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AS No. 294 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-03-2026

CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

AS No. 294 of 2026

and

C.M.P.Nos.5294 & 5297 of 2026

M/s.Indian Oil Corporation Ltd
Rep. by Deputy General Manager,
(Retail Sales),
SDLO A Building, First Floor,
234, Salem-Bangalore Bypass Road,
NH No.-7, Near Kondalampatti Roundtana,
Salem-636 010.

..Appellant

Vs

Sri Varalakshmi Star Hotel Pvt. Ltd
Rep. by its Managing Director,
Mr.Sundeep Devarajan,
3/100, Vivekananda Street,
New Fair Lands, Salem-636 016.

..Respondent

Appeal Suit filed under Section 96 of CPC to allow the above Appeal by setting aside the Judgement and decree dated 25.08.2025 in O.S.No 178 of 2021 on the file I Additional District Judge, Salem.

For Appellant:

Mr.Anantha Natarajan V

For Respondent:

Mr.M.S.Krishnan, Senior Counsel for
Mr.J.Ramakrishnan



JUDGMENT

(Judgment of the Court was delivered by C.V.Karthikeyan J.)

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The Appeal has been listed for admission.

2. Heard Mr.V.Anantha Natarajan, learned counsel for the appellant and Mr.M.S.Krishnan, learned Senior Counsel appearing for the respondent/Caveator.

3. The appeal emanates from O.S.No.178 of 2021, which had been filed by the respondent herein, seeking a direction against the appellant to deliver vacant possession of the suit property within a time frame fixed by the court and a further direction to pay Rs.10,00,000/- towards damages and subsequent damages at the rate of Rs.5,00,000/- per month till delivery of vacant possession and for cost of the suit.

4. By judgment dated 25.08.2025, the suit was decreed and it was directed that the appellant should vacate the premises within a period of one month from that date and hand over vacant possession and that the appellant should pay damages at the rate of Rs.1,00,000/- till the date of decree from 25.01.2021 and at the rate of Rs.2,00,000/- per month thereafter till the date of delivery of vacant possession. Costs was also granted.

5. Challenging the judgment and decree, the defendant therein had filed the present Appeal.



6. Brief facts of the case are as follows:-

The plaintiff/respondent herein, a Private Limited Company, had purchased the suit property from S.K.Rajagopal and his son S.K.Kadiresan, who had leased out the property to the appellant/defendant under a lease deed dated 29.01.1997 for a period of 25 years commencing from 25.01.1996 and expiring on 24.01.2021. The terms of the lease also included for increase of the lease amount every five years to be paid during the period of such possession. During the final five years, the monthly lease was determined at Rs.20,736/-. Contending that the respondent/plaintiff had purchased the adjoining properties and they required the suit schedule properties for further development of their business and interests, the respondent had instituted the suit seeking delivery of vacant possession and for damages for use and occupation.

7. The defence taken by the appellant herein was that the original lessors viz, S.K.Rajagopal and his son S.K.Kadiresan had covenanted that if they were to deal with the property, they would offer the first right to the appellant herein, but, however, in breach of such statement, they had sold the property to the present respondent/plaintiff.

8. It is to be noted that if the appellant were to seek the right to pre-emption in respect of the suit property, they should have instituted a suit against S.K.Rajagopal and S.K.Kadiresan and cannot question the right of the respondent/plaintiff to purchase property. The appellant had not taken any steps to challenge the sale in favour of the respondent/plaintiff. The

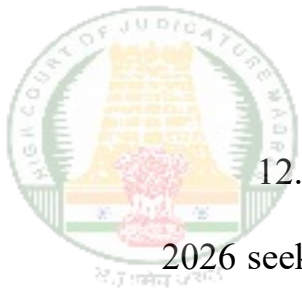


respondent/plaintiff had acquired right, title and interest over the suit property including the right to initiate suit seeking a judgment and decree against the appellant to vacate and hand over vacant possession. This right cannot be denied or disputed.

9. It is also to be noted that the period of lease had expired on 24.01.2021. A suit had been filed by the appellant in O.S.No.94 of 2022 before the I Additional District Judge, Salem for mandatory injunction and permanent injunction directing the respondent herein to execute fresh terms of lease in continuation of the lease deed dated 29.01.1997, which they had entered into with S.K.Rajagopal and S.K.Kadiresan.

10. In the above suit viz., O.S.No.94 of 2022, the respondent herein had filed I.A.No.1 of 2022 under Order VII Rule 11 CPC to reject the plaint and by order/judgment dated 09.09.2022, the interlocutory application was allowed and the suit was rejected. We are informed that no further appeal had been filed against that order. Therefore, the order rejecting O.S.No.94 of 2022 has become final.

11. Taking note of all these facts, the learned Trial Judge, in the suit from which the present Appeal has emanated, had directed the appellant herein to vacate and hand over vacant possession. Unfortunately, the appellant had not vacated and handed over vacant possession of the suit property to the decree holder. They have also not paid the damages at the rate of Rs.1,00,000/- till the date of decree or at Rs.2,00,000/- per month thereafter.



12. In such circumstances, the respondent/plaintiff had filed E.P.No.1 of 2026 seeking eviction of the appellant and E.P.No.2 of 2026 seeking to enforce the decree for payment of damages. We are informed that in E.P.No.2 of 2026, attachment of properties of the appellant had been directed. It is at this stage, the appellant had filed the present Appeal.

13. Learned counsel for the appellant contended that the right of the appellant to seek pre-emption had been provided in the lease deed entered into by them with S.K.Rajagopal and S.K.Kadiresan.

14. However, we hold that to invoke such a right, the appellant has not instituted any suit at the time when S.K.Rajagopal and S.K.Kadiresan had conveyed the property to the respondent herein, who had purchased the properties in the year 2010 and 2011. Therefore, we hold that the appellant had lost such right, owing to their own laches. Even with respect to the issue of continuation in possession, no ground has been made out to justify the continuation in occupation after the expiry of the lease period and after the judgment of the Trial court.

15. We would, therefore, confirm that portion of the decree, which directed the appellant herein to vacate the premises and hand over vacant possession of the premises to the decree holder within one month from the date of the decree. We would, now, leave it to the wisdom of the appellant to vacate and hand over vacant possession within one month from the date of uploading of this judgment in the website. In default, we direct the Executing Court to pass



orders in E.P.No.1 of 2026 within a period of four weeks from the date of receipt of a copy of this judgment.

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16. With respect to the second portion of the decree, viz., payment of damages, the learned counsel for the appellant argued that no evidence had been let in about the claim of damages at the rate of either Rs.1,00,000/- till the date of decree from 25.01.2021 or at the rate of Rs.2,00,000/- per month till the date of delivery of vacant possession. The learned counsel for the appellant would state that it is imperative on the part of the respondent to have let in evidence about the market value of the land, determination of the fair rent and justify the claim of damages at that particular rates. Moreover, the Trial Court also had the responsibility to conduct an enquiry to determine the damages till the date of decree or till the date of eviction.

17. In this regard, the learned counsel pointed out Order XX Rule 12 of CPC, which is as follows:-

"12. Decree for possession and mesne profits.—(1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree—

(a) for the possession of the property;

(b) for the rents which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rent.

(ba) for the mesne profits or directing an inquiry as to such



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mesne profits;

(c) directing an inquiry as to rent or mesne profits from the institution of the suit until—

(i) the delivery of possession to the decree-holder,

(ii) the relinquishment of possession by the judgment-debtor

with notice to the decree-holder through the Court, or

(iii) the expiration of three years from the date of the decree,

whichever, event first occurs.

(2) Where an inquiry is directed under clause (b) or clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry."

18. The learned counsel also fortified his arguments by relying on the judgment of the Hon'ble Supreme Court reported in ***Ganapati Madhav Sawant vs. Dattur Madhav Sawant*** (2008) 3 SCC 183 wherein, the Hon'ble Supreme Court held that it is imperative to conduct an enquiry relating to the mesne profit in terms of Order XX Rule 12 CPC and in the absence of a specific prayer for enquiry in that aspect, the same could not have been granted.

19. In view of the fact that E.P.No.2 of 2026 is now pending, we would direct the Trial Court to conduct an enquiry into the quantum of damages. We are, therefore, inclined to set aside that portion of the decree relating to grant of damages of Rs.1,00,000/- per month till the date of decree from the date of



expiry of the lease/24.01.2021 and at the rate of Rs.2,00,000/- per month from the date of decree till handing over of possession and direct the Trial Court to conduct an enquiry under Order XX Rule 12 CPC relating to the market value of the land and fair rent of the property wherein the appellant is in occupation. This enquiry is to be conducted and concluded within a period of eight weeks from the date of receipt of a copy of this judgment. If required, evidence could be adduced by both the parties.

20. We, therefore, reiterate that the Executing Court in E.P.No.1 of 2026 is to direct delivery of vacant possession of the premises to the decree holder within a period of four weeks from the date of receipt of a copy of this judgment and the judgment of the Trial Court relating to delivery and handing over of vacant possession is confirmed. The portion of the decree relating to damages is set aside and the matter is remanded for conducting fresh enquiry by the Trial Court under Order XX Rule 12 of CPC relating to quantum of the damages payable. The Appeal Suit stands partly allowed. Time is granted to the Trial Court to conduct enquiry within a period of eight weeks from the date of receipt of a copy of this judgment. No costs. The connected miscellaneous petitions are closed.

(C.V.K.,J.) (K.R.S.,J.)
30-03-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
ssk



To

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1. I Additional District Judge,
Salem.

2. Sri Varalakshmi Star Hotel Pvt.Ltd
Rep. by its Managing Director,
Mr.Sundeeep Devarajan,
3/100, Vivekananda Street,
New Fair Lands, Salem- 636 016.



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AND
K.RAJASEKAR, J.**

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