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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

FRIDAY, THE 24TH DAY OF MAY 2024 / 3RD JYAISHTA, 1946

RSA NO. 943 OF 2008

AGAINST THE JUDGMENT AND DECREE DATED 26.06.2008 IN AS NO.221 OF 2005 OF II ADDITIONAL DISTRICT COURT & SESSIONS COURT,PALAKKAD ARISING OUT OF THE JUDGMENT AND DECREE DATED 20.07.2005 IN OS NO.500 OF 2003 OF ADDITIONAL MUNSIFF COURT, PALAKKAD

APPELLANTS/APPELLANTS/DEFENDANTS:

1 A.SIVALINGAPPA GOWDER @ SIVARAJ GOWDER,
[DIED LRs IMPLEADED]
S/O.ANANTHARAMA GOWDER,KUNNATHURMEDU,
KUNNANUR, AMSOM, PALAKKAD.

2 ANANTHARAMAN RAVI,[DIED LRs IMPLEADED]
S/O.A.SIVALINGAPPA GOWDER @ SIVARAJ GOWDER,
-DO- -DO-

ADDL.3 SHAKILA.B
AGED 51 YEARS, W/O.LATE ANANTHARAMAN @ RAVI,
NO.4,ALAPHA NAGAR,KOVAI PUDUR,
COIMBATORE-641 042.

ADDL.4 NAMRUTA.A
AGED 24 YEARS, D/O.LATE ANANTHARAMAN @ RAVI,
NO.4,ALAPHA NAGAR,KOVAI PUDUR, COIMBATORE-641 042.

ADDL.5 VIDHYANANDHI.M
AGED 48 YEARS, W/O.LATE ANANDARAJ,
NO.III, JAMIYA NAGAR,BHARATHI NAGAR EXTN.,
KOVAI PUDUR,COIMBATORE-641 042.

ADDL.6 S.A.SABARI KRISHNA
AGED 21 YEARS,S/O.LATE ANANDARAJ,
NO.III, JAMIYA NAGAR, BHARATHI NAGAR EXTN.,
KOVAI PUDUR, COIMBATORE-641 042.

ADDL.7 S.A.SMRITI GOWRI
AGED 18 YEARS, D/O.LATE ANANDARAJ,
NO.III, JAMIYA NAGAR,BHARATHI NAGAR EXTN.,
KOVAI PUDUR,COIMBATORE-641 042.

(LEGAL REPRESENTATIVES OF DECEASED FIRST APPELLANT ARE IMPLEADED AS ADDL.A3 TO A7 AND LEGAL REPRESENTATIVES OF DECEASED SECOND APPELLANT ARE IMPLEADED AS ADDL.A3 AND A4 AS PER THE ORDER DATED 11.10.2022 IN IA.1/2022.)

BY ADVS.
SAJAN VARGHEESE K.
LIJU. M.P

RESPONDENTS/RESPONDENTS/PLAINTIFFS:

1 **N.A.ANIDAS, S/O.APPUKKUTTAN**
VALIYAVEETTIL, KUNNATHURMEDU,
KANNANUR AMSOM, PALAKKAD.

2 **NA AJIDAS S/O.APPUKKUTTAN VALIYAVEETIL**
KUNNATHURMEDU, KUNNANUR AMSOM, PALAKKAD.

BY ADVS.
SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN - R1 & R2

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 11.4.2024, THE COURT ON 24.05.2024 DELIVERED THE FOLLOWING:

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C.PRATHEEP KUMAR, J.

R.S.A.943 of 2008

Dated : 24th May 2024

JUDGMENT

1. This Second Appeal has been preferred under Section 100 r/w Order XLII Rule 1 & 2 of CPC by the appellants in A.S.221/2005 on the file of the District Court, Palakkad, who are the defendants in O.S.500/2003 on the file of the Munsiff's Court, Palakkad, against the judgment dated 26.6.2008 dismissing the appeal. For the purpose of convenience the parties are hereafter referred as per their rank before the trial court.

2. The brief facts necessary for the disposal of this appeal are the following:

The plaint schedule property consisting of ½ share over 98 cents of landed property and the residential building scheduled in the plaint originally belonged to late Anandarama Gowder. He had three sons, Devaraja Gowder, Subbayya Gowder and Sivalingappa Gowder, who is the 1st defendant in the suit. The 2nd defendant is the son of the 1st defendant. In the family partition, the above 98 cents and the building therein was jointly allotted to Devaraja

Gowder and Subbayya Gowder. One half undivided right of Devaraja Gowder from the above 98 cents and building was purchased by the plaintiffs 1 and 2 as per Ext.A1 sale deed No.3406/2001, which is the plaint schedule property. In one portion of the building the defendants have been residing with the permission of Devaraja Gowder. After purchasing the share of Devaraja Gowder as per Ext.A1 sale deed, the plaintiffs filed the suit for mandatory injunction for vacating the defendants from the schedule property and the building therein. The defendants would admit that Devaraja Gowder and Subbayya Gowder are the co-owners of the 98 cents of property scheduled in the plaint. However, according to them, after the family partition, the 1st defendant exchanged his house situated at Kunnathurmedu to Devaraja Gowder with the share of Devaraja Gowder in the above 98 cents and started residence in the building therein. Therefore, the defendants would contend that they are residing in the building in the schedule property not as a licencee. They would further contend that they are not aware of the sale deed executed by Devaraja Gowder in favour of the plaintiffs and also that the right of Devaraja Gowder was acquired by the defendants by adverse possession and limitation.

3. The trial Court rejected the contentions of the defendants and decreed the suit by directing them to surrender vacant possession of the schedule property to the plaintiffs. The 1st Appellate Court also confirmed the judgment and decree of the trial court. Dis-satisfied with the above concurrent findings of the trial court and the 1st appellate court, the defendants preferred this second appeal. During the pendency of the Second Appeal, both the defendants died and the LRs were impleaded as additional appellants 3 to 7.

4. At the time of admission, the following substantial question of law was formulated by this Court :

> *"Whether the courts below were justified in decreeing the suit by granting decree of mandatory injunction directing the appellants/defendants to vacate the scheduled portion of the building occupied by them along with the first appellant's brother Subbayya Gowder consequent on acquisition of half right over the building and property from a co-owner, without a decree for partition and separate possession of the half right purchased by them on the strength of Ext.A2 power of attorney executed by one of th*e co-owners, *especially when plaintiffs are not related to the appellants/defendants, in view of Section 44 of the T.P.Act."*

5. Heard both sides in detail on the above substantial question of law.

6. At the time of arguments, the main contention raised by the learned counsel for the defendants was to the effect that since the defendants are residing in the building in the plaint schedule property even at the time of family partition, the remedy of the plaintiffs is to file a suit for recovery possession and not one for mandatory injunction. Another contention raised was that, since the residential building situated in the plaint schedule property is the family house of the defendants and the other co-owner Subbaraja Gowdar, the plaintiffs who are strangers cannot seek recovery possession of the same, without a prayer for partition. In support of the above arguments, the learned counsel for the defendants relied upon Section 44 of the Transfer of Property Act, 1882.

7. Section 44 of the Transfer of Property Act dealing with the transfer by one co-owner is extracted below for reference :

> **44. Transfer by one co-owner.—**
>
> *Where one of two or more co-owners of immovable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so*

far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

8. It is true that the plaintiffs who have purchased ½ undivided share from 98 cents of landed property and the residential building scheduled in the plaint are total strangers and not members of the family of his predecessor. Therefore, in the light of Section 44 of the Transfer of Property Act, it was argued that the plaintiffs are not entitled to get joint possession or other common or part enjoyment of the dwelling house situated in the plaint schedule property.

9. In the instant case, the above 98 cents of property and residential building scheduled in the plaint was allotted to the predecessor of the plaintiffs Devaraja Gowder and his brother

Subbayya Gowder, as early as in the year 1957. As per the above partition deed, no right in the above property was given to the 1st defendant. Till the execution of the partition deed in the year 1957, the 1st defendant was a co-owner of the above property and the residential building. As and when the partition deed was executed in the year 1957, the 1st defendant ceased to be a co-owner of the above property.

10. It is true that even after the execution of the partition deed in 1957, the 1st defendant continued to reside in the residential building situated in the above 98 cents of property. In the written statement, the contention of the defendants is that immediately after the partition in 1957, Devaraja Gowder allowed the 1st defendant and his family to reside in the residential building in the plaint schedule property in exchange for allowing him to reside in the house of the 1st defendant at Kunnathurmed and that accordingly, both of them had relinquished their rights over their respective properties. Further, the defendants contended that they have acquired prescriptive title over the plaint schedule property by adverse possession and limitation. However, both the trial court as well as the 1st appellate court concurrently found that the defendants could not prove the above claim. The above concurrent findings of the

trial court as well as the 1st appellate court regarding specific question of facts cannot be agitated again before this Court in second Appeal. Since the 1st defendant could not prove the claim that after the family partition, he had exchanged his house situated at Kunnathurmedu to Devaraja Gowder with the share of Devaraja Gowder in the above 98 cents, his residence in the building in the plaint schedule property after the execution of partition deed in the year 1957, can only be as a licensee of Devaraja Gowder.

11. In the decision in **Rajappan v. Veeraraghava Iyer, 1969 KHC 126** relied upon by the learned counsel for the respondents, a Single Judge of this Court, after comparing a lease and licence, held that, though exclusive possession is given if the possession is permissive does not amount to a lease. The defendants also have no case that they are in possession of the building in the schedule property as a lessee. At the same time, even according to the defendants, they are occupying the portion of the dwelling-house in the schedule property with the permission of the prior owner Subbayya Gowder. The above circumstances also substantiates the conclusion that the status of the defendants is only as licensees and nothing more than that.

12. Since, after the execution of the partition deed in the year 1957,

the 1st defendant is not a co-owner of the plaint schedule property, he is not entitled to get the benefit of the second paragraph of Section 44 of the Transfer of Property Act. At the same time, even after the partition deed of 1957, the other co-owner namely Subbayya Gowder continues to be the co-owner of the remaining one-half share in the 98 cents of landed property and the residential building scheduled in the plaint. Therefore, Subbayya Gowder could enforce the right under Section 44 of the Transfer of Property Act as against the 1st defendant. In this case, the other co-owner namely Subbayya Gowder is not made a party. It is true that in the written statement the defendants have raised a contention that Subbayya Gowder is a necessary party to the suit and failure to implead him as a party to the suit is fatal to the plaintiffs' claim. It was also argued that the plaintiffs who had acquired only one-half right over the 98 cents and the residential building scheduled in the plaint cannot claim exclusive possession over the residential building without a prayer for partition and without making the other co-owner as a party in the suit.

13. The learned counsel for the plaintiffs would argue that the plaintiffs have no right, interest or claim as against the other co-owner Subbayya Gowder and hence the decree obtained by them as

against the defendants will in fact enure to the benefit of Subbayya Gowder also. He has also relied upon certain decisions to substantiate his contention that one co-owner can sue another person for recovery of possession, without the juncture of the other co-owners and also to show that a decree obtained in such a proceeding will enure to the benefit of the other co-owners also.

14. The law is well settled that one co-owner could sue a third party for recovery of possession, on the strength of his title as a co-owner, without the juncture of the other co-owners **[Merly Thomas Kuriakose v. Dr.George Kuriakose, RFA 638/2012 decided on 19.3.2024; Valsala v. Sundaram Nadar, 1993 (2) KLT 67]** As held by the learned Single Judge in **Merly Thomas Kuriakose**, (supra), in such cases, a decree could be granted to the co-owner/plaintiff clarifying that the decree is granted in the capacity as co-owner and that it would enure to the benefit of other co-owners also. In the decision in **Valsala** (supra) in paragraph 12 the learned Single Judge held that :

> *"A tenant continuing in possession after the determination of his tenancy, without the assent of the landlord being thus only in the position of a trespasser, necessarily the rule relating to suits against trespassers*

by a co-owner must apply, that is a co-owner can in his own right sue for recovery of possession from such a person, without arraying the other co-owners as parties to the suit."

15. However, in exceptional circumstances the other co-owners also may become necessary parties to the suit, if one of the co-owners claims exclusive title to the property denying the rights of the other co-owners. Such an eventuality was discussed by the learned Single Judge in paragraph 13 as follows :-

"But the question still arises as to whether the plaintiff in this case can recover possession from the defendants. An exception to the rule above mentioned has been made where the suing co-owner claims exclusive title to the property in derogation or denial of the rights of the other co-owners. In such an event, the co-owner whose rights are denied or against whose interest the plaintiff is suing is a necessary party to the suit, and his absence will be fatal to the suit itself."

16. In the instant case, the plaintiffs have not denied the right, title and possession of the other co-owner Subbayya Gowder over the remaining ½ undivided share in the plaint schedule property and as

such absence of the other co-owner Subbayya Gowder in the party array in this case is not at all fatal to the prayer for recovery possession claimed by the plaintiffs.

17. The learned counsel for the defendants relying upon the decision of the Hon'ble Supreme Court in **Dorab Cawasji Warden v. Coomi Sorab Warden and Others, AIR 1990 SC 867,** would argue that the defendants are entitled to protection under the second paragraph of Section 44 of the Transfer of Property Act. In paragraph 25 of the above decision, the Hon'ble Supreme Court held that :

> *"The two brothers, therefore, shall be deemed to be holding the property as members of an undivided family and in the absence of the partition by metes and bounds qua this property they shall be deemed to have been holding the dwelling house as an undivided family. Prima facie, therefore, the transfer by defendants 1 to 3 would come within the mischief of second paragraph of S.44 of the Act."*

18. As I have already noted above, the protection under the second paragraph of Section 44 of the Transfer of Property Act is available in this case only to the other co-owner Subbayya Gowder. Since the first defendant in this case is not a a co-owner, but only a licensee

under the other co-owner Subbayya Gowder, he is not entitled to claim the protection under the second paragraph of Section 44 of the Transfer of Property Act .

19. The learned counsel for the defendants relied upon Section 4 of the Partition Act also, in support of his argument for denying eviction to the plaintiffs. Section 4 of the Partition Act dealing with partition suit by transferee of share in dwelling-house reads thus :

> ***"4. Partition suit by transferee of share in dwelling-house -***
>
> *(1)Where a share of a dwelling-house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the Court shall, if any member of the family being a shareholder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such shareholder, and may give all necessary and proper directions in that behalf.*
>
> *(2)If in any case described in sub-section (1) two or more members of the family being such shareholders*

severally undertake to buy such share, the Court shall follow the procedure prescribed by sub-section (2) of the last foregoing section. "

20. The benefit of sub-section (1) of Section 4 the Partition Act applies only to a shareholder of a dwelling house. As I have noted above, the first defendant in this case is not a co-owner of the schedule property, and as such he is not a shareholder of the dwelling-house situated therein. He is only a licensee under one of the co-owners Subbayya Gowder. Since the 1st defendant is not a shareholder of the dwelling house involved in this case, he is not entitled to get the benefit of Section 4 (1) of the Partition Act also.

21. Relying upon the decision of the Hon'ble Supreme Court in **Gautam Paul v. Debi Rani Paul and Others, AIR 2001 SC 61**, the learned counsel for the defendants would argue that without a prayer for partition, the prayer for recovery possession cannot be allowed. In the above decision, one of the questions which arose for consideration of the Hon'ble Supreme Court was *"whether in the absence of the transferee suing for partition a shareholder can invoke S.4 and buy over such share ?"*

22. In the decision in **Ghantesher Ghosh v. Madan Mohan Ghosh,**

1996 (11) SCC 446, the Hon'ble Supreme Court has laid down the conditions to be fulfilled for invoking Section 4 of the Partition Act, in paragraph 4, as follows :

> *(1) A co-owner having undivided share in the family dwelling house should effect transfer of his undivided interest therein.*
>
> *(2) The transferee of such undivided interest of the co-owner should be an outsider or stranger to the family.*
>
> *(3) Such transferee must sue for partition and separate possession of the undivided share transferred to him by the co-owner cncerned.*
>
> *(4) As against such a claim of the stranger transferee, any member of the family having undivided share in the dwelling house should put forward his claim of pre emption by undertaking to buy out the share of such transferee, and*
>
> *(5) While accepting such a claim for pre emption by the existing co-owner of the dwelling house belonging to the undivided family, the Court should make a valuation of the transferred share belonging to the stranger transferee and make the claimant co-owner pay the value of the*

share of the transferee so as to enable the claimant co-owner to purchase by way of pre emption the said transferred share of the stranger transferee in the dwelling house belonging to the undivided family so that the stranger transferee can have no more claim left for partition and separate possession of his share in the dwelling house and accordingly can be effectively denied entry in any part of such family dwelling-house."

23. In the decision in **Gautam Paul** (supra), relying upon the above principles laid down in **Ghantesher Ghosh** (supra), the Hon'ble Apex court held that, prayer for partition is necessary for claiming the right of pre-emption under Section 4 of the Partition Act. The right of pre-emption recognized under Section 4 of the Partition Act is available only to a sharer of a dwelling-house. The present suit is not one claiming pre-emption. Since the 1st defendant is not a sharer of the dwelling-house involved in this case, and the suit is not for pre-emption, the decision in **Gautam Paul** (supra) does not apply to the facts of this case.

24. On the other hand, even if the plaintiffs recover possession of the dwelling-house situated in the plaint schedule property in his capacity as a co-owner, the same will enure to the other co-owner

Subbayya Gowder also. More over, the claim of Subbayya Gowder under Section 4 of the Partition Act and Section 44 of the Transfer of Property Act will not in any way be affected by the decree that may be passed in this case, as Subbayya Gowder is not a party in the present proceedings.

25. The learned counsel for the defendants would argue that since the defendants are residing in the dwelling-house in the plaint schedule property even before the execution of Ext.A1 sale deed, they can be evicted only through a suit for recovery of possession and a suit for mandatory injunction is not enough. He has also relied upon the decision of a Division Bench of this Court in **Aspinwall and Co.Ltd v.Soudamini Amma, 1974 KLT 681**, to substantiate the above argument. According to the plaintiffs, after purchasing the plaint schedule property as per Ext.A1 sale deed in the year 2001, they have terminated the licence on 12.7.2003 and demanded the defendants to vacate the premises. Since the defendants failed to vacate the building as demanded, the plaintiffs preferred this suit for mandatory injunction.

26. In paragraph 5 of the decision in **Aspinwall and Co.Ltd**, the Division Bench held that :

"The licence is terminated. But the licensee does not leave

the premises. The question that may arise in the suit is whether a suit for a mandatory injunction or a suit for possession is the proper remedy. A mere licence only makes an act lawful which without it would be unlawful. A licensee has only a right of occupation with the permission of his licenser and his possession is not juridical possession. The licensee will be the actual occupant but the licenser will be the person having the control or possession of the property through his licensee. Then on the termination of the licence can the licensee be treated as a trespasser? In the possession of a trespasser there cannot but be an element of animus possidendi which will not be there in the possession which a licensee is having. Even after the termination of the licence the licensee may have to continue to be in occupation of the premises for some time, because in many cases the licensee may require some reasonable time to remove materials belonging to him and quit the place. But during such time the licenser will be deemed to be in possession through his licensee, because the licensee cannot have any independent or separate interest in the premises. In that case a licensee cannot

possibly be treated as a trespasser. But there will be cases where even after the expiry of the licence the licenser sleeps over the matter and does not take prompt action to neck the licensee out of the premises. No doubt a licensee can continue in occupation of the premises for a reasonable time after the termination of the licence. But if the licenser is not vigilant and the licensee continues in occupation of the premises beyond this reasonable time, what will he be? Will he be still a licensee or will he become a trespasser? If he continues to cling on to the premises why should he still be a licensee? No doubt it will be difficult to make a distinction in actual practice as to when a licensee becomes a trespasser and upto what time he will continue to be a licensee. There can be a more definite test. If on the expiry of the licence an assertion of a hostile title is made by the licensee and the licenser sleeps over the matter then the occupation of the licensee can be considered to have been converted into one of possession of a trespasser. Under such circumstances the licenser will have to sue for recovery of possession and a suit for a mandatory injunction under S.39 of the Specific Relief Act,

1963 will not be the remedy."

27. In the instant case, the licence was terminated on 12.07.2003 and immediately thereafter the suit was filed on 21.07.2003. Therefore, it can be seen that, in this case there is absolutely no delay in filing the suit for mandatory injunction, after the termination of the licence and as such, there was no occasion for the defendants to change their character from that of a licensee to that of a trespasser. For the very same reasons it is also to be held that in this case there is absolutely no necessity for any suit for recovery of possession and as such the present suit for mandatory injunction is sufficient for claiming recovery of possession from the defendants.

28. In the decision in **George v. John, 1984 KHC 117** relied upon by the learned counsel for the plaintiffs, another Division Bench of this Court held in paragraph 9 thus :

".....A trespasser is a person in wrongful possession who has a hostile animus against the person entitled to the legal possession of the property. A licensee has no possession and having come on the property under a permissive arrangement with no possession or interest it cannot be assumed that the moment the licence is withdrawn he acquires the necessary physical and

mental elements to become a trespasser. He might usurp the possession and develop into a trespasser, but then it is not an automatic and necessary development the moment the licence is over. If he is a trespasser he would perfect his possession and become an owner at the end of 12 years. As the Privy Council observed in Kodoth Ambu Nayar v. Secretary of State for India, ILR Madras 572 (582) "Their Lordships think that a licensee cannot claim title only from possession, however, long, unless it is proved that the possession was adverse to that of the licenser, to his knowledge and with his acquiescence". We are not concerned with title but this passage is helpful to show that possession of a licensee could become hostile, after revocation of the licence only if the possession was adverse to the licenser to his knowledge and with his acquiescence. That is a matter to be pleaded and proved by the licensee. Lawful possession however long will not be adverse and it is only adverse possession that leads to the acquisition of title. A licensee's occupation does not become hostile possession, or the possession of a

trespasser the moment the licence comes to an end."

29. Relying upon the decision of the Hon'ble Supreme Court in **Sant Lal Jain v. Avtar Singh,** AIR 1985 SC 857, the learned counsel for the plaintiffs would argue that even if there is some delay in approaching the court, the court should not deny relief of mandatory injunction to the licenser by driving him to file another round of suit for recovery of possession, as it is necessary to avoid multiplicity of suits. In paragraph 7 the Hon'ble Supreme Court held that:

> *"In the present case it has not been shown to us that the appellant had come to the court with the suit for mandatory injunction after any considerable delay which will disentitle him to the discretionary relief. Even if there was some delay, we think that in a case of this kind attempt should be made to avoid multiplicity of suits and the licensor should not be driven to file another round of suit with all the attendant delay, trouble and expense. The suit is in effect one for possession though couched in the form of a suit for mandatory injunction as what would be given to the plaintiff in case he succeeds is possession of the property to which he may be found to be entitled. Therefore, we are of the opinion that the appellant should not be denied relief merely because he had couched the plaint in the form of a suit for mandatory injunction."*

30. The learned counsel for the plaintiffs relying upon Section 59 of

the Easements Act would also argue that they are not bound by the license granted by his predecessor. Section 59 of the Easements Act, states that :

> ***59. Grantors transferee not bound by license***
>
> *"When the grantor of the license transfers the property affected thereby, the transferee is not as such bound by the license."*

31. It is true that by virtue of S.59 of the Easements Act the plaintiffs are not bound by the license granted by Devaraja Gowder. Even then, the plaintiffs have terminated the license and filed the suit only thereafter. Since the suit is filed after terminating the license, S.59 of the Easements Act has no relevance in the facts and circumstance of the present case.

32. In the light of the above discussions it can be seen that, the defendants not being co-owners of the plaint schedule property and the residential building situated therein, they are not entitled to get the benefit of paragraph 2 of Section 44 of the Transfer of Property Act. Since the 1st defendant along with the 2nd defendant are residing in the dwelling-house in the plaint schedule property as liencesees, on termination of licence, they are bound to vacate the plaint schedule property. Since they have refused to vacate the plaint

schedule property even after termination of the licence on 12.7.2003, the plaintiffs are entitled to get a decree of mandatory injunction directing the defendants to vacate the plaint schedule premises. Since the suit was filed immediately on termination of license, suit for recovery of possession in not required in this case. Similarly, since the suit is not for pre-emption, absence of any prayer for partition is not fatal to the plaintiff's case. The substantial question of law is answered accordingly.

33. In the light of the finding on the substantial question of law, I do not find any irregularity or illegality in the impugned judgment and decree of the 1st Appellate court so as to call for any interference. Therefore, the Second Appeal is liable to be dismissed.

In the result, the Second Appeal is dismissed with costs.

Sd/-

C.Pratheep Kumar, Judge

Mrcs/3.5.