

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 15TH DAY OF FEBRUARY 2021

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

A.No.3141 of 2020

in

C.S.No.51 of 2020

K.T.Rajakumaravel,
No.30, B2/T1, Paris Apartment,
City Link Road,
Guindy,
Chennai-600 032.

:Plaintiff

Versus

1.Bharat Petroleum Corporation Ltd.,
No.1, Ranganathan Gardens,
11th Main Road,
Chennai-600 040.

2.Bharat Petroleum Corporation Ltd.,
Bharat Bhavan, 4 & 6, Currimbhoy Road,
Ballard Estate, PB.No.688,
Mumbai-400 001.

..Defendants

A.No.3141 of 2020:

1.Bharat Petroleum Corporation Ltd.,
No.1, Ranganathan Gardens,
11th Main Road,
Chennai-600 040.

2.Bharat Petroleum Corporation Ltd.,
Bharat Bhavan, 4 & 6, Currimbhoy Road,
Ballard Estate, PB.No.688,
Mumbai-400 001.

..Applicants/Defendants

Versus

K.T.Rajakumaravel,
No.30, B2/T1, Paris Apartment,
City Link Road,
Guindy,
Chennai-600 032.

:Respondent/Plaintiff

Application praying that this Hon'ble Court be pleased to reject the
plaint.

This Application coming on this day before this court for hearing,
the court made the following order:-

This application has been filed taking advantage of Order VII Rule 11
(d) of the Code of Civil Procedure seeking to reject the plaint as been barred
by law.

2. The plaintiff had instituted the present suit seeking a direction
against the defendant to pay a sum of Rs.3,88,69,185/- (Rupees Three
Crores Eighty Eight Lakhs Sixty Nine Thousand One Hundred and Eighty
Five only) as damages for wrongful occupation of the property belonging to
the plaintiff and also a sum of Rs.1,08,30,815/- (Rupees One Crore Eight
Lakhs Thirty Thousand Eight Hundred and Fifteen only) towards damages
for mental agony suffered by the plaintiff owing to the wrongful occupation
of the said property and for costs.

3. Heard Mr.O.R.Santhanakrishnan, learned counsel for the applicant / defendant and Mr.A.K.Balaji, learned counsel for the respondent / plaintiff.

4. A brief glance into the background facts reveal that the plaintiff herein was the landlord and the defendant was the lessee who had been given the benefit of running a petrol bunk litigations arose. The litigations went up to the doors of the Hon'ble Supreme Court and by an Order dated 04.03.2016, in S.L.P.(Civil) No.5619 of 2016, the Hon'ble Supreme Court had dismissed the Special Leave Petition which have been preferred by the applicant / defendant herein, but however granted time till 31.12.2016 to deliver vacant and peaceful possession, subject to the condition that arrears of rent if any shall be paid at the rate of Rs.1,00,000/- (Rupees One Lakh only) per month from the date of the Order. It is pointed by Mr.O.R.Santhanakrishnan that the possession has been handed over on 02.12.2016.

5. The grievance expressed by Mr.O.R.Santhanakrishnan is that there was an undertaking or an implied understanding that there will not be any mutual claims made by either party against the other. The applicant / defendant had thought that the entire matter had come to a rest.

6. However, the plaintiff had instituted the present suit in C.S.No.51 of 2020 seeking the reliefs as stated above. Written statement has also been filed by the defendant.

7. At this juncture, the defendant had taken out the present application calling upon the Court to examine the maintainability of the suit and urging that the plaint has to be rejected as barred by law primarily under Order VII Rule 11(d) of CPC.

8. The issue which is now taken up by Mr.O.R.Santhanakrishnan is that suit which had been filed as a Commercial Dispute, cannot be termed as a Commercial Dispute and that the Commercial Division has no jurisdiction to examine the issues raised. It is pointed out the applicant / defendant had vacated the premises and therefore, the reliefs in the suit claiming damages not only for occupation, but also on the ground of mental agony, suffered cannot be termed as Commercial Disputes and that the lis is not a Commercial lis.

9. A counter had been filed by the respondent.

10. It is the claim of Mr.A.K.Balaji, learned counsel for the respondent / plaintiff that the litigation between the parties had traversed through various layers of the Courts right from the Original Suit, First Appeal, Second Appeal and then a Writ Petition and then a Writ Appeal and had finally landed in the laps of the Hon'ble Supreme Court, wherein, the applicant / defendant herein was given the liberty to vacate the premises. It is stated that by the present suit, damages for unlawful occupation from the years 2003 to 2016 and for mental agony have been claimed.

11. The learned counsel stated that the original lis was a Commercial Dispute, in view of the fact that lessee / applicant / defendant was running a petrol bunk which by any stretch of imagination can only be termed as a Commercial Venture. Learned counsel justified the institution of the suit before the Commercial Division.

12. My attention is drawn to the Explanation of Section 2(1)(c) of the Commercial Courts Act, 2015 as amended under Section 2(1)(c) about 21 categories of disputes have been enumerated which could be termed as Commercial Disputes and in the 22nd category it is stated that any other Commercial Dispute as may notified by the Central Government could also

be termed as a Commercial Dispute. To the best of the knowledge of this

Court, there has been no such notification issued.

13. Be that as it may, there is an Explanation provided to the above provision and Explanation (a) and (b) are relevant and they are given below:

"Explanation:

(a) it also involves action for recovery of immovable property or for realization of monies out of immovable property given as security or involves any other relief pertaining to immovable property;

(b) one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions;"

14. Explanation (a) states that a Commercial Dispute would not cease to be a Commercial Dispute merely because it involves an action for recovery of immovable property or for realization of monies out of immovable property given a security which action. These two categories are not the cases herein. It further provides that a Commercial Dispute would not cease to be a Commercial Dispute if it involves any other relief pertaining to immovable property.

15. While examining the facts of the instant case, the immovable

property was given on lease for commercial purposes. The Lessee / Applicant / Defendant had enjoyed the property by running a petrol bunk and by putting the property to Commercial Venture. No doubt they have vacated by directions of the Hon'ble Supreme Court, but still the respondent / plaintiff seeks further reliefs pertaining to their occupation of the said immovable property till 2016.

16. I therefore hold that claiming damages for unlawful occupation can certainly be termed as a Commercial Dispute and this Court will have jurisdiction to examine the issues surrounding the same.

17. However, Mr.O.R.Santhanakrishnan is not done with this. Learned counsel pointed out relief (b) in the plaint and stated that it involved claim for mental agony and stated that such a claim cannot be termed as a Commercial Dispute. However, I hold that relief (b) would follow the determination of relief (a). If it is determined that the applicant / defendant had been in illegal occupation and has to pay damages for such illegal occupation then owing such illegal occupation alone, the respondent / plaintiff can make out a case for grant of damages for mental agony.

18. I further hold that two reliefs cannot be bifurcated. If that be so it would lead to a very anomalous situation wherein relief (a) will have to be determined by the Commercial Division then the papers will have to be sent back to the Original Side for the determination of relief (b). This is not the intention of the Legislature and would not be to the convenience of either the applicant or the respondent herein. It would only be appropriate that both the reliefs are examined, determined and adjudicated by one Court namely Commercial Division of this Court.

19. Learned counsel for the respondent Mr.O.R.Santhanakrishnan also drew my attention to an earlier order passed by me reported in *Manu / TN / 0046 / 2021 M/s.Bharat Petroleum Corporation Ltd., -vs- M/s.ATM Constructions (P) Ltd.*, wherein, while examining whether the dispute raised in that suit regarding whether the dispute was Commercial in nature or not. I had held that the Commercial Dispute as between the landlord and lessee with respect to the running of the petrol bunk should be existing on the date of the institution of the suit.

20. In this case, the plaintiff has a dispute with respect to illegal occupation and has claimed damages for the same, through the applicant herein had vacated, still the right of the respondent to claim damages cannot

be denied, unless the said claim as barred by limitation. This is not the case herein.

21. In view of there fact, I hold that the application has to be dismissed and the suit has to be retained by the Commercial Division of this Court.

Sd./-C.V.KJ
15.02.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

JJ 01/03/2021

सत्यमेव जयते

WEB COPY