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AS Nos.538 and 391 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**
and
THE HONOURABLE MRS.JUSTICE **R.KALAIMATHI**

A.S.Nos.538 and 391 of 2022
and CMP Nos.20022/22 and 17780/23 in AS No.538 of 2022

AS No.538 of 2022

1. M/s. Bharat Petroleum Corporation Ltd.,
Bharat Bhavan, 4 & 6, Curimbhay Road,
P.B.No.688, Ballard Estate,
Mumbai – 400 001.
(Rep. By its Chairman & Managing Director)
2. The General Manager, (Madras Division)
M/s. Bharat Petroleum Corporation Ltd.,
Ranganathan Gardens,
Off 11th Main Road, Anna Nagar,
Chennai 600 040.
3. The Chief Divisional Manger, (Madras Division)
M/s. Bharat Petroleum Corporation Ltd.,
Ranganathan Gardens,
Off 11th Main Road, Anna Nagar,
Chennai 600 040. ... Appellants/ Defendants 1 to 4

Vs

1. H.A. Mohd. Aleemuddin
2. Mrs. Rasheed Begum @ Rasheed Aleemuddin
3. Mr. Rajiv Sampath



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4. Mr.s Jutika R.Sampath

5. Mrs. B.J. Sampat

6. Mrs. Nila B. Sampat

7. Mr. Punit Sampat

8. Mrs. Sweta P. Sampat

9. Mr.Hamir B. Sampat

10. Mrs. Jidnyasa Hamir Sampat

... Respondents 3to 10/Plaintiffs 1 to

10

5th Respondent died, Respondents 3,4 & 6 to 10 are recorded as legal representatives of the deceased 5th Respondent vide order dated 22.08.23 made in CMP No.17773 of 2023 [RSMJ & RKMJ]

11. T.K.Koshi, Formerly General Manager,
(Madras Division M/s. Bharat Petroleum Corporation Ltd,
No.1 Ranganathan Gardens,
Off 11th Main Road, Anna Nagar,
Chennai 40. ... 11th Respondent / 4th Respondent

This appeal is filed under Section 96 of the Code of Civil Procedure, to set aside the judgement and decree dated 26.10.2021, made in O.S.No.7082/2019 in so far as relief “A” is concerned, on the file of XVI Additional City Civil Court, Chennai.

For Appellants : Mr.A.K.Sriram, Senior Counsel
for M/s. O.S.karthikeyan



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For Respondents : Mr.R.Parthasarathy, Senior Counsel
for M/s. Rahul Balaji, for RR3 to 10

RR 1 and 2 – served – No appearance

R11 – Retired from service

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1. Mr. Rajiv Sampath

2. Mrs. Jutika R.Sampath

Mrs. B.J. Sampat (Deceased)

3. Mrs. Nila B. Sampat

4. Mr. Punit Sampat

5. Mrs. Sweta P. Sampat

6. Mr.Hamir B. Sampat

7. Mrs. Jidnyasa Hamir Sampat ... Appellants/Plaintiffs 3 to 10

vs.

1. M/s. Bharat Petroleum Corporation Ltd.,
Bharat Bhavan, 4 & 6, Curimbhay Road,
P.B.No.688, Ballard Estate,
Mumbai – 400 001.
(Rep. By its Chairman & Managing Director)

2. The General Manager, (Madras Division)
M/s. Bharat Petroleum Corporation Ltd.,
Ranganathan Gardens,
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3. The Chief Divisional Manger,
M/s. Bharat Petroleum Corporation Ltd.,
Ranganathan Gardens,
Off 11th Main Road, Anna Nagar,
Chennai 600 040.

4. T.K.Koshi, Formerly General Manager,
M/s. Bharat Petroleum Corporation Ltd,

... Respondents/Defendants

5. H.A. Mohd. Aleemuddin

6. Mrs. Rasheed Begum @ Rasheed Aleemuddin

... Respondents/Plaintiffs 1 & 2

This appeal is filed under Section 96 of the Code of Civil Procedure, to set aside the judgement and decree of the learned XVI Additional Judge, City Civil Court, Chennai dated 26.10.2021 passed in O.S.No.7082 of 2019 to the extent of dismissing prayer (f) of the appellants herein seeking Mesne Profits.

For Appellants : Mr.R.Parthasarathy, Senior Counsel
for M/s. Rahul Balaji

For Respondents :Mr.A.K.Sriram, Senior Counsel
for M/s. O.S.karthikeyan, for RR1 to 3

R5 & R6 served – No appearance

R4 – Retired from service



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COMMON JUDGEMENT

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

The defendants 1 to 3 in OS No.7082 of 2019 (CS No.121 of 1998 on the file of the original side of this Court) on the file of the XVI Additional City Civil Judge, Chennai are the appellants. The suit was laid for the relief of recovery of possession of Schedule II property, mesne profits and for several other reliefs by respondents 1 and 2 in this Appeal as plaintiffs 1 and 2.

2. According to the plaintiffs, the suit I Schedule property measuring about 11726 sq. ft. was leased to the appellants on 01.06.1969 for a period of 20 years, when the appellant Corporation was known as Burmah Shell Oil Storage and Distributing Company of India Ltd. Subsequently upon acquisition of the said Company under the Burma Shell (Acquisition of Undertakings in India) Act 1976, the lease was transferred to the appellants herein. The original plaintiffs viz. the respondents 1 and 2 herein had purchased the property subject matter of lease on 29.07.1981. During the year 1993, there was an understanding between the original owners viz. plaintiffs 1 and 2 and the appellants herein, wherein the appellants agreed to surrender the entire extent of



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11726 sq.ft. subject to the condition that the respondents 1 and 2 purchased alternate land at Sathangadu for the purposes of the appellant Corporation.

3. Pursuant to the said understanding, according to the original plaintiffs, a Lease cum Sale Agreement was entered into between the Chennai Metropolitan Development Authority then known as the Madras Metropolitan Development Authority and the appellants herein, for allotment of a piece of land for relocation of the Petrol Bunk which is situate in Schedule II property. It is claimed that the consideration for the said Lease cum Sale Agreement was paid by the original plaintiffs and it is denied by the Corporation. Claiming that after having obtained the land at Sathangadu under the lease cum sale agreement marked as Ex.A22, the defendants have not vacated the entire extent of the suit property and they had only surrender an extent of 7700 sq. ft. and retained possession of 4026 sq. ft. The original plaintiffs had filed the suit for recovery of possession and for other reliefs.

4. The suit was resisted by the Corporation contending that the suit is premature, since it had exercised its option for renewal of the lease on



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29.03.1989 under Ex.A7 followed by Exs.A8 & A9 dated 03.04.1989

and 16.05.1989. In view of the provisions of the Burma Shell (Acquisition of Undertakings in India) Act 1976, one statutory renewal is available to the Corporation for a period of 20 years and the option having been exercised, the lease stood extended upto 31.05.2009 and therefore the suit is premature. It was also contended that the suit as framed is not maintainable in this Court, since leave to sue has not been obtained in respect of the relief sought for in respect of the III Schedule property, which was admittedly situate outside the jurisdiction of the Court.

5. An application under Order VII Rule 11 of the code of Civil Procedure was also filed seeking rejection of the plaint on the ground that the suit is premature. This Court held that in the light of the averments made in the plaint, it cannot be said that the suit is premature and dismissed the application. There was no appeal against the said order. The respondents 3 to 10 herein purchased the property from the original plaintiffs under Exs.A30 to A33 on 21.01.2004. Thereafter, by notice dated 03.03.2004, the defendant attorned the tenancy to the purchasers on 03.03.2004 under Ex.A34. Thereafter the purchasers were impleaded



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as parties to the suit as plaintiffs 3 to 10 by order dated 19.04.2007.

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6. Upon amendment of the Madras City Civil Courts Act and enhancement of the pecuniary jurisdiction of the City Civil Court, the suit stood transferred to the City Civil Court from the original side of this Court and was numbered as OS No.7082 of 2019.

The following issues were framed for trial on 04.12.2007:

1. Whether the defendants are entitled to protection under the provisions of Section 5(2) and 7(3) of the Burmah Shell Acquisition Act, 1976 on the existing terms and conditions with regard to the plaint Schedule-II mentioned property;

2. Whether the defendants are liable to handover vacant possession of plaint Schedule-II mentioned property;

3. Whether the defendants are liable to execute a deed reconveying the plaint Schedule-III mentioned property in favour of the plaintiffs;

4. Whether the plaintiffs are entitled for a direction directing the defendants to enter into a fresh lease deed with the plaintiff in respect of plaint Schedule-III mentioned property or whether the plaintiffs are entitled to the alternative prayer pleaded in this regard in the plaint;



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5. *Whether the defendants are liable to pay to the plaintiffs a sum of Rs.1,26,949/- being the excess amount wrongfully collected by the defendants towards compensation in respect of plaint Schedule-I mentioned property;*

6. *Whether the defendants are liable to pay a sum of Rs.4,52,000/- towards past mesne profits for use and occupation of plaint Schedule-II mentioned property from 12.2.1997 to 11.1.1998 at the rate of Rs.10/- per sq. ft;*

7. *Whether the defendants are liable to pay a sum of Rs.45,200/- per mensem towards future mesne profits for the use and occupation of plaint Schedule-II mentioned property;*

8. *Whether the defendants are liable to pay a sum of Rs.35,500/- towards past mesne profits for the use and occupation of plaint Schedule-III mentioned property from 1.12.1995 to 15.1.1998;*

9. *Whether the defendants are liable to pay a sum of Rs.1000/- per mensem towards future mesne profits for the use and occupation of plaint Schedule-III mentioned property; and*

10. *To what other reliefs the parties are entitled to.*

Additional issues were framed on 08.02.2016:



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- 1. Whether the Court is having territorial jurisdiction to entertain the suit;*
- 2. Whether leave of the Court is necessary for institution of the suit; and*
- 3. Whether the suit is bad for joinder of cause of action.*

7. At trial, the third plaintiff was examined as P.W.1 and the first plaintiff was examined as P.W.2, Exhibits A1 to A53 were marked. One Tr.Kshitiji Midha, Territorial Manager of the appellant was examined as D.W.1, Exhibits B1 to B13 were marked.

8. The learned Trial Judge on a consideration of the evidence on record concluded that the plaintiffs 3 to 10 would be entitled to the relief of recovery of possession of the II Schedule property. It negated all the other reliefs that were sought for. The original plaintiffs, who were interested in the other reliefs except the relief of mesne profits for the II Schedule property, had not filed an Appeal against the dismissal of their suit for those Appeals. The defendants 1 to 3 are on Appeal against the decree for possession and the plaintiffs 3 to 10 are on Appeal against the rejection of their claim for mesne profits and for damages for use and occupation.



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9. We have heard Mr.A.K.Sriram, learned Senior Counsel appearing for the appellants in A.S.No.538 of 2022 and respondents 1 to 3 in AS No.391 of 2022 and Mr.R.Parthasarathy, learned Senior Counsel appearing for respondents 3, 4 and 6 to 10 in AS No.538 of 2022 and appellants 1 to 7 in AS No.391 of 2022. The other parties though served are not appearing either in person or through counsel duly instructed.

10. Mr.A.K.Sriram, learned Senior Counsel appearing for the appellants in A.S.No.538 of 2022 would contend that the Trial Court was not right in decreeing the suit for possession as the lease was in currency on the date when the suit was instituted. According to the learned Senior Counsel on the exercise of option by the Corporation pursuant to the statutory provisions of the Burma Shell (Acquisition of Undertakings in India) Act 1976, the lease stood automatically renewed upto 31.05.2009, therefore without terminating the lease in the manner known to law, the suit filed for possession is premature. He would also contend that except the relief (a) viz. the relief for possession of the property and the relief for recovery of mesne profits of Schedule II Property, the other reliefs relating to Schedule III property could not have been maintained in this Court



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without leave being obtained since the property subject matter of those reliefs viz. the Schedule III property is situate outside the jurisdiction of this Court. The learned Senior Counsel is in unenviable position and is unable to urge any other ground since the lease period has expired on 31.05.2009 and the position of the appellants as of today is that of trespassers.

11. Mr.R.Parthasarathy, learned Senior Counsel appearing for respondents 3, 4 and 6 to 10 in AS No.538 of 2022 would submit that the suit has been held to be not premature by an order of this Court dated 13.06.2011 made in the Application No.7080 of 2010 filed under Order VII Rule 11 of the Code of Civil Procedure and that order having not been appealed against, the appellant cannot now raise the issue relating to the deficiency of cause of action for the suit. The learned counsel would also point out that the suit for possession was on the basis of the plea that there was an agreement between the defendants 1 to 3 and the original plaintiffs for surrender of possession on purchase of the land at Sathangadu and therefore, it cannot be said that the suit was without any cause of action.



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12. On the maintainability of the suit without leave having been obtained under Clause 12 with reference to the other prayers, the learned Senior Counsel Mr.R.Parthasarathy would submit that those prayers have been rejected by the City Civil Court and there is no Appeal by the original plaintiffs, who figure as respondents 1 and 2 in AS 538 of 2022, therefore, we need not dwell upon that issue at all. Addressing the issue relating to rejection of the relief for damages for use and occupation/mesne profit, learned Senior Counsel would contend that the Trial Court was not right in rejecting the same on the ground that there is no evidence on record, he would submit that once it is found that the defendants are in possession even after the expiry of the lease and their possession is akin to that of the trespassers, they are liable for damages for use and occupation. He would also submit that the Court can grant a decree for mesne profits and relegate the quantum to be determined after an enquiry to be held under Order XX Rule 12 of the Code of Civil Procedure.

13. From the above arguments of the counsel on either side, the following points emerge for consideration:

(i) Whether the suit could be dismissed as



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premature even in a case where the lease had expired by the time the suit is taken up for disposal.

(ii) Whether the fact that leave has not been obtained for the reliefs claimed in respect of the Schedule III property would affect the maintainability of the suit for possession in respect of Schedule II Property which is admittedly within the jurisdiction of this Court.

(iii) Whether the Trial Court was right in rejecting the relief of mesne profits on the ground that there was no evidence.

Point No.I:

14. Admittedly, the original lease was entered into on 15.09.1969 with effect from 01.06.1969 for a period of 20 years and the same expired on 31.05.1989. The option to renew was exercised on 29.03.1989 and therefore, the lease stood extended upto 31.05.2009. If the suit simplicitor for eviction had been filed prior to 31.05.2009 without any other claim, it has to be thrown out as premature. As rightly pointed out by



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Mr.Parthasarathy, learned Senior Counsel, the suit originally filed was not only based on a termination of an existing tenancy, it was based on an alleged understanding between the parties that there was an arrangement in the year 1993 by which the defendants had agreed to surrender possession of the entirety of the property upon obtaining alternate land at Sathangadu. Whether such an arrangement has been proved or not is a different question. In the light of the averments in the plaint to that effect, we cannot conclude that the suit was completely without cause of action. This very question was addressed by this Court while deciding Appn No.7080 of 2010, an application filed under Order VII Rule 11 seeking rejection of the plaint. Hon'ble Mr.Justice V.Ramasubramanian, had after a detailed analysis of the pleadings of the parties and after considering the various judgments of the Hon'ble Supreme Court and this Court held that the suit cannot be said to be without cause of action and this surrender of a portion of the land in the year 1997 was also considered by the Hon'ble Judge to conclude that there is a possibility for the plaintiff to contend that the defendants have waived the benefits under the Section 5(2) and &7(3) of the Burma Shell (Acquisition of Undertakings in India) Act 1976. The Hon'ble Judge observed as follows:

“30. The above events, which have happened



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after the defendants invoked the provisions for the renewal of the lease, show that there is a possibility for the plaintiffs to contend that the defendants waived the benefits of Sections 5(2) and 7(3). In other words, it is possible for the plaintiffs to contend in the case on hand that the benefits of Sections 5(2) and 7(3) are not available any more to the defendants, in view of the defendants agreeing to take up an alternative site and also surrendering a major part of the leasehold land on 12.02.1997. The possibility for the plaintiffs raising such a contention cannot be scuttled by throwing the plaint out under Order VII, Rule 11. In my view, the events that happened subsequent to 29.3.1989, which diluted the benefits available under Section 5(2) of the Act, do certainly disclose a cause of action for the plaintiffs. It must be remembered that after a full fledged trial, the plaintiffs may even fail in establishing that the conduct of the defendants amounted to waiver of the rights conferred by Section 5(2). But, it is a fundamental principle that a Court cannot reject a plaint on a presumption that the plaintiff may ultimately fail in their suit.”

14.1. Therefore, we do not think that the appellant Corporation



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could be allowed to contend that the suit is premature on the date of its institution and therefore it should be dismissed. Useful reference can also be made to the judgment of the Hon'ble Supreme Court in **Vithalbhai (P) Ltd v. Union Bank of India, reported in 2005 (4) SCC 315**, where the Hon'ble Supreme Court has observed as follows:

“21. Where the right to sue has not matured on the date of the institution of the suit an objection in that regard must be promptly taken by the defendant. The Court may reject the plaint if it does not disclose the cause of action. It may dismiss the suit with liberty to the plaintiff to file a fresh suit on its maturity. The plaintiff may himself withdraw the suit at that stage and such withdrawal would not come in the way of the plaintiff in filing the suit on its maturity. In either case, the plaintiff would not be prejudiced. On the other hand, if the defendant by his inaction amounting to acquiescence or waiver allows the suit to proceed ahead then he cannot be permitted to belatedly urge such a plea as that would cause hardship, may be irreparable prejudice, to the plaintiff because of lapse of time. If the suit proceeds ahead and at a much later stage the Court is called upon to decide the plea as to non-maintainability of the suit on account of its being premature, then the Court shall not necessarily dismiss the suit. The Court would examine if



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any prejudice has been caused to the defendant or any manifest injustice would result to the defendant if the suit is to be decreed. The Court would also examine if in the facts and circumstances of the case it is necessary to drive the plaintiff to the need of filing a fresh suit or grant a decree in the same suit inasmuch as it would not make any real difference at that stage if the suit would have to be filed again on its having matured for filing.

22. We may now briefly sum up the correct position of law which is as follows :

A suit of a civil nature disclosing a cause of action even if filed before the date on which the plaintiff became actually entitled to sue and claim the relief founded on such cause of action is not to be necessarily dismissed for such reason. The question of suit being premature does not go to the root of jurisdiction of the Court; the Court entertaining such a suit and passing decree therein is not acting without jurisdiction but it is in the judicial discretion of the Court to grant decree or not. The Court would examine whether any irreparable prejudice was caused to the defendant on account of the suit having been filed a little before the date on which the plaintiff's entitlement to relief became due and whether by granting the relief in such suit a manifest injustice would be caused to the defendant. Taking into consideration the explanation offered by the plaintiff for filing the suit



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before the date of maturity of cause of action, the Court may deny the plaintiff his costs or may make such other order adjusting equities and satisfying the ends of justice as it may deem fit in its discretion. The conduct of the parties and unmerited advantage to plaintiff or disadvantage amounting to prejudice to the defendant, if any, would be relevant factors. A plea as to non-maintainability of the suit on the ground of its being premature should be promptly raised by the defendant and pressed for decision. It will equally be the responsibility of the Court to examine and promptly dispose of such a plea. The plea may not be permitted to be raised at a belated stage of the suit. However, the Court shall not exercise its discretion in favour of decreeing a premature suit in the following cases : (i) When there is a mandatory bar created by a statute which disables the plaintiff from filing the suit on or before a particular date or the occurrence of a particular event; (ii) when the institution of the suit before the lapse of a particular time or occurrence of a particular event would have the effect of defeating a public policy or public purpose; (iii) if such premature institution renders the presentation itself patently void and the invalidity is incurable such as when it goes to the root of the Court's jurisdiction, and (iv) where the lis is not confined to parties alone and affects and involves persons other than



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those arrayed as parties, such as in an election petition which affects and involves the entire constituency. (See : Samar Singh v. Kedar Nath and Ors., reported in 1987 Supp. SCC 663). One more category of suits which may be added to the above is: where leave of the Court or some authority is mandatorily required to be obtained before the institution and was not so obtained.”

14.2. Viewing from any angle, we do not think that the appellant could be allowed to raise the issue relating to maintainability of the suit on the date of its institution. Since almost a quarter of a century has gone by since the institution of the suit. We will be doing violence to the very concept of justice, if we are to entertain such a plea and drive the plaintiffs to another suit after a quarter century. As pointed out by the Hon'ble Supreme Court in **Collector, Land Acquisition, Anantnag & Another v. Katiji and Ors.**, reported in **1987 (2) SCC 107**, technical considerations should take a back seat when they are pitted against a substantial justice. We are therefore unable to sustain the contention of the learned counsel for the appellant that the suit should have been thrown out as premature.

14.3. Hence Point No.I is answered in favour of the Plaintiffs.



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Point No.II:

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15. Adverting to the next submission of Mr.A.K.Sriram, learned Senior Counsel, relating to the maintainability of the suit with reference to the Schedule III property, we do not see any necessity to dwell into the said issue as the Trial Court has dismissed the suit with reference to those reliefs and the same are not subject matter of any of the two Appeals which are before us. The prayers for possession of the II Schedule property and recovery of mesne profits are completely severable from the other prayers. We do not find any unity of cause of action and also the reliefs are not interdependent or interlinked. We, therefore, do not see any reason to consider the said question, excepting to observe that the non maintainability or otherwise of the suit relating to the other prayers with reference to the Schedule III property would not affect the maintainability of the suit with reference to the Schedule II property.

15.1. Hence Point II is answered in favour of the Plaintiffs.

Point No.III:

16. On the issue of mesne profits, we find that the Trial Court has erred in rejecting the prayer outright. It is not in dispute that the rents



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agreed upon upto 31.05.2009 have been paid. Thereafter the plaintiffs/appellants in AS No.391 of 2022 have, in our opinion, rightly refused to receive the rents which was a pittance compared to the value of the property that was in the occupation of the Corporation. Admittedly, the Corporation is in occupation of very valuable land of an extent of about 4026 sq. feet. Order XX Rule 12 of the Code of Civil Procedure enables a Court to pass a decree for possession and for directing an enquiry as to mesne profits that would be payable. When the appellants in AS No.538 of 2022 are continuing in possession *dehors* the expiry of the lease, it would be a travesty of justice to favour them with the dismissal of the suit for mesne profits.

16.1. Being a Navratna Company the appellants in AS No.538 of 2022 ought to have come forward to pay a fair rent, if they do not, the Court can always compel to pay them such rents. We, therefore, find that the Trial Court ought to have relegated the matter to an enquiry since it cannot be said that the plaintiffs 3 to 10 are not entitled to mesne profits. Since their ownership is admitted, the tenancy is attorned to them and the possession of the appellants in AS 538 of 2022 is akin to that of trespassers after 31.05.2009.



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17. In fine, the Appeal in AS No.538 of 2022 is dismissed with costs and Appeal in AS 391 of 2022 is allowed with costs, the decree for possession granted by the Trial Court is confirmed. There will be a decree for mesne profits from 01.06.2009 till date of delivery of possession and the quantum is relegated to an enquiry under Order XX Rule 12 of the Code of Civil Procedure. The plaintiffs 3 to 10 would also be entitled to costs of the suit. Consequently the connected miscellaneous petitions are closed.

(R.SUBRAMANIAN, J .) (R.KALAIMATHI, J.)
22.08.2023

jv

Index : Yes/No

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Speaking order/Non Speaking order

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To
The XVI Additional Judge,
City Civil Court, Chennai.



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R.SUBRAMANIAN, J.
and
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jv

To

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and CMP Nos.20022/22 and 17780/23 in AS No.538 of 2022

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