IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 19TH DAY OF JANUARY 2021

THE HON'BLE MS.JUSTICE P.T.ASHA

A.No.6075 of 2017
and
O.A.No.982 of 2017
in
C.S.No.68 of 1983

Pazhaverkadu Venkatesami Gramani
Trust by its present Trustee,
S.Venkataraman ..Plaintiff

-Versus-

Gemini Industrial Estate,
rep. by its Partner Sri Vasanji Vijpal ..Defendant

O.A.No.982 of 2017 and A.No.6075 of 2017:

Pazhaverkadu Venkatasami
Gramani Trust
rep. by its present Trustee
S.Venkataraman,
Now office at No.7, Valeeswarar Koil Street,
Mylapore, Chennai 600 004. ..Applicant/Plaintiff

-Versus-

1.Gemini Industrial Estate
Rep. by its Partner
Vasanji Vijpal, ..Respondents/Defendants

2.Vasanji Vijpal

3.Mr.Sharad Vasanji

4.HareeshVasanji
1 to 4 having office at No.25,
Thiyagappa Chety Street,
Korukkupet, (Opposite to railway Gage)
Chennai 600 021. ..Respondents/Defendants

O.A.No.982 of 2017:

Original Application praying that this Hon'ble Court be pleased to grant an oder of interim injunction restraining the Respondents/Defendants, their men, agents and anybody claiming under them from in any way and in any manner alienating or encumbering the schedule mentioned leasehold superstructures in the suit property pending disposal of this application.

A.No.6075 of 2017

Application praying that this Hon'ble Court be pleased to original plaint in C.S.No.68 of 1983, since the Respondents/Defendants have violated the terms and clause 8 of the Compromise Decree dated 09.08.19990 and clause 7 of the Schedule 'B'.

These Applications coming on this day before this court for hearing the court made the following order:

A.No.6075 of 2017: *filed for granting a decree and judgment as prayed for in the original plaint, since Clause 8 and 9 of the compromise decree dated 09.08.1990 and Clause 7 of Schedule 'B' has been violated.*

2. ***OA.No.982 of 2017:*** *is filed for an injunction restraining the respondents from alienating or encumbering the schedule mentioned leasehold superstructure in the suit property pending disposal of this application.*

3. The applicant is the plaintiff in the suit. The Suit CS.No.68 of 1983 was filed in the year 1983 for recovery of possession of the schedule mentioned property and damages of Rs.84,000/- from April 1981 till date of plaint and thereafter at the rate of Rs.7,000/- per month till date of delivery of possession to the plaintiff.

4. The case of the plaintiff is that the trust has been created by one Pazhaverkadu Venkatasami. The Trust was constituted to perform several religious and charitable activities and was possessed of several properties. After the death of the founder-trustee, a scheme was framed for the Trust in CS.No.221 of 51 as disputes arose between the descendants of the founder trustee. Under the Scheme, the Trust and its properties were to be managed by the senior most adult member of the descendents Raju Pillai was the son of the founder trustee through his first wife who managed the Trust. Kuppusamy Pillai, the eldest son of Raju Pillai died in the year 1956

without leaving a male issue. Thereafter, the Trust was managed by the other sons of Raju Pillai. On the date of filing of this Suit, the present Trustee S. Venkataraman, son of P.R.Srinivasan was in management. The plaintiff would contend that when he was a minor C.Sathyamurthy was the Trustee. He had leased out the suit schedule property measuring 98 grounds at Tondiarpet to the defendant. The said Satyamurthy had acted as guardian of the present Trustee. The lease was for a period of 25 years with an option of renewal for three consecutive terms of 25 years each. The plaintiff would submit that this lease was without the sanction of the committee and beyond the powers of the trustee. The defendant was paying a rent of two thousand per month and had built godowns and was enjoying an income of over Rs.30,000/-. The plaintiff therefore filed the suit for the reliefs claimed therein as the lease in favour of the defendant was void. The parties pending the suit had entered into a compromise on 09.08.1990 and a decree in terms of the compromise was passed on the very same day and the memorandum of compromise forms part of the decree.

5. The present application is filed stating that the defendant had violated their obligations under Clause 8 of the memorandum of compromise and Clause 7 of Schedule B. The applicant would contend that as per the terms contained in Clause 8, the defendant was to pay the property

tax in his name for the entire structure that was existing and super structure that would be put up later with effect from 1979 till they handover the vacant possession of the demised land. The grievance of the applicant is that the property has been sub-let to one Kuppuswamy Pillai who is having separate Tax Assessment in his name which, according to the applicant, was in utter violation of Clause 8 of the compromise decree dated 09.08.1990. The tax was being paid in the name of persons other than the defendant. Therefore the Trust had the right to terminate the tenancy and the defendant was bound to surrender the vacant possession of the suit property. The applicant has also contended that the respondent is taking steps to encumber and alienate the schedule mentioned property and therefore there must be an injunction restraining them from doing so.

6. The applicant/plaintiff has filed a common affidavit in respect of both the applications.

7. The defendants/respondents have filed a common counter affidavit inter alia denying the allegations put forward. They would also submit that much prior to the filing of the suit a portion of the property tax was being paid in the name of Kuppusamy and even the tax in respect of a portion of the leased out portion is being remitted in the name of Kuppusamy.

Therefore there is no violation of the terms of the compromise memo. They would submit that they have no intention of alienating or encumbering the superstructure and they would also give an undertaking that they and the tenants under them would be bound by the terms of the compromise decree.

8. Heard the arguments of the counsels on either side and perused the records.

9. The suit has been decreed as early as on 09.08.1990. The memorandum of compromise filed by the parties forms part of the decree.

10. Clause 8 of the decree reads as follows:

> *"8. That the defendant herein do pay the property tax in his name for the entire superstructures that are existing at present and those which may be put up subsequently by him with effect from 1979 onwards till the delivery of vacant possession of the demised land.* "

11. It is also necessary to extract Clause 13 herein:

> *"13. That if the defendant fails to pay the*

> *periodical monthly rents as contemplated in this*

lease for a consecutive period of six months after due notice of demand, the plaintiff shall have the right to take delivery of possession of the demised land, more fully set out in the Schedule-A hereunder, from the defendant and cancel this lease deed;

12. A reading of the above clauses would clearly indicate that only if the monthly rents are not paid regularly by the defendants then the applicant/plaintiff had right to take possession of the demised land. Admittedly there is no arrears of rent as on date. Therefore, the provisions of Clause 13 cannot be invoked. However, a reading of Clause 8 and 9 would indicate that non compliance of this condition does not automatically result in the plaintiff invoking their right to recover the possession of the property. The Superstructure belongs to the defendant and the plaintiff has no right over the same. It is for this reason that Clause 8 permits paying the property tax by the defendant.

13. It is also not the case of the plaintiff that the property tax has not been paid but the grievance of the trust is that the tax is being paid in

different names.

14. The respondents/defendants have filed a typed set of papers containing the details of property tax that is being paid in different names much prior to the institution of the suit. The property tax continues to be paid in different names since it appears it has not been in the name of the first defendant.

15. The memorandum of compromise has also recognised the right of the defendant to sublet the superstructure with a rider that the sublessee shall have no right to claim an independent right over the superstructure. Therefore, once the plaintiff has recognised the right of the first defendant to sublet the property and property tax was directed to be paid by the defendants, it is clear that the plaintiff has no right over the superstructure. It is only a failure of the conditions to Clause 13 of the compromise that gives a right to the applicant/plaintiff to seek recovery of possession. Such a recovery can only be done in the manner known to law namely by executing the decree. It is not known as to how the applicant has instituted the instant application when a decree has already been passed.

16. In view of the above fact, there is no merit in the application,

moved after the undertaking of the respondent that they will not alienate or encumber the superstructure. The above undertaking is also recorded. A.No.6075 of 2017 is dismissed and O.A.No.982 of 2017 is disposed of on the basis of the undertaking.

Sd/-P.T.A.J
19.01.2021

//Certified to be true copy//
Dated at Madras this the day of 2021.

JJ 24/02/2021 COURT OFFICER(O.S.)

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