

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2021

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P.(PD) No. 2164 of 2020

Operation Mercy India Foundation (OMIF),
Having its registered Office at: 2-2-96,
Logos Bhavan, Medchal, Jeedimetla Village,
Quthbullapur Mandal, Medchal District,
Secunderabad, Telangana – 500 067, India.

Through

Col.Jeyaraj Azaria, (Retd) Age:62 years,
S/o.Rathinam Jeyaraj,
Senior Manager of
Good Shepherd Schools of Tamil Nadu

..Petitioner

VS.

Good Shepherd Matriculation Schools,
Rep.by its Correspondent
S.Selvakumar, S/o.Samydass,
R/o.Dharamanayaken Pattarai Village,
Vaiyavoor Post, Kanchipuram Taluk and District,
Tamil Nadu.

.. Respondent

(Cause title amended vide Court Order dated 04.12.2020 made in
C.M.P.No.13274 of 2020 in C.R.P.Sr.80952 of 2020 by TKRJ)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, calling for the records of the O.S.No.385/2019 on the file of Sub-Ordinate Court, Kanchipuram and strike off the plaint.

For Petitioner : Mr.C.Mani Shankar
Standing Counsel
for A.Ashwin Kumar

For Respondent : Mr.A.Sundaravadhanan

ORDER

The Revision Petition has been filed by the defendant in O.S.No.385 of 2019, now pending before the Sub-Ordinate Court, Kanchipuram.

2. The said Original Suit has been filed by the respondent / Good Shepherd Matriculation School represented by S.Selvakumar, claiming to be the Correspondent at Vaiyavoor, Kanchipuram, against the Revision Petitioner / Operation Mobilisation India represented by its Director Jayaraj Soloman Raja, seeking a judgment and decree in the nature of

permanent injunction against the defendant or anybody acting under the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit property, until he is evicted by due process of law and also for costs of the suit.

3. The Schedule of the property has been given as land in Survey No.536 – Acres 5.00 cents and a school building thereon with well and service connection No.116 with security deposit in Vaiyavoor Village, Kanchipuram Firka, Kanchipuram Taluk in Kanchipuram District. In the plaint, it has been stated that the cause of action for instituting the suit arose on 13.03.2012, when a registered lease deed was executed between the plaintiff and the defendant for a period of 30 years to run the educational institution and on 16.11.2019, when a complaint was lodged by the plaintiff before the Taluk Police Station, in view of various threats issued on various dates by the defendants.

4. The plaint is very short with just four paragraphs. In the first paragraph, the plaintiff had been described and in the second paragraph,

the defendant had been described and in the third paragraph, it has been stated that the plaintiff is a tenant of the suit premises under a regular lease deed dated 13.03.2012 and that a lease for 30 years for the period from 13.03.2012 to 13.03.2041 had been entered on an annual lease of Rs.100/-. It was stated that the tenancy is for non residential purpose namely to run the educational institution. In the fourth paragraph, it has been stated that the Tahsildar, Taluk Office, Kanchipuram, has issued licence to run the school on 25.11.2016. It has been stated that the original licence is filed along with the plaint and the periodical renewal of licence had also been issued. It has been further stated that the attitude of the defendant changed and threatening calls were made. Therefore, on 16.11.2019 a complaint was lodged by the plaintiff before the Taluk Police Station, who refused to give CSR number. Therefore, an online complaint was lodged by the plaintiff and receipt for the same is filed along with the plaint. The plaintiff claimed that they are entitled for protection as a tenant under the Tamil Nadu Regulation of Rights and Responsibilities of Landlord and Tenant Act, 2017. The plaintiff, therefore, stated that they were obliged to file the suit for permanent

injunction against the defendant seeking the relief as above. Along with the plaint, five documents have been filed. The first document was a certified copy of the lease deed dated 13.03.2012, the second document was the original licence issued by the Tahsildar, Taluk Office, Kanchipuram, on 02.11.2016. The third document was the original proceedings issued by the Joint Director of Matriculation School, Tamil Nadu, dated 06.10.2018, the fourth document was a xerox copy of the complaint dated 16.11.2019 and the fifth document was acknowledgement for the said complaint. The plaint had been verified by the Correspondent, Good Shepherd Matriculation School, who had also signed the plaint namely S.Selvakumar.

5. It must be kept in mind that the plaintiff had sought the relief of permanent injunction to protect possession until “he” is evicted by due process of law. This will naturally indicate that it is not the plaintiff / Good Shepherd Matriculation School, which seeks protection, but rather the correspondent, S.Selvakumar, who primarily seeks protection.

6. The agreement of lease deed has to be examined to determine the nature of relationship between the plaintiff and defendant. The lease deed is a registered document executed on 13.03.2012, for a period of 30 years.

7. I am not interested in any of the covenants of the lease deed but rather only to the parties to the document. The lease had been entered into between Operation Mobilisation India, a Charitable Company represented by its Director Mr.Jayaraj Soloman Raja and Good Shepherd Matriculation School in Kanchipuram Taluk in Kanchipuram, represented by its Correspondent, Mr.S.Selvakumar. The lessor is, therefore, Operation Mobilisation India and the lessee is Good Shepherd Matriculation School. Incidentally, since neither the said named lessor nor the named lessee can by any stretch of imagination sign any document and they have to be represented by some responsible person and for that purpose, the lessor had been represented by its director Mr.Jayaraj Soloman Raja and the lessee had been represented by its

correspondent, Mr.S.Selvakumar. Any breach of the covenants or an attempt for any breach of the covenants, can be complained only by the lessor or lessee. The officials, who had been shown as representing the lessor and lessee may or may not change or may even be removed or replaced during the course of the said 30 years. It is not imperative that they should be constant. The lease deed, has not granted any specific rights to the named individuals - as lessor and lessee. The rights and obligations are only with Operation Mobilisation India and with Good Shepherd Matriculation School.

8. Subsequent to the execution of the lease deed, the school namely Good Shepherd Matriculation School commenced its operations and it is stated to be running with much credit at the said premises. But, however, serious undercurrents developed to with respect to the position of Mr.S.Selvakumar, as a correspondent. He had also been termed as the correspondent in the plaint, and this nomenclature or this status is the primary reason why this Civil Revision Petition has been filed.

9. It is the contention of the Revision Petitioner that Mr.S.Selvakumar, has no manner of right or interest to represent Good Shepherd Matriculation School. It is stated that he had been appointed only as a 'staff' and he had been given additional responsibilities as an 'Operations Manager' for Puducherry Region. His work was therefore, till that particular point of time, actually recognised and appreciated. But for various other reasons, his appointment as a 'staff' also came to be terminated. It is therefore, the contention of the Revision Petitioner that owing to such termination S.Selvakumar, cannot continue to call himself as a 'correspondent' of the said school. It is also stated that since he is not an employee, he cannot further claim to represent the School either as a 'correspondent' or as a staff or in any other capacity.

10. It is, therefore, pointed out that the entire suit is vexatious. It is claimed that hiding behind the screen of the School, S.Selvakumar, had instituted the suit to protect his position as a staff / correspondent / Project Manager but certainly not to protect the interest of the School. It is also pointed out during the course of arguments that a correspondent

had actually been appointed for the School and who had also taken charge, but who was physically prevented from entering into the school premises by S.Selvakumar. Therefore, it is evident that S.Selvakumar has an axe to grind against the Revision Petitioner in his personal capacity.

11. The School namely Good Shepherd Matriculation School is a victim of this conflict and had been dragged into the lis and had been shown as a plaintiff. This is the reason why the Revision Petition has been filed under Article 227 of the Constitution of India, to strike off the plaint. That there are very serious differences of opinion between those in Management of the Revision Petitioner and S.Selvakumar, is evident by the documents filed by either side which include complaints, which include counter complaints, which also includes recommendations for prosecution and similar such documents over which I am not entering into a discussion.

12. The only aspect to be examined is maintainability of the suit on the basis of the cause of action paragraph and whether the suit would

stand the judicial scrutiny of this Court.

13. Arguments have been advanced by Mr.C.Mani Shankar, learned Senior Counsel appearing on behalf of the Revision Petitioner and by Mr.A.Sundaravadhanan, learned counsel appearing on behalf of the respondent.

14. For the sake of convenience, parties are referred as plaintiff and defendant. The defendant is the Revision Petitioner herein and the plaintiff is the respondent.

15. A lease deed had been executed by Operation Mobilisation India. The suit in O.S.No.385 of 2019 had been filed against Operation Mobilisation India. But the Revision Petition has been filed by the Operation Mercy India Foundation. This fact has been pointed out by Mr.A.Sundaravadhanan, learned counsel who stated that a different entity is now before this Court seeking to strike off the plaint. To this, my attention has been drawn to a Certificate of Incorporation, consequent

to Change of Name issued by the Registrar of Companies, stating that Operation Mobilisation India, has changed its name to Operation Mercy India Foundation. This certificate had been issued on 24.11.2006.

16. Mr.A.Sundarayadanan, learned counsel, however pointed out the date of the certificate and stated that the lease had been entered into by the Operation Mobilisation India. It is however pointed out by Mr.C.Mani Shankar, learned Senior Counsel that the cause title in the Revision had been permitted to be accepted by a judicial order dated 04.12.2020, passed by this Court in C.M.P.No.13274 of 2020.

17. Be that as it may, once again I am not entering into a deep discussion on that particular aspect. Let me now concentrate on the plaint which has been filed. It is admitted that as against S.Selvakumar, termination order has been passed, terminating him as a 'staff', by order dated 02.12.2019 issued by the Revision Petitioner herein. It is therefore stated that S.Selvakumar is no longer a staff to represent the plaintiff in this suit. He cannot represent the plaintiff, more specifically, as a

'correspondent'. He may have his individual grievances against the defendant. He can always institute a suit in his individual name seeking redressal. But he cannot take advantage of the name of the school and plead innocence and ignorance and seek indulgence. That cannot be permitted.

18. It is also seen from the records that the entire service benefits have also been paid to S.Selvakumar, consequent to his termination. Officials of the Education Department have also been informed about his termination. A new correspondent has also been appointed for the School.

19. It is, therefore, very strenuously argued by Mr.C.Mani Shankar, learned Senior Counsel, that the entire frame of the suit cannot withstand scrutiny and the plaint will have necessarily have to be struck off. It is also pointed out that there is no cause of action for the defendant to disturb the functioning of the school. The lease deed subsists and there is every reason to understand that the lease deed would continue to

subsist. As a matter of fact, no specific date had been given by the plaintiff in the cause of action paragraph indicating when threat was held out by the defendant. It is therefore, contended that an imaginary cause of action has been created by plaintiff and the suit has been instituted, not keeping in mind the interest of the school but rather keeping in mind only the personal interest of S.Selvakumar. I find much force in such contention.

20. A second reading of the plaint, again reveals that in the cause of action paragraph, it had been stated that on various dates there have been threats by the defendant. A specific date has to be given to seek an order of permanent injunction restraining the defendant from interfering with peaceful possession. A complaint has been lodged on 16.07.2019 but as is always a case, any complaint is a self serving document created for the benefit of the complainant alone. A reading of the plaint, does not disclose any cause of action.

21. It is stated by Mr.C.Mani Shankar, learned Senior Counsel that the Revision Petitioner has no intention at all to interfere with the functioning of the School. If S.Selvakumar, has any grievances, he can always approach a Court of law and seek necessary remedies but he cannot hide behind the screen of the school to protect his individual rights and his individual status and proclaim himself as a 'correspondent', when as a matter of fact he had been removed even as a 'staff'.

22. In **1977 (4) SCC page 467** in the case of **T.Arivandandam vs. T.V.Satyapal and Another**, the Hon'ble Supreme Court held as follows:

“2.Here is an audacious application by a determined engineer of fake litigations asking for special leave to appeal against an order of the High Court on an interlocutory application for injunction. The sharp practice or legal legerdemain of the petitioner, who is the son of the 2nd respondent, stultifies the court process and makes a decree with judicial seals brutum fulmen. The long arm of the law must throttle such litigative caricatures if the confidence and creditability of the community in the judicature is to survive.”

23. In ***K.Akbar Ali vs. K.Umar Khan and others*** reported in **2021 SCC online SC 238**, it was held as follows:

“... clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. Similarly the Court must see that the bar in law of the suit is not camouflaged by devious and clever drafting of the plaint... the Court has the inherent power to see that frivolous or vexatious litigations are not allowed to consume the time of the Court.”

24. In the instant case, the plaint in O.S.No. 385 of 2019, does not disclose any cause of action. It has been instituted by an individual using the plaintiff as a screen to protect his own alleged status to continue to act as a 'correspondent', when actually he had even been dismissed as a 'staff'.

25. The plaint in O.S.No.385 of 2019 now pending on the file of Subordinate Court, Kanchipuram, is directed to struck off and necessary

entries must also made in the Suit Register by the Subordinate Court at Kancheepuram with relation to O.S.No.385 of 2019.

26. The Revision Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

23.07.2021

Pns

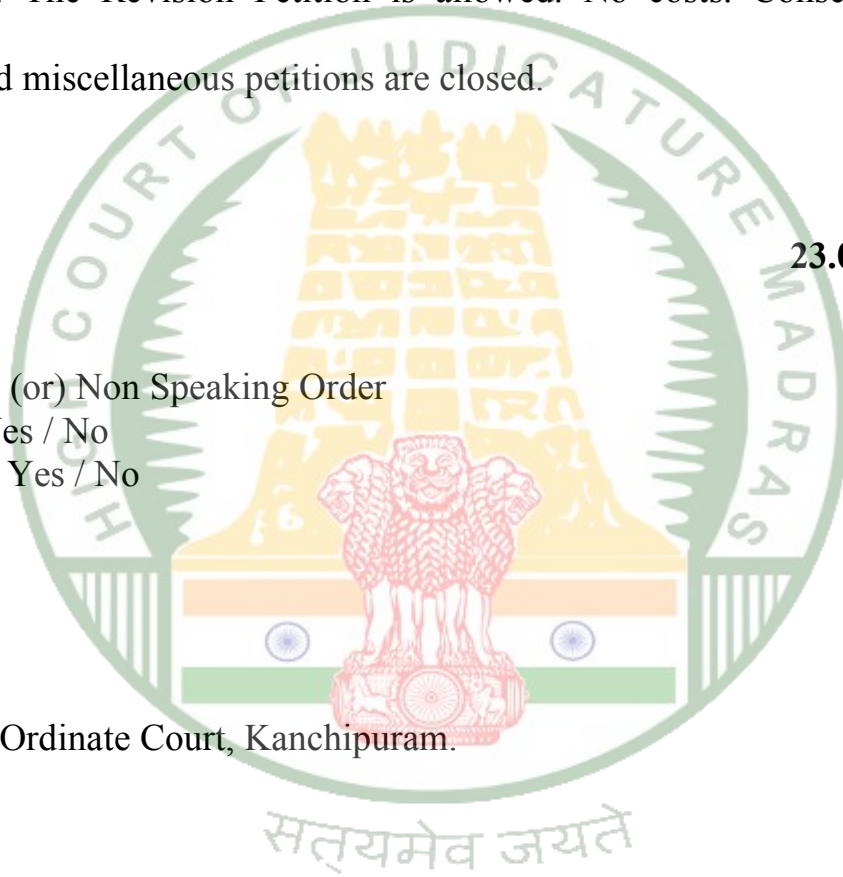
Speaking (or) Non Speaking Order

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To

The Sub-Ordinate Court, Kanchipuram.

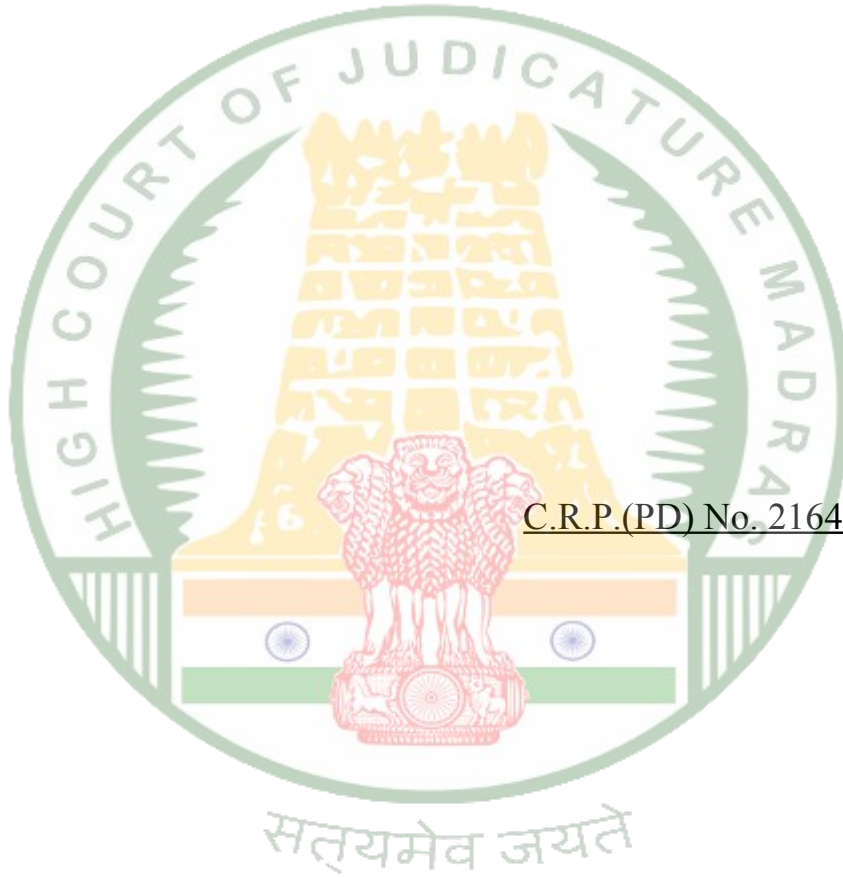


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C.V.KARTHIKEYAN, J

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