

Nagaraja Rao

Vs

C. K. Mamad Keyi

Civil Appeal No. 1473 of 1967

(V. Ramaswami-I, I.D. Dua JJ)

27.10.1969

JUDGMENT

RAMASWAMI, J. -

1. This appeal is brought by special leave from the judgment of the Kerala High Court, dated August 2, 1967, in Writ Appeal No. 13 of 1966, setting aside the judgment of the Single judge of the same High Court in O.P. No. 1992 of 1964.
2. The property described in the Schedule to the lease-deed Ex. A-1 was let by respondent No. 1 to deceased K. K. Subba Rao, father of appellants Nos. 1 to 3 and respondent Nos. 8 and 9 and husband of respondent No. 10. The lease-deed, dated February 26, 1944, was for a term of six years. The lessee had to pay Pattam of Rs. 75/- for taking the usufruct and rent of Rs. 100/- for the building. The lessee had to expend Rs. 25/- out of the above amount for the repairs of the house and for maintenance of the compound every year. The balance of Rs. 150/- was to be paid in monthly instalments of Rs. 12.50. The respondent alleged that the appellants had sublet separate portions of the building. Respondent No. 1, therefore, filed a petition under Section 11(4)(1)(iii) of the Kerala Buildings (Lease and Rent Control) Act 1959, Act 16 of 1959, against the appellants and respondent Nos. 8 to 10 for ordering them to surrender possession of the buildings alone by the lease embraced the buildings and the Paramba (compound) and that the petition to evict the respondents from the buildings alone on the strength of the lease is not maintainable. The Munsiff held that the sub-letting had occurred and respondent No. 1 was entitled to claim eviction. The appellants preferred Civil Miscellaneous Appeal No. 45 of 1962 in the Court of Subordinate Judge, Tellicherry, who dismissed the appeal. The appellants thereupon filed Civil Revision Petition No. 20 of 1963 in the Court of District Judge, Tellicherry, who by his judgment, dated July 1, 1964, allowed the revision petition holding that Ex. A-1 represented a composite lease of the buildings and also of the trees and the provisions of Act 16 of 1959 were not applicable. Thereupon respondents 1 to 6 filed writ petition No. 1922 of 1964 under Article 226 of the Constitution in the Kerala High Court. By his judgment, dated August 27, 1965. K. K. Mathew, J., dismissed the writ petition. Respondents 1 to 6 filed writ appeal No. 13 of 1966 in the High Court and this writ appeal was allowed by the Division Bench consisting of the Chief Justice and Velu Pillai, J. and the Order of the Rent Control granting eviction was restored.
3. The sole question involved in this appeal is whether the lease Ex. A-1 is a composite lease in respect of the land and the building thereon or whether it contains two independent transactions, one in respect of the building in question and the other for the remaining properties and the trees.
4. The relevant portion of the lease Ex. A-1, dated, February 26, 1944, is reproduced below :

"The Paramba and the upstairs building described in the Schedule belonging to Jenm rights to the Tarwad of executant No. 1 and which are in the possession of executant No. 2 as per the registered Marupattam Deed No. 557 of 1940 of the Sub-Registrar's Office, Cannanore, dated 15th Kumbam 1115 corresponding to 27th February, 1940, for taking the usufructs of the coconut trees, jack trees, etc., in the Paramba and the fixtures including the upstairs building for rent are hereby taken on lease of a period of 6 years from you, the executant No. 1 by me, the executant No. 2 for taking only the usufructs from the coconut trees and jack trees, etc., in the abovementioned Paramba, improvements including the upstairs building for rent and to construct buildings by the side of the road for the purpose of running business and is given on lease by executant No. 1 to executant No. 2 for a period of six years. Therefore it is agreed that deducting an amount of rupees 25 as mentioned below out of the total amount of Rs. 175/- being Pattam of Rs. 75/- per year fixed for taking the usufructs from the properties and Rs. 100/- per year as rent for the building, the monthly instalment of Rs. 12-8-0 shall be paid to executant No. 1 at Tellicherry by executant No. 2 on the due date every month and receipt obtained, that even after the date of expiry till the recovery of possession the Pattam and rent at the above rate shall be paid by executant No. 2 to executant No. 1 and that till that date the Paramba shall be tilled, improvements shall be safeguarded and buildings repaired by executant No. 2 on behalf of the executant No. 1 from out of the above deducted sum of Rs. 25/-. It is decided that either in case of failure to pay the Pattam and rent in any instalment and thereby balance is caused by executant No. 2 to executant No. 1 or executant No. 2 causes loss by cutting any trees or causes damage to the buildings or causes loss by dismantling, executant No. 1 has the right to recover the loss with balance of Pattam and rent with interest at rupee one per Rs. 100/- per months and to recover possession from executant No. 2 by executant No. 1 before the expiry of the stipulated period. It is decided that executant No. 2 shall on the expiry of the stipulated period. It is decided that executant No. 2 shall on the expiry of the stipulated period of this lease surrender the properties in the Schedule with everything in that including the buildings to executant No. 1 receiving half the approximate value of the buildings built by the said of the road for the purpose of doing business from executant No. 1 that I, executant No. 2 have no right for more than the half of the value of that, in case executant No. 2 demands more than half of the value he shall surrender the properties dismantling at his cost the buildings built by him. The executant No. 2 had no right or authority to make improvements in the Paramba; nor has the right to build structures in the property except on the said of the road as agreed to above."

Section 2(1) of the Kerala Buildings (Lease and Rent Control) Act, 1959 (Act 16 of 1959), states :

"In this Act, unless the context otherwise requires, -

(1) 'building' means any building or hut or part of a building or hut, let or to be let separately for residential or non-residential purposes and includes -

(a) the garden, grounds, walls, tanks and structures, if any, appurtenant to such building, but or part of such building or hut, and let or to be let along with such building or hut;

(b) any furniture supplied or any fittings affixed by the land-lord for use in such

building or hut or part of a building or hut;

but does not include a room in a hotel or boarding house."

5. It was argued on behalf of the appellant that the terms embodied in the lease-deed clearly show that it contains only one single transaction in respect of the Paramba and the buildings namely a composite lease which fell outside the ambit of the Act. We are unable to accept this argument. In the opinion of this Court the lease consists of two separate transactions, one for the building and the other for the trees. The rent of Rs. 75/- per year is fixed for taking the usufruct from the trees and Rs. 100/- per year as rent for the building. The building is also described in the Schedule to the lease-deed and is identifiable, apart from the compound in which the trees are located. There is, therefore, separate identity of the land and the buildings. It is not possible to accept the argument on behalf of the appellants that the lease is a composite transaction of building and the trees which cannot be separated. It is true that there is a provision in the lease that a sum of Rs. 25/- may be spent by the lessee for repair of the buildings and for tilling the Paramba. There is also another provision in the lease that a charge for arrears of rent of the building and also of the Paramba is created on the leasehold interest in the buildings. But in our opinion these provisions cannot be construed as making the lease a composite and indivisible transaction for both the buildings and the Paramba. We are accordingly of opinion that the judgment of the Division Bench is right and this appeal must be dismissed with costs.

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