
(2010) 12 MAD CK 0229
In the Madras High Court
Case No : A.S. No. 1052 of 2003

R. Lakshmi and Iswaria

APPELLANT

Vs

K. Gopalan

RESPONDENT

Date of Decision : 22-12-2010

Acts Referred:

Contract Act, 1872 — Section 53, 54
Transfer of Property Act, 1882 — Section 4

Citation : (2010) 12 MAD CK 0229

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : S. Ravi, for Gupta and Ravi, for the Appellant; S. Nataraja Sankar, for the Respondent

Final Decision : Allowed

Judgement

M. Venugopal, J.—The Appellants/Defendants have preferred the present appeal before this Court as against the judgment and decree dated 23.12.2002 in O.S. No. 2019 of 2000 passed by the learned Additional District Judge, (Fast Track Court No. V), Chennai.

2. The trial Court, on an appreciation of oral and documentary evidence available on record, while passing the judgment in O.S. No. 2019 of 2000 on 23.12.2002, has among other things observed that the Respondent/Plaintiff is entitled to the relief of recovery of possession and that the Appellants/Defendants are liable to pay the damages for use and occupation to the Respondent/Plaintiff a sum of Rs. 36,300/-(Rupees Thirty Six Thousand and Three Hundred only) past damages and future damages at the rate of Rs. 3,300/-(Rupees Three Thousand and Three Hundred only) p.m, from the date of plaint till date of delivery of possession and dismissed the balance claim for damages and decreed the suit without costs.

3. Before the trial Court, in the main suit, six issues have been framed for adjudication. On the side of the Respondent/Plaintiff, witness P.W.1 has been examined and Exs.A.1 to A.10 have been marked. On the side of the Appellants/

Defendants, witnesses D.W.1 and D.W.2 have been examined and Exs.B.1 to B.3 have been marked.

4. Being dissatisfied with the judgment and decree passed by the trial Court in O.S. No. 2019 of 2000 dated 23.12.2002, the Appellants/Defendants have preferred the present appeal before this Court as the aggrieved persons.

5. The points that arise for ruminations in this appeal are:

(i) Whether the Appellants/Defendants are to vacate and deliver the vacant possession of the suit property with all its fittings and fixtures? and.

(ii) Whether the Appellants/Defendants are liable to pay a sum of Rs. 36,300/- (Rupees Thirty Six Thousand and Three Hundred only) as damages towards use and occupation to the Respondent/Plaintiff and also to pay future damages at the rate of Rs. 3,300/- (Rupees Three Thousand and Three Hundred only) p.m. from the date of plaint till date of delivery of possession?

6. The contentions, discussions and findings on Point Nos. (i) and (ii):

According to the learned Counsel for the Appellants/Defendants, the trial Court has not appreciated the rival contentions arising out of the pleadings in a proper perspective and as a matter of fact, the trial Court has gone wrong in holding that Ex.B.2, agreement dated 26.02.1999, is not an independent one and cannot be connected with the present suit.

7. It is the contention of the learned Counsel for the Appellants/Defendants that the trial Court has committed an error in decreeing the suit for eviction filed by the Respondent/Plaintiff and further also directing the Appellants/Defendants to pay a sum of Rs. 36,300/- (Rupees Thirty Six Thousand and Three Hundred only) towards past damages for use and occupation and future damages at the rate of Rs. 3,300/- (Rupees Three Thousand and Three Hundred only) p.m, from 30.03.2000 till date of delivery of possession.

8. Proceeding further, it is the contention of the learned Counsel for the Appellants/Defendants that the trial Court should have rejected the contention of the Respondent/Plaintiff that the Appellants/Defendants have been put in possession of the suit property on a licence.

9. Advancing his arguments, it is the submission of the learned Counsel for the Appellants/Defendants that the Respondent/Plaintiff has completely defaulted in fulfilling the obligations cast upon him in terms of Ex.B.2 and even in his evidence, he has confirmed that he is not bound by the condition mentioned in Ex.B.2 and if such be the position, the trial Court should have seen that the burden cast upon the Appellants to vacate the premises cannot be enforced and since it is the condition upon the Respondent/Plaintiff to fulfil the obligations as against him as per the terms of Ex.B.2, dated 26.02.1999.

10. Expatiating his submissions, it is the plea of the Appellants/Defendants that Ex.B.2 dated 26.02.1999, has been arrived at between the parties wherein the

Respondent/Plaintiff unconditionally agreed to remove the encumbrances on the two properties, settle the liability on the property under the Income Tax Act and also to deposit a sum of Rs. 75,000/- (Rupees Seventy Five Thousand only) in the name of the second Appellant and only on the basis of the aforesaid conditions, the Appellants have agreed to vacate the premises and indeed, it is not open to the Respondent/Plaintiff to independently enforce the alleged agreement of the Appellants to vacate the premises. In any event, the conclusion of the trial Court that the Appellants are liable to pay the damages at Rs. 3,300/- (Rupees Three Thousand and Three Hundred only) for use and occupation, is not based on any evidence or materials on record. Moreover, the trial Court without conducting any enquiry on the mesne profits has accepted the ipsi dixit of the Respondent/Plaintiff that the suit property would fetch Rs. 4,500/- (Rupees Four Thousand and Five Hundred only) by way of monthly rent and Rs. 500/- (Rupees Five Hundred only) would be the rent for fixtures like fan, TV Set, etc.

11. The learned Counsel for the Appellants/Defendants urges before this Court that the Respondent/Plaintiff has not placed any materials to prove that the fixtures and fittings like fans, TV Sets, have been purchased by him and he is entitled to damages for use and occupation of the same.

12. It is the evidence of the Respondent/Plaintiff (P.W.1) that the first Appellant/first Defendant is his brother's wife and the second Appellant/second Defendant is his brother's daughter and that he runs a small industries in the name of S.A. Industries and that the suit property is a flat in a storeyed building and that he has purchased this flat as per the sale deed from one Visalakshi and the original sale deed is in the hands of Andhra Bank where it has been given in for mortgage. In the suit flat, the Appellants/Defendants are residing in the one room of the suit property and further that, he has locked one room in the flat measuring to an extent of 100 sq. ft and kept the key with him.

13. It is the further evidence of P.W.1 (Respondent/Plaintiff) that the Appellants/Defendants being his brother's wife and daughter, after the death of his brother, they have been keeping his father with him and have been residing in the property and at that time, his father has been residing along with the Appellants/Defendants and that they have not paid any rent to him. Furthermore, the evidence of P.W.1 is to the effect that because of the problem between his mother and the first Appellant/first Defendant, his parents have come out of the suit property and they have come to him ten months prior to the filing of the suit and with the Appellants/Defendants, he has no agreement/ contract. P.W.1 goes on to add in his evidence that after the death of his brother, he allowed his brother's wife and her daughter to live in his house and he permitted them to stay in the suit property because they have to stay with his parents and his brother, when he has been with him, has been running Poovalai Agency and after the death of his brother, the said Agency has been run by him in the name of himself, his brother's daughter, his mother and his brother's wife and his brother's daughter has been made as a member of the said Poovalai Agency so

as to enable his brother's daughter to obtain the benefits and since the first Appellant/first Defendant has not co-operated with him and since she informed that she has to go to her mother's house, he handed over all the responsibilities to his father and the first Appellant/first Defendant has written a document in which his mother has also joined and the same is the joint release deed.

14. P.W.1, has further deposed that the talks have been held to the effect that the Appellants/Defendants have to vacate and the talks have been conducting in the presence of a friend by name Elumalai and he has written the petition and the copy of the same given to him is Ex.A.8. Though it is mentioned that the first Appellant/first Defendant has to vacate by 05.03.2000, she has not vacated and after the lawyer's notice, compromise talks once again have been held with the Appellants/ Defendants and in Ex.A.8, an amount has been mentioned and he has not paid that amount.

15. P.W.1 in his cross-examination has stated that after the death of his brother, Exs.A.5 and A.6 properties have been maintained by him and only for that property, he has been collecting the monthly rent and he has been running the said Poovalai Agency and maintaining the same and even after his brother's death, he has been maintaining the same and till April 1999, he has been maintaining the same and the amount deposited in the name of the second Defendant/minor has been maintained by him and in Ex.B.1, document, it is correct to state that there has been a reference about the deposit amount and the properties to be maintained. Moreover, he has sold the said Poovalai Agency's machineries and wiped out the loan amount.

16. It is the candid evidence of P.W.1 (Respondent/ Plaintiff) that as per Ex.A.8, agreement, he is not ready to remit a sum of Rs. 75,000/-(Rupees Seventy Five Thousand only) in the name of the second Appellant/second Defendant and he is not ready to abide by Exs.A.7 and A.8 and it is not correct to state that only if one is to act as per Exs.A.7 and A.8, the possession has to be recovered from the Appellants/Defendants.

17. The first Appellant/first Defendant as D.W.1, in her evidence has deposed that when her husband has been alive, at that time, they have been residing at Radhakrishnan Street, T. Nagar and at that time, his father-in-law and mother-in-law have been residing with her and after the death of her husband, three years later, they have come to the suit property from the said Radhakrishnan Street and after the death of her husband, Poovalai Agency has been maintained by the Respondent/Plaintiff and rent from the two storeyed building belonged to her husband, has been collected by the Respondent/Plaintiff and that no amount from Poovalai Agency or the rental amount from the storeyed buildings received by the Respondent/Plaintiff, have not been given to her and when she has come to the suit house, at that time, her father-in-law and mother-in-law have come along with her and they have been residing till the year 1999 and now, they are residing with the Respondent/Plaintiff.

18. D.W.1, in her evidence has also deposed that the Respondent/Plaintiff has purchased the articles for her family and before filing of the suit, he has not purchased the articles for her family and therefore, a problem has arisen and she has asked the Respondent/Plaintiff about the house documents of her husband and at that time, the Respondent/Plaintiff has been in a position to hand over the records pertaining to the said Poovalai Agency and the Respondent/Plaintiff has not paid her the said Poovalai Agency's outstanding amount and the storeyed building's rental amount and further, he has not given the accounts and that he has taken her father-in-law and mother-in-law with him.

19. The evidence of D.W.1 is to the effect that the Respondent/Plaintiff has conducted the compromise talk with her brothers viz, Santhanam and Mohan and as per the compromise, the Respondent/Plaintiff has not abided and Ex.A.8, agreement has been written on 30.01.2000 as per the compromise and it is true that Ex.B.2 has been written, but it has been corrected in Ex.A.7 and the same has been filed and if the Respondent/Plaintiff pays her amount as per Ex.A.8, agreement, then she is willing to vacate the house and that she is paying the electricity charges for that house and during the year 1999, when the suit property has been handed over to her at that time, it has been in a bad condition and she has repaired and set right the same and if the Respondent/Plaintiff acts as per Ex.A.8, agreement, then she agrees to vacate the house and till then, the Respondent/Plaintiff is not entitled to claim the suit relief.

20. D.W.2, (brother of the first Appellant/first Defendant) in his evidence, has deposed that in Ex.A.8, agreement, it is correct to state that no time limit has been mentioned for vacating the property by the Appellants/Defendants and by 05.03.2000, if the Respondent/Plaintiff delivers the documents handed over, to the Appellants/Defendants, then the Appellants/ Defendants will have to vacate by 05.03.2000. It is the further evidence of D.W.2 that in Ex.A.8, in serial No. 4, his signature is seen. Ex.A.8, agreement, has been written because of uncordial relationship between the Respondent/Plaintiff and the Appellants/Defendants. The agreement between the Respondent/Plaintiff and the Appellants/Defendants has been entered into to the effect that the income tax accounts will have to be stated without any problem and also to remove the encumbrances in the properties standing in the name of the first Appellant/first Defendant's husband.

21. D.W.2 in his evidence has categorically stated that in Ex.A.7, his signature has been scored out and Ex.A.8, agreement has been written by him at the instructions of the Respondent/Plaintiff.

22. The Respondent/Plaintiff in his plaint, has among other things, averred that the Appellants/Defendants have not vacated the schedule mentioned premises and therefore, he has issued a lawyer's notice dated 16.11.1999 to the first Appellant/first Defendant calling upon her to vacate and hand over the possession within fifteen days from the date of receipt of the notice and also a sum of Rs. 40,000/- (Rupees Forty Thousand only) being the amount payable by her and the second Defendant to the Respondent/Plaintiff towards the

compensation or damages for their illegal use and occupation. Though the first Appellant/first Defendant acknowledged the letter, failed to vacate the premises and she has not replied to.

23. Also, the Respondent/Plaintiff has averred in the plaint that the first Appellant/first Defendant on 30.01.2000, in the presence of a Mediator entered into the arrangement with the Respondent/Plaintiff and agreed to vacate the premises by 05.03.2000, but the Appellants/ Defendants failed to vacate the said premises. But, on 11.02.2000, as advised by her wicked-minded relatives, the first Appellant/first Defendant sent through the same Mediator a letter consenting to vacate the premises on certain unlawful terms including obtaining release of the lawful rights of the mother of the Respondent/Plaintiff in her favour in a particular property. The possession of the suit property by the Appellants/Defendants subsequent to 1st April 1999, is unlawful and they are liable to be vacated from the suit schedule property. Further, they are also liable to pay a sum of Rs. 5,000/- (Rupees Five Thousand only) by way of costs to the Respondent/Plaintiff on account of their unlawful use and occupation from April 1999. In the cause of action paragraph, the Respondent/ Plaintiff has mentioned as follows:

16. The cause of action arose at Chennai on 26th March 1996, when the Plaintiff purchased the suit schedule premises and on 04th April 1996 when the Defendants were permitted to occupy the suit schedule premises and on 01st March 1999, when the parents of the Plaintiff vacated the premises and when the Plaintiff wanted the Defendants also to vacate the premises, and on 1st April 1999 when the time granted by the Plaintiff to the Defendants to vacate the premises expired and on 10/4/1999 when the first Defendant created a scene in the premises and refused to vacate and on 13th April 1999 when the Defendant on her own caused a letter to the Plaintiff and on 16th November 1999, when a lawyer notice calling upon the Defendants was issued and on 11th February 2000, when the conditional letter was given by the first Defendant and subsequently.

24. In the written statement filed by the Appellants/Defendants, it is mentioned that the first Appellant/first Defendant's husband died during March 1993 and that the first Appellant/first Defendant who is a handicapped person because of the sudden demise of her husband and being an illiterate, has been assisted by the Respondent/Plaintiff in running Poovalai Agency run by her late husband Raju and that the Respondent/Plaintiff even though promises to look after the welfare of the Defendants, has been very much interested in capitalizing her innocence of the first Appellant/first Defendant and won the confidence of the first Appellant/first Defendant by promising to look after the flats standing in the name of the first Appellant/first Defendant. The first Appellant/first Defendant started collecting the rents from the tenants in respect of two flats in (1) No. 19/3, Soundararajn Street, T. Nagar, Chennai -600 017 and (2) No. 2, Menon Apartments, Gopalakrishnan Road, T. Nagar, Chennai -600 017 to the extent of

Rs. 10,500/-(Rupees Ten Thousand and Five Hundred only) in respect of two flats. The Respondent/Plaintiff has collected the rent from the tenants from the year 1993 till May 1997. Moreover, he has not rendered any account in respect of the income derived from the two flats as well as in respect of the running of the industries in Poovalai Agency. After the Respondent/Plaintiff taking over the charge of Poovalai Agency, he has collected the income and not paid any amount to the first Appellant/first Defendant.

25. The Appellants/Defendants also took a plea in the written statement that when the first Appellant/first Defendant requested the Respondent/Plaintiff to submit the statement of accounts in the presence of their well-wishers viz., Padmanabhan, Venkatraman, Sambasivan, Santhanam, Mohan and R. Elumalai, the Respondent/Plaintiff informed that he will clear all the encumbrances in respect of two flats and also clear the income tax clearance and also furnish the statement of accounts in respect of Poovalai Agency and therefore, an arrangement has been made on 30.01.2000. That apart, the Respondent/Plaintiff has undertaken to deposit a sum of Rs. 75,000/-(Rupees Seventy Five Thousand only) in the name of minor daughter Iswaria, the second Appellant/second Defendant, etc. The minor daughter is studying in school and she has to be maintained.

26. The learned Counsel for the Appellants/Defendants submits that Ex.A.8 agreement dated 30.01.2000 between the Respondent/Plaintiff and the first Appellant/first Defendant contains the sequences of contract of obligations to be fulfilled and to lend support to his contention, relies on the decision of the Honourable Apex Court in Nathulal Vs. Phoolchand, , wherein it is laid down as follows:

12. In considering whether a person is willing to perform his part of the contract the sequence in which the obligations under a contract are to be performed must be taken into account. The argument raised by Mr. Shroff that Nathulal was bound to perform the two conditions only after the amount of Rs. 21,000/-was paid is plainly contrary to the terms of the agreement. By virtue of Section 4 of the Transfer of Property Act, the chapters and sections of the Transfer of Property Act which relate to contracts are to be taken as part of the Indian Contract Act, 1872. If, therefore, under the terms of the contract the obligations of the parties have to be performed in a certain sequence, one of the parties to the contract cannot require compliance with the obligations by the other party without in the first instance performing his own part of the contract which in the sequence of obligations is performable by him earlier.

27. Secondly, he also cites the decision of this Court in Vairavan Chettiar and Others Vs. Kannappa Mudaliar, , wherein it is held thus:

4. It was also argued that since the Defendant supplied a certain number of bags he could not afterwards refuse to supply the balance on the ground that money was not paid to him according to the stipulated condition. This argument was not

put forward in the lower Courts. The decision in *Jugtanaund Misser v. Narghan Singh* (1881) 6 Cal. 433 cited in support of this contention does not help the Appellant. In that decision, it was held that evidence that the written agreement shall not be of any force until some condition precedent had been performed was inadmissible in the case where the written agreement had not only become binding but had actually been performed as to a large portion of its obligations. The part performance of the agreement was referred to only to emphasise further the fact that the written agreement in question was considered binding by the parties, and that evidence to vary the nature of such a binding agreement was inadmissible. In the present case the contract consists of reciprocal promises to which Section 54 of the Indian Contract Act will apply. The option to perform his part of the contract is always available to the Defendant, but this does not mean that the Plaintiff can insist on the Defendant performing his promise without himself performing what he has undertaken to do.

28. He also seeks in aid the decision of this Court in *G.K. Chengravelu Chetti and Sons. Vs. Akarapu Venkanna and Sons*, , wherein it is mentioned as follows:

2. The first question to be decided by us is, what is the true construction of this contract? Are the promises in the nature of concurrent conditions the promise relating to the payment of the price and the promise, relating to the delivery of the goods? Or, is the payment of the price by the Plaintiffs conditional on the performance by the Defendants of their part of the contract, namely, delivery of the goods? We entertain no doubt that on a true construction of this contract, the delivery of the goods? We entertain no doubt that on a true construction of this contract, the parties have agreed that the performance of their respective promises is to be simultaneous, that is to say, that each shall be ready and willing to perform his promise at one and the same time. Anson says:

Modern decisions incline against the construction of promises as independent of one another... In a contract for the sale of goods, the rule of Common Law, now embodied in the Sale of Goods Act, was that unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions?." Anson on Contracts, 16th Edition, 1923, page 359.

Where each party is to do an act at the same time as the other, as where goods in the sale for cash are to be delivered by the vendor and the price to be paid by the buyer, these are concurrent condition and neither party can maintain an action for breach of contract without averring that he performed or offered to perform what he himself was bound to do." Benjamin on Sales, 6th Edition, pages 638 to 639.

6. The learned author quotes the case of *Morton v. Lamb* (1797)7TR 125 : 4RR 395:

Morton agreed to buy a certain quantity of corn from Lamb at a fixed price, the

corn to be delivered in one month. It was not delivered and Morton sued for damages, alleging that he had been always ready and willing to receive the corn. But the Court held that this was not enough to make a cause of action. He should have alleged that he was always ready and willing to pay for the corn; he might, for aught that appeared on the pleadings, have discharged the Defendant by his non-readiness to pay.

Thus, where the contract relates to sale of goods, the Plaintiff if he happens to be a buyer must allege and prove that he was ready and willing to pay for the goods and likewise if the seller be the Plaintiff, he must allege and prove that he was ready and willing to deliver the goods. The Plaintiffs in this case having themselves committed default, cannot take advantage of what is said to be a default on the part of the Defendants. The action on the findings of the learned Judge is thus bound to fail.

7. So far, the case does not present much difficulty. The suit was filed on the footing of a breach of contract and the allegation in the plaint was that the Plaintiffs performed their part and that the Defendants committed default. The learned Judge, however, on the evidence before him, came to the conclusion that the parties did not intend either to deliver the goods or pay the price but their object was only to settle their rights by payment of differences. The learned Judge seemed to think that the Defendants, finding that the market was rising, were unwilling to keep to their bargain and that, therefore, they should be mulcted in damages. This is how the learned Judge explains his own judgment:

It (my judgment) is rightly or wrongly based on the finding that the contract is a speculative one, the most common characteristic of which is that the parties waive the ordinary steps of paying or tendering the price and tendering or delivering the goods, but settle their rights by payment of the differences.

29. Further, he invites the attention of this Court to the decision of the Honourable Apex Court in *M/s. Sikkim Subba Associates Vs. State of Sikkim*, , wherein it is held that "Where the reference to the arbitrator was a general one, to adjudicate upon disputes relating to the termination of contract by a party and not a specific one on any particular question, held, the award could be set aside if shown or substantiated to be erroneous on the face of it, etc."

30. Per contra, the learned Counsel for the Respondent/Plaintiff cites the decision in *State of Orissa Vs. Harekrishna Mahatab and Others*, , wherein it is held as follows:

9. There is no doubt that Defendants offered to carry on transport of ore independently having agreement with Government and for that purpose requested for a loan of Rs. 56,000/-to have three powerful engines for the launches to tour the boats loaded with iron ore. State Government in Planning and Co-ordination (Paradeep Port) Department entered into two agreements with Defendants. One is the loan of Rs. 50,000/-with terms contained therein and the other, the transport agreement. Perusal of the two agreements indicate that each

one is independent of the other. Although for giving benefit to Defendants to execute the transport contract. State Government gave the loan and also accommodated Defendants to pay a percentage of the bill amount, there was no implied term that transport contract failing, loan would not be recoverable. Rather for avoiding such a situation, it was specifically stated in the term of loan agreement that in case repayment of loan by instalment becomes impossible, Defendant shall be liable to refund the entire amount outstanding at that time. This indicates that loan is not a part of the transport agreement and there was no implied term that in case Plaintiff is responsible for the non performance of its part of the contract, loan would not be recoverable.

To such a case Ss.53 and 54 of the Contract Act have no application.

31. He also relies on the decision in Nanik Lal Karmarkar Vs. Shankar Lal Shah and Another, , wherein it is laid down thus:

The ordinary rule governing vendors and purchasers is that the payment of the consideration is to be simultaneous with the execution of the deed and shall be made at the time when the conveyance is executed by the vendor. In any particular case, however, the parties may agree to deviate from the ordinary rule. Unless therefore, there be any special contract, the parties are to follow the ordinary rule relating to payment between vendors and purchasers.

Apart from any special contract it is not the law that the consideration money must be tendered as a condition precedent by the party aspiring for specific performance of a contract of reconveyance.

But, if under the order of performance of reciprocal promises expressly agreed upon, the tender of the money came first, then even though a party to the contract had wrongfully repudiated to reconvey, the party aspiring specifically to enforce the contract must perform the condition precedent, on his part, before he becomes entitled to the relief.

32. Added further, the learned Counsel for the Respondent/Plaintiff places reliance on the decision in Sheriff Iqbal Hussain Ahmad Vs. Kota Venkata Subbamma and Others, , wherein it is held that "there was no discretion left either for the trial Court or the appellate Court but to grant specific relief of possession and there cannot be any exception to it. On proof of Plaintiffs' title to the property, the Court has to grant a decree for possession for it has no discretion to deny it. The Court cannot give any equitable relief to mitigate or sustain the consequences laid down by the statute. The plain provisions of the statute cannot be whittled away by the application of equitable doctrines."

33. A reading of Ex.A.8, agreement dated 30.01.2000 entered into between the Respondent/Plaintiff and the first Appellant/first Defendant, goes to show that a sum of Rs. 75,000/- (Rupees Seventy Five Thousand only) is to be deposited in the name of the second Appellant/second Defendant viz., Iswaria in a fixed deposit in a Nationalised Bank or in the N.S.C to receive the full amount with

interest after a period of eight years and further, the second party, namely the first Appellant/ first Defendant will have to vacate the house at 8/15, 3rd Sivaprakasam Street, T. Nagar, Chennai, belonging to the Respondent/Plaintiff where she resides now, before 05.03.2000, etc.

34. In regard to the second clause in Ex.A.8, agreement dated 30.01.2000, the first Appellant/first Defendant has assured to vacate the house where she resides now belonging to the Respondent/Plaintiff before 05.03.2000 and therefore, the date for the first Appellant/first Defendant to vacate the house has been mentioned specifically viz., 05.03.2000, but in regard to the first clause in Ex.A.8, agreement dated 30.01.2000, that the Respondent/Plaintiff has to deposit a sum of Rs. 75,000/-(Rupees Seventy Five Thousand only) in the name of the second Appellant/second Defendant viz., Iswaria in a fixed deposit in a Nationalised Bank or in the N.S.C to receive the full amount with interest after a period of eight years, no time limit is mentioned. Even though no time limit has been mentioned in regard to the first clause in Ex.A.8, agreement dated 30.01.2000, in regard to the deposit of Rs. 75,000/-(Rupees Seventy Five Thousand only), this Court is of the considered view that the Respondent/Plaintiff cannot insist upon the Appellants/Defendants to vacate the suit property before 05.03.2000 because of the simple fact that the performance of obligation as per the first clause of Ex.A.8 agreement dated 30.01.2000 by the Respondent/Plaintiff is simultaneous with that of the first Respondent/first Defendant vacating the house before 05.03.2000, in the considered opinion of this Court.

35. As a matter of fact, the second clause in Ex.A.8, agreement dated 30.01.2000, that the first Appellant/first Defendant has assured to vacate the suit property before 05.03.2000, is not an independent clause de hors the first clause mentioned in the said agreement. Indeed, Ex.A.8, agreement dated 30.01.2000, Clauses (i) and (ii) will have to be read together simultaneously and it cannot be interpreted in a disjunctive way, in the considered view of this Court. If the Respondent/Plaintiff is not agreeing to fulfil his promise as per the first clause in Ex.A.8, agreement dated 30.01.2000, in regard to the deposit of Rs. 75,000/-(Rupees Seventy Five Thousand only) in the name of the second Appellant/second Defendant viz., Iswaria in a fixed deposit in a Nationalised Bank or in the N.S.C to receive the full amount with interest after a period of eight years, then he cannot in a piecemeal fashion compel the first Appellant/first Defendant to vacate the suit property before 05.03.2000. In short, the deposit of Rs. 75,000/-(Rupees Seventy Five Thousand only) in the name of the second Appellant/second Defendant viz., Iswaria in a fixed deposit in a Nationalised Bank or in the N.S.C to receive the full amount with interest after a period of eight years, is the first up to be fulfilled by the Respondent/Plaintiff and the first Appellant/first Defendant, secondly, will have to vacate the suit property before 05.03.2000.

36. Suffice it for this Court to point out that the first clause in Ex.A.8, agreement dated 30.01.2000, in regard to the deposit of Rs. 75,000/-(Rupees Seventy Five

Thousand only) in the name of the second Appellant/second Defendant viz., Iswaria in a fixed deposit in a Nationalised Bank or in the N.S.C to receive the full amount with interest after a period of eight years, will have to be performed as a sequence of first event and then only, the Appellants/Defendants will have to vacate the suit property before 05.03.2000. Therefore, the obligations to be fulfilled by the respective parties, viz., the Respondent/Plaintiff and the Appellants/ Defendants, are to be performed in a sequence and only in that fashion, it has to be viewed, in the considered opinion of this Court and the contra view taken by the trial Court that the two clauses are independent obligations not linked together is not a correct view, in the eye of law.

37. Only if the Respondent/Plaintiff fulfils the first clause or obligation as per Ex.A.8, agreement dated 30.01.2000, in regard to the deposit of Rs. 75,000/- (Rupees Seventy Five Thousand only) in the name of the second Appellant/second Defendant viz., Iswaria in a fixed deposit in a Nationalised Bank or in the N.S.C to receive the full amount with interest after a period of eight years, the aspect of the first Appellant/first Defendant fulfilling her obligation to vacate the house before 05.03.2000 will arise. Otherwise, the Respondent/Plaintiff will have no cause of action against the Appellants/ Defendants, in the considered view of this Court.

38. Therefore, this Court holds that as per Ex.A.8, agreement dated 30.01.2000, the Respondent/Plaintiff will have to perform his part of obligation in depositing a sum of Rs. 75,000/-(Rupees Seventy Five Thousand only) in the name of the second Appellant/second Defendant viz., Iswaria in a fixed deposit in a Nationalised Bank or in the N.S.C to receive the full amount with interest after a period of eight years and if he deposits the said amount, then the first Appellant/first Defendant will have to vacate the house. Therefore, this Court directs the Respondent/Plaintiff to deposit a sum of Rs. 75,000/-(Rupees Seventy Five Thousand only) in the name of the second Appellant/second Defendant viz., Iswaria in a fixed deposit in a Nationalised Bank or in the N.S.C to receive the full amount with interest after a period of eight years as the case may be, within a period of two months from the date of receipt of a copy of this judgment and if such deposit is being made, the Appellants/Defendants are directed to vacate and deliver the vacant possession of the suit property to the Respondent/Plaintiff with all its fittings and fixtures kept therein, within a period of three months thereafter. Accordingly, Point No. (i) is answered.

39. Coming to the aspect as to whether the Appellants/ Defendants are liable to pay any sum as damages towards loss caused to the Respondent/Plaintiff on account of their illegal occupation of the premises, with the interest at the rate of 18% p.a, etc. and insofar as the award of damages by the trial Court at Rs. 36,300/-(Rupees Thirty Six Thousand and Three Hundred only) from the date of Ex.A.1 till date of plaint namely 30.03.2000, in and by which the trial Court has granted a sum of Rs. 36,300/-(Rupees Thirty Six Thousand and Three Hundred only), since this Court has taken a view that the first clause in Ex.A.8, agreement

dated 30.01.2000, will have to be performed by the Respondent/Plaintiff first and then only, the Appellants/Defendants will have to perform their obligation of vacating the suit property before 05.03.2000, this Court is of the considered view that after coming into the force of Ex.A.8, agreement dated 30.01.2000, entered into between the Respondent/Plaintiff and the first Appellant/first Defendant, the question of the Appellants/Defendants paying the damages to the tune of Rs. 55,000/-(Rupees Fifty Five Thousand only) or Rs. 36,300/-(Rupees Thirty Six Thousand and Three Hundred only) as determined by the trial Court does not arise on any score because of the simple fact that the Respondent/Plaintiff has not performed his obligation as per first clause of Ex.A.8 agreement dated 30.01.2000 and viewed in that perspective, the view taken by the trial Court that the Appellants/Defendants are liable to pay a sum of Rs. 36,300/-(Rupees Thirty Six Thousand and Three Hundred only), from the date of Ex.A.1 dated 15.04.1999 till the date of filing of the plaint viz. 30.03.2000, is clearly unsustainable in the eye of law.

40. The Respondent/Plaintiff has to fulfil his obligation as the first clause of Ex.A.8, agreement dated 30.01.2000 and therefore, only the Appellants/Defendants will have to perform their obligation to vacate and deliver the vacant possession, the question of awarding of future damages at Rs. 3,300/-(Rupees Three Thousand and Three Hundred only) p.m, from the date of plaint till date of delivery of possession is also illegal and invalid one and accordingly, the Point No. (ii) is answered against the Respondent/Plaintiff. Resultantly, this appeal succeeds in part.

41. In the result, this Appeal Suit is allowed in part, leaving the parties to bear their own costs and the judgment and decree of the trial Court in O.S. No. 2019 of 2000 dated 23.12.2002 passed by the learned Additional District Judge, Fast Track Court No. V, Chennai, are modified. Consequently, the Respondent/Plaintiff is directed to deposit a sum of Rs. 75,000/-(Rupees Seventy Five Thousand only) in the name of the second Appellant/second Defendant viz., Iswaria in a fixed deposit in a Nationalised Bank or in the N.S.C to receive the full amount with interest after a period of eight years as the case may be, within a period of two months from the date of receipt of a copy of this judgment and if such deposit is being made, the Appellants/Defendants are directed to vacate and deliver the vacant possession of the suit property to the Respondent/Plaintiff with all its fittings and fixtures kept therein, within a period of three months there after.