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OSA Nos. 29 and 30 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2023

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Original Side Appeal Nos. 29 and 30 of 2023
and
CMP. No. 2199 of 2023

A.K. Sasikumar
Proprietor
M/s. Sri Vari Motors
No.32/2, Sri Vari Illam
5th Circle, Temple Road
Jawahar Nagar, Chennai - 600 082

.. Appellant in both
the appeals

Versus

1. S. Danushkodi
2. D. Nivedhita
3. D. Sindhumathi
4. D. Sruthi
5. J. Walter Philips

(5th respondent impleaded as per order
dated 08.02.2022 passed in A.No. 139 of 2022)

.. Respondents in
both the appeals

O.S.A. No. 29 of 2023:- Original Side Appeal filed under Order XXXVI Rule 9 of Original Side Rules and Clause 15 of the Letters Patent against the Order dated 26.10.2022 made in O.A. No. 611 of 2021 in C.S. No. 296 of 2021 on the file of this Court.

O.S.A. No. 30 of 2023:- Original Side Appeal filed under Order XXXVI Rule 9 of Original Side Rules and Clause 15 of the Letters Patent against the Order dated 26.10.2022 made in O.A. No. 612 of 2021 in C.S. No. 296 of 2021 on the file of this Court.



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WEB COPY For Appellant

: Mr. S. Senthilnathan
in both the appeals

For Respondents

: Mr. K. Chandrasekaran
in both the appeals

COMMON JUDGMENT

(Judgment of the Court was delivered by **R.MAHADEVAN, J**)

The appellant is the tenant. He instituted the suit in C.S. No. 296 of 2021 for recovery of possession of the schedule mentioned property. Pending the same, the appellant / plaintiff filed two applications namely O.A. Nos. 611 and 612 of 2021, which were dismissed by the learned Judge, by a common order dated 26.10.2022, which has given rise to the filing of the present appeals.

2. According to the appellant / plaintiff, he is the tenant in respect of the commercial building measuring 6800 square feet at No.223, T.H. Road, New Washermanpet, Chennai - 600 081. This property was let out to the appellant during the year 2012, where he is running a two wheeler sales and service business in the name and style of "Sri Vari Motors". On 01.04.2017, a rental agreement was entered into between the plaintiff and defendants for a period of five years commencing from 01.04.2017 to 31.03.2022. As per the



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agreement, the monthly rent payable by the plaintiff is Rs.1,35,000/-. The

Plaintiff also paid a sum of Rs.25,00,000/- towards security deposit to the defendants. After taking possession of the premises in question, the plaintiff had spent atleast Rs.30 lakhs towards interior work, flooring etc. However, due to the spread of Covid-19 pandemic and the consequential lockdown imposed throughout the State, from March 2020, the plaintiff could not carry on his business and the show room was closed during March 2021. While so, on 13.04.2021, the defendants, taking law into their own hands, broke open the shutter lock of the showroom, illegally occupied the premises and took over possession of the same. They also removed the name board and flex banner kept in the premises. Immediately, the plaintiff gave a complaint dated 13.04.2021 to the Inspector of Police, H5, New Washermenpet Police Station for which a receipt bearing CSR No.108 of 2021 was issued on 16.04.2021. The attempts made by the plaintiff to recover the business premises from the first defendant ended in vain. Further, the plaintiff was subjected to intense pressure by the customers, to whom original R.C. books have not been given by him due to the pandemic situation. Therefore, he is entitled for the relief under Section 6 of the Specific Relief Act. Stating so, the plaintiff filed the suit for recovery of possession and consequential permanent injunction. The reliefs sought in the suit are reproduced below, for clarity and specificity:



"(a) Directing the defendants to restore the possession to the plaintiff the suit mentioned property mentioned in the schedule hereunder.

(b) Granting permanent injunction restraining the defendants, their men, agents or any other persons claiming under them from in any manner renting or leasing or encumbering the schedule mentioned property

(c) Granting permanent injunction restraining the defendants, their men, agents or any other persons claiming under them from in any manner continuing in possession of the schedule mentioned property and consequently put the plaintiff in possession of the schedule mentioned property

(d) Granting mandatory injunction directing the defendants or their men or agents to handover all the original R.C. books, documents, spares and all other materials belonging to the plaintiff that are kept in the schedule mentioned property."

3. During the pendency of the suit, the appellant / plaintiff filed two applications viz., (i)O.A. No. 611 of 2021 to pass an order granting interim injunction restraining the respondents, their men, agents or any other persons claiming under them from in any manner renting or leasing or encumbering the schedule mentioned property pending disposal of the suit; and (ii)OA No. 612 of 2021 to pass an order granting interim injunction restraining the respondents, their men, agents or any other persons claiming under them from continuing in possession of the schedule mentioned property and consequently put the appellant / plaintiff in possession of the same, pending disposal of the suit.



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4. On notice, the respondents / defendants filed a common counter affidavit denying the averments made in the aforesaid original applications.

According to the respondents, the monthly rent payable was Rs.1,35,000/- by the plaintiff and the three owners viz., defendants 2 to 4, equally at Rs.45,000/- and the plaintiff has paid only a sum of Rs.10,50,000/- as security deposit, which could be evident from the rental agreement dated 01.04.2017. Due to the pandemic situation, the plaintiff could not run the business, as a result of which, he was unable to pay rent and in arrears of rent from 01.04.2020. On demand, piece meal payment of rent was made by the plaintiff from 15.04.2020 onwards. On 07.03.2020, when the defendants visited the show room run by the plaintiff, they were shocked to notice that the premises was heavily damaged. The plaintiff has removed the entire tiles in the ground floor, demolished the stair case leading to the first floor and also demolished the bathroom. Besides that, he made structural alteration and shifted one of the rolling shutters to another place and also removed one of the shutters. When the defendants demanded the plaintiff to pay them damages, the plaintiff obliged and in fact, transferred a sum of Rs.1,00,000/- to the account of the second defendant on 15.03.2021. Subsequently, the plaintiff expressed his inability to continue the tenancy and ultimately, handed over the vacant possession of the premises on 18.03.2021 and also keys of the same. Even at



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that point of time, the plaintiff assured to pay the balance rental arrears until 18.03.2021. The counter affidavit further proceeds to state that after taking over the business premises, the defendants engaged a competent Surveyor namely M/s. EBEN Builders and estimated the damage caused to the premises, which comes to Rs.13,73,400/-. Therefore, the plaintiff is liable to pay a sum of Rs.13,73,400/- towards damages and Rs.13,68,000/- towards rental arrears totalling a sum of Rs.26,41,400/-, out of which, after deducting a sum of Rs.10,50,000/- towards security deposit, the balance amount is liable to be payable by the plaintiff. Thus, according to the respondents / defendants, the plaintiff had voluntarily handed over the business premises by expressing his inability to continue to pay the rent for the same and hence, the question of restoring possession, as claimed by him, does not arise. It was also stated therein that the plaint as well as the applications have been filed by the appellant / plaintiff by suppressing the material particulars.

5. In the common counter affidavit filed by the respondents/ defendants, it was specifically stated that the rental agreement entered into between the parties on 01.04.2017 was only for three years (i.e) from 01.04.2017 to 31.03.2020 and not upto 31.03.2022 as pleaded in the plaint. It was also stated that the plaintiff has given a complaint in Complaint No. 184 of



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2021 on 27.07.2021 against the first defendant before the Bar Council of Tamil Nadu. Placing reliance on the photocopy of the rental agreement produced along with the said complaint, it was stated by the respondents that the plaintiff has materially altered the tenancy period, security deposit, monthly rent payable, etc., in the agreement. Further, the signatures were made only in the first and last page of the rental agreement. The respondents / defendants therefore stated that the plaintiff is not entitled for any interim relief during the pendency of the suit.

6. On appreciation of the rival contentions, the learned Judge by order dated 26.10.2022, dismissed those applications, by observing that the plaintiff will have to await the result of trial and it is very well open to him to seek restitution on conclusion of trial, if it is found that the document produced by the defendants is false, but, on this date, the interim injunction already granted cannot be extended in favour of the plaintiff. Aggrieved by the said order, the appellant / plaintiff has come up with the present appeals before this court.

7. The learned counsel appearing for the appellant submitted that the appellant was running the show room after entering into an agreement dated



01.04.2017 with the defendants. Taking advantage of the closure of the showroom due to the lockdown imposed by the Government to curb the Covid-19 Pandemic, the defendants broke open the lock, replaced the materials inside the showroom by dumping them in the open terrace and took illegal possession of the premises. Therefore, the appellant is entitled for the immediate relief against dispossession under section 6 of the Specific Relief Act, 1963. In this regard, the learned counsel referred to the decisions of the Hon'ble Supreme Court in *S.R.Ejaz v. Tamil Nadu Handloom Weavers Co-operative Society Ltd* [CDJ 2002 SC 175] and *Mohd. Mehtab Khan and others v. Khushnuma Ibrahim and others* [CDJ 2013 SC 066]. Thus, according to the learned counsel, in such circumstances, the learned Judge ought to have extended the interim injunction already granted till the disposal of the suit, but he vacated the same. By reason of vacating the interim injunction, third party right will intervene and therefore, even if the plaintiff succeeds in the suit, he cannot enjoy the fruits of the decree. Stating so, the learned counsel sought to allow these appeals by setting aside the common order passed by the learned Judge.

8. Stoutly refuting the submissions of the counsel for the appellant, the learned counsel for the respondents submitted that the appellant / plaintiff



voluntarily surrendered possession of the premises in question and therefore, there was no necessity for the defendants to break open the premises and to dump the materials in the open terrace, as alleged in the plaint. It is also submitted that there are various material alterations in the rental agreement and hence, the learned Judge rightly rejected the interim reliefs sought by the appellant / plaintiff, by the order impugned herein, which does not require any interference at the hands of this court.

9. We have heard the learned counsel for the appellant / plaintiff as well as the respondents / defendants and also perused the materials placed on record.

10. Admittedly, the appellant / plaintiff filed the suit for restoration of possession and permanent injunction in respect of the schedule mentioned property. Along with the suit, he preferred two applications seeking interim injunction restraining the respondents from leasing or renting out the subject premises and from continuing in possession and put the appellant in possession of the same, by stating *inter alia* that during the tenancy period, the possession of the premises was forcibly taken by the respondents / defendants from the appellant / plaintiff without following due process of law. On the other hand, it



is the stand of the respondents / defendants that the appellant has voluntarily surrendered the possession to them, by expressing his inability to pay the rent for the subject premises and hence, the question of restoration of possession does not arise. The learned Judge, after detailed analysis, dismissed the applications seeking interim injunction by the appellant / plaintiff. For better appreciation, the relevant paragraphs of the order impugned herein, are reproduced below:

"24. In the instant case, as had been first observed, either the plaintiff or the 1st to 4th defendants, have come forward laying their respective case on the basis of a document, which to their knowledge is false and fabricated. Till that issue is resolved, the Court should hesitate to grant any interim relief.

25. It is also seen that the suit has not been filed only under Section 6 of the Specific Relief Act, 1963. Further reliefs have also been sought in the suit. The issue whether the plaintiff had actually surrendered possession on 18.03.2021 or not is an issue to be examined during the course of trial. The issue whether on 13.04.2021, consequent to handing over possession, the defendants had a right to enter and take possession, is again a matter of trial which can be examined only if the first fact namely the issue of handing over possession on 18.03.2021 is established in manner known to law by the defendants and negated by the plaintiffs. The further issue, whether after having taken possession, the defendants have a right to enter into a fresh lease agreement with a third party, in this case, the 5th defendant, will have to be examined only in the light of pleadings in that regard.

26. One further aspect which is pointed out by Mr. S. Senthilnathan is that the 2nd, 3rd and 4th defendants are residents of USA and therefore, the learned counsel doubts the veracity of their signatures in the rental agreements produced by him and also by the 1st defendant.

27. This again, forces the Court to come to a conclusion that having produced a document along with the plaint and if the plaintiff doubts the very signatures in the agreement by which he was granted possession, naturally, the plaintiff will have to await a decision in that regard, after due trial.

28. It is prima facie seen that both the parties rely on the respective agreements, in which, for some strange reason, the lessors



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and the lessee have signed only in the first page and in the last page and have taken a conscious decision not to sign in the other pages. It is in one of those pages particularly at page No.6 that the clause relating to the term of lease is found and at page No.7 that clause relating to the security deposit is found. Both these pages are not signed by any of the parties but differing terms of lease and differing amounts of security deposit are mentioned.

29. *Once there is a suspicion that there is a possibility that the plaintiff has produced a false document and there is an equal possibility that the defendants could also have produced a false document, it is only advisable that the Court refrains from passing any interim order.*

30. *The issue of admissibility of the said document itself is under question. The issue of the signatures in the documents are also under question. It is only proper that the plaintiff is not granted the relief of restitution and it is only proper that the Court renders a decision only after examining the evidence adduced by both sides.*

31. *Opportunity to that extent has to be given and on the basis of the documents now produced, it would not be proper on the part of this Court, to come to any conclusion particularly in favour of the plaintiff since, it is alleged that he had handed over possession on 18.03.2021, giving rights to the defendants to enter into the premises on a later date on 13.04.2021 and take possession. These are all issues to be decided after trial.*

32. *The plaintiff will have to await the result of trial and it is very well open to the plaintiff, if it is found that the document produced by the defendants is false, to seek restitution on conclusion of trial. But on this date, I cannot extend the interim injunction already granted in favour of the plaintiff. The same stands vacated.*

33. *Let the parties prove the rental agreements in manner known to law and establish their bonafide in the first place before seeking any order from the Court."*

The aforesaid order of the learned Judge is questioned in these appeals at the instance of the appellant / plaintiff.

11. On 28.02.2023, when the appeals were taken up for consideration, in order to give quietus to the issues involved herein, this court appointed one Mr. Benjamin Erskine Moses, as advocate commissioner to ascertain the present position of the subject premises. Accordingly, the Advocate



Commissioner inspected the premises in question, and submitted his report in detail, along with photographs. The relevant passage of the report dated

11.04.2023 filed by the Advocate Commissioner reads as under:

"5. I state that upon inspection of the subject property, I have ascertained that the property consists of a ground floor, first floor with 5 rooms and a terrace portion with separate side access.

6. I state that with respect to the materials belonging to the appellant in the subject property the same was pointed out by the appellant himself to which there were no objections from the 1st respondent, in the presence of all other parties present during the said inspection, are as follows:-

a. Ground Floor

Nil

b. First Floor

Room 1 - 1 fan and discarded electrical switchboards & wires

Room 2 - 1 Wooden showcase and 3 Glass panes (in the wall between Room 2 & 4)

Room 3 - Nil

Room 4 - 4 Tube light fittings and 1 notice (containing RTO names and respective pincodes) affixed to the side wall

Room 5 - Discarded electrical wirings

c. Terrace and common passage.

Few discarded wooden planks.

The above list is exhaustive and is evidenced vide the photographs taken by me during the said inspection (Annexure IV series)

7. I state that with respect to certain belongings claimed by the appellant as his own, there were objections from the first respondent and the same along with relevant objections have been listed below.

a. Ground floor

Main shutters (2 Nos.) in the entrance of the property leading into the Ground floor (respondent has objected stating that he has installed the shutter during the present renovations and the appellant maintains that it was installed by him previously) and

Shutter (1 No.) at the back end of the ground floor leading to the staircase that leads to the first floor (respondent has objected stating that he has installed the shutter during the present renovations and the appellant maintains that it was installed by him previously)

b. First floor

Room 1 - Shutter (1 No.) in the Doorway leading into Room 1



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(Respondent has objected stating that he has installed the shutter during the present renovations and the appellant maintains that it was installed by him previously)

Room 2 - Nil

Room 3 - Nil

Room 4 - Nil

Room 5 - Nil

C. Terrace and common passages

Nil

The above list is exhaustive and is evindenced vide the photographs taken by me during the said inspection (Annexure V – series)

8. I state the said inspection was concluded in the presence of all stated above at 1.30 pm and minutes of the inspection was noted by me and signed by the said parties present therein (Annexure VI)."

12. Upon receipt of the Advocate commissioner's report, the respondents / defendants filed their objections dated 18.04.2023, wherein, it is *inter alia* stated that even at the time of inspection conducted by the Advocate Commissioner, the ground and first floor of the premises were leased out to a tenant namely "Girias" and they were in possession of the premises by running a showroom dealing with electronics and Home Appliances. It was further stated that the said tenant has commenced its business from 14.04.2023 and is in possession of the premises till date. Thus, according to the respondents / defendants, if any relief is granted to the plaintiff, the present tenant will be subjected to untold hardship.



13. It could be seen from the pleadings and documents on record as well as the submissions made by the learned counsel appearing for the parties that there are serious disputes between the parties, *qua* period of tenancy, rent payable, security deposit made by the appellant, etc. The basic document of rental agreement dated 01.04.2017 entered into between the parties, is also disputed by the respondents / defendants stating that there are material alterations in the same. Additionally, the possession taken by the defendants from the plaintiff is also questioned by the parties. After having elaborately pointed out all these aspects, the learned Judge was of the view that the continuation of interim injunction in favour of the appellant / plaintiff is not feasible and ultimately, dismissed the applications seeking interim injunction by the appellant, by vacating the interim order already granted in his favour. While so, it was observed by the learned Judge that the parties have to subject themselves to the trial in the suit and depending upon the same, they can assert a right and interest over the premises in question. It is also to be noted that the subject premises is now, in occupation of the third party, as evident from the report of the Advocate Commissioner. Such being the present scenario, in the absence of supporting documents in respect of the pleadings / averments made by the appellant / plaintiff in the applications seeking interim injunction, this court does not find any ground much less valid ground to interfere with the



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order of the learned Judge.

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14. At this juncture, it is brought to the notice of this Court by the learned counsel for the respondents / defendants that the defendants have already filed applications viz, A.No. 629 of 2022 praying to appoint an Advocate Commissioner to take the original agreement of lease dated 01.04.2017 filed along with the written statement as document No. 1 and the lease agreement dated 01.04.2017 filed along with the plaint as document No.1 and submit the same to the handwriting expert to be appointed by this Court for comparison of the said documents and to submit a report; and A.No. 1327 of 2023 praying to decide as a preliminary issue as to whether the suit is over-valued as it has got to be valued only under Section 43 (d) of the Tamil Nadu Court Fee and Suit Valuations Act and if so valued, whether the suit has to be transferred to City Civil Court, Chennai and try the same on merits; and both the applications are pending consideration. According to the learned counsel, the adjudication in these two applications is significant, in the given nature of dispute between the parties and hence, both the applications may be directed to be considered first by the trial court.

15. In such view of the matter, both the Original Side Appeals are



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disposed of, leaving it open to the parties to agitate their claims before the court, where the suit is pending. We also direct that the hearing of the applications in A.No. 629 of 2022 and A. No. 1327 of 2023 and the trial of the suit, be wrapped up as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this judgment. While so, the report of the Advocate Commissioner dated 11.04.2023 shall be taken into consideration by the trial court. No costs. Consequently, connected miscellaneous petition is closed.

(R.M.D., J) (M.S.Q., J)

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Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non-Speaking Order

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and
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