the following Illustration shall be substituted, namely-

"Illustration – A lets immovable property to B at an yearly rent. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid, and the tenancy is determined before A sues B in 1908, only for the rent due for 1906. A may afterwards sue B for ejectment but not for the rent due for 1905 or 1907." - U.P.Act (57 of 1976). (1-1-1977)

22. In this connection, it is also relevant to refer the Constitution

Bench judgment in **Gurbux Singh -vs- Bhooralal** reported in (1964 (7) SCR 831)

which has said,

"In order that a plea of a bar Order II Rule 2(3), Civil Procedure Code should succeed the defendant who raises the plea must make out (1) that the second suit was in respect of the same cause of action as that on which the previous suit was based, (2) that in respect of that cause of action the plaintiff was entitled to more than one relief, (3) that being thus entitled more than one relief the plaintiff, without leave obtained from the Court, omitted to sue for the relief which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the later suit is based there would be no scope for the application of the bar. No doubt, a relief which is sought in a plaint could ordinarily be traceable to a particular cause of action but this might, by no means, be the universal rule. As the plea is a technical bar it has to be established satisfactorily and cannot be presumed merely on basis of inferential reasoning. It is for this reason that we consider that a plea of a bar under Order II, Rule 2, Civil Procedure Code can be established only if the defendant files in evidence the pleadings in the previous suit and thereby proves to the Court the identity of the cause of action in the two suits. It of 1950 were not filed by the appellant in the

present suit as evidence in support of his plea under Order II, Rule 2, Civil Procedure Code. The learned trial Judge, however, without these pleadings being on the record inferred what the cause of action should have been from the reference to the previous suit contained in the plaint as a matter of deduction. At the stage of the appeal the learned District Judge noticed this lacuna in the appellant's case and pointed out, in our opinion rightly, that without the plaint in the previous suit being on the record, a plea of a bar under Order II, Rule 2, Civil Procedure Code was not maintainable."

23. Order VII Rule 11 (d) of C.P.C empowers the Court to reject the plaint if the suit appears from the statement in the plaint to be barred by any law. Order II Rule 2 of C.P.C bars a person filing subsequent suit for reliefs omitted in the earlier suit, provided he was entitled for the said relief in respect of the same cause of action of the earlier suit.

24. The statement in the plaint regarding the cause of action in the prior suit and subsequent suit are extracted below :-

Plaint in O.S.No.626/2014 : The prior suit for damages:-

Para 14: "The plaintiff reserve their right to

initiate legal proceedings for recovery of possession of the property, in case defendants fail to surrender possession of the leased property” (emphasis added)

Para 16: “The cause of action for the suit arises within the jurisdiction of this Hon'ble Court where the offices of all the defendants are situate, then under Clause 6 of the registered Lease Deed, dated 18.10.1963, the property in Survey No.72, Naravarikuppam Village within the Registration District of Chennai – North, Chennai 52.” M/s. Burmah Shell Oil Storage and Distributing Company of India Limited by Late. S.K.Kanniah Naidu, and on 30.03.1966 by a deed of partition, the Leased property was allotted to S.K. Paramanandam, the father of the Plaintiff's., on 25.01.1972 when the plaintiff's father died and on subsequent dates when the plaintiff's become the absolute owners of the property as the legal heirs of S.K.Paramanandam, after the plaintiff's mother Mrs.P.Saraswathi Ammal and sister K.Lakshmi relinquished their rights over the leased property., on 01.11.1993 when the lease stands terminated by efflux of time., and on -10-1996, when the defendants filed O.S.No.340 of 1997 on the file of the District Munsif Court, Tiruvotriyur, seeking declaration that defendants

are entitled to renewal of lease for a further period of 30 years from 01.11.1963 for a mandatory order for execution of renewal of lease deed, and for injunction., and on 14.07.2009 when O.S.No.340 of 1997 was dismissed for non prosecution., on 23.01.2012, when the defendants agreed for renewal of lease from 01.01.2012 on a monthly rent of Rs.66,000/-., and failed to honour the commitment., on 14.05.2014, when the plaintiffs sent the lawyer's notice demanding payment of arrears of damages at the rate of Rs.66,000/- per month from 01.12.2012 up to 31.05.2014 and future damages at the rate of Rs.4,00,000/- per month being the market rate of monthly rent., and on 07.07.2014 when the defendants sent their reply falsely claiming that they have paid rent up to 31.12.2015 and on subsequent dates.

Plaint in O.S.No.50 of 2015: The later suit for recovery of vacant possession:-

Para 8: The plaintiffs submit that the lease stands terminated. The defendants are not entitled to continue in possession of the property. Their possession of the property after 31.12.2014 is unlawful. Hence the plaintiffs are filing this suit for recovery of possession of the plaint scheduled property. The defendants are duty bound to remove all their belongings and handover

vacant possession of the plaint scheduled property to the plaintiffs

Para 9: The cause of action for the suit arose within the jurisdiction of this Hon'ble Court where the suit property is situate, on 18.10.1963 when by executing a lease deed registered as Document No.444 of 1963 on the file of Sub Registrar, Sembium, the plaintiff's Predecessors leased the plaint scheduled property in favour of the Burma Shell Co Ltd., for a period of 30 years from 01.11.1963 on subsequent dates when the defendants become the successor-in-interest of the erstwhile Burma Shell Co. Ltd., on 31.10.1993 when the lease stood determined by efflux of time, during 1997 when the 2nd defendant filed O.S.No. 340 of 1997 on the file of District Munsif Court, Thiruvotriyur, seeking the relief of renewal of the lease; on 14.07.2009 when O.S.No.340 of 1997 was dismissed by the Learned District Munsif, Thiruvotriyur, and on subsequent dates when on 14.05.2014 the plaintiffs through their counsel sent a notice to the defendants demanding to handover vacant possession of the property on or before 31.12.2014 on 01.08.2014, when the plaintiff's filed C.S.No.626 of 2014 on the file of the Hon'ble High Court, Madras for recovery of damages without

prejudice to their rights to file a suit for recovery of possession of the plaint scheduled property and subsequent dates; when the defendants failed to vacate and handover the possession of the plaint scheduled property to the plaintiffs.

25. Reading through the statements in the respective plaint, it is ample clear that the plaintiffs/land owners have reserved the right to file the subsequent suit in the event the tenant failed to surrender possession of the leased property within the time given (31.12.2014). The reply letter expressing desire to renew the lease cannot be presumed as refusal to vacate, as erroneously contended by the revision petitioner. If it is to be so presumed, it shall be looked as audacity of a mighty corporate, squatting on the land of meek land owners, refuse to pay reasonable rent or vacate and hand over the property, but bend upon to litigate and protract the legal proceedings on all flimsy grounds available under the sun, to make the landowners tired of litigation and submit to their might. Article 227 of the Constitution cannot be abused in this manner. Therefore, this Court hold that the Civil Revision Petition is liable to be dismissed.

26. Before parting, this Court is compelled to record certain facts in this case, which are, though not germane to decide the revision petition, but

warrants in the context of the farmers protest across the Country expressing their reservations about the conduct of the corporate companies in the contest of contract farming contemplated under the new Farm Laws.

27. When the scope of revision jurisdiction under section 115 of C.P.C was restricted by amendment Act 46/1999 (w.e.f 01.07.2002) and alternate gateway under Article 227 of the Constitution was opened with the intention to prevent the abuse of power and miscarriage of justice. In this case, when the Trial Court has thoughtfully analysed the facts, law and had held the suit is not barred by any law, the defendants a Corporate Giant in Oil Sector, instead of contesting the case on merit had filed the revision petition invoking Article 227 of the Constitution, mentioning throughout the petition, as if the impugned order was passed in I.A.No.129 of 2016, whereas the correct number of the order under challenge is I.A.No.279 of 2016. The Registry of this Court should have returned the papers for defective filing. Surprisingly, contrary to the normal course, the passing clerk was kind enough to correct the error in pencil and passed the papers, fit for hearing. The Registry did not print the correct initial of the respondent counsel in the cause list who entered caveat. By printing the name of the Counsel as Ravi with wrong initial 'S' instead of 'V' an *ex-parte* order came to be passed

on 19.04.2018 in favour of the revision petitioners. When the respondents came to know about the *ex-parte* order, they filed petition for restoration of the Civil Revision Petition. Then, with all alacrity, the Registry has raised the point of maintainability of the restoration petition. Only after the due intervention of the Court, the revision petition was restored on file.

28. These facts are highlighted by this Court with much constrain and with very heavy heart, to place on record and deprecate the practise how corporate companies are able to manipulate the system to work against the poor private litigants. If this is the attitude of corporate companies, this Court able to see the reason why farmers are agitating across the Country fearing harassment at the hands of the Corporate Companies when contract farming become inevitable for them in due course, on implementation of the Farm Laws. The suffering of respondents herein is index of the large scale apprehension across the Country. Hence, it is high time for the Corporate Companies more particularly the Public Sector Undertakings to change their attitude and conduct, while dealing with the individual land owners for commercial purpose. They have the duty to dispel the mistrust prevailing among the public, by restraining themselves from filing frivolous petitions with an oblique intention of making the counterpart fall in the

vicious cycle of litigation.

29. As a result, though this is a fit case to dismiss with exemplary costs, with hope that the revision petitioners will not any further prolong the litigation, dismiss the Civil Revision Petition with the direction to the Trial Court to take up the trial in O.S.No.50/2015 on priority basis and complete the Trial preferable within 4 months from the date of receipt of the order copy.

30. Accordingly, the ***Civil Revision Petition is dismissed.*** No order as to costs. Consequently, connected Miscellaneous Petition is closed.

22.12.2020

Index :Yes
Speaking order/Non-speaking order
bsm
To:-
The Subordinate Court, Ponneri.

WEB COPY

C.R.P.(PD).No.1176 of 2018
& C.M.P.No.6062 of 2018

Dr.G.Jayachandran,J.

bsm



Pre-delivery order in
C.R.P.(PD).No.1176 of 2018
& C.M.P.No.6062 of 2018

WEB COPY

22.12.2020