

H. A. R. S. Ramaswamy Chettiar A Registered Firm

Vs

K. S. Krishnaswamy and Others

Civil Appeal No. 2039 of 1978.

(D. A. Desai, Ranganath Misra JJ)

24.04.1985

JUDGMENT

RANGANATH MISRA, J. -

1. This appeal is by special leave. Challenge herein is to the affirming revisional order of the Madras High Court upholding the concurrent decisions of the courts below dismissing plaintiffs' suit for permanent injunction against the first three defendants respondents from alienating the disputed property and restraining all the respondents from interfering with plaintiffs' possession. Plaintiffs are appellants in this Court.

2. Plaintiffs are a registered firm and carry on the business of running a rice mill as also an oil mill at Erode in the State of Tamil Nadu. Defendants 1 and 2 are the sons and Defendant 3 is the widow of one Sundaraswamy Chettiar who owned the disputed property which consisted of a small building and a large open space abutting behind. The plaintiffs took lease of the entire property in 1936. The lease was on annual basis but there was no provision for renewal. This property came to be given two separate municipal door numbers, initially being 27 and 28, and later being 111 and 112.

3. Plaintiffs came to Court pleading that the lease was initially of a vacant site and their purpose was to put up suitable structures for running a rice and an oil mill. Initially the monthly rent was Rs. 25 but with improvements being made by the plaintiffs and rent rising up in the locality there has been escalation in the monthly rent. Very valuable structures have been put by the plaintiffs to the knowledge of defendants 1-3 and plaintiffs have been carrying on their business in the mills set up by them. In June 1975 the State Government extended the provisions of the Madras City Tenants' Protection Act, 1921 (Tamil Nadu Act 3 of 1922) to the City limits of Erode. The defendants 1-3 started interfering with the possession of the plaintiffs and negotiated with defendant 4 for alienating the property. That led to the institution of the suit.

4. Defendants took the stand that the subject-matter of lease was a building with its appertaining vacant land and heavily relied on the description of the leasehold as a building and the abutting vacant land. Strong reliance was also placed on the description in the Schedule of an existing compound wall all-round. Under the Tamil Nadu Act referred to above, protection has been extended to tenants who have raised their own constructions on leased property and under Section 3 a tenant becomes entitled to be paid as compensation the value of any building which may have been erected by him on ejection. The defendants took the plea that the lease was of the building and no improvements had been made by the plaintiffs and, therefore, they were not entitled to the benefit conferred by the Act. When the plaintiffs made an application under Section 9 of the Tamil

Nadu Act for a direction to the landlord to sell the property to the plaintiffs, the same stand was also taken in defence. The trial court took up both the proceedings together and dismissed plaintiffs' application for a direction for sale of the property to them but granted injunction against unauthorised interference by the defendants with the plaintiffs' possession and enjoyment of the property until they were evicted in due course of law. The decision of the trial court was affirmed in appeal and the High Court upheld the appellate order. From the appellate judgment it transpires that during the pendency of the litigation a part of the property in dispute has been sold by defendants 1-3 in favour of defendant 4.

5. Appellants did not contest in this Court that the construction abutting the Sathy Road belonged to the lessors and was a part of the leasehold. Similarly, there was no challenge on behalf of the respondents that on the property towards the north of this construction plaintiffs have erected a rice mill and an oil mill and have raised several structures for the purpose of such mills. A look at the lease-deeds left no doubt in us that the construction was very small and that a large tract of vacant property behind the construction was included in the leasehold. There is evidence and counsel for the respondents did not challenge it that soon after the first lease in 1936 was taken, the erection of the mill was taken up. Obviously, the plaintiffs were interested in the vacant site where they wanted to raise their mills and the real purpose of the lease was to have the use of the vacant site for the purpose of business and make use of building of the lessor located in front of the vacant site. We had prima facie doubts as to the correctness of the conclusion reached in the courts below regarding the nature of the lease. In this background when we suggested to counsel for parties that the matter should be settled and a fair and equitable arrangement should be made, they wanted the presence of the parties and the matter was, therefore, adjourned. At the further hearing parties were present and the counsel were heard with a view to evolving a mode of equitable disposal. After suggestions were indicated in Court by each of the counsel, they left it to us to touch up the term suggested by them with a view to protecting the interests of each of the parties and keeping the equities in view.

6. The property stands on the immediate north of the Sathy Road. Abutting this road there is a standing structure 84 long west to east and 28' wide south to north. This construction, as now conceded, belongs to defendants 1-3. Plaintiffs have no claim in respect of the same. They are agreeable to make over vacant possession of it within a time to be fixed by the Court. Immediately abutting this construction on the north are located the different constructions raised by the plaintiffs. Defendants 1-3 have pleaded that for convenient enjoyment of the building which plaintiffs will make over to them, a vacant backyard is necessary. They have also claimed that whatever vacant property is to be given to them under the arrangement to be made should adjoin this property so that they may conveniently possess and enjoy the same. This would involve shifting and removal of the constructions which have been put by plaintiffs for the purpose of their rice mill and oil mill. We have been told that the structures are such that with minimum of expense and labour the shifting of these to the further north would be possible. Defendants 1-3 have agreed to bear the expenses of shifting. With the exclusion of the front portion where there is standing construction which defendants 1-3 have to take, the rest of the property covered by the lease works out to roughly 215'x 84'= 18,060 sq. ft. In answer to the suggestion that this property should be divided into two portions and half should be given to the plaintiffs and half should be kept by defendants 1-3, learned counsel for the appellants has pressed for allotment of a larger share to the plaintiffs by purchase as for the purposes of business and future expansion they would require more land than would be given to them allotting half share. Learned counsel for defendants 1-3 has stated that after the dispute between the plaintiffs and themselves is disposed of, defendants 1-3 will make appropriate settlement with defendant 4 in respect of the latter's claim arising out of the lis pendens purchase. Defendants 1-3 have agreed that an appropriate passage from the Sathy Road with a width of 10'

shall be kept up to the area that may be allotted to the plaintiffs. The plaintiffs have agreed to adequately compensate defendants 1-3 in respect of the land which by the present arrangement would get allotted to them. In course of hearing there was a proposal for appointment of a valuer for fixing the price for the purposes of compensation but ultimately it was left to the Court to decide whether a valuer should be appointed or a rough and ready method of valuation should be evolved. A plan showing the location of the disputed property with structure standing thereon prepared by S. V. Tangavalu was shown to us at the hearing. We have taken the same on record.

7. We direct the disposal of the appeal on the following terms :

- (1) The standing construction marked 'A', 'B', 'C', 'D', in green ink on the plan is the property of defendants 1-3. Plaintiffs are directed deliver vacant possession of the same to the said defendants within two months from today.
- (2) Of the remaining property which is 215' north-south and 84' east-west shown as 'C', 'D', 'E', 'F', in green, 8000 sq. ft. abutting 'C', 'D', line will be carved out in favour of defendants 1-3. All constructions of the plaintiffs standing within this area shall be shifted to the further north so as to be within the area which is being allotted to the plaintiffs. The shifting shall be completed within six month from today under the supervision of an appropriate Engineer Commissioner to be appointed by the trial court. The cost of the Commissioner as also the cost of the shifting shall be borne by the defendants 1-3.
- (3) The remaining area of the disputed property beyond these 8000 sq. ft. stands allotted to the plaintiffs. The Engineer Commissioner shall demarcate the 8000 sq. ft. of the defendants 1-3 as also the remaining property which is allotted to the plaintiffs in rectangular shape as far as practicable and at the joint cost of the parties a demarcating boundary wall shall also be raised under the supervision of the Commissioner within such time as the trial court shall fix.
- (4) Within six months from today, defendants 1-3 shall carve out, if necessary, by appropriate demolition of the standing structure a passage of 10' width at all points running by the side of points 'B' and 'C' up to the site of the plaintiffs.
- (5) The plaintiffs shall deposit in Court within two months hence a net sum of Rs. 7,50,000 (Rupees seven lacs and fifty thousand only) as the consideration for the property (roughly 10,060 sq. ft.) which is being allotted to them after excluding the standing construction of the defendants 1-3 and the 8000 sq. ft. behind the same as directed above. We may point out that plaintiffs through their counsel had agreed for five lacs. The defendants 1-3 shall be entitled to withdraw this amount from the Court without any condition. If the plaintiffs fail to deposit the amount as directed, the appeal shall be taken to have been dismissed and order of the High Court shall stand confirmed.
- (6) No provision is being made in regard to the defendant 4 as counsel for defendants 1-3 and counsel for defendant 4 have stated to us that they will settle up their mutual claims and disputes amicably. The property which is allotted to the plaintiffs shall be free from encumbrances of mortgage and defendants 1-3 shall be liable for payment of the mortgage dues, if any.
- (7) All parties shall bear their respective costs throughout.

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