

Antony

Vs

K. C. Ittoop & Sons and Others

Civil appeal No. 5904 of 1999

(K. T. Thomas, Syed Shah Mohammed Quadri JJ)

12.10.1999

JUDGMENT

SYED SHAH MOHAMMED QUADRI, J. -

1. This appeal is from the judgment and order of the High Court of Kerala at Ernakulam in second Appeal No. 835 of 1988-G dated 4-9-1997. The short but important question that arises for consideration is whether the appellant who has occupied the suit premises under a void lease, is entitled to the protection of the Kerala Buildings (Lease and Rent Control) Act, 1965.
2. The Facts, necessary to appreciate the question, may be out briefly. The parties will be referred to as the appellant and the respondents. The suit property was allotted to one Raman Namboodiri and others (pro forma Respondents 2 to 6 herein) in a family partition in the year 1974. From them the appellant took it on lease on a monthly rent of Rs 140 for a period of five years. A lease deed, Exh. B-3, was executed on 14-1-1974 but it was, however, not registered. Thereafter, the suit premises were purchased by the first respondent from respondent from Respondents 2 to 6 on 2-12-1974.
3. On 24-3-1975 the respondents filed the suit (out of which this appeal arises) on the strength of title, for recovery of possession of the suit property and past and future mesne profits on the ground that the lease was void and they are entitled to get back the possession thereof. The appellant has contested the suit on the ground that he is the lessee of the suit premises; he paid the rent under Exh. B-3 till October 1974 and as such he is entitled to the protection of the Kerala Buildings (Lease and Rent Control) Act, 1965 (for short "the Act"). The lease itself was void being in contravention of section 107 of the Transfer of Property Act and the lease deed was inadmissible in evidence being in contravention of Section 49 of the Indian Registration Act. However, no plea was taken that independent of the void lease, by conduct of the parties in paying and accepting the rent every month till October 1974, a month tenancy came into existence.
4. The trial court held that the appellant acquired no right which could be protected either under section 53-A of the Transfer of Property Act or under the act and thus decreed the suit of the respondents on 9-2-1976. On appeal by the appellant, the learned district judge, Trichur, held that the appellant was a lessee entitled to the protection of the Act. The matter was carried in Second appeal No. 803 of 1981 before the High court. The High court having held that the lease was void, remanded the case to district Court having held that the lease was void, remanded the case to the District court to determine the question whether independent of the lease the appellant was in possession as a lessee on a month-to-month tenancy.
5. After remand, the learned District judge held that the facts and circumstances and the facts and

circumstances and the evidence adduced in the case would show that the parties intended to create a lease and there was relationship of landlord and tenant, notwithstanding the fact that the lease deed was void. The High court held that the appellant had not proved that independent of the void lease, a relationship of landlord and tenant had come into existence between the parties and in that view of the matter set aside the judgment of the learned district judge and restored the judgment of the trial court by allowing the second appeal on 4-9-1997. It is against that judgment and order of the High court that the present appeal has been preferred.

6. Heard Mr. T.L.V. Iyer, learned Senior Counsel for the appellant and Mr. P. Krishnamoorthy, learned Senior counsel for the respondents.

7. The question whether under a void lease relationship of landlord and tenant is created on acceptance of rent from the person in occupation of the demised property, fell for consideration of this court in *Hitkarini Sabha v. Corpn. Of the City of Jabalpur*¹. The question arose in the context of apportionment of the compensation for the acquired land which included the demised land. In that case a lease in respect of Municipal land was granted by the Administrator of the Municipality. The lease was found to be void as the property of the Municipality on its superseded Municipality had no authority to transfer its property in any manner. The High court proceeded in the matter on the footing that the lease was for 30 years. A Bench of two learned judges of this court noted with approval the contention of the learned counsel for the appellant that on acceptance of the rent by the Municipality from the appellant (tenant) the relationship of landlord and tenant came into existence between the parties.

8. In *Technicians Studio (P) Ltd. V. Lila Ghosh*² the same question came to be determined by a Bench of two learned judges of this Court. There, under a compromise decree, the appellant became a tenant of the suit property for a period of 16 years on an agreed monthly rent of Rs 1000. However, neither was any registered lease deed executed nor was the memo of compromise registered. During the said period of the lease, the suit property devolved upon the respondent. On the expiry of the said period of lease, the respondent filed the suit for recovery of possession of the suit property after serving a notice to quit on the appellant. In the suit, the plea set up by the appellant was that by payment of the agreed rent during the said period of 16 years a monthly tenancy was created in its favour and though no payment of rent was made thereafter, the monthly tenancy continued even after the expiry of the said lease period. The trial court found that the lease was void as the compromise was not registered and that the payment and acceptance of rent in terms of the unregistered compromise did not give rise to a right of tenancy. Accordingly, the suit was decreed. The first appellate court and the High court confirmed the suit was decreed. The first appellate court and the High court confirmed the decree of the trial court. On appeal to this court, it was observed, inter alia, that after the compromise decree the possession of the appellant, in order to be valid, must be referable to the compromise. Negating the contention of the appellant that *Ram Kumar Das v. Jagdish Chandra Deo*³ is an authority for the proposition that in every case where a person enters into possession on the strength of an invalid lease and the landlord accepts the rent in terms of that invalid lease, a monthly tenancy is crated by implication of law, it was held that the monthly payment brought the appellant under the coverage of Section 53-A of the Transfer of Property Act but from that fact it was not possible to conclude that tenancy was brought into existence. It was however, pointed out that it was possible to find on the facts of a given case that payments, made by a transferee in possession under an invalid lease, were really not in terms of the contract but independent of it, and that might justify an inference of tenancy in his favour.

9. The question is ultimately on of fact and has to be determined in each case.

10. In view of the apparent conflict of opinion in the said decisions of this Court by Benches of equal strength and in view of the fact that the question frequently arises in various forms, we consider it appropriate to refer the case to a larger Bench for an authoritative pronouncement. We order accordingly and direct the Registry to place the case before Hon'ble the Chief Justice of India for appropriate orders.