

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reservation	28.11.2019
Date of Judgment	10.01.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

OSA No.124 of 2019

Indian Oil Corporation,
through its General Manager,
Southern Region,
Indian Oil Bhavan,
No.139, Nungambakkam Main Road,
Chennai-600 034.

: Appellant/1st Defendant

Vs.

1.PKS Prashath
2.PJK Sairam
3.Sri Venkatesa Enterprises
A Partnership Firm rep. by
one of its Partners
C.G.Rajkumar

: R1 and R2/Plaintiffs

: 3rd Respondent/2nd Defendant

Prayer: Original Side Appeal filed under Order 36 Rule 1 of
Original Side Rules r/w clause 15 of the Letters Patent, against
the order, dated 04.09.2018 passed in C.S.No.532of 2005.

C.S.No.532/2005:

Civil suit praying that this Hon'ble Court be pleased
to pass a decree and judgment against the defendants:

a) directing the defendant to surrender vacant possession of
the premises mentioned in the schedule.

b) directing the defendant to pay damages for use and
occupation in the sum of Rs.7,20,000/- (Rupees seven lakhs and
twenty thousand only) and also future damages for use and
occupation in the sum of Rs.20000/- per month in respect of the
demised premises from the date of plaint till surrender of
vacant possession of the premises:

c) directing the defendant to pay the plaintiff the costs of
the suit.

For Appellant : Mr.T.R.Rajagopalan
Senior counsel
for Mr.Anantha Natarajan

For R1 and R2 : Mr.G.Muthukumar

For 3rd Respondent : Mr.A.Selvendran

J U D G M E N T

T.KRISHNAVALLI, J

This OSA is directed against the order, dated 04.09.2018 passed in C.S.No.532 of 2005 by the learned single Judge of this court.

2.The case of the plaintiffs is that their father Late Mr.Kuppu Reddy has given the suit property to run a Petrol Retain Outlet for a period 10 years commencing from 01.09.1966 and thereafter, the lease period was extended for a further period of 10 years till 1986 and subsequently, a lease deed was entered for 10 years to run the Petrol Bunk for Rs.3,000/- as monthly rent and thereafter, renewal was not extended and in the meantime, the father of the plaintiffs died on 07.03.1995 and by virtue of Deed of settlement, the plaintiffs have become the full and absolute owners of the suit property and the plaintiffs ownership over the suit property was accepted on 20.04.2014 by the application made in Application No.822 of 2016. Thereafter, the landlord given notice dated 12.10.1999 for willful default of rent for more than 37 months and on 12.10.1999, the landlord terminated the lease by way of letter. Hence, the plaintiffs filed a suit in C.S.No.532 of 2005 for eviction.

3.The 1st defendant filed a written statement contending that IOC possession is lawful and therefore, the plaintiffs cannot seek damages on the basis that its possession and prays for dismissal of the suit.

4.The suit was decreed, dated 04.09.2018 holding that the plaintiffs are entitled to immediate repossession of the suit property since the defendants were running the petrol bunk and two months time was given to deliver the vacant possession to the plaintiffs till 04.11.2018. Aggrieved by the said judgment, the 1st defendant is before this court.

5.Heard both sides and perused the materials available on record.

6.The points for consideration to be decided in this appeal are as follows:-

(1) Whether there is a valid and subsisting lease of the suit property in favour of the first defendant?

(2) Whether the contention of the first defendant that they are in lawful possession of the suit property is sustainable?

(3) Whether the defendants are entitled to continue in possession of the suit property?

(4) Whether the plaintiffs are entitled to recover possession of the suit property?

(5) Whether the plaintiffs are entitled to damages for use and occupation in the sum of Rs.7,20,000/-?

(6) Whether the plaintiffs are entitled to the sum of Rs.20,000/- per month as damages for use and occupation from the date of plaint as prayed for? and

(7) To what other relief?

Point No.1:-

7. It is admitted on the side of the respondents/defendants that the suit property originally belonged to the plaintiffs father and after the death of their father, the suit property devolves on the plaintiffs. Further, the plaintiffs stated that the lease agreement between the plaintiffs and the first defendant was entered into on 01.09.1966 and further, it was renewed till 31.08.1986. But on the other hand, the first defendant stated that the plaintiffs admitted in their plaint that agreement was renewed till 1996 and the lease was terminated only on 12.10.1999 and the plaintiffs always treating the first defendant as their lawful tenant and hence, the first defendant is not liable to pay damages to the plaintiffs.

8. It was stated in para 4 of the amended plaint that there was negotiation for further extension of lease on condition that the first defendant should pay the monthly rent of Rs.3,000/- for a period of 10 years from 01.09.1986 to 31.08.1996 and further renewal was attempted on mutually agreed terms between the parties and however, after 1996, the parties could not agree upon the terms and hence, there was no further renewal of the lease beyond August 1996. To prove that after 1996, there was renewal of lease agreement, no document was filed on the side of the defendants. Hence, it is held that there was no further

renewal after August 1996. Point No.1 is answered accordingly.

Point Nos.2 to 4:-

9.Already, it was decided that there was no further renewal of lease after 31.08.1996 and further, no rents have been paid after 1995. The plaintiffs returned the monthly rent sent by way of cheques for a sum of Rs.3,000/- as per the original terms of lease and afterwards, the defendants are in possession and carrying on the business in the suit property without authority of a valid document. Hence, it reveals that the defendants are not in lawful possession as on date and the defendants are not entitled to continue in possession of the suit property. The plaintiffs are the lawful owners of the suit property and the defendants are residing there without authority of law and the plaintiffs are entitled to recover possession of the suit property from the defendants.

10.Accordingly, the point Nos.2 to 4 are answered in favour of the plaintiffs.

Point Nos.5 and 6:-

11.The plaintiffs claimed Rs.7,20,000/- towards damages and Rs.20,000/- per month towards rent. The suit property is situated in prime location and the defendants are running a Petrol Bunk till date. Hence, the amount claimed by the plaintiffs towards damages as well as Rs.20,000/- per month towards rent are reasonable. Therefore, it is held that the plaintiffs are entitled to Rs.7,20,000/- towards damages for use and occupation of the property and a sum of Rs.20,000/- per month as future damages for use and occupation from the date of filing till the date of judgment.

12.Accordingly, the point Nos.5 and 6 are answered in favour of the respondents/plaintiffs.

Point No.7:-

13.Since the points 1 to 6 are answered in favour of the respondents/plaintiffs, the findings arrived at by the single Judge is correct and accordingly, the original side appeal is liable to be dismissed.

14.In the result, the OSA fails and the same is dismissed. No costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

1.The Sub Assistant Registrar
Original Side
High Court, Madras 104.

+2 Ccs to Mr.G.Muthukumar, Advocate sr 28961.

+3 Ccs to Mr.Anantha Natarajan, Advocate sr 2830.

OSA No.124 of 2019

SSD(CO)
SP(25/02/2020)



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