

B.G. Kumaravelu and Another

Vs

K. R. Kanakarathnam Chetty and Others

Civil Appeal No. 40 of 1996

(S.C. Agrawal, S. Saghir Ahmad JJ)

03.01.1996

JUDGEMENT

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S.C. AGRAWAL:-

1 Special Leave granted.

2. The question that falls for consideration in this appeal arising out of a suit for eviction of the appellant-tenants is whether a lease of a building with fittings and furniture for running a cinema theatre falls within the purview of the Karnataka Rent Control Act, 1961 (hereinafter referred to as "the Act") and the tenant is entitled to avail the protection against eviction available under Section 21 of the Act.

3. A Cinema Theatre known as "Opera House" bearing No. 24 (Old) (New No. 57) 101, Brigade Road, Civil Station, Bangalore belonged to Mr. T.C. W. Skipp. After the death of Mr. Skipp on November 10, 1934, Mrs, Evelyn Elizebeth Holland Smith (Nee Skipp). one of his heirs, obtained the letters of administration in respect of the properties of Mr, Skipp including the 'Opera House', and she leased out the said property to one R. Phul Chand Mrs. Evelyn Elizebeth Holland Smith (Nee Skipp) along with other heirs of Mr. Skipp sold the said property including, fixtures, fittings and machinery free of all encumbrances, except the leasehold right of R. Phul Chand to Shri C.S. Krishnaiah Chetty and his wife, Smt. Rangamma under a sale deed dated July 20, 1939. Shri C. S. Krishnaiah Chetty had 3/8th share in the property while Smt. Rangamma had 5/8 share in the said property. By lease deed dated September 29, 1944 C.S. Krishnaiah Chetty and Smt. Rangamma leased out the premises of the 'Opera House' including fittings, furnitures, machineries etc. to Sri Rao Sahib S.V.Govindrajan, the father of the appellants herein. Under the said lease deed the rent was Rs. 800/- per month and the hire for furnitures etc. was Rs.300/- The said lease was for a period of 69 months and it expired on June 29,1950. Thereafter Sri Govindrajan became a tenant holding over and the landlords were receiving the rents from him. After the death of Sri Govindrajan in 1955, there was a family partition vide deed dated July 15,1967 and the lease hold interest in the suit property was allotted to the appellants and the appellants were treated as tenants holding over by the landlords. Smt. Rangamma died on August 17,1958 and after her death Shri C. S. Krishnaiah Chetty, as sole executor (as per her last will) sold her 5/8th share in property to his son-in-law Shri K.R.Kanakarathnam Chetty, respondent No. 1 herein by sale deed dated November 16,1959. On the same day Shri C.S.Krishnaiah Chetty sold his own 3/8th share in the said property to his daughter. Smt. K Yasodamma, respondent No.2 herein. On the same day there was attainment of tenancy by the appellants in favour of respondents Nos.1 and 2. On November 30. 1959 the appellants executed

a lease deed in favour of the respondents Nos.1 and 2 in respect of the building as well as furniture and fittings and all articles including machinery etc. The said lease was for a period of two years. The appellants continued to be tenants by executing from time to time lease deeds in favour of the respondents Nos. 1 and 2. Lease deed dated January 6, 1962 was executed for a period of 55 months from December 1,1961. Under the said lease the rent was Rs.950/- per month and the hire of furniture and machinery etc. was Rs.550/- per month. This lease was followed by lease deed dated August 11, 1966 for a further period of 55 months form July 1.1966 . Under this lease deed the rent was Rs.1300/- per month and hire of furniture and machinery etc. was Rs.700/- per month. After the expiry of the said lease, the appellants executed two separate lease deeds dated January 28, 1971, one in favour of respondent No. 1 and the other in favour of respondent No. 2. Both the lease deeds were for a period of 55 months from February 1, 1971. Under the lease deed executed in favour of respondent No. 1 the monthly rent was Rs. 937.50 and the hire of furniture and machinery etc. was Rs. 468.75 per month. Under the lease deed executed in favour of respondent No. 2 the said amounts were Rs. 562.50 and Rs. 281.25 respectively. On October 1, 1975 the appellants executed a lease deed in favour of respondent No. 1 in respect of his 5/8th share in the suit property whereunder the monthly rent was Rs 1750/-and a lease deed was executed in favour of respondent No. 2 on September 27,1975 in respect of his 3/8th share whereunder the monthly rent was Rs. 1,000/-. Both these leases were in respect of the thees theatre with machineries and fixtures. As regards the furniture it appears that respondent No. 2 had made a gift of her share of the furniture to her son Ramkrishnan. respondent No.3 herein, and respondent No.1 had made a gift of his share of furniture to his daughters. Smt. Uma Devi, respondent No. 4 herein, and Smt. Rajeshwari Gupta, respondent No. 5 herein, in equal shares. On October 10, 1975 three separate lease agreements were executed by the appellants in favour of respondents Nos. 3,4 and 5. Under the lease agreement executed in favour of respondent No. 3 the rent was Rs. 200/-per month whereas under the leases agreements executed in favour of respondents Nos. 4 and 5 the monthly rent payable to each of them was Rs. 150/- All the leases were for a period expiring on August 31, 1978. By an agreement dated September 9, 1978, the lease were extended for a period of three months till November 30, 1978. On failure on the part of the appellants to hand over the possession on the expiry of the lease on November 30, 1978, the respondents Nos. 1 to 5 filed the suit giving rise to this appeal in the Court of Addl.City Civil Judge. Bangalore city.

4. The suit was originally filed on the basis that under Section 31 of the Act the provisions contained in Part V (including Section 21) of the Act were not applicable to a non-residential building, the monthly rent of which exceeded Rs.500/- or the annual rental value of which exceeded Rs. 6,000/-. It was claimed that the rent in respect of the suit premises exceeded Rs. 500/- per month and the provisions of the Act did not apply to lease in question. During the pendency of the suit, Section 31 of the Act was struck down by the Karnataka High Court in H. Padmanabha Rao v. State of Karnataka, ILR 1986 Kant 2480. After the said decision, the appellants amended their written statement on June 25, 1988 raising the plea that the provisions of the Act covered the lease in question and the suit was not maintainable and that the Civil Court had no jurisdiction to entertain the suit. In view of the said amendment in the written statement, the plaintiff respondents were permitted to file a reply by way of rejoinder. In the rejoinder, the plaintiff-respondents pleaded that the lease was of a well equipped permanent cinema theatre with all the equipments, namely machineries, fixtures, furniture and fittings etc. and was not a mere ordinary tenancy of a building, and, therefore, the provisions of the Act were not attracted, In the light of the said plea, the following additional issue was framed by the Trial Court :

"Is the suit not maintainable in view of Section 31 of the K.R.C. Act was struck down and this Court has no jurisdiction to try the suit?"

5. The IV Addl. City Civil Judge, by his judgment dated January 7, 1989, decreed the suit and directed the appellants to deliver vacant possession of the Opera House building furniture, fittings, machinery fittings, fixtures etc. It was, however, found that the projectors amplifiers, screen and speakers were not the property of the plaintiffs as claimed by them and dismissed the suit of the plaintiff-respondents in respect of the said properties. The trial Court has held that though the plaintiffs have not alleged in the plaint, that it was a composite lease of a running cinema theatre but from a reading of the plaint, in entirety, it is clear that the plaintiffs have leased out the cinema theatre as a running concern. The trial Court has held that Phulchand had taken the premises to run it as a cinema theatre and thereafter the father of the appellants and, after his death, the appellants have continued to be the lessees of the cinema theatre as such but not the building or the furniture and that a fully equipped cinema theatre was leased in favour of the appellants and that they also had taken the cinema theatre as a running concern, and, therefore, the suit was maintainable even though Section 31 of the Act had been struck down.

6. The High Court, on appeal, has affirmed the said judgment of the IV Addl. City Civil Judge. The High Court has upheld the finding recorded by the trial Court that the lease did not include the projectors, amplifiers, screen and speakers. The High Courts, however, held that the dominant purpose of the lease was to run a cinema business in the building with the furniture, machinery and equipment provided therein and that in fact the lease is a composite lease of the building with furniture, fittings, machineries and equipments for running a cinema theatre and the lease was outside the purview of the Act and the same does not come under the provisions of the Act. In coming to the said conclusion, the High Court has placed reliance on the decisions of this Court in *Uttamchand v.S.M. Lalwani*, AIR 1965 SC 716 and *Dwarka Prasad v. Dwarka Das Saraf*, (1976) (1) SCR277:(AIR1975 SC 1758). The decision of the Madhya Pradesh High Court in *Anant Gadre v. Smt. Gomtibai*, AIR 1983 Madh Pra 72, was held to be inapplicable in the facts of this case.

7. Before we proceed to deal with the submissions of the learned counsel, it would be necessary to refer to the definition of the expression "premises" and "building" as contained in the Act. The "premises" is defined in Section 3(n) of the Act in the following terms:

"(n) "Premises" means -

(i) a building as defined in clause (a);

(ii) any land not used for agricultural purposes;"

8. The expression "building" is defined in Section 3(a) of the Act as follows:

"(a) building" means any building or hut or part of a building or hut other than a farm house, let or to be let separately for residential or non-residential purposes and includes-

(i) the garden, grounds and out-houses, 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 or part of building or hut;

(ii) any furniture supplied by the landlord for the use in such building or hut or part of a building or hut;

(iii) any fittings affixed to such building or part of a building for the more beneficial

enjoyment thereof, but does not include a room or other accommodation in a hotel or a lodging house."

9. The definition of "building" in Section 3 (a) of the Act is similar to the definition of the expression "accommodation" in Section 3(a)(y) of the Madhya Pradesh Accommodation Control Act, 1955 and Section 2 (a) of the U.P. (Temporary) Control of Rent and Eviction Act, 1947.

10. In *Uttamchand v. S.M. Lalwani* (AIR1965 SC716) (supra) this Court has dealt with the question whether the lease in respect of a Dal Mill building with fixed machinery could be said to be a lease of "accommodation" within the meaning of Section 3 (a) (y) of the M.P. Accommodation Control Act, 1955. It was urged that the lease was of the Dal Mill building and that the machinery came under the lease was incidentally as having been fixed in the said building. It was submitted that the Court must apply the test of the dominant intention of the parties. Construing the lease deed by applying the test of the dominant intention of the parties, the Court held that though the document purported to be a lease in respect of the Dal Mill building the said description was not decisive of the matter and that it was not a case where the subject-matter of the lease was the building and along with the lease building incidentally passes the fixture of the machinery in regard to the Mill and that in truth it was the Mill which was the subject-matter of the lease, and it was because the Mill was intended to be let out that the building had inevitably to be let out along with the Mill. In that context, this Court has held that the fixtures in the schedule to the lease are in no sense intended for the more beneficial enjoyment of the building and that the fixtures are the primary objects which the lease was intended to cover and the building in which the fixtures are located comes in incidentally. It was, therefore, held that it was a case where the tenant had entered into the lease for the purpose of running of the Dal Mill which was located in the building and that a Mill of this kind would have to be located in some building or another, and so, the mere fact that the lease purported to be in respect of the building would not make it a lease in respect of an accommodation as defined in Section 3 (a)(y)(3) of the M.P. Accommodation Control Act, 1955.

11. In *Dwarka Prasad v. Dwarka Das Saraf* (1976(1)SCR 277: AIR 1975 SC 1758)(supra,) the question which came up for consideration before this Court was whether a cinema theatre equipped with projectors and other fittings and ready to be launched as an entertainment house was an accommodation as defined in Section 2(1)(a) of the U.P.(Temporary) Control of Rent and Eviction Acts, 1947. As indicated by the Court, the core of the controversy was whether the lease was of the building, the fittings and the fixtures merely making for the beneficial enjoyment of and ancillary to the building, as urged by the tenant, or whether the building provided a bare, though appropriately designed, enclosure to have an enterprise, the dominant purpose or real subject of the lease being the cinema, apparatus and fittings, including subsidiarily and incidentally, though necessarily, the structure of brick and mortar. The Court held that the lease of an "accommodation" must essentially be of a building- not a business or industry together with the building in which it is situated. Referring to the amenities which may be provided in the building by landlord to see that the tenants' enjoyment of the tenement may be more attractive, viz furniture and fittings, it was observed that the crucial point is that these additions are appurtenant, subservient and beneficial to the buildings itself and they make the occupation of the building more convenient and pleasant but the principal thing demised is the building and the additives are auxiliary and that whether the lease is composite and has a plurality of purposes, the decisive test is the dominant purpose of the demise. In that case the rent for the building was Rs.400/- per month and the rent for the projector and all other items fixed in the building was Rs.1,000/- per month and the commencement of the lease was to synchronize with the inaugural cinema show on March 25, 1953. In the light of these facts it has been held :

"In the present case we have to visualize what was the dominant or decisive component of the transaction between the parties, the tenancy of the building qua building or the taking over of a cinema house as a business. the projectors, furniture, fittings and annexes being the moving factor, the building itself playing a secondary, though necessary role in the calculations of the parties. Going by the rental apportioned, it is obvious that the parties stressed the cinema equipment as by far the more important. Judging by the fact that there had already been a cinema in this house for several years, with the necessary certificates under the various statutes for running a cinema theatre obtained by the landlord and that the lease itself was to commence only from the date of the first show of the films, doubts regarding the essential object and subject of the bargain stand dispelled"

(pp.283-84(of SCR):(at pp.1762-63 of AIR

"In the case before us the fixtures are not for the more beneficial enjoyment of the building. On the contrary, the possession of the building is made over as an integral part of, and incidental to, the making over of the cinema apparatus and costly appliances. In the language of the learned Chief Justice in Uttam Chand case (AIR 1965 SC 716) (supra), the fixtures are the primary object which the lease was intended to cover and the building in which the fixtures are located comes in incidentally."

[p.287] (of SCR) :(at P.1765 of AIR).

"A lease of a lucrative theatre with expensive cinema equipment, which latter pressed the lessee to go into the transaction, cannot reasonably be reduced into a mere tenancy of a building together with fittings which but make the user more comfortable."

[pp.289-90 (of SCR) :(at p.1767 of AIR).

12. Shri P P. Rao, the learned senior counsel appearing for the appellants, has urged that adopting the dominant test laid down by the Court in Uttamchand v.S.M. Lalwani (AIR1965 SC 716) (supra) and Dwarka Prasad v. Dwarka Das Saraf (AIR 1975 SC 1758) (supra) the lease in the present case is primarily a lease for the building and the fitting and furnitures etc. are incidental to the building which was meant to be used as a cinema theatre and, therefore, the lease is for a "building" as defined in Section 2(a) of the Act. In this regard Shri Rao has laid emphasis on the fact that projectors, amplifiers, screen and speakers were not part of the equipment that was leased out and that the said equipment has to be provided by the appellants and, therefore, that it was not a lease in respect of the business of a cinema theatre or for running a cinema theatre. The submission is that furniture, fittings and other equipment which were leased out along with the building was for the beneficial enjoyment of the building which had been constructed for being used as a cinema theatre and the said furniture, fittings and equipment were incidental and not the dominant purpose of the lease and that the dominant purpose of the lease was the building which was to be used as a cinema theatre. Shri Rao has also submitted that in the present case the furniture was owned by the respondents Nos. 3, 4 and 5 while the building, fittings and the equipment were owned by respondents Nos. 1 and 2. Moreover, Shri Rao has pointed out that as per the terms of the lease the rent for the building payable to respondents Nos, 1 and 2 was Rs. 2,750/- per month and rent for the furniture that was payable to respondents Nos. 4 and 5 was Rs. 500/- per month which was later on

raised to Rs. 1000/- per month. Shri Rao has placed reliance on the judgment of the High Court of Madhya Pradesh in *Anant Gadre v. Smt. Gombibai* (AIR 1983 MadhPra 72) (supra) where the lease was of a cinema building with the furniture, fans and other fittings but without projector or the machinery for exhibition of films and it was held that the dominant intention was to lease out the building with furniture and fittings and not to let out the cinema business. Shri Rao has urged that in the impugned judgment the High Court was in error in holding that the said case was not applicable in the facts of this case.

13. Shri Harish N. Salve, the learned senior counsel appearing for the plaintiff-respondents, has submitted that the purpose of the lease was to run a cinema which was already running in the premises and in this regard he has invited our attention to the earlier lease granted in favour of Phulchand and Govindrajan as well as the appellants. The submission of Shri Salve is that the lease for furniture was not an independent transaction and that the High Court has rightly held that the dominant intention was to grant the lease for running a cinema theatre. Shri Salve's contention is that the mere fact that some equipments were not leased out would not alter the nature of the lease.

14. Though there are separate lease deeds executed by respondents Nos. 1 and 2 in respect of their respective shares in the premises and separate lease deeds have been executed by respondents Nos. 3 to 5 for the furniture but having regard to the leases executed earlier, we will treat all of them as part of a single lease for the building, fittings and equipment and furniture.

15. In view of the decisions of this Court in *Uttamchand v. S.M. Lalwani* (AIR 1965 SC 716) (supra) and *Dwarka Prasad v. Dwarka Das Saraf* (AIR 1975 SC 1758) (supra) for the purpose of determining whether the lease in the present case is in respect of a 'building' under Section 3 (a) of the Act so as to fall within the ambit of expression "premises" as defined in Section 3 (n) of the Act, we have to apply the test of the dominant intention of the parties. It is, therefore, necessary to find out what is the dominant purpose of the demise. The property covered by the lease is the cinema building, fittings and furniture and some equipment. The projectors, amplifiers, screen and speakers are, however, not included in the demise. In the lease deeds that were executed from time to time since 1944 the rent for the building and fittings and the hire for furniture and machinery etc. has been apportioned and that rent for the building is much more than to the hire for furniture and machinery etc., the ratio being 2:1 approximately. It cannot, therefore, be said that cinema equipment is more important part of the demises than the building. Having regard to the apportionment of the rent for the building and the furniture and equipments it can be said that the dominant purpose of the demise is the building qua building and the fittings and other equipment only incidentally pass with the building which has been constructed for being used as a cinema theatre. This is not a case where it can be said that the fittings and the equipment are the primary objects which the lease was intended to cover and the building in which they are located comes in incidentally. It must, therefore, be held that the dominant intention of the parties was to let out the building for being used as a cinema theatre and it cannot be said that the dominant intention was to let out the fittings, furnitures and equipment and the building playing a subsidiary role only. Moreover in the absence of the projectors, amplifiers, screen and the speakers, which are the major part of the equipment required for exhibition of films is cannot be said that the lease was of a running cinema business or of a fully equipped running cinema theatre. On that view of the matter there is no escape from the conclusion that the lease in favour of the appellants it of a 'building' as defined in Section 3 (a) of the Act and it falls within the ambit of the expression "premises" as defined in Section 3(n) of the Act. This would mean that the appellants are entitled to the protection of the provisions of the Act in the matter of eviction and they can be evicted only in accordance with the provisions of the Act in proceedings initiated before the appropriate forums.

16. Since we are of the opinion that the lease was primarily of a 'building' falling under Section 3 (a), of the Act and the appellants are entitled to the protection of the Act in the matter of eviction, it must be held that the suit filed by the plaintiff-respondents for the eviction of the appellants in the Civil Court was not maintainable. The appeal is, therefore allowed, the judgment and decree of the High Court dated 22nd April, 1994 in Regular First Appeal No.80 of 1989 as well as the judgment and decree of the IV Addl. City Civil Judge, Bangalore city dated January 7, 1989 in Original Suit No. 409 of 1980 are set aside and the said suit filed by the plaintiff- respondents for the eviction of the appellants is dismissed. There is no order as to costs. Appeal allowed.