

KABC010086192017



IN THE COURT OF THE XXIX ADDL. CITY CIVIL
& SESSIONS JUDGE AT BENGALURU CITY. (CCH-30)

Dated this the 6th day of February 2023

PRESENT: SRI G.G. KURUVATTI, B.Com., LL.B. (Spl.)
XXIX ADDL. CITY CIVIL & SESSIONS JUDGE, BENGALURU.

O.S.No. 2422/2017

Plaintiff : Mr. T. Manoharan,
Aged about 48 years,
S/o Mr. A. Tharmalingam,
R/a No.115, (Old No.2),
1st Cross, 1st Main,
Nayanashettypalya, (N.S. Palya),
Bannerghatta Road,
Bengaluru – 560 076.

(By Sri A. Feroze Nizam, Advocate)

Vs.

Defendant : Mr. Babanna,
Aged about 52 years,
S/o Mr. P. Munivenkatappa,
R/a No.1, 1st Main Road,
7th Cross, N.S. Palya,
Rashtra Kavi Kuvempu Nagar,
BTM 2nd Stage,
Bannerghatta Road,
Bengaluru – 560 076.

Office at :

No.129, 7th Main, 5th Block,
Jayanagar,
Bengaluru – 560 041.

(By Sri P.D. Surana, Advocate)

Date of institution of the suit	04/04/2017
Nature of the suit (suit on pronote. Suit for declaration and possession suit for injunction, etc.)	Permanent Injunction
Date of the commencement of recording of the evidence.	05/09/2018
Date on which the judgment was pronounced	06/02/2023
Total duration	Year/s Month/s Day/s 05 10 02

JUDGMENT

This suit is filed for permanent injunction against the defendant claiming in trust or under the authority of the defendant from in any manner interfering in the plaintiff's peaceful possession and enjoyment of the suit schedule 'A' property or trespassing or dispossessing the plaintiff from the suit schedule property and for costs and such other reliefs.

2. The brief facts of the case as per the plaint are :

The defendant is running a construction firm in the name and style of P.M. Construction and the plaintiff started to work under the defendant from 1996 as a Supervisor. The defendant

further started the business of running and maintaining swimming pool at Jayanagar 3rd Block, Bengaluru, in the name of P.M. Swimming Pool and was Administrator and looked after all the administration and management of swimming pool. For this, the salary is paid under salary certificate.

During the course of employment, the plaintiff was provided with a house at No.115, (old No.2), Opp. Maruti Flour Mill, situated at 1st Cross, 1st Main, Nayanashettyalya (N.S. Palya), Bannerghatta Road, Bengaluru. The plaintiff is residing in the said house since 20 years with his family and to show the occupation of the house, he has got documents with the above address like Bank Statement, Airtel bill, BSNL bills, LIC premium receipts, Insurance policies, LPG bills, BESCOM bills, BWSSB bills, Aadhar cards, Voter's ID cards and passport. Later, the defendant started other 7 businesses and the plaintiff was made in-charge of all entire group of companies. The plaintiff made all efforts for improvement of the above said company. So, the defendant has provided a Car bearing No.KA-05-MN-6535 and on 25.01.2006, the plaintiff was made one of the Partners in M/s Upendra & Company. The plaintiff has also invested his amount.

In the month of September 2016, the plaintiff noticed several irregularities and advised the defendant. But the defendant did not heed request. Then the plaintiff requested the defendant to allow him to part away. For this, the defendant was agreed and salary was stopped from the month of November, 2016. So, he assured that he would transfer the property as well as car to the name of plaintiff.

Later, on 22.03.2017, a notice was issued to vacate the premises. When the plaintiff questioned as to why such notices were issued, the plaintiff was summoned to the office on 31.03.2017, and at about 12.45 p.m., the plaintiff was warned with the dire consequences. Even the plaintiff was confined between 12.45 p.m. and 2.00 p.m., and he was manhandled. The plaintiff is in possession of several papers, documents, bond sheets and letterheads in the name of plaintiff and there is every chances of issuing such papers to the defendant. The plaintiff has submitted his resignation in the month of October 2016, and plaintiff was made to retire from the partnership of M/s Upendra & Company. On 03.04.2017, once again the henchmen of the defendant had warned the plaintiff to hand over the vacant

possession of the schedule 'A' property. The plaintiff approached the police, but they refused to register the complaint against the defendant. The defendant is trying to commit acts of trespass and dispossess the plaintiff from the suit schedule property. The possession of the plaintiff is uninterrupted over the suit schedule property. The plaintiff has furnished number of documents to prove his possession for the last 20 years. The defendant is frequently coming around the schedule property and made attempt to trespass and the same is resisted by the plaintiff. The cause of action for the suit arose in the year 1996, when the plaintiff was put in possession of the schedule 'A' property, and on 08.10.2017, when the defendant issued a letter claiming that he will gift the schedule 'A' & 'B' properties to the plaintiff, and on 03.04.2017, when the defendant tried to interfere with the possession of the plaintiff within the jurisdiction of this Court. Hence, the suit is filed for permanent injunction against the defendant.

3. On issuance of the notice, the defendant has appeared and filed written statement contending that the averments of the plaint are all false and the suit is liable to be rejected. The suit is

filed without any basis. The plaintiff has not made P.M. Granite Export Pvt. Ltd., as a party to the suit and the suit is liable to be rejected. The property was given to plaintiff by P.M. Granite Export Pvt. Ltd., in the capacity as an employee of P.M. Granite Export Pvt. Ltd. The plaintiff was not giving any rentals or any consideration for being in possession of the schedule property. The possession of the defendant on the ground that the defendant had assured about gift of the property.

The defendant is the owner of the property and he is the Director of P.M. Granite Export Pvt. Ltd., and plaintiff is only an employee, who was looking after the P.M. Granite Export Pvt. Ltd. So, there was a lease deed between defendant and P.M. Granite Export Pvt. Ltd., to use the schedule property as official quarters. In this regard, there is a lease deed dated 15.01.2015, and P.M. Granite Export Pvt. Ltd., is paying rent to the defendant. The schedule property is allotted to plaintiff as quarters as a incentive for working and no rent is received.

The plaintiff himself had committed fraud and then resigned from P.M. Granite Export Pvt. Ltd. After sending the resignation, the plaintiff was summoned and he was directed to

keep up the promise made by him as to handing over the possession of the schedule property. There were police complaints in view of assault between the plaintiff and defendant. The plaintiff is alleged to have committed fraud, misappropriation when he was working under the defendant. The plaintiff has misused the information possessed by him as an employee of the defendant. So, after resignation, the continuation of the plaintiff in occupation of the schedule property is illegal. The suit is liable to be rejected for the reason that the company was allotted the schedule property, is not made as a party. The plaintiff has not paid rent and he has shown wrong description of the property. The entry and the possession of the plaintiff is only an employee of the company and he has no right to remain the schedule property after submitting resignation.

The property number mentioned in para-3 of the plaint, is fictitious in nature and the same is not in existence. The property is required by the defendant to enable the defendant to allot them to other employees. Under such circumstances, the plaintiff cannot continue in the suit schedule property.

The defendant has denied that the plaintiff has worked as Administrator to the swimming pool and he looked after all the P.M. Granite entity. Further it is denied that the Car bearing No.KA-05-MN-6535 was given to the plaintiff exclusively. It is denied that after starting Upendra & Company, he found irregularities and then came out from P.M. Group. It is alleged that the plaintiff has misappropriated the funds of the company. It is denied that the defendant has assured the plaintiff of giving schedule property so also so a Car. It is denied that the plaintiff has worked so hard for the defendant, by which the defendant was earning Rs.90,00,000/- p.m. It is admitted that the issuance of notice and service of notice on the plaintiff. In fact the plaintiff himself came to the Office of P.M. Granite Export Pvt. Ltd., and exhibited unruly behaviour and abused the H.R. Manager. It is denied that the plaintiff was called to the company and was manhandled. It is denied that the defendant has warned the plaintiff with the dire consequences, if he does not vacate the suit premises. It is denied that the defendant is in possession of the several papers and documents of the plaintiff, which might be misused by the defendant.

The plaintiff himself has used anti-social elements, by which the defendant has filed a complaint under Section 452 of the Companies Act, to take possession of the property.

It is admitted that the resignation tendered by the plaintiff and accepted the same by the defendant. There are no conditions imposed by him at the time of resignation and the resignation letter is unconditional letter of resignation. The firm of the plaintiff is not having any assets to make any investments and there was only filing of application for grant of mining lease. The house claimed belongs to the defendant given on rent to P.M. Granite Export Pvt. Ltd. So, the defendant intends to take possession of the schedule property only in the manner known to law. The plaintiff himself has taken possession of the documents pertaining to the defendant. The defendant has approached the Magistrate Court for appropriate orders. It is denied that the defendant is frequently visited the spot and tried to dispossess the plaintiff forcibly and unruly. The suit is only for bare injunction. There is no cause of action. The defendant had already filed a complaint under Section 452 of the Companies Act. Further the property as referred in the above, has not

claimed as the schedule property. So, for the above reasons, it is prayed to dismiss the suit.

4. On the basis of the above pleadings, the following issues have been framed by my learned Predecessor-in-office on 31.05.2018.

ISSUES

1. Whether the plaintiff proves his lawful possession of suit property?
2. Whether the plaintiff proves the interference of defendant in suit property?
3. Whether the defendant proves that suit property is not identifiable as given in the plaint?
4. Whether the plaintiff is entitled for the relief sought for?
5. What order or decree?

5. The plaintiff examined himself as PW.1 and got marked the documents as per Ex.P.1 to Ex.P.102. The defendant examined himself as DW.1 and got marked the documents as per Ex.D.1 to Ex.D.36.

6. Heard the arguments.

7. My findings to the above issues are as under:

Issue No.1 : Partly in the affirmative.

Issue No.2 : In the Negative.
Issue No.3 : In the Negative.
Issue No.4 : In the Negative.
Issue No.5 : As per final order for the following:

REASONS

8. **Issue No.1:-** In this case the learned Counsel for the plaintiff has drawn the attention of the Court straight to the written statement of the defendant. The defendant has stated in the written statement at page-2 that, "The property was given to plaintiff by P.M. Granite Export Pvt. Ltd., in the capacity as an employee of P.M. Granite Export Pvt. Ltd." So, the learned Counsel for the plaintiff has argued that the defendant himself has admitted particular narration in the written statement that it was given to plaintiff by defendant as an employee itself is sufficient to prove that the plaintiff is in possession of the suit schedule property. In page-7 of the written statement, a contention is taken that, "The entry and the possession of the plaintiff is only an employee of the Company and therefore he has no right to remain in the schedule property after submitting resignation". Another contention is taken at page-8 of the written statement that, "The schedule property was given to plaintiff in

the capacity as an employee of the P.M. Granite Export Pvt. Ltd., in the capacity of General Manager”. Another contention is taken that, “In order to enable the other employees to take over the possession is requited to allot to the other employees”. So, by the very contentions of the defendant, the defendant is admitting the plaintiff is in possession of the schedule property. Again at page-20 of the written statement while answering para-wise, it is narrated that,”He is in possession in the capacity as employee of P.M. Granite Export Pvt. Ltd.”

9. By the very contentions, in my opinion, the possession of the plaintiff over the suit schedule property, is admitted by the defendant. So, in my opinion, as far as possession is concerned, there is no need of much discussion as the defendant has admitted the possession of the plaintiff over the suit schedule property.

10. The only question raised by the defendant is that, the plaintiff has resigned from the service and when he is no more an employee of the P.M. Granite Export Pvt. Ltd., the plaintiff has no right to continue in possession of the suit schedule property, and it is strong contention of the defendant that the plaintiff is only a

permissive occupant and he is not the tenant to seek an injunction against the owner. In this regard, the defendant has taken up a contention at page-2 in para-(d) of the written statement that, "The plaintiff even otherwise also is not paying any rentals or any consideration for being in possession of the property" and in page-7 of the written statement, it is mentioned that, "The entry and the possession of the plaintiff is only an employee of the Company and therefore he has no right to remain in the schedule property after submitting resignation".

11. The plaintiff has not paid any rent for occupying the schedule property, he was only permitted to occupy as employee and the relationship between defendant and plaintiff is not that of landlord and tenant. The relationship between defendant and plaintiff is that of licensor and licensee i.e., only a permissive occupant, at the behest of the defendant. The plaintiff was given schedule property to rent free as he worked for the defendant's company. In this case when the relationship between plaintiff and defendant is shown, the plaintiff has resigned from the service but continued to stay in the schedule property.

12. It is pertinent to note that, nowhere in the plaint the plaintiff has stated as to payment of any rent and nowhere in the evidence has deposed about payment of rent. So, this itself shows that the schedule property was given to the plaintiff as an employee and he was staying in the schedule property, at the behest of the defendant. In the examination-in-chief by way of affidavit, there is no whisper about payment of any rent and there is a contention that the defendant had assured the plaintiff that the house in which he is residing would be transferred in the name of plaintiff only. In the exhibits marked for the plaintiff, there is no document to show in respect of payment of any rent towards the schedule property. In the cross-examination of PW.1 at page-22, when it is suggested that the schedule property was given to the plaintiff as he is an employee of the defendant, for that he has not answered in the straightaway, but admits giving the schedule property and it has been given to him in the year 2017 (2017 ರಲ್ಲಿ ಅದನ್ನು ನನಗೆ ಬರೆದುಕೊಟ್ಟಿರುತ್ತಾರೆ). In the cross-examination of PW.1 at page-24, the plaintiff admits that he has tendered the resignation on 08.10.2016, and the same is marked as Ex.D.6. In the evidence of DW.1, he reiterated the written

statement averments and in the cross-examination it is clearly suggested and admitted that the property bearing No.49 is purchased by the father of DW.1. In the cross-examination much cross-examination has done in respect of property bearing Nos.49 & 115. The learned counsel for the defendant had raised objection that the property in which the plaintiff resides is not as stated in the plaint and the property is not identifiable. In this regard, the commissioner is also appointed and the commissioner report has been filed. As per the commissioner report, the suit schedule property is identified by the plaintiff, as the suit schedule property is occupied by himself so also the defendant has identified the suit schedule property as the property bearing No.49.

13. At this juncture, the Court has to see only the possession of the plaintiff as the Court is dealing with the bare injunction.

14. Admittedly, in this case the plaintiff has not paid any rent for occupation of the suit schedule property. The strong contention of the defendant is that the plaintiff is only an employee and his status would be that of permissive occupant

and on resignation he has to quit and vacate the schedule property and he has no right to continue in the schedule property after submitting his resignation. In this regard, in O.S.No.2260/2018, the plaintiff herein has filed written statement and as narrated in para-26 that, "The plaintiff has not claimed the existence of any contract, agreement, understanding or conditions of service between the plaintiff and the defendant in the capacity of the employer and the employee to the effect of payment of any some of money as rent towards the house property bearing No.115, 1st Cross, 1st Main, N.S. Palya, Bannerghatta Road, Bangalore – 560 076, provided to the defendant". In the above suit the present plaintiff is the defendant and has clearly admitted that there is no agreement in regard to the suit schedule property in occupation by him. Further he has admitted that there is no agreement to pay the rent towards house property i.e., present suit schedule property. So, these aspects clearly prove that the plaintiff herein is the permissive occupant, a licensee and certainly ought to have vacated the premises on tendering the resignation in the year 2016. Though the plaintiff is in possession, he cannot plead that

his possession is lawful possession. As soon he tendered the resignation, within reasonable time he ought to have vacated the premises. But the plaintiff continued to stay in the suit schedule property certainly does not amount to lawful possession. Accordingly, I answer Issue No.1 '*Partly in the affirmative*'.

15. **Issue No.3**:- The defendant has taken up a contention that the suit schedule property is not identifiable as given in the plaint. The plaintiff has shown the suit schedule property with property bearing No.115 (Old No.2), 1st Cross, 1st Main, Nayanashetty Palya (N.S. Palya), Bannerghatta Road, Bangalore – 560 076. The defendant is contending that the property so allotted to the plaintiff, is property bearing No.49, B.T.M. 2nd Stage, N.S. Palya, 4th Main, 13th 'A' Cross, Bangalore – 560 076. It is averred that the defendant is the Director of the P.M. Granite Export Pvt. Ltd. He wanted to allot the schedule property to the employee, who is looking after P.M. Granite Export Pvt. Ltd. So, there was an agreement between P.M. Granite Export Pvt. Ltd., and defendant and authorized the P.M. Granite Export Pvt. Ltd., to use the schedule property as quarters for General Manager.

16. The defendant has contended that the schedule property is not identifiable and a false description has been given by the plaintiff with an ulterior motive.

17. In this regard, the commissioner is appointed and the commissioner report is already filed. In the detailed report of the commissioner, he has stated in para-3 that, "Both the plaintiff and defendant have identified the schedule property and as per his version, it is a corner site and as per his enquiry, the property bearing No.49 is in the name of Babanna and further the authority has replied there is no property bearing No.115 at B.T.M. Layout 2nd Stage, N.S. Palya, 1st Main Road, 1st Cross, Bangalore". After thorough description of his work and narration, finally he has stated that, the schedule property which is occupied by plaintiff is at B.T.M. Layout 2nd Stage, N.S. Palya, 4th Main, 13th 'A' Cross, and part of property bearing No.49. Further the commissioner has reported that, "There is no any record for the property at B.T.M. Layout 2nd Stage, N.S. Palya, 1st Main, 1st Cross, Property bearing No.115". So, the learned Counsel for the defendant has strongly contended that the plaintiff wants to grab some orders by misguiding the Court.

Admittedly, both the parties to the suit and Advocates to both the parties were present when the commission work was done. The objections were filed by plaintiff to the commissioner report. After hearing both sides, the objection filed by plaintiff to the commissioner report, is rejected. Later even heard in regard to the examination of the Court Commissioner and after hearing the prayer for plaintiff to examine the Court Commissioner, is also rejected. So, under such circumstances, the commissioner report cannot be discarded and the Court has to accept the same. In this case the plaintiff has produced many documents to show his employment. But there is no single document pertain to the Corporation to show the occupation of the property bearing No.115.

18. The learned Counsel for plaintiff has drawn the attention of the Court to the Ex.P.1, wherein the defendant herein has written a letter to the plaintiff stating that, "The plaintiff is working honestly with the defendant" and in the said letter it is mentioned that, "You have responded graciously when resignation was sought from you and handed over all official documents and movable property belonging to the group of

companies". Further it is mentioned that, the offer made to the plaintiff is confirmed by the letter / Ex.P.1. In the said letter the Tata Indica Vista Car bearing registration No.KA-05-MN-6535 and the house property bearing No.115, 1st Cross, 1st Main Road, N.S. Palya, B.T.M. 2nd Stage, Bannerghatta Road, Bangalore – 560 076, which was provided you as quarters for 20 years can be retained by you and this will be transferred as gift by the requested owner to your name within a period of one year from this date. The letter is dated 08.10.2016. The same is marked as Ex.D.6 by the defendant. It is a certified copy of the letter produced before another Court. In the said letter the plaintiff has resigned to his post as Marketing Manager on 08.10.2016.

19. When the plaint averments are looked into the relationship between plaintiff and defendant have shown, both the plaintiff and defendant have alleged about manhandling. Under such circumstances, in my opinion, there cannot be any gesture by the defendant to give away the house property to the plaintiff. The letter / Ex.P.1 appears to be suspicious when compared with the plaint averments. The averments in the said Ex.P.1 and mentioning of the property number cannot be basis to

prove or to identify the property before the Court of Law and in the cross-examination of PW.1, he admits that he is residing even today when he joined the service. Ex.D.1 shows that his permanent address is No.115, 1st Cross, 1st Main, N.S. Palya, Bannerghatta Road, Bangalore – 560 076. So, the learned Counsel for defendant has argued that the address in which he stayed when plaintiff has joined the defendant company, is misused and claiming the property of the defendant as property bearing No.49. So, if this aspect is looked into plaintiff has not come to the Court with clean hands, the description of property is improper. The description of the schedule property does not match with the commissioner report.

20. Again in the cross-examination of PW.1 at page-23, the plaintiff has stated that, “He does not know whether the schedule property is within the limit of BBMP”. In unequivocal term the plaintiff has stated that, “He does not reside in part of property bearing No.49” and he states that, “He does not know the existence of records in respect of property bearing No.115”. Further he states that, “He enquired for having defendant's property bearing No.115 at BBMP so also at BDA, but he did not

get documents". So, this type of answer by the plaintiff at the time of cross-examination is severest that the plaintiff was residing in part of property bearing No.49, and he claimed it as a property bearing No.115. Certainly the plaintiff herein has tried to show some different address and snatch orders from the Court. Certainly this kind of attitude shall be deprecated. A person who has no clean hands cannot seek any relief before the Court of Law. So, in view of the above discussion, I answer Issue No.3 in the '*Negative*'.

21. **Issue No.2 & 4:-** In this case the plaintiff is contending that the defendant is interfering in the suit schedule property. So, he is seeking an injunction against the defendant to restrain him from interfering in the peaceful possession or from trespassing or dispossessing the plaintiff from the suit schedule property.

22. The defendant is contending that the plaintiff is not the tenant and he is occupying the schedule property in the capacity of employee and his possession over the schedule property is that of permissive and he is a mere licensee to stay in the schedule property. It is the strong contention of the defendant that, as

soon plaintiff has resigned from his job under the defendant, he ought to have vacated the suit premises and there is no question of evicting him with due process of law. The plaintiff has contended that he is provided with a house No.115 at N.S. Palya, Bannerghatta Road, Bangalore. He has taken up a contention that he was in the Management of P.M. Swimming Pool and he started to work under P.M. Constructions, for that he has been provided with a house No.115. But in the averments of the plaint, his all allegations and contentions were made against defendant only. In para-16 of the plaint the plaintiff has narrated that, "The plaintiff had submitted his resignation letter to the defendant in October, 2016". This narration itself shows that the defendant is the person who is running P.M. Constructions and P.M. Swimming Pool Service Center.

23. The defendant also has contended that, all the companies were private companies and were run by defendant only. It is the strong contention of the defendant that, the company and present defendant cannot be considered as separate.

24. Certainly when plaintiff has narrated that he submitted resignation letter to the defendant in October 2016, he himself has considered that both P.M. Constructions or P.M. Swimming Center and the defendant are one and the same. So, under such circumstances, the plaintiff cannot go back from his pleadings and contend that the defendant and P.M. Constructions or P.M. Swimming Center are different.

25. Another contention by the plaintiff is that, the defendant had assured that the property will be gift away to the plaintiff only and based on this, the plaintiff is contending that he continued to stay in the schedule property. If these contentions were to believe, the plaintiff is estopped from contending that P.M. Constructions / P.M. Swimming Center and defendant are different. So, it is clear that the defendant only had given the schedule property to the plaintiff when he was serving under the defendant.

26. Now this Court has to see, whether plaintiff is permitted to continue to stay and his possession be protected by injunction. The learned Counsel for defendant has strongly contended that the plaintiff being the permissive occupant, a licensee has no

right to continue in possession of the schedule property and there is no need to evict the licensee from the schedule property with due process of law. The defendant has strongly contended that there is no relationship of lessor and lessee between defendant and plaintiff. Under such circumstances, it is contended that the defendant has got every right to get vacate the schedule property through police by filing a complaint to the police.

27. In this regard, the learned Counsel for the defendant has cited a decision reported in **2000 (III) CTC 565** of the Hon'ble High Court of Madras, in the case of *General Merchant Association rep. by Secretary and Treasurer and others Vs. The Corporation of Chennai, rep. by its Commissioner, Chennai*, wherein it is observed that, "Licences has no right to remain in possession after termination of Licence – Licensee is entitled to reasonable time to leave licensed property – Licensee after termination of Licence has no right whatsoever to continue to remain in premises". The possession after termination is not protected by any statutory provision. Finally in para-27, it is observed that, "His status is as already pointed out is unlawful

and he has no semblance of any right to continue in the premises". Finally in that case "The Licensee was given breathing time of seven days to remove the commodities from the respective stalls or shops and after the expiry of seven days, it is open to the respondent to proceed further, remove the unauthorized occupations by use of such reasonable force as may be open to them according to law".

The Hon'ble High Court of Madras has observed that, "After the reasonable time granted if licensee does not vacate the premises, he can be removed by using the force". So, in my opinion, even in this case the plaintiff is occupying the schedule property in the capacity of licensee and his duty is only to vacate the premises within a reasonable time before he be evicted by force. Since the defendant has resigned from the service under the defendant, the licence or the permission to occupy the said schedule property stands terminated. So, the principle laid down in the above said citation, is aptly applicable to the facts of this case and defendant can take help of the principle laid down in the above said citation.

28. The learned Counsel for the defendant has cited an unreported case in W.P.No.2581/2015 C/W W.P.No.3740/2015, dated 01.06.2015, where the Hon'ble High Court of Karnataka has followed the principle laid down in the above said citation, has dismissed the writ petitions of the licensee and granted time to leave the premises in question.

29. The learned Counsel for the defendant has also cited a decision reported in **AIR 1959 SC 1262**, in the case of *Associated Hotels of India Ltd., Vs. R.N. Kapoor*, wherein the Hon'ble Supreme Court has observed under Section 52 of the Indian Easements Act, licence means, "Where one person grants to another, or to a definite number of other persons, a right to do or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence". In the present case also the plaintiff is granted to stay in the suit schedule property for being an employee under the defendant. So, at most the plaintiff is licensee and the above section is aptly applicable to the present case. Further the Hon'ble Supreme

Court has observed that, “The legal possession, therefore, continues to be with the owner of the property, but the licensee is permitted to make use of the premises for a particular purpose. But for the permission, his occupation would be unlawful. It does not create any estate or interest in the property”.

30. The learned Counsel for the defendant has also cited a decision reported in **2006 (88) DRJ 545** of the **Hon'ble High Court of Delhi**, in the case of *Thomas Cook (India) Ltd., Vs. Hotel Imperial & Others*, wherein the above case is referred and it is observed in para-26 of the Judgment that, “The nature of occupancy is clearly permissive. In fact it does not amount to possession at all”.

31. The learned Counsel for the defendant has also cited a decision reported in **(2012) 5 Supreme Court Cases 370**, in the case of *Maria Margarida Sequeira Fernandes & Others Vs. Erasmo Jack De Sequeira (Dead) Through LRs*, wherein the Hon'ble Supreme Court has held in para-97 as under:

“(1) No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long

possession of years or decades such person would not acquire any right or interest in the said property.

(2) Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.

(3) The courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.

(4) The protection of the court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or license agreement in his favour.

(5) The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession”.

In para-100, the Hon'ble Supreme Court has imposed an amount of Rs.1,00,000/- per month for the use and occupation of the premises for three months. On failure, they must hand over the possession of the premises within two weeks from the date of this judgment. Thereafter, if the legal representatives of the respondent do not hand over peaceful possession of the suit property, in that event, the appellant would be at liberty to get the possession of the premises by taking police help. So, the

Hon'ble Supreme Court has observed that the appellant need not once again file a suit for possession and appellant is at liberty to get possession by the police help.

In para-101, the appeal has been allowed and the respondents are directed to pay a costs of Rs.50,000/-.

32. So, the learned Counsel for the defendant has strongly argued that, once again the defendant herein need not file a petition or suit for seeking possession of the suit schedule property as laid down by the Hon'ble Supreme Court. In my opinion, certainly when plaintiff is held to be a licensee, the defendant can take help the principle laid down in the above said citation.

33. The learned Counsel for the defendant has also cited a decision reported in **(2012) 6 Supreme Court Cases 430**, in the case of *A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam, Represented by its President & Others*, wherein it reads as under:

“A. Civil Suit – Abuse of process of court – Delayed administration of civil justice – Frivolous litigation to gain undue benefits – Watchman's suit seeking permanent injunction against his dispossession by owner of the premises – Such non-maintainable suit

protracted for long by resorting to falsehoods, concealment, distortion, obstruction and confusion in pleadings and documents, thereby avoiding ejectment – This reflects delayed administration of Civil justice prevalent in present judicial system – Principles for improving the system, reiterated – Appeal of appellant watchman dismissed with costs and vacant possession of premises directed to be handed over to respondent owner within two months, by police force, if required.

B. Specific Relief Act, 1963 – Ss.38, 39 and 6 – Injunction – Suit for – Maintainability – Gratuitous possessee / Permissive possessee – Suit for injunction by watchman / caretaker / agent / servant, all of them being persons in gratuitous possession / permissive possession, against dispossession by owner of the premises, reiterated, not maintainable – Such person holds property on behalf of principal (owner) and acquires no right or interest therein irrespective of long possession – Protection of court can be granted or extended only to a person who has valid subsisting rent agreement, lease agreement or licence agreement in his favour – Transfer of Property Act, 1882 – Ss.55(1)(f), 58(d) and 108(b) – Easements Act, 1882 – Ss.52 and 60 – Property Law – Possession – Gratuitous possessee / Permissive possessee – Extremely limited entitlement of, if any”.

At page-459 para-44 reads as under:

“44. In the instant case, we would have ordinarily imposed heavy costs and would have ordered restitution but looking to the fact that the appellant is a watchman and may not be able to bear the financial burden, we dismiss these appeals with very nominal costs of Rs.25,000/- to be paid within a period of two months and direct the appellant to vacate the premises within two months from today and hand

over peaceful possession of the suit property to the respondent Society. In case, the appellant does not vacate the premises within two months from today, the respondent Society would be at liberty to take police help and get the premises vacated”.

The Hon'ble Supreme Court has also discussed about the frivolous cases and abusive of judicial process and finally imposed costs of Rs.25,000/- and the appellant is directed to vacate the premises within two months and in case the appellant does not vacate the premises within two months, the respondent would be at liberty to take police help and get the premises vacated. So, in my opinion, the principle laid down in the line of the earlier judgment, is aptly applicable to the facts of this case and defendant can take with the help of principle laid down in the above said citation.

34. The learned Counsel for the defendant has also cited a decision reported in **2021 SCC OnLine SC 744** of the **Hon'ble Supreme Court**, in the case of *Himalaya Vintrade Pvt. Ltd., Vs. Md. Zahid and Another*, in a similar case in para-11, it is narrated that, “The respondent No.1 – plaintiff to handover, vacant and peaceful possession of the subject property in question free from all encumbrances within three months”. Further in para-12, it is

narrated that, "If the respondent No.1 – plaintiff fails to handover possession, the appellant – defendant will be at liberty to take the recourse as known to the law".

35. In all the citations noted above, the licensee has no right to continue in the suit schedule property occupied by him at the permission of the owner of the suit schedule property. Further it is also held that, there is no need to file separate petition or suit for taking possession of the suit schedule property, which was granted for the occupant.

36. So, under such circumstances, in my opinion, in the present case also when plaintiff herein has tendered his resignation, he does not have any right to continue to stay in the suit schedule property and he is duty bound to handover the suit schedule property. Under such circumstances, the occupation of the plaintiff has become an unlawful possession and his possession cannot be protected.

37. As laid down in the Judgment of the *Thomas Cook (India) Ltd., Vs. Hotel Imperial & Others*, there is no need of due process of law and a licensee can be evicted by recourse to law. The Hon'ble Supreme Court has held that, "Such licensee can be

evicted even with the police help". So, looking from any angle, the plaintiff has not made out the case. Seeking the vacant possession of the suit schedule property from the plaintiff by the defendant, does not amount to interference with the peaceful possession of the plaintiff. So, certainly the plaintiff is not entitled for the relief of injunction. Further in this case, the plaintiff has not made out his case that the suit schedule property situated does not as per schedule mentioned. So, for all these reasons, I am of the opinion that certainly the plaintiff is to be ordered to handover the vacant possession by imposing cost, in view of the principle laid down in **2012 (6) Supreme Court Cases 430**. Accordingly, I answer Issue No.2 & 4 in the 'Negative'.

38. **Issue No.5:-** In view of the discussion made on Issue No.1 to 4, I proceed to pass the following:

ORDER

Suit filed by the plaintiff against the defendant is hereby dismissed with costs and exemplary cost of Rs.25,000/-.

The plaintiff shall vacate the suit schedule property within one month and handover the vacant possession to the defendant.

Draw decree accordingly.

(Dictated to the Judgment Writer, transcribed and typed by him, corrected and then pronounced by me in the Open Court on this the 6th day of February, 2023)

(G.G. KURUVATTI)
XXIX Addl. City Civil & Sessions Judge,
Bengaluru City.

ANNEXURE

List of witnesses examined for the plaintiff's side:-

PW.1 T. Manoharan

List of documents exhibited for the plaintiff's side:-

Ex.P.1	Notice issued by defendant on 08.10.2016.
Ex.P.2}{ to P.4}{	Salary certificates (3 in Nos.).
Ex.P.5 }{ to P.11}{	Salary slips (7 in Nos.).
Ex.P.12}{ to P.14}{	Statement of accounts of Citibank.
Ex.P.15	Airtel bill.
Ex.P.16}{ to P.24}{	BSNL bills (9 in Nos.).
Ex.P.25}{ to P.34}{	LIC receipts (10 in Nos.).
Ex.P.35}{ to P.39}{	Gas receipts (5 in Nos.).
Ex.P.40}{ to P.43}{	Electricity bills (4 in Nos.).

Ex.P.44	Notice given by P.M. Swimming Centre.
Ex.P.45	Notice given by P.M. Swimming Centre.
Ex.P.46}{ to P.51}{	Lab reports.
Ex.P.52	Certified copy of plaintiff's Aadhar Card.
Ex.P.53	Certified copy of plaintiff's Driving Licence (DL).
Ex.P.54	Certified copy of Lease deed dated 07.12.2004.
Ex.P.55	Certified copy of Saral Form No.16.
Ex.P.56	Copy of legal notice dated 25.03.2017.
Ex.P.57	Certified copy of postal cover.
Ex.P.58	Copy of legal notice dated 22.03.2017.
Ex.P.59	Certified copy of postal cover.
Ex.P.60	Certified copy of postal acknowledgement card.
Ex.P.61	Letter of Assistant P.F. Commissioner, Regional Office, Bengaluru.
Ex.P.62	Certified copy of Employees' P.F. Scheme Form.
Ex.P.63	Certified copy of Employees' Pension Scheme Form.
Ex.P.64}{ & P.65}{	Certified copy of work sheet of EPF.
Ex.P.66	Certified copy of Certificate issued by P.M. Swimming Centre.
Ex.P.67	Certified copy of relieving letter.
Ex.P.68	Statement of EPF Organization.
Ex.P.69	Complaint given to the National Human Rights Commission with postal receipts.
Ex.P.70	Certified copy of the letter dated 14.11.2017 issued by The Regional P.F. Commissioner – II, Bengaluru (along with the documents pertains to P.F.No.70401/393 standing in the name of Manoharan T. obtains under the RTI Act).
Ex.P.71	Certified copy of the letter dated 14.11.2017 issued by The Regional P.F. Commissioner – II, Bengaluru (along with the documents pertains to P.F.No.70401/393 standing in the name of Manoharan T. obtains under the RTI Act).
Ex.P.72	Reply dated 17.03.2018 issued by Assistant Registrar (Law), National Human Rights Commission, New Delhi.
Ex.P.73	Reply dated 07.05.2018 issued by Assistant Registrar (Law), National Human Rights Commission, New Delhi.
Ex.P.74	Copy of the letter dated 05.02.2018 submitted to the National Commission for Women, New Delhi.

- Ex.P.75 Copy of the letter dated 05.02.2018 submitted to the State Human Rights Commission, Bengaluru.
- Ex.P.76 Copy of the letter dated 14.02.2018 submitted to the State Human Rights Commission, Bengaluru.
- Ex.P.77 Copy of Order dated 22.03.2018 passed in HRC No.467/10/31/2018 (SB – III) on the file of State Human Rights Commission, Bengaluru.
- Ex.P.78 Notice dated 06.10.2018 issued by Karnataka State Human Rights Commission, Bengaluru.
- Ex.P.79 Endorsement dated 20.03.2018 issued by Karnataka State Human Rights Commission, Bengaluru.
- Ex.P.80 Copy of the letter dated 05.11.2018 submitted to the Human Rights Commission, Bengaluru.
- Ex.P.81 Certified copy of the application filed under Section 7 of RTI Act.
- Ex.P.82 Certified copy of the letter dated 27.04.2018 issued by Treasury & Accounts Department, Krishnagiri.
- Ex.P.83 Certified copy of the Stamp Vendor Ledger standing in the name of Sri K.A. Krishnamurthy, resident of Hosur, Krishnagiri District, Tamilnadu.
- Ex.P.84 Certified copy of FSL Report dated 19.01.2018 submitted in CC No.702/2019.
- Ex.P.85 Certified copy of Rental Agreement dated 01.04.2015.
- Ex.P.86 Certified copy of a Document dated 27.04.2018 in Tamil language.
- Ex.P.87 Certified copy of postal address letter.
- Ex.P.88 Certified copy of letter dated 29.05.2018 of District Registrar, Krishnagiri.
- Ex.P.89 Certified copy of the letter of Manoharan, dated 03.04.2018.
- Ex.P.90 Certified copy of demand draft dated 29.05.2018.
- Ex.P.91 Certified copy of letter of Smt Punitha, dated 25.06.2018.
- Ex.P.92 Certified copy of Ex.P.91 in Tamil language.
- Ex.P.93 Certified copy of voter I.D. of M. Prema.
- Ex.P.94 Certified copy of voter I.D. of T. Manoharan.
- Ex.P.95}{ BWSSB water bills (2 in Nos.).
- & P.96}{
- Ex.P.97 Certified copy of application filed under Order 6 Rule 17 of CPC in O.S.No.2260/2018.
- Ex.P.98 Certified copy of Passport.
- Ex.P.99 Certified copy of RTI application filed by plaintiff to the

	Deputy Passport Officer, dated 28.08.2021.
Ex.P.100	Reply received from Passport Authority dated 17.09.2021.
Ex.P.101	Letter received from Passport Authority dated 20.09.2021.
Ex.P.102	Police report submitted to the Passport Authority.

List of witnesses examined for the defendant's side:-

DW.1 M. Babanna

List of documents exhibited for the defendant's side:-

Ex.D.1	Certified copy of Bio-Data of T. Manoharan.
Ex.D.2	Certified copy of Advance Stamped Receipt.
Ex.D.2(a)	Signature of T. Manoharan (plaintiff) in Ex.D.2.
Ex.D.3}{ to D.5}{	Photographs (3 in Nos.).
Ex.D.6	Certified copy of resignation letter dated 08.10.2016.
Ex.D.7 of	Copy of Judgment passed by the Hon'ble High Court of Karnataka in Crl. Appeal No.827/2019, dated 14.11.2019.
Ex.D.8	Copy of order passed by the Hon'ble Supreme Court of India in Special Leave Petition (Criminal) Diary No. 12221/2020.
Ex.D.9	Certified copy of sale deed dated 23.12.2003.
Ex.D.10	Certified copy of sale deed dated 03.04.2006.
Ex.D.11	Certified copy of sale deed dated 31.05.2007.
Ex.D.12	Certified copy of sale deed dated 20.10.2011.
Ex.D.13	Certified copy of sale deed dated 15.02.2013.
Ex.D.14	Certified copy of sale deed dated 12.04.2013.
Ex.D.15	Certified copy of Deed of Reconstitution of Partnership dated 28.12.2016.
Ex.D.16	Certified copy of charge sheet in Cr.No.46/2018 before Jayanagara police station.
Ex.D.17	Certified copy of order sheet in Cr.No.46/2018 before 4 th ACMM, Bengaluru City.
Ex.D.18	Certified copy of plaint in O.S.No.2261/2018.
Ex.D.19	Certified copy of written statement in O.S.No.2261/2018.
Ex.D.20	Certified copy of plaint in O.S.No.2260/2018.
Ex.D.21	Certified copy of written statement in O.S.No.2260/2018.
Ex.D.22	Certified copy of order sheet in CC No.708/2019 (Cr.No. 219/2017) along with charge sheet, First Information

- Report and complaint.
- Ex.D.23 Certified copy of order sheet in CC No.702/2019 (Cr.No. 219/2017) along with charge sheet, First Information Report and complaint.
- Ex.D.24 Certified copy of order sheet in CC No.718/2019 (Cr.No. 219/2017) along with charge sheet along with complaint.
- Ex.D.25 Certified copy of Khatha certificate dated 19.04.2017.
- Ex.D.26 Certified copy of Khatha extract dated 19.04.2017.
- Ex.D.27 Certified copy of tax paid receipt.
- Ex.D.28 Certified copy of complaint in PCR No.5543/2017, dated 03.04.2017.
- Ex.D.29 Certified copy of order passed by the Hon'ble High Court of Karnataka in Crl. Petition No.4049/2017, dated 27.11.2020.
- Ex.D.30 Certified copy of partition deed dated 13.10.1999.
- Ex.D.31 Certified copy of Tax Assessment Record for the year 1996-97.
- Ex.D.32 Certified copy of endorsement issued by BBMP dated 15.06.2017.
- Ex.D.33 Certified copy of endorsement issued by BBMP dated 30.06.2017.
- Ex.D.34 Certified copy of endorsement issued by BBMP dated 05.09.2017.
- Ex.D.35 Certified copy of voucher dated 19.12.2016 issued by P.M. Granite Export Pvt. Ltd., in favour of T. Manoharan.
- Ex.D.36 Certified copy of voucher dated 19.12.2016 issued by P.M. Granite Export Pvt. Ltd., in favour of T. Manoharan.

(G.G. KURUVATTI)
XXIX Addl. City Civil & Sessions Judge,
Bengaluru City.

06/02/2023:

Judgment pronounced in open Court, vide separate judgment.

ORDER

Suit filed by the plaintiff against the defendant is hereby dismissed with costs and exemplary cost of Rs.25,000/-.

The plaintiff shall vacate the suit schedule property within one month and handover the vacant possession to the defendant.

Draw decree accordingly.

XXIX ACC & SJ,
Bengaluru City.

