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(2011) 06 MAD CK 0168

In the Madras High Court

Case No : Sub Application No''s. 183 to 186 of 2011

K. Balasubramanian, M. Rathinakumar and S. Chandrasekar — APPELLANT

Vs

P. Padma Rajendran and Others — RESPONDENT

Date of Decision : 10-06-2011

Acts Referred:

Citation : (2011) 06 MAD CK 0168

Hon'ble Judges : V. Periya Karuppiah, J;R. Banumathi, J

Bench : Division Bench

Advocate : I. Subramanian for Prakash Goklaney, for the Appellant; M.S. Krishnan for P.T. Asha, for R1 to R4 and Bijay Sundar, for R5, for the Respondent

Judgement

R. Banumathi, J.—Defendants 6, 8 and 9 have filed Sub Application Nos. 183 to 186 of 2011 for the reliefs:

(i) directing the sum of Rs. 429 lakhs being the rent received by Respondents 1, 2 and 4 onbehalf of M/s. V.R. Packers and deposit the same

forthwith into Court together with any other sums received by them including the sum of Rs. 15.25 lakhs received as interest free advance;

(ii) directing the Respondents 1, 2 and 4 to file its audited accounts since formation of the firm M/s. V.R. Packers for the period from 01.10.2008

till date along with copies of bank statements in respect of all bank accounts;

(iii) appoint an Advocate-Commissioner to verify the exact areas occupied by the 5th Respondent to avoid the possibility of a false claim at a later

stage by Respondents 1 to 4; and (iv) direct the 5th Respondent to deposit the monthly rents into Court pending final orders passed in the

Contempt Petition. Alleging that there is wilful disobedience of the judgment in O.S.A. No. 202 of 2005 dated 05.09.2005, Petitioners/Defendants

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6, 8 and 9 have also filed Contempt Petition in C.P. No. 315 of 2011 against Respondents 1 to 4/Plaintiffs 2,4,5 and 6 in C.S. No. 51 of 2005

and 5th Respondent who is a 3rd Party/Garnishee-M/s. Continental Warehousing Corporation (Nhava Sheva) Limited.

2. Dispute over the control and management of 1st Plaintiff-M/s. Citrex Products Limited has been the subject matter of dispute between the

parties. 1st Plaintiff-M/s. Citrex Products Limited was incorporated in the year 1992. 1st Plaintiff-M/s. Citrex Products Limited purchased

properties in S.F. No. 157/1 - 11.50 acres in Thatchur village; S.F. No. 124/12 - 14.50 acres in Peravallur village; S.F. No. 124/4B - 2.00 acres

in Peravallaur village and S.F. No. 124/11 - 2.80 acres in Peravallur village in the public auction conducted by M/s. Tamil Nadu Industrial

Investment Corporation Limited (TIIC) under registered sale deed dated 28.07.1993. The total outstanding to TIIC was Rs. 120 lakhs and 1st

Plaintiff-M/s. Citrex Products Limited borrowed money of Rs. 1,18,17,677.15 from Defendants Group of Companies for the purpose of

discharging the mortgage loan due to the consortium of the Banks consisting of Indian Overseas Bank, Canara Bank and TIIC and to redeem the

suit schedule property. 1st Defendant-M/s. Vishwapriya Financial Services and Securities Limited agreed to give financial assistance to an extent

of Rs. 125 lakhs and 1st Plaintiff-M/s. Citrex Products Limited and 6th Plaintiff-V. Rajendran received total loan of Rs. 1,18,17,677.15. Case of

Plaintiffs is that as a security for the said loan, 1st Plaintiff-M/s. Citrex Products Limited executed various documents and signed in several blank

papers and also opened accounts with Times Bank with whom the Defendants Group of Companies had a tie-up. Plaintiffs are said to have

executed various documents as security viz., (i) Power of Attorney dated 07.04.1999 registered as Doc. No. 362 of 1999 on the file of Sub

Registrar Office, Adyar; (ii) Agreements of sale dated 02.06.1997 and 25.08.1995; (iii) Mortgage deed dated 02.06.1997 for Rs. 2,50,000/- and

(iv) Pledge of 900 shares belonging to Plaintiffs 2,3,5 to 11 (R. Padma, R. Ganesh Raj, R. Sathish Raj, V. Rajendran, Usha Selvarathinam, P.

Selvarathinam, M. Jeya, K. Mahalingaswamy, N. Ayyamperumal).

3. Case of Plaintiffs is that out of Rs. 1,18,17,677.15 borrowed by way of a loan, Rs. 1,30,55,995.40 was paid by the Plaintiffs within the period

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of 22 months. While that being so, in the month of June 2004, Plaintiffs came to know that returns of 1st Plaintiff-M/s. Citrex Products Limited had

been filed from 29.07.2003 by some of the Defendants. In or about the same time, Defendants 6,8 and 9 have also filed two suits in O.S. Nos. 57

of 2004 and 64 of 2004 on the file of Sub-Court, Ponneri. After enquiry, Plaintiffs realised that some of the documents taken as security from them

have been misused by the Defendants 6,8 and 9 to create the instruments as though they have taken over the Company as well as the property and

they are trying to interfere with the affairs of the Company.C.S. No. 51 of 2005 has been filed by the Plaintiffs interalia for the reliefs:

(i) to declare that the pledge of the 900 shares belonging to Plaintiffs 2,3,5 to 11 infavour of 2nd Defendant stands discharged and consequently

direct the 2nd Defendant to return 900 shares pledged by Plaintiffs 2,3,5 to 11;

(ii) to declare that Plaintiffs 2 to 6 continue to be the Directors of 1st Plaintiff Company and Plaintiffs 2, 3,5 to 11 continue to be the shareholders

of the 1st Plaintiff Company and consequently restrain the Defendants by means of a permanent injunction from in any manner interfering with the

management of the 1st Plaintiff Company; and

(iii) to declare that the agreement of sale dated 02.06.1997 and 25.08.1995 are null and void and not binding upon the 1st Plaintiff Company and

other reliefs.

4. Alleging that Plaintiffs are attempting to encroach into the property and that the Power of Attorney executed infavour of Defendants dated

07.04.1999 is irrevocable, Defendants 6,8 and 9 have filed O.S. No. 57 of 2004 on the file of Sub-Court, Ponneri.O.S. No. 57 of 2004 has been

filed for the reliefs:

(i) declaration that the sale deed dated 13.07.1998 registered as Doc. No. 1761 of 1998 on the file of Sub Registrar, Ponneri in respect of

Schedule ''B'' property is void abinitio;

(ii) declaration that the sale deed dated 13.07.1998 registered as Doc. No. 1765 of 1998 on the file of Sub Registrar, Ponneri in respect of

Schedule ''C'' property is void abinitio;

(iii)declaration that the Power of Attorney dated 07.04.1999 registered as Doc. No. 362 of 1999 on the file of Sub Registrar, Adyar infavour of

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Plaintiffs 2 to 4 is irrevocable;

(iv) permanent injunction restraining the Defendants from disturbing the Plaintiffs'' peaceful possession of the schedule mentioned property

comprised in S.F. Nos. 157/1, 124/12, 124/48 and 124/11 in Thatchur village, Ponneri Taluk;

(v)permanent injunction restraining the Defendants from dealing with the schedule mentioned property comprised in S.F. Nos. 157/1, 124/12,

124/48 and 124/11 in Thatchur village, Ponneri Taluk.

5. Along with C.S. No. 51 of 2005, Plaintiffs have filed O.A. No. 58 of 2005 for grant of interim injunction restraining the Defendants from in any

manner interfering with the control and management of the 1st Plaintiff-M/s. Citrex Products Limited. By an order dated 30.08.2005, Justice D.

Murugesan held that Plaintiffs have not made out a prima facie case and dismissed O.A. No. 58 of 2005 and vacated the interim injunction. In the

said order, learned single Judge held as under:

8. ... Moreover, the first Plaintiff company has not even filed the returns till the year 2004 for at least a period of four years presumably because

the company was administered by the majority of the Directors representing the Defendants. In the circumstances, I do not find any prima facie

case made out for continuance of the order of injunction, as the administration of the company shall always vest with the Directors, whose names

are entered with the Registrar of Companies and so long as the Directors, who are on roll, are not removed in the manner known to law and the

said fact is communicated to the Registrar of Companies and the change is effected in the records maintained by the Registrar of Companies, the

Directors are entitled to administer the company.

6. Being aggrieved by the above said order dated 30.08.2005, Plaintiffs preferred Appeal in O.S.A. No. 202 of 2005. By the judgment dated

05.09.2005, the Division Bench of this Court found there was no reason to differ from the prima facie conclusion of the learned single Judge

however, to protect the interest of the 1st Plaintiff Company, the Division Bench modified the order of the learned single Judge as under:

(1) Neither the Appellants nor the Respondents shall alienate any of the immovable assets or movable assets belonging to the company without the

permission of the court.

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(2) The Appellant No. 5 viz., Mr. R. Sathish Raj shall function as Receiver of the Company for the purpose of collecting rent from the various

lessees in respect of the properties already leased out. After collecting such amount, the amounts shall be deposited in the name of the company.

No amount shall be withdrawn from the account without the specific permission of the learned Single Judge.

(3) For the purpose of meeting out any expenses towards upkeep and maintenance of the properties in question, if it is agreed between the

Appellants and the Respondents to incur such expenditure, such amount can be withdrawn on the basis of the joint signature of Appellant No. 5

viz., Mr. R. Sathish Raj and the 8th Respondent viz., Mr. M. Rathinakumar.

(4) It is open to the 5th Appellant R. Sathish Raj in his capacity as Receiver, to approach the learned Single Judge to withdraw any amount for any

other purposes and in such event, we expect the learned Judge to consider the question of granting permission for such withdrawal after hearing the

respective parties concerned.

(5) The Appellant No. 5 viz., Mr. R. Sathish Raj shall also file accounts before the learned Single Judge once in three months with copies of the

other side.

7. The said judgment of the Division Bench came to be modified/clarified by the Hon''ble Supreme Court in Civil Appeal No. 1009 of 2006 as

under:

So far as direction No. 3 given by the Division Bench is concerned, in case there is any dispute regarding the expenditure claimed to have been

made and there is no concurrence between present Appellant No. 4 viz., Mr. R. Sathish Raj and present Respondent No. 8 viz., Mr. M.

Rathinakumar it shall be open to the concerned parties to move learned Single Judge for such directions as may be necessary.

8. Alleging that in violation of the order of the Court dated 05.09.2005 in O.S.A. No. 202 of 2005, 4th Respondent-V. Rajendran has executed

lease deed (19.12.2005) for 3 acres for a period of 20 years to M/s. V.R. Packers with the lease rent of Rs. 1000/- per annum, Defendants 6,8

and 9 have filed the Contempt Petition. It is averred that lessee M/s. V.R. Packers is a firm wholly owned by wife of 4th Respondent-V.

Rajendran along with two daughters-in-law. Petitioners further averred that the

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Respondents are fully aware of the judgment dated 05.09.2005 in

O.S.A. No. 202 of 2005 and created the lease deed on onerous terms only with a view to frustrate the Petitioners from exercising their lawful

rights and entitlement and is clearly an act of prejudicing a judicial proceeding apart from interfering with the administration of justice.

9. Along with the Contempt Petition, Petitioners have filed Sub Application Nos. 183 to 186 of 2011 stating that M/s. V.R. Packers had

commercially exploited the property between December 2005 and September 2008 by leasing out the same to the 5th Respondent-Continental

Warehousing Corporation (Nhava Sheva) Limited. It is further averred M/s. V.R. Packers had entered into two unregistered leases with the 5th

Respondent-Continental Warehousing Corporation (Nhava Sheva) Limited on 03.09.2008. The said leases had been executed onbehalf of the

firm M/s. V.R. Packers only by the 4th Respondent-V. Rajendran claiming to be the authorised representative of M/s. V.R. Packers. Under the

terms of two leases/arrangements, 5th Respondent-Continental Warehousing Corporation (Nhava Sheva) Limited is occupying the Company

property as a lessee of M/s. V.R. Packers and under the two leases/arrangements the total rent payable is Rs. 15,75,000/-. Petitioners further

averred that the rents received for the period from 01.10.2008 being the date of commencement of lease to 31.01.2011 (28 months) would be

Rs. 429 lakhs and hence in these Sub Applications, Petitioners seek for the reliefs:

(i) directing the Respondents to deposit Rs. 429 lakhs into Court being the rent received by them including the sum of Rs. 15.25 lakhs received as

interest free advance;

(ii) directing the Respondents 1,2 and 4 to file its audited accounts for the period from 01.10.2008 till date;

(iii) appoint an Advocate-Commissioner to verify the exact areas occupied by the 5th Respondent;

(iv) directing the 5th Respondent to deposit the monthly rents into Court till the disposal of Contempt Petition.

10. Respondents filed counter-statement resisting the Contempt Petition and the Sub Applications contending as follows:

The leased property is owned by 4th Respondent-V. Rajendran having been

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purchased from the 1st Plaintiff Company in 1998 under Doc. No.

1761 of 1998 (13.07.1998) and there is a confusion in the lay and the lie of the land as two villages Thatchur and Peravallur are adjacent and

though the schedule in Doc. No. 1761 of 1998 refers to Thatchur village, the property which 4th Respondent-V. Rajendran owns is in Peravallur

village and that is what 4th Respondent-V. Rajendran has leased. 4th Respondent-V. Rajendran has leased only his property and there is no lease

of Company property and as such there is no contempt in respect of the lease. The arrangements of low lease rent of Rs. 1000/- per annum to the

partnership firm-M/s. V.R. Packers and the lease at a high market rate of Rs. 189 lakhs per annum payable by the 5th Respondent are the internal

affairs of the 4th Respondent''s family. According to Respondents 1 to 4 various proceedings are sought to be launched by the Petitioners only to

delay the trial.

11. We have heard Mr. I. Subramanian, learned Senior Counsel appearing along with Mr. Prakash Goklaney for Petitioners. We have also heard

Mr. M.S. Krishnan, learned Senior Counsel appearing along with Ms. P.T. Asha for Respondents 1 to 4. We have heard Mr. Bijay Sundar,

learned Counsel appearing for 5th Respondent.

12. Taking us through the documents, Mr. I. Subramanian, learned Senior Counsel has submitted that Company property has been leased under

false pretext in the name of 4th Respondent-V. Rajendran and huge rents received from the 5th Respondent-Continental Warehousing

Corporation (Nhava Sheva) Limited are only the rents due to the Company. It was further submitted that Contemnors ought not to be permitted to

enjoy and or keep the fruits of his contempt and the Respondents acted in breach of the order of the Court and the act of the

Respondents/Contemnors is in contumacious disregard of the order of the High Court in O.S.A. No. 202 of 2005 and in such circumstances the

Court has a duty to treat the alienation/lease as having not taken place and should issue an appropriate directions to put an end to the breach.

Learned Senior Counsel for Petitioners urged that the orders of the Court should be obeyed and that the 5th Respondent is to be directed to

deposit the lease rents into the Court to the credit of the suit. In support of his contention, learned Senior Counsel placed reliance upon Century

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Flour Mills Ltd. Vs. S. Suppiah and Others, Surjit and others Vs. Harbans Singh and others etc. etc., Delhi Development Authority Vs. Skiper

Construction Company (P) Ltd. and another, ; Pravin C. Shah Vs. K.A. Mohd. Ali and Another, All Bengal Excise Licensees Association Vs.

Raghabendra Singh and Others, and Palitana Sugar Mills Pvt. Ltd. and Another Vs. Smt. Vilasiniben Ramachandran and Others,

13. Onbehalf of Respondents 1 to 4, Mr. M.S. Krishnan, learned Senior Counsel has contended that in the sale deed executed by 1st Plaintiff-

M/s. Citrex Products Limited infavour of 4th Respondent-V. Rajendran, the land actually situate in Thatchur village but in Doc. No. 1761 of 1998

dated 13.07.1998, it has been wrongly stated as ""situate at Peravallur village"". Learned Senior Counsel would further submit that the property

leased out to M/s. V.R. Packers is the property of 4th Respondent-V. Rajendran and the judgment of the Division Bench in O.S.A. No. 202 of

2005 clearly stipulates that the order is in respect of immovable and movable assets ""belonging to the Company"" and not the schedule mentioned

property in C.S. No. 51 of 2005. Learned Senior Counsel would further contend that Petitioners are attempting to portray as though ''B'' schedule

property described in the plaint is belonging to the 1st Plaintiff Company which according to Respondents 1 to 4 is patently erroneous. While

making the submissions, learned Senior Counsel has made a reference to the rough sketch/rough site plan prepared by the Respondents 1 to 4

themselves. In support of his contention, learned Senior Counsel placed reliance upon Capt. Dushyant Somal Vs. Smt. Sushma Somal and

Another, ; Niaz Mohammad and others, etc. etc. Vs. State of Haryana and others, Indian Airport Employees Union Vs. Ranjan Chatterjee and

another, Kapildeo Prasad Sah and Others Vs. State of Bihar and Others, and Ashok Paper Kamgar Union and Others Vs. Dharam Godha and

Others,

14. Onbehalf of 5th Respondent, Mr. Bijay Sundar, learned Counsel has submitted that the actual area occupied by the Garnishee was only

77,500 sq. ft. in 2008 and subsequently with effect from 16.01.2010, it was restricted to 62,500 sq. ft. and the rent payable is in respect of the

said area at the rate of Rs. 7/- per sq. ft. In the counter-affidavit, 5th Respondent has stated that Garnishee is not concerned with the interse

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dispute between the parties and Garnishee would abide by the orders of the Court.

15. For proper appreciation of the interse dispute between the parties and the alleged act of violation, it is necessary to have an understanding of

the property and to refer to various sale deeds. 1st Plaintiff-M/s. Citrex Products Limited purchased the properties in the public auction conducted

by TIIC by the sale deed dated 28.07.1993. By the said sale deed dated 28.07.1993, 1st Plaintiff-M/s. Citrex Products Limited purchased total

extent of 30.80 acres with the specific boundaries as under:

(1) S.F. No. 157/1 11.50 acres in Thatchur village bounded on the north by S.F. Nos. 124/12 & 220 of Peravallur and S.F. No. 157/3 of

Thatchur village; south by S.F. No. 157/2 of Thatchur village; east by S.F. No. 157/3 and 156 of Thatchur village; west by Thatchur village.

(2) S.F. No. 124/12 14.50 acres in Peravallur village bounded on the north by S.F. No. 124/4A; south by S.F. No. 157/1 of Thatchur village;

east by S.F. No. 124/4B of Peravallur village; west by Panjetti and Keelameni villages.

(3) S.F. No. 124/4B 2.00 acres in Peravallur village bounded on the north by Keelameni road; south by PWD Pump No. 2 in S.F. No. 157/3 of

Thatchur village; east by GNT Road; west by land belonging to Southern Borax Limited (S.F. No. 124/12).

(4) S.F. No. 124/11 2.80 acres of Peravallur village on all side surrounded by Borax Limited and on the northern side is Keelameni road. Under

sale deed dated 01.09.1997, 1st Plaintiff-M/s. Citrex Products Limited, represented by its Director (Ganesh Raj, son of V. Rajendran) sold 5

acres of land in S.F. Nos. 124/4B11 and 12 in Peravallur village, Ponneri Taluk infavour of M/s. Meta Films India Limited, represented by its

Managing Director 4th Respondent-V. Rajendran.

16. Under Doc. No. 1761 of 1998 (13.07.1998), 4th Respondent-V. Rajendran got the sale deed executed from 1st Plaintiff-M/s. Citrex

Products Limited to an extent of 9 acres in S.F. No. 157/1 of Thatchur village, Ponneri Taluk. On the same date (13.07.1998), a sale deed (Doc.

No. 1765 of 1998) was got to be executed in the name of 3rd Respondent-Sathish Raj from 1st Plaintiff-M/s. Citrex Products Limited for an

extent of 1 acre in S.F. No. 124/12 of Peravallur village, Ponneri Taluk. It is to be

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noted that in O.S. No. 57 of 2004 on the file of Sub-Court,

Ponneri, Petitioners have sought for declaration that the above said two sale deeds (Doc. Nos. 1761 of 1998 and 1765 of 1998) are void. Under

sale deed dated 20.09.2004, sale deed was executed infavour of 4th Defendant-M/s. Thamiraparani Investments Private Limited by 1st Plaintiff-

M/s. Citrex Products Limited to an extent of 14.80 acres in S.F. No. 157/1 of Thatchur village and S.F. Nos. 124/12, 124/1B, 124/11 of

Peravallur village, Ponneri Taluk respectively.

17. As per the order in O.S.A. No. 202 of 2005 dated 05.09.2005, neither the Plaintiffs nor the Defendants can alienate any of the immovable

assets or movable assets belonging to 1st Plaintiff Company without the permission of the Court. Respondents are bound by the order of the

Division Bench of this Court. Without permission of the Court, Respondents 1 to 4 cannot alienate any of the immovable assets or movable assets

belonging to the 1st Plaintiff Company. While that being so, shortly after the judgment of the Division Bench in O.S.A. No. 202 of 2005, on

19.12.2005, 4th Respondent-V. Rajendran had executed the lease deed for an extent of 3 acres in S.F. No. 124/12 of Peravallur village infavour

of M/s. V.R. Packers for a period of 20 years from 01.12.2005 at a meagre rent of Rs. 1000/- per annum. M/s. V.R. Packers is a partnership

firm comprising of none other than the family members of 4th Respondent-V. Rajendran viz., wife and daughters-in-law. The said M/s. V.R.

Packers authorised the 4th Respondent-V. Rajendran himself to deal with its affairs. Salient features of the lease deed infavour of M/s. V.R.

Packers are very curious. Large extent of 3 acres of land in Peravallur village, Ponneri Taluk was leased on a meagre rent of Rs. 1000/- per

annum. There shall be no change in the rent for 20 years and lease cannot be terminated by the lessor for 20 years. The land leased by 4th

Respondent-V. Rajendran to his family firm-M/s. V.R. Packers at Rs. 1000/- per annum was leased out to 5th Respondent-Continental

Warehousing Corporation (Nhava Seva) Limited at a lease rent of huge amount of Rs. 189 lakhs per annum. Curiously the said M/s. V.R. Packers

authorised the 4th Respondent-V. Rajendran who is the lessor to deal with its affairs. We find much force in the contention of Mr. I. Subramanian,

learned Senior Counsel for Petitioners that 4th Respondent-V. Rajendran has

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created the firm M/s. V.R. Packers only as a conduit to lease out the

Company property to a firm of his family members represented by himself.

18. An extent of 3 acres of land in S.F. No. 124/12 of Peravallur village, Ponneri Taluk leased out to M/s. V.R. Packers is with the following

boundaries:

East by Property owned by Meta Films (India) Limited; West by property owned by lessor (V. Rajendran); North by Keelameni Road; South by

property owned by lessor (V. Rajendran)"" In the above said lease deed (19.12.2005), 4th Respondent-V. Rajendran claims that he became the

owner of the leased property under Doc. No. 1761 of 1998 registered at Sub Registrar Office, Ponneri. As pointed out earlier, Doc. No. 1761 of

1998 (13.07.1998) got to be executed in the name of 4th Respondent-V. Rajendran only in respect of S.F. No. 157/1 of Thatchur village,

Ponneri Taluk measuring 9 acres with the following boundaries:

North by the property belonging to M/s. Meta Films (India) Limited; South by the property belonging to the vendor bearing S.F. No. 157/2,

Thatchur village; East by the land belonging to the vendor and West by the land belonging to the vendor bearing S.F. No. 124/12, Peravallur

village.

19. It is evident that the property purchased under sale deed dated 13.07.1998 (Doc. No. 1761 of 1998) is in S.F. No. 157/1 of Thatchur village,

Ponneri Taluk whereas the property leased is in S.F. No. 124/12 of Peravallur village, Ponneri Taluk. By comparison of boundaries in the lease

deed and the boundaries in Doc. No. 1761 of 1998, it is amply made clear that the leased property has nothing to do with the property said to

have been purchased by 4th Respondent-V. Rajendran under Doc. No. 1761 of 1998 dated 13.07.1998.

20. The leased property in S.F. No. 124/12 of Peravallur village, Ponneri Taluk is evidently the property of 1st Plaintiff-M/s. Citrex Products

Limited. As pointed out earlier, under sale deed dated 28.07.1993, 1st Plaintiff-M/s. Citrex Products Limited purchased the property from TIIC in

S.F. No. 124/12 14.50 acres in Peravallur village, Ponneri Taluk along with other properties totalling into 30.80 acres.

21. Insofar as the sale deed dated 01.09.1997 executed by 1st Plaintiff-M/s. Citrex Products Limited infavour of M/s. Meta Films (India) Limited,

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represented by its Managing Director 4th Respondent-V. Rajendran and the sale deed dated 13.07.1998 (Doc. No. 1765 of 1998) executed by

1st Plaintiff-M/s. Citrex Products Limited infavour of 3rd Respondent-Sathish Raj are concerned they are the interse sale deeds between the

family members. We do not propose to express any opinion on the merits of those sale deeds. Suffice it to note that the sale deeds obtained from

1st Plaintiff-M/s. Citrex Products Limited would clearly show that the plaint schedule properties are the properties of 1st Plaintiff-M/s. Citrex

Products Limited. Both parties have been litigating their rights on the premise that the properties are of the properties of the 1st Plaintiff Company.

In the counter-affidavit filed by 4th Respondent-V. Rajendran in the Sub Applications, 4th Respondent has taken a stand that ""the property that

has been leased out belongs to him and does not belong to the 1st Plaintiff Company"". Stand of 4th Respondent-V. Rajendran that the leased out

property belongs to him is perse erroneous. We are not convinced with the submissions of the learned Senior Counsel Mr. M.S. Krishnan that 4th

Respondent-V. Rajendran has mistakenly made the statement that the leased out property belongs to him. Averment in the counter-affidavit of 4th

Respondent that the leased out property does not belong to 1st Plaintiff Company is not only erroneous, but is deliberate manifestation of the

conduct of 4th Respondent-V. Rajendran. At this juncture, it is pertinent to note that in the lease deed (19.12.2005) infavour of M/s. V.R.

Packers who are none other than the womenfolk of the family members of 4th Respondent, 4th Respondent-V. Rajendran has made a categoric

statement that the leased property belongs to him.

22. The lease is for a long unterminable period of 20 years which is in violation of the order of the Division Bench in O.S.A. No. 202 of 2005

dated 05.09.2005. We find that prima facie, there is violation of the order of this Court in O.S.A. No. 202 of 2005 dated 05.09.2005. It was also

stated that there is prima facie violation of the undertaking given by the Respondents 1 to 4 in O.S. No. 57 of 2004 on the file of Sub-Court,

Ponneri. However, we are not inclined to immediately take up the Contempt Petition. We are primarily concerned to protect the interest of 1st

Plaintiff Company and also the income earned from the properties of the 1st Plaintiff Company.

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23. Respondents 1 to 4 have produced the rough sketch prepared by themselves. Taking us through the rough sketch and the Advocate

Commissioner''s report filed in O.S. No. 57 of 2004 on the file of Sub-Court, Ponneri, Mr. M.S. Krishnan, learned Senior Counsel for

Respondents 1 to 4 has submitted that only the portions marked ""G"" ""F"" and ""H"" are the lands that remain with the 1st Plaintiff Company and it is

only that property the Court had injuncted the Plaintiffs and Defendants from alienating without the permission of the Court. Learned Senior

Counsel would further submit that the alienation made by the 1st Plaintiff Company infavour of 4th Respondent-V. Rajendran and 3rd

Respondent-Sathish Raj (Doc. Nos. 1761 of 1998 and 1765 of 1998) and also to the third parties have been described and incorporated in the

sketch filed by the Plaintiffs along with the plaint and even in the year 2004 much prior to the dispute between the parties, the 4th Respondent-V.

Rajendran had leased out a portion of the property to M/s. Best Boards and a reading of the schedule would clearly support the above contention.

Learned Senior Counsel would further submit that in the sale deed dated 13.07.1998 (Doc. No. 1761 of 1998), there is a confusion in the lie of

the land and also Survey Numbers and that the Petitioners are only trying to take advantage of the said confusion. Main contention of Respondents

1 to 4 is that the property leased to M/s. V.R. Packers is the property covered under sale deed dated 13.07.1998 (Doc. No. 1761 of 1998) and

that there is an erroneous description of the property in the sale deed. Main contention of Respondents 1 to 4 is that the mistake in the description

of the property and the boundaries cannot be taken advantage by the Petitioners. We are not convinced with the arguments that there had been a

confusion in the lie of the land and also the Survey Numbers. However, it would be appropriate to have a detailed examination by appointing an

Advocate-Commissioner and examining the extent of the land leased out, Survey Number etc. In the mean while, it is necessary to protect the

interest of the 1st Plaintiff Company and also the litigating parties. This is all the more so, when 4th Respondent-V. Rajendran is asserting that the

leased property belonging to him and has created the documents interse with the family members, in the interest of justice, it is appropriate to direct

the 5th Respondent Garnishee to deposit the monthly rent into the Court from 01.03.2011.

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24. Coming to the extent of the property and the lease rent payable, as pointed out earlier, M/s. V.R. Packers, represented by its authorised

signatory viz., 4th Respondent-V. Rajendran executed lease deed on 03.09.2008 infavour of 5th Respondent. The total area of leased property is

approximately 1,05,000 sq. ft. from 01.10.2008 at the rate of Rs. 10/- per sq. ft. per month for closed warehouse area i.e. Rs. 10,50,000/- per

month which 5th Respondent-Continental Warehousing Corporation (Nhava Seva) Limited has occupied from 01.10.2008. By another lease

agreement dated 03.09.2008, M/s. V.R. Packers has also leased out open space area of approximately 2,10,000 sq. ft. situated in S.F. Nos.

124/4B and 124/12, G.N.T. Road, Peravallur, Ponneri Taluk and the rent payable is at Rs. 2.50 per sq. ft. i.e. Rs. 5,25,000/- per month. Thus

the total rent payable by 5th Respondent-Continental Warehousing Corporation (Nhava Seva) Limited is Rs. 15,75,000/- (Rs.10,50,000/- plus

Rs. 5,25,000/-) per month.

25. In the counter-affidavit filed by 5th Respondent-Continental Warehousing Corporation (Nhava Seva) Limited, 5th Respondent has averred

that even though the land and building measuring about 1,05,000 sq. ft. was purported to have been let out by M/s. V.R. Packers to the 5th

Respondent-Continental Warehousing Corporation (Nhava Seva) Limited, the 5th Respondent has occupied only an actual area of 77,500 sq. ft.

in 2008 and the monthly rent for the said area was paid at the rate of Rs. 10/- per sq. ft. for the period commencing from 01.10.2008 to

31.10.2009. Further stand of 5th Respondent is that by mutual agreement, the said leased area was reduced to 62,000 sq. ft. with effect from

01.10.2009 to 31.12.2009 and the said arrangement was terminated with effect from 31.12.2009. 5th Respondent has further averred that a fresh

agreement was entered into between the 5th Respondent Garnishee and M/s. V.R. Packers on 16.01.2010 in respect of an area measuring

62,500 sq. ft. and the rent payable in respect of the said area is at the rate of Rs. 7/- per sq. ft. per month. In the counter-affidavit, 5th Respondent

has averred that the lease agreement dated 03.09.2008 though entered into was never given effect to and the said area (closed warehouse area

and open space area) was not occupied by the Garnishee as a tenant and as such no rent there under was paid for the said extent. Even though,

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5th Respondent has averred that they have occupied only 77,500 sq. ft. in 2008 and from January 2010, an area of 62,500/- sq. ft. for which the

rent is payable at the rate of Rs. 7/- per sq. ft. per month, 5th Respondent has not produced any document to substantiate their contention. 5th

Respondent-Continental Warehousing Corporation (Nhava Seva) Limited neither produced the accounts nor produced the document evidencing

payment to the said limited extent said to have been occupied. At this juncture, it is pertinent to note that in the counter-affidavit filed by 4th

Respondent-V. Rajendran, it is averred that only an extent of 87,500 sq. ft. has been leased out to 5th Respondent and the rent received was very

much lower. Obviously, there is no consistent stand between the 4th Respondent and 5th Respondent as to the area occupied by the 5th

Respondent-Continental Warehousing Corporation (Nhava Seva) Limited. It is pertinent to note that as per the terms of the lease deeds, there

shall be 15% escalation of lease rentals at the end of every three years both for closed warehouse space as well as open space. In the absence of

any documents to the contrary, we are governed only by the lease agreements entered between M/s. V.R. Packers and 5th Respondent-

Continental Warehousing Corporation (Nhava Seva) Limited as per which an extent of 1,05,000 sq. ft. (closed warehouse area) was leased out

and the lease rent payable at the rate of Rs. 10/- per sq. ft. and the total lease rental payable for the closed warehouse area is Rs. 10,50,000/- per

month. For the open space area of 2,10,000 sq. ft., the lease rent is payable at Rs. 2.50 per sq. ft. per month and the total lease rental payable for

the open space area is Rs. 5,25,000/- per month. Thus the total lease rent payable is Rs. 15,75,000/- per month less TDS at the rate of 20%. The

said amount is directed to be payable from March 2011 during which the Sub Application came to be filed.

26. So far as Application in A. No. 183 of 2011 direction to deposit the arrears of rent along with advance of Rs. 15.25 lakhs, we feel that the

same can be taken up along with the Contempt Application. Like wise, the Applications directing the Respondents to produce the account books

and relevant documents and also to appoint Advocate-Commissioner shall be heard along with the Contempt Application.

27. In the result, Sub Application No. 186 of 2011 is allowed. 5th Respondent-Continental Warehousing Corporation (Nhava Seva) Limited is

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directed to deposit the monthly rent of Rs. 15,75,000/- less TDS at the rate of 20% to the credit of the suit C.S. No. 51 of 2005 on the file of this

Court from 01.03.2011. The arrears of rent for the month of March, April and May 2011 are to be deposited within a period of six weeks from

the date of this order. From the month of June 2011, the lease rent is to be deposited to the credit of the suit C.S. No. 51 of 2005 on or before

15th of every succeeding English calendar month by the 5th Respondent.

For reporting compliance and the other Sub Application Nos. 183 to 185 of 2011 and also Contempt Petition No. 315 of 2011 are to be listed

after six weeks.

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