

IN THE COURT OF THE ADDITIONAL MUNSIFF, CHERTHALA

Present: Sri. Mahesh. M., Additional Munsiff

Monday, the 16th day of December, 2024/ 25th Agrahayanam, 1946.

I.A.01/2023 in O.S. No.438/2023

(Filed on 21.08.2023)

Plaintiff/ Petitioner:-

Syed Shihabuddin Roshan, aged 47 years,
S/o Saiyuddhin Ahammed, Cheriyaarambil House,
Ezhupunna South.P.O, Cherthala Taluk.

By Adv. Remya S R

Defendant/ Counter Petitioner:-

K.V.Sasikumar, aged about 63 years,
S/o Viswambharan, Kandathil Unichira house,
Kakkanad.P.O, Vazhakkala,
Kanayannur Taluk, Ernakulam-682030.

By Adv. A.S.Santhosh, Adv.N B Sunil Nath

& Adv. S.K Harish

This petition having been finally heard on 21.11.2024 and the Court on 16.12.2024 passed the following:-

ORDER

This is a petition filed by the petitioner under Order 39 Rule 1 CPC for restraining the respondent from trespassing into the Plaintiff's Schedule Property, doing any damages to the utensils and machinery, interfering with the peaceful

conduct of business in the Plaint Schedule Property and from forcefully evicting the petitioner from the Plaint Schedule Property.

2. Petition averments in brief are as follows:

The petitioner herein is the plaintiff in the above suit. The petitioner is engaged into the business of prawns cultivation whereby cultivating vanami shrimps in the property having a total extent of 1 Acre 81 cents of landed property in Sy. No. 88/43 and Sy.No.88/44 of Kodamthuruth Village. The defendant is residing in the above mentioned address and is the absolute owner and in possession of the above mentioned property which is plaint scheduled property. Petitioner had approached the defendant after hearing from reliable sources that he was in search of a buyer for the plaint scheduled property which he was intending to sell for a total sum of Rs. 10,00,000/- (Rupees Ten lakhs only). After many discussions the plaintiff had agreed to purchase the plaint scheduled property for a total sale consideration of Rs. 10,00,000/- (Rupees Ten lakhs only) within 3 years and the same was accepted by the defendant herein. Upon insistence from the defendant, the petitioner had agreed to treat the 3 years waiting period as lease period for which they both had agreed to execute separate lease agreements for each and every year. The petitioner and the defendant herein had entered into an agreement for lease on 28.01.2020 whereas the defendant herein had agreed to lease the plaint scheduled premises to the plaintiff herein for the purpose of fish cultivation. In the said lease agreement, it was agreed between the parties that the plaintiff can take profit from the plaint schedule property by doing the business of fish cultivation. In the said lease agreement dated 28.01.2020 it was agreed by the defendant that the plaintiff is at liberty to appoint his own workers for doing the development works in the plaint

schedule property and was permitted to carry out all sort of development works which were intended at developing fish cultivation atmosphere in the plaint schedule property. It is submitted that the total lease consideration agreed by the defendant and plaintiff vide lease agreement dated 28.01.2020 was Rs. 25,000/- (Rupees Twenty five thousand only) for 11 months and they both had entered into the said lease agreement with mutual consent and without any collusion or undue influence. After executing the lease agreement dated 28.01.2020, then the petitioner has started the development works in the plaint scheduled property to make the aforesaid property suitable for fish cultivation. The plaintiff herein was having all the rights of ingress which was granted to him vide lease agreement dated 28.01.2020 by the defendant. The plaintiff herein had entrusted the work of removing earth to the earth moving firm having name and style of "Kunnath Earth Movers-Kummanam" and was paying a whooping sum of Rs. 18,000/- (Rupees Eighteen thousand only) as average rent. So far the plaintiff herein had spent a total sum of Rs. 2,04,280/- (Rupees Two lakh four thousand two hundred and eighty only) during the payment cycle commencing from 04.05.2020. The petitioner had already invested more than Rs. 20,00,000/- (Rupees Twenty lakhs only) for the development as well as the fish cultivation in the plaint scheduled property. Now it is understood by the plaintiff herein that the defendant herein is trying to evade from the sale of the plaint scheduled property after realizing the potential of fish cultivation and the current status of the plaint scheduled property. On several instances the defendant herein had expressed his desire of terminating the lease agreement dated 15.06.2023 before the maturity of the agreement and the reason for the said demand is best known to the defendant herein. The plaint schedule property was filled with muddy water and all sort of creepers and was not at all suitable for any sort of cultivation. It was the hard

work and hard earned money of the plaintiff which had help, transform the plaintiff schedule property to its current shape and scope. The petitioner believes that what the defendant saw in the plaintiff was just a developer for his waste land. The plaintiff herein was paying lease amount with proper increase in the rent fee i.e.. Rs. 30,000/- on 2021, Rs. 35,000/-on 2022 and recently Rs. 40,000/- vide lease agreement dated 15.06.2023. The petitioner is ready and willing to purchase the plaintiff scheduled property from the defendant herein for the already agreed sale consideration of Rs. 10,00,000/- with appropriate increase in the sale consideration. But the defendant who with ulterior motive and arbitrary intention is demanding an exorbitant sum of Rs. 30,00,000/- (Rupees Thirty lakhs only) towards the sale consideration which is unreasonably high. The petitioner had already invested a whopping sum of Rs. 20,00,000/- in the plaintiff schedule property by believing the words of the defendant. But the defendant is now taking every hasty steps to evict the plaintiff herein from the plaintiff schedule property through unlawful means. The plaintiff herein had recently started the cultivation of the new batch of his Prawns and fish and it will take the entire lease period to achieve the complete potential for harvesting. If the defendant herein became successful in evicting the plaintiff from the plaintiff schedule property all the hard works of the plaintiff will went in vein and the same cannot be accepted. By the act of the defendant, the peaceful life of the plaintiff and his time of doing business in the plaintiff scheduled property is frequently getting disturbed. Since the plaintiff is in the absolute possession of the plaintiff scheduled property vide the lease agreement, the defendants have no right or authority to enter into the plaintiff scheduled property and he is not at all liberty in inflicting unlawful actions against the plaintiff in evicting him from the plaintiff scheduled property. Balance of convenience is in favour of the petitioner and the petitioner

have got a prima facie case. Defendant is financially and politically very strong. Plaintiff alone cannot stop the illegal activities of the defendant. On 05.08.2023 defendant openly declared that they will encroach and trespass plaintiff schedule property and damage the utensil, missionary and interfere with the peaceful conduct of business in the plaintiff schedule property. Defendant declared that he will forcefully evict the plaintiff using strangers. Defendant have no right or authority to do so. If the defendant do so it will cause irreparable loss and injury to the plaintiff.

3. Respondent filed objection as follows:-

The above petition and the suit are not maintainable either in law or on facts. The reliefs sought in the above suit and the petition are not maintainable under the provisions of law. The petitioner has approached this court without clean hands. The petitioner has produced forged documents before this court for obtaining an order in his favour. The respondent had purchased 73.25 ares (1.81 acres) of land in Sy.Nos.88/43 and 88//44 of Kodamthuruthu Village in Cherthala Taluk as per sale deed No.2772 of 2006 of Kuthiyathodu SRO. As such this respondent is the sole owner of the plaintiff schedule property, which is a wet land. The respondent has paying tax for the property. The plaintiff has never approached this defendant in the year 2020 for purchasing the property owned by this defendant. But the plaintiff approached this defendant for getting the property (nilam) owned by the defendant to cultivate shrimps as a license. There was no discussion for selling the property for Rupees 10 lakhs or for any amount as alleged in the plaintiff. The plaintiff demanded that he needs the property for the shrimp cultivation for three years. On the discussion, this defendant agreed to give permission to use property for

and the same can be executed by mutually agreed terms and conditions. Thereby, a license dated 28.01.2020 was executed for an amount of Rs.35,000/- was executed for 11 months. Thereafter, it was subsequently extended for further 11 months. This defendant permitted the plaintiff to do shrimp cultivation in the plaint schedule property and a license was executed on 16.02.2022 between the plaintiff and this defendant for a period of 11 months. The second license expired on 15.01.2023. The plaintiff did not come forward to renew the license after the expiry period. But on 15.06.2023, he requested to permit him to harvest the fish already cultivated and on 15.06.2023 a license for was executed for an amount of Rs.25,000/- which expired on 31.08.2023. After execution the above said license dated 15.06.2023 which would expire on 31.08.2023, the plaintiff approached this court on 21.08.2023 by filing the above suit alleging untenable and false allegations. This defendant had at any point of time discussed with the plaintiff or with any other person about selling the property. The statement in the plaint that there was discussion and the plaintiff had agreed to purchase the property for ten lakh rupees within 3 years are false and are all only imagination of the plaintiff. This defendant never thought of selling the property and had never accepted such proposals as mentioned in the plaint. In all the three license deed, it was clearly agreed that the plaintiff herein can do fish cultivation and can take the yield out of it and has to remove the temporary developments if any made by him after the expiry of the license and nothing else. The attempt of the plaintiff is only to coerce the defendant to sell the property owned by him some how or other without any bondafides. This defendant admits that he allowed the plaintiff to use the land owned by him for fish cultivation. The temporary developments if any made by the plaintiffs for the business has to be removed after the agreed period. These

terms are specified even in license deeds executed by him. The petitioner/ plaintiff had only made some temporary development for fish cultivation. This respondent/defendant is not responsible for the investments if any done by the plaintiff for the said business. As per the license, it was only the plaintiff taking the profit from the fish cultivation. The plaintiff ought to have vacated himself on the last date agreed date mentioned in the last license. This defendant was not asked by the plaintiff about the entrustment made to remove any earth from the property. The allegation that the license dated 15.06.2023 was for another 11 months is denied. The license was for two months which expired on 31.08.2023. The averments regarding the amount spend by the plaintiff for the business he had done in the property owned by the defendant is not known to this defendant. As there is no sale agreement among the parties herein for the sale of property, there is no question of evading the sale of the plaint schedule property as alleged by the plaintiff and hence there is no question of any termination. It is to be specifically noted that the license was only up to 31.08.2023. Rather it was the plaintiff who approached this court by filing this suit. The plaintiff ought to have vacated and surrendered the property on 31.08.2023. It is only for continuing business in the land owned by this respondent/defendant, plaintiff had approached this court. As a matter of fact the plaint schedule property owned by the defendant is a nilam near to Karathode. It is a kettu used for shrimp farming due to its predominancy with the said Karthodu. The amount of Rs.20,00,000/- alleged to be spent by the plaintiff for development of the nilam and for fish cultivation are incorrect and unbelievable. This respondent/ defendant is not having any intention to sell the property either to plaintiff or to any other person. This respondent has never done anything unlawfully to evict the petitioner. But it is the petitioner, using

his financial power and influences is continuing the fish cultivations in the property after the agreed license period, for his illegal enrichment in the property owned by the respondent. The respondent believing that the petitioner/ plaintiff that had started new batch had given reasonable time for harvesting and hence a license dated 15.06.2023 was executed up to 31.08.2023. But the petitioner/ plaintiff instead of stating the correct period mentioned in the license, approached this court stating that the said license was for 11 months from 15.06.2023. The act of the plaintiff itself reveals the evil intention and approach of the plaintiff. The plaintiff had approached before this court without clean hands. There is no prim facie case in favour of the plaintiff. There is no balance of convenience for granting a decree of injunction. That no harm will be caused to the plaintiff if the injunction is refused, whereas if the injunction is continued, irreparable loss and damages including monetary loss would occur to this respondent. This defendant at any point of time after the execution of the license deed had obstructed the use of his lady by the plaintiff or his men till date. As the license period has terminated on 31.08.2023, the plaintiff is a trespasser and he is still holding the possession of the land owned by this respondent. Hence the petition is liable to be dismissed.

4. Heard both sides.

5. The following points are raised for consideration;

1. Whether this petition is allowable or not?

2. What is the order?

6. Point No.1 -

The contention of the petitioner is that he has entered into a lease agreement with the respondent for the purpose of fish cultivation at the plaint schedule property. On the contrary the respondent would contend that the property was given on a license. So the first question that is to be considered is whether the agreement between the petitioner and respondent is a lease or license. The Hon'ble Supreme Court of India in **Associated Hotels of India Ltd. v. R. N. Kapur (AIR 1959 SC 1262)** has held that "*In order to ascertain whether the transaction is a lease or license, the following propositions may, therefore be taken as well established : (1) the substance of the document must be preferred to the form; (2) the real test is the intention of the parties whether they intended to create a lease or a licence; (3) if the document creates an interest in the property, it is a lease; but, if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence; and (4) if under the document a party gets exclusive possession of the property, prima facie, he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease.*" So by relying on the above dictum it has to be analysed that whether the agreement entered into between the petitioner and respondent is a lease or license. On perusing the agreement that is produced by the petitioner it can be seen that the possession of the plaint schedule property is given to the petitioner. But apart from the possession no right is seen given in favour of the petitioner with regard to the plaint schedule property. The only obligation that is casted upon the respondent is not to do anything harmful to the plaint schedule property. The same cannot be said to be an interest creation in the property. Likewise no notice period is

also mentioned in the agreement which is to be given before seeking to vacate the property. Hence a close perusal of the agreement between the parties would go to show that only the possession of the property is given without transferring any interest over the property. The said transfer cannot be construed as a lease. It can only be considered as a license. So the first contention of the petitioner that the agreement entered into between him and the respondent is a lease is found to be wrong. The petitioner is only entitled to enforce the rights of a licensee over the plaint schedule property.

7. The specific case of the petitioner is that there was an oral agreement between him and the respondent for the sale of plaint schedule property for a period of Rs.10 lacs within a period of 3 years and the said 3 years will be considered as lease period. But the respondent has vehemently denied the existence of such oral agreement to sell the plaint schedule property. As the petitioner alleges that the agreement is oral in nature there is nothing before this court at this stage to come to a conclusion that such an agreement exists. The same has to be proved by the petitioner at the time of evidence in this case. Moreover the petitioner is not trying to enforce his rights over the plaint schedule property on the basis of the oral agreement for sale. So the said allegation need not be considered now.

8. The next contention of the petitioner is that he has entered into the agreement with the respondent as regards the plaint schedule property from 28.01.2020 for the purpose of prawns cultivation for a period of 11 months. After the expiry of the said period the agreement was renewed again for a time bound period. According to the petitioner the agreement is lastly renewed for a period of 11 months vide lease agreement dated 15.06.2023. But the respondent contended that the last agreement was not executed for a period of 11 months.

The agreement dated 15.06.2023 is produced before the court. On perusal of the same it can be seen that the contention of the respondent is right. The agreement dated 15.06.2023 is executed for a period of 2 months only that is starting from 15.06.2023 to 31.08.2023. So from the document produced by the petitioner itself it is clear that the his contention is wrong. At this stage it is pertinent to note that the suit on hand is filed on 21.08.2023 that is 10 days before the expiration of the agreement. The contention of the petitioner is that the respondent has threatened him to evict him from the plaint schedule property on 05.08.2023. This court is unable to digest the said contention of the petitioner. Because as already found out the agreement between the petitioner and respondent will be ending by 31.08.2023. So there is no possibility that the respondent will threaten the petitioner to vacate the plaint schedule property just days before the expiry of the agreement. Hence the intention of the petitioner behind filing of this suit can only be to avoid the respondent from evicting him from the plaint schedule property after the expiry of the agreement. The false statement made by the petitioner in the affidavit with regard to the tenure of the last agreement coupled with time of filing the suit would make the court believe that the petitioner has not approached with clean hands.

9. Being found that the agreement entered into between the petitioner and respondent is only a license the next thing that is to be ascertained is what are the rights available to the petitioner as a licensee. According to the petitioner he has invested huge amount in developing the plaint schedule property and hence he is not liable to be evicted. But such a right cannot be sought for by the petitioner. The Hon'ble Supreme Court of India in **COX AND KINGS LTD. V/s. INDIAN RLY. CATERING AND TOURISM CORPORATION LTD. AND ANR (2012 (7) SCC 587)** has held that "*Merely because the licensee*

*invested money in developing the licensed premises, it cannot seek an injunction to permit it to continue in occupation beyond the licence period". So by relying on the above decision it is clear that despite the fact that the petitioner invested money on plaint schedule property that by itself will not give him a right to continue there after the expiry of license period. As discernible from the document the license period expired on 31.08.2023. Admittedly by the petitioner the same is not renewed. So at present there is no right for the petitioner over the plaint schedule property. The Hon'ble Supreme Court of India in **EAST INDIA HOTELS LTD. V/s. SYNDICATE BANK (1992 Supp (2) SCC 29)** has held that "Unlike a lessee, the legal incidence of a licence, in normal parlance, is that licensee has no right to possession of the demised property as the legal possession always remains with the licensor. The licence creates neither interest nor estate therein and after expiry of the period of licence, the continuance in possession by the licensee would be as a trespasser, unless the covenant in the contract under which he came into possession creates such a right or is acquiesced by the licensor. His possession, therefore, would not be juridical." The above dictum will conclude that the petitioner does not have any right over the property at present that is after the expiry of license period.*

10. So to sum up it is found that the petitioner does not have a prima facie case in his favour. The aspects of balance of convenience and irreparable injury are also not in favour of the petitioner. The respondent is the absolute owner of the plaint schedule property. The right of the petitioner over the plaint schedule property extinguished on 31.08.2023. Since no right is available to the petitioner she is not entitled to enforce any such non-existent rights. Hence this point is found against the petitioner.

11. Point No.2 –

In view of the above findings in point No.1 it is found that the petition does not have any merits and consequently it is dismissed.

In the result the I.A. is dismissed.

(Dictated to the Confidential Asst. transcribed and typed by her, corrected by me and pronounced in open court on this the 16th day of December, 2024.)

Sd/-
MAHESH.M
ADDITIONAL MUNSIFF

APPENDIX:-

Documents produced by petitioner -

- (1) Copy of Lease Agreement dated 28/01/2020
- (2) Copy of Lease Agreement dated 15/06/2023
- (3) Copy of certificate given by the Village Officer, Kodamthuruthu
- (4) Copy of Lease Agreement dated 16/02/2022

Documents produced by respondent -

- (1) Copy of Sale deed No.2772/2006 dated 27/10/2006
- (2) Copy of tax receipt dated 14/05/2024
- (3) Copy of possession certificate dated 15/05/2024
- (4) Copy of Licence dated 15/06/2023

Sd/-
ADDITIONAL MUNSIFF