



C.S.No.121 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 09.09.2021

Judgment Pronounced on : 04.11.2022

CORAM : JUSTICE N.SESHASAYEE

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St.Peters Church, Royapuram
Represented by its Board of Trustees

- 1.T.Gokulachandran
- 2.L.James
- 3.K.S.Barnabas
- 4.K.M.Irudayaraj
- 5.B.Peter Vijayan

Having their Office at :
19, West Mada Church Street
Royapuram, Chennai – 600 013.

.... Plaintiffs

[P4 amended as per order dated 22.10.2013 in
Appln.No.4518 of 2013
P5 amended as per order dated 20.02.2018 in
Appln.No.1456 of 2018]

Vs

1.M/s.Samad & Co.,
Estate of K.Muhammed Kutty
(Constituting the legal heirs of Late K.M.Kutty)
Represented by its Co-owner K.Zainudeen
Having Office at :
III Street, Perambur High Road, Chennai – 600 012.



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2.A.P.M.Mariyam
3.K.Abdul Samad
4.K.M.Saleem
5.K.Munerudeen
6.K.Nizamudeen
7.K.Razia Veerankutty
8.K.Zareena
9.K.Fathima
10.K.Mumtaz

.... Defendants

[Defendants 2 to 10 impleaded as per order dated 08.01.2015
in Appln.No.1442 of 2014]

Prayer : Civil Suit filed under Order IV Rule 1 of Madras High Court O.S.Rules read with Order VII Rule 1 of CPC., praying for a judgment and decree against the defendants :

- (a) to direct the defendants to quit and deliver vacant possession of the land, more fully described in the schedule hereunder, after removing the superstructure put up by the defendant within a time to be fixed by this Court;
- (b) to direct the defendant to pay the plaintiff trust a sum of Rs.3,26,064/- (Rupees Three Lakhs Twenty Six Thousand and Sixty Four only), being the past damages for wrongful use and occupation of the property from 01.07.2002 to 31.01.2003;
- (c) to direct the defendant to pay the plaintiff trust future damages at Rs.50,000/- per month for wrongful use and occupation of the suit property from 01.02.2003 till the date of delivery of vacant possession;



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(d) to direct the defendant to pay the cost of the suit.

For Plaintiffs : Mr.T.V.Ramanujam

For Defendants : Mr.G.Kalyan Jhabakh
for M/s.Surana & Surana
[D3, D4, D6 to D10]

JUDGMENT

The suit is laid for recovery of possession of the suit property with past damages of Rs.3,26,064/- for wrongful occupation and use of the same, and for future damages of Rs.50,000/- per month on the same head.

2. The case of the plaintiff :

- The suit property is described as a vacant land measuring 24,310 sq.ft., comprised in R.S.No.287/1, Block No.9, bearing Door Nos.13 & 14, South Mada Street, Royapuram, Madras – 13. This property belongs to the plaintiff-Trust, which is managed by a Scheme framed by this Court in C.S.No.10 of 1949 and by a modified Scheme in C.S.No.134/1973.
- On 06.09.1996, the plaintiff entered into a lease deed with the first



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defendant for a portion of the scheduled property which is described as a suit property for a period of five years. This period expired on 31.08.2001.

- In terms of Clause 4(i) of the lease deed, the option of renewal of lease on a rent to be mutually agreed between the parties.
- While so, on 26.07.2001, about a month prior to the expiry of the lease term, the first defendant wrote a letter and sought renewal of lease from 01.09.2001. But, it did not propose any rent payable for the period post such renewal. The plaintiff-Trust, in its reply dated 22.08.2001, disclosed its terms regarding the rate of rent payable for the period post the proposed renewal in terms thereof. The lessee/first defendant was required to pay the monthly rent at 90 paise per sq.ft. for the first 30 months and at the rate of Rs.1/- per sq.ft. for the next 30 months.
- The defendant however, did not agree to the proposal of the plaintiff regarding the rent payable for the renewal period. The defendant, vide its letter dated 03.09.2001, made a counter proposal that it would enhance the rent only by 10% over the rent earlier paid, for the entire renewal period of five years.



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- In response, the plaintiff had reiterated their stated position vide their letters dated 22.08.2001, 05.09.2001 and 15.10.2001, all of which were returned unclaimed. This was followed by a further reiteration of terms by the plaintiff vide its letter dated 19.11.2001, and the plaintiff stuck to the proposal that it had originally made vide its letter dated 22.08.2001. This communication was however, responded by the first defendant vide its letter dated 24.11.2001, wherein it had indicated that the enhancement of rent could be between 7.5% to 10% for the period of renewal.
- This to and fro proposals and counter proposal only indicates that there is no consensus between the lessor and the lessee as to the rate of rent payable for the period for the proposed renewal of lease.
- While the lease has expired due to efflux of time on 31.08.2001, the plaintiff by way of abundant caution has issued a notice dated 29.05.2022, intimating the first defendant that the lease would stand terminated by 30.06.2022, and requiring the lessee to hand over vacant possession.
- The first defendant would now issue his reply dated 05.06.2002 that



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the lessee is not entitled to claim any increase of rent more than 25% of the earlier rent claimed in terms of Section 7 of the City Tenants Protection Act. This provision of statute will have no application nor any bearing of the lease in question.

- In this circumstances, the plaintiff has laid the suit. So far as the past and future damages are concerned, taking into account the location of the property and the advantages it offers, the plaintiff claims Rs.2/- per sq.ft. for unlawful occupation and use of the property as damages.

3. In the written statement filed by the first defendant, it principally alleges as below :

- The suit is a part of a larger extent of about 100 grounds, and the same has been granted to the plaintiff by the Government and therefore, the proposal made by the defendant is expected to be reasonable as it had obtained the property from the Government free of any costs. But the plaintiff claims enhancement of rent by 300% and this is untenable.
- The defendant had taken the property in lease in 1948, and had invested huge amounts for the construction of the building, and had



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also paid enormous rents for the vacant land leased to it, all in the expectation that the lease would be periodically renewed. Indeed, when nobody was coming forward to take the property in lease, it was the defendant who agreed to take it on lease, and this arrangement has even helped the plaintiff in generating some income out of it.

- Earlier when the plaintiff made its proposal for the increase in rent, it was about 300% high from the earlier rent and now he claims 700% in the suit.
- As of now, the first defendant pays Rs.7,138/- as monthly rent in terms of lease deed executed on 06.09.1996. In this circumstances, to demand Rs.21,414/- per month (which is about 300% higher than the present rent of Rs.7,138/-) will be a far excessive rent for the vacant land, and the defendant cannot afford to pay the rent so demanded by the plaintiff.
- The suit as against the first defendant is not maintainable since the lease was executed in favour of late K.Mohammed Kutty. The defendants 2 to 10 who are the legal heirs of late K.Mohammed Kutty, the lessee, and that the suit is not maintainable as no separate notice of termination was issued to them at any point of time.



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4. On the above pleadings, the following issues are framed :

- 1. Whether the suit is maintainable?*
- 2. Whether the plaintiff is entitled to a decree for delivery of vacant possession of the land, after removing the superstructure put up by the defendant?*
- 3. Whether the suit is liable to be dismissed for non-joinder of necessary parties?*
- 4. Whether the suit is liable to be dismissed for non-payment of proper Court fee as per Tamil Nadu Court Fees and Suit Valuation Act?*
- 5. Whether the defendant is liable to pay the plaintiff Trust, a sum of Rs.3,26,064/- (Rupees Three Lakhs Twenty Six Thousand and Sixty Four only) being the past damages for wrongful use and occupation of the property from 01.07.2002 to 31.01.2003?*
- 6. Whether the defendant is liable to pay the plaintiff Trust further damages at Rs.50,000/- per month for wrongful use and occupation of the suit property from 01.02.2003 till the date of delivery of vacant possession?*
- 7. To what other reliefs, the parties are entitled to?"*

5. The dispute went to trial. On the side of the plaintiff, one of the Trustee Member named T.Gokulachandran is examined as PW1 and he has produced



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Ext.P1 to P18, of which, Ext.P5 is the lease deed dated 06.09.1996; Ext.P7 to Ext.P12 are the exchange of notices between the parties regarding payment of rent and renewal of rent, of which, Ext.P9 and Ext.P10 are the notices dated 05.09.2001 and 15.10.2001 which the defendant do not claim; Ext.P13 dated 29.05.2002 is the legal notice issued by the plaintiff terminating the lease; Ext.P14 is the reply of the first defendant pursuant to Ext.P13; Ext.P.17 and Ext.P18 are certain lease deeds dated 03.08.2007 and 08.06.2010 which the plaintiff has entered into with the third parties to show his justness of its claim of enhancement. On the side of defendants, the first defendant is examined as D.W.1, who is the lessee of the plaint property representing the defendant-company. He has produced Ext.D1 to Ext.D14, of which Ext.D5 and Ext.D6 are same as Ext.P17 and Ext.P18.

6. The learned counsel for the plaintiff submitted that admittedly the lease had expired by efflux of time stipulated in Ext.P5, lease deed dated 06.09.1996, and that it has not been renewed as there is no consensus arrived at between the parties regarding the rate of rent payable for the intended renewal period. Notwithstanding the same, it also issued Ext.P13, suit notice dated 29.05.2002, terminating the lease, and the defendants necessarily have to deliver vacant



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possession. So far as the justness of the plaintiff's claim is concerned, Ext.P17 and Ext.P18, the lease deeds dated 03.08.2007 and 08.06.2010, entered with third parties would show that the property is situated in a prime locality of the city and that would indicate that the rate of rent prevailing in the property.

7. Per contra, the learned counsel for the defendants argued that the lease dates back to 1948, which is about 75 years as of now. The first defendant has put up constructions at considerable cost in the property, and the conduct of the plaintiff is such that they would all go wasted. He submitted that the defendants would be willing to pay a reasonable enhancement in rent, but to increase it by 300% might not be appropriate. He submitted that Ext.P.17 and Ext.P18 lease deeds pertaining to adjacent portions given in lease by the plaintiff to some third parties to establish the rate of rent payable, have come into existence during the pendency of the suit, and these lease deed cover a smaller extent. He also added that no notice of termination has been served on defendants 2 to 10 who are the heirs of late K.Mohammed Kutty, the original lessee.



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Issues 1 and 3 :

8. Issue No.3 may not be necessary since the legal heirs of the deceased lessee has been brought on record as defendants 2 to 10 since the institution of the suit. Turning to Issue No.1, the question of maintainability of suit is concerned the only point canvassed is that no notice of termination is validly given to defendants 2 to 10. Here, it has to be seen that Ext.P5, lease deed dated 06.09.1996 has stipulated the term of lease as five years. Now under Section 111(a) of Transfer of Property Act, 1882, the lease would terminate by efflux of time stipulated in the lease deed and necessarily the term would expire on 06.09.2001. It now stands to reason that the notice of termination of lease was issued by the plaintiff more by way of abundant caution, and its issuance will not have an overriding effect on the legal consequences of Section 111(a) on leases limited by time. Therefore, the suit is maintainable.

Issues 2,4 to 7:

9. Admittedly, there is no *consensus ad idem* regarding the rate of rent payable. Somewhere the defendants have weakly brought in Section 7 of the City



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Tenants Protection Act. But inasmuch as the property belonged to a Church, it would be covered under the T.N.Act 1 of 1996 by which the properties belonging to temples, mosques, churches and public Trust are exempted from the operational purview of the City Tenants Protection Act. In effect, the defendants cannot invoke any of the provisions of the City Tenants Protection Act and this paves way for the plaintiff to obtain recovery of the possession of the property. It must however be added that the defendants would be entitled to remove all the constructions that they had put up in the suit property. The defendants merely are tenants holding over and they are liable to pay damages for their continued occupation of the building.

10. Turning to the damages payable, both past and future, to prove the reasonable rent which the property now in question might fetch, the plaintiff has produced are Ext.P17 and Ext.P18, and they are dated sometime in 2007 and 2010 respectively. The properties covered in them are 4,800 sq.feet, in the same same survey field in which the suit property also is situate. The details of which are tabulated below :



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<i>Exhibit</i>	<i>Description</i>	<i>Agreed payment term</i>
Ex.P17	Lease deed dated 03.08.2022 executed in favour of Suthanther Assumtha by the plaintiff for a period of five years (01.02.1993 to 31.01.1998)	The monthly rent payable for the entire period of lease shall be Rs.2/- per sq.ft. payable every succeeding month before the fifth day. A sum of Rs.45,000/- has been paid as interest free advance by the lessee to the lessor, which is refundable on the lessee handing over vacant possession of the schedule mentioned land.
Ex.P18	Lease deed dated 08.06.2010 executed in favour of S.Thamil Selvi, W/o.Suthanther Assumtha by the plaintiff for a period of five years (01.01.2005 to 31.12.2009)	The monthly rent shall be Rs.3/- per sq.ft. payable for first 30 months and Rs.4/- per sq.ft. for the next 30 months, payable every succeeding month before the 7th day. A sum of Rs.1,40,000/- has been paid as interest free advance by the lessee to the lessor, which is refundable on the lessee handing over vacant possession of the schedule mentioned land.

11. Turning to the present case, it is not known in a block of 100 grounds where exactly the suit property is located and its relative merit or otherwise viz-a-viz the property covered under Ext.P-17 and P-18 is also not made known. Therefore, this Court fixes the damages payable at Rs.25,000/- per month through out.

12. In the result, the suit is decreed with costs, and the defendants are directed to vacate the suit premises and hand over vacant possession to the plaintiff after removing all the constructions put up therein within three months from today



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and to pay past damages of a sum of Rs.1,75,000/- for occupation of the property from 01.07.2002 to 31.01.2003 and to pay future damages at Rs.25,000/- per month from 01.02.2003 till the date of handing over the vacant possession of the suit property.

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Index : Yes / No

Speaking order / Non-speaking order
ds



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APPENDIX

I. Witnesses :

<i>Plaintiffs :</i>	
PW1	T.Gokulachandran
<i>Defendants :</i>	
DW1	K.Zainudeen

II. Exhibits :

<i>Plaintiffs :</i>		
Ext.P1	12.3.1953	Copy of the judgment and decree in C.S.No.10 of 1949
Ext.P2	24.4.1956	Copy of the judgment in O.S.A.No.63 of 1953
Ext.P3	27.4.1979	Copy of the judgment in C.S.No.134 of 1973
Ext.P4	26.4.1988	Copy of the judgment in O.S.A.No.94 of 1979
Ext.P5	06.9.1996	Original Lease Agreement dated
Ext.P6	27.7.2001	Xerox copy of the letter addressed to the President, Board of Trustees of the plaintiff-church by the first defendant
Ext.P7	22.8.2001	Letter addressed to the first defendant by the President, Board of Trustees of the plaintiff-church
Ext.P8	03.9.2001	Letter addressed to the President, Board of Trustees of the plaintiff-church by the first defendant
Ext.P9	05.9.2001	Original copy of the letter addressed to the first defendant by the Secretary, Board of Trustees of plaintiff-church
Ext.P10	15.10.2001	Original copy of the letter addressed to the first defendant by the Secretary, Board of Trustees of plaintiff-church
Ext.P11	19.11.2001	Original copy of the letter addressed to the first defendant by the Secretary, Board of Trustees of plaintiff-church
Ext.P12	24.11.2001	Xerox copy of the letter addressed to the President/Secretary, Board of Trustees of the plaintiff-



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Plaintiffs :		
		church by the first defendant
Ext.P13	29.5.2002	Legal notice issued to the first defendant by the counsel for the plaintiff-church
Ext.P14	05.6.2002	Reply notice issued to the counsel for the plaintiff-church by the counsel for the first defendant
Ext.P15	09.10.2002	Extract of Resolution held by the Board of Trustees of the plaintiff-Church
Ext.P16	27.10.2009	Xerox copy of the letter addressed to the first defendant by the Board of Trustees of the plaintiff-church
Ext.P17	03.8.2007	Lease Deed for five years executed between the Board of Trustees of the plaintiff-church with his lessee Mr.Suthanther Assumtha
Ext.P18	08.6.2010	Lease Deed for five years executed between the Board of Trustees of the plaintiff-church and Tmt.S.Thamil Selvi
Defendants :		
Ext.D1	20.4.2005	Deed of surrender of lease by Mr.Ahmed Ali in favour of the Board of Trustees of the plaintiff-church
Ext.D2	28.4.1995	Deed of surrender of lease by Mrs.Qudsia Sultana in favour of the Board of Trustees of the plaintiff-church
Ext.D3	22.12.2003	Deed of lease (for 5 years) executed between the Board of Trustees of the plaintiff-church and Mr.T.Santhan
Ext.D4	01.02.1993	Deed of lease (for 5 years) executed between the Board of Trustees of the plaintiff-church and Mr.G.M.Maran
Ext.D5	03.8.2007	Deed of lease (for 5 years) executed between the Board of Trustees of the plaintiff-church and Tmt.S.Thamil Selvi
Ext.D6	08.6.2010	Deed of lease (for 5 years) executed between the Board of Trustees of the plaintiff-church and Tmt.S.Thamil Selvi
Ext.D7	25.10.1996	Letter addressed to Mr.Jb.K.Zianudeen by the Board of Trustees of the plaintiff-Church
Ext.D8	21.7.1996	Letter addressed to the first defendant by the Board of Trustees of the plaintiff-church
Ext.D9	16.07.1996	Letter addressed to the President, Board of Trustees of the plaintiff-church by the first defendant
Ext.D10	27.7.2001	Letter addressed to the President, Board of Trustees of the



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Defendants :		
		plaintiff-church by the first defendant
Ext.D11	24.11.2001	Letter addressed to the President / Secretary, Board of Trustees of the plaintiff-church by the first defendant
Ext.D12	03.9.2001	Letter addresssed to the President, Board of Trustees of the plaintiff-church by the first defendant
Ext.D13		Income Tax Return of Mr.K.Zainudeen for the Assessment Year 2002-2003
Ext.D14	27.10.2015	Original General Power of Attorney executed in favour of Mr.K.Zainudeen by the defendants 3,4,6 to 10 herein.

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N.SESHASAYEE.J.,

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