

(1993) 09 MAD CK 0069
In the Madras High Court

S. Ganapathy Chettiar, Proprietor, Karkalaiyar Plastic Works	APPELLANT
Vs	
R.V. Dharmalingam Mudaliar and Others	RESPONDENT

Date of Decision : 15-09-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 144, 145, 146, 149

Citation : (1994) 1 LW 590 : (1994) 1 MLJ 601

Hon'ble Judges : Mishra, J

Bench : Single Bench

Judgement

Mishra, J.—The plaintiff in C.S. No. 2 of 1993 and the applicant in O.A. No. 3 of 1993 has preferred this appeal against an order by a learned single Judge of this Court under which, he has disposed of the application or injunction to restrain the respondents Dharmalingam Mudaliar, D. Ravindranathan, Pathy and Kannan from interfering with his possession and enjoyment of the suit property pending disposal of the suit by an order to the effect that both the parties would not make any construction till the disposal of the suit and that the hearing of the suit would be expedited. The plaintiff, appellant in the appeal, has filed the writ petition (W.P. No. 8418 of 1993) for a mandamus/direction for restoration of the possession of the subject property to him, from which it is alleged he has been dispossessed by the 3rd respondent therein and the respondents in the appeal (respondents 5 to 8 in the writ petition) have been put in possession by him (the 3rd respondent in the writ petition). Since facts covered by the plaint in the suit, the application O.A. No. 3 of 1993 and the writ petition are mostly common and complement or supplement each other and the issue before us is whether to grant to the appellant herein a modified prayer of injunction of restoration of possession pendente lite, we propose to narrate such relevant facts which are stated in the plaint, in the application for injunction, in the writ petition and other affidavits of the parties including the counters of the respondents leaving however, adjudication of the issues of fact and the law as and when determined by the trial court. The plaintiffs case is as follows.

2. He is a statutory tenant under the 1st defendant and is in lawful possession of the subject property, wherein he is carrying on business under the name and style of Karkalaiyar Plastic Works. He has got the licence from the Corporation of Madras, for the running of a 20 H.P. motor for the said business and the supply of electricity from the Tamil Nadu Electricity Board in his name for the business at the premises in his occupation, that is to say, the subject property. The business is registered as a small scale industry with the Department of Industries and Commerce, Government of Tamil Nadu. He has been in occupation and running the business at the said premises right from 1973 onwards and paid rent every month to the 1st defendant for the possession of premises for industrial purposes. The plaintiff has stated, "the rents for the months of April, May, June and July, 1992 have been paid on 13.8.1992, for which the 1st defendant issued stamp receipt to the plaintiff. The plaintiff has sent Rs. 1,000 by telegraphic money order on 15.10.1992 from Bombay to the 1st defendant towards the rent for the months of August and September, 1992. Then after coming to Madras paid Rs. 100 to the 1st defendant. The plaintiff has paid the rents for the months of October and November, 1992 to the 1st defendant in cash on 17.12.1992. The 1st defendant has been promising to send stamped receipt later. The plaintiff has no reason to suspect the bona fide of the 1st defendant. From 17.12.1992 onwards the 1st defendant's son, the 2nd defendant herein has been coming to the suit property often and when the plaintiff asked for rental receipts for the rent already paid for the months of August, September, October and November, 1992 he asked the plaintiff to go and see the 1st defendant. When the plaintiff went and saw the 1st defendant, he was saying that he will be sending the rental receipts. Few days later the son of the 1st defendant D. Ravindranathan called upon the plaintiff to vacate the suit property without giving any reason. The plaintiff replied by stating that he lawfully carrying on business in the suit property as a statutory tenant having invest huge amounts and he cannot be called upon to vacate according to the whims and fancies of the 2nd defendant (son of the 1st defendant). While so, on 25.12.1992 the 2nd defendant along with defendants 3 and 4 came to the suit property along with some able bodied persons and started behaving in an unruly manner and created scene. They caused damage to the machineries of the plaintiff. They created a law and order situation. The plaintiff lodged a police complaint with G-2 Police Station against the defendants 2 to 4. The police came and sent away those persons. The 3rd defendant is another son of the 1st defendant. The 4th defendant is the brother-in-law of the 1st defendant". Alleging that the defendants were threatening to throw him away forcibly and dispossessing him from the tenanted premises by taking law into their own hands, the plaintiff has filed the suit for a permanent injunction along with a relief by way of damages, which relief is based on the allegation that the defendants have caused damage to the machineries used by the plaintiff in his business son 23.12.1992 and caused mental suffering and agony and further", "...during recent rains a tree has fallen on the shed in the suit property and the shed was damaged. The plaintiff has carried out work to set right things to safeguard his machineries with the full knowledge of the 1st

defendant. The Corporation of Madras has also issued permission in this regard". The plaint was presented in court on 28.12.1992. An application for injunction, however, was moved on the same day in which, the plaintiff stated that there was some litigation between the 1st defendant and a third party regarding the suit property, "at that time, the son of the 1st defendant one Ravindranathan came to me and asked me to sign in some stamp paper and papers stating that they are necessary for their case and he also gave me a letter in stamp paper stating that after the case is over, in case he sells the property, he will sell the same to me". In an additional affidavit, filed on 12.1.1993, the plaintiff appellant, however, stated that he filed the suit in a hurry before the vacation court for the reasons of the urgency, but did not state about the role of the Inspector of Police, Periamet Police Station G-2, Madras-3, 3rd respondent in the writ petition, who played a vital role in the sense that on 25.12.1992 when the plaintiff lodged a police complaint about the activities of the defendants and their musclemen, he prevented them from committing trespass, but locked the suit premises and kept the key with him. The plaintiff filed the suit on 28.12.1992, but it could not be numbered and brought for orders on the following day, that is to say, on 29.12.1992, on which day, the plaintiff contacted the Inspector of Police, G-2 Police Station, Periamet, Madras, who stated that he would hand over the key to the plaintiff. The court reopened after Christmas vacation only on 4.1.1993, when the plaint was numbered and the application for injunction was posted before the court only on 6.1.1993. Some of the defendants had entered caveat through their counsel and when the application for injunction was moved, the defendants represented by their counsel admitted that plaintiffs machineries were there in suit property and his telephone connection in the suit premises also existed, but pleaded that the plaintiff had already surrendered possession of the tenanted premises to the 1st defendant voluntarily in June/July, 1992 "then my counsel produced the rental receipts to show that I have paid rents even thereafter, which has been received by the 1st defendant". Even during the course of arguments on 6.1.1993, the plaintiffs counsel represented before the court that the defendants were attempting to take the key from the police and accordingly sought appointment of an Advocate-Commissioner to note down the physical features of the suit premises, so that the real state of affairs were brought on the records. A Commissioner was appointed with the consent of both the parties on 6.1.1993. In his additional affidavit, the plaintiff has stated as follows:

...after the Advocate-Commissioner was appointed by this Hon"ble Court on 6.1.1993, I contacted the Inspector of Police, G-2 Police Station, Mr. Somasundaram and the Sub-Inspector and asked them to hand over the key to me. They were evasive. Then I came to know that the Inspector of Police of G-2 Police Station, Mr. Somasundaram and the Sub Inspector of Police, Mr. Srinivasan have colluded with the 1st defendant. I came to know that they have handed over the key to the 1st defendant. When I went to the suit property on 6.1.1993, there were two constables in the suit property which is in my lawful possession.

The defendants were also not allowed to enter suit property. Then, I went to the office of the Commissioner of Police, Egmore, Madras on 7.1.1993 and wanted to give a complaint against the Inspector of Police, G-2 Police Station, and the Sub Inspector of Police. I took the written complaint along with me. I was not allowed to see the Commissioner of Police. Hence, I sent the complaint by Registered Post on 7.1.1993 to the Commissioner of Police, Egmore, Madras-8. I also gave a complaint on 7.1.1993 to the Honourable Chief Minister of Tamil Nadu, Home Secretary, Government of Tamil Nadu and the Assistant Commissioner of Police, Law and Order, Flower Bazaar Range, Madras-1. I have sent everything by registered post with acknowledgement due. Earlier I have also sent a telegram to the Commissioner of Police, Egmore, Madras-8 stating that I was prevented from meeting him and that is why I am sending the complaint by registered post with acknowledgement due. After I sent the complaint in the morning on 7.1.1993, the Advocate-Commissioner visited the suit property in the evening of 7.1.1993. When the Advocate-Commissioner came to the suit property, it was locked and there were two constables. The said constables prevented even the Advocate-Commissioner from entering the suit property and asked the Advocate-Commissioner to go and meet the Inspector of Police, G-2 Police station. No one was allowed to enter the suit property. The constable said that the property is under lock and key of Inspector of Police, G-2 Police Station and the Advocate-Commissioner should go and meet him. The Advocate-Commissioner was made to wait for half an hour. Then my counsel requested the Advocate-Commissioner to note this and report the same to this Honourable Court and seek for direction. After that only, the two constables allowed the Advocate-Commissioner inside. One lady came and opened the lock. Thus, the whole thing has been stage managed to create false evidence after I filed the suit before this Honourable court. After entering the suit property, it was found that my things and machineries are there. My machineries have been damaged. The Advocate-Commissioner has been nothing things. I requested the Advocate-Commissioner to note down the damages to my machineries which is also one of the physical features. But the counsel for the respondents/defendants wanted the Advocate-Commissioner to give a finding as to who is in possession. The Advocate-Commissioner rightly stopped the proceedings stating that he will seek for further directions from this Honourable Court.

There is an additional fact mentioned in this affidavit that the 1st defendant was having a litigation with one Appa Rao and during the course of the said proceedings, the 1st defendant had taken his (plaintiffs) signatures on some stamp papers under threat and alleged, "Now I understand that he has tilled up some of those stamp papers and trying to use the same against me".

3. The 1st defendant's counter to the injunction application has disclosed the defendants' case as follows:

The plaintiff is not in any kind of possession of the suit property. As matter of fact, he has shifted machinery to Srinivasapuram, Eruvadi, Tirunelveli District,

Pin Code 627103 and his office to No. 14, Vanigar Street, Eruvadi, Tirunelveli District, Pin Code 627103. He shifted the machinery to his factory at Srinivasapuram in July, 1992 and has been running his business thereunder the name and style of Rajkumar plastics. It was a partnership firm, of which the 1st defendant and the plaintiff were partners which occupied the premises the subject property, but the said firm has not been carrying on the manufacturing activities. The plaintiff wanted to remove the machineries brought in by him and which were used for the partnership business and accordingly removed the same. After the removal of the machinery by the plaintiff, the 1st defendant, his wife and the 3rd defendant returned to possession and enjoyment of the suit property. His case is that he was running a factory under the name and style of the United Traders Metal Industries since 1950. When, however, he became old and was not in a position to personally look after the business, he entered into a partnership with the plaintiff in the year 1977, the firm being called either United Traders Metal Industries or Karkalaiyar Plastic Works. The partnership was a share profiting of 25% to the 1st defendant and 75% to the plaintiff. The plaintiff's allegation that the 1st defendant received rent for the occupation of the premises by him has been replied to by an assertion that since the plaintiff insisted that he needed receipts of the payment of the share profits in the form of rental receipts, the 1st defendant issued such receipts and, "thereafter in 1978-79 there was a raid by the Sales Tax Authorities. After such a raid the applicant represented that he had been unfortunately inflicted with arrears of sales tax and penalty and if he (the 1st defendant) agreed to continue to issue receipts as aforesaid it would facilitate him to reduce his liability in respect of other taxes. Only in such circumstances, he was constrained to issue receipts. After denying the allegations of Ravindranathan (son of the 1st defendant) obtaining signature of the plaintiff on a paper, the plaintiff's assertion that he was a tenant under him and the allegation that on 25.12.1992 his son Ravindranathan, along with other defendants and some other persons, caused any threat or scene at the premises (subject property), the 1st defendant has alleged that the plaintiff has been adopting all the questionable methods to dispossess the suit property and threatening the defendants 1st defendant with dire consequences if they did not oblige him. The allegation of a need to repair the damages when has been answered by the 1st defendant as follows:

On account of the betrothal of my last son Sri D. Gunasekaran, we had locked the premises and had gone to my another son Sri D. Ravindranathan's place for about a week from 2.12.1992. During that period the sons of the applicant had unlawfully entered into the suit premises after breaking open the lock and had cut the big "Arasamaram" and started some unlawful construction after demolishing the existing structures. Coming to know of it, we informed the Madras Corporation. On 8.12.1992 an official by name Sri Veeraraghavan who is the Administrative Officer, Division No. 46 of the Corporation of Madras visited the premises and ordered the said persons to stop the unauthorised construction. The said persons stopped the unauthorised construction and immediately left the

place. Thereafter, for about 15 days, we were living in the premises peacefully. On 24.12.1992 we went to Sri Angala Paramaswari Ammal Temple in Choolai at about 7.00 a.m. after locking the gate of the premises. When we returned from the temple at about 8.30 a.m. applicant along with his henchmen was standing in front of the gate and started threatening us and did not allow us to open the gate and enter the premises. We immediately went to the Periamet Police Station and wanted to lodge a complaint. On account of the death anniversary of the former Chief Minister Thiru M.G. Ramachandran and opening of the memorial at Marina Beach the concerned Inspector of Police and the other police officials had gone for bandobust duty. Therefore, we could lodge our complaint only at about 5.00 p.m. At about 7.00 p.m. a Head Constable and two constables accompanied us to the suit premises. On seeing the police personal the applicant and his henchmen ran away. Thereafter we were able to open the lock and enter the premises. On 25.12.1992 the Sub Inspector of the said Periamet Police Station visits the premises, called the applicant who is residing in a rented portion of the opposite house and advised him not to disturb us and not to create any disturbance in the locality. The above facts and the photograph produced would clearly show that the structures for which the applicant claims to be a tenant are not in existence at all on account of their demolition by the applicant's sons. Facts being as stated above the allegations made in para 8 are patently false.

As a matter of fact on 1.1.1993 at about 3.00 a.m. about 25 persons came in auto rickshaws and threw big stones inside our premises and made an attempt to gate crash into the premises. Providence saved us; Thereafter at about 4.30 p.m. I receive an anonymous telephone call. The caller threatened me saying that there was going to be a murder inside the premises and that I would be killed. Again I went to the Periamet police station and lodged a complaint and requested for police protection. The police provided protection by posting two constables at the premises with five arms. They were there till 11.00 a.m. on 8.1.1993. It is pertinent to note that the applicant has caused disconnection of the telephone.

At this juncture Submit that on 6.1.1993 when the application was taken up this Hon"ble Court was pleased to observe that a Commissioner had to be appointed in order to see who is in possession of the suit property premises. But when the learned Advocate-Commissioner visited the place on 7.1.1993 we were told that he was going to note down only the articles and machinery. Therefore we served a memo dated 7.1.1993 on the learned Advocate-Commissioner requesting him to note the actual inmates who are in the suit property. The learned Advocate Commissioner started noting down the same and when he recorded that one Annammal wife of Dharmalinga Mudaliar the 1st defendant (myself) was therein the suit premises, the learned Counsel for the applicant started objections. I was also inside the premises when the learned advocate commissioner came. The learned Counsel for the applicant wanted the alleged damage to articles to be noted down to which we objected. Therefore, the learned Advocate Commissioner could not complete his job. There was no pandemonium as such as stated by the learned Advocate-Commissioner in his interim report dated

11.1.1993. He has omitted to mention the name of the old lady who was in the suit premises at that time. We reserve our right to file our objections after the final report is submitted by the learned Advocate-Commissioner.

4. It may be in controversy as to what role actually the police played. But it is admitted that it did play a role in the dispute between the parties and the 1st defendant has narrated the events giving his version of the controversy as follows:

As stated in my counter affidavit on 24.12.1992 itself the applicant along with his henchmen created trouble which prompted me to prefer a complaint to the police. On seeing the police he and his henchmen ran away. Thereafter, on 25.12.1992 the Sub-Inspector of Periamet Police Station visited the premises, called the applicant who is residing in a rented portion of the opposite house and advised him not to disturb me and not to create any disturbance in the locality. It is pertinent to note here that all along I and my family members as stated in my counter affidavit have been in possession and enjoyment of the suit property. I submit that I am not aware of any complaint that is said to have been lodged by the applicant with the police.

...The allegation that the defendants are attempting to take the key from the police is specifically denied in view of the fact that the police never locked the premises and kept the key with them.

Some other defendants in the suit have also filed their return and the plaintiff has filed a reply affidavit, particularly, rebutting the claim of the 1st defendant that he was living in the suit premises with his wife and has said, after the appointment of an Advocate-Commissioner by orders of this Hon'ble Court dated 6.1.1993 with the help of police the respondent is trying to create false evidence. I am in possession as a statutory tenant. I have not given wrong address. I have given the address known to me. In fact the first respondent is living with his son, the 2nd respondent and has written letters to me from there, in October, 1992. It is only the first respondent who is giving wrong address in his caveat petition as well as this counter-affidavit." He has also denied the defendants' case of any partnership of this voluntarily vacating the premises in favour of the 1st defendant and about his shifting the business and/or closing the business at Madras.

5. After hearing the parties and taking into consideration the relevant facts, the learned Single Judge has noted, "...in regard to the question of possession on the date of suit there is no clear material evidence available. One thing is clear, viz., that there was a scramble for possession by both the parties and scuffle between them. Likewise, as to who amongst the parties was responsible for the construction going on there is also not clear. Both the parties claim that they have been doing the construction. No documentary evidence is placed before me clinching the issue. In view of mutually contradictory contentions raised by both the parties, I appointed a Commissioner to inspect the property. His report

disclosed that when he went to the suit property for inspection, he found two police constables on guard and that the doorway to enter the property, was locked inside. The Commissioner reports that initially he was resisted by the police to enter into the property but that on production of the warrant issued by this Court, he was permitted to inspect. The Commissioner says that the door way was opened by an old lady and neither of the parties deny that the old lady is the wife of the 1st defendant. How she happens to be in the house when the Advocate-Commissioner went there is, according to the plaintiff, a state of affairs brought about by the 1st defendant after the application for appointment of Commissioner was ordered. Again no materials are there to show at whose instance the police constables were put on guard of the property. In my view, their presence clearly indicate to my mind a law and order problem having arisen in regard to the possession of the suit property. The above are only some of the materials relevant for consideration of the question at this stage. It is also significant to notice that the report of the Advocate-Commissioner enumerates some articles and machineries in the premises. While the plaintiff claims some of them as his, the 1st defendant claims others as his. Individually, neither of them make a claim to any of the articles which is claimed by the other. In other words, it is evident that articles of both the parties are there. The Commissioner's report does not make a mention of materials required for the industry is alleged to have been carried on. Therefore, while the plaintiff says that he is using the 1st defendant says that he is residing with his family. The factum of an old lady being present at the time of Commissioner's inspection point to residential use, although it may not be conclusive. It is to be noted that the plaintiff does not claim title to the suit property. He claims that he is only a tenant. Hence, the right to possession is there with the 1st defendant. To oust him from the suit property when admittedly, according to the Commissioner, an old lady was inside the house, is not just. Likewise, if really the plaintiff was carrying on business in the suit property on the date of suit, it would be equally unjust to be dispossessed. But, the report of the Advocate Commissioner does not give materials for coming to a conclusion that such a business was being run. I make it clear that I am not expressing any opinion on the question of possession by making observation that further evidence is absolutely necessary to decide the question one way or the other," and thus concluded the balance of convenience lies in asking both the parties to maintain status status quo as it obtained on the date of inspection by the Advocate-Commissioner as mentioned in his report.

6. The facts in the writ petition and the counters therein do not in any manner introduce any new fact, event or case between the plaintiff and the defendants in the suit, but have brought returns of the Commissioner of Police, Madras City, the Inspector of Police, G-2 Police Station, Periamet, Madras, who, according to the plaintiff, had locked the premises and kept the key with him and the Sub Inspector of Police, attached to the said police station. The Commissioner of Police has, in fact, tiled two affidavits. In one he has said that a complaint petition of the plaintiff was received in his office on 8.1.1993 and the same was

placed before the Deputy Commissioner of police, Law and Order, North District, who in turn directed the Assistant Commissioner of Police, Law and Order, Flower Bazaar range, Madras for enquiry and necessary action. The Assistant Commissioner of Police conducted an enquiry and submitted a report to the Deputy Commissioner of Police to the effect that it was a civil dispute and as such the petition was lodged. In the second or the additional affidavit, he has touched the allegation of the plaintiff that he was not allowed to meet the Commissioner of Police on 7.1.1993 by stating as follows:

I respectfully submit that the general public can have an interview with me on all days except Government Holidays between 10.00 a.m. and 13.00 hrs. A board is displayed at my office intimating the general public about this interview timings.

I most respectfully submit that no prior appointment is needed by the general public to have an interview during the abovesaid hours. However, the interview is formerly regulated by Thiru V. Kanniappan, the Assistant Commissioner of Police, Public Relation Officer, Madras City attached to my office who is also seated in the waiting hall attached to the Commissioner's room during such visiting hours. On 7.1.1993 I had attended office as usual and being a Thursday, I had held a press meet besides seeing the visitors at my office.

The receipt dated 7.1.1993 produced by the petitioner herein prima facie shows a telegram having been sent by the petitioner herein and addressed to me. Unfortunately the tapal register concerning the receipt of the telegram and Government tapal register maintained at the "F" section of my office does not reflect the receipt of the above said telegram. In view of this I made enquiries with Thiru V. Kanniappan, Assistant Commissioner of Police, Public Relation Officer, Madras City who was the Assistant Commissioner of Police, Public Relation Officer on 7.1.1993 with reference to the allegations made by the petitioner regarding the alleged refusal by the police constable attached to my office. Thiru V. Kanniappan has reported to me that to the best of his recollection and knowledge no such incident as alleged by the petitioner had taken place. However, I have severely warned all the officials that they must discharge their duties in the best interest of the public. I respectfully state that I will strictly abide by all directions that may be issued by this Hon'ble Court in relation to this issue.

The 3rd and 4th respondents have made almost the same statements in their counter affidavits. The 3rd respondent has denied that he locked the premises on 25.12.1992 and kept the key with him as well as the allegation that he represented to the plaintiff that he would hand over the key to him and stated that it is totally false to allege that he or the Sub Inspector of Police (4th respondent in the writ petition) colluded with respondents 5 to 8 i.e. defendants in the suit and handed over the key to the 5th respondent in the writ petition, i.e. to say the 1st defendant in the suit. He has also denied to have put any constables at the suit property and explained that being a troubled areas, two best constables would be moving in and around the street to maintain the law

and order and the plaintiff/petitioner probably mistook them to be the constables put to guard the suit property. He has said, it is false to state that anybody was prevented from entering into the suit property by the police as he or the 4th respondent Sub Inspector never interfered in the civil dispute between the plaintiff and the defendants in the suit. The 4th respondent has stated also in the same vein and made no improvement in respect of the facts.

7. A serious contention as to the possession of the suit property has thus arisen. According to the plaintiff/appellant, he has been in possession of the suit property as a statutory tenant under the 1st defendant and paying rent to him. According to the 1st defendant, the plaintiff entered into a partnership with him in the year 1977 and a partnership business was located in the suit premises, the profit sharing of the partnership being 25% for the 1st defendant and 75% for the plaintiff, which virtually came to a close in July, 1992 when the plaintiff removed his machineries, etc. and vacated the premises voluntarily for good as he decided to have his business elsewhere. The plaintiff has supported his case of the relationship of landlord and tenant between the 1st defendant and himself by showing the issuance of the rental receipts by the 1st defendant. But the receipt for payment of rent, the 1st defendant has explained, however, that such receipts were issued by him to the plaintiff on his (letter's) insistence, but the receipts were really in token of the share profit of the defendant. Both parties, however, have admitted to have lodged complaints to the police, the 1st defendant on 24.12.1992 and the plaintiff on 25.12.1992, that one or the other was committing the act of trespass, in case of the 1st defendant the plaintiff after demolishing a structure called shed was attempting to reconstruct the same without the consent of the 1st defendant and without the prior permission of the Corporation of Madras and in case of the plaintiff, Ravindranathan, one of the sons of the 1st defendant, and some other persons had come and threatened the plaintiff, leading to the plaintiffs lodging complaint with the police, in which process the defendants' men also caused damage to machineries, etc. of the plaintiff. Both sides thus admit that police visited the premises and played a role. The plaintiff has alleged the 3rd respondent locked the premises on 25.12.1992 and kept the key with him and kept on telling the plaintiff that he would hand over the key to him. On 7.1.1993 when the Advocate-Commissioner visited the suit premises, the two constables posted at the suit premises, at the first instance, prevented the Advocate-Commissioner from entering into the suit premises, but later on allowed him to enter. The 1st defendant, however, has denied any such locking of the premises by the police and harped on his case that the plaintiff had vacated the suit premises in July, 1992. The case of the 1st defendant in this behalf has many loopholes, the first and most vital being a complaint filed by the 1st defendant with the police on 24.12.1992 and another by one of the sons of the 1st defendant, who is not a party to the instant proceeding, with the police on 7.1.1993. In both these complaints the presence of the plaintiff in the suit premises is almost admitted. What is alleged is that the plaintiff had been trying to put up some new construction without the consent of

the 1st defendant and without obtaining necessary permission from the Corporation of Madras. There is a document on the record (English translation of which has been produced before us), which shows existence of some sort of partnership between the plaintiff and the 1st defendant, a document which has been described by the plaintiff at one place as obtained on the basis of a misrepresentation, and at another place under threat, but either in the capacity of the sole proprietor of the business concerned or as a managing partner thereof, it is shown, the plaintiff has been in possession, and it is conceded by the 1st defendant that the plaintiff has been running the business at the suit premises. The story of the partnership has no support except the document which is challenged by the plaintiff. But the story Of the exclusive business of the plaintiff is supported by the great of tenancy receipts by the 1st defendant in favour of the plaintiff, which incidentally creates sufficient prima facie basis for building that the plaintiffs case that he is a tenant of the 1st defendant is probable.

8. The case of the 1st defendant that the plaintiff voluntarily vacated the suit premises and delivered possession to the 1st defendant, as we have already observed, has many loop-holes and those loop-holes also lend support to the case of the plaintiff that the police did not take the impartial stand of preventing the aggressive or aggressor party from interfering with the peaceful possession of either the plaintiff or the 1st defendant. The facts, as we have seen eloquently speak in favour of the existence of the plaintiff s business in the suit premises in December, 1992 and the incidents of 24th and 25th December, 1992 which are reported to the police by the 1st defendant and the plaintiff go to show that there has been a clash between the parties, if not physical, atleast with respect to the exercise of possession, but the 1st defendant had on 24.12.1992 not yet seen the plaintiff out of possession. The incident, as alleged by the plaintiff, took place on 25th or not, but it is admitted by the 1st defendant that the police came and intervened first on the 24th of December and again on the 25th of December. What has surprised us most, however, is the attitude adopted by the 3rd and 4th respondents, viz. Inspector and Sub Inspector of Police attached to G-2 Police Station, Periamet who have chosen not even to admit that they responded to the complaints of the 1st defendant and the plaintiff and that while so responding they found one or the other party committing aggression. Had they chosen to say what they had found either on the 24th of December or on the 25th of December, because of it is not in doubt that the police had visited, both according to the plaintiff and the defendants, the suit premises on both occasions, and given their version of the occurrence and the possession of the one or the other party, the same would have provided a good basis to test the veracity, that is to say the truth or otherwise of the version of the plaintiff as to the possession and interference in the plaintiffs possession by the defendants or the claim of the physical possession of the 1st defendant and has living with his wife in the suit premises after the plaintiff vacated the same.

9. There can be little doubt that the police shall have no role to play in the

adjudication of a dispute of possession, where there is a claim on the one side of the relationship of landlord and tenant and on the other side of possession as a partner, which possession had already been vacated by the plaintiff. The police has no role to play in a civil dispute. A civil dispute has to be decided in accordance with law only in a proper civil proceeding. Not all civil disputes, however, are untouchables for either the police or the criminal courts. There can be many occasions of person having no semblance of a right interfering with the possession of a person who is lawfully entitled to it, or a certain landlord trying forcibly to evict the tenant by adopting illegitimate to and unlawful means. The version of one or the other as to the nature of the right claimed and disputed may not be enough for the police to say that because it is a civil dispute, we have no role to play. There can be serious apprehensions of the breach of the peace created on account of the attitude of the parties and the police on receipt of a complaint that any person likely to commit a breach of the peace or disturb the public tranquillity or to do any unlawful act that would probably occasion a breach of the peace or disturb the public tranquillity cannot be justified in saying that because the complaint related to a property right there is no occasion for a report to a Magistrate for action u/s 107 of the Code of Criminal Procedure and to seek a direction from a competent Magistrate for executing bonds with or without sureties for maintaining the peace and the tranquillity. There may further be occasions requiring the police to play an effective role and seek orders of a competent Magistrate to prevent obstruction, annoyance or injury to any person lawfully employed or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot or an affray and invoke Section 144 of the Code of Criminal Procedure leaving for the Magistrate empowered to Act in the case a dispute likely to causes breach of the peace concerning any land or water or boundaries thereof to act u/s 145 of the Code of Criminal Procedure and order attachment of the subject of the dispute or to appoint receiver u/s 146 of the Code of Criminal Procedure. Such preventive laws also empower police officer to interpose for the purpose of preventing cognizable offences u/s 149 of the Code of Criminal Procedure as well as to arrest to prevent the commission of cognizable offences u/s 151 of the Code of Criminal Procedure. We have not digressed when we have referred to these provisions of the Code of Criminal Procedure from the main controversy before us because, on the facts, as presented before us, we have no manner of doubt that the police has played a role, but it has not chosen to disclose the whole truth. The truth, undoubtedly, is somewhere between the version of the plaintiff or the 1st defendant either the 3rd respondent took the key in his possession and later got the 1st defendant induced in possession of the suit property or he did not do any such thing, and some how either for the reason that the plaintiff vacated and allowed the 1st defendant to enter possession or otherwise the 1st defendant entered upon the property. There were moments or serious tension between the parties giving one occasion on 24th of December to the 1st defendant to rush to the police and another on 25th December to the plaintiff to rush to the police. On 7th of January, 1993 the police was guarding the subject property, that is to say the

suit property when the Advocate-Commissioner visited the suit premises, the two constables reported about specific instructions to them to prevent any entry upon the suit property and they named, according to the Advocate-Commissioner, the 3rd respondent as the officer issuing such instructions. Learned Counsel appearing for the respondents 3 and 4 has tried to persuade us to hold that since records at the police station do not support either of the versions, that is to say, the plaintiffs version or the defendants' version and they do not also justify his statements that are attributed to the constables by the Advocate-Commissioner in his report and all that is said about the role of the 3rd respondent in the writ petition, that is to say the Inspector of Police, G-2 Police Station of the 4th respondent, that is to say the Sub Inspector of Police are connected by the plaintiff to lend credence to his case that the 1st defendant succeeded in dispossessing him with the police help. We are, however, not satisfied that these respondents have stated the whole truth by saying that they have played no role at all. We have on the record the affidavit of the Commissioner of Police, Madras City, and he, it appears, at least has whom desire to improve the functioning of the police in the City of Madras. It is indeed necessary that the Police Commissioner is made aware that hands off, if sort of a civil dispute is reported, is not a totally correct approach, at the same time interference to support one party whose case is found by such policemen justifiable is also not correct approach. The correct approach in a situation where dispute of civil nature is likely to cause apprehensions of the breach of the peace or the public tranquillity or where there are obstructions to the rightful exercise of possession of one by another who has a right or no right of his own but is ready to act aggressively is to take recourse to the provisions u/s 107 or Section 144 of the Code of Criminal Procedure as the case may be and to leave rest to be done by the Magistrate concerned in accordance with law and to Act strictly in obedience to the law under the directions of the Magistrate in this behalf. Such Magisterial powers in the city are some times exercised by the police personnel as well and if they are vested with such magisterial powers there is no reason why they should not take recourse to such specific provisions of law and make known their actions so that the aggrieved party may take recourse to law to avoid any action against itself.

10. We have no reason to feel satisfied that when on 7th of January, 1993 the plaintiff, visited the office of the Police Commissioner he was not rebutted by the constable on duty, yet because that has caused as serious consequences and in any case when lawfully or unlawfully the 1st defendant had already been put in possession of the property, the Police Commissioner could do nothing tangible, we do not propose to go further into it. We have, however, reasons to think that the Assistant Commissioner, who held enquiry, gave no serious consideration to the complaint of the plaintiff that the Inspector of Police and Sub Inspector of Police of G-2 Police Station, Periamet, Madras had played parties role and he made no enquiry into it although the plaintiffs complaint was allegedly enquired into by him. Had he held enquiry and verified facts, perhaps he would have seen

through the defence of the 3rd and 4th respondent in the writ petition, that is to say, Inspector of Police and Sub Inspector of Police of G-2 Police Station, Periamet, Madras-3 and we should not have been left with no specific information as to their conduct in the matter.

11. Even if we leave, however, this aspect of the case aside, we have every reason to find in favour of the plaintiff that he had been to possession of the suit property and that he has been thrown out of possession by means sanctioned by law. His properties including the telephone and electrical connections existing in the premises, acceptance of rent and granting receipts to the plaintiff by the 1st defendant, stating in the complaint to the police on 24th December that the plaintiff/appellant had demolished a certain portion of the shed and was reconstructing the same without the consent of the Corporation of Madras are some such facts which lie the defence and make the case of the plaintiff more probable, it is not the stage, however for us to finally accept the version of the plaintiff or the 1st defendant and decide any issue of fact finally. We say so for the reason that the above, in our view, is sufficient prima facie to hold that the plaintiff has been thrown out of a property in his possession without sanction or, authority of law and the 1st defendant has not been fair in denying to him possession of the premises either in the capacity of a tenant under him or in the capacity atleast of the managing partner of a firm which has not yet been legally dissolved.

12. Courts ordinarily do not favour grant of a mandatory injunction and prefer preservation of status quo than making one party to vacate and another to occupy any property. The rule as to the preservation of status quo, however, has several exceptions, one such exception being that one who has unlawfully thrown out another from his lawful possession must be directed to restore the status quo note when he resorted to the unlawful act. This will be least that a court will order as recurring damages which a person on lawful possession will suffer if he is kept out of possession may not be compensated only in terms of money. In such a case, the balance of convenience is always in favour of party who has acted within the confines of law. We, have given our anxious consideration as to the nature of the order we should pass on the facts and in the circumstances of this case. We are inclined in the instant case to order that the defendants in the suit shall vacate possession and allow the plaintiff to assume possession of the suit premises forthwith and if there is any reluctance in vacating possession by the defendants, the respondents 1 to 4 in the writ petition shall ensure that they vacate possession and the plaintiff is put in possession of the suit property. The 1st defendant, wearer informed, has reached a ripe age and even though he has, in our prima facie opinion, not acted in accordance with law and shown least regard to the law than his age and experience would have taught him to show, we are inclined to fix a time limit for him to vacate the suit premises and permit the plaintiff to assume possession. We accordingly indicated to the learned Counsel for the defendants/respondents in the appeal to report after consulting the respondents concerned. He has, however, not indicated about any such time-

limit that we should fix in this case. In view of the above we fix no time limit except that the plaintiff/appellant shall wait for a period of one week for the 1st defendant and others inducted by him to vacate the premises and in case they fail to vacate within the said period of one week to inform accordingly to the 2nd respondent in the Writ petition. The 2nd respondent in the writ petition shall issue necessary instructions to the police personnel concerned who shall ensure that status quo as ordered by us is restored. The plaintiff/appellant, however, when restored to possession shall not in any manner alter the physical features of the suit property except the repairs of the damages caused either by a natural calamity or by any of the defendants, their agents or men, for which purpose, however, he shall make a specific report to the trial court. The appeal is allowed and ordered accordingly. Since the order in appeal will take care of the ends of justice, no separate order is required in the writ petition. The writ petition is, accordingly, disposed of. On the facts of this case, there shall, however, be no order as to costs.