

K. V. Jai Singh

Vs

C. R. Govindaswamy Chettiar (Died) and Others

Civil Appeal No. 2594 of 1995

(Kuldip Singh, S. Saghir Ahmadi JJ)

09.08.1996

ORDER

1. C. R. Govindaswamy Chettiar (deceased), predecessor-in-interest of Respondents 4 to 6 and C. R. Hariharaputhiran, instituted a suit before the City Civil Court at Madras seeking ejection of the appellant from the suit scheduled property. The appellant, in the written statement filed before the trial court, took the following objection with regard to the maintainability of the suit :

1. The suit property being a building simpliciter and not a composite lease, the appellant-defendant as a tenant of the suit-property was entitled to the protection under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (the Act).

2. That the appellant-defendant was an assignee from the third respondent herein of the right to an extent of 1/3rd share in the income derived from the lease under the registered deed of assignment Ex. B-42 dated 21-11-1983.

2. The trial court decreed the suit and directed the ejection of the appellant. Appeal filed against the judgment of the trial court was dismissed by a Division Bench of the High Court by the judgment dated 21-1-1995. This appeal by the tenant is against the judgment of the Division Bench of the High Court.

3. Mr D. D. Thakur, the learned counsel for the appellant has raised the same two contentions which were raised before the trial court before the High Court.

4. The main question before the High Court was whether the suit property was leased out as a running cinema house with the fixtures, machinery and furniture as a part of the lease and as such it was a composite lease within Section 30(iii) of the Act. The High Court upheld the findings of the trial court that the lease in favour of the appellant was a composite lease and as such he was not entitled to the protection of the provisions of the Act. The High Court on elaborate consideration of the terms and various clauses of the lease deed and also on appreciation of oral and documentary evidence has come to the conclusion that the lease in favour of the appellant was a composite lease. No fault can be found with the reasoning of the High Court which is reproduced hereunder :

"In our opinion, the principles laid down in the above case squarely apply to the facts and circumstances of the case on hand. We have already discussed the terms and conditions contained in Ex. A-1 in extenso in paras supra. As clearly mentioned in the lease deed, the dominant purpose of the lease, as disclosed in the lease deed Ex. A-1, was for running a cinema theatre and that the lessee should run the theatre in the

name of Shri Kothandarama Theatre for a period of 13 years with the building, furniture, electrical fittings, etc., as set out in Schedules A and B. Under the agreement, the lessee has to pay the rent for the building and hire charges for the furniture, fittings, etc., and also apply and obtain police permission, etc., for conducting the cinema theatre or exhibiting any films, pictures, etc. The lessee shall also pay the electricity charges, meter rent, etc., taxes like professional tax for the business and also the licence fee for running the cinema theatre. It is also seen from clause 2(x) that the lessee shall bear and pay all the charges, fees, etc., for running the theatre as a going concern and for exhibiting any film, picture, etc. Thus, the intention of the parties has been very clearly spelt out in the clause referred to above. Therefore, we have no hesitation in holding that the dominant purpose of the lease is for running a theatre as a going concern together with the building in which it was being run. It would, therefore, follow that the lease is a composite one and that it is not governed by the provisions of the Act as contended by the appellants.

It is also useful to refer to the Commissioner's report filed in IA No. 6148 of 1962 in OS No. 2521 of 1962 on the file of the Third Assistant City Civil Judge, Madras. The said suit was filed by Rukmani Bai and others against C. V. Rajagopal Chetty and another. An application for appointment of Commissioner was taken out by the defendants C. V. Rajagopal Chetty and another as petitioners. The Commissioner took out an inventory of the various articles kept in the premises as per the directions of the court. The Commissioner has found 21 items in the auditorium, five items on the switchboard on the right side wall of the auditorium, five items on the switchboard on the left side wall of the auditorium, 59 items of furniture, 20 items inside the cabin and 13 items in the rewinder room. The inventory was taken by the Commissioner on 22-10-1962. It is seen from the inventory taken that all the items required for running a cinema theatre were given to the lessee for effective running of the theatre, which includes furniture provided, loudspeaker, double speaker, etc., and all other electrical items except projectors and their accessories, which the defendant C. V. Rajagopal Chetty admitted that the three projectors and their accessories kept in the cabin room belong to the plaintiffs Rukmani Bai and others.

Likewise, Ex. B-13 dated 29-11-1963, which is the lease deed executed between C. V. Rajagopal Chetty and C. R. Govindaswami Chettiar on the one hand and Rukmani Bai and K. Viswanath Singh on the other, also provides under clause (c) that the lessee shall use the premises only as a place of exhibition of cinematograph shows in the public and shall not use the theatre for any other purpose without the written consent of the lessors and that the lessee shall not be entitled to sub-lease the premises to others. It also further provides that the lessee shall take the necessary licences for the running of the cinematographic Resorts Act, etc., for conducting the cinema shows in the premises in question. As per clause (m), the lessees shall at their own expense and cost bring the theatre into a working condition and shall themselves apply for and obtain necessary licences to run cinema shows in the said theatre and the lessors shall in no way be responsible for effecting any repairs, renovations or improvements to the theatre.

Ex. B-11 is the decree in OS No. 2521 of 1962 on the file of the City Civil Court, Madras, dated 21-3-1963 between the parties to the present action. That suit was filed by the lessees for specific performance of an agreement dated 5-11-1961 by

executing and registering the deed of lease in respect of the theatre known as Kothandarama Theatre, and of the furniture and electric fittings therein described in Schedules A and B thereunder in favour of the 1st plaintiff Rukmani Bai and for other reliefs. That suit was decreed and the defendants therein were directed to execute and register the deed of lease in respect of the theatre known as Kothandarama Theatre, and of the furniture and electric fittings therein, more fully described in Schedules A and B in that decree in favour of the 1st plaintiff Rukmani Bai as per the agreement dated 5-11-1961. Schedule B relates to the furniture and fittings provided by the lessors to the lessors to the lessees. Sixty-five items of furniture viz., 24 single-seat sofas, 12 double-seat sofas, 125 cushion chairs, 59 wooden back benches, 52 wooden bank benches, fire extinguishers, fire buckets, electrical fittings, etc., were given in Schedule B.

Ex. A-28 is the plaint copy in CS No. 88 of 1957 on the file of this Court. That suit was filed by Rukmani Bai and K. Viswanath Singh against the lessors herein. Para 3 of the plaint reads that the said theatre is equipped with furniture and fittings as a cinematograph exhibition house and that the 1st plaintiff Rukmani Bai, holds a lease of the said property where with her own machinery runs a business of cinematograph exhibitions and that the lease in her favours is dated 1-12-1954 and is in writing and registered. Ex. B-9 is again a memorandum of agreement between the same parties, which was entered into between them to settle all their disputes and proceedings now pending in various courts in the manner provided thereunder. Clause 10 of that agreement is relevant. It provides that the lease of the theatre and the hiring of the furniture, fittings, etc., shall be coextensive.

Thus, the terms and conditions stipulated in the various agreements referred to and entered into between the parties to this action clearly go to show that the intention of the parties is to run the theatre as a going concern with the furnitures, fittings, etc., as originally provided by the lessors and subsequently altered and provided from time to time by the lessees. As pointed out by a Division Bench of this Court in 86 LW 65, the question of intention of the parties will become relevant only if the terms of the transaction are not clear. In this case, the terms are very clear, simple and unambiguous and therefore the intention also can be clearly seen and the purpose for which the building was taken is to run the business of the theatre with the fixtures, fittings, etc. There can be no transaction of lease of a going concern of theatre. So, we have no hesitation in holding that Ex. A-1 is a composite lease. We answer the point accordingly and in favour of the lessors and against the lessees."

5. We agree with the reasons and the conclusion reached by the High Court.

6. The second contention of the appellant based on Ex. B-42 assignment-deed dated 21-11-1983 has been dealt with by the High Court as under :

"Ex. B-42 reads that Rs. 25,000 is to be paid before the Sub-Registrar but admittedly not paid Sub-Registrar. The circumstances under which Ex. B-42 has come into existence are not mentioned in the plaint is OS No. 9075 of 1983. The 2nd defendant in OS No. 885 of 1984 has been made a party, viz., 2nd defendant in OS No. 9075 of 1983. The 2nd defendant has also given all the documents to the 1st defendant for the purpose of using them in this case, viz., Exs. B-1 to B-13. The 2nd defendants'

explanation that he gave them to the mother of the 1st defendant at the time of Ex. A-1 is only an afterthought and not spoken to by the 1st defendant as DW 1. DW 1 says that they were in a box in a bundle. It is the case of the plaintiffs that there is a clear collusion between the 1st defendant and the 2nd defendant.

The 2nd defendant as DW states that he has received Rs. 25,000. There are no stakes involved for him. He wants to support the 1st defendant somehow or other. As rightly pointed out by Mr. T. V. Rakanujam, the 2nd defendant is a pawn in the hands of the 1st defendant. At the time of cross-examination, the 1st defendant has been exposed for having filed documents which should be in the custody of the 2nd defendant. Even the office copy of the Execution Petition Ex. B-2 is filed by the 1st defendant. It is, therefore, highly unbelievable that the 1st defendant's mother would have asked for that document. The 2nd defendant has no right to give away the documents to third parties. He has not even made a demand for the return of those documents to third parties. He has not even made a demand for the return of those documents at least after the death of 1st defendant's mother. He has not even informed the 1st plaintiff while handing over charge. After the cross-examination of the 1st defendant, realising that it has been exposed that the 2nd defendant has given the documents to the 1st defendant, a notice to produce documents Exs. B-46 to B-48 was sent. Even that notice has not been filed. The 1st defendant is not claiming any ownership in the theatre but he only claims tenancy rights. Hence, we are of the view that Ex. B-42 is not relevant for the purpose of this case and we, therefore, refrain ourselves from giving any finding in regard to the validity of Ex. B-42 in these proceedings. As could be seen, in Ex. A-8, the plaintiffs and the 2nd defendant have no right to assign and that the 2nd defendant has no legal right to execute Ex. B-42. However, this point is left open to be agitated by the parties concerned before the proper forum at the appropriate stage."

7. Although the trial court came to conclusion that document Ex. B-42 was not a valid document but the High Court, for justifiable reasons did not go into the merits of the question. The High Court has left the point open to be agitated by the parties concerned before the proper forum at the appropriate stage. We see no ground to interfere with the conclusions reached by the High Court.

8. Mr. D. D. Thakur also raised an additional point. According to his the Act was amended after 21-12-1970 when the lease was granted to the appellant. The precise contention is that on the date of the contract the provisions of the Act, as existed, gave the appellant full protection and the appellant could not be ejected from the suit premises except in accordance with the provisions of the Act. This point was neither pleaded nor raised before any of the courts below. We are not inclined to permit the learned counsel to raise the point at this stage.

9. The appeal is dismissed with costs. We quantify the costs at Rs. 20,000.