
(2009) 01 MAD CK 0340

In the Madras High Court

Case No : C.R.P. (PD) No's. 3806 to 3808 of 2008 and M.P. No's. 1 to 1 of 2008

Mohammed Kasim

APPELLANT

Vs

Arun Rajammal Trust

RESPONDENT

Date of Decision : 23-01-2009

Acts Referred:

Citation : (2009) 01 MAD CK 0340

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : C.R. Prasanan, for the Appellant; No appearance, for the Respondent

Judgement

G. Rajasuria, J.—Animadverting upon the common order dated 27.04.2007 in CMA Nos. 8, 9 and 10 of 2007 on the file of Principal Subordinate Judge's Court, Coimbatore, confirming the fair and decreetal orders dated 09.09.2006 in I.A. Nos. 2059, 2058 and 2060 of 2005 in O.S. No. 1830 of 2005 on the file of I Additional District Munsif's Court, Coimbatore, these civil revision petitions are focussed.

2. Heard the learned Counsel for the petitioner. Despite printing the name of the respondent, no one appeared.

3. The facts giving rise to the filing of these revision petitions as stood exposed from the records could succinctly and pithily be set out thus:

The respondent/plaintiff filed the suit O.S. No. 1830 of 2005 seeking the following reliefs:

(i) restraining the defendant, his men, agents, staffs and family members from in any manner altering the physical features of the suit property, by means of permanent injunction;

(ii) restraining the defendant, his men, agents and staffs and his family members from any manner converting the business from selling the Toys, gift articles under the name and style "TIP TOP" or "TIP TOP TREASURE" to any other

business other than the purpose it was let out, by means of permanent injunction;

(iii) restraining the defendant, his men, agents and staffs, from any manner sub-letting the suit property to any third party including his family members, by means of permanent injunction;

(iv) Awarding the costs of the suit;

(v) And pass such other and further orders deem fit and proper in the circumstances of the case and thus render justice.

4. During the pendency of the suit, I.A. Nos. 2058 to 2060 of 2005 were filed seeking the following reliefs:

I.A. No. 2058 of 2005 to restrain the respondent, his men, agents, staffs, his family members from any manner converting the business from selling the toys, gift articles under the name and style "TIP TOP" or "TIP TOP TREASURE" to any other business, other than the purpose it was let out, by means of temporary injunction till the disposal of this suit by means of Ad-interim injunction for the same purpose till the disposal of this petition.

I.A. No. 2059 of 2005 to restrain the respondent, his men, agents, staffs, his family members from any manner altering the physical features of the suit property, by means of temporary injunction till the disposal of this suit and by means of ad-interim injunction for the same purpose till the disposal of this petition.

I.A. No. 2060 of 2005 to restrain the respondent, his men, agents, staffs, his family members from any manner Sub-Letting the suit property to any third parties including his family members by means of Temporary injunction till the disposal of this suit and by means of Ad-interim injunction for the same purpose till the disposal of this petition.

5. After hearing both sides, the lower Court passed a common order on 09.09.2006 granting injunction, as against which C.M. As were filed before the Principal Subordinate Court, Coimbatore, but they were dismissed. Being aggrieved by and dissatisfied with the order of the Courts below, these three revisions have been filed on various grounds.

6. The learned Counsel for the revision petitioner placing reliance on the grounds of revision would develop his argument to the effect that the revision petitioner being a tenant under the deceased Arunachalam is bound by the terms and conditions as found detailed and delineated in the lease deeds emerged between them on 19.01.1998 and 04.10.2000; that those two deeds do contain the same terms and conditions; the first deed is relating to ground floor and the second one is relating to first floor of the building; while so the Trust claiming to be the one created by the deceased Arunachalam filed the suit with vexatious allegations and obtained injunction orders; the defendant is entitled to carry on

with his legitimate business and no restrictions are found incorporated in those lease deeds; the petitioner is only conducting business in toys and other articles and not in any illegal business and in such a case it is not open for the plaintiff to obtain a blanket injunction that the nature of the business, so to say, "TIP TOP" or "TIP TOP TREASURE" should not be changed; the petitioner even as per the terms and conditions of the lease deed could make temporary interim partition and could effect certain decorations to attract the customers; at no point of time the defendant intended to sub let and in such a case, the lower Court was not justified in issuing injunction orders; whereas accepting the details furnished in paragraphs 8 and 9 of the counter, the trial Court should have dismissed all the three applications. Accordingly, he prays for allowing the three revision petitions.

7. When all said and done, considering the pro et contra in this factual matrix what I could understand is that the original owner namely the deceased Arunachalam and the defendant entered into two lease agreements under which the defendant entered into possession and continues to be so as such. The lower Court in its order delved deep into the main issue whether there is a landlord and tenant relationship between the present plaintiff and the defendant and I am of the considered opinion that the lower Court could have reserved all its discursive discussions and findings at the time of disposing of the main suit.

8. At the time of dealing with the interim injunction applications, the paramount duty of the Court is to see that pending the suit, the subject matter of the suit should be preserved and status quo should be maintained. Hence I am of the considered view that the findings of the lower Court in the common order relating to landlord and tenant relationship between the present plaintiff and the defendant should not be taken as a conclusive one for deciding the main suit; untrammelled and uninfluenced by its findings, the lower Court has to conduct the trial and render its judgment finally in the original suit.

9. I could see considerable force in the submission made by the learned Counsel for the revision petitioner/defendant that as the defendant is bound to adhere to the conditions found envisaged in the lease agreements and the plaintiff cannot dictate terms to the tenant as to what he should do and what he should not.

10. I would like to refer to the relevant terms and conditions referred to in the lease deed. Following are the certain conditions in the lease agreement dated 19th January 1998:

5. The Lessees shall keep the demised premises and the fixtures, fittings, thereof, in good and tenantable repair, order and condition, shall not cause, or permit to be caused any damage, disfigurement of alteration thereto, except that the Lessees may put up temporary partitions at their cost as may be absolutely required for their business purpose. Such temporary partitions shall be removed by the Lessees when the demised premises is vacated.

6. The Lessees shall not carry on, or permit to be carried on in the demised premises, any trade or occupation which is prohibited by any law of the land for

the time being in force.

Similar conditions are found in the lease deed dated 4th October 2000.

11. It is quite obvious and axiomatic that the plaintiff who claims to have stepped into the shoes of the original landlord cannot give a go bye to the previous commitments of Arunachalam. So the terms and conditions as found set out supra would bind the present plaintiff also. The core question arises as to whether in the I.A. No. 2058 of 2008 the following relief sought by the petitioner is tenable:

To restrain the respondent, his men, agents, staffs, his family members from any manner converting the business from selling the toys, gift articles under the name and style "TIP TOP" or "TIP TOP TREASURE" to any other business, other than the purpose it was let out, by means of temporary injunction till the disposal of this suit by means of Ad-interim injunction for the same purpose till the disposal of this petition.

12. The learned Counsel for the revision petitioner would appropriately and appositely invite the attention of this Court that in the lease deed, there is no reference to the name of the business and also nature of the business and in such a case, it is not open for the plaintiff to pray for restraining the defendant from conducting business other than the business under the name of Style "TIP TOP" or "TIP TOP TREASURE".

As such, the lower Court was not justified in blindly issuing an injunction order in the way that it granted in I.A. No. 2058 of 2008.

13. In I.A. No. 2059 of 2005, the plaintiff prayed for the following relief:

To restrain the respondent, his men, agents, staffs, his family members from any manner altering the physical features of the suit property, by means of temporary injunction till the disposal of this suit and by means of ad-interim injunction for the same purpose till the disposal of this petition.

14. The learned Counsel for the revision petitioner/defendant would correctly argue that the lower Court was not justified in simply giving a blanket injunction. A perusal of the terms and conditions extracted supra would unambiguously evince that the defendant is entitled to make temporary partition inside the premises and in such a case, the plaintiff cannot try to restrain the tenant from effecting such temporary partition within the four corners of the terms and conditions contemplated in the lease deeds referred to supra.

15. In I.A. No. 2060 of 2005 the petitioner/plaintiff prayed for the following reliefs:

To restrain the respondent, his men, agents, staffs, his family members from any manner Sub-Letting the suit property to any third parties including his family members by means of Temporary injunction till the disposal of this suit and by means of Ad-interim injunction for the same purpose till the disposal of this

petition.

The Court also granted injunction by way of restraining the defendant from sub letting. The learned Counsel for the revision petitioner/defendant would submit that in view of the supine and categorical submission made in the counter filed before the lower Court, it was not justified in issuing such an injunction order and the defendant is having no intention to sub lease.

16. In view of the discussion supra, I am of the considered opinion that out of the three injunction orders, the injunction order in I.A. No. 2060 of 2005 so to say, to restrain the defendant from sub-letting warrants no interference as the plaintiff apprehended in view of the misunderstanding which erupted between the plaintiff and the defendant and hence so far that injunction is concerned, it warrants no interference by this Court. Accordingly, the concerned C.R.P. No. 3808 of 2008 is dismissed.

17. Relating to the other injunction orders referred to supra, I am of the opinion that they should be interfered with as the nature of the two injunction orders granted in I.A. Nos. 2058 and 2059 of 2005 are not in commensurate with the terms and conditions in the lease deed as found extracted supra. The Court for the purpose of preserving the status quo could have only mandated the defendant to adhere strictly to those conditions in letter and spirit and nothing more. Hence those two injunction orders shall stand modified as under:

The revision petitioners/defendants shall adhere strictly to the following conditions pending disposal of the suit:

1. The defendant shall keep the demised premises and the fixtures, fittings, thereof, in good and tenantable repair, order and condition, shall not cause, or permit to be caused any damage, disfigurement of alteration thereto, except that the defendant may put up temporary partitions at their cost as may be absolutely required for their business purpose. Such temporary partitions shall be removed by the defendant when the demised premises is vacated.

2. The defendant shall not carry on, or permit to be carried on in the demised premises, any trade or occupation which is prohibited by any law of the land for the time being in force.

Accordingly, C.R.P. Nos. 3806 and 3807 of 2008 are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.