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A.S.Nos.622 & 369 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2025

CORAM:

THE HONOURABLE Mr. JUSTICE **R.SUBRAMANIAN**
AND
THE HONOURABLE Mr.JUSTICE **C.KUMARAPPAN**

A.S.Nos.622 & 369 of 2024
and
CMP.No.19587 of 2024

Indian Oil Corporation Limited,
Having registered Office at No.G9,
Ali Yavar Jung Marg, Bandra (East),
Mumbai-400 051.
Divisional Office at Indian Oil Bhavan,
8/1079, Avinashi Road,
Coimbatore.

... Appellant/Defendant in both the Appeals
-Vs-

1. Mr.D.Senthil Kumar
Rep. by Power Agent Mrs.D.Selvam
2. Mr.S.Srinivasan
3. Mrs.Nirmala
4. Mr.Ramesh
5. Mr.Kemburaj
6. Mrs.Sheela
7. Mr.G.Madhan
8. Mr.G.Prasath

... Respondents/Plaintiffs in both Appeals

PRAYER: First Appeals filed under Section 96 of the Code of Civil
Procedure praying to set aside the Judgement and decree dated 02.06.2023



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passed in O.S.No.329 of 2016 by the III Additional District Judge,
Coimbatore.

For Appellant : Mr.R.Sreedhar

For Respondents : Mr.N.Murali Kumaran
for Mr.S.K.Chandrakumar

COMMON JUDGMENT

*[Judgment of the Court was delivered by **R.SUBRAMANIAN, J**]*

The parties will be referred to as per their ranks for the purpose of convenience.

2. The respondents 1 to 8 filed a suit seeking a declaration that there is no renewal of the lease beyond 31.12.2009 as the right to renew conferred on the defendant has become nugatory on account of non-payment of the renegotiated rent and for eviction. The plaintiffs contended that the suit property was leased to the appellant to run a Petroleum outlet under a lease deed dated 27.02.1995 by one Rajagopal, who died on 12.09.2006. The plaintiffs are the legal heirs of said Rajagopal. The lease was for a period of 20 years commencing from 01.01.1989. The initial rent was Rs.4,500/- and it was subsequently enhanced to Rs.5,400/- for the second 5 years, to Rs.6,750/-



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for the third 5 years and Rs.8,440/- for the last 5 years. As per the conditions in the lease deed, the lease can be terminated by the defendant by giving 3 months notice. The plaintiffs are given a right to repossess the property, if there is a default in payment of rent. It is also alleged that the lease will be automatically renewed for a further period of 10 years and the rent has to be fixed by negotiation. The renewal is also subject to the willingness of the defendant. The lease [30 years period] expired on 31.12.2018. The defendant did not opt out from renewal by giving a notice in advance. There were negotiations between the parties for renewal of the lease for a further period of 10 years. It was agreed between the parties that the lease could be renewed for the period of further 10 years from 01.01.2009 and it was agreed that the monthly rent should be Rs.80,000/- for the first 5 years and Rs.84,000/- for the second 5 years. It is claimed that even after fixation of the rent, the defendant did not pay the same. Terming the failure to pay the rent as a breach of terms indenture of the lease, the plaintiffs sought for a declaration that the lease was not renewed and sought for recovery of possession.

3. The claim of the defendant that the lease is perpetual was specifically denied. On service of notice, the defendant filed a Counter Claim accepting



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that the claim of the respondents for renewal of the lease on a monthly rent of Rs.80,000/- per month [Rupees eighty thousand only] for the first 5 years and Rs.84,000/- per month [Rupees eighty four thousand only] for the next 5 years was accepted by it and claimed that the lease rent was not paid only because the lease deed was not executed. It was also claimed that the Corporation sent the monthly rents as per the original agreement by cheques and it also claimed that the difference rent will be paid upon execution of the fresh lease deed.

4. A reply statement was filed by the second plaintiff, which was adopted by the other plaintiffs, wherein it was contended that the failure on the part of the defendants to pay the rent as agreed to would render the renewal clause itself as nugatory and therefore, they are entitled to the possession.

5. Upon the above pleadings, the learned Trial Judge framed the following issues in the suit and the Counter Claim:-

- “1. Whether the clause of automatic renewal of the lease is valid and whether the plaintiff is entitled for the declaration to this effect?*
- 2. Whether the defendant has to be directed to deliver vacant possession of the suit property to the plaintiff?*



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3. *Whether the plaintiff is entitled for the damages from the defendant as prayed for?*

4. *What are the other relief the plaintiffs are entitled for?"*

Counter Claim:-

1. *Whether the defendant is entitled to a declaration that there is an automatic renewal of lease after 31.12.2009 with a renewal clause?*

2. *Whether the defendant is entitled to a mandatory injunction as prayed for?*

3. *To what other reliefs the defendant is entitled to?"*

6. At Trial, the 2nd plaintiff was examined as PW1 and Exs.A1 to A16 were marked. One Selvi M.Palani Prabha was examined as DW1 and no document was marked on the side of the defendant.

7. Upon consideration on the evidence on record, the learned Trial Judge concluded that the lease got terminated on 31.12.2008 due to the failure of the defendant to get a new lease for a period of 10 years from 01.01.2009. Therefore, the Trial Court held that in the absence of a registered lease deed in terms of Section 107 of The Transfer of Property Act, 1882, the lessee/plaintiff/defendant is not entitled to be in possession of the property.



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Consequently, issue no.2 was answered in favour of the plaintiffs. On issue no.3, viz., the damages, the Court found that the plaintiffs would be entitled to decree for Rs.84,000/- per month [Rupees eighty four thousand only] as mesne profits from October, 2015 till date of delivery of possession. The Counter Claim was rejected on the language of the lease deed, which requires an exercise of option and execution of a renewal lease deed. The claim of perpetual lease was termed as unfounded. On the above findings, the learned Trial Judge granted a decree in favour of the plaintiffs, while dismissing the Counter Claim. Aggrieved, the Corporation has come up with these appeals.

8. Heard Mr.R.Sreedhar, learned counsel appearing for the appellants and Mr.N.Murali Kumaran, learned Senior Counsel appearing for Mr.S.K.Chandrakumar for the respondents.

9. While Mr.R.Sreedhar, learned counsel for the appellant would vehemently contend that the relevant clause in the lease deed would amount to a perpetual lease. Therefore, the Trial Court was not right in its conclusion that there is no perpetual lease. Mr.N.Murali Kumaran, learned Senior Counsel appearing for the respondents/defendants in the suit would submit that there is



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no question of perpetual lease, when the lease deed specifically provides that there shall be renewal for a further period of 10 years. Therefore, only one renewal is possible. Even that renewal of lease has not been formalised by a registered instrument, though the parties reached in Agreement. Hence, he would urge us to confirm the finding of the Trial Court.

10. We have considered the rival submissions.

11. On the arguments addressed by the learned counsel for the parties the only point that arises for determination in the appeal is, as to whether there was a perpetual lease in favour of the appellant-Oil Company. We have considered the oral and documentary evidence that has been placed before us. The clause relating to the renewal of the lease in the lease deed reads as follows:-

“..... Such notice PROVIDED ALWAYS AND IT IS AGREED AND DECLARED that at the expiration of the said terms of 20 years this lease will be automatically and without any further act of any of the parties hereto renewed for a further term of 10 years from the expiration of the said term hereby granted unless the lessee shall prior to the expiration of



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*the last mentioned term gives to the lessors one calendar month previous notice in writing of them intention not to take any renewed lease. **The renewed lease will be on a rental to be negotiated and under the subject to the same covenants conditions and agreements as are herein contained including the present covenant for renewal.....***”

12. It is expressly admitted by the appellant-Corporation that there were negotiations for renewal and it was agreed that the Corporation would pay monthly rent of Rs.80,000/- for the first 5 years and Rs.84,000/- for the next 5 years during the renewal period. It is also not in dispute that the Corporation has not paid the rents. Once the Corporation has not paid the rents, the respondents were well within the rights to refuse the execution of the renewal lease deeds. It is claimed that it was the plaintiffs, who did not come forward to execute the lease deed and therefore, the defendant cannot be made liable for the consequences. When the lease deed executed earlier specifically states that the renewal should be on agreed terms by way of a registered instrument for a period of 10 years, the non execution of a registered instrument evidencing the lease would certainly have an effect on the validity of the renewal. Admittedly, the original lease was for a period of 20 years,



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extendable by another 10 years on the option of the Corporation/Oil Company.

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The said option was also exercised and the rent was fixed as per the conditions found in the lease deed. It however appears that the Corporation did not come forward to pay rent that was fixed. Therefore, the appellant cannot contend that the lease should be termed as renewed. Section 107 of the Transfer of Property Act requires the lease for more than a period of 11 months should be by way of a registered instrument. Admittedly, such registered instrument has not been executed by the parties. It is also seen that the revised rents as agreed to have not been paid. Therefore, the Trial Court was justified in concluding that the plaintiffs are entitled for a relief claimed in the suit and also in rejecting the Counter Claim. Though a contention raised that the lease deed was not executed because of the non co-operation by the plaintiffs. The same cannot be accepted inasmuch as the non payment of the revised rent is accepted by the defendant itself and that would provide the cause of action for the plaintiffs to sue for eviction despite the above renewal clause. The Trial Court after analysing the evidence has concluded that there was no perpetual lease and the option for renewal was not properly exercised by the appellant-Oil Company.



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13. We are unable to sustain the contentions of the learned counsel for the appellant as they militate against the well settled positions of law regarding renewals. Particularly, the automatic renewal contained in documents/lease obtained by the Oil Company. Hence, we see no merits in the appeals. The Appeals are therefore dismissed. However, in the circumstances, there shall be no order as to costs. Consequently, connected CMP is also closed.

[R.S.M., J] [C.K., J]
27.01.2025
(2/2)

Index : No

Internet : Yes

Speaking Order

NCC : No

kmi

Note: Issue order copy on 07.02.2025

To
The III Additional District Judge,
Coimbatore.



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