



CMA Nos.2716 to 2719 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2023

CORAM

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CMA Nos.2716 to 2719 of 2022

P.T.Dhinakar

...

Appellant

versus

K.Ashokumar

...

Respondent

Prayer: Civil Miscellaneous Appeal filed against the fair and decretal order dated 18.11.2022 in I.A.Nos.6, 7, 4 and 5 of 2022 in C.O.S.No.3 of 2022 on the file of the learned Principal District Court, Nagapattinam.

For the Appellant :: Mr.N.Manoharan

For the Respondents :: Mr.K.Sukumaran,
Assisted by Mr.M.K.Subramanian

COMMON JUDGMENT

(Made by the Hon'ble Acting Chief Justice)

These appeals have been directed against the fair and decretal order dated 18.11.2022 in I.A.Nos.6, 7, 4 and 5 of 2022 in C.O.S.No.3 of 2022, on the file of learned Principal District Court, Nagapattinam.



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2. The suit property measuring an extent of 9,004 sq.ft. in T.S.No.103/1 and 14,518 sq.ft. in T.S.No.103/2, totaling 23,522 sq.ft. of land, with Devi Theatre and other appurtenance therein at Block 3, Ward 3, Nagapattinam Town, was purchased by the appellant, vide sale deed dated 02.04.2008. According to the appellant, he spent a sum of Rs.85 lakh for the purpose of renovating the theatre and was running it till 2016. Thereafter, the appellant settled at Coimbatore.

3. The appellant entered into a lease agreement, dated 22.09.2018, with the respondent, for a period of 48 months on a daily rent of Rs.3,600/-, which shall be enhanced after completion of two years. At the time of handing over the theatre to the respondent, it was fully air conditioned with excellent infrastructure. The agreement was that the respondent should pay a daily rent of Rs.3,600/- and till 22.09.2022, the respondent was bound to pay Rs.53,78,400/- whereas he has paid only a sum of Rs.20,99,850/-. There exists a balance of Rs.32,78,550/-. Therefore, the appellant thought of selling the theatre to the second respondent.

4. In the meanwhile, the respondent filed a civil suit in C.O.S.No.3 of 2022 on the basis of fraudulent unregistered lease deeds, by committing an act of impersonation and forgery, as if the appellant renewed the lease on 21.08.2019,



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21.07.2020, 21.06.2021 and 21.05.2022. However, according to the appellant, on 21.05.2022, he was in Singapore. In support of the said submission, learned counsel for the appellant has produced before us, a copy of the passport. A perusal of the same shows that the appellant left India on 16.05.2022 and returned only on 22.05.2022, from Singapore. Therefore, it was the claim of the appellant that the allegation of executing lease deed dated 21.05.2022 with monthly rent of Rs.1000/-, was nothing but a fraudulent claim.

5. Coming to know of the forged lease deed, the appellant immediately gave a complaint against the respondent to the police on 26.08.2022, which was registered in FIR No.22 of 2022, for offences under Sections 420, 468 and 471 IPC. The respondent filed an application for anticipatory bail before learned Principal Sessions Judge, Nagapattinam, and the same was dismissed on 07.09.2022. The respondent approached this Court and filed an application for anticipatory bail and the same was also dismissed on 17.10.2022. In the meanwhile, the respondent was arrested on 14.10.2022 and he moved an application for bail before the Principal Sessions Court, Nagapattinam, and the same was dismissed on 01.11.2022. Again, the respondent moved this Court for bail and this Court granted bail on 07.11.2022.



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6. When the finding recorded by learned Principal Sessions Judge, holds that the respondent has committed forgery by executing unlawful lease deeds forging the signature of the appellant, the same Court sitting in the civil side has granted the interim orders. Aggrieved thereby, the present appeals have been filed.

7. Mr.N.Manoharan, learned counsel for the appellant submitted that it is an admitted fact that the respondent had executed lease deed dated 22.09.2018, for a daily rent of Rs.3,600/-. Bank statement of the City Union Bank, Nagapattinam Branch, clearly shows that the respondent has been regularly depositing the daily rent. The respondent cannot claim that the daily rent was only Rs.1000/-, when he was initially paying a sum of Rs.3600/-.

8. The lease deed dated 22.09.2018 has been prima facie found to be forged by learned Principal Sessions Court while dismissing both the anticipatory bail and bail applications. Contrary to the reasons stated therein, the very same learned Judge sitting on the civil side, has passed the interim orders.

9. In support of his submission that the appellant was out of country on 21.05.2022, Mr.N.Manoharan, learned counsel, has produced before us a copy of the passport marked as Ex.R-1, and demonstrated that the appellant was out



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of India between the period 16.05.2022 and 22.05.2022. This fact clearly shows that the lease agreement dated 21.05.2022 has not been executed by the appellant as alleged by the respondent. Since these material aspects have been completely overlooked by learned trial Judge, the impugned fair and decretal orders are liable to be set aside by directing the respondent to handover the cinema theatre.

10. Learned counsel has relied on the judgment in *Mahadeo Savlaram Shelke and ors. vs. Pune Municipal Corporation and Anr.* (1995) 3 SCC 33, wherein the Hon'ble Supreme Court has referred to the earlier order in *Shiv Kumar Chadha vs. Municipal Corporation of Delhi* (1993) 3 SCC 161, wherein it was observed that Court should be always willing to extend its hand to protect a citizen who is being wronged or is being deprived of a property without any authority in law or without following the procedure which are fundamental and vital in nature.

11. Again, referring to the judgment in *Maria Margarida Sequeira Fernandes and ors. vs. Erasmo Jack De Sequeira, through LRs*, (2012) 5 SCC 370, learned counsel argued that caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand. The Court has also



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observed that the protection of the Court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or license agreement in his favour.

12. In the present case, admittedly, the appellant is the owner of the property in question. It is also an admitted case that the respondent had taken the cinema theatre on lease. We find that the lease was granted vide agreement dated 22.09.2018 for a period of four years, which has already expired. Only based on forged lease agreement, the lease is contested to be extended. When there is no agreement executed between the appellant and the respondent, learned trial Judge ought to have dismissed the interlocutory applications and directed the respondent to handover the theatre. On the contrary, the impugned orders have been passed, which need to be set aside.

13. Mr.Sukumaran, learned counsel for the respondent submitted that the arguments advanced by learned counsel for the appellant that the lease deed dated 21.05.2022 is a forged document, is a matter for trial. The question of forgery also needs to be examined by the trial court on production of oral and documentary evidence. The argument that the appellant was out of India during that particular point of time, has to be looked into by the competent trial court. Therefore, the arguments advanced by learned counsel for the appellant that a



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direction should be issued to the respondents to handover the theatre during the period of lease agreement is unacceptable.

14. We are unable to accept the said arguments for the following reasons:

(a) The lease deed dated 22.09.2018 was executed for a period of four years, and the daily rent of the theatre fixed at Rs.3,600/-. The respondent was also honouring the terms and conditions of the lease agreement and has been depositing the daily rent in bank. The bank statement produced before us issued by the City Union Bank, Nagapattinam Branch, clearly shows that the respondent has been paying Rs.3,600/- towards daily rent. When in the year 2018, the respondent was paying the daily rent of Rs.3,600/-, it is not known how it can be as low as Rs.1,000/- in the year 2022.

(b) Secondly, regarding the subsequent lease renewal agreement dated 21.05.2022, it has been demonstrated before us that the appellant was in Singapore between 16.05.2022 and 22.05.2022. Therefore, it is clear that the document dated



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21.05.2022 is a forged one. A perusal of the passport placed before us, marked as Ex.R-1 before the trial court, clearly falsifies the case of the respondent. Even for the naked eye, the difference in signatures of the appellant in the forged lease/renewal agreements is very much visible.

(c) Moreover, when learned Trial Judge has rejected the case of the respondent for grant of anticipatory bail and bail, it is not known how the same learned Judge has passed the impugned fair and decretal order in favour of the person, who has forged the signature of the appellant in the lease deed.

(d) The respondent could not produce a shred of paper to support his case that the rent was only Rs.1000/-. Therefore, absolutely we have no hesitation whatsoever in concluding that the suit filed by the respondent is by playing fraud on Court by producing forged and concocted documents. There is no prima facie case at all in favour of the respondent. Hence, the respondent does not deserve the interim



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orders, as granted by the trial court and therefore, all these four appeals are allowed, vacating the interim orders.

(e) In normal course, we would have stopped with the vacating of interim orders. But in the case on hand, the respondent had the audacity to file the present suit on the basis of concocted and forged documents. The Hon'ble Supreme Court of India in ***S.P. Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1***, has held as follows:

“5..... The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.”

(f) Further, under somewhat similar circumstances, where the possession of the property



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was not through legal means, in ***Maria Margarida Sequeira Fernandes and ors. vs. Erasmo Jack De Sequeira, through LRs, (2012) 5 SCC 370***, The Hon'ble Supreme Court of India has held thus:

“98. In this view of the matter, the impugned judgment of the High Court as also the trial court deserve to be set aside and we accordingly do so. Consequently, this Court directs that the possession of the suit premises be handed over to the appellant, who is admittedly the owner of the suit property.”

(g) In that view of the matter, we have to direct the respondent to forthwith surrender the possession of the suit property/theatre to the appellant, within a week's time, from the date of receipt of the copy of this Order.

(h) For indulging in this frivolous litigation, we also hold that the respondent is liable to pay a cost of Rs.1,00,000/- (Rupees One lakh only) to the appellant, within a week's time from the date of receipt of a copy of this judgment.



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15. In the result,

(i) CMA Nos.2716 to 2719 of 2022 shall stand allowed and the impugned common order passed by learned Principal District Judge, Nagapattinam, in I.A.Nos.6, 7, 4 and 5 of 2022 in C.O.S.No.3 of 2022, dated 18.11.2022, shall stand set aside and the said I.A.Nos.6, 7, 4 and 5 of 2022 in C.O.S.No.3 of 2022, dated 18.11.2022 shall stand dismissed;

(ii) The respondent is directed to handover the possession of the theatre/the suit scheduled property, to the appellant, within a week's time, from the date of receipt of a copy of this judgment;

(iii) The respondent shall pay the cost of Rs.1,00,000/- (Rupees One lakh only) as costs to the appellant;

(iv) We direct the trial court to take up the suit and dispose of the same in accordance with law, within a period of three months from the date of receipt of a copy of this judgment.

(vi) CMP Nos.21213, 21217, 21212, and 21211 of 2022 are closed.

(T.R., ACJ.) (D.B.C., J.)
17.04.2023

Index : Yes/No
Neutral Citation : Yes/No
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Note: Issue order copy on 28.04.2023

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T.RAJA, ACJ,
and
D.BHARATHA CHAKRAVARTHY, J.

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To

The Principal District Court, Nagapattinam.

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