

**IN THE COURT OF THE SUBORDINATE JUDGE, KARUNAGAPPALLY**

Present:- Sri.Santhosh Das, Civil Judge (Senior Division), Karunagappally.

Tuesday the 31<sup>st</sup> day of March, 2026/10<sup>th</sup> day of Chaithra, 1948.

**AS No.42/2018**

**Between**

- Appellants :
1. Vikraman Nair, aged 70 years,  
S/o.Vasudevan Pillai, Moolethekkathil,  
(Santha cottage), Payikuzhi muri, Oachira village.
  2. Santhakumari @ Vijayakumari, aged 63 years,  
W/o.Vikraman Nair,-do-

By Adv.Jayakrishnan.S

**And**

- Respondents:
1. Pradeep kumar, aged 53 years,  
S/o.Bhaskaran Pillai, Kottoor Thekkathil,  
North Kochumuri, Puthupally village,  
From Moolethekkathil House,  
Payikuzhi muri, Oachira village.
  - Addl. 2. Lakshmi Vikraman, 121 Park side way,  
Haro 6db, United Kingdom.
  - Addl. 3. Rasmi Vikraman, B602, Sonal Towers,  
Apple wood Township, Ahammadabad,  
Gujarath, Pin No.380058

By Adv. M.R.Salim & Adv. P.Prasannan

Addl Respondents 2 and 3 (legal representatives of deceased 1<sup>st</sup> apellant)  
are impleaded as per order dated 10.02.2023 in IA 2/2022



3. Case advanced by the plaintiff, in brief, is as follows:-

1. Plaintiff schedule shop room belongs to the administrative committee of Oachira Parabrahma Temple. Plaintiff is conducting a Jewellery shop under the name and style 'Lekshmi Jewellery' in the shop room. The jewellery shop was started by one Mr. Bharghavan Pillai, who is the paternal uncle of plaintiff and maternal uncle of 2<sup>nd</sup> defendant. 1<sup>st</sup> defendant is the husband of 2<sup>nd</sup> defendant. Bharghavan Pillai is now no more.
2. Bharghavan Pillai started the Jewellery business in the shop room during the year 1980 after taking the shop on a monthly rent of ₹ 232/-. Since he was suffering from many ailments, in the year 1985 Bharghavan Pillai brought the plaintiff to the shop room to assist him in the business. Later, towards the end of 1985 plaintiff started to conduct the jewellery shop in the plaintiff schedule shop room with the consent of Bharghavan Pillai, by investing his own money. However, license for business in the shop room is still in the name of Bharghavan Pillai.
3. The license fee, professional tax, income tax, etc pertaining to the business in plaintiff schedule shop room are being remitted by the plaintiff. Now the rent of the shop room is Rs. 450/- per month and is being paid by the plaintiff regularly to the landlord. Thus, the plaintiff is the tenant of the plaintiff schedule shop room. In this regard, during 2005 itself the then Secretary of Oachira Temple Administration Board issued a certificate in favour of plaintiff for submitting before a bank for availing loan.

4. Bharghavan Pillai died on 29.03.2008 unmarried and issue-less. So, plaintiff's father and 2<sup>nd</sup> defendant's mother became the legal heirs of Bharghavan Pillai. During the life time of Bharghavan Pillai and after his death plaintiff continued to conduct the jewellery shop in the plaint schedule shop room. According to plaintiff, after the year 1985 Bharghavan Pillai didn't have any investment in the business therein.
  
5. Recently, defendants started to make some unwanted claims over the business in the plaint schedule shop room. They are claiming that the 2<sup>nd</sup> defendant is the legal heir of deceased Bharghavan Pillai. Since the business therein is absolutely owned by the plaintiff, defendants have no manner of right over the business in the plaint schedule shop room, it is claimed. Now defendants are causing obstructions to the smooth conduct of business in plaint schedule shop room. They have no manner of right to do so. Therefore, the plaintiff filed the suit for permanent prohibitory injunction.
  
4. Defendants filed written statement with counter claim and contended as follows;-
  1. Plaintiff has no manner of right or interest over the plaint schedule shop room. Admittedly, the shop rooms belongs to the administrative committee of Oachira Temple. As per its bye-law the shop rooms belonging to the temple shall be taken on rent by executing rent deed in the name of its President. On 12.10.1983 Bharghavan Pillal executed such a rent deed in favour of the President of Temple. Administrative Committee. Sri.

Bhavanathu Krishna Pillai, Sri. Bharghavan Pillai and the 1<sup>st</sup> defendant were conducting the jewellery business in the plaint schedule shop room by executing a partnership deed. The said Krishnapillai had later surrendered his shares in the partnership by accepting money. Bharghavan Pillai is unmarried and issue-less. His partnership rights over the plaint schedule shop room has been gifted by him to 2<sup>nd</sup> defendant on 15.06.93.

2. Bharghavan Pillai was conducting business in the plaint schedule shop room and he extended the lease transaction with the temple Administrative Committee on application and was paying rent @ ₹ 430/- per month. But, since 2007 upon the obtaining of the absolute rights over the business in the plaint schedule shop room, it was being conducted by defendants 1&2. As the 1<sup>st</sup> defendant has some cardiac problems, defendants have to go for treatment in different hospitals, and therefore they have entrusted the plaintiff to look after the business in plaint schedule shop room. Plaintiff never paid any rent to the Temple Administrative Committee with respect of the shop room.
3. OS 144/2008 has been filed against the landlord for injunction against forceful eviction of the legal heirs of Bharghavan Pillal from plaint schedule shop room and OS 411/2008 has been filled by the President of Temple Administrative Committee against the defendants 1&2 and others for eviction. Those case were compromised by allowing the 1<sup>st</sup> defendant to execute rent agreement and deposit security amount with the Temple Committee. Plaintiff is a witness in those rent agreements dated 26.03.2011

and 17.12.2013.

4. When the plaintiff was entrusted to look after the affairs of business in plaintiff schedule shop room, defendants were made to believe by him that he was paying rent without default. But, when it came to the knowledge of defendants that the plaintiff committed arrear of rent, they rebuked him, and 1<sup>st</sup> defendant cleared the rent arrears with the Temple Administrative Committee. Getting infuriated, plaintiff filed the present suit without any basis.
  5. Plaintiff is not having any cause of action against the defendants. The plaintiff is not entitled to do any business in the plaintiff schedule room. Therefore the defendants filed counterclaim seeking a mandatory direction against the plaintiff to hand over vacant possession of the plaintiff schedule shop room to the 1<sup>st</sup> defendant.
5. Plaintiff filed a written statement to the counter claim raising following contentions:-
1. Plaintiff is the tenant of the plaintiff schedule shop room. plaintiff schedule shop room is situating in the notified area where Kerala Building Lease & Rent Control Act is applicable. Therefore, the prayer of mandatory injunction is not allowable, it is claimed.

2. Plaintiff was not a party to the cases mentioned in the written statement. Therefore, the decisions in those cases are not binding on the plaintiff, it is said. Alleged lease deeds executed on 28.03.11 and 17.12.13 are not genuine and are fabricated.
3. 1<sup>st</sup> defendant never invested any amount for the business in plaint schedule shop room or never conducted business therein. The counterclaim is not allowable. There is no cause of action against the plaintiff.
6. Based on the above rival pleadings, issues were framed by the Trial Court and after recast the following issues remained for adjudication:-
  1. Whether the business in the plaint schedule shop room belongs to the plaintiff ?
  2. Whether plaintiff is a tenant of the plaint schedule shop room ?
  3. Whether the plaintiff is entitled to a decree for permanent prohibitory injunction as prayed?
  4. Whether the counter claim is maintainable as per provisions of KBLRC Act?
  5. Whether the defendants are entitled for a decree for mandatory injunction as prayed ?
  6. Relief and costs.

7. Plaintiff's evidence consists of the oral testimony of PW1 & PW2 and Exts. A1 to A8. On the side of defendants, DW1, DW2 & DW3 were examined and Ext. B1 to B13 were got marked. Also, Exts. C1 & C1(a) were marked.
8. As mentioned supra, Trial Court finally dismissed the counter claim, and allowed the suit, and that is now in challenge.
9. The appeal was finally listed for hearing, whereupon both sides were heard at length and records were perused. Having heard both sides, and having perused the records, following points arises for consideration in this appeal: -
  1. Whether the findings of the Trial Court require any interference?
  2. Reliefs and costs.

**10. Point No.1:-**

1. The trial Court had discussed issue No. 1, 2, 3 & 5 together, whereas issue No. 4 was considered separately and the Trial Court concluded on issue No. 4 that the defendants having denied the status of the plaintiff as a tenant, who according to them was originally managing their business in the shop room which was rented out by them from the landlord, the counter claim relief of mandatory injunction sought against the plaintiff is not hit by the provisions of BLRC Act. I am in respectful agreement on this aspect with the learned Trial Judge.

2. However, regarding issue No. 1, 2, 3 & 5, I cannot subscribe to the view taken by the Trial Court in the matter. It appears from the impugned judgment that the learned Trial Court fail to appreciate the settled principle of law that in respect of relief claimed by a plaintiff, he has to stand on his own legs by proving his case. A reading of paragraph Nos. 10, 11, 12, 13 & 14 of the impugned judgment would show that the Trial Judge wrongly shifted burden of proof on the defendants, and have made a mountain out of a molehill by attacking the evidence of defendants.
3. Now, plaintiff is seeking permanent prohibitory injunction against the defendants, and according to him he is conducting the jewellery business by his own investment in the plaint schedule shop room, which shop room is admittedly owned by the Administrative Committee of Oachira Parabrahma Temple. Therefore, it was for the plaintiff to establish that he is a lawful tenant of the shop room, for which he ought to have produced the rent deed and rent receipts in his favour issued from the landlord. Admittedly, plaintiff has not produced rent deed and rent receipts in his name, which fact is also noticed by the Trial Court as is evident from its observation at paragraph No. 18 of the impugned judgment.
4. Ext. A1 to A8 are the documents, which according to the Trial Court would support the case of the plaintiff. However, a perusal of Ext. A1 & A2 receipts would show that the licency is the aforesaid Bharghavan Pillai. Trial Court had given much weight to Ext. A3 certificate dated 17/08/2025 to say that the plaintiff had obtained the shop room from Oachira Temple Administration Board on rent. However, it has come out in the cross

examination of DW3 the then President of Oachira Parabrahma Temple that a tenancy will be completed only when a rent deed is executed and possession handed over on the basis of that deed. Admittedly, Ext. A3 is not a rent/lease deed and the same is only a certificate purportedly issued by the Secretary, and it is pertinent to note that DW2 (the President of Oachira Parabrahma Temple) in his re-examination had stated that he is not sure whether Ext. A3 was issued by the then Secretary after verifying the records. Therefore, Ext. A3 by itself will not help the plaintiff to establish that he is the tenant of the shop room. Ext. A4 would only show that the plaintiff is a member of Kerala Vyapari Vyavasayi Ekopana Samithi on behalf of 'Sree Lekshmi Jewellery', and Ext. A5 is only the membership subscription receipt. A4 & A5 will not make the plaintiff the tenant. Likewise, Ext. A6 is only a letter by the plaintiff to Chief Manager of Bank of India Oachira Branch, which is issued on behalf of All Kerala Gold & Silver Merchant's Association Oachira Unit and that will not establish tenancy. Ext. A7 is the registration certificate, but admittedly the same stands in the name of Sri. Bhargavan Pillai. Turning to Ext. A8, the same is the copy of the judgment of Hon'ble High Court of Kerala in OP 21852/2022, wherein the plaintiff is seen as the 2<sup>nd</sup> petitioner and the same will not show that the plaintiff is the tenant.

5. It is pertinent to note that both sides are on the same page regarding the antiquity of the shop room, which according to them was originally taken on rent by Bhargavan Pillai from the Administrative Committee of Oachira Parabrahma Temple. However, according to the plaintiff, that tenancy started in the year 1980, whereas it is claimed by defendants that the tenancy

started from 12/10/1983. According to the plaintiff, as the said Bhargavan Pillai was suffering from many ailments, in the year 1985, Bharghavan Pillai brought the plaintiff to the shop room to assist him in the business, and that by the end of 1985 plaintiff started to conduct the jewellery business in the shop room with the consent of Bharghavan Pillai, by investing his own money. However, admittedly plaintiff had not produced any scrap of paper to show that he made such investments. At any rate, even as per the case advanced by the plaintiff, the plaintiff had no direct tenancy arrangement with respect to the plaint schedule shop room with the landlord, but that he was continuing in possession after having brought in by the actual tenant as an assistant, and admittedly the license for the business in the shop room is still in the name of Bhargavan Pillai, the original tenant.

6. On the other hand, it has come out from the evidence of DW3, that the aforesaid Bhargavan Pillai had taken the shop room on rent from the temple for conducting jewellery business and that upon his demise during the year 2008 demand was made by the temple for getting vacant possession, whereupon OS 144/2008 was filed against the temple, and that the temple thereafter filed OS 411/2008 for eviction, and that both the said cases were finally compromised, based on which Ext. B9 lease deed was executed in favour of 1<sup>st</sup> defendant. Also, Ext. B4, B4(a) to B4(f), Ext. B10 & B10(a), Ext. B11, B12 & B13 are the relevant rent receipts issued by the temple administrative committee to the 1<sup>st</sup> defendant in the matter. Further, Ext. B3, B3(a) & B3(b) would show that Oachira Grama Panchayat had issued licence in favour of the 1<sup>st</sup> defendant with respect to Lekshmi Jewellery.

7. Ext. B5 is the certified copy of the plaint in OS 411/2008 and perusal of the same would show that the shop room in issue was leased out by the temple to the aforesaid Bhargavan Pillai on 01/10/1983, and that the same was periodically extended with rent enhancements. It is also understood from Ext. B5 that defendants 1, 2 & 3 therein were continuing the business, being the legal heirs of deceased Bhargavan Pillai, and that they filed OS 144/2008 against the temple seeking an order of injunction against their eviction. It is seen mentioned in Ext. B5 that plaintiffs therein got idea from Panchayat records that the shop room is in the possession of Sri. V. Vikraman Nair (1<sup>st</sup> defendant herein), and that the said V. Vikraman Nair was doing business with the said Bhargavan Pillai in the shop room, and that taking into consideration of that fact, and having regard to rights if any passed on by the said Bhargavan Pillai to Vikraman Nair's wife, the said Vikraman Nair and his wife are arrayed as defendant No. 4 & 5 respectively in the suit, which is filed for arrears of rent and connected reliefs. Ext. B6 is the compromise filed in OS 411/2008, whereby it was agreed to execute a lease with respect to the shop room in issue in favour of 4<sup>th</sup> defendant (1<sup>st</sup> defendant herein), and it is on the basis of this compromise that Ext. B9 rent deed / release deed is executed by 1<sup>st</sup> defendant herein in favour of Oachira Temple Administrative Committee. How the plaintiff remained continuously in possession of plaint schedule / counter claim schedule shop room ? Admittedly, parties are close relatives and it is thus that the plaintiff was originally brought in for assisting the conduct of the business by Bhargavan Pillai. Later, when the business was taken over by defendants more particularly by the 1<sup>st</sup> defendant, assistance of the plaintiff seems to have continued as contended by defendants in the written statement. It is

specifically contended by defendants that on account of health issues of the 1<sup>st</sup> defendant, defendants were required to frequently visit hospitals and as such for the smooth running of the business assistance of the plaintiff was taken and he was accordingly entrusted. Ext. B7 is the medical record evidencing the treatment of the 1<sup>st</sup> defendant.

8. Therefore, having regard to the discussions at paragraph No. 10 (3) to 10 (7) above, it is prudent to conclude that the case advanced by the defendants is more probable, than the case put up by the plaintiff.
9. The learned Trial Court had not properly appreciated the evidence. According to the Trial Court, Ext, B9 cannot be considered as a lease agreement between the 1<sup>st</sup> defendant and DW3 (temple administrative committee) for the only reason that the said registered document is signed only by the 1<sup>st</sup> defendant. According to the Trial Court, therefore Ext. B9 is not in compliance with the mandatory provision of S. 107 Transfer of Property Act. Learned Counsel for the appellant had cited the judgment of Hon'ble Supreme Court in '**Rajendra Pratap Singh v. Rameshwar Prasad**', reported in AIR 1999 SC 37 and pointed out that the Trial Court erred in understanding the law in the field. In '**Rajendra Pratap Singh**' supra, Apex Court had explained S. 107 of TP Act and observed that a close reading of the third paragraph indicates that there is no stipulation that the instrument must be signed by both parties, and that the requirement is that when the lease is made by a registered instrument, 'such instrument shall be executed by both the lesser and lessee. The Apex Court clarified that what is underlined in it is that the creation of a lease is not a unilateral exercise of

one of the parties but a bilateral endeavor of both the lesser and lessee. At paragraph No. 11 of the said judgment, Apex Court explained the word 'execute' and concluded that merely because the document shows only the signature of one of the parties it is not enough to conclude that the non signing party has not joined in the execution of the instrument. At paragraph No. 12 of the said judgment. Apex Court referred to a three judge bench decision of the Apex Court in 'Asa Ram v. Ram Kali', wherein the claim that lessees could not claim the status of tenants solely on the strength of the Kabuliat which was only a unilateral undertaking, was repelled as the evidence showed that the lessors had accepted the Kabuliat and received rent as prescribed therein. Turning back to the case in hand, it is true that Ext. B9 is only having the junction of the 1<sup>st</sup> defendant, but it is pertinent to note that the temple administrative committed had accepted rent from the 1<sup>st</sup> defendant on the strength of Ext. B9 as is evident from the rent receipts supra. Therefore, the Trial Court went wrong in disregarding Ext. B9, and the Trial Court ought to have found that Ext. B9 is a valid lease deed in favour of the 1<sup>st</sup> defendant with respect to the shop room in issue.

10. Likewise, the Trial Court was of the view that Ext. B6 compromise is not affecting the interest of the plaintiff and not binding for the reason that he is not a party to the suit. Yes, the plaintiff is not a party to OS 411/2008 and thus he is also not a party to the compromise. However, it is the admitted case of the plaintiff that he was brought in to the shop for assisting aforesaid Bhargavan Pillai and as discussed supra, plaintiff had not proved independent title of what ever degree with respect to the plaintiff schedule shop room. If at all he was continuing possession, the same is not on any

independent footing and has to be related back to the original induction as an assistant for helping the business. In other words, continuous permissive possession of this nature will not ripe for claiming absolute independent possession. This distinction was missed by the Learned Trial Judge. Therefore, the plaintiff cannot stand in the way of Ext. B6 and cannot object the subsequent transactions done by the parties on the strength of Ext. B6 compromise.

11. In the premises, it can only be concluded that Trial Court went wrong in dismissing the counter claim and allowing the suit. Therefore, the finding of the trial Court requires interference.

12. This point is answered accordingly.

**11. Point No.2 :-**

1. For the discussions on point No.1 above, the impugned judgment and decree of the Trial Court cannot be allowed to stand and the same are hereby set aside.
2. Plaintiff has not proved his entitlement with respect to plaint schedule shop room, whereas defendants have established that the shop room is leased out to the 1<sup>st</sup> defendant and that therefore the 1<sup>st</sup> defendant is entitled for the relief of the mandatory injunction as sought in the counter claim.
3. Therefore, the suit will stand dismissed, whereas the counter claim will

stand allowed with following reliefs :-

1. It is declared that the plaintiff is not having any right over counter claim schedule shop room, and a mandatory injunction is hereby issued directing the plaintiff to surrender peaceful vacant possession of the shop room to the 1<sup>st</sup> defendant within a period of 90 days from this date, failing which, 1<sup>st</sup> defendant will be entitled to enforce vacant possession through due process of law, and plaintiff will be mulcted with the costs of that execution steps.
2. Having regard to the facts and circumstances, defendants / appellants are entitled for their costs from the plaintiff and his assets.

12. In fine, the **appeal is allowed as above.**

(Dictated to the C.A., typed by her and corrected and pronounced by me in open Court on this the 31<sup>st</sup> day of March, 2026)

Sd/-  
Santhosh Das  
Civil Judge (Senior Division).

**Appendix:-** Nil

Sd/-  
Civil Judge (Senior Division)

//True copy//

Typed by: Sini.G  
Compared by:Sunilkumar.S

Civil Judge (Senior Division)