



WEB COPY

C.S. No.184 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.08.2024

Pronounced on: 25.10.2024

CORAM:

THE HON'BLE MR.JUSTICE P.B.BALAJI

C.S. No.184 of 2004

Mrs.Prema

..Plaintiff

Vs.

1.Indian Oil Corporation Limited,
rep by its Chief Divisional Manager.

2.Alfa Gasoline

...Defendants

PRAYER: Plaintiff filed under Order VII Rule 1 of CPC r/w Order IV Rule 1 of the O.S. Rules, praying to pass judgment in favour of the plaintiff against the defendants,

a. directing the defendants, their men, agents, servants, dealers, etc., to quit and deliver vacant possession of the property described in the Schedule to the plaint, to the plaintiff.

b. for a Mandatory Injunction directing the defendants to dismantle and remove the superstructures and fittings erected over and in the property described in the Schedule to the Plaint;

c. Directing the first Defendant to pay the plaintiff damages for breach of lease deed dated 06.02.1986 by abuse of process of law and illegal use and occupation of the suit property in the sum of Rs.4,26,34,716.84 together with interest at 12% per annum from the date of plaint up to the date of realization and in a lie manner subsequently;



d. for costs of the suit.

For Plaintiff : Mr.S.Parthasarathy,
Senior Counsel for
Mr.C.Ramesh

For Defendants : Mr.T.R.Rajagopalan,
Senior Counsel for
for Mr.V.Anathanatarajan.
for D1

Mr.D.Kanagasundaram
for D2

J U D G M E N T

This suit has been filed for recovery of vacant possession of the suit property from the defendants; for mandatory injunction to direct the defendants to dismantle and remove the superstructures and fittings erected over and in the suit property and for a direction to the 1st defendant to pay the plaintiff damages for breach of lease deed dated 06.02.1986 by abuse of process of law and illegal use and occupation of the suit property to the tune of Rs.4,26,34,716.84 together with 12 % interest per annum from the date of plaint till the date of realization.

2. The plaint in C.S.No.184 of 2004, in brief:



The plaintiff is the absolute owner of the suit property comprised in S.No.383/1 measuring 8058 sq ft or thereabouts. The suit property is situated in a prime location in Central Chennai on Poonamallee High Road near Hospitals, Schools, Banks, Residential Complexes and Marriage Halls commanding excellent locational advantages. The plaintiff let out the suit property to the 1st defendant for a period of 20 years commencing from 1st November 1964. The rent mutually fixed for the first ten years was Rs.700/- per month and Rs.1,200/- per month for the next ten years. The purpose of the lease was to enable the first defendant to set up a Petrol Bunk.

3. On the expiry of the lease, the parties entered into a fresh registered lease deed dated 06.02.1986 for a period of 5 years and 5 months, commencing from 01.11.1984 and ending 31.03.1990, on the last paid rent of Rs.1,200/- per month, payable up to 31.03.1987 and at Rs.1,800/- per month from 01.04.1987 to 31.03.1990. According to the plaintiff, the rent was deliberately fixed at a low rate as the defendant had agreed to hand over possession of the property by 31st March 1996. In the meantime, the 1st defendant appointed the plaintiff as its sole dealer to run and operate the Petrol and Diesel outlet in the plaintiff's property in July 1986 and thus the plaintiff was put in physical possession of the suit property. It is the specific



case of the plaintiff that the lease was not renewed beyond 31.03.1990 and the last lease deed did not even contain a provision for renewal.

WEB COPY

4. By a letter dated 31.03.1990/01.04.1990, the plaintiff informed the 1st defendant that the lease had come to an end by efflux of time and the property was retained by the plaintiff as full owner. The plaintiff also put up a barbed wire fencing on the northern side of the suit property bound by Poonamallee High Road, to prevent trespass and to safeguard the suit property.

5. The plaintiff alleges that the 1st defendant, taking law into his own hands forcibly entered into the suit property on 05.04.1990 and also appointed Loganathan of Kasthuri Agencies as its dealer without any leasehold right or interest in the suit property. The plaintiff filed a suit in C.S.No.342 of 1990 for a permanent injunction to restrain the 1st defendant and its agents from operating the petrol outlet at the suit property. Though an interim injunction was granted by this Court on 10.04.1990, subsequently the same was vacated on 08.05.1990 and taking advantage of the same, the 1st defendant took forcible possession from the plaintiff on the same day. Therefore, the plaintiff filed a suit in C.S.No.342 of 1990, the same was



transferred to the City Civil court in O.S.No.8465 of 1998 and again re-transferred to this Court in Tr.C.S.No.646 of 2006.

WEB COPY

6. In the meantime the 1st defendant filed C.S.No.389 of 1990 to declare that the 1st defendant is entitled to all benefits under the Tamil Nadu City Tenants Protection Act, and for permanent injunction, the said suit was transferred to the City Civil Court in O.S.No.5606 of 1996 and ultimately the said suit was dismissed for default on 15.03.2002. After noticing an advertisement in a leading newspaper on 02.10.2002 published by the 1st defendant inviting offers from the land owners for sale of land for retail outlets, the plaintiff made an offer on 24.10.2002. However, the 1st defendant did not choose to respond to the said offer and the plaintiff thereupon issued a lawyer's notice on 24.12.2002, calling upon the 1st defendant to quit and deliver the vacant possession of the suit property and also pay damages.

7. The plaintiff also filed C.S.No.700 of 1993 before this Court for damages at the rate of Rs.3,600/- per month on and from 06.04.1990, for illegal use and occupation, besides property and water taxes paid for 6 half years and for the value of the plaintiff's stocks at the time of forcible



dispossession by the first defendant, amounting to Rs.1,47,484.40. The said suit was transferred to the City Civil Court in O.S.No.10136 of 1996, which is now re-transferred to the file of this Court and re-numbered as C.S.No.670 of 2006.

8. The plaintiff under the above narrated circumstances instituted the suit for the reliefs already set out. It is also alleged by the plaintiff that the 2nd defendant has been appointed as a dealer of the 1st defendant without any manner of right, title or interest in the suit property. The plaintiff being an aged widow, on 04.05.2003, approached the first defendant for amicable settlement after quantifying her claim in accordance with the guidelines set out under the Tamil Nadu Buildings Lease and Rent Control Act, 1960 made an offer to the tune of Rs.5,04,52,229/-, together with interest for either handing over the property leased to the first defendant or for purchase by the first defendant mutually acceptable price. Despite receiving the said letter on 21.08.2003, the first defendant has not chosen to reply.

9. According to the plaintiff, the plaintiff is entitled to possession and also damages for use and occupation including interest at 12% of the interest on the then guideline value, from 05.04.1990, being the date of



forcible entry, up to 04.11.2003 and subsequently, up to date of recovery of possession. The plaintiff has quantified the damages for breach of lease deed by abuse of legal process for 163 months at Rs.2,61,56,268/- per month. (2,61,562.68 X 163 or Rs.4,26,34,716.84). According the plaintiff, the suit is not barred by limitation, in view of the plaintiff's suit for injunction being still pending and the first defendant's suit was dismissed only on 15.03.2002. The plaintiff therefore, prayed for the relief as already set out herein above.

10. *The 1st defendant has filed a written statement, the sum and substance of which is as follows.*

The ownership of the suit property at the hands of the plaintiff is admitted. The factum of execution of lease deeds and also not renewing the same beyond 31.03.1990 are also admitted. The 1st defendant denies forcible entry into the suit property as alleged and claims that only because the plaintiff resigned as a dealer, the 1st defendant had appointed M/s.Kasthuri Agency as Adhoc dealer and handover possession to them. It is also stated by the 1st defendant that the 2nd defendant was selected as the dealer after completing due process and they have nothing to do with the plaintiff. According to the defendants, they continue to send a sum of Rs.1,800/- per



month towards rent, however the plaintiff has returned the same without any justification. The 1st defendant also denies the liability to pay damages for use and occupation of the suit property. The defendant denies illegal occupation and abuse of the lease deed as alleged by the plaintiff and seeks dismissal of the suit.

11. *The 2nd defendant has filed a separate written statement, the crux of which is as follows.*

The 2nd defendant is not a proper or necessary party to the suit. The 2nd defendant is not liable to pay any amount to the plaintiff and there is no privity of contract between the plaintiff and the 2nd defendant. The 2nd defendant was allotted the suit property by the 1st defendant in terms of an order of this Court in W.P.No.13213 of 1995 and therefore the 2nd defendant has nothing to do with the plaintiff. In short, the 2nd defendant also prayed for dismissal of the suit, since the plaintiff had no transaction with the plaintiff.

12.. This Court, on 26.08.2016, framed the following 7 issues in C.S.No.184 of 2024:-

“1. Whether the possession of the suit property by the first defendant is lawful?”



WEB COPY

C.S. No.184 of 2



2. Whether the appointment of the second defendant and operation as a dealer by the first defendant in the suit property is lawful in view of the determination of lease?

3. Whether the plaintiff is entitled to possession of the suit property?

4. Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for?

5. Whether the plaintiff is entitled to the relief of damages together with interest at 12% per annum from the date of plaintiff as prayed for?

6. Whether second defendant is a proper and necessary party to the suit?

7. To what other reliefs, the plaintiff is entitled to?"

13. At trial, the plaintiff's son, R.Jayakumar, Chief Manager of Retail Sales of the 1st defendant Company examined himself as PW1 and Exhibits P1 to P23 were marked. On the side of the 1st defendant, one Mr.K.Judson, Senior Manager of the 1st defendant Company was examined as D.W.1 and Exhibits D1 and D2 were marked.

14. I have heard Mr.S.Parthasarathy, learned Senior Counsel for Mr.C.Ramesh, learned counsel for the plaintiff, Mr.T.R.Rajagopalan, learned Senior Counsel for Mr.V.Ananthanatarajan, learned counsel for the 1st defendant and Mr.D.Kanagasundaram, learned counsel for the 2nd defendant.



WEB COPY

15.(a) Mr.S.Parthasarathy, learned Senior Counsel for the plaintiff would submit that there is no dispute with regard to the ownership of the property, however he would submit that the plaintiff herself was appointed as a sole dealer to run the outlet in her own property and only in such capacity, the plaintiff was put in physical possession of the suit property. According to the learned Senior Counsel, the lease deed originally entered into between the plaintiff and the defendants was not renewed beyond March 1990 and therefore, the plaintiff had retained the possession as the owner of the property by the end of the lease period contemplated under the last lease deed between the parties. Only in order to protect the property, the plaintiff had put up a barbed wire fencing to ensure that there was no trespass by any person. However, the defendants have forcibly entered the property and in furtherance of orders passed in the interlocutory stage, the defendants have started running a petrol outlet. In such circumstances, the plaintiff was well within her right to seek recovery of possession as well as damages for the use and occupation.

(b) Learned Senior Counsel would further submit that the plaintiff's



son has been examined as P.W.1 and he has clearly spoken about the manner in which the property was used by the plaintiff herself as a dealer and subsequently, how the defendants came to forcibly occupy the same. He would refer to the evidence of Mr.K.Judson, who was examined as D.W.1 on the side of the 1st defendant and highlighted the inconsistent evidence let in on the side of the defendants. He would further submit that the defendants are admittedly in occupation of the suit property without any iota of right and well beyond the period of lease expiring and therefore, the plaintiff is entitled to not only recovery of possession but also damages for use and occupation.

(c) Learned Senior Counsel would further state that the plaintiff was willing to amicably settle the matter as well and the defendants did not come forward to accept the same and they have clearly acquiesced to the plaintiff's claim for enhancement of damages and interest and therefore, it is not open to the 1st defendant to even challenge the claim for damages. He would further submit that the plaintiff has also produced the guideline value for the relevant year and the damages will have to be ascertained on the basis of the guideline value.



(d) Learned Senior Counsel would also place reliance on the decision of the Hon'ble Supreme Court in *Muddasani Venkata Narsaiah (Dead) through Legal Representatives Vs. Muddasani Sarojana* reported in (2016) 12 SCC 288, where the Hon'ble Supreme Court held that denial of a fact in the written statement has to be specific and that denial for want of knowledge is no denial at all and would not amount to have the effect of putting the fact in issue.

(e) In *K.Pandurangan Vs. C.Parimala* reported in 2022 (1) CTC 282, where this Court held that mesne profits is a concept of procedural law and not a principle of substantive law of torts. It is further held that the measure of damages for tortious wrong need not be restricted either to the concept of compensatory or restitutionary damages and that windfall or downfall, would be the making of the owner of the property since he is the owner and it is his right and therefore cannot be dictated by the defendant.

(f) In *Indian Oil Corporation Ltd., Vs. Sudera Realty Private Limited* reported in 2022 SCC Online SC 1161, where the Hon'ble Supreme Court held that the claim for mesne profits accrues day to day and is a continuing one and could be decided under Article 113 of the Limitation Act and the



suit cannot be barred by limitation.

WEB COPY

16.(a) Per contra, Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the 1st defendant would state that the plaintiff has clearly taken advantage of the fact that she was appointed as the dealer and was running the outlet in her own property and attempted to prevent the defendants from entering the property let out to the 1st defendant for the purposes of running a petrol and diesel outlet. Learned Senior Counsel would further submit that the defendants cannot be termed as illegal occupants at all and further, he would invite my attention to the orders passed by this Court in the interlocutory stage, fixing the rent at Rs.1,20,870/- which is being duly paid by the 1st defendant without any default whatsoever. In such circumstances, learned Senior Counsel would submit that the question of payment of the mesne profits as claimed by the plaintiff cannot arise.

(b) Learned Senior Counsel would further submit that the plaintiff has not let in any evidence whatsoever to prove the claim in respect of the damages and would state that the guideline value relied on by the plaintiff has no evidentiary value and it was incumbent on the plaintiff to establish



the market rents in the locality before becoming entitled to a decree for damages. He would also state that the claim for damages is also hopelessly barred by law of limitation and the claim cannot be for a period of exceeding three years preceding the suit.

(c) He would place reliance on the decision of the Hon'ble Supreme Court in *Ganapathi Madhav Sawant (Dead) through his LR's Vs. Dattur Madhav Sawant* reported in 2008 3 SCC 183, where the Hon'ble Supreme Court held that without any enquiry in terms of the Order XX Rule 12 of the CPC, there can be no grant of mesne profits.

(d) He would also place reliance on the decision of the Hon'ble Supreme Court in *Rahul Yadav and Another Vs. Indian Oil Corporation Limited and Others*, reported in (2015) 9 SCC 447, where the Hon'ble Supreme Court held that a lessor who is put in possession by the lessee as licensee, upon termination of licence, the lessor would himself be a trespasser during subsistence of the lease. Learned Senior Counsel would therefore pray for dismissal of the suit.

17. The learned counsel for the 2nd defendant would adopt the arguments of the learned Senior Counsel for the 1st defendant and also



additionally contend that there being no privity of contract between the plaintiff and the 2nd defendant, the suit was liable to be dismissed.

WEB COPY

18.I have carefully considered the submissions advanced by the learned Senior Counsel on either side.

19. Issues 1 to 4 and 6:

(a) It is an admitted fact that the plaintiff is the owner of the suit property and the property was let out to the 1st defendant for a period of twenty years, even as early as in November 1964 on a monthly rent of Rs.700/- for the first ten years and Rs.1200/- for the next ten years. The purpose of tenancy was to enable the 1st defendant to run a petrol bunk in the suit property. After the expiry of the lease period, a fresh registered lease deed was also executed between the plaintiff and the 1st defendant on 06.02.1986 for a period commencing 01.11.1984 and ending 31.03.1990, fixing the rent as Rs.1200/- per month payable up to 31.03.1987 and Rs.1800/- per month payable for 01.04.1987 to end of the tenancy, namely 31.03.1990. It is the contention of the plaintiff that the rent was deliberately fixed at a very low rate since the 1st defendant had agreed to hand over possession by end of 1990.



(b) It is a peculiar case where the owner of the property, lessor herself was appointed as the sole dealer of the 1st defendant to operate the petrol bunk in the suit property belonging to the plaintiff. Therefore, during the subsistence of the lease, the plaintiff, though owner of the suit property was in occupation of the same only as a lessee under the 1st defendant. On perusal of the lease deed dated 31.03.1990, I do not find that the parties contemplated any renewal post expiry of the lease period on 31.03.1990. In fact, it is borne out of record that the plaintiff, in and by a letter dated 31.03.1990, informed the 1st defendant about the lease having come to an end and the property being retained by the plaintiff as full owner. It is not disputed that the plaintiff attempted to protect her possession of the suit property.

(c) It is the allegation of the plaintiff that, the 1st defendant took law into its hands and forcibly entered the suit property on 05.04.1990 and also appointed a dealer by name, Loganathan of Kasthuri Agencies to run the petrol bunk. It is also seen that initially an exparte interim order was granted in favour of the plaintiff in C.S.No.342 of 1990. However, the same was vacated by this Court on 08.05.1990, thereby paving the way for the 1st defendant to be in possession of the leased property, namely the petrol bunk.



WEB COPY

(d) Exercising the rights under Section 9 of the City Tenants Protection Act, the 1st defendant also filed a suit in C.S.No.389 of 1990. The said suit was transferred to the City Civil Court, in O.S.No.5606 of 1996 and subsequently, the suit was dismissed for default on 15.03.2002. The said decree has become final and therefore, the 1st defendant has lost his rights to purchase the property and avail the benefits of Section 9 of the City Tenants Protection Act.

(e) According to the 1st defendant, there was no forcible entry and consequent to the plaintiff resigning as a dealer of the 1st defendant, they had rightfully appointed another dealer and handed over possession to the said new dealer by following the due process and therefore, the 1st defendant or the 2nd defendant are not in illegal occupation as alleged by the plaintiff. It is also stated by the 2nd defendant by filing a separate written statement that the 2nd defendant is neither a proper nor a necessary party to the suit as the 2nd defendant has no privity of contract with the plaintiff. He claims to be in lawful possession of the suit property by virtue of an allotment made by the 1st defendant.



WEB COPY

(f) Mr.R.Jayakumar, son of the plaintiff was examined as P.W.1. In his evidence, he has stated that he is aware of the various lease deeds executed between the Corporation and his mother. He further admitted that in pursuance of the interim directions issued by this Court, the 1st defendant has been paying a sum of Rs.1,20,870/- per month and that they have also paid the entire arrears.

(g) One Mr.K.Judson, Chief Manager, Retail Sales under the 1st defendant, was examined as D.W.1 on the side of the 1st defendant. In his evidence, he has stated that the claim made by the plaintiff for enhancement of rent was not based on the lease terms and conditions and only on personal assumptions and therefore, the plaintiff has not entitled to any damages. He has further stated that in compliance of the order of this Court dated 09.12.2009, the monthly rent of Rs.1,20,870/- is being promptly paid without any default. He has further stated that he was aware that the plaintiff had put up barbed wire fencing around the property to safeguard her possession of the suit property. He has further stated that he did not know when the 2nd defendant dealer was appointed as a dealer and as to whether



there was any dealership agreement with the 2nd defendant. Thus, it can be seen that the plaintiff, after the expiry of the last lease period, was in physical possession of her property, the lease with the 1st defendant having come to an end by efflux of time.

(h) The defendants' witness, D.W.1 himself admits that the plaintiff had put up barbed wire fencing which effectively implies that the plaintiff alone was in physical possession and not the 1st defendant. For the alleged trespass committed by the 1st defendant, the plaintiff also lodged a police complaint and the same is exhibited in Ex.P8.

(i) Therefore, as rightly contended by the learned Senior Counsel for the plaintiff, it cannot be stated that the 1st defendant is in occupation of the suit property as a tenant holding over, but, only as trespasser and bound to not only deliver vacant possession of the suit property to the plaintiff but also adequate compensation to the plaintiff by way of damages for use and occupation of the suit property.

(j) The report of the Advocate Commissioner was also marked as Ex.P11. The report of the Advocate Commissioner clearly evidences the



fact that the possession was only with the plaintiff and forcible entry was made by the 1st defendant and that the dealer, Loganathan of Kasthuri Agencies was not in a position to operate the service station, which was not even functioning on all the days of inspection made by the Advocate Commissioner.

(k) Admittedly, the plaintiff filed a suit in C.S.No.342 of 1990 and an exparte injunction was also granted restraining the 1st defendant or claiming through the 1st defendant for trespassing into the suit property. However, this Court, on 08.05.1990, vacated the said interim order and only pursuant to the said order passed by this Court, the defendants, were in a position to enter into the suit property and run the petrol and diesel outlet.

20. Thus, from the above, it is clear that the 1st defendant plea that it is a tenant holding over is clearly unestablished and unacceptable. The 1st defendant may have been a lessee under a valid lease deed entered into with the plaintiff. However, from the pleadings and evidence available on record and on a careful appreciation of the oral evidence adduced by the parties, it is clear that the plaintiff being the owner of the property and also running the petrol outlet as a dealer never parted with possession to suit property to



the 1st defendant at any point of time, much less after the expiry of the lease deed on 31.03.1990.

WEB COPY

21.In fact, at the earliest instance, she has sent a communication dated 31.03.1990 / 01.04.1990 informing the 1st defendant that the plaintiff is in possession as owner of the property. The further fact that the defendants admit to the plaintiff having put up a barbed wire fencing to protect the property also does not advance the defence any further. Therefore, I am inclined to hold that the possession of the suit property at the hands of the defendants is not lawful.

22.Insofar as appointment of the 2nd defendant as a dealer with the 1st defendant's concern, the same is also not established by adducing the dealership agreement. In fact, the 2nd defendant has chosen to file a separate written statement and he only claim that he has been allotted the petrol bunk by the 1st defendant. Even before the Advocate Commissioner, the defendants have not been able to produce any dealership agreement. In such circumstances, the appointment of 2nd defendant and his operation as a dealer of the 1st defendant in the suit property is also not lawful.



23.Further, the 2nd defendant, admittedly is in possession and running petrol outlet and therefore, even though there may not be any agreement between the plaintiff and the 2nd defendant, considering the reliefs prayed for in the suit, especially the relief of recovery of possession, the 2nd defendant is a proper and necessary party. For all the above reasons, the issues 1 to 4 and 6 are answered accordingly.

24.Issue No.5:

The plaintiff has claimed relief of damages. In paragraph No.12 of the plaint, the plaintiff has stated that the 1st defendant is liable to pay damages at 12% of the guideline value of the suit property from April 1990, namely the date of forcible entry up to 04.11.2003 for 163 months and subsequently, up to the date of recovery of possession, the plaintiff has claimed damages to the tune of Rs.4,26,34,716.84/-.

25.Pending the suit, this Court has passed an order dated 09.12.2009, directing payment of Rs.1,20,870/-. The said order has become final. Excepting for production of the guideline value for the year 2003, in this regard, I do not find any evidence whatsoever on the side of the plaintiff to establish the prevailing market rent which alone would entitle the plaintiff



to succeed in her claim for damages for use and occupation.

WEB COPY

26.The law is well settled that the guideline value is only fixed for the purposes of the registering authorities to enable them to collect stamp duty and registration charges in respect of registration of documents and the said guideline value cannot be equated to market value of the property concern. As already discussed above, excepting the guideline value, there is no independent evidence adduced by the plaintiff to prove the prevailing market rent in the locality or the market rent that the suit property would fetch.

27.Though the issue as to whether the claim is barred by limitation has not been specifically framed, the Court is always empowered to deal with the same in view of the mandate of Section 3 of the Limitation Act. Even otherwise issue No.5 is wide enough to cover this.

28.The Hon'ble Supreme Court in *Indian Oil Coporation Ltd., Vs. Sudera Realty Private Limited's* case, has held that the claim for mesne profits would accrue from day to day and it is continuing one and the suit for mesne profit would fall under Article 113 and since the cause of action



is continuing and it would not fall under Article 51 which prescribes the limitation of three years in respect of profits received.

WEB COPY

29. However, in the present case, the plaintiff herself has approached the Court alleging that the defendants are trespassers and therefore, in such circumstances, it cannot be said that the plaintiff is entitled to mesne profits. The plaintiff is entitled only to damages for use and occupation and there is clear bar under Article 87 of the Limitation Act for claiming such damages beyond the period of three years from the date of trespass. Therefore, the claim made by the plaintiff right from April 1990 is clearly not sustainable in law and at best, the plaintiff is entitled to damages only from November 2000, the suit having been filed in December 2003. The decisions relied on by the learned Senior Counsel for the plaintiff would not apply to the facts of the present case. In any event, I have already discussed the evidence on record and held that excepting the guideline value, there is no independent evidence adduced on the side of the plaintiff to establish the prevailing market rent to enable the plaintiff to sustain the claim for damages for use and occupation. Therefore, the claim made by the plaintiff cannot be entertained as prayed for.



30. However, this Court, in and by an order dated 09.12.2009, after considering the facts and circumstances of the case, had fixed a sum of Rs.1,20,870/- to be paid as rent and admittedly, the 1st defendant has been paying the said sum to the plaintiff and has also paid the entire arrears of rent based on the said order passed by this Court. The plaintiff has also admitted that the 1st defendant is continuing to pay the said sum without any default. Therefore, in the light of the above, the plaintiff is not entitled to any decree insofar as damages for use and occupation in respect of the past period.

31. Though I am alive to the situation that the order passed by this Court is being duly complied with by the 1st defendant as early from 2009, yet, the same cannot be equitable as on date. I am though inclined to direct the 1st defendant to pay damages to the tune of Rs.1,20,870/- per month together with interest at the rate of 12% per annum which would be enhanced at the rate of 10% once in every three years, beginning November 2000, from which date alone, the plaintiff is lawfully entitled to claim damages for use and occupation. The issue No.5 is answered accordingly.

32. In fine, the suit is decreed as follows:



WEB COPY

(i) The defendants shall hand over vacant possession to the plaintiff within a period of three months from today.

(ii) The defendants are directed to dismantle and remove the superstructures and fittings erected over the suit property, before vacating and handing over the possession to the plaintiff as directed in clause (i) as stated supra.

(iii) The 1st defendant shall pay interest at 12% per annum on Rs.1,20,870/- per month from November 2000 till the date of this decree.

(iv) The 1st defendant shall pay damages at an enhanced rate of 10% per annum every three years commencing from November 2000 till the date of vacating and handing over vacant possession to the plaintiff.

(v) The 1st defendant shall continue to pay the present enhanced rent calculated in terms of clause (iv) as stated supra till the date of defendants vacating and handing over the vacant possession to the plaintiff.

(vi) The defendants shall pay the proportionate costs insofar as the relief granted to the plaintiff alone.

25.10.2024

(2/2)

Index : Yes/No
Speaking/Non-speaking order
ata



WEB COPY

C.S. No.184 of 2



Witnesses examined on the side of the plaintiff:

P.W.1 – R.Jayakumar

Exhibits produced on the side of the plaintiffs:

S.No.	Exhibits	Date	Description
1.	P1	29.08.2016	The authorisation letter.
2.	P2	04.10.1966	The original letter.
3.	P3	20.04.1981	The copy of the letter.
4	P4	03.01.1985	The copy of the notice.
5	P5	06.02.1986	The certified copy of the lease deed.
6	P6	06.08.1986	The certified copy of the dealership agreement.
7	P7	31.03.1990	The certified copy of the letter.
8	P8	05.04.1990	The certified copy of the complaint.
9	P9	...	The office copy of the plaint.
10	P10	...	The copy of the plaint.
11	P11	26.04.1990	The copy of the report.
12	P12	...	The copy of the plaint.
13	P13	02.10.2002	The original advertisement made by the first defendant in the Hindu.
14	P14	24.10.2002	The copy of the letter.
15	P15	24.10.2002	The office copy of the Lawyer's notice.
16	P16	10.02.2003	The original reply.
17	P17	04.05.2003 and 21.08.2003	The copy of the offer of settlement.
18	P18	09.10.2012	The copy of the letter.
19	P19	12.10.2012	The original reply.
20	P20	12.10.2012	The original reply.



WEB COPY

C.S. No.184 of 2



21	P21	10.04.1990	Letter of Indian Oil Corporation Limited.
22	P22	15.03.2002	Copy of judgment.
23	P23	06.04.2013	Notice.

Witnesses examined on the side of the defendants:

D.W.1 – K.Judson

Documents marked on the side of the defendants:

S.No.	Exhibits	Date	Description
1.	D1	...	Photocopy of the power of attorney dated 01.06.2016.
2.	D2	...	General Power of Attorney.

25.10.2024
(2/2)

ata



WEB COPY

C.S. No.184 of 2



P.B.BALAJI,J.

ata

C.S. No.184 of 2004

25.10.2024
(2/2)