

**IN THE COURT OF PRINCIPAL DISTRICT MUNSIF AT
KANCHEEPURAM**

**PRESENT: Tmt.R. Rajeswari,B.Com.,L.L.M.,
Principal District Munsif, Kancheepuram.**

On Friday, this the 20th day of December 2024

**IA.No. 02/2024
in
O.S.No. 215/2017**

S.R.Gopi

... Petitioner/Plaintiff

/Versus/

A. Velayudham

...Respondent/Defendant

This petition has come up on 22.11.2024 before me for final hearing in the presence of M/s. L. Sowmiya Narayanan and M. Priya advocates for the Petitioner/Plaintiff and M/s.Tamilarasu, V. Thulasi, J. Karpagam V. Praveen, M.K. Archana, R. Kamesh, V. Srisaran and A. Sarathkumar advocates for the Respondent and upon hearing the arguments and upon perusing the connected material records and having stood over till this day for consideration, this court delivers the following:

ORDER

- 1.This petition is filed by the petitioner Under Order 9 Rule 9 of CPC to restore the suit to file which was dismissed for default on 17.11.2023 and render justice.

2. Brief facts in the petition are as follows:-

The petitioner herein is the Plaintiff in the main suit. The plaintiff filed the above suit against the respondent/defendant for a permanent injunction restraining him and his men and agents from in any way interfering with his peaceful possession and enjoyment of the suit property. That the case was posted for Trial and the same was dismissed on 17.11.2023 for trial. The petitioner was suffering from severe virus fever, he was not able to appear before this court. Hence he was called absent and the suit was dismissed for default on 17.11.2023. The petitioner have already filed a petition to stay the trial of the said suit and the same was returned on multiple occasions. That he have got sufficient cause for his absence. The petitioner was filing this petition to restore the above suit which was dismissed for default on 17.11.2023. Hence this petition.

3. The Respondent filed his counter and the gist of the same is as follows:

The respondents submits that the petitioner is not produced the medical evidence to before this court and without filing the evidence, this petition is not maintainable one.

4. The respondent submits that he is a Tenant under the Ambalavanar Trust in the property by was of a Registered Lease Agreement between this respondent and said Ambalayanar trust on 07.07.2000 and the same was registered at Walajabad Sub Register Office at Walajabad. From date of lease agreement, this respondent was in possession and enjoyment of the suit

property by way of running a vegetarian Hotel in the Name and style of “ANNAPOORNA HOTEL” for the past 18 years and he got Approval from the Walajabad Panchayat For Construction and Constructed Commercial Building in part of the schedule of property mentioned in the Lease Agreement and paid Necessary taxes and obtained Electric connection on his name without any hindrance and the remaining part was kept vacant space for the purpose of Easement and as well as the vacant space was used as Two Wheeler parking for customers of the Hotel for past 18 years.

5. The respondent submits that meanwhile, the trust without taking Legal steps and tried to evict this respondent and interfered with the peaceful possession and Enjoyment of the suit Property and therefore, this respondent was forced to file stay petition along with the Appeal and the Stay was Granted against the trust for stay the operation of the learned Lower Court Decree. That in the meantime, the Trust has entered a Registered Document No. 2369/2017 at Walajabad Sub Register of Right to do so and the Trust has alleged that the possession of the suit property was vested with the Trust and the recitals of the alleged Registered lease agreement is against law and without taking delivery of the suit property, the trust has no Locustand to execute such lease agreement in favour of the petitioner and while the Appeal was pending, the alleged lease agreement was a voidable one.

6. That the petitioner was no way connected with the suit property and the petitioner along with some trust members has given a lot of trouble to this

respondent by trying to evict the respondent from the suit property in unlawful manner. This respondent submits that the petitioner was trying to grab the property from this respondent. In these circumstances this respondent has filed the suit for declaration for declare the lease deed dated 24.09.2017 is void and for permanent injunction against the petitioner and trust, and the same was pending before this court in O.S No. 213 of 2017.

7. The respondent Lease Agreement executed in favour of the petitioner is a voidable one and the petitioner has no manner of right to do so. The dispute of the said lease agreement is still pending before this court in O.S. No. 213 of 2017 hence the petition itself not maintainable. The petitioner is never in possession and enjoyment of the said property. This respondent submits that the alleged lease deed executed by the trust in favour of the petitioner, hence ought to have the trust is added in the party of the suit, but the petitioner has wantonly to avoid the trust in this suit. The trust is necessary party in this suit, hence necessary party is not included in this suit, and this suit and petition is not maintainable one. The petitioner has not filed any scrap of paper to prove his possession of the suit property. The petitioner has no right to file this petition and he is not entitled to get any relief before this court. Hence, the petition is liable to be dismissed.

8. The point for consideration in this petition is whether this petition is to be allowed or not.?

9. Heard both sides arguments. The above suit was posted for trial and the plaintiff called absent on the hearing date, hence, this suit is dismissed for default on 17.11.2023. The petitioner/plaintiff filed this restoration petition to restore the suit, which was dismissed for default within one month. An opportunity has to be given to the petitioner to prove his case. Hence in the interest of justice, this court inclined to allow this petition
10. In the result, this petition is allowed. No Cost.

Dictated to the steno-typist, who directly typed in computer. Pronounced by me in open court, this the 20th day of December 2024.

(S/d.R.Rajeswari)
**Principal District Munsif,
Kancheepuram.**