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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.11.2021

PRONOUNCED ON : 07.12.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

S.A.No.370 of 2019
and C.M.P.Nos.15674 & 5429 of 2019

Bharat Petroleum Corporation Ltd.,
Represented by its Regional Director,
No.1, Ranganathan Gardens,
11th main road, Anna Nagar,
Chennai - 600 040

... Appellant/ Appellant/1st Defendant

Vs.

Cove Holdings Pvt Ltd.,
Represented by its authorized signatory
Mr.Joseph Philip,
having office at 5/124, Pebble Beach Road,
Enjambakka, Chennai,
Kancheepuram,
Tamil Nadu - 600115.

... 1st Respondent/
1st Respondent/Plaintiff

(Formerly known as,
Rama Krishnakulvantraai Holding Pvt Ltd.,
Represented by its Director,
Mr.Ritesh Rai and Rajiv Rai,
No.6/13, North Avenue, K.P.Puram,
Chennai - 600 028)

2.K.G.Loganathan

... 2nd Respondent/
2nd Respondent/ Defendant 2

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree in A.S.No.20 of 2017 dated 13.11.2018 on the file Sub Court Judge, Ponneri, and confirming the judgment and decree passed in O.S.No.100 of 1999 dated 15.03.2017 on the file of the District Munsif Court, Thiruvottiyur and praying to set aside the same and dismiss the suit.

For Appellant : Mr.V.Anantha Natarajan



For R1 : Mr.Roshan Balasubramanian

For R2 : No appearance

JUDGMENT

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This Second Appeal is filed challenging the judgment of the learned Subordinate Judge, Ponneri, in A.S.No.20 of 2017, confirming the judgment of the learned District Munsif, Thiruvottiyur in O.S.No.100 of 1999.

2. The first respondent filed the suit against the appellant and second respondent for the reliefs of :

i)direction to the defendants to quit and deliver vacant possession of the suit property to the plaintiff after removing the building, all structures, fuel filling station, tankers etc., from the suit property.

ii)granting a relief of permanent injunction, restraining the defendants, their men, agents, servants and others authorized by them from putting up any further additional or new constructions or improvements upon the suit property and for other reliefs

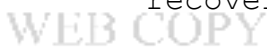
3. The case of the first respondent, in brief, is as follows:

First respondent concern was originally a partnership firm. The suit property was purchased by the first respondent from one K.V.Manicker and others through a registered sale deed dated 06.07.1960. The suit property was let out to appellant which was originally known as M/s.Burmah Shell Oil Storage and Distribution Company of India Limited for erecting a fuel filling station. A lease agreement was executed on 14.07.1962 for a period of twenty years. The lease expired on 14.07.1982. By virtue of the Burmah Shell (Acquisition of undertaking in India) Act 1976 by the Government of India, the right, title M/s.Burmah Shell Oil Storage and Distribution Company of India Limited, in relation to its undertakings in India, stood transferred to and vested with the Central Government. Subsequently, on 24.01.1975 under Section 7 of the above Act, the Government of India issued a notification in GSR 40 (3) directing all the rights, title and interest and liabilities of Burmah Shell Oil Storage and Distribution Company of India Limited in relation to its undertakings in India shall instead of continuing to vest in the Central Government vest with Burma Shell Refineries Limited with effect from 24.02.1976. By virtue of the issue of fresh certificate of incorporation under the provisions of companies Act, the name of the company was finally changed to Bharat Petroleum Corporation Limited, that is, the



first defendant herein, who succeeded to the lease hold right in respect of the site of the suit property. First defendant by a letter dated 20.03.1982, requested the renewal of the lease for a further period of twenty years commencing from 01.04.1982. Prior to the letter dated 20.03.1982, plaintiff informed the first defendant by a letter dated 17.03.1982, that plaintiff is not interested to renew the lease agreement on account of certain specific reasons, which adversely affected plaintiff's business. The very occupation of the first defendant of the suit property on and from 01.04.1982 is unauthorized. First defendant has sublet the suit property to the second defendant who is running a petrol bunk under the name and style of Sree Venkateswara Service Station. The second defendant is also carrying on a service station which was not authorized even to the first defendant. Second defendant has been causing lot of nuisance, not only to plaintiff but also to other neighbors by dumping the wastes like oil, sledges, used and washed waste water. The second respondent started to erect building construction in the suit property without the written consent and knowledge of the plaintiff inspite of the objections. Plaintiff sent notice dated 11.01.1999, terminating the tenancy and demanding the defendants to quit and deliver vacant possession of the suit property by giving three months time. First defendant received notice on 13.01.1999, but the defendants have not complied with the demands of the plaintiff. Therefore, the suit.

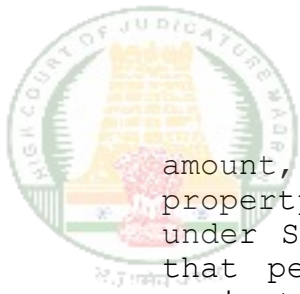
4. The first defendant filed written statement. It is the case of the first defendant that the cause title do not reveal whether the firm is a registered one and especially when the other partners are not impleaded in the proceedings. The lease was renewed by this defendant by letter dated 25.02.1982. It is the contractual extension and the defendants are entitled to remain in possession for a period of twenty years. It is denied that the suit property was sublet to the second defendant. Second defendant was mere licensee running the retail business on behalf of the first defendant. Second defendant is not at all in the picture now. Since, he was only an agent and certain malpractices committed by the second defendant culminated his tenancy being terminated. First defendant is in physical and actual possession of the suit property. First defendant put up superstructure on the demised premises and they are entitled to purchase the vacant land. First defendant filed I.A.No.102 of 2002 under Section 9 of the Tamil Nadu City Tenants Protection Act. It is further stated in the additional written statement that there is no sub-lease to the second defendant and first defendant has hundreds of outlets throughout India. They have been managed through commission agents. Therefore, the defendants prayed for the dismissal of the suit.



i) Whether the plaintiff is entitled for the relief of recovery of possession as prayed for?
ii) Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?
iii) To what other reliefs plaintiff is entitled?

7. The learned counsel for the appellant submitted that originally the suit property was purchased by partnership firm. Then, the partnership firm was converted as Private Limited Company. There was no contractual relationship between the Private Limited Company and the appellant. The suit was not properly instituted. Appellant is entitled to continue as a lessee in respect of the suit property. Appellant has put up construction in the suit property by spending huge amount. If the appellant is asked to quit and deliver vacant possession now, the appellant, a public sector undertaking, engaged in the service of public would be put to much hardship. Without considering all these aspects, both the Courts have wrongly decreed the suit. Appellant's endeavor is to protect its right by entertaining this Second Appeal.

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amount, especially when the first respondent requires the suit property for its own use. Though, the appellant filed a petition under Section 9 of the Tamil Nadu City Tenant's Protection Act, that petition was dismissed. No further proceedings was taken against the dismissal of the petition. Appellant cannot continue to remain in the suit property after the expiry of the lease period and after termination of lease agreement by advance notice. Both the Courts below have rightly decreed the suit. Thus, the learned counsel for the first respondent prayed for dismissal of this Second Appeal.

9. Considered the submissions of the learned counsel appearing for both the parties and perused the records.

10. There is no dispute with regard to the fact that the suit property belongs to the first respondent. First respondent was originally a partnership firm, later changed as Private Limited in the name of M/s.Ram Krishnan Kulwant Rai Holdings Private Limited. During the pendency of appeal as per order passed in C.M.P.No.7396 of 2021, first respondent's name is changed as (M/s.Cove Holdings Private Limited, Represented by its authorized signatory, Mr.Joseph Phillip, having office at 5/124, Pebble Beach Road, Enjambakkam, Chennai, Kancheepuram, Tamil Nadu, India - 600115). It is seen from the judgments of the Courts below that there was a technical objections raised with regard to the maintainability of the suit by the first respondent. However, on going through the records that the first respondent partnership firm was converted as M/s.Ram Krishnan Kulwant Rai Holdings Private Limited, it was found that first respondent was entitled to maintain the suit. There is also no dispute with regard to the lease agreement between the appellant and first respondent dated 14.07.1962 for twenty years. It appears that there is no further extension of lease period through any lease agreement. However, the appellant continue to remain in the property as a lessee by holding over the suit property. Notice terminating the lease was issued to the appellant on 11.01.1999. Only objection that was raised by the appellant is that appellant filed I.A.No.102 of 2002 under Section 9 of the Tamil Nadu City Tenants Protection Act for purchase of the suit property. It is seen that this petition was dismissed after contest on 30.04.2015. Therefore, appellant cannot claim any legal right to continue any further in possession of the suit property.

11. One of the main grievance of the first respondent is that appellant has not paid lease amount for many years. Appellant has not shown any record to show the continued payment of lease amount. It is the claim of the first respondent that appellant has not paid lease amount from March 1999. Though, it is denied by the appellant, appellant has not produced any



material to show that lease amount was paid regularly and without any default. It is for the tenant to prove the payment of lease amount. Appellant has not proved the payment of lease amount.

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12. Both the Courts below found that the lease agreement was terminated by the first respondent. Appellant has not paid the lease amount regularly and first respondent is entitled to recover the suit property for its own use. In view of the matter, both the Courts concurrently decreed the suit. There is no perversity or illegality in appreciating the evidence and granting the decree as prayed for by the first respondent. There is no substantial question(s) of law involved in this Second Appeal. This Court finds no reason to interfere with the judgment and decree of the first appellate Court, confirming the judgment and decree of the Trial Court.

13. Thus, the judgment and decree of the learned Subordinate Judge, Ponneri, in A.S.No.20 of 2017 confirming the judgment and decree of the learned District Munsif, Thiruvottiyur, in O.S.No.100 of 1999 is confirmed. Resultantly, this Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

1. The Subordinate Judge, Ponneri
2. The District Munsif, Thiruvottiyur
3. The Section Officer,
VR Section,
High Court of Madras.

+1cc to Mr.Roshan Balasubramanian, Advocate, S.R.No.64684
+1cc to Mr.V.Anantha Natarajan, Advocate, S.R.No.64725

S.A.No.370 of 2019
and C.M.P.Nos.15674 & 5429 of 2019

NRL(CO)
CT/28/12/2021