

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOMAS P.JOSEPH

FRIDAY, THE 30TH DAY OF NOVEMBER 2012/9TH AGRAHAYANA 1934

RSA.No. 1460 of 2012 ()

AS.97/2011 of DISTRICT COURT,THODUPUZHA
OS.172/2002 of MUNSIFF COURT, DEVIKULAM

APPELLANT(S)/RESPONDENTS 3,4 AND 5/DEFENDANTS 3,4 AND 5:

1. BINU MENDEZ,
S/O.MANUEL MENDEZ, RESIDING AT PGP NO.IV/53,
PALLIVASAL ESTATE, PALLIVASAL VILLAGE.
2. MRS.MANUEL MENDEZ,
W/O.MANUEL MENDEZ, RESIDING AT PGP NO.IV/53,
PALLIVASAL ESTATE, PALLIVASAL VILLAGE.
3. BINTHIS,
D/O.MANUEL MENDEZ, RESIDING AT PGP NO.IV/53,
PALLIVASAL ESTATE, PALLIVASAL VILLAGE.

BY ADVS.SRI.SATHISH NINAN
SRI.SANTHOSH MATHEW

RESPONDENT(S)/APPELLANT AND RESPONDENTS 1,6,7 AND ADDL.8TH
RESPONDENT/PLAINTIFF AND DEFENDANTS 1,6 AND 7):

1. M/S.TATA TEA LIMITED
A PUBLIC LIMITED COMPANY INCORPORATED IN INDIA WITH ITS HEAD OFFICE
AT 1, BISHOP LEFROY ROAD,
CULCUTTA WITH ITS REGIONAL OFFICE AT MUNNAR,
KDH VILLAGE, REPRESENTED BY MANAGER,
SOUTH INDIA ESTATE DEPARTMENT, TATA TEA LTD
AND POWER OF ATTORNEY HOLDER OF THE COMPANY PRESENTLY NAMED
TATA GLOBAL BEVERAGES LTD., KOLKATA, PIN 700035.
2. C.G.MENDEZ,
BUILDING CONTRACTOR, RESIDING AT PGP NO.IV/53,
NURSERY DIVISION, PALLIVASAL ESTATE
PALLIVASAL VILLAGE- 685 565.
3. TRESA,
W/O.SURENDRAN, RESIDING AT PGP NO.IV/53
NURSERY DIVISION, PALLIVASAL ESTATE
PALLIVASAL VILLAGE- 685 565.

4. SURENDRAN,
HUSBAND OF TRESA, RESIDING AT IV/53,
NURSERY DIVISION, PALLIVASAL ESTATE,
PALLIVASAL VILLAGE- 685 565.
5. PAVITHA,
D/O.LATE MANUEL MENDEZ, RESIDING AT PGP NO.IV/53,
NURSERY DIVISION, PALLIVASAL ESTATE,
PALLIVASAL VILLAGE- 685 565.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
30-11-2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOMAS P. JOSEPH, J.

R.S.A. No.1460 of 2012

Dated this the 30th day of November, 2012.

JUDGMENT

Defendants 3 to 5 in O.S.No.172 of 2002 of the Munsiff's Court, Devikulam are aggrieved by the decree for their eviction along with respondent No. 2 onwards from the building referred to in the plaint schedule on the strength of the title claimed by the 1st respondent, a private limited company.

2. According to the 1st respondent, the 2nd respondent as a building contractor under it was permitted to occupy the schedule building as per a license agreement dated 01.01.1999. As performance of the 2nd respondent was not satisfactory, his engagement was terminated. Thereon, the 2nd respondent shifted residence to Perumbavoor after inducting defendants 2 to 7 and others into the building. Hence the suit for eviction.

3. Defendants 1 to 5 contended and raised a counter claim that the building referred to in the plaint schedule does not belong to the plaintiff and that building No.4/53 referred to in the plaint is owned by defendants 1 and 2 along with eight cents which is the land appurtenant to that building. Defendants 3 to 5 are stated to be family members of defendants 1 and 2. They denied that they had any license agreement between the plaintiff and the 1st defendant. The father of defendants 1 and 2 was working as a contract worker under the plaintiff. In the counter claim defendants 1 to 5 prayed for a decree for

prohibitory injunction against the plaintiff interfering with their possession of the property.

4. The plaintiff filed replication disputing the contentions raised by defendants 1 to 5 in the counter claim.

5. The counter claim was later withdrawn as per the order on I.A.No.337 of 2006.

6. The trial court dismissed the suit observing that boundaries mentioned in Ext.A2, agreement of license and the plaint schedule are different. Against that dismissal the plaintiff filed A.S.No.79 of 2006 in the District Court, Thodupuzha. That appeal was transferred to the Sub Court, Thodupuzha where it was renumbered as A.S.No.66 of 2006. That appeal was allowed by way of remand. After remand the plaintiff examined PW2 and marked Exts.A1 to A16. PW2 was not cross examined by the defendants for the reason of their counsel having no instruction as to the further conduct of the case.

7. The trial court again dismissed the suit pointing to the discrepancies in the boundaries in the plaint schedule and Ext.A2 and observing that Ext.A1, copy of the building tax assessment register lacks clarity.

8. That dismissal was challenged in A.S.No.97 of 2011. In the appeal, Exts.A17 series were received as additional evidence. Based on Ext.A17 series as well, the first appellate court concluded that the claim of the plaintiff over the building has to be accepted and consequently granted a decree for eviction. That judgment and decree are under challenge.

9. The learned counsel for appellants/defendants 3 to 5 contend that

finding of the first appellate court as to the identity of the building is not correct. It is pointed out that according to the defendants, they are in possession of eight cents adjoining the building referred to in the plaint and it is not clear whether eviction sought for is concerning the said building or the adjoining building constructed by the defendants. A further contention the learned counsel has advanced is that when Ext.A17 series were admitted in evidence in appeal the defendants ought to have been given an opportunity to controvert the same by adducing evidence. It is pointed out by the learned counsel that if the contentions raised by the 1st defendant in the reply notice (Ext.A4) were to be acted upon, the entire facts stated therein including that the 1st defendant is a tenant under the plaintiff ought to have been accepted in which case the suit for recovery of possession would not lie in the civil court.

10. I must notice that though in the counter claim, defendants 1 to 5 had raised a claim of title over the building, that was given up by withdrawing the counter claim as per I.A.No.337 of 2006. As it now stands, none of the defendants has a claim of title over the building in the suit property. On the otherhand, there is no serious dispute that the building belongs to the plaintiff as is revealed from the contentions raised. According to defendants 1 to 5, father of defendants 1 and 2 was engaged in contract work under the plaintiff and he was allowed to occupy the building.

11. Ext.A2 is the agreement proved to be executed by the 1st defendant in favour of the plaintiff. Ext.A3 is the notice issued on behalf of the plaintiff to the 1st defendant seeking recovery of possession. There, the building

number mentioned is 4/53. Ext.A4 is the reply notice where the 1st defendant has not made any claim over building No.4/53. Instead, he only claimed that he is a tenant of the plaintiff in that building. That was taken into by the first appellate court.

12. Ext.A7 is a letter sent by the 1st defendant to the plaintiff where he has stated that he has no objection in evicting the workers under him from the building in question. Ext.A16 are extracts of the building tax assessment registers. There, the old number of the building is stated as 7/216 and the new number as 7/217. In Ext.A17 series, the electoral roll of the year, 2012 concerning some of the contesting defendants who are claiming right under the 1st defendant, they are shown to be residing in building No.7/217. The old number of that building is mentioned as 4/53 (which is the building number originally stated in the plaint schedule and later amended as 7/217).

13. True that Ext.A17 series were admitted in evidence in the appeal and the defendants were not given opportunity to adduce contra evidence. But I must notice conduct of the defendants while PW2 was examined and Exts.A14 to A16 were marked in evidence after the remand they did not take part in the trial for the reason of the counsel not having any instruction regarding the further conduct of the case. In other words they had no dispute about Exts.A14 to A16. In Ext.A17 the present number of the building is given as 7/217 with its old number as 4/53. The defendants have no plea that they are in possession of any other building. Therefore, building No.4/53 referred to in Ext.A17 series and stated in the plaint originally is the building referred to in the plaint

schedule which carries the present number, 7/217. Along with that, there is the statement of the 1st defendant in Ext.A4, reply that he is occupying building No.4/53 (originally stated in the plaint) though according to him as a tenant.

14. No doubt in Ext.A4, a plea of tenancy is raised but no such contention was raised in the written statement.

15. Having regard to the above, I am not inclined to think that for the purpose of directing a further remand of the case to enable the defendants controvert Ext.A17 series I should entertain this appeal. I do not find any substantial question of law involved in the second appeal.

16. It is submitted by the learned counsel that for two generations the defendants are staying in the building in the suit property. Having regard to the above and the difficulties pointed out to find alternate accommodation I am inclined to grant six (6) months' time to the defendants to vacate the building.

Resultantly, the second appeal is dismissed. But the defendants are granted six (6) months' time to vacate the building referred in the plaint schedule subject to the following conditions:

i. that they shall not put up any additional structures or commit mischief in the building referred to in the plaint schedule during the said period of six (6) months.

ii. that the defendants shall not induct third parties into possession or create documents concerning the said building.

iii. that the defendants shall file an affidavit in the executing court within two weeks from this day undertaking to vacate the

premises without putting forth any claim or objection before the expiry of the said period of six months.

iv. In case any of the above conditions is violated it is open to the plaintiff to proceed with the execution of the decree.

v. It is directed that execution of the decree for eviction alone will stand in abeyance for the said period of six (6) months or till the defendants vacate the building or till they violate any of the conditions above stated, whichever is earlier.

All pending interlocutory applications will stand dismissed.

**THOMAS P.JOSEPH,
Judge.**

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