IN THE COURT OF MUNSIFF, THIRUVALLA

Present:-Sri. Aravind S.J, Munsiff.

Thursday the 11th day of April 2024/ 22nd day of Chaitram 1946 SE.

IA 1/24 & 3/24 in OS 26/24

IA 1/24 in OS 26/24

BETWEEN

Saraswathy.M.K, aged 43 years, W/o Sajimon K.P, Kolathu Vadakkethil Veedu, Anjilithanam P.O, Kunamthanam Village, Mallappally Taluk, now residing at Chellettu Veedu, Chengaroor P.O, Puthusseri, Kallooppara Village, Mallappally Taluk, Pathanamthitta Dist. — Petitioner / Plaintiff

(Adv. N.C.Preny)

AND

1. Varghese Mathew, aged 68 years, S/o V.V.Mathew, Vattachackal Veedu, Punnaveli P.O, Anikkadu Village, Mallappally Taluk Now residing at Vattachackal Veedu, Punnaveli P.O, Nedumkunnam Village, Changanasseri Taluk, Kottayam Dist.
2. Salamma Varghese, aged 63, W/o Varghese Mathew, Vattachackal Veedu, Punnaveli P.O, Anikkadu Village, Mallappally Taluk Now residing at Vattachackal Veedu, Punnaveli P.O, Nedumkunnam Village, Changanasseri Taluk, Kottayam Dist.

— Counter Petitioner / Defendant

(Adv. V.C.Jose)

IA 3/24 in OS 26/24

BETWEEN

1. Varghese Mathew, aged 68 years, S/o V.V.Mathew, Vattachackal Veedu, Punnaveli P.O, Anikkadu Village, Mallappally Taluk Now residing at Vattachackal Veedu, Punnaveli P.O, Nedumkunnam Village, Changanasseri Taluk, Kottayam Dist. 2. Salamma Varghese, aged 65, W/o Varghese Mathew, Vattachackal Veedu, Punnaveli P.O, anikkadu Village, Mallappally Taluk Now residing at Vattachackal Veedu, Punnaveli P.O, Nedumkunnam Village, Changanasseri Taluk, Kottayam Dist.	<u>Petitioners</u> Defendants

(Adv. V.C.Jose)

AND

Saraswathy.M.K, aged 43 years, W/o Sajimon K.P, Kolathu Vadakkethil Veedu, Anjilithanam P.O, Kunamthanam Village, Mallappally Taluk, now residing at Chellettu Veedu, Chengaroor P.O, Puthusseri, Kallooppara Village, Mallappally Taluk, Pathanamthitta Dist	<u>Counter Petitioner</u> Plaintiff

(Adv. N.C.Preny)

These petitions filed under order 39 Rule 1 of Civil Procedure Code.

These petitions having been finally heard on 27.03.2024 and stood over for consideration on 11.04.2024 and on the same day the court passed the following:-

COMMON ORDER

IA 1/2022

The afore numbered petition is filed by the petitioner/plaintiff under O XXXIX R 1 CPC for an order of temporary injunction.

2. The petition averments in brief are as follows: The petitioner is the plaintiff in the case. The suit is one for permanent prohibitory injunction. The petitioner is engaged in the business of a plant nursery and a kiosk for food in the plaint schedule building. The petitioner had entered into an agreement with the respondent for using the property of the latter for the said business. There are 8 employees under the petitioner. The petitioner is solely relying upon the income from the said business. The petitioner and respondent had entered into a license agreement on 29-11-2023 for a period of 11 months which would be effective from October 2023. The license agreement is still subsisting. The petitioner is bound to pay an amount of Rs 650 per day towards license fee or an amount of Rs 19,500 per month on the 1st day of every month. The petitioner had constructed temporary sheds for the said business in the plaint schedule shop room. The respondent had promised that they would take necessary steps for obtaining water connection from the Kerala Water Authority. It is essential for watering the plants in the nursery. However, the respondent thereafter stated that she would make such arrangement only if the petitioner pays Rs 2,00,000/- as security and Rs 25,000/- as license fee. The petitioner refused to accede to the said demand and thus the parties are now at loggerheads. The respondent had received license fee of Rs 19,500/- directly from the petitioner on 23-10-2023. Matters being so, the respondent came to the plaint schedule shop room on 10-01-2024 for collecting license fee. When the petitioner demanded the respondent to provide water connection, the 1st respondent verbally abused the petitioner using obscene language. The respondents have also caused ruckus in the plaint schedule shop room and demanded the customers to leave the shop. The respondents are also reluctant to receive the license fee for the month of January. The respondents have no right to eject the petitioner from the room when the license agreement is subsisting. The respondents have issued notice on 18-01-

2024 to the petitioner to vacate from the petition schedule shop room. The respondents have also stated that license fee for the past 75 days are in arrears. The respondents did not receive the license fee when the petitioner offered the same. The petitioner thereafter approached the bank of the respondent to deposit the license fee. The Bank did not accept the same due to the prior instructions of the respondents. The 1st respondent is influential. The respondents are attempting to eject the petitioner from the petition schedule shop room and cause obstruction to the smooth functioning of the business in the petition schedule shop room. The respondents have no right or authority to do so. Hence, this petition.

3. The respondent entered appearance. However, no written objection was filed by them. The counsel for the respondent orally submitted their objection.

4. Based on the rival contentions, the following points arise for consideration:

1. Whether there exists a prima facie case in favour of the petitioner?
2. Is balance of convenience in favour of the petitioner?
3. Whether the petitioner would be put to irreparable loss and injury if the injunction is not granted?
4. Is the petitioner entitled to an order of temporary injunction as sought for?
5. Relief and costs?

IA 3/2022

5. The afore numbered petition is filed by the petitioner/defendant under O. XXXIX R 1 and 2 CPC for an order of temporary mandatory injunction.

6. The petition averments in brief are as follows: Petitioners are the defendants in the suit. The petitioners and the respondent entered into a license agreement on 29-11-2023 and the respondent is accordingly conducting business in the plaint schedule property. However, the respondent has violated almost all

the terms of the agreement. Thus, the petitioners have issued a notice to the respondent on 16-01-2024 to remove the constructions made in the property. The respondent however did not remove the same and instead filed the present suit raising false averments. The petitioners have not attempted to forcefully evict the respondent from the petition schedule building. The respondent has no right to continue her business in the property. The respondent has encroached into some portion of the property and had constructed a pit for dumping waste. The petitioners are residing 20 kms away from the property. They would come to the plaint schedule property only sparingly. The male friend of the respondent had earlier conducted the plant nursery from October 2022 as per a license agreement executed between the petitioner and the said person. He had introduced the respondent as his wife. However, the respondent with the aid of goondas have removed her male friend and a new license agreement was entered into between the petitioners and the respondent. The respondent is not regularly paying the license fees. When the petitioners sought payment of license fee, the respondent verbally abused them. The respondent had cheated one Samuel K G by misrepresenting that the plaint schedule property belongs to her and had obtained lakhs of amount from him. The respondent is also an accused in Crime No 11/2024 of the Keezhvaipur Police station under s. 420,323, 506 IPC and s. 66(E) of the Information and technology Act. The respondent is conducting sale of drugs and the alcohol in the property under the pretext of the food kiosk. Thus, it is highly necessary that the respondent is ejected from the petition schedule room. Hence, this petition.

7. The respondent filed objection contending as follows: The Petition is not maintainable either under law or on facts. There exists no circumstance to grant an order of temporary mandatory injunction. The petitioners and the respondent had entered into a license agreement on 29-11-2023 which came into

force from 01-10-2023. The period of agreement is still subsisting. The respondent has not violated the terms of the agreement. The respondent has paid the license fee regularly. The petitioners sought for an amount of Rs 2,00,000/- towards security and an amount of Rs 25,000/- as license fee after the execution of the license agreement to obtain water supply from the Kerala Water Authority. However, the respondent did not accede to the request of the petitioners. Thus, the petitioners are now in inimical terms with the respondent. The respondent has paid license fee on 10-12-2023. Matters being so, the respondent came to the plaint schedule shop room on 10-01-2024 for collecting license fee. When the petitioner demanded the respondent to provide water connection, the 1st respondent verbally abused the petitioner using obscene language. The respondents have also caused ruckus in the plaint schedule shop room and demanded the customers to leave the shop. The respondents are also reluctant to receive the license fee for the month of January. The respondents have no right to eject the petitioner from the room when the license agreement is subsisting. The respondents have issued notice on 18-01-2024 to the petitioner to vacate from the petition schedule shop room. The respondent has also stated that license fee for the past 75 days are pending. The respondents did not accept the license fee when the petitioner offered the same. The respondent thereafter approached the bank of the petitioners to deposit the license fee. The Bank did not accept the same due to the prior instructions of the petitioners. The intention of the petitioners is to defame the respondent. The respondent was willing to enter into a license agreement during 2022 itself. However, as she secured a job abroad, the license agreement was entered into between her employee, Joseph and the petitioners. The passport verification did not go through and thus the respondent was conducting business in the shop room with the permission and knowledge of the petitioners. There is no sufficient pleading to grant an order of temporary mandatory injunction. Hence, the present petition is liable to be dismissed.

8. Based on the rival contentions, the following points arise for consideration:

1. Are the petitioners entitled to an order of temporary mandatory injunction as sought for?
2. Relief and costs?

9. The parties in the present petitions are referred to as per their status in the suit. Ext A1 and A2 were produced and marked from the side of the plaintiff for the purpose of these IA's. Ext B1 to B5 were produced and marked from the side of the defendants.

10. Heard both sides in detail.

11. **Point Nos. 1 to 4 in I.A No 1/2024:** All these points are considered together for brevity and for convenience. The specific case of the plaintiff is that she had entered into a license agreement with the defendants for conducting a plant nursery and food kiosk in the plaint schedule shop room on 29-11-2023. The period of license is 11 months. It is the case of the plaintiff that the license agreement is still subsisting and that the defendants are attempting to forcefully eject her from the plaint schedule room and cause obstruction to the smooth functioning of the business in the room.

12. It is not in dispute that the petitioner and the respondent had entered into a license agreement with respect to the plaint schedule room on 29-11-2023. The copy of the said agreement is produced by the plaintiff and is marked as Ext A1. The defendant produced the original of Ext A1 and the same is marked as Ext B1. The plaintiff and the defendants do not have a case that Ext A1/B1 is not a license agreement. The specific case of the plaintiff is that the agreement is a license agreement. A perusal of Ext A1/B1 would show that an agreement

termed as license agreement was entered into between the plaintiff and the defendants with respect to the plaint schedule building for continuing plant nursery and food kiosk by the plaintiff. The period of license was 11 months. The document also grants right to the defendants to enter into the plaint schedule building at any time and to inspect the same. Thus, it could be seen that exclusive possession is not granted to the plaintiff. Therefore, it could prima facie be considered that Ext A1/B1 is only a license agreement and thus no right of possession is obtained by the plaintiff.

13. Then the question that arises for consideration is if this court is competent to grant an order of temporary injunction in favour of the plaintiff. The plaintiff had sought for an order of temporary injunction restraining the defendants from forcefully evicting the plaintiff from the plaint schedule building, causing any obstruction or hindrance to the business being conducted by the plaintiff, removing the building and its allied constructions and committing any waste in the property. The plaintiff has no case that the license is irrevocable as contemplated under s. 60 of the Indian Easement Act. A licence becomes irrevocable only in two eventualities, i.e., (a) when it is coupled with a transfer of property and the said transfer is in force; or (b) the licensee, acting upon the licence, has executed a work of a permanent character and incurred expenses in the execution. Except in the above two circumstances, always a licence is revocable. It is admitted by the plaintiff that the constructions made by her are temporary in nature. The licensor had granted permission to the licensee to put up sheds in the property. At the same time, there is an undertaking by the licensee that the said constructions can be removed by the licensor using the funds of the former. Therefore, it is evident that such construction of sheds is not of a permanent character within the meaning of S.60(b). Therefore, it can only be considered that the license is revokable in nature. The learned counsel for the

plaintiff argued that the period of license is 11 months and thus the license is still subsisting. Therefore, the only ground on which the plaintiff seeks an order of injunction is based on the fact that the license is still subsisting.

14. Ext A1/B1 was entered into on 29-11-2023 and the period specified is 11 months. At this juncture, it is necessary to consider the dictum of the honourable High Court of Kerala in **Travancore Golf Club Rep. By its Secretary v. State of Kerala and others** (2010 (2) KLT 996) wherein it was held that *"Now when it is seen that the license is revocable, the pertinent question emerges for consideration whether a licensee, the Club can seek an interim injunction as against the licensor to continue the user of the land covered by the license agreement. The rights and obligations of a licensor and licensee are governed by the provisions in Chapter VI of the Indian Easements Act. The law governing their rights as under the above Act is exhaustive and there cannot be any exception to the rules enshrined thereunder. Licence is just a permission by the licensor to do an act, or to occupy the particular premises for a particular time, which, in the absence of such right, will be unlawful. The licensee has no interest in the property and his possession and enjoyment of his right is not juristical possession but only occupation under a permissive arrangement. The moment the permission is withdrawn, the possession of the licensee is that of a trespasser. Where the licence is found revocable at the instance of the licensor, can such a licensee maintain a suit for perpetual prohibitory injunction to continue user of such land till expiry of the licence period, is the question to the considered. The answer, no doubt, has to be expressed in the negative. The rule to enable a party to get a decree of perpetual prohibitory injunction as covered under S.38 of the Specific Relief Act is its entitlement under the law to prevent the breach of an existing legal right of such person by means of an injunction. So, what is the existing legal right vested in*

the plaintiff, of which there has been a breach or threatened violation by the defendants, has to be established to claim a decree of perpetual prohibitory injunction. A licensee, who is in permissive use, with no vested right of enjoyment over the land, is incompetent to claim a decree of perpetual prohibitory injunction against the licensor where the licence arrangement is revocable and so revoked by the licensor. A licensee is entitled to a reasonable time to leave the property on revocation of the licence and also to remove his goods in such property. Even in a case where the licence has been revoked without providing such reasonable time, he cannot claim an injunction to continue for user of the land after revocation of the licence. His remedy is only to sue for damages provided he is entitled to the right conferred under S.64 of the Indian Easements Act. In **Corporation of Calicut v. K. Sreenivasan** (*AIR 2002 SC 2051) it has been held that if a licensee is evicted though grounds for revocation of licence do not exist, or forcefully evicted, his only remedy is to recover compensation from the licensor and not to resume occupation. True, in that decision, it has been clarified that it does not mean that a licensee can be forcefully evicted by the grantor without taking recourse to the provisions of law. However, the settled position over which there cannot be any dispute is that a licensee after revocation of the license and withdrawal of the permission cannot seek any restrictive order against the licensor to cling on to his user of the land. It is to be noticed that under S.6 of the Specific Relief Act, even against the true owner of the land, in the event of a forceful dispossession, a person in settled possession can seek for restoration of his possession. But a licensee forcefully dispossessed by the licensor or even by a third party, where the licence arrangement was revocable, cannot maintain any suit under S.6 of the Specific Relief Act for restoration of his possession as his possession is only permissive under the license. The remedy available to the licensee when the* *license is revocable is only to claim damages if so entitled to as under S.64 of the Indian Easements Act."* Therefore, there need not be any doubt regarding the fact that the licensor cannot maintain a suit for injunction against the licensee when the license is revoked.

15. Ext. A1/B1 contains a clause that the license can be revoked if the plaintiff violates any terms of the license. One of the term of the license is that the plaintiff is bound to pay an amount of Rs 650/- daily or 19,500/- per month to the defendants. It is an admitted case that the plaintiffs have no paid the said amount for the month of January. True, there are conflicting averments regarding the reason for the same. The plaintiff alleges that the defendants are not accepting the license fee whereas the defendants contend that the plaintiff is not paying the same. The said question can be decided only after adducing evidence in the case. Any how, it is an admitted case that the defendants have issued a lawyers notice on 16-01-2024 stating that the plaintiff has not paid license fee for 75 days and seeking ejection from the building within 30 days after removing the temporary constructions from the property. The said document is produced and marked as Ext A2. There is a clause in Ext A1/B1 that the license could be terminated by the defendants by giving 30 days notice to the plaintiff. The defendants have done so. Therefore, it is quite evident that the defendants have revoked the license agreement.

16. In a case wherein a particular term is included in a contract of license and a further condition is made to the effect that the licensee should not be dispossessed prior to the expiry of such a term, then it clearly makes out a case of contracting out. In such a case, such a contract will fall within the clutches of S.60 and will create a license irrevocable during that particular period for which that contract was entered into. (see **Eldho v. Manual and others** (2014(3) KHC 611). But in the present case Ext. A1/B1 does not give

any such indication. The terms of Ext A1/ B1 is unambiguous that the license can be revoked at any time if the conditions are not satisfied. Even if all the conditions are duly complied by the plaintiff, the defendants still has the right to eject the plaintiff by giving prior notice of 1 month. Ext B2 would show that such a notice is duly served on the plaintiff. Thus, when the agreement between the parties is a license and the said license is revoked, this court cannot grant an order of temporary injunction as sought for in favour of the licensee. Hence, point nos. 1 to 4 in I.A No 1/2024 are found against the plaintiff.

17. **<u>Point Nos. 1 in I.A No 3/2024:</u>** The present petition is filed by the defendants in the suit for an order of temporary mandatory injunction directing the plaintiff to removing all the constructions, sheds and articles of the plaintiff in the property of the defendants as the plaintiff has violated the terms of the license agreement. After the presentation of the present petition, the defendant filed counter claim for a decree of permanent mandatory injunction to eject the plaintiff from the plaint schedule building and for obtaining the defaulted license fee.

18. Before delving further, it is apposite to consider the criteria's to be followed while considering a petition for interim mandatory injunction. The locus classicus on the point is the one rendered by the honourable Apex Court in **Dorab Cawasji Warden v. Comi Sorab Warden and others** (AIR 1990 SC 867) wherein it was held that "*The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great*

injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are :

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie cast that is normally required for a prohibitory injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief." It was further held that "*Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the Court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive or complete or absolute rules, and there may be exceptional circumstances needing action, applying them as pre requisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion."*

19. The defendants have contended that the plaintiff has violated almost all the terms of Ext A1/B1 agreement. The learned counsel for the defendants argued that the plaintiff was bound to pay license fee every day and nonpayment for 50 consequent days would entail in termination of the license agreement. It is the case of the defendants that the plaintiff has not paid license fee for 75 days and thus the license is terminated. It is also the case of the defendants that there are several criminal cases against the plaintiff and her continued occupation would be disastrous for them. It is the case of the defendants that the plaintiff had cheated one Samuel K G by misrepresenting that she was the owner of the property wherein the kiosk and plant nursery is functioning and had obtained

amount from him by force and blackmail. The private complaint preferred before the Judicial Magistrate of the First Class I, Thiruvalla is produced and marked as Ext B2. Ext B3 is the FIR registered as per the order in Ext B2. It is also stated that the plaintiff had entered into an agreement for sale for purchasing 2.35 ares of property of one Sunu Joseph and his wife Suni Binu and is residing therein. She has not paid the balance sale consideration. Ext B4 is the copy of the said agreement for sale. The defendants relies on the said materials in support of their relief of interim mandatory injunction.

20. It is not in dispute that the defendants had earlier entered into a license agreement with respect to the plaint schedule building with one John Joseph on 01-10-2022. Ext B5 is the said license agreement. The present license agreement is made in continuation of Ext B5 agreement as is evident from the recitals in Ext A1/B1. The license is terminated as is evident from Ext A2. The constructions and the sheds are made in tune with the terms of Ext A1/B1. Even if the license is revokable and is terminated, the defendants cannot eject the plaintiff otherwise than through due process of law. The defendants have filed counter claim for the said purpose.

21. The Court is well within its own powers to issue interim mandatory injunction restoring *status quo ante* to a date prior to suit provided such a relief is claimed in a suit brought for a decree of mandatory injunction and further all necessary conditions as laid down in *Dorab Cawasji Warden's case (supra)* are established by the applicant in the proceedings. (see **AnilKumar and others v. K. Rajendran** (2021(1) KHC 766)). The interim mandatory injunction is sought for to restore the status quo ante prior to the institution of the suit. The relief in the present petition is akin to a decree to be passed in the suit. As already stated, the constructions are done as authorized in the license agreement. Even if it is considered that the plaintiff has violated the terms of the agreement, it would not

mean that the defendants would suffer irreparable injury which cannot be compensated in terms of money if the plaintiff is not ejected from the property. There is no finality in the proceedings of Ext. B2 and B3. Ext. B4 is merely an agreement for sale. Except for the bald allegation in the counter claim, there is nothing to indicate that the sale as per Ext. B4 has not gone through. This court is not privy of the circumstances in which Ext. B4 is executed and thus cannot thus comment upon Ext. B4. The learned counsel for the defendants have argued that the plaintiff is engaged in the business of sale of alcohol and drugs in the property. There is nothing to prima facie come to the said conclusion. This court cannot act upon such a bald statement of the defendants. Moreover, all these assertions cannot be considered to be of such a magnitude that an order of temporary mandatory injunction is to be granted. Therefore, this court is of the opinion that no exceptional circumstances are present in the facts of the present case so as to grant an order of temporary mandatory injunction in favour of the defendants. Thus, Point No. 1 in I.A No. 3/2024 is found against the defendants/ petitioners.

22. **Point Nos. 5 in IA 1/2024 and Point Nos. 2 in IA 3/2024:** Based on the foregoing discussions, both the petitions are liable to be dismissed. There is no order as to costs.

In the result, IA 1/2024 and I.A No 3/2024 are dismissed. There is no order as to costs.

Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court, this the 11th day of April, 2024.

Sd/-

ARAVIND S.J
MUNSIFF

APPENDIX

Petitioner's Exhibits:-

A1 - Copy of license agreement between Varghese Mathew, Salamma Varghese and John Joseph.

A2 - Copy of legal notice from Adv. V.C.Jose.

Counter Petitioner's Exhibits

B1 - Original license agreement between Varghese Mathew, Salamma Varghese and John Joseph dated 29.11.2023.

B2 - Copy of complaint filed before JFMC-I, Thiruvalla by Samuel K.G

B3 - Copy of FIR No. 11/24 Keezhvaipur Police Station, dated 04.01.2024.

B4 - Copy of agreement deed No. 97/I/21 of SRO, Mallappally.

B5 - License agreement between Varghese Mathew, Salamma Varghese and John Joseph dated 01.10.2022.

Id/-
MUNSIFF

Typed by: Joji
Comp. By: Jayapriya

Fair/copy of order in
I.A No 01/24 & IA 3/24
in OS 26/24
Dated 11.04.2024