IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.11.2023

Pronounced on : 16.05.2024

CORAM:

THE HONOURABLE MR. JUSTICE A.A. NAKKIRAN

C.S.No. 105 of 2011

M/s.Vijaya Medical and Educational Trust,
Rep.by its Managing Trustee,
Having office at (Old No.180), New No.434,
N.S.K. Salai, Vadapalani,
Chennai – 600 026. .. Plaintiff

Versus

M/s. R.K.V. Studioss (P) Ltd.,
Rep.by its Managing Director,
R.K. Venkatathiri,
Having office at 317-G N.S.K. Salai,
Vijaya Garden, Vadapalani,
Chennai – 600 026. .. Defendant

Prayer: Civil Suit filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 CPC praying to pass a Judgment and decree:

a) For delivery of vacant possession of the suit property along with the theatre equipments by the defendant to the plaintiff.

b) For damages for use and occupation of the suit property at the rate of Rs. 3,60,000/- per month for the month of November and December 2010 totaling to Rs.7,20,000/-

c) for future damages at the rate of Rs.3,60,000/- per month from January, 2011 till the delivery of possession,

d) Pass such further or other orders as this Hon'ble Court deem fit and proper in the circumstances of the case and thus render justice.

For Plaintiff : Mr.T.S. Baskaran

For Defendant : Mr.P. Chandrasekar

JUDGMENT

The suit is filed for the following reliefs:

a) For delivery of vacant possession of the suit property along with the theatre equipments by the defendant to the plaintiff.

b) For damages for use and occupation of the sait property at the rate of Rs. 3,60,000/- per month for the month of November and December 2010 totaling to Rs.7,20,000/-

c)For future damages at the rate of Rs.3,60,000/- per month from January, 2011 till the delivery of possession,

d) Pass such further or other orders as this Hon'ble Court deem fit and proper in the circumstances of the case and thus render justice.

2. The brief facts of the case of the plaintiff are as follows:

(a) The suit property is known as "Vijaya Garden Deluxe Theater" situated at M/S. Vijaya Gardens, Opp Vijaya Hospital, Vadapalani, Chennai 26, morefully described in the schedule hereunder. M/S.Vijaya Garden Theatre, a unit of Vijaya Productions Pvt Ltd., who owned theatre and equipments intended to lease out the theater with the equipments to a third party and one Mr.R.K.Venkatathiri, the Managing Director of the Defendant Company approached the original owner and had taken the theatre along with the equipments on lease. A lease deed dated 05-10-1998 was executed between the original owner M/s. Vijaya Garden Theater and Mr. Venkatathiri. As per the terms of the Lease Deed, the lease was for a period of 7 years commencing from 01-10-1998. The Lessee had paid an rental advance of Rs.7,00,000/- towards the equipments and Rs.3,00,000/- towards the theatre. The rent was fixed at Rs.25,000/- per month for first two months ie., till renovation and other works were to be completed and thereafter the monthly rent was agreed to be paid at Rs.45,000/- pm., It was further agreed that an increase of rent of 15% after three years of lease and 20% increase on the 7th year shall be paid by the leasee. The lease entered between the parties is a composite lease consisting of the land, building, theatre and its equipments. The terms of the conditions of the lease deed dated 05-10-1998 may be read part and parcel of this plaint.

b).Pending the lease period, the original owner M/s.Vijay Productions Pvt Ltd., had transferred their rights over the suit property ie. M/s.Vijaya Garden Theatre, in favour of "Vijaya Medical and Educational Trust", a Public Trust, the Plaintiff herein. The transfer came into effect from 1st April 2002. The original owner M/s.Vijaya Productions Pvt Ltd., by its letter 17-04-2002 informed the transfer of rights in favour of Plaintiff and directed the defendant to attorn the tenancy in favour of Plaintiff. The Plaintiff trust also by its letter 22-04-2002 had informed about the transfer of rights in their favour and directed the defendant to attorn their tenancy in their favour. The Managing Director of the defendant company, Mr. R.K.Venkatathiri, had also by his letter dated 10-05-2002 had attorned the tenancy in favour of the plaintiff trust and started paying the rents directly to the plaintiff trust.

c). As per the lease deed on the 7th year of lease, the defendant has to pay an enhanced rent of 20% on the monthly rent. The defendant before the commencement of the 7th year of lease had sent a letter dated 24-04-2004 to the plaintiff trust requesting not to increase the rent as per the terms of lease deed, as the defendant alleged to have carried out certain repair works in the suit property. The defendant had carried out the alleged repairs without any notice or permission of the plaintiff. The defendant failed to pay the enhanced rent as agreed after the 3 years of lease and also in the 7th year of lease and continued to pay the old rent of Rs. 45,000/-. Further, the defendant without any valid permission and against the terms of the lease agreement had let out the suit property for film shooting. On coming to know of the same, the plaintiff trust had immediately sent a protest letter dated 24-10-2007 to the defendant objecting for using the suit property for the purposes other than agreed upon in the lease deed. After the expiry of lease deed, the defendant by its letter dated 12-02-2008 had requested the plaintiff trust to extend the lease period as the same had expired as early as on 4-10-2005. The plaintiff trust by its letter dated 13-02-2008 had extended the lease for a period of 5 years from 4-10-2005. Further, the maintenance charges was enhanced by 10% once in 2 years instead of once in 3 years as mentioned in Original lease agreement dated 5-10-1998. Further it was informed that all other terms and conditions mentioned in the earlier agreement remained same. The letter of plaintiff trust dated 13-02-2008 may be read in part and parcel of this plaint. The Plaintiff trust is running Hospitals on various specialties. In the recent years, there are more number of patients having Heart related problems and the plaintiff trust finds it difficult to give treatments in the available wards. The plaintiff trust in considering the requirement of additional space, had decided to construct a dedicated Heart Hospital to serve the patients. Accordingly, the plaintiff trust sent a letter dated 7-11-2008 requesting the defendant to vacate and deliver the suit property to the trust for achieving their noble cause. The plaintiff trust sent a letter giving three months advance notice and directed the defendant to deliver possession by 31-01-2009. For the said letter of plaintiff, the defendant sent a reply dated 21-11-2008 requesting the plaintiff for some time in vacating the suit property on the ground that he will incur loss by vacating the suit property immediately and also requested the plaintiff to consider the extension of the lease period till 4-10-2010. The defendant in his letter had assured that he will deliver vacant possession of the suit property before the expiry of the lease period ie. 4-10-2010. The plaintiff trust by its letter dated 01-05-2009 acknowledged the letter of defendant dated 21-11-2008 and insisted the defendant to adhere to the promise made in his letter. The plaintiff trust sent series of letters on various dates reminding the defendant to deliver possession of the suit property as agreed by their letter dated 21-11-2008. The defendant received all these letters of the plaintiff, but had not responded at all. To the shock and surprise to the plaintiff, the defendant who was keeping quite for all these days and gaining time for delivery of possession, had sent a letter dated 25-09-2010 in which he had sought extension of lease for a further period 10 years. The defendant was fully aware of his period of lease and hence cannot claim any right to continue by his alleged conduct of effecting improvements. Further the defendant without the consent of the plaintiff, had constructed small temples in the suit property and the same is in violation to the terms of the lease. The plaintiff was never put on notice about the alleged improvisation of the theatre and the defendant never obtained any consent to do so. The plaintiff is entitled to seek recovery of possession of the suit property from the defendant. The property is in the heart of Chennai and it would easily fetch a monthly rent at Rs.3,60,000/- per month with all its equipments. The plaintiff is entitled to recover a sum of Rs.3,60,000/- per month as damages for use and occupation of the suit property from the defendant from the date of expiry of the period of lease ie., from November, 2010 till delivery of possession. Hence, this Suit.

3.The case of the Defendant, as set out in the written statement, is as follows:-

a). A perusal of the Lease Deed dated 05.10.1998 would reveal that what was subject matter of the lease was only movables such as equipment required for running a theatre. The schedule of the property leased does not pertain to any theatre or immovable property. Had the lease deed dated 05.10.1998, pertained to immovable property namely a superstructure leasing a theatre along with equipment embedded in the property as claimed by the Plaintiff in paragraphs 3 & 9 of the plaint, then in such a case, certainly the lease deed dated 05.10.1998 required registration in terms of section 105 of the transfer of Transfer of Property Act and Section 17 of the Indian Registration Act. However admittedly the lease is an unregistered instrument. This Defendant submits that the suit is based solely on the basis that the suit schedule mentioned property was subject matter of the lease deed dated 05.10.1998 which was initially executed for a term of 7 years commencing from 01.10.1998 and further extended for a further period of 5 years with effect from 04.10.2005. In as much as the suit is based an unregistered lease deed, the suit is not maintainable in law and is liable to be dismissed in this short ground as well.

b)This Defendant further submits that since he suit property pertains to a superstructure with machinery embedded, notice under Section 106 of the Transfer of Property Act is mandatory in order to maintain the suit. The failure in the part of the Plaintiff to issue a mandatory notice as required under Section 106 of the Transfer of Property Act, renders the suit liable to be dismissed at the very threshold itself. Further, the Plaintiff is not the owner of the land comprised in Old Day No.170, New Dew No.317-G, NSK Salai, Vadapalani belongs to the S.M.M. Mohideen Wakf-Al-Aulad Estate and the Plaintiff was only a lessee under the S.M.M. Mohideen Wakf-Al-Aulad Estate. The lease in favour of the Plaintiff was in fact invalid as it was contrary to the express terms of the Wakf Deed. In any event, the property described in the schedule appended to the lease deed dated 05.10.1998 only pertains to movable and not any superstructure or immovable property as claimed in paragraph 5 of the plaint. Even assuming though not conceeding that the lease deed dated 05.10.1998 pertained to immovable property, the fact remains that the lease deed dated 05.10.1998 was an unregistered instrument and as such cannot be looked into by the Hon'ble Court, in view of the legal prohibition contained in section 49 of the Registration Act. It is further submitted that the schedule mentioned in the lease deed dated 05.10.1998 and the suit schedule mentioned property drastically differ. The Plaintiff and its predecessor in title being fully conscious of the fact that it was not the owner of the land had intentionally omitted to include the land, presently described in the suit schedule in the schedule appended to the lease deed dated 05.10.1998.

c). The suit schedule property was never owned by the Plaintiff or its predecessor-in-title. The predecessor-in-title of the suit schedule mentioned property had falsely held out that it was the owner and thereby induced this Defendant to execute the lease deed dated 05.10.1998, the Plaintiff is guilty of the gross misrepresentation and suppression of facts. It is incorrect to state that this Defendant carried out repairs without any notice or permission of the Plaintiff. The Plaintiff and its predecessor in title had full knowledge of the extensive modifications, constructions and repair work executed by the Defendant. At no point of time had the Plaintiff raised any protest against the action of the Defendant. In like manner, there is no expression prohibition in the lease deed against shooting being under taken in the suit property. That being so the Plaintiff cannot now contend that the Defendant had violated the terms of the lease. When the lease deed provides for recording / dubbing/mixing/re-recording / effects etc., shooting is incidental to recording and dubbing and hence cannot be objected to by the Plaintiff. This Defendant denies having received any protest letter dated 24.10.2009 and the Plaintiff is put to strict proof of the same.

d) The Plaintiff Trust has been running its hospital for several decades. The necessity to expand the hospital capacity could not have arisen all of a sudden. If the alleged expansion programme of the Plaintiff is genuine, the Plaintiff certainly would have foreseen the same at the time of extending the lease on 13.02.2008. It is rather shocking that in a matter of a few months, the Plaintiff suddenly felt the need to expand its activities and required the premises under the occupation of this Defendant. The requirement of the Plaintiff is not bonafide and is only a ruse to vacate the Defendant. Having extended the lease on 13.02.2008 it is not open to the Plaintiff to call upon the Defendant to vacate the hand over possession of few months later namely 07.11.2008. 9. It has invested more than 15 Crores of rupees in updating and replacing the equipments required for its business activity. The Plaintiff is fully aware of all the modifications and changes effected by this Defendant at its own costs. The Defendant had invested huge amounts in order to improve its technology and hope to recoup its investment over a period of time. It is entitled to remain in possession until it recovers all its investments made at its own expenses and it is legally entitled to continue in possession especially when the lease deed dated 05.10.1998 pertains only to movables and not any immovable property. The said theatre has not been specifically mentioned in the lease deed. There is no reference to any survey number nor extent of land or the dimensions of the superstructure. In the absence of any material details pertaining to the property, the Plaintiff is not entitled to claim something that is not at all referred to nor described in the lease deed. The claim of the Plaintiff that it requires the premises for its expansion activity lacks bonafides.

e) The Plaintiff's claim for damages at the rate of R.3,60,000/- per mensum is exorbitant and highly excessive. It is an admitted fact that in the year 2008 the Plaintiff had voluntarily fixed the rent at Rs.45,000/- per mensum. Thus it is not open to the Plaintiff to claim an extravagant sum of Rs.3,60,000/- which amounts to eight times that the rent fixed by the Plaintiff itself. Such a huge increase is not at all warranted and has no nexus to the prevailing market rent in the locality. The Defendant further submits that the equipments leased out to it are all out dated and cannot be used in the Cinema and music industry. Further, it had to replace all the equipments leased by the Plaintiff in order to be in tune with modern technology in a highly competitive field. It is further submitted that in paragraph 9 of the plaint it is alleged that the lease expired on 04.10.2010 while in paragraph 10 it is claimed that the lease period is November 2010. The Plaintiff itself is not certain of the date expiry of the lease. The Defendant is only liable to pay the existing rent in the absence of any valid determination of the lease. Further, it has made several modifications and new construction. At present there are in existence 5 studios as against the one originally available. This Defendant cannot seek to take advantage of the huge investments and improvements made by the Defendant at its costs and unilaterally seek for recovery of the property. This Defendant further submits that the Plaintiff had tacitly agreed to renew the lease for a further period of 5 years as this Defendant had initially sought for a renewal for a period of 10 years. The Plaintiff on the contrary granted a 5 year then renewal with effect from 04.10.2005 with a promise for an extension for a further period of 5 years. Acting on the promise made by the Plaintiff this Defendant had invested huge amounts in modernising the studio. There is no cause of action for the usit and same is liable to be dismissed.

4. In the pleadings of the parties, the following issues were framed:-

1. Whether the defendant has forfeited his right as a tenant by denying the title of the plaintiff in the written statement?

2. Whether the defendant is not a lessee of the suit property?

3. Whether the notice under section 106 of the Transfer of Property Act is mandatory for filing this suit?

4. Whether the plaintiff not entitled to recover possession of the suit property since the lease deed is unregistered?

5. Whether the defendant had violated the terms of the lease and whether the defendant had carried out modification and expansion over the suit property with the knowledge of the plaintiff?

6. Whether the plaintiff is entitled to recover damages for use and occupation at Rs.3,60,000/- per month with interest from the defendant?

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

8. To what other reliefs the parties entitled?

5. On the side of the Plaintiffs, Ex.P1 to Ex.P17 were marked and PW.1 was examined. Neither any witness was examined nor documents were marked on the side of the Defendant.

6. Heard both sides and perused the material available on record.

<u>Issue Nos.1 to 7:</u>

7.The learned counsel for the plaintiff would submit that the defendant by letter dated 21.11.2008 (Ex.P10) undertook to vacate the tenanted premises on or before 04.10.2010. However, the defendant failed to vacate the said premises and instead the defendant contested the suit. Therefore, pending the suit, the plaintiff filed an application No.5221 of

2014 seeking for Judgment and Decree based on admission of the defendant and A.No.5220 of 2014 seeking the direction to pay a sum of Rs.1,54,35,000/- being the arrears for the use and occupation of the suit property from November 2010 to July 2014 and continue to pay the sum of Rs.3,60,000/- per month. While the application No.5221 of 2014 was allowed by order dated 27.06.2016 granting a decree for delivery of the possession in favour of the plaintiff, A.No.5220 of 2014 was dismissed. Being aggrieved, the defendant has preferred an Appeal in OSA No.43 of 2017 against the order dated 27.06.2016 made in A.No.5221 of 2014. The Hon'ble Division Bench dismissed the said appeal by Judgment dated 23.11.2017. Subssequenlty, based on the decree passed in A.No.5221 of 2014 dated 27.06.2016, the plaintiff filed E.P. No.136 of 2016 for delivery of possession. In the said E.P., the plaintiff took the delivery of the suit premises on 11.07.2018.

8. The learned counsel for the plaintiff would further submit that the defendant failed to pay the rent from November 2010 till vacating the suit premises. Therefore, the plaintiff seeks the direction to the

defendant to pay the arrears of rent. Thus, the plaintiff seeks the relief as prayed for.

9. The learned counsel for the defendant would submit that in view of the Judgment and Decree dated 27.06.2016, passed in A.No.5221 of 2014, the plaintiff took the delivery of the tenanted premises. Further, the defendant has invested more than 15 Crores of rupees in updating and replacing the equipments required for its business activity. The Plaintiff is fully aware of all the modifications and changes effected by this Defendant at its own costs. The Defendant had invested huge amounts in order to improve its technology and hope to recoup its investment over a period of time. Hence, the defendant is entitled to adjust the said amount with the payable arrears of rent to the plaintiff.

10. The learned counsel for the defendant would further submit that in the year 2008 the Plaintiff had voluntarily fixed the rent at Rs.45,000/- per mensum. Thus, he seeks to dismiss the suit.

11. On a perusal of the records and the submission of the learned counsel on either side, it is seen that the plaintiff took the delivery of the suit premises on 11.07.2018 by virtue of filing E.P. No.136 of 2016. Hence, now, the Issue No. 8 is alone to be decided by this Court since the issue Nos.1 to 7 have already been decided by this Court in both the Applications filed by the plaintiff.

Issue No.8:

12. There is no any oral and documentary evidence on the side of the defendant to prove that they have paid the rent to the plaintiff till the occupation of the suit premises. Hence, the plaintiff is entitled to claim the rent from November 2010 till vacating the premises ie. July 2018 since the rent said not to have been paid by the defendant as fixed by it. ie. Rs.45,000/- per month.

13.In view of the above, the defenant is directed to pay the arrears of rent at the rate of Rs.45,000/- per month from November 2010 till July 2018 to the plaintiff. Hence, the plaintiff is entilted to receive the arrears of rent along with interest @ 9% p.m.

14. Accordingly, the suit is decreed to the aforesaid extent. No costs.

16.05.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Lbm

Witnesses examined on the side of the plaintiff:

PW1 :M.Thirumalai Nambi
PW2 :Mr.P.Kannan

Witnesses examined on the side of the defendant:

Nil

Exhibits produced on the side of the plaintiff:

Ex.P1 :Photocopy of the lease deed dated 05.10.1998. (Subject to objection raised by the defendant)

Ex.P2 :Photocopy of the letter dated 17.04.2002 sent by Vijaya Production to the defendant. (Subject to objection raised by the defendant)

Ex.P3 :Photocopy of the letter datd 22.04.2002 sent by the plaintiff to the defendant. (Subject to objection raised by the defendant)

Ex.P4 :Photocopy of the letter dated 10.05.2002 by the defendant to the plaintiff.

Ex.P5 :The letter dated 24.04.2004 written by the defendant to the plaintiff.

Ex.P6 :The office copy of the letter dated 24.10.2007 by the plaintiff to the defendant. (Subject to objection raised by the defendant)

Ex.P7 :The letter dated 12.02.2008 sent by the defendant to the plaintiff.

Ex.P8 :The office copy of letter dated 13.02.2008 by the plaintiff to the defendant. (Subject to objection raised by the defendant) defendant. (Subject to objection raised by the defendant)

Ex.P9 :The office copy of letter dated 07.11.2008 by the plaintiff to the defendant. (Subject to objection raised by the defendant)

Ex.P10:The lettter dated 21.11.2008 by the defendant to the plaintiff.

Ex.P11:The letter dated 01.05.2009 by the plaintiffs to the defendant.

Ex.P12:The letter dated 26.02.2010 by the plaintiffs to the defendant.

Ex.P13:The letter dated 23.09.2010 by the plaintiffs to the defendant.

Ex.P14:The letter dated 30.06.2010 by the plaintiffs to the defendant.

Ex.P15:The letter dated 25.09.2010 by the defendant to the plaintiff.

Ex.P16:The copy of the resolution dated 20.02.2012 by the plaintiff company authorising me to depose the evidence in this case

Ex.P17:Authorization letted dated 10.08.2022 along with the Board Resolution dated 09.08.2022. (Ex.P17 is marked as requested by the learned counsel for the plaintiff mentioned as Ex.P17.)

<u>Exhibits produced on the side of the defendant:</u>

<u>Nil</u>

16.05.2024

A.A. NAKKIRAN, J

Lbm

Pre-Delivery Judgment in
C.S.No. 105 of 2011

Delivered on
16.05.2024