Suryakumar Govindjee

Vs

Krishnammal and Other

Civil Appeals No. 2044-45 of 1990

(A. M. Ahmadi, S. Ranganathan JJ)

26.04.1990

JUDGMENT

S. RANGANATHAN J. -

1. Special have to appeal is granted and the appeal are disposed of by a common order.

2. On June 9, 1936 Ramaswamy Gounder (the predecessor in interest of the respondents) executed a lease deed in favour of Gopal Sait (the predecessor in interest of the appellant). Certain passages from an English translation of the lease deed (which was in vernacular) are relevant for the purposes of the present case and they read thus :

> "Whereas the property viz. vacant land will and kaichalai etc. belongs to the party of the First part as his ancestral property;
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> Whereas the said property was leased out to party of the Second part on a monthly rental of Rs. 12-8-0 for 15 years and taken possession by the party of the second part from party of the First part on December 3, 1935 ... and the party of the Second part for his convenience and at his own expenses and costs (was) permitted to construct in the said vacant land and install petrol selling business .....
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> [A]fter the expiry of leas period of 15 years i.e. on February 12, 1950 the lessee shall at his own expenses remove the structure put up by him and deliver possession of the vacant land together with well and kaichalai in the present state ....
>
> Schedule
>
> ... vacant land situated in this bounded on the north by vacant land leased out for Burmah Oil Co. by the said Ramaswamy Gounder Gopalji Ratnaswami all these vacant lands together with in the fourth plot measuring east to west 84 and north to south 16 together with half share in well therein together with tiled kaichalai ..... together with door doorways etc. There is no number for Kaichalai."

3. It is common ground that the total vacant area covered by the lease was 3600 sq. ft. and that the Kaichalai referred to therein was thirty-seven and a half by sixteen and a half feet i.e., of the extent of about 600 sq. ft. It also appears that even though there was initially no door number for the kaichalai, it was eventually given door No. 82 and the suit premises we are concerned with bear door Nos. 80, 81 and 82.

4. The lease was extended for a period of two years from January 1, 1951 by a fresh deed dated January 15, 1951 at an enhanced rent. This lease deed recited.

> "On the expiry of two years i.e. on December 31, 1952, the lessor has no objection for the removal of the structure put up by Burmah Shell petrol pump etc. except the extent of structure of thirty-seven and a half feet by sixteen and a half feet put up by the lessor ...."

There was a fresh lease deed against executed on January 2, 1953 for a further period of three years at a higher rent. This deed also required the lessee when delivering possession back to the lessor on the expiry of the lease to remove the structure put up by him or the Burmah Shell Co. Ltd. "except the structure measuring thirty seven and a half feet by sixteen and a half feet."

5. The lessee appears to have continued to occupy the property even beyond December 31, 1955 at a further enhanced rent. In 1962, we are told the lessor filed a petition to evict the lessee under Section 10(3)(a)(i) and 14(1)(b) of the Madras Buildings (Lease and Rent control Act) 1960 alleging that he required the premises for personal occupation and for bona fide immediate demolition. The lessee defended the petition saying that the premises do not requires any immediate demolition that the premises are used for non residential purposes and kept in good condition and that the petitioners requirement for personal occupation is not bona fide immediate demolition., The lessee defended the petition saying that the premises do not require any immediate demolition that the premises are used for non residential purpose and kept in good condition and that the petitioners requirement for personal occupation is not bona fide. The petition was dismissed by the Rent Controller observing that the premises did not need demolition and further that as the premises had been leased out for non-residential purposes and the landlord could not seek its conversion into residential use without the Controllers application the petitioners allegation that he required it for personal use was neither tenable nor bona fide.

6. Ramaswamy Gounder filed a petition again in 1979 for the eviction of the respondent but he died in February 1979 and the petition filed by him was dismissed for default. Thereafter his legal representatives (the present respondents) instituted a petition for eviction (R.C.O.P. 19 of 1979 out of which the present proceedings have arisen) of the respondents on the grounds of demolition and reconstruction and of wilful denial of title within the meaning of Sections 14(1)(b) and 10(2)(vii) of the Tamil Nadu Buildings (Lease and Rent Control) Act.

7. In the meantime the provision of the Madras City Tenants protection Act 1922 (later renamed the Tamil Nadu City Tenant Protection Act) were extended to the municipal limits of Udumalpettai within which the premises in question were located. Taking advantage of this respondent filed O.P. 1 of 1979 (in the same court of District Munsif cum Rent Controller) claiming the benefit of compulsory purchase conferred on tenants of land under the said Act. The District Munsif-Cum-Rent Controller allowed the lessors petition for eviction and dismissed the lessees petition. The Sub-Judge on appeal dismissed the appeals with a slight modification. He was of the view that except for the Kaichalai the other buildings had been put up by the respondents with the permission of the lessor and that hence he was entitled to obtain compensation therefore by institution of separate appropriate proceedings.

8. The respondent filed two revision to interference. The learned Judge held :

> "I do not see any reason to interference with the orders of the courts blow negativing

the claim of the revision petitioner. Inasmuch as admittedly the property situated in door No. 82 belonged to the landlord this is a case to which Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 will apply. However the property baring door Nos. 80 and 81 belonged to the petitioner is finding. On that all that the tenant could ask for will be for removal of the superstructure. Beyond that his claim for compensation also could not be ordered since there was no prayer for the same. The decision in Larsen & Toubro Ltd. v. Trustees of Dharmamurthy Rao Bahadur Calavala Cunnan Chetty's Charities by its Trustees ((1988) 2 LW 380) is distinguishable because this is a case of only one and a half grounds wherein there is a Kaichalai of 600 sq. ft. The removal shall take place within a period of three months from today. The civil revision petitions are dismissed."

Hence these two appeals.

9. Though there have been claims made under the Rent Control Act by the lessor and under the City Tenants Protection Act by the lessee the claim under the latter has not been pressed before us by the learned counsel for the appellant who has confined his arguments before us to the only question whether the demised premises constitute a "building" within the meaning of Section 2(2) of the Rent Control Act.

10. Shri C. S. Vaidyanathan learned counsel for the appellants submitted that the first appellate court has found, modifying the trial courts findings in this regard, that the original lease comprised only of the vacant site, well and kaichalai and that all the other superstructures found in the demised premises had been put up by the appellant. He contended that the Kaichalai was merely in the nature of a shed put up for the tethering of cattle and that it was not a "building" within the meaning of the Rent Control Act. Alternatively, he contended, even if the Kaichalai could be considered to be a building this was not a case of the lease of a building or hut with its appurtenant land : it was rally a case of the lease of a vacant site to the petitioner on which was situated a small hut in one corner. The lease deed itself recites that the appellant had taken the premises for putting up a petrol pump. In fact he did not put in an underground storage tank a petrol pump and other structure and carried on a petrol and kerosene business thereon. Though the small kaichalai was situate in a corner of the site the lease intended by the parties was only that of the site. The kaichalai was no doubt not demolished and perhaps, the appellant also made use of it for the purposes of his business but says, Sri Vaidyanathan, this made no difference to the obvious and clear and dominant intention of both parties that it was the site that was leased out for a petrol pump business. Shri. Vaidyanathan contended that the issue is directly governed by the decision in the Larsen & Toubro case (Larsen and Toubro Ltd. v. Trustees of Dharmamurthy Rao Bahadur Calavala Cunnan, Chetty's Charities, (1988) 4 SCC 260) (to which on of us was a party). He submitted that where a lease is a composite one of land and buildings the court has to address itself to the primary or dominant intention of the parties. If this is to lease a building - the lease of a building the leas of land being adjunct or incidental - as in the Larsen & Toubro (Larsen and Tourbo Ltd. v. Trustees of Dharmamurthy Rao Bahadur Calavala Cunnan, Chetty's, ((1988) 4 SCC 260) case, the Rent Control Act would apply. On the other hand if the dominate intention is to lease a site - the presence of a building thereon not being considered material by either party the lease would not be one of a building covered by the Rent Control Act whether or not it can be considered as a lease only of a vacant site governed by the City Tenants Protection Act. Counsel contended that it is possible that there may be a grey area of lease which might fall under neither Act and proceedings in respect of which may continue to be governed by the Transfer of Property Act, unaffected by these special laws.

11. The Rent Control Act contains a definition of the expression 'building' which reads as follows :

> "2. (2) building means any building or hut or part of a building or a hut let or to be let separately for residential or non residential purpose and includes -
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> (a) the gardens, grounds and outhouses, if any, appurtenant to such building, hut or part of such building or hut and let or to be let along with such building or hut,
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> (b) any furniture supplied by the landlord for us in such building or hut or part of a building or hut,
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> but does not include a room in a hotel or boarding house."

12. We have not been able to get at the exact meaning of the Tamil word Kaichalai. It however seems to denote a structure or a roof put up by hand. Whatever may be the precise meaning of the term we think that the definition of Section 2 (2) clearly includes the Kaichalai in the present case. Since the Act applies to residential and non residential building alike the expression hut cannot to be restricted only to huts or cottages intended to be lived in. It will also take in any shed hut or other curd or third class construction consisting of an enclosure made of mud or by poles supporting a tin or asbestos roof that can be put to use for any purpose residential or non residential in the same manner as any other first class construction. The Kaichalai is a structure which falls within the purview of the definition. Counsel for the appellant is perhaps understating its utility by describing it as a mere cattle shed. The area of the shed is quite substantial and, as will be explained later, the parties also appear to have attached some importance to its existence on the site. It is very difficult to hold in view of the above definition that the Kaichalai is not a 'building' within the meaning of Section 2(2).

13. On behalf of the respondents it is contended that in a composite leas the existence of a building or hut on the land (however small insignificant or useless it may be) is sufficient per see to bring the lease within the scope of the Rent Control Act. It is suggested for the respondent that it would be unarguable once it is admitted or held that the kaichalai is a building and that the same has been let out that still there is no letting out of a building within the meaning of the Act. In support of this contention Sri Parasaran for the respondent placed considerable reliance on J. H. Irani v. T. S. P. P. Chidambaran Chettiar (AIR 1953 Mad 650 : (1952) 2 MLJ 221). He pointed out in that, in that case there was a vast vacant land with only some stalls in on corner and a compound wall but it was nevertheless held to be a case of lease of a building. According to him this case was not disapproved, but indeed indirectly approved by this Court in A. R. Salay Md. Sait v. J. M. S. Memorial Dispensary Charity ((1969) 1 MLJ 16 (SC) : 1969 Ren CR 322) though certain other cases (where leases of vacant sites with only the lessees' buildings thereon were held to be leases of buildings) were overruled in that decision,. This case, according to him, decides that once there is a building on the land however insignificant and it is let out the case will be governed by the Rent Control Act. We do not think this case is an authority for such an extreme position. It rather seems that the case was one decided on its own special facts. At the time of the original lease by the landlord there was only a vacant site and a few small stalls. But, by the time the relevant lease deed (which came up for consideration) was executed, it had become the site of a theatre. No doubt the theatre did not belong to the lessor nevertheless for several years the leased property had been used as a theatre and the purpose of the parties was clearly that the leased premises should continue to be used as a cinema theatre. It was in this special situation that the court came to the conclusion that it was plausible to hold the lease to be one of a building though if the structures not belonging to the

landlord were left out of account there was only a vacant site and a few stalls. We think it would not be correct to draw support from this decision for the extreme proposition contended for on behalf of the respondent. In our opinion, we have to travel beyond this solitary fact, go further to look at the terms of the lease and the surrounding circumstances to find out what it is that the parties really intended.

14. There is no difficulty in determining the scope of the lease where a building and piece of land are separately let out. But in the case of composite lease of land and building, a question may well arise whether the lease is one of land although there is a small building or hut on it (which does not really figures in the transaction) or one of lease of the building (in which the lease of land is incidental) or a lease of both building (in which the lease of land is incidental) or a lease of both regardless of their respective dimension. In determining whether a particular lease is of the one kind or another, difficulties are always bound to arise and it will be necessary to examine whether the parties intended to let out the building along with the lands or vice versa. The decisions in T. K. Sivarajan v. Official Receiver (AIR 1953 TC 205 : 1953 KLT 110), Nagamony Kumaraswamy V. S. Tiruchittambalam (AIR 1953 TC 369 : 8 DLR TC 83), Official Trustee v. United Commercial Syndicate ((1955) 1 MLJ 220) and Raj Narain v. Shiv Raj Saran (1969 RCJ 409 : 1969 ALJ 358) relied upon by Sri Vaidyanathan, were instances where what the parties had in mind was only the lease of land, although there were certain petty structures thereon which were not demolished or kept out of the lease but were also let out. They were clearly cases in which we think the applicability of the Rent Act was rightly ruled out. On the other hand Larsen & Toubro (Larsen and Tourbo Ltd. v. Trustees of Dharmmurthy Rao Bahadur Calavala Cunnan, Chetty's Charities, (1988) 4 SCC 260) is a case where there was the lease Of a building although a vast extent of land was also included in the lease. That was not a case which arose under the Rent Control Act but it illustrates the converse situation. Sri Vaidyanathan wants to derive, from the cases refereed to above and certain cases which deal with other aspects which become relevant while considering a composite letting, a proposition that the dominat purpose of the letting should govern. For instance, there are cases where factories, mills or cinema theatres are leased out and cases have held that the dominant object is to lease a factory, mill or theatre and that, even though in all these cases the letting out of a building would be involved the provisions of the Rent Control Act would not apply (vide Konijeti Venkayya v. Thammana Venkayya Peda Venkata Subbarao (AIR 1957 AP 619 : 1956 Andh WR 1093), Uttamchand v. S. M. Lalwani (AIR 1965 SC 716 : (1964) 2 SCWR 241) and Dwarka Prasad v. Dwarka Das ((1976) 1 SCC 128 : (1976) 1 SCR 277). But we think that this approach also seeks to oversimplify the problem. When we come down to consider the terms of a particular lease and the intention of the parties there are bound to be a large variety of case. If the transaction clearly brings out a dominant intention and purpose as in the cases cited above there may be no difficulty in drawing a conclusion one way or the other. But it is not always necessary that there should be a dominant intention swaying the parties. There may be cases where all that is intended is a joint lease of both the land and the building without there being any considerations sufficient to justify spelling out an intention to give primacy to the land or the building. For instance where a person owns a building surrounded by a vast extent of vacant lands (which may not all the capable of being described as appurtenant thereto, in the sense of being necessary for its use and enjoyment) and a party comes to him and desires to take a lease thereof he may do so because he is interested either in the building or the land (as the case may be). But the owner may very well say : "I am not interested in your need or purpose. You may do what you like with the land (or building) I have got a compact property consisting of both and I want to let it out as such. You may take it or leave it". The fact in such cases is that the owner has a building and land and he lets them out together. He is not bothered about the purpose for which the lease is being taken by the other party. In such cases it is very

difficult to say that there is no lease of building at all unless there is some contra indication in the terms of the lease such as for example that the lessee could demolish the structure. The test of dominant intention or propose may not be very helpful in such cases in the context of this legislation.

15. Shri Vaidyanathan sought to contend that the words of Section 2(2) "any building ... and gardens grounds ... let or to be let alone with it". Import the concept that the dominant purpose should be a letting of the building. We do not think that this is necessarily so. The decision of this Court in Sultan Bros. P. Ltd. v. CIT ((1964) 5 SCR 807 : AIR 1964 SC 1389 : (1964) 51 ITR 353) is of some relevance in this context. There the Supreme Court was concerned with the interpretation of Section 12(4) of the Indian Income Tax Act, 1922 which read :

> "12. (4) Where an assessee lets on hire machinery plant or furniture belonging to him and also buildings and the letting of the building inseparable from the letting of the said machinery plant or furniture he shall be entitled to allowance in accordance with the provision of the clauses (iv) (v) (vi) and (vii) of sub-section (2) of Section 10 in respect of such buildings."

The High Court took the view that the plant and machinery and buildings should not only be inseparably let out but also that "the primary letting must be of the machinery plant or furniture and that together with such letting or along with such letting there (should be) letting of buildings". In that case, the High Court held, the primary letting was of the building and so Section 12(4) would not apply. the Supreme Court did not approve of this reasoning. It said : (SCR pp. 818-19)

> "Now the difficulty that we feel in accepting the view which appealed to the High Court and the Tribunal is that we find nothing in the language of sub section (4) of Section 12 to support it. No doubt the sub-section first mentions the letting of the machinery, Plant or furniture and then refers to the letting of the building and further uses the word 'also' in connection with the letting of the building. We, however think that this is too slender a foundation for the conclusion that the intention was that the primary letting must stronger indication in the language used there is no warrant for saying that the sub section contemplated that the letting of the building had to be incidental to the letting of the plant machinery or furniture. It is pertinent to ask that if the intention was that the letting of the plant machinery or furniture should be primary why did not these section say so ? Furthermore, we find it practically impossible to imagine how the letting of a building could be incidental to the letting of furniture though we can see that the letting of a factory building may be incidental to the letting of the machinery or plant in it for the object there may be rally to work the machinery. If we are right in our view, as we think we are that the letting of a building can never can never be incidental to the letting of furniture contained in it then it must be held that no consideration of primary or secondary letting arises in the construing the section for what must apply when furniture is let and also buildings must equally apply when plant and (4) of Section 12 contemplates is that the letting of machinery plant or furniture should be inseparable from the letting of the building".

The court proceeded then to consider the concept of 'inseparable letting' and observed : (SCR p. 820)

> "It seems to us that the inseparability referred to in sub-section (4) is an inseparability arising from the intention of the pretties. That intention may be ascertained by framing the following question. Was it the intention in making the lease - and it matters not whether there is one lease or two, that is, separate lease in respect of the furniture and the building that the two should be enjoyed together ? Was it the intention to make the letting of the two practically one letting ? Would one have been let alone or a lease of it accepted without the other ? If the answers to the first two questions are in the affirmatives, and the last in the negative than, in our view, it has to be held that it was intended that the letting would be inseparable. This view also provides a justification for taking the case of the income from the lease of a building out of Section 9 and putting it under Section 12 as a residuary head of income. It then becomes a new kind of income, not covered by Section 9, that is, income not from the ownership of the building alone but an income which though arising from a building would not have arisen if the plant, machinery and furniture had not also been let alone with it."

Though the context was somewhat different the observations in that case are of grant assistance. We think that, in the context here also, we should be guided not by any theory of dominant purpose but by the consideration as to whether the parties intended that the building and land should go together or whether the lessor could have intended to let out the land without the building. The latter inference can perhaps be generally drawn in certain cases where only the lease of land dominated the thoughts of the parties but the mere fact that the buildings is small or that the land is vast or that the lease had in mind a particular purpose cannot be conclusive.

16. Let us now turn, in the above background, to a consideration of the lease deed in the present case. As already mentioned counsel for the appellant strongly relies on the purpose of the lease and seeks to make out that the building (kaichalai) was not really a significant part of the lease. This contention is stoutly refuted on behalf of the respondent. It is pointed out that the shed was also admittedly used by the appellants is not right in characterizing it as a mere cattle shed. It is pointed out that the shed was also admittedly used by the appellants for the purposes of its business and there is nothing to show that this was also not in contemplation at the time of the lease. Again it is pointed out that in some parts of the lease deeds the vernacular version gives first place to the kaichalai rather than to the vacant site. Also every one of the lease deeds attaches special emphasis that the Kaichalai should not be removed but should be returned to the lessor without any damage. We may also advert to one more circumstance which shows beyond doubt that the Kaichalai was not an insignificant structure. We have earlier referred to the fact that Ramaswamy Gounder had filed an earlier eviction petition on the ground that he needed the premises for personal occupation and immediate demolition. The losses defense to this was not that the Kaichalai was a cattle shed unfit for personal occupation. The Defence was that it had been let out for a non residential purpose and could not be converted to residential use without permission. This certainly demonstrates that the Kaichalai was capable of use both for residential and non residential purpose. Counsel for the respondents, in fact, wanted to go a little further and hold it against the appellant that he had not taken in those proceedings the plea, now put forward that the Rent Control Act could not at all be invoked. We will not, however, hold this against the appellant as, at that time, the benefits of the Tenants Protection Act had not been extended to Udumalpettai and the tenant would not have gained anything by raising any such point. But the plattings in those proceedings as well as the order of the Rent Controller therein leave no doubt that the Kaichalai was a material structure let us as such to the lease for non residential purposes and which with necessary permission could also have been used for residential purposes. Having regard to all these circumstances the correct inference appears

to be that what the lessor intended was a lease of both the land and the building. The land was to be put to use for petrol pump so far as the building was concerned the lessee was at liberty to use it as he liked but he had to maintain it in good condition and return it at the end of the lease. This was a composite lease with a composite purpose. It is difficult to break up the integrity of the lease as one of land alone or or building alone. In these circumstances, we think this letting would come in within the scope of the Rent Control Act for the reason already explained.

17. Before concluding we may touch upon two more relevant aspects. The first is the use of the word "separately" in section 2 (2). This, however does not affect our above construction of the section. That word is intended to emphasise that for purposes of the Act a building means any unit comprising the whole or part of a building that is separately let out. It does not mean - it cannot mean - that composite leases of land and building would not be covered by it. That would be clearly contrary to the language of the whole clause which specifically talks of joint letting of land and building. The second is the restriction of the applicability of Section 2(2) to cases of letting of building and appurtenant lands only. It may be suggested that the lands here are not "appurtenant" except perhaps to the extent required for providing access to the Kaichalai. This argument is not very helpful to the appellants. At best, it can mean that the Kaichalai and only a part of land needed for its enjoyment or use would be governed by the Rent Control Act. But this was not the contention of the appellant and no attempt has been made to ascertain what the extent of such "appurtenant" land could be. That context a much wide meaning. It is not just restricted to land which, on a consideration of the circumstances, a court may consider necessary or imperative for its enjoyment. It should be construed as comprehending the land which the parties considered appropriate to let along with the building. To hold to the contrary may give rise to practical difficulties. Suppose there is, in the middle of a metropolis, a bungalow with a vast extent of land surrounding it such as for e.g. in the Larsen & Toubro case (Larsen and Tourbo Ltd. v. Trustees of Dharmamurthy Rao Bahadur Calavala Cunnan, Chetty's Charities, (1988) 4 SCC 260) and this is let out to a tenant. If a very strict and narrow interpretation is given to the word "appurtenant", it is arguable that a considerable part of surrounding land is surplus to the requirements of the leases of the building. But we think no argument is needed to say that such a lease would be a lease of building for the purposes of the Rent Control Act. Where a person leases a building together with land, it seems impermissible in the absence of clear intention spelt out in the deed, to dissect the lease as (a) of building and appurtenant land covered by the Rent Control Act and (b) of land alone governed by other relevant statutory provisions. What the parties have joined, one would think, the court cannot tear asunder. In fact we may point out that a wider meaning for this word was canvassed in J. H. Irani v. T. S. P. L. P. Chidambaran Chettiar (AIR 1953 Mad 650 : (1952) 2 MLJ 221) which the court had no necessity to go into in the view taken by it on the interpretation of the lease deed. In this cases also no contention has been raised in regard to this aspect and so we shall also leave open the precise connotation of the word except to say that it may warrant a wider meaning in the context.

18. For the reasons discussed above we see no grounds to interfere with the judgments of the courts below. The appeal is dismissed but we make no order as to costs.

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