

Delhi Motor Company and Ors

Vs

U. A. Basurkar and Ors

Civil Appeal No. 495 of 1965.

(J. C. Shah, V. Ramaswami – I, V. Bhargava JJ)

08.01.1968

JUDGMENT

BHARGAVA J. –

The first appellant, Messrs. Delhi Motor Company, is a partnership firm (hereinafter referred to as "the firm"), of which the other four appellants Nos. 2 to 5 are partners. Respondent No. 6, New Garage Ltd., is a private limited company (hereinafter referred to as "the company"), of which respondent No. 1 was the Managing Director, and respondents Nos. 2 to 5 were members of the Board of Directors. The firm brought a suit against the Company for possession of part of the building known as "Scindia House" situated in Connaught Circus, New Delhi, on the basis of an agreement of sub-lease. Possession was claimed of a portion of the Show-Room on the ground floor, of 1/2 portion of the Balcony, and another portion of the premises which were, in the year 1950, in the possession of Messrs. Kanwar Brothers Ltd. The case put forward by the firm was that the Company was the tenant of Scindia House and was in occupation of the Show-Room and other parts of the building, while a part of it was occupied by Messrs. Kanwar Brothers Ltd. as sub-lessee of the Company. According to the firm, the agreement to sub-lease, or the sub-lease on the basis of which possession was claimed by the firm from the Company, is evidenced by three documents, the first one of which is letter, Ext. P.1, dated 20th February, 1950, written by K. S. Bhatnagar, appellant No. 2, on behalf of the firm, to U. A. Basurkar, respondent No. 1, who was the Managing Director of the Company. The second document is letter, Ext. P.2, dated 22nd February, 1950, written by respondent No.1 Basurkar to appellant No. 2 Bhatnagar; and the third document is Ext. P.3, which purports to be notes on agreement arrived at between Basurkar and Bhatnagar on 22nd February, 1950. The case of the firm was that, though these documents did not purport in so many words to be an agreement of sub-lease to be granted by the Company to the firm, in substance and in fact, the agreement arrived at was of a sub-lease in respect of the premises mentioned above. Since, under the Delhi and Ajmer Merwara Rent Control Act 19 of 1947, if a sub-lease had been granted by the Company to the firm without the consent of the landlord, the Company would have been liable to ejection from the premises, the agreement was not made as directly evidencing a sub-lease, so that the landlord should not have an opportunity of suing the Company for ejection. In February, 1950, when the agreement evidenced by these three documents was arrived at, respondent No. 1, U. A. Basurkar as Managing Director did not have the authority to enter into this transaction on behalf of the Company with the firm and, consequently on 22nd March, 1950, the Board of Directors of the Company, by a resolution Ext. P. 9, authorised the Managing Director to enter into this transaction. Thereafter, the firm came into possession of two portions of the leased property and started its business in them with effect from 1st April, 1950. The two portions of the leased property, which came into the possession of the firm, were a portion of the Show-Room on the ground floor and a half portion of the Balcony on the first floor. The agreement contained in these letters and

documents also required parties to carry out some other obligations and, according to the firm, it complied with them. In order to avoid the liability of the Company for ejection under the Delhi and Ajmer Merwara Rent Control Act, 1947, the agreement was sought to be given the form of a partnership; and in order to enable the Company to enter into such a transaction, a special resolution Ext. P. 4 was passed on 24th November, 1950 at an Extra-ordinary General Meeting of the Shareholders of the Company amending the Memorandum of Association of the Company. This amendment was subsequently approved by the District Judge and was registered with the Registrar of Companies. So far as the landlord is concerned, he was not a party to these transactions, though, on 5th April, 1951, the landlord gave a letter Ext. P. 22 recognising the possession of the firm, but he specifically stated in that letter that the firm would be a licensee and not a sub-lessee. One other term in the agreement arrived at was that appellant No. 2, K. S. Bhatnagar, was to be taken as a Director of the Company and he was in fact included in the Directors of the Company thereafter. The further case of the firm was that when Messrs. Kanwar Brothers Ltd. vacated the portion of the premises which was included in the sub-lease, the Company did not give possession of that portion of the leased property to the firm and also started obstructing the use of those portions of the property by the firm of which the firm had secured possession by 1st April, 1950. A stage came when the firm was completely dispossessed from the property leased and, ultimately, after giving notices, the firm instituted a suit on 18th June, 1952. The principal prayer in the suit was for delivery of possession in respect of all the three portions of the leased property. Then, there was a claim for damages to the extent of Rs. 10,000/- in respect of loss incurred on account of dispossession and obstruction in use of the leased property at the instance of the Company. Injunctions were also sought restraining the Company from interfering with the rights of the firm and with their uninterrupted use of the leased property. There were further prayers for other consequential injunctions which need not be described in detail.

On behalf of the Company and its Directors, the plea put forward was that there was no agreement of sub-lease or a completed sub-lease between the Company and the firm and that, in fact, all that took place were negotiations for entering into a partnership. Even the agreement for partnership was never completed, so that the firm was not entitled to any relief at all.

The trial Court held that the contract evidenced by these documents was an agreement for a sub-lease and, since this agreement did not require registration, the firm was entitled to the reliefs claimed on the basis of this agreement. The Company and its Directors appealed to the High Court of Punjab and that Court held that these documents constituted a completed lease or at least an agreement to lease falling within s. 2(7) of the Indian Registration Act and, since the lease or the agreement to lease was evidenced by documents in writing and they were unregistered, the lease or the agreement to lease could not be enforced. On this sole ground, the High Court allowed the appeal and dismissed the suit of the firm. The firm has now come up in appeal to this Court by special leave.

The first point urged on behalf of the firm was that, in this case, there was a completed sub-lease, but it did not require registration for two reasons. The first reason advanced was that the lease was not evidenced by the documents Exts. P. 1, P. 2 and P. 3 only, but was, in fact, completed subsequently when, after the resolution of the Board of Directors of the Company, the Company gave possession of the leased property to the firm on or about the 1st April, 1950. The second reason was that, in any case, this lease was not a lease from year to year or for any term exceeding one year or reserving a yearly rent, so that s. 107 of the Transfer of Property Act was not applicable and registration was not compulsory. These submissions fail, because the lease, as relied upon by the firm, has to be held to be a lease of immovable property for a term exceeding one year, and such

a lease is fully governed by s. 107 of the Transfer of Property Act. The firm itself came forward with the case that the rights that were being claimed were under a lease and the lease was in respect of immovable property consisting of the three portions of the Scindia House which have been mentioned above. It was, however, urged that this lease was not for any fixed term at all and was for an indefinite period, so that it could not be held to be a lease from year to year either. It was further submitted that yearly rent had not been reserved in respect of this lease. Even these submissions were made on the basis that the terms of the lease have to be ascertained from the three documents Exts. P. 1, P. 2 and P. 3 which were relied upon by the firm to claim the relief in the suit. It appears to us that, if these documents are properly interpreted, an inference necessarily follows that the lease, if any, brought into existence by these documents was certainly for a period exceeding one year. Since reliance was placed on these documents on behalf of the firm to urge that there was a completed lease, learned counsel for the firm was asked to point out the provision which fixed the rent payable in respect of the leased property. The only provision, on which he relied to show that rent had, in fact, been agreed upon the fixed, was para 1 of Ext. P. 3 which contains notes on agreement dated 22nd February, 1950. That paragraph is as follows :-

"Profit share of party No. 1 would be 10% of net profit of New Delhi business only and will be settled at the end of the 1st closing of the financial year which would be 30th June, 1951."

Accepting this submission that this paragraph lays down the rent payable, it is clear that, under it, the rent payable for the first time would be 10% of the net profits earned by the firm in its New Delhi business up to 30th June, 1951. The period would naturally begin on the date on which the lease commenced. That date, according to the firm itself, was 1st April, 1950. From these facts it follows that when the rent is to be paid for the first time, it would be an amount of 10% of the net profits earned by the firm in its New Delhi business between 1st April, 1950 and 30th June, 1951, and, naturally enough, the rent will be in respect of the same period. This term, therefore, clearly laid down that the very first payment of rent was to be for a period of one year and three months, so that, even though no further period for the continuance of the lease after 30th June, 1951, was laid down, the lease at least made rent payable for the first period of fifteen months. The lease was, therefore, at least for a period of fifteen months and, consequently, for a period exceeding one year. Section 107 of the Transfer of Property Act was, thus clearly applicable and such a lease could not have been validly made, except under a registered instrument. Admittedly, there was no registration of the documents which constituted the lease and, consequently, the firm could not claim any rights on the basis of this lease evidenced by unregistered documents.

Learned counsel tried to urge that, since in these documents no definite period for the lease was mentioned, we should hold that s. 106 of the Transfer of Property Act was applicable and the lease being in respect of immovable property for purposes other than agricultural or manufacturing must be deemed to be a lease from month to month. We are unable to accept this submission, because none of the documents, on which reliance has been placed on behalf of the firm to prove the lease, contains any clause indicating that the tenancy was to be from month to month or the rent was payable monthly. In fact, the indication from para 1 of Ext. P. 3 quoted above is that the rent was to be payable annually, so that the contract itself seems to give an indication that it was to be a lease from year to year and annual rent was payable. These circumstances, however, are immaterial, because we have already indicated earlier our finding that this lease was at least for a minimum period of 15 months and, consequently, s. 107 of the Transfer of Property Act becomes applicable, irrespective of the question whether it was a lease from month to month or from year to year. The High Court was, therefore, quite correct in holding that on the basis of this lease the reliefs claimed

by the firm could not be granted to it.

In these circumstances, an argument was put forward on behalf of the firm that, though this contract to lease had not been registered, the firm could claim possession under it in view of the provisions of s. 53A of the Transfer of Property Act, because, in this case, the Company would be debarred from enforcing against the firm any right in respect of that property of which the firm had already taken possession, viz., part of the Show-Room and a portion of the Balcony. In our opinion, this argument proceeds on an incorrect interpretation of s. 53A, because that section is only meant to bring about a bar against enforcement of rights by a lessor in respect of property of which the lessee had already taken possession, but does not give any right to the lessee to claim possession or to claim any other rights on the basis of an unregistered lease. Section 53A of the Transfer of Property Act is only available as a defence to a lessee and not as conferring a right on the basis of which the lessee can claim rights against the lessor. This interpretation of s. 53A was clearly laid down by their Lordships of the Privy Council in *Proboodh Kumar Das and Others v. Dantmara Tea Company Limited & Others* [66 I.A. 293].

Learned counsel for the firm, however, relied on a decision of the Allahabad High Court in *Ram Chander v. Maharaj Kunwar and Others* [I.L.R. [1939] All. 809]. In that case, the lessee, under a registered lease which was defective and did not comply with requirements of s. 107 of the Transfer of Property Act, brought a suit against a subsequent purchaser of the house of the lessor on the allegation that the purchaser had, in collusion with the Municipal Board, procured the demolition of a portion of the house, and claimed a relief of perpetual injunction restraining the purchaser from demolishing the house or otherwise interfering with the lessee's rights as such, and for restoration of the demolished portion at the purchaser's cost. The High Court, in allowing the claim of the lessee, held :-

"Now, in the present case, what is it that the plaintiff is attempting to do ? He is not attempting to set up a transfer which is invalid; he has not instituted a suit for the declaration of the validity of the transfer; he has not instituted a suit in which he claims an order against the defendant directing him to perform any covenant of the transfer. What he is seeking to do is to debar the defendants from interfering with his possession into which he has entered with the consent of his transferor after the execution of a transfer in his favour. He is, in other words, seeking to defend the rights to which he is entitled under s. 53A of the Transfer of Property Act. The defendants Nos. 1 and 2 in demolishing part of the property of which the plaintiff had obtained possession were acting suo motu with the aid of the Municipal Board of Moradabad. It is the defendants who are seeking to assert rights covered by the contract. The plaintiff seeks merely to debar them from doing so; the plaintiff is seeking to protect his rights. In a sense, in the proceedings he is really a defendant and we see nothing in the terms of section 53A of the Transfer of Property Act to disentitle him from maintaining the present suit."

Without expressing any opinion as to the correctness of the view taken by the Allahabad High Court, we have to point out that the interpretation put on s. 53A of the Transfer of Property Act even by that Court is of no assistance to the firm in the present case. In this case, the firm is seeking to enforce rights under the unregistered lease and to seek a decree for possession against the lessor. The Allahabad High Court in that case proceeded on the basis that the plaintiff of that suit was in the position of a defendant and was only seeking to protect his rights by resort to the provisions of s. 53A of the Transfer of Property Act, so that no principle was laid down by the High Court that s.

53A is available to a lessee otherwise than as a defence. We are unable to accept the submission that the judgment in that case should be read as recognising a right of a lessee to enforce rights on the basis of an unregistered lease by resort to that provision of law. In fact, if that case be interpreted as laying down such a principle, it must be held that it has been directly over-ruled by the decision of the Privy Council in the case of Probodh Kumar Das and Others [66 I.A. 293] and is not correct. That decision may be justified, if at all, on the basis that, though the lessee in that case was a plaintiff, he was actually seeking protection under s. 53A of the Transfer of Property Act by being in the real position of a defendant. On the question whether a person, who sues as a plaintiff, may still be regarded as defending the rights sought to be conferred upon him by an unregistered deed, we need express no opinion. In the present case before us, the claim, which was put forward by the firm in the plaint, can by no means be construed as a mere defence of the firm's rights. What the firm is actually seeking to do is to enforce the rights under the lease and, in such a case, s. 53A of the Transfer of Property Act is clearly inapplicable.

Reliance was also placed on behalf of the firm on the decision of this Court in Ram Kumar Das v. Jagadish Chandra Deb Dhabal Deb and Another [[1952] S.C.R. 269], in which case also, a registered Kabuliyat executed by the lessee did not comply with the requirements of s. 107 of the Transfer of Property Act, and on the facts of the case it was held that, though under the Kabuliyat the land was leased out for a period of ten years, the lease in fact must be presumed to be from month to month under s. 106 of that Act. The facts of that case were, however, quite different. In that case, the terms of the lease were not ascertained from the Kabuliyat in which the period of lease was fixed at 10 years. The terms of the lease were ascertained from other documents, including receipts for rent paid by the lessee to the lessor, and on the basis of that evidence it was found that a lease had come into existence under which rent was being paid monthly. No such circumstances appear in the case before us. In fact, it was at no stage pleaded and no evidence was led to show that, independently on the three documents Exts. P. 1, P. 2 and P. 3, there was material from which it could be inferred that a lease from month to month had come into existence between the firm and the Company. No such point was urged either in the trial Court or before the High Court and no such finding of fact exists. In these circumstances, s. 106 of the Transfer of Property Act would clearly be inapplicable, and the lease has to be held to be for a period exceeding one year for the reasons given by us above.

In the alternative, learned counsel for the firm urged that the firm was entitled to contend that these documents Exts. P. 1 to P. 3 constituted an agreement in writing to lease the property in suit and could claim specific performance of this contract. There are three reasons why we are unable to accept this submission. The first is that, in the plaint itself, no specific performance of contract was claimed on behalf of the firm. Though the pleadings included averments about this contract, the relief claimed was for a decree for possession, damages and injunctions. These reliefs could only be claimed on the basis of a completed lease and could not be the reliefs in a suit for specific performance of a contract to lease. The second reason is that, as mentioned by us earlier, the firm itself came forward with the case that the entire contract was not included within these three documents Exts. P. 1 to P. 3, because, at the stage when these documents came into existence, the Managing Director of the Company had no authority to enter into such a contract on behalf of the Company and that the contract was only completed subsequently when the Board of Directors passed a resolution authorising the Managing Director to enter into such a contract and actual possession of part of the property was given on or about the 1st April, 1950. The contract being a contract to lease immovable property and unregistered, specific performance of it could not be sought, except under s. 27A of the Specific Relief Act. That section, however, applies only if the entire contract is made in writing, while, according to the case put forward on behalf of the firm

itself, the entire contract was not in writing. The third reason why specific performance of the contract cannot be claimed by the firm under s. 27A of the Specific Relief Act is that such a claim under that provision of law is only available to a lessee, when the lessee, in part performance of the contract, has taken possession of the property, or, being already in possession, continues in possession in part performance of the contract. In the present case, the pleas put forward on behalf of the firm itself show that the firm never got possession of the entire property to which the contract related. Possession was taken by the firm of only two items of property, while the firm never obtained possession of the third item of property which was in possession of Messrs. Kanwar Brothers Ltd. Clause (b) of s. 27A can apply only if possession of the entire property, which is the subject-matter of the contract of lease, has been taken by the lessee. The pleadings in the plaint show that, even though the third item of property was vacated by M/s. Kanwar Brothers Ltd. in December, 1950, possession of that property was never obtained by the firm.

To meet this objection, it was urged by learned counsel on behalf of the firm that we should interpret s. 27A of the specific Relief Act as being applicable even if possession of part of the property, which is the subject-matter of the contract, is obtained by the lessee; but we are unable to accept this submission. The language used makes it clear that possession must be obtained of the entire property to which the contract relates. In this connection, it is significant to note that under s. 53A of the Transfer of Property Act, a transferor is barred from interfering with the rights of the transferee, even if the transferee gets possession of any part of the property sought to be transferred by the unregistered document of transfer. That section specifically uses the expression "taken possession of the property or any part thereof", whereas the words used in s. 27A of the Specific Relief Act are : "taken possession of the property". The omission of the words "any part thereof" in s. 27A of the Specific Relief Act when compared with the provision in s. 53A of the Transfer of Property Act clearly brings out the position that the former section is only applicable when possession of the entire property, which is subject-matter of the contract, has been taken, while the latter section is made applicable even if the lessee takes possession of any part of the property. Consequently, on the facts of the present case, the firm could not claim specific performance of the contract under s. 27A of the Specific Relief Act, even if such a claim had been put forward in the plaint. This alternative contention also, therefore, fails.

The appeal is, consequently, dismissed, but, in view of the circumstances of this case and the conduct of the parties relating to the contract, we direct parties to bear their own costs of the appeal.

Appeal dismissed.

</html