

S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2025

CORAM:

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

S.A.No.873 of 2024
and
C.R.P.(PD).No.2239 of 2024
and C.M.P.No.11789 of 2024

S.A.No.873 of 2024:

The Thyagaraya Nagar Social Club
rep. by its Secretary,
No.1, Nageswara Rao Road,
T. Nagar,
Chennai – 600 017.

...Appellant/1st Respondent/Plaintiff

Vs.

1.M/s.Woodlands Tiffin Room
rep.by Mr.K. Krishnamurthy,
No.3, Nageswara Rao Road,
T. Nagar,
Chennai -600 017.

...1st Respondent/Appellant/1st Defendant

2.The Bank of Maharashtra,
having its office at T. Nagar,
among other places in Union of India
rep by its Branch Manager,
No.3, Nageswara Rao Road,
T. Nagar,
Chennai -600 017.

...2nd Respondent/2nd Appellant/2nd Defendant



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

C.R.P.(PD).No.2239 of 2024:

The Thyagaraya Nagar Social Club
rep. by its Secretary,
Sinora P.S.Ashok,
No.1, Nageswara Rao Road,
T. Nagar,
Chennai – 600 017.

... Petitioner/Petitioner /Plaintiff

Vs.

1.M/s.Woodlands Tiffin Room
rep.by Mr.K. Krishnamurthy,
No.3, Nageswara Rao Road,
T. Nagar,
Chennai - 600 017.

2.M/s. Bank of Maharashtra
rep by its Branch Manager,
No.3, Nageswara Rao Road,
T. Nagar,
Chennai - 600 017.

... Respondents/Respondents

Prayer in S.A.No.873 of 2024: Second Appeal is filed under Section 100 read with Order XLII of the Code of Civil Procedure against the Judgment and Decree dated 30.04.2024 made in A.S.No.19 of 2023 on the file of the learned XV Additional Judge, City Civil Court, Chennai, reversing the Judgment and Decree dated 01.12.2023 made in O.S.No.2494 of 1999 on the file of the learned XI Assistant Judge, City Civil Court, Chennai.



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

Prayer in C.R.P.(PD).No.2239 of 2024: Civil Revision Petition is filed under Article 227 of the Constitution of India against the Fair and Decreetal Order dated 01.12.2023 made in I.A.No.2 of 2022 in O.S.No.2494 of 1999 on the file of the learned XI Assistant Judge, City Civil Court, Chennai.

S.A.No.873 of 2024:

For Appellant : Mr.N.Jothi,
Senior Counsel
for Mr.G.V. Sridharan

For Respondents : Mr.P.Parthasarathy,
Senior Counsel
for M/s.Prahalad K.Bhat
for R1

C.R.P.(PD).No.2239 of 2024:

For Petitioner : Mr.N.Jothi,
Senior Counsel
for Mr.G.V. Sridharan

For Respondents : Mr.R.Parthasarathy
Senior Counsel
for Mr.Prahalad Bhat
for R1

No appearance for R2



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

COMMON JUDGMENT

The plaintiff is the appellant in S.A.No.873 of 2024 and the revision petitioner in C.R.P.(PD).No.2239 of 2024.

2.The parties are described in the same array as in the Original Suit.

3.The suit in O.S.No.2494 of 1999 was filed by the appellant/plaintiff against the respondents/defendants claiming himself as the owner of the suit property and directing the 1st defendant to surrender possession on the ground that the 1st defendant has sublet the premises to the 2nd defendant by violating the terms of the Lease Agreement executed between the plaintiff Club and the 1st defendant dated 28.06.1975. The 1st respondent/1st defendant contested the suit by filing their Written Statement. Before the Trial Court, both the parties adduced evidence. Before the commencement of arguments, based on the admissions made by DW1 with regard to the violations of the Lease Agreement as well as subletting the premises and also there are earlier findings in the Civil Revision proceedings that the 1st defendant Krishnamurthy was not in

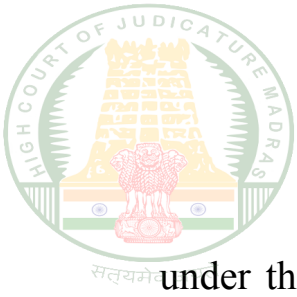


S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

possession of the premises. Hence, the plaintiff filed an Interlocutory Application in I.A.No.2 of 2022 in O.S.No.2494 of 1999 under Order 6 Rule 17 and Section 151 of the Code of Civil Procedure by amending the Plaint by including the prayer for claiming liquidated damages for the illegal occupation under the 1st defendant and also for mandatory injunction, directing the 1st defendant and their illegal occupation for the unauthorized and illegal occupant in possession of the premises and also filed another Interlocutory Application in I.A.No.3 of 2023 in O.S.No.2494 of 1999 under Order 12 Rule 6 and read with 151 of CPC, praying to pass a Judgment and Decree in terms of Order 12 Rule 6 of CPC on the admission of DW1 by his oral and documentary evidence to the factum that the present incumbents are different persons not traceable to original tenancy to the suit premises.

4.Both the Interlocutory Applications were contested by the 1st defendant through DW1 by filing objections. On hearing both sides, the Trial Court dismissed I.A.N.2 of 2022 holding that the dispute between the parties with regard to subletting the premises to the unauthorised occupant



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

under the guise of change in partnership. But, the proposed amendment relating to the relief of mandatory injunction cannot be permitted to introduce that the suit was pending for arguments. After conclusion of the Trial, the relief has also been sought after 12 years from the expiry of the lease period as to be consonance with earlier cause of action. Aggrieved over the same, the plaintiff preferred C.R.P.(PD).No.2239 of 2024.

5.In respect of I.A.No.3 of 2023, the Trial Court held that the lease period ended on 28.06.2010 but, the 1st defendant has not handed over the possession to the plaintiff. Instead of that, the 1st defendant is subletting the top floor to the 2nd defendant and also as per the admission made by DW1 during his cross examination relating to change in partnership, there was no Agreement with the plaintiff and one Krishnamurthy, who inducted the third parties as a tenant under the guise of partners. Against the terms of Lease Agreement and nearly about 13 years, after the expiry of the lease period, the 1st defendant is evading the eviction process and squatting on the property with abusing the process of Law and the alleged rent of Rs.10,000/- per month is also not in accordance with the terms of



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

the Agreement and they are acting against the interest of the plaintiff and its property. The admission made by DW1 is sufficient to decree the suit in favour of the plaintiff. Accordingly, the Original Suit was allowed.

6.Challenging the said findings, the defendant filed an appeal in A.S.No.19 of 2023 on the file of the learned XV Additional Judge, City Civil Court, Chennai. The First Appellate Judge on hearing both sides held that the retirement of existing partner and entering of new partner to the 1st defendant Firm, wherein the earlier partner Krishnamuthy remains a partner of the Firm would not amount to sublet the premises and also held that subletting the premises to the 2nd defendant with the permission of the plaintiff as per the findings of C.S.No.392 of 1998 and after filing of the suit, the plaintiff has also received rents.

7.Apart from that, another issue framed regarding the limitation as well as barred under Order 2 Rule 2, is to be decided between the parties. Therefore, the findings of the Trial Judge, based upon the alleged admission made by DW1, as such, is not acceptable one. Accordingly, the



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

order passed in I.A.No.3 of 2023 was set aside and directions were given

to both the parties to appear before the Trial Court.

8.Challenging the said findings, the plaintiff preferred Second Appeal in S.A.No.873 of 2024 before this Court. In both the Second Appeal as well as the Civil Revision Petition, the point to be decided as to whether the plaintiff is entitled for amendment as he prayed for in I.A.No.2 of 2022? and also whether he is entitled to get the relief under Order 12 Rule 6 in I.A.No.3 of 2023 based on the alleged admission made by DW1?.

The brief facts are as follows:

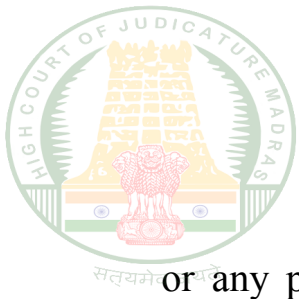
9.The plaintiff is a Society registered under the Society Registration Act and it has own rules and regulations for its administration. Now, there are more than 1000 members in the Society and it was started in the year 1931-1932. The plaintiff purchased a plot of land in Nageswara Rao Road, T. Nagar, Chennai, measuring 14 grounds for housing the Club for the use and benefits of the Members of the Society and the Club activities



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

have also been increased. While so, in the year 1975, the 1st defendant, namely, M/s.Woodlands Tiffin Room, approached the plaintiff Club to take lease a portion of the premises to an extent of 5263 sq.ft. facing Nageswara Rao Road, for the purpose of running a Restaurant and Hotel and also requested to give lease for 35 years with the permission to construct and to raise buildings at the cost of the 1st defendant. The said request was placed before the Annual General Body Meeting and approved to lease out a portion of the premises to the 1st defendant. Accordingly, the Lease Agreement was entered into between the plaintiff Club and the 1st defendant on 28.06.1975 for a period of 35 years and the lease only for the purpose of running a Restaurant and Hostel and for no other purpose. With regard to the payment of rents, Clause 10 of the Lease Agreement was arrived at between the parties. Accordingly, Rs.24,000/- per annum is payable for the first five years and the rent has to be increased thereafter and the terms were incorporated. The plaintiff also permitted the 1st defendant to surrender the demised portion with the superstructures without making any claim over the same and also there is a specific clause that the 1st defendant shall not assign or sublet the premises



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

or any partition thereof and the 1st defendant was also not permitted to assign or sublet, sublease any portion of the building as per Clause 14 of the Agreement and if there is any violation, the lease period will automatically come to an end.

10. But, soon after immediately on 27.06.1975, a letter was received from the 1st defendant by the plaintiff Club seeking permission to sublet a portion to avail Bank facilities. Immediately, it was replied by the plaintiff that they would place the letter before the Managing Committee to take a final decision. But, no Resolution was passed regarding the sublease. Therefore, no permission was ever given to the 1st defendant to sublet the premises. But, without the written consent of the plaintiff, the 1st defendant sublet a portion of the buildings to the 2nd defendant / Bank of Maharashtra. In spite of purchase made on the side of the plaintiff Club, the sublease is contrary to the terms of the Lease Agreement. Hence, they filed a Civil Suit in C.S.No.392 of 1998. The 1st defendant filed their Written Statement stating that he never stated that he is permitted to sublet the premises, but, in connivance with some of Members, he played fraud

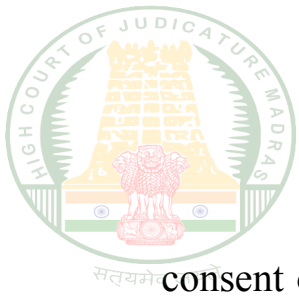


S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

on the Club endangering valuable property owned by the Club.
WEB COPY

Subsequently, some of the Members have acted in collusion with the 1st defendant also.

11.The contention of the plaintiff is that originally one K.Srinivasa Rao and K. Gopal Rao were Partners of M/s.Woodlands Tiffin Room when the Lease Deed was executed on 28.06.1975. Thereafter, through an unregistered Partnership Deed dated 03.06.1977, one K.Srinivasa Achar, who is the father of K.Krishnamurthy was inducted as a Partner along with the above two persons. On 04.01.1978, the said Srinivasa Rao and Gopal Rao retired from Firm. Thereafter, Srinivasa Achar became the sole proprietor, who executed an unregistered Deed of declaration in favour of Krishnamurthy on 06.02.1980 whereby the business was allotted to Krishnamurthy and he became the sole proprietor. Thereafter, in the year 1988, the said Krishnamurthy is unable to run the Firm. Hence, an unregistered Partnership Deed dated 25.01.1988 was entered into with S.Suresh Rao and others for subletting the premises of the newly added persons as Partners. At any point of time, the plaintiff was not given their



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

consent or approval for the various changes effected in constitution of the original firm except the Lease Deed dated 26.08.1975. The plaintiff has not entered into any Lease Agreement with anyone. Therefore, the plaintiff submitted that all the internal and illegal assignment of the tenancy are without approval of the plaintiff/landlord. Therefore, all the documents right from 13.06.1977 till 25.02.1988, the said Krishnamurthy cannot be termed as a tenant in the eye of Law. The earlier suit in C.S.No.392 of 1998 was filed with a limited prayer to prevent the 1st defendant as well as one Krishnamurthy from subletting the premises under the cloak of partnership in favour of the other defendants and the conduct of the parties and subletting the premises have already been discussed by this Court in a reported Judgment in **Thiyagaraya Nagar Social Cub by its Secretary Somasundaram, Chennai – 17 v. Woodlands Tiffin Room, Chennai -17 [2015 (6) CTC 340]** while disposing C.R.P.Nos.1601 of 2008 and 4771 of 2013.

12.While disposing of Section 9 Application filed by the tenant under the Madras City Tenants' Protection Act, this Court held that

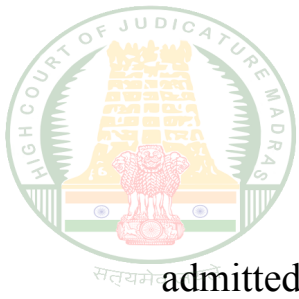


S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

Krishnamurthy was not the owner of a portion of the property and a portion of the property was under sublet and the said order was not challenged by the defendants. Therefore, the 1st defendant has not carried out as per the terms of the Agreement as well as hotel business and allowed the 2nd defendant to run a Bank activities and claimed huge rents by subletting the premises. Hence, they came forward with the suit seeking direction to the 1st defendant to surrender the portion of the property.

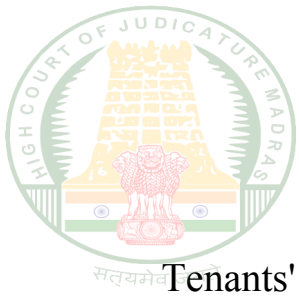
13. Pending proceedings, the 2nd respondent Bank of Maharashtra vacated the premises in the year 2000. The 1st defendant contested the suit by filing Written Statement. The 1st defendant admitted the registered Lease Deed dated 28.06.1975 entered with the plaintiff/Club for a period of 35 years for the vacant site at Panagal Park, Chennai. The 1st defendant contended that he put up false ceiling, carried out decoration works and spent huge amount for putting up a superstructure and paid rents regularly. He has not committed any violation of the terms of lease. Further, he would submit that the sublease to the 2nd defendant Bank a portion of the first floor was with the consent of the plaintiff as early as 1975 and it is



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

admitted by the plaintiff in Para 9 of their Plaint in the earlier suit
WEB COPY
C.S.No.392 of 1988 the re-numbered as O.S.No.4651 of 1991.

14.Further contended that contrary to the same, nearly after a lapse of 24 years, now the plaintiff raised false allegations against the 1st defendant. The fact that consent was given for subletting a portion in the First floor was admitted in the earlier suit proceedings in C.S.No.392 of 1988. Now, the plaintiff raised a plea of sublease. The plaintiff is also collecting rents after ratifying the sublease. Hence, there is no need for amendment of Lease Agreement. The defendant also contended that in the earlier suit, no relief of possession has been asked nor specifically stated that fraud committed by the 1st defendant colluding with the members of the plaintiff. The Sublet was perfectly legal and the 1st defendant is running a hotel business and he has not committed any gross violation of the terms and is not liable to surrender the possession as prayed in the present suit. At earlier point of time, the lease period of 35 years came to an end only on 2010. Hence, the 1st defendant is also entitled for compensation for the superstructure under Section 9 of the Madras City

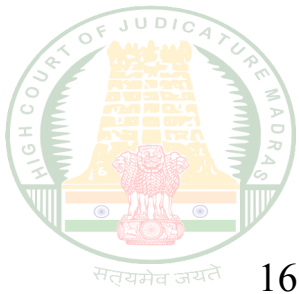


S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

Tenants' Protection Act. Even the 1st defendant has occupied 150 sq.ft on the Eastern side of the ground floor for running a Canteen, if the 2nd defendant vacated the retaining portion, the plaintiff is not entitled for any relief and prayed for dismissal of the suit.

15. Before the Trial Court, on behalf of the plaintiff Club, the Under Secretary was examined as PW1. On the side of the 1st defendant one Suresh Rao was examined as DW1. Both the parties were cross examined and the evidence was closed. At that time of arguments, the plaintiff came forward with the two applications, one is for amendment in the prayer and the second one is to decree the suit based upon the admission made by DW1 during the trial. The amendment application was dismissed, against which, the present Civil Revision Petition has been filed. Another application was filed under Order 12 Rule 6 of CPC, was allowed. Against which, Appeal Suit was filed and the First Appellate Judge set aside the findings of the Trial Court. Now challenge has been made in the appeal.



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

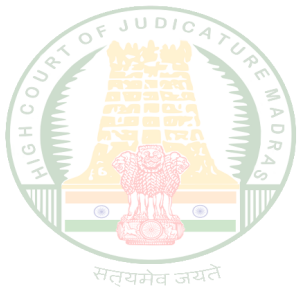
WEB COPY

16.At the time of admission, this Court had framed the following
Substantial Questions of Law:

“(a)Whether the reversal Judgment of the First Appellate Court is correct and proper in Law so as to vary the well considered Judgment of the Trial Court based on the admissions of DW1 together with Ex.B3 and Ex.B4 that he is not the original lessee at all?

(b)When there is a clear admission of DW1 in his oral evidence that he is a third party and stranger to the original lease, is it proper on the part of the First Appellate Court to allow such unauthorised occupation to continue?

(c)Whether the First Appellate Court is correct in its findings that there should be termination of lease when the registered Lease Deed marked in Ex.A6 itself, the period of lease is consciously agreed and fixed for quietly vacating and handing over the possession which itself got already expired on 27.06.2010 itself that is 14 years ago?



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

(d) Whether the First Appellate Court is correct in its finding that the damages of Rs.3,500/- per mensem sent for the occupation of 5263 sq.ft. at the prime commercial area unilaterally by the third party trespasser would amount to “acceptance of rent” to legitimise the trespassing and unauthorised occupation by a stranger?

(e) Whether the First Appellate Court is correct in its finding that the unregistered Partnership Deeds in Ex.B3 and Ex.B4 among the very family members of DW1 would qualify to be a Partnership Deed within the meaning of Indian Partnership Act?”

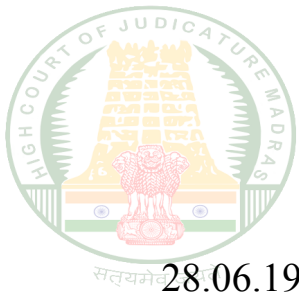
17.The learned counsel for the appellant/plaintiff would submit that the original Lease Agreement with the 1st defendant, namely, M/s.Woodlands Tiffin Room represented by its Partner Mr.Gopal Rao entered into a Lease Agreement in respect of the suit property to carry out a hotel business. Subsequently, the original partners were entered into a Lease Agreement in the year 1975 got retired. Soon after the said lease,



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

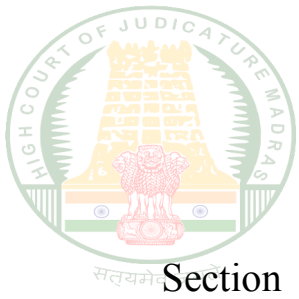
contrary to the terms of the Lease Agreement, the 1st defendant sublet a portion of the property to the Bank of Maharashtra. Though the said intimation was given but the plaintiff Club has not given any written consent to that effect. Inspite of the fact that, the sublease was continued. Thereafter, in 1978, the two partners retired from the Firm and one Srinivasa Achar became the sole proprietor, who entered into an unregistered Deed of declaration with Krishnamurthy in the year 1980 to run the business. After that, the said Krishnamurthy assigned the lease with one Suresh Rao (DW1) and his family members entered into a partnership on 25.02.1988 by subletting the premises without consent of the plaintiff Club. As on date, except the Lease Agreement with the original partner dated 28.06.1975, represented M/s.Woodlands Tiffin Room, the plaintiff has not entered into any Agreement. As on date, the nomenclature of the 1st respondent's business name, namely, M/s.Woodlands Tiffin Room, is just abused by the trespasser (DW1) under the cloak and shell of the trade name which no longer possesses the legal character of the original Firm. Therefore, he is ranked as trespasser and he also admitted that he is a third party to the Lease Agreement dated



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

28.06.1975 which expired 15 years ago and that the period of lease expired on 27.06.2010 and he is in illegal occupation of 5263 sq.ft in the heart of the City. They are not a party to the original lease and as per the terms of the Lease Agreement, the original lease holders were not permitted for sublet, but contrary to the terms, they violated and the original partnership was also not in existence. The present occupants and other family members are the third party to the Agreement and they did trespass and the same was admitted by DW1 during his cross examination. Therefore, the Trial Judge has rightly allowed the Interlocutory Application filed under Order 6 ad Rule 6 of CPC and the First Appellate Judge has not appreciated the proposition of law properly without appreciating the entire evidence as well as the facts of the case which are not available and failed to take note of the fact that after expiry of lease period more than 14 years under the occupation of the unauthorised persons who are the third party and he has no *locus standi* to contest the suit. They are ranked as trespassers. But without appreciating all the facts as well as the legal proposition and also not appreciated the categorical admission of DW1 as well as not appreciating the earlier findings under



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

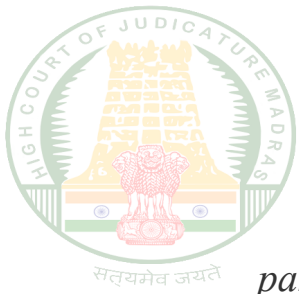
WEB COPY

Section 9 of the Madras City Tenants' Protection Act wherein a clear admission that the property was sublet by violating the terms of the Lease Agreement and the same was reported in 2015-5-L.W.717. Without any legal or factual basis, the First Appellate Court set aside the findings of the Trial Court, as such, is perverse and illegal and it is liable to be set aside.

18.In support of their contentions, the learned counsel for the appellant has relied upon the following authorities:

***(1) T.Arivandandam v. T.V.Satyapal and another
[(1977) 4 Supreme Court Cases]***

(1)The Trial Court must remember that if on a meaningful-nor formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he (Munsif) should exercise his power under Order VII rule 11, C.P.C. taking care to see that the ground mentioned therein fulfilled. And, if clever drafting has created the illusion of a cause of action, it should be nipped in the bud at the first hearing by examining the party searchingly under Chapter X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial court should insist imperatively on examining the



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

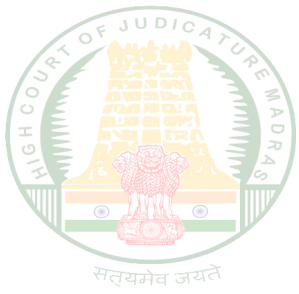
WEB COPY

party at the first hearing so that bogus litigation can be shot-down at the earliest stage. The penal Code (Chapter XI) is also resourceful enough to meet such men and must be triggered against them.(Para 5)

In the present case,it is perfectly plain that the suit pending before the First Munsif's Court, Bangalore being a flagrant misuse of the mercies of the law in receiving complaints having no survival value, the court directed the Trial Court to dispose of it forthwith after giving an immediate hearing of the parties concerned and to take deterrent action if it is satisfied that the litigation was inspired by vexatious motives and is altogether groundless. The suit has no survival value and should be disposed of forthwith after giving an immediate hearing to the parties concerned. (Para 6)

It may be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an advocate is an officer of justice he owes it to society not to collaborate in shady actions. The Bar Council of India, we hope will activate this obligation. (Para 7)”

(2) Dalip Singh v. State of Uttar Pradesh and others
[(2010) 2 Supreme Court Cases 114]



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

“A party which has misled the Court in passing an order in its favour is not entitled to be heard on the merits of the case. A person who invokes the High Court's jurisdiction under [article 226](#) of the Constitution is duty bound to place all the facts before the court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain petition filed under [Article 226](#) of the Constitution.”

19.The learned counsel for the appellant would point out that the sublease made by the 1st defendant was illegal which has been held by this Court and that the main tenant was not in possession of the entire buildings also and a portion was in occupation of the Bank of Maharashtra, who vacated the buildings in the year 2000 and thereby held that the original tenant was in not the actual and physical possession. Therefore, he is not entitled any benefit under Section 9 of Act and the same was held in favour of the plaintiff. In support of their contention, the learned counsel relied on the Judgment of this Court in **Thiyagaraya Nagar Social Cub by its Secretary Somasundaram, Chennai – 17 v.**

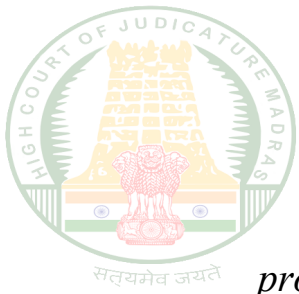


S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

Woodlands Tiffin Room, Chennai -17 [2015 (6) CTC 340].

WEB COPY

Madras City Tenants' Protection Act, 1921 (T.N. Act 3 of 1922), Section 9 - Maintainability of Application under - Actual physical possession of Tenant, whether mandatory to claim benefit - Held, Suit property was admittedly leased out to 1st Defendant, who in turn sublet to 2nd Defendant-Bank who was in possession of Suit property till Section 9-Petition was filed in May 2000 - Therefore, it can be safely concluded that main Tenant was not in possession of entire building from 1975 to 2000 - Said fact would clearly prove that main Tenant was not in need of entire superstructure for His business activities – Therefore, contention to contrary by main Tenant lacks bona fides - Moreover, in order to claim benefit of Section 9. it is mandatory for Tenant to be in actual physical possession -Case-law discussed - Right conferred on Tenant under Section 9 is only privilege conferred on him, same could be exercised only by adopting proper procedure prescribed under Act – Therefore Respondent/Tenant being not in actual physical possession, Petition seeking benefit under Section 9 is not maintainable - Moreover, Lower Appellate Court while setting aside Order of Trial Court has not discussed anything on merits of case and has not even rendered



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

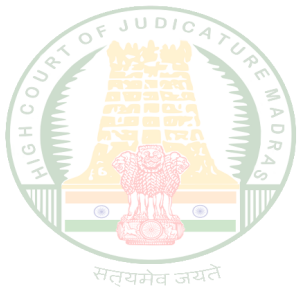
WEB COPY

proper findings on issue Same is legally perverse and requires interference Impugned Judgment of Lower Appellate Court is set aside -Revision allowed.

20.Further, the learned counsel also relied upon the Judgment of the Kerala High Court in **B.Assiamma v. State Bank of India and others [AIR 1990 Kerala 157]** with regard to how the partners can enter into a new firm and what are the mandatory requirements.

Partnership Act (9 of 1932) -S.32(3).S.45, S.72 – Retirement of a partner – Notice to strangers, when presented – Notice not given to Registrar of Firms – Nor its publication effected in Official Gazette – Mere publication of notice in local language – Not sufficient to absolve retired partner from his liability to third persons.

21.Further, the learned counsel for the appellant would argue that after filing of the suit, the subsequent events have been taken place between the 1st defendant and the third party which also taken into consideration while granting the relief to the plaintiff. To that effect, he relied the following authorities:



WEB COPY



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

(1) *Lekh Raj v. Muni Lal and others*

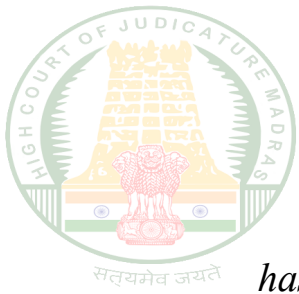
[2001] 2 Supreme Court Cases 762]

Rent Control and Eviction - Subsequent events - Held, can be brought on record at revision stage in aid of justice, if they have a material bearing on the issues involved and would materially affect the outcome of the case - More so, where case has been pending for many years. Further held, caution ought to be exercised and subsequent events ought not to be routinely included -Appellate court setting aside finding of trial court that disputed shop was in dilapidated condition and unfit for human habitation - During pendency of respondent landlord's revision petition (18 years), High Court allowing his application for appointment of Local Commissioner On basis of Commissioner's report High Court finding that shop was unfit for human use and allowing respondent's eviction petition - Held, High Court did not exceed revisional jurisdiction in bringing the Commissioner's report on record and in relying on it.

(2) *Om Prakash Gupta v. Ranbir B. Goyal*

[(2002) 2 Supreme Court Cases 256]

Practice and Procedure Subsequent events Held, court



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

has power to take note of and mould relief as appropriate but only if three conditions are satisfied: (1) relief, as originally claimed has become inappropriate or impossible to grant; (ii) taking note of such events or changed circumstances would lead to early end of the litigation and would result in complete justice being done; and (iii) subsequent events are brought to notice of court promptly and in accordance with rules of procedure to ensure that opposite party is not taken by surprise Clarified that under ordinary rule of civil law, the relevant rights of the parties are those that existed on the date of the institution of the suit Rent Control and Eviction - Subsequent events.”

22.By submitting all the above authorities, the learned counsel would submit that the Trial Court has rightly appreciated the entire facts and the subsequent events as well as the admission made by DW1 and granted the relief in favour of the plaintiff. But, the First Appellate Judge without appreciating both the Law and facts dismissed the appeal.

23.By way of reply, the learned counsel for the 1st respondent would



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

submit that in the suit, the relief sought by the appellant is that of an ejectment, to that effect, there is no admission made by DW1. The Trial Judge has erroneously held that on the admission made by the party. The learned counsel for the 1st respondent would argue that the precondition for Order 12 Rule 6 is an admission by a party that it would enable the Court to pass a decree. But, in the suit, the relief sought by the appellant is that of ejectment and there is no admission by the 1st respondent of any facts. Therefore, the appellant is not entitled for a decree and the same was rightly held by the First Appellate Judge. Further, he would also submit that the Trial Court ought to have considered that the admission must be a categorical one and it has to be clear, unambiguous one. Without which, the discretion of the Court should not be exercised to deny the valuable right of the defendant to contest the claim. To that effect, he relied upon the Judgment of the Supreme Court in **Himami Alloys Limited v. TATA Steet Limited (2011) 15 SCC 273**.

24.The learned counsel would submit that the Trial Court has not empowered to exercise its discretion under Order12 Rule 6without dealing



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

with all the defence taken by the defendant. The case in hand, two issues were framed (1)Whether the suit is barred by limitation? and (2)Whether the suit is barred under Order 2 Rule 2 of CPC?. To that effect, he relied the ratio laid down in **Karan Kapoor v. Madhuri Kumar (2022) 10 SCC 496**.

25.Further, the learned counsel would also point out that in the earlier suit C.S.No.392 of 1988, the appellant/plaintiff categorically admitted that permission is granted for subletting the premises to the Bank of Maharashtra, so also, with regard to the changes of partnership Firm, the appellant/Club admitted the induction of Krishnamurthy as Partner of the 1st respondent Firm. Though he was not a party to the Lease Agreement, the appellant has not raised any objection. Also, the rent was accepted by the appellant Club. Therefore, under Section 12 of the Transfer of Property Act, it is deemed to be waived, even after the expiry of lease period. If the rent is accepted after the expiry of lease, it deemed to be waived. In such circumstances, the induction of the other partners, ever after the induction of other partners, the rent was received by the plaintiff/Club. Therefore,

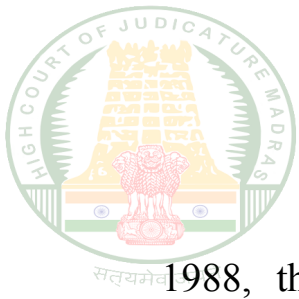


S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

they are not a trespasser and he is not entitled to proceed with the suit for eviction and still the lease continues by running the business in the partnership with others and the same was not amount to sublet. Furthermore, if the tenant is unauthorizedly in possession with the third party, there is no unauthorized possession as per the terms of the lease and the subsequent partners are continuing the hotel business. So, there is no amount of admission to subletting, after the retirement of the partners and new partners were inducted, even after the expiry of the time, no termination of lease. Further, he would also submit that the failure to register the partnership does not invalidate the existence of partnership. Under Section 69 of the Partnership Act would not apply to the suit for eviction. To that effect, he relied the Judgment of the *Supreme Court in Saifuddin Hussinbhay Siamwala v. The Burma Cycle Trading and Co [1971 (3) SCC 881]* and *Seth Badri Prasad and others v., Nagannal and others [1959 Supp (1) SCR 769]* that the analogy of Section 60 of the *India Partnership Act would not apply to suits for eviction.*”

26.Further, he would submit that in the earlier suit in C.S.No.392 of



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

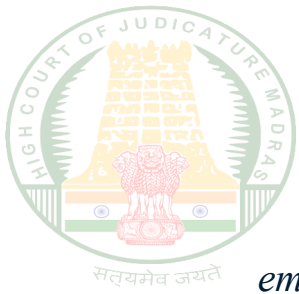
WEB COPY

1988, the suit was filed for the alleged subletting by changing the partnership, and the suit was dismissed for default and no leave was obtained. Therefore, the present suit is barred by limitation under Order 2 Rule 2 of CPC. Hence, the First Appellate Judge has rightly appreciated all the above said legal proposition, though improper appreciation made by the Trial Judge. Therefore, he prayed for dismissal of the appeal as no merit.

27.Further, he would submit that the appeal is not maintainable since the order of remand made by the Appellate Judge, as such, the Second Appeal is not maintainable.

28.Considering the submissions made on either side, at the time of argument before the Trial Court, the Appellant Club filed an application under Order 12 Rule 6 of CPC, praying to pass a decree based on the admission made by DW1 during the trial. Order 12 Rule 6 of CPC is extracted hereunder:

“Order XII Rule 6 of the Code of Civil Procedure



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

empowers courts to pronounce judgment on admissions made by parties, either in pleadings or otherwise, without requiring a full trial. This rule is designed to expedite legal proceedings by allowing courts to quickly resolve cases where liability is clear due to admissions.”

29.The Law is very clear that where admissions of the fact has been made either in the pleadings or otherwise, whether oral or writing at any stage of the suit, the Court may give such a Judgment by considering the said admissions. Coming to the case in hand, the prayer sought for in the Plaint by the appellant/Club for directing the 1st defendant to surrender possession of the suit mentioned property against the 1st defendant, namely, M/s.Woodlands Tiffin Room. According to the appellant/Club, at the time of filing of the suit, the 1st defendant contrary to the Lease Agreement sublet a portion of the property to the 2nd defnednat Bank. It is an admitted fact that the said Bank vacated the premises in the year 2000. As per the contention of the plaintiff/Club pending suit without consent, the 1st defendant under the cloak and shell of the trade name, the 1st respondent's business name, M/s.Woodlands Tiffin Room was abused by



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

DW1 who claimed as a partner of the 1st respondent Firm, who is a trespasser for the reason that he is not entered into any Lease Agreement with the plaintiff/Club nor he was inducted as a partner in the original partnership Firm, but entered into a Lease Agreement with the appellant/Club and he unauthorizedly occupied the suit property and the same was admitted by his evidence. Therefore, he filed a petition under Order 6 Rule 18 of CPC, since he proved that he is an unauthorized occupant and illegally possessed and enjoyed the property by colluding with one Krishnamurthy. Considering the evidence of DW1, the entire fact reveals that the plaintiff/Club entered into a Lease Agreement with the 1st defendant's name, M/s.Woodlands Tiffin Room represented by its Partner, one Srinivasa Rao and Gopal Rao in the year 1975, after the said lease, immediately they sent a letter to the plaintiff Club seeking permission to sublet a portion of the buildings. For that, the appellant replied that they would place before the Managing committee, but no Resolution was passed to that effect. Therefore, the plaintiff Club has not given consent or permission for subletting by way of Resolution as per the terms of Lease Agreement which require Written consent. But, the



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

respondent relied the averments in the earlier suit in C.S.No.392 of 1988 at

Para 9 of the Plaint which states as follows:

“9).Sometime in June 1975, the first defendant herein stated that for the purpose of their financial accommodation, they wanted to sub-let a portion of the demised premises for a branch of Bank of Maharashtra, and the plaintiff with reluctance gave such permission.”

30.By relying the said averments, the learned counsel for the 1st respondent submitted that the appellant/Club gave permission for subletting, therefore, they estopped and not entitled to for the relief of ejectment on the ground of subletting. But the above submission alone is not sufficient to conclude that the plaintiff gave consent because between the parties, there is a valid Lease Agreement dated 28.06.1975. Clause 5 of the Lease Deed is extracted as follows:

“13.The clause containing the following description in the Lease Deed as hereunder :-

That the Lessees will not assign or sublet or otherwise part with the land hereby demised or any constructions erected thereon or any part thereof without



WEB COPY

the permission in writing of the Lessors.”

31. Therefore, for the assignment or sublet, unless the written permission of the leassor (appellant/Club), the lessee/1st defendant is not entitled to assign sublet of the suit properties. Admittedly, there is no such written submission given by the appellant at any point of time. Therefore, mere averment in the earlier suit alone is not sufficient to conclude that there was a consent given by the appellant and others when there is a specific Clause in the Agreement, it requires written consent. Furthermore, thereafter, two partners were retired in the year 1978 and one Srinivasa Achar became the sole proprietor. Therefore, the original partnership came into an end in the 1988 itself. It is an admitted fact that the said Srinivasa Achar, who is the sole proprietor was not entered into any Lease Agreement with the plaintiff. But, in the year 1980, he allowed to give the business to one Krishnamurthy till 1988. The said Krishnamurthy is running a restaurant and Hotel in the name and style of “Meenakshi Bhavan” nor he entered into any Lease Agreement with the appellant/Club, even though on 25.02.1988 through an unregistered

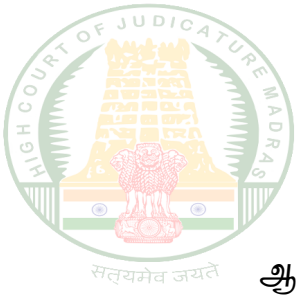


S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

Partnership. The DW1 Suresh Rao and his family members got family partnership with the said Krishnamurthy. As discussed above, DW1 and his family members are not continuing as partners with the original partner, nearly about 8 years as there was no existence with regard to partnership Firm and there is the sole proprietor in the Hotel business in the name and style of Meenakshi Bhavan. Therefore, neither Krishnamurthy nor DW1 Suresh Rao were the continuous partners of the original partnership Firm which entered into a Lease Agreement with the appellant/Club. To that effect, the evidence given by DW1 is as follows:

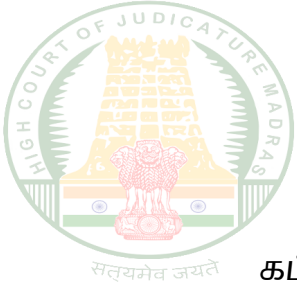
“எனது சொந்த ஊர் கொச்சின். நான் பங்குதாரர் என்பதை காட்டக்கூடிய ஆவணம் தாக்கல் செய்யவில்லை என்றால் சரியல்ல. பொய் சாட்சியம் அளிக்கிறேன் என்றால் சரியல்ல. வழக்கறிஞர் கேட்கவில்லை என்பதால் கொடுக்கவில்லை. அது தி.நகர் பதிவாளர் அலுவலகத்தில் 1988ல் பதிவு செய்யப்பட்டது. அதை என்னால் தாக்கல் செய்ய இயலும். அந்த நிறுவனத்தில் கிருஷ்ணமூர்த்தி ராவ், என் மனைவி சமந்திகா மற்றும் அனிருத் ஆகியோரும் பங்குதாரர்கள் தான். அதில் எனக்கு 50 பங்கு. சமந்திகாவிற்கு 20 பங்கு. அனிருத்திற்கு 20 பங்கு. 1988ல் தான் முதன்முறையாக சென்னையில் நான் 5 முதல் 6 லட்சம் முதலீட்டில் கோட்டல் தொழில்



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

ஆரம்பித்தேன். மேற்படி கோட்டலை கிருஷ்ணமூர்த்தி நடத்தி வந்ததில் எங்களை பங்குதாரராக சேர்த்துக்கொண்டார். கிருஷ்ணமூர்த்தி நடத்த முடியவில்லை என்பதால் எங்களை பங்குதாரராக சேர்த்து கொண்டார். கிருஷ்ணமூர்த்தி என் உறவினர். 1988க்கு முன்பு நான் கொச்சியில் இருந்தேன். அதற்கு முன்பு கிருஷ்ணமூர்த்தி உடன் யார் பங்குதாரர்களாக இருந்தார்கள் என்பது தெரியாது. கோட்டல் உரிமத்தை வழக்கறிஞர் கேட்டால் தாக்கல் செய்ய இயலும். நான் தான் மேனேஜிங் பாட்னர். புதிய பங்குதாரர் நிறுவனம் 1988ல் ஆரம்பித்த உடன் பழைய பங்குதாரர் நிறுவனம் கலைக்கப்பட்டதையும் பதிவு செய்துள்ளோம். முதன்மை உயர்நீதிமன்றத்தில் சீராய்வு மனு நடைபெற்ற விவரம் தெரியும். உயர்நீதிமன்றத்திலோ இந்த நீதிமன்றத்திலோ அபிடவிட் மற்றும் வக்காளத்து என்னால் தாக்கல் செய்யப்படவில்லை என்றால் சரிதான். புதிய பங்குதாரர் நிறுவனத்தில் யார் யார் பங்குதாரர் என்பதை நீதிமன்றத்தில் தெரிவிக்கவில்லை. சீராய்வு மனு உத்தரவு எங்களுக்கு எதிரானது என்றால் தெரியாது. அந்த உத்தரவை எதிர்த்து மேல்முறையீடு எதுவும் செய்யவில்லை. சென்னை உயர்நீதிமன்ற உத்தரவை படித்து பார்த்தேன். அந்த உத்தரவில் பங்குதாரர் நிறுவனம் பதிவு செய்யப்படவில்லை என குறிப்பிடப்பட்டுள்ளது என்றால் சரியல்ல. கட்டிட உரிமையாளருக்கு புதிய பங்குதாரர் நிறுவனம் உருவாக்கப்பட்டது பற்றி தெரிவித்தோம். தகவல் தெரிவித்தற்கான ஆதாரம் இல்லை. கிருஷ்ணமூர்த்தி



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

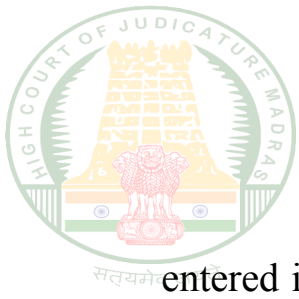
கட்டிட உரிமையாளருடன் ஒப்பந்தம் செய்து கொண்டு அதன் அனுபவத்திற்கு வந்தார். அந்த ஒப்பந்தத்தை நான் படித்து பார்த்தது கிடையாது. கிருஷ்ணமூர்த்தியின் வாய்மொழி உறுதிமொழியை நம்பி நான் முதலீடு செய்தேன். கிருஷ்ணமூர்த்தியை வயது காரணமாக சாட்சியம் அளிக்க நான் அழைத்து வரமுடியாது. கிருஷ்ணமூர்த்தி நடமாட முடியாமல் இருப்பதாக காட்டுவதற்கு மருத்துவச் சான்றிதழ் தாக்கல் செய்யவில்லை. ஆனால் தாக்கல் செய்ய இயலும். கடந்த 5 ஆண்டுகளாக வருடம் ஒன்றிற்கு கொரானா காலத்தை தவிர்த்து சுமார் 2 கோடி வரை வியாபாரம் செய்கிறேன். நாங்கள் 3 மாதத்திற்கு ரூ.10,500/- வாடகையை நிறுவனத்தில் இருந்து பதிவு தபால் மூலம் வரைவு காசோலையாக மற்றும் வங்கி காசோலையாக செலுத்தி வருகிறேன். மாதம் ரூ.3,000/- மட்டுமே வாடகை செலுத்தி வருகிறேன் என்றால் சரியல்ல. சொத்தின் பரப்பு 4000 சதுரடி. பனகல் பார்ச் ஏரியாவில் உள்ளது. அங்கு 1 சதுரடிக்கு வாடகை எவ்வளவு என்று தெரியாது. 1 சதுரடிக்கு மாத வாடகை ரூ.120/-ல் இருந்து ரூ.150/- என்றால் தெரியாது. கிருஷ்ணமூர்த்தி 1975ல் இருந்து அங்கு இருக்கிறார். கிருஷ்ணமூர்த்தி எதனடிப்படையில் அங்கு இருக்கிறார் என்றால் தெரியாது. நான் அவரிடம் கேட்கவில்லை. எங்களுக்கு வருடம் சுமார் 40 லட்சம் லாபம் கிடைக்கும் என்றால் கிடைக்கலாம். என் மனைவியின் வயது 60. எனது மகனின் வயது 31. இந்த வழக்கு சம்பந்தப்பட்ட ஆவணங்களை படித்து தெரிந்து கொண்டேன். வழக்குச்



WEB COPY

சொத்தில் உள்ள கட்டிடத்தை நான் கட்டவில்லை என்றால் சரிதான். என் மனைவியும் மகனும் கட்டவில்லை. வாதி சங்கத்தில் 1800 உறுப்பினர்கள் உள்ளார்கள் என்றால் சரிதான். அவர்களின் இருசக்கர நான்சக்கர வாகனங்களை நிறுத்த இடமே இல்லை என்றால் சரிதான். தற்போது அருகில் உள்ள கிரவுண்டில் நிறுத்தி கொள்கிறார்கள். கிருஷ்ணமூர்த்திக்கு முன்பு பிராது சொத்தில் யார் இருந்தார்கள் என்று தெரியாது. உயர்நீதிமன்றத்தில் வேறு ஒரு வழக்கறிஞர் மூலம் வழக்கு நடத்தினேன். அவர் 04.01.1978 தேதிய பதிவு பெறாத ஆவணம் தாக்கல் செய்தார் என்றால் தெரியாது. அந்த வழக்கறிஞர் மூலம்தான் சில ஆவணங்கள் உயர்நீதிமன்றத்தில் நான் தாக்கல் செய்தேன் சரியல்ல. கிருஷ்ணமூர்த்தி சில ஆவணங்களை கொடுத்தார். அதில் ஒன்று கூட பதிவு பெற்றது கிடையாது என்றால் எனக்கு தெரியாது. கிருஷ்ணமூர்த்திக்கு அனுபவ உரிமை உள்ளதா என எனக்கு தெரியாது. கிருஷ்ணமூர்த்தி எவ்வளவு வாடகை செலுத்தினார் என்றும் தெரியாது.....”

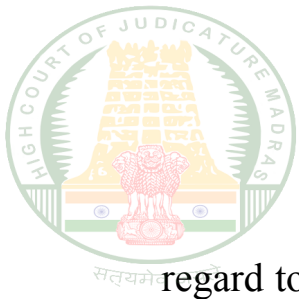
32. Therefore, he made a clear admission that he never entered into Ex.B.1 - Lease Agreement. Without knowing the contents, he entered into some contract with Krishnamurthy. He also admitted that he paid the said Krishnamurthy as a relative, and DW1 and his family members are belonging to Kochi, Kerala State and thereafter, in the year 1988, he



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

entered into the terms of agreement with the said Krishnamurthy. He paid some amount to Krishnamurthy. He was also not aware of the Lease Agreement for nearly 35 years and hence, from the year 2010 nearly about two crores he had turn over but he was not known on what capacity he is now in occupation of the suit premises. He also admitted that the earlier partners were already retired and also admits that he had not intimated the partnership with the appellant/Club and also, he admits that he has not shown the family members as partners in the GST. He admitted that he paid Rs.4 lakhs to Krishnamurthy and got the said premises under his custody. So all the admission made by him clearly shows that he never entered into an Agreement with the Club. He also admitted that he was not known the real task of the Agreement and he was not aware of the Lease Agreement. He was also not intimated about his assignment relating to Krishnamurthy with the appellant Club. He also admitted that he had crores of rupees turn over, but paid Rs.3,000/- as meagre rent through Demand Draft and also admits that extent nearly about 5263 sq.ft. of the property at Panagal Park which is situate at heart of the Chennai City and also admitted that he has not produced any registered document with

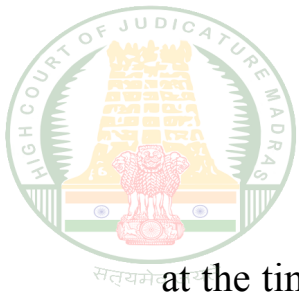


S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

regard to the partnership firm. Therefore, his own evidence reveals that as far as he is the third party to the appellant/Club and the appellant is concerned, he is an unauthorized occupant of the suit premises. Even the alleged Krishnamurthy has not entered into a Lease Agreement with the appellant. As discussed above, the original Partnership Firm came into an end in the year 1988 itself and thereafter, there is a sole proprietor. The 2nd defendant already vacated the premises in the year 2000. Now, under the guise of old Firm, DW1 and his family members are squatting on the property and illegally trying to grab the property. Therefore, they are ranked trespassers. Accordingly, the Substantial question of Law (e) is answered.

33. When the Court found that they are in illegal occupation and they are not entitled to any benefit and they are abusing the Court of Law for all these years by dragging on the proceedings. Therefore, the judgment relied by the appellant in **T.Arivandandam v. T.V.Satyapal and another [(1977) 4 Supreme Court Cases 467]** is squarely applicable to the facts of this case. Even the Courts are empowered to exercise its discretion, even



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

at the time of first hearing. Therefore, After completion of the arguments, considering the admissions made by DW1, the Trial Judge has rightly held that they are unauthorised occupants of the suit premises. Furthermore, considering the subsequent events, the conduct of the parties are also taking into consideration. Therefore, mere receiving the meagre rents would not amount to consent acceptance to sublet premises. Further, the lease period was expired in the year 2010 itself. Therefore, mere receiving of alleged rents would not amount to acceptance of the illegal occupation of the lessee since the tenancy was already expired. Accordingly, the Substantial Question of Law (d) is answered.

34.As per the terms of Agreement, efflux of time expired from 2010 itself. Therefore, the subsequent period of occupation, the 1st defendant is liable to pay damages for the use and occupation. To that effect, I.A.No.2 of 2022 filed by the appellant/Club is sustainable one. After filing of the suit, there was a disposal of C.R.P.Nos.1601 of 2008 and 4771 of 2013 arising out of the dispute between the parties. Under Section 9 of the Madras City Tenants' Protection Act, this Court found that the said

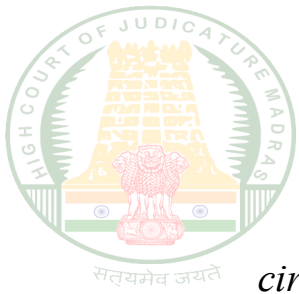


S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

Krishnamurthy is not in possession of the property. To that effect, the said authority was published in 2015 which reveals that in the year 2015, the proceedings were came to an end and so, pending proceedings, the appellant/Club came forward with the application to amend the prayer for damages as well as mandatory injunction, as such, is maintainable. But, the Trial Court erroneously dismissed the said application, against which, C.R.P.No.(PD).2229 of 2019 was filed. Indeed, the Court has power to consider the change of circumstances. Therefore, the subsequent needs necessitate to the appellant/Club to file application, as such, is maintainable in Law. To that effect, the ratio laid down in **Kedar Nath Agrawal (dead) and another v. Dhanraji Devi (dead) reb, by Lrs and another [(2004 8 Supreme Court Cases 76)]**.

“The basic rule is that the rights of the parties should be determined on the basis of the date of institution of the suit or proceeding and the suit/action should be tried at all stages on the cause of action as it existed at the commencement of the suit/action. This, however, does not mean that events happening after institution of a suit/proceeding, cannot be considered at all. It is the power and duty of the court to consider changed



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

circumstances. A court of law may take into account subsequent events inter alia in the following circumstances:

(1) the relief claimed originally has by reason of subsequent change of circumstances become inappropriate; or

(ii) it is necessary to take notice of subsequent events in order to shorten litigation; or

(iii) it is necessary to do so in order to do complete justice between the parties.”

The said authority is squarely applicable to the facts of this case. Therefore, the findings of the Trial Court is set aside. This Civil Revision Petition is allowed. The amendment sought by the appellant/Club is sustainable one.

35.The learned counsel for the respondent raised objections that in the suit, an issue of limitation and issue under Order 2 Rule 2 were framed to that effect, the argument advanced before the Trial Judge is rightly suggested by the First Appellate Judge. As discussed above, nearly about 14 years, DW1 and his family members, illegally and unauthorizedly



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

occupied and enjoyed the property by earning more than crores of rupees,

but not inclined to enter into any Lease Agreement with the plaintiff/Club.

Besides the lease period also expired as on date and they are ranked as

trespasser. In his own evidence, he paid some amount to one

Krishnamurthy to possession of the premises. Both Krishnamurthy as well

as RW1 has no locus standi to occupy the said premises and they are the

illegal trespassers. Besides, they have no locus standi to contest the suit.

Since DW1 is not a party to the proceedings nor any Power of Attorney

given by Krishnamurthy to that effect to DW1 to contest the case and nor

he has taken steps. Therefore, he has no right to take all the defences by

abusing process of law. He wanted to drag on the proceedings which

could not be entertained. Therefore, the objections raised to that effect is

unsustainable one. Accordingly, the Substantial Question of Law (c) is

answered.

36.The definition of the legal term "Tenant" clearly indicates on the word so as to mean "who continues in possession of the land". Whereas, in this case the original Lessee is no longer available and totally alien the



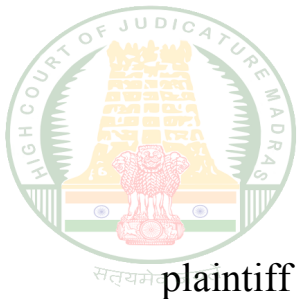
S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY

third parties namely new persons have illegally entered even as per their own admission before this Court in C.R.P.No.1601 of 2008.

37. Therefore, the 1st respondent as a trespasser and he is the third party to the Lease Agreement, he is no longer entitled to keep the premises. The First Appellate Court failed to appreciate both the Law and fact. Therefore, the findings of the First Appellate Judge is perverse and is liable to be set aside. Accordingly, the Substantial Questions of Law (a) and (b) are answered.

38. Accordingly, this Civil Revision Petition and the Second Appeal are allowed. Consequently, the Registry is directed to carryout necessary amendments. Thus, I.A.Nos.2 and 3 are allowed. The plaintiff is also entitled for damages for the illegal occupation of the 1st respondent/1st defendant, to that effect file separate application before the appropriate Forum as per the manner known to Law. The 1st respondent and its constituent members, who are in unauthorized occupation of the suit premises, are directed to vacate and hand over the possession to the



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

WEB COPY
plaintiff by way of mandatory injunction within a period of six weeks from the date of receipt of a copy of this Judgment. No costs. Consequently, connected Miscellaneous Petition is closed.

18.08.2025

Speaking / Non Speaking order

Neutral Citation : Yes/No

Index : Yes/No

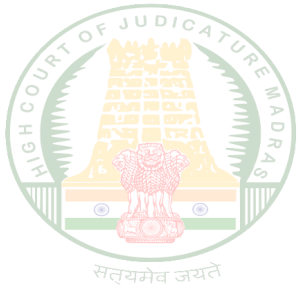
mps

To

1.The XV Additional Judge,
City Civil Court,
Chennai.

2.The XI Assistant Judge,
City Civil Court,
Chennai.

3.The Section Officer,
VR Section,
Madras High Court.



WEB COPY



S.A.No.873 of 2024 &
C.R.P.(PD).No.2239 of 2024

T.V.THAMILSELVI, J.

mps

S.A.No.873 of 2024
and
C.R.P.(PD).No.2239 of 2024
and C.M.P.No.11789 of 2024

18.08.2025