

C.R.P (PD) No.1283 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2025

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THE HONOURABLE MS. JUSTICE P.T. ASHA.J

C.R.P (PD) No.1283 of 2025

and

C.M.P.Nos. 7665 & 7667 of 2025

Leela Nambiar (Died)

1.O.Padmanabhan Nambiar @ O.P.Nambiar

2.O.Venugopal Nambiar @ O.V.Nambiar

3.Nirmala Nambiar

... Petitioners

vs.

P.Suresh Solomon

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the order in IA.No.7 of 2024 in OS.No.131 of 2022 dated 19.11.2024 on the file of the Sub Court, Thiruvottiyur.



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For Petitioners : Mr. Selvaraj
For Mr. D.Prabhu Mukunth Arun
Kumar

For Respondent : Mr. B.Sivaraman

ORDER

Challenging the order passed in IA.No.7 of 2024 in OS.No.131 of 2022 on the file of the Sub Court, Thiruvottiyur, the plaintiffs are the petitioners herein. The respondent is the 21st defendant in the suit OS.No.131 of 2022 and the petitioner in IA.No.7 of 2024. The short facts are as follows.

2. The plaintiffs had filed the suit OS.No.148 of 2014 originally on the file of the Sub Court, Ponneri, which was later transferred to the file of the Sub Court, Thiruvottiyur and re-numbered as OS.No.131 of 2022. This suit was filed for the following reliefs:



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“(a)declaring that the plaintiffs are entitled to be in possession and enjoyment of the plaint schedule property as lessee till 30.04.2061 (i.e., 49 years from 01.05.2012) as per Clause 8 of the registered lease deed in DOC.No.1969/1962 dated 28.04.1962.

(b)Consequential permanent injunction restraining the defendants, their men, agents, servants or anybody claiming through them in any way interfering with the peaceful possession and enjoyment of the plaint schedule property by the plaintiffs as lessees.

(c)In the event of this Hon'ble Court holding that a fresh registered lease deed has to be executed extending the lease, grant a decree of specific performance mandating the defendants who are the legal heirs or successors in interest of Late Rathunissa Bi to extend / continue the lease of the plaint schedule property by executing a registered lease deed in favour of the



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plaintiffs for a period of 49 years from 1.5.2012 in terms of Clause 8 of registered lease deed dated 28.4.1962 in Doc.No.1969 / 1962 and in the event of the defendants failing to execute the lease deed, this Hon'ble Court may be pleased to depute an officer of this Court to execute the lease deed in favour of the plaintiffs.

3. A written statement had been filed by the 21st defendant and thereafter the 21st defendant had taken out an application for striking of the plaint in IA.No.3 of 2022. In the affidavit filed in support of the said application, the 21st defendant would submit that the suit is a sheer abuse of process of Court since the pleadings and averments in the plaint have been drafted in such a fashion to conceal the true facts.

4. The contention of the 21st defendant is that the plaintiffs had decided to vacate the demised premises and have entered into a tripartite agreement dated 03.03.2006 with one of the descendant



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Rathunnissa Bi, in and by which the plaintiffs have given up their lease hold right during the subsistence of the original period of lease, which they admitted, have ended on 30.04.2012 when the National Green Tribunal had stopped the activity with effect from 01.05.2014. Once the plaintiffs have opted to surrender the demised premises, they cannot turnaround and seek extension of the lease. These facts have been suppressed by the plaintiff. They sought for a dismissal of the suit.

5. The 21st defendant had thereafter filed IA.No.3 of 2022 to strike off the plaint in OS.No.131 of 2022 on the file of the ground that the lease was for the purpose of running and establishing an industry. The plaintiff has suppressed an order dated 25.04.2014 passed by the Pollution Control Board prohibiting the running of the factory in the suit property. Therefore, the purpose of the lease has come to an end. The plaintiff has allowed the encroachment of 30 grounds along the north eastern side where third parties have raised houses and huts. The plaintiff as a lessee has failed both to protect the property as well as



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recover the property from third parties. In the process the plaintiff has lost the right to demand renewal of the lease. Further, after deciding to vacate the premises and having signed a tripartite agreement on 03.03.2006 the lease hold right has ended on 30.04.2012 when the original period of lease come to an end. The suit is therefore a vexatious one aimed at harassing the petitioner and other purchasers.

6. The plaintiffs filed a counter stating that originally the suit was filed before the Sub Court, Ponneri, as OS.No.148 of 2014 and was later transferred and re-numbered as O.S.No.131 of 2022 on the file of the Sub Court, Tiruvottiyur. At this juncture, after 8 years, an application to strike off the plaint has been filed stating that an extension of lease cannot be granted as the orders of the Pollution Control Board asking them to stop operating the factory has no bearing upon the case on hand. They would further contend that the stand taken by the 21st defendant was illusory and that there was no encroachment.



WEB COPY 7. In the said application, ie., IA.No.3 of 2022, the 21st defendant has taken out an application in IA.No.7 of 2024 seeking production of tripartite memorandum of agreement dated 13.09.2006 executed between the plaintiff and the 23rd defendant in the suit as also the lease agreement entered into between the plaintiffs and the third parties. The said application was countered by the plaintiffs by contending that IA.No.3 of 2022 itself is not maintainable and therefore this application taken out in an application which is not maintainable has to be dismissed. The plaintiffs would also submit that these documents are not relevant to the issue on hand.

8. The learned Sub Judge, Thiruvottiur, by his order dated 19.11.2024 was pleased to allow the application directing the production of the tripartite agreement dated 13.09.2006 and the lease agreement entered into between the plaintiffs and third parties.



9. Challenging the same the plaintiffs / petitioners are before this

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10. Heard the learned counsels on the either side and perused the records.

11.The relief claimed in the suit is for a declaration and consequential injunction and for specific performance. The 21st defendant has filed IA.No.3 of 2022 for striking off the plaint on the following grounds:

(a)The request for extension of the lease could not be granted as there is a ban in place imposed by the Pollution Control Board, Chennai which has also been confirmed by the National Green Tribunal (South Zone), Chennai.

(b)The plaintiffs have failed to safeguard the demised premises and caused huge loss to the lessor and



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the descendants / successors. The plaintiffs ought to have taken steps to ensure that the property in question was protected.

(c)The plaintiffs have decided to vacate the premises and in furtherance of this have entered into a tripartite agreement dated 13.09.2006 giving up the lease.

12.The affidavit filed in support of the petition for receiving the additional documents is totally silent as to how these documents are required for considering the application for striking out the plaint. The ground on which the plaint is sought to be struck off can be independently considered without these documents.

13. The provisions of Order XI rule 12 of the CPC, would be applicable only in the case of main suit and not in interlocutory application. Therefore, the learned Trial Judge has misdirected himself



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allowing the said application. Even the order does not spell out the reason which has prompted the Court to allow the application except for a statement that it is necessary to be produced by the plaintiffs in order to arrive at just decision and for deciding real matter in controversy between the parties.

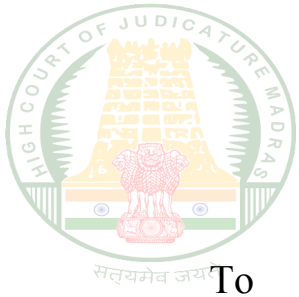
14. The order of the Subordinate Judge, Thiruvottiyur in IA.No.7 of 2024 in OS.No.131 of 2022 is set aside. The Civil Revision Petition is allowed giving liberty to the 21st defendant / respondent to use the said documents which are already filed before the Court as the originals of the same may not be available with him as he is not a party to the documents. Consequently, the connected miscellaneous petitions are closed. No costs.

28.03.2025

Index: Yes/No
Internet: yes/No

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To
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The Sub Court, Thiruvottiyur.



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