

Haridas Girdhardas and Others

Vs

Varadaraja Pillai and Another

Civil Appeal No. 74 of 1971

(CJI S. M. Sikri, A.N. Ray, D.G. Palekar JJ)

18.08.1971

JUDGMENT

SIKRI C.J. -

1. This appeal is directed against the judgment of the Madras High Court (Veeraswami, C.J. and Gokulakrishnan, J.) dismissing the appeal filed by the plaintiffs-appellants against the judgment and decree of Kunhamed Kutti, J., dated February 20, 1967, made in the exercise of the ordinary original civil jurisdiction of the Madras High Court.

2. The plaintiffs had filed a suit on the following allegations. The plaintiffs who were landlords leased to defendant No. 1 the plot of land on Mount Road, Madras, under a duly registered lease deed, dated November 17, 1938, for a period of 15 years, 3 month from March 1, 1939 at a rent of Rs. 560/- per month on the terms and conditions set out therein with an opinion for renewal in favour of defendant No. 1 for a further period of 10 years from March 1, 1954 but at an enhanced rent of Rs. 630/- per month, and subject to the other stipulations except the clause for renewal. For our purpose the following clauses are important.

"2. The Lessee covenants with the Lessors as follows :

(c) Within a reasonable period from the date hereof, at his own cost and charges, under the supervision of the Lessors and in accordance with plans elevations, sections and specifications to be first approved by the Lessors erect, cover in and complete in a substantial and workmen like manner on the demised plot of land, a theatre with all proper offices and out buildings such as bazaars, restaurants, motor and dynamo sheds etc., and fences, drains, sewers to be used for production and exhibition of films and for staging drama therein and to expend in building such theatre a sum of not less than Rs. 50,000/-. The Lessee shall be at liberty to put other buildings in addition to the above.

(d) Not to have an entrance for the theatre going public from the General Peters Road, so long as the Police Authorities do not permit such access from the said road.

(f) In the erection and completion of such buildings to do all acts and things required by and perform the works conformably in all respects with the provisions of the statutes applicable thereto and with the bye-laws and regulations of the Corporation of Madras to pay and keep the Lessors indemnified against all claims for the fees, charges, fines, penalties and other payments whatsoever, which during the progress

of the works may become payable or be demanded by the said authorities in respect of the said works or of anything done under the authority herein contained and from time to time discharge and pay all claims, assessments, outgoings now or at any time hereafter chargeable against an owner by statute or otherwise in regard to the said plot of land or any buildings thereof, save and except the property tax and quit rent levied on the demised plot of land which alone shall be borne by the Lessors.

(g) Not at any time to cause or permit any public or private nuisance in or upon the demised plot of land or anything which shall cause unnecessary annoyance inconvenience or disturbance to the Lessors or to the occupiers of any adjoining or neighbouring premises or which shall lead to interference by the Police or local authorities and at all times to comply with all Municipal and Police requirements.

(h) not to install or cause to be installed on the demised land or any part thereof any petrol pump, without getting the Lessor's previous permission in writing and without providing sufficient safeguards to the Lessors' neighbouring owners and their other tenants.

(o) Not to put up a compound wall on the southern side of the demised plot but to put up only iron railings or bars with a low wall if necessary, not exceeding three feet in height."

3. It was further agreed between the lessor and lessee :

"4. (d) At the expiration or sooner determination of the tenancy, the Lessors shall have the option of buying the buildings to be erected on the demised land the basis of valuation being as follows :

The buildings shall be valued at Rs. 50,000/- irrespective of the actual cost of construction and the Lessee shall allow a depreciation of 3 per cent. per annum, the period being calculated for the purpose of this valuation from March 1, 1939. If within a week from such termination of tenancy the Lessors do not signify their willingness to purchase the building or erections at the aforesaid valuation from the Lessee, the Lessee shall within three months thereafter remove and carry away any buildings or erections on the demised plot of land and shall cause to be restored to its original or natural level state and condition the demised plot of land."

4. Defendant No. 1 in accordance with the stipulations in the lease deed, constructed a theatre on the said plot and the same has been used for exhibition of cinema films by him. Defendant No. 1 exercised the option of renewal of lease for the further period of 10 years from March 1, 1954, and has been continuing in possession for a full further term of 10 years from March 1, 1954, expiring with the month of February, 1964.

5. In accordance with the terms of Clause 4(d) of the lease deed, the plaintiffs exercised the option of buying the building erected on the demised land by letter, dated February 27, 1964 and sent alongwith the full amount of Rs. 50,000/- by cheque in payment for all the superstructures without deducting any amount for depreciation, as provided in the said clause of the lease deed, stating that they had decided not to stand on their strict legal rights to deduct depreciation but to pay the full price of Rs. 50,000/- as the buildings had been maintained and kept in good repair. Defendant No. 1,

however refused the sum of Rs. 50,000/- and contended that the plaintiffs were not entitled to claim any rights on the footing of Clause 4(d) of the lease deed or to offer the sum of Rs. 50,000/- as the price for purchasing the superstructure put up by him on the land leased to him.

6. The question that arises before us is whether the plaintiffs were entitled to enforce Clause 4(d) of the lease deed in view of the Madras City Tenants' Protection Act, 1921, as amended by the Amending Act of 1955.

7. This Court construed the said Act and its various provisions in *N. Vajrapani Naidu v. New Theatre Carnatic Talkies* ((1964) 6 SCR 1015 : AIR 1964 SC 1440 : (1965) 1 SCJ 368) and in *The Mylapore Hindu Permanent Fund Ltd. v. K. S. Subramania Iyer*. (1970(2) SCC 307) The second decision was not before the High Court when the Letters Patent bench rendered its judgment. It seems to us that the case is covered by the judgment in the Mylapore Hindu Permanent Fund case (supra). In that case Vaidialingam, J., speaking for the Court, observed :

"Therefore, in our opinion, the decision in Vajrapani's case (supra), has been misunderstood by the learned Judges of the Letters Patent Bench and the said decision is no authority for the proposition that the stipulation contained in the lease deed before us cannot come within the proviso to Section 12. The case before us is not one under which the tenant has in any manner contracted himself out of the rights conferred on him by the statute. On the other and, by allowing the building to stand on the property and agreeing to receive the amount of compensation provided for in the lease deed, the object of the legislation is fully satisfied. It must also be emphasised that the first part of Section 12 protects a tenant against the deprivation or limitation of his rights under the Act and the rights conferred by the Act do not directly relate to covenants relating to erection of buildings."

8. Considering the facts of that case this Court held that Clause 2, in the deed, read with Clause 4, amounted to stipulations as to the erection of buildings and, in this view the proviso to Section 12 applied.

9. We have set out the relevant clauses of the lease deed in this case and it seems to us that these clauses amount to a stipulation as to the erection of buildings and consequently the proviso to Section 12 applies.

10. Mylapore Hindu Permanent Fund case (supra) was sought to be distinguished by the learned counsel for the respondent on the ground that in the present case the defendant was entitled to put up the building beyond the value of Rs. 50,000/-. But Clause 2(c) of the lease deed, set out above, clearly shows that the plaintiffs required "a theatre with all proper offices and out buildings such as bazaars, restaurants, motor and dynamo sheds etc., and fences, drains, sewers to be used for production and exhibition of films and for staging drama therein" to be erected. The plaintiffs wanted to ensure that the cost of the building would not be less than Rs. 50,000/- in order that the building would be of a proper quality of construction. There is no evidence as to what other buildings the defendant had put up. On these facts we cannot say that there were no stipulations as to the erection of buildings within the meaning of the proviso to Section 12.

11. It must be remembered that the Madras City Tenants' Protection Act, 1921, was passed in 1922 to give protection to certain classes of tenants who had constructed buildings on others' lands in the hope that they would not be evicted so long as they paid a fair rent for the land. It was not the object

of the Act to cover a hope if the 'hope' was entertained contrary to express stipulations as to erection of buildings. Accordingly proviso to section 12 exempted any stipulations made by the tenant in writing registered as to the erection of buildings, in so far as they related to buildings erected after the date of the contract.

12. The plaintiffs-appellants applied for amendment of their plaint dated April 15, 1964, by adding the following words in the prayer clause :

"(a) after the words : as from March 1, 1964,

'and direct the defendant No. 1 to deliver possession to the plaintiffs of the sites leased out to the defendant No. 1 under the aforesaid lease deeds and the buildings and superstructures built thereupon in good and satisfactory condition.'

(b) Delete prayer (b) and in its place substitute the following :

'That the defendants do pay the plaintiffs the sum of Rs. 12,000 (twelve thousand) per month as mesne profits for use and occupation of the buildings and superstructures built upon the demised premises from August 4, 1968 till possession is handed over to the plaintiffs'."

We allowed the amendment to be made. The learned counsel for the defendant objected to the prayer regarding mesne profits but as the plaintiffs are limiting the mesne profits for use and occupation from August 4, 1968, i.e., three years before the date of the application for amending the plaint, the defendant can have no just cause to complain.

13. In the result the appeal is allowed, the judgments of the single Judge and the Division Bench set aside and the suit decreed in terms of prayers (a) and (b) as amended. The case will now go back to the Trial Judge to determine the mesne profits for use and occupation from August 4, 1968, till the possession is handed over to the plaintiffs in accordance with law. The parties will bear their own costs throughout. Possession will be handed over within six months from today. In the meantime respondent No. 1 will not induct any tenant or other person or otherwise create any interest in the property.

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