SUPREME COURT OF INDIA

Board of Trustees of Port of Kandla

Vs.

Hargovind Jasraj

C.A.No.153 of 2013

(T.S.Thakur and Gyan Sudha Misra JJ.)

09.01.2013

JUDGMENT

T.S. THAKUR, J.

1. Leave granted.

2. This appeal arises out of a judgment and order dated 26th December, 2007 passed by the High Court of Gujarat at Ahmedabad whereby Civil Second Appeal No.17 of 2007 filed by the appellant has been dismissed and the judgment and decree passed by the Courts below affirmed. The facts giving rise to the filing of this appeal may be summarised as under:

3. A parcel of land admeasuring 1891.64 square meters situated in Sector 30, Gandhidham in the State of Gujarat was granted in favour of Smt. Pushpa Pramod Shah-respondent No.2 in this appeal on a long-term lease basis. A formal lease-deed was also executed and registered in favour of the lessee stipulating the terms and conditions on which the lessee was to hold the land demised in her favour. The respondent-lessee it appears committed default in the payment of the lease rent stipulated in the lease-deed with the result that the appellant-lessor issued notices dated 12th December, 1975 and 17th July, 1976 calling upon the lessee to pay the outstanding amount with interest and stating that the lease of the plot in question shall stand determined under Clause 4 thereof and possession of the demised premises taken over by the appellant-Port Trust in case the needful is not done.

4. In response to the notices aforementioned the lessee by communication dated 18th November, 1976 requested the appellant-Port Trust to permit her to resell the

plots for a symbolic consideration and to obtain the refund of the instalment amount already paid to the Port Trust. The letter sought to justify the default in the payment of arrears on the ground of an untimely demise of her husband, resulting in cancellation of expansion programme including any further acquisition of land by the lessee.

5. Failure of the lessee to remit the outstanding instalment amount culminated in the termination of the lease by the appellant-Port Trust in terms of an order dated 8th August, 1977 w.e.f. 13th December, 1978. A panchnama prepared on 14th December, 1978 evidenced the takeover of possession of the plot in question by the appellant-Port Trust, copy whereof was forwarded even to the lessee along with a certificate that the possession had been taken over by the Assistant Estate Manager of the appellant-Port Trust under his letter dated 20th December, 1978.

6. On receipt of the letter aforementioned the lessee by her letter dated 22nd February, 1979 requested the appellant-Port Trust to refund the amount and in case a refund could not be made, to return the possession of the plot to her. One year and four months after the issue of the said letter the lessee-respondent No.2 herein filed Civil Suit No.152 of 1980 in the Court of Civil Judge, Gandhidham, in which she prayed for a decree for permanent injunction restraining the defendants, its officers and servants from interfering with her peaceful possession over the plot in question. The immediate provocation for the filing of the said suit was provided by the appellant-Port Trust proposing to re-auction the plot in question. The plaintiff's case in the suit was that she was in actual physical possession of the plot which rendered the proposed auction thereof unreasonable. An interim application was also filed in the said suit in which the Court granted an ex-parte order of injunction that was subsequently vacated by a detailed order passed on 5th September, 1980 holding that the plaintiff was not entitled to the relief of injunction. It is common ground that suit No.152 of 1980 was eventually dismissed on 18th January, 1985 for non- prosecution.

7. Almost six years after the dismissal of the first suit, another Suit No.126 of 1991 was filed, this time by respondent No.1-Hargovind Jasraj against respondent No.2-Smt. Pushpa Pramod Shah for a permanent prohibitory injunction restraining defendant No.2-lessee of the plot, her agents, servants and representatives from interfering with the plaintiff's possession over the plot in dispute. According to averments made in the said suit the lessee had not been carrying on any business activities in Gandhidham nor was she using the plot in question and that she was finding it difficult to look after and administer the plot after the death of her husband. She had, therefore, sold the plot to the plaintiff-respondent No.1 in this

appeal in terms of a registered document. It was further alleged that the cause of action to file the suit accrued a few days before the filing of the suit when defendant-lessee had through her representative asked the plaintiff to vacate the suit plot which demand was in breach of the sale agreement between the parties. Apprehending dispossession from the plot in question plaintiff-respondent No.1 sought a decree for injunction against respondent No.2. The appellant-Port Trust, it is noteworthy, was not impleaded as a party to the suit which too was dismissed for non- prosecution on 15th March, 2002.

8. Five years later and pending disposal of the second suit mentioned above, a third suit being Suit No.77 of 1996 was filed by respondent No.1 this time asking for a declaration and permanent injunction in which the plaintiff for the first time questioned the termination of the lease by the appellant-Port Trust. A declaration that the said lease was still subsisting with an injunction restraining the defendant-appellant in this appeal and its employees from acting in any manner injurious to the title and the possession of the plaintiff over the disputed land was prayed for. Plaintiff's case in this suit was that he had purchased the plot in question from Smt. Pushpa Pramod Shah in the year 1991 in terms of a transfer deed registered with the concerned Sub-Registrar at Gandhidham and that he had based on the said transfer asked for transfer of the lease rights which request had been declined by the appellant-Port Trust in the year 1994. It was further alleged that he had come to know about the purported cancellation of the lease in favour of Smt. Pushpa Pramod Shah and the purported takeover of the possession of the plot from her which was according to him both fraudulent and invalid in the eyes of law.

9. The suit was contested by the appellant-Port Trust on several grounds giving rise to as many as seven issues framed by the trial Court for determination. The suit was eventually decreed by the said Court, aggrieved whereof the appellant-Port Trust filed an appeal before the First Appellate Court who partly allowed the said appeal by its judgment and order dated 16th November, 2006. The Appellate Court affirmed the decree passed by the Courts below in so far as the trial Court had declared that the lease-deed in question had not been validly terminated by the lessor and the same continued to be subsisting but allowed the appeal setting aside that part of the judgment passed by the trial Court whereby the trial Court had directed the appellant-Port Trust to transfer the lease rights in favour of the plaintiff-respondent No.1 in this appeal.

10. The appellant-Port Trust appealed to the High Court against the above judgment and decree which has been dismissed by the High Court in terms of the order impugned before us holding that no substantial question of law arose in the

light of the concurrent findings of fact recorded by the courts below. The High Court found that since the earlier suits had not been decided on merits, no final adjudication had taken place in the same so as to attract the doctrine of res judicata to the issues raised in the third suit out of which the present proceedings arise.

11. Appearing for the appellant Mr. Pravin H. Parekh, learned senior counsel, strenuously argued that the courts below had fallen in serious error in holding that the termination of the lease by the appellant-Port Trust was invalid or that the lease continued to be valid and subsisting. The question whether the Senior Estate Manager was competent to terminate the lease and enter upon the suit property was not, argued Mr. Parekh, joined as an issue by the courts below and could not be made a basis for holding the termination to be unauthorised or invalid. Alternatively, he submitted that the termination order had been passed as early as in the year 1977 whereas the suit in question was filed in the year 1996 after a lapse of nearly 18 years. The possession of the plot was also taken over on 14th December, 1978 which fact was acknowledged unequivocally by the lessee in her letter dated 22nd February, 1979. That being so, any suit aimed at challenging the validity of the termination or assailing validity of the process by which the possession was taken over from the lessee should have been filed within a period of six months from the date the cause of action accrued to the lessee in terms of Section 120 of the Major Port Trust Act. At any rate, such a suit could be filed, at best within three years from the date the cause of action accrued to the lessee. Neither the lessee nor her transferee who came on the scene long after the termination order had been passed and the possession taken over could question the validity of the termination of the lease or demand protection of their possession in the light of a clear and unequivocal admission made by the lessee in her letter dated 22nd February, 1979 that the possession of the plot in question stood taken over from her. The courts below have, in that view, committed a mistake in holding that the suit was within time.

12. Mr. Ahmadi, counsel appearing for the respondent, on the other hand, submitted that the courts below had recorded a concurrent finding of fact that the lessee continued to be in possession of the suit property even after the termination of the lease which finding of fact could not be assailed nor was there any legal impediment for the plaintiff transferee or the original lessee who too was joined as a plaintiff in the year 1999 to seek protection of their possession. It was further argued by Mr. Ahmadi that the admission made by the lessee in her letter dated 22nd February, 1979 was not unequivocal and stood explained by the attendant circumstances including the demise of her husband and resultant inability of the

lessee to go ahead with the expansion programme or to pay remainder of the lease amount.

13. The Trial Court has, while dealing with the question of dispossession of the lessee from the disputed plot, recorded a rather ambivalent finding. This is evident from the following observations made by it in its judgment:

> "…..Further Panchnama submitted alongwith Ex.49 cannot be said to be panchnama of taking physical possession of the plot because the plot is open. Even at present it is open and there are bushes of the Babool Trees and as such it is difficult to hold anything about possession that of Pushpaben or K.P.T. IT cannot be believed that by mere preparing panchnama the possession has been taken from the person who is in possession of the plot. The K.P.T. has not taken the possession vide Ex. 49 in the presence of Pushpaben. Under the said circumstances the plot is open and it is as it is……"
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> (emphasis supplied)

14. It is manifest that there is no clear finding of fact regarding possession of the suit property having continued with the lessee, no matter the lease stood terminated and a panchnama evidencing takeover of the possession drawn and even communicated to her. The first Appellate Court in appeal filed against the above judgment and decree also did not record a specific finding that the possession of the plot had not been taken over by the Port Trust no matter the documents relied upon by it evidenced such take over. The first Appellate Court instead held that the termination of the lease was not valid inasmuch as no notice regarding termination in terms of Sections 106 and 111(g) of the Transfer of Property Act, 1882 had been proved and served upon the lessee nor was it proved that the person who signed notice Exhibit 47 and who took over possession in terms of panchnama enclosed with Exhibit 49 had been authorised by the Kandla Port Trust, the lessor, to do so. The conclusions drawn by the first Appellate Court were summarised in paragraph 59 of its judgment in the following words:

> "59. In view of what is stated in foregoing paras of this judgment this Court come to the following conclusions: -
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> 1. The appellant/original defendant has failed to prove the service of notice terminating the lease as required under Section 111(g) and 106 of the

Transfer of Property Act upon the lessee i.e. the Respondent No. 2/original plaintiff No. 2.

2. The defendant/the present appellant failed to prove that the person who signed the notice Ex. 47 and the person who is alleged to have made re-entry on the suit plot and signed Ex.49 and panchnama produced along with Ex. 49 were specifically authorised by Kandla Port Trust i.e. the lessor and the Chairman of Kandla Port Trust.

3. The lease dated 14/12/1966 is not legally and validly determined by the lessor hence, it is subsisting till date and alive, and the lessee Smt. Pushapaben Shah i.e. the respondent No. 2 is entitled to hold and enjoy the suit plot No. 30 sector No. 8."

15. In the second appeal filed by the appellant, the High Court was of the view that the matter was concluded by concurrent findings of fact regarding the validity of the termination of the lease and the authority of those who purported to have brought about such a termination. The question whether the possession of the suit plot was taken over did not engage the attention of the first Appellate Court or the High Court although the latter proceeded on the basis that the findings of fact recorded by the Courts below were concurrent, without pointing out as to what those findings were and how the same put the issue regarding takeover of the possession from the lessee beyond the pale of any challenge. Suffice it to say that the respondents are not correct in urging that the dispossession of the lessee pursuant to the termination of the lease was not proved as a fact. None of the Courts below has recorded a clear finding on this aspect even though the trial Court has in its judgment briefly touched that issue but declined to record an affirmative finding in the matter. That apart a careful reading of the passage extracted above from the order passed by the trial Court shows that the trial Court was labouring under the impression as though possession of the vacant piece of land cannot be taken over by the lessor unless some overt act of actual occupation of the plot is established. The fact that wild bushes were growing on the plot was, in our opinion, no reason to hold that the panchnama prepared by the Port Trust authorities evidencing the takeover of the plot was inconsequential or insufficient to establish that the process of dispossession of the lessee had been accomplished. We need to remember that with the termination of the lease, the title to the suit property vested in the lessor, ipso jure. That being so, possession of a vacant property would follow title and also vest in the lessor. Even so, the Panchnama drawn up at site recorded the factum of actual takeover of the possession from the lessee, whereafter the possession too legally vested in the lessor, growth of wild

bushes and grass notwithstanding. We need not delve any further on this aspect for we are of the view that there could be no better evidence to prove that the lessee had been dispossessed from the plot in question than her own admission contained in her communication dated 22nd February, 1979 addressed to the Senior Estate Manager of the appellant-Trust. The letter may at this stage be extracted in extenso:

> "Dear Sir,
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> I am in receipt of your letter No. ES/LL/723/63/9180 dated 20th December 1978 informing that the Assistant Estate Manager has taken over the plot No. 30 Sector 8. Please note, you have not informed me to be present on 4 PM on 14.12.1978 at the site of the aforesaid plot and your letter No. ES/LL/723/63/6248 dated 8th August 1977 said to have been sent to me has not yet been received and hence you do not have the authority to re- enter the plot.
>
> As you have taken the possession of the plot, you are now requested to kindly refund all the amounts forthwith otherwise you may return back the possession of plot to me. If I do not hear anything from you within seven days from the date of receipt of this letter, appropriate legal proceedings will be adopted against you, holding you entirely responsible for the cost of consequences thereof.
>
> Yours faithfully,
>
> Sd/- P.P. Shah
>
> (Smt. Pushpa P. Shah)"
>
> (emphasis supplied)

16. The genuineness of the above document was not disputed by learned counsel for the respondents. All that was argued was that the admission regarding the dispossession of the lessee had been made in circumstances that (a) cannot constitute an admission and (b) absolve the lessee, the maker, of its binding effect. The husband of the lessee having passed away, the letter in question was written in a state of shock and distress and any admission made therein could not argued Mr. Ahmadi and Ms. Bhati be treated as an admission in the true sense. We regret our inability to accept that submission. The question is whether possession had indeed

been taken over from the lessee pursuant to the termination of the lease. The answer to that question is squarely provided by the letter in which the lessee makes an unequivocal and unconditional admission that possession had indeed been taken over by the appellant-Port Trust. What is significant is that the lessee had asked for refund of the amount paid by her towards instalments and in case such a refund was not possible to return the plot to her. We do not think that such an unequivocal admission as is contained in the letter can be wished away or ignored in a suit where the question is whether the lessee had indeed been dispossessed pursuant to the termination of the lease. There is no worthwhile explanation or any other reason that can possibly spell a withdrawal of the admission or constitute an explanation cogent enough to carry conviction with the Court. We have in that view no hesitation in holding that dispossession of the lessee had taken place pursuant to the termination of the lease deed in terms of panchnama dated 14th December, 1978.

17. The next question then is whether the suit for declaration to the effect that the termination of the lease was invalid and that the lease continued to subsist could be filed more than 17 years after the termination had taken place. A suit for declaration not covered by Article 57 of the Schedule to the Limitation Act, 1963 must be filed within 3 years from the date when the right to sue first arises. Article 58 applicable to such suits reads as under:

> | |Description of suit |Period of |Time from which | | | |Limitation |period begins to run | |58. |To obtain any other |Three years |When the right to sue| | |declaration. | |first accrues. |

18. The expression right to sue has not been defined. But the same has on numerous occasions fallen for interpretation before the Courts. In State of Punjab Ors. V. Gurdev Singh (1991) 4 SCC 1, the expression was explained as under:

> "…….
>
> The words "right to sue" ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted."

19. Similarly in Daya Singh Anr. V. Gurdev Singh (dead) by LRs. Ors. (2010) 2 SCC 194 the position was re-stated as follows:

> "13. Let us, therefore, consider whether the suit was barred by limitation in view of Article 58 of the Act in the background of the facts stated in the plaint itself. Part III of the Schedule which has prescribed the period of limitation relates to suits concerning declarations. Article 58 of the Act clearly says that to obtain any other declaration, the limitation would be three years from the date when the right to sue first accrues.

14. In support of the contention that the suit was filed within the period of limitation, the learned Senior Counsel appearing for the appellant-plaintiffs before us submitted that there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. In support of this contention the learned Senior Counsel strongly relied on a decision of the Privy Council in reported in AIR 1930 PC 270 Bolo v. Koklan. In this decision Their Lordships of the Privy Council observed as follows:

> '… There can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted.'

15. A similar view was reiterated in C. Mohammad Yunus v. Syed Unnissa AIR 1961 SC 808 in which this Court observed: (AIR p.810, para 7)

> ' … The period of six years prescribed by Article 120 has to be computed from the date when the right to sue accrues and there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right.'
>
> In C. Mohammad Yunus, this Court held that the cause of action for the purposes of Article 58 of the Act accrues only when the right asserted in the suit is infringed or there is at least a clear and unequivocal threat to infringe that right. Therefore, the mere existence of an adverse entry in the revenue records cannot give rise to cause of action.
>
> …….Accordingly, we are of the view that the right to sue accrued when a clear and unequivocal threat to infringe that right by the defendants……."

20. References may be made to the decisions of this Court in Khatri Hotels Pvt. Ltd. Anr. V. Union of India Anr. (2011) 9 SCC 126 where this Court observed:

> "While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word "first" has been used between the words "sue" and "accrued". This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued."
>
> (emphasis supplied)

21. The right to sue in the present case first accrued to the lessee on 13th December, 1978 when in terms of order dated 8th August, 1977 the lease in favour of the lessee was terminated. A suit for declaration that the termination of the lease was invalid hence ineffective for any reason including the reason that the person on whose orders the same was terminated had no authority to do so, could have been instituted by the lessee on 14th of December 1978. For any such suit it was not necessary that the lessee was dispossessed from the leased property as dispossession was different from termination of the lease. But even assuming that the right to sue did not fully accrue till the date the lessee was dispossessed of the plot in question, such a dispossession having taken place on 14th of December, 1978, the lessee ought to have filed the suit within three years of 15th December, 1978 so as to be within the time stipulated under Article 58 extracted above. The suit in the instant case was, however, instituted in the year 1996 i.e. after nearly eighteen years later and was, therefore, clearly barred by limitation. The Courts below fell in error in holding that the suit was within time and decreeing the same in whole or in part.

22. Mr. Ahmadi next argued that the termination of the lease being illegal and non est in law, the plaintiff-respondents could ignore the same, and so long as they or any one of them remained in possession, a decree for injunction restraining the Port Trust from interfering with their possession could be passed by the Court competent to do so. We are not impressed by that submission. The termination of the lease deed was by an order which the plaintiffs ought to get rid of by having the same set aside, or declared invalid for whatever reasons, it may be permissible to

do so. No order bears a label of its being valid or invalid on its forehead. Any one affected by any such order ought to seek redress against the same within the period permissible for doing so. We may in this regard refer to the following oft quoted passage in Smith v. East Elloe Rural District Council(1956) 1 All ER 855. The following are the observations regarding the necessity of recourse to the Court for getting the invalidity of an order established:

> "An order, even if not made in good faith is still an act capable of legal consequences. It bears no brand of invalidity on itsforehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.
>
> This must be equally true even where the brand of invalidity is plainly visible : for there also the order can effectively be resisted in law only by obtaining the decision of the court. The necessity of recourse to the court has been pointed put repeatedly in the House of Lords and Privy Council without distinction between patent and latent defects."

23. The above case was approved by this Court in Krishnadevi Malchand Kamathia Ors. v. Bombay Environmental Action Group and Ors. (2011) 3 SCC 363, where this Court observed:

> "19. Thus, from the above it emerges that even if the order/notification isvoid/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the Petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may bevoidfor one purpose or for one person, it may not be so for another purpose or another person."

24. To the same effect is the decision of this Court in Pune Municipal Corporation v. State of Maharashtra and Ors (2007) 5 SCC 211, where this Court discussed the need for determination of invalidity of an order for public purposes:

> "36. It is well settled that no order can be ignored altogether unless a finding is recorded that it was illegal, voidor not in consonance with law. As Prof.

Wade states: The principle must be equally true even where the 'brand of invalidity' is plainly visible: for there also the order can effectively be resisted in law only by obtaining the decision of the Court.

He further states:

"The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is, in reality, valid. It follows that an order may bevoidfor one purpose and valid for another, and that it may bevoidagainst one person but valid against another."

xx xx xx xx

38. A similar question came up for consideration before this Court inState of Punjab and Ors. v. Gurdev Singh(1992) ILLJ 283 SC ...

39. Setting aside the decree passed by all the Courts and referring to several cases, this Court held that if the party aggrieved by invalidity of the order intends to approach the Court for declaration that the order against him was inoperative, he must come before the Court within the period prescribed by limitation. If the statutory time of limitation expires, the Court cannot give the declaration sought for."

25. Reference may also be made to the decisions of this Court in R. Thiruvirkolam v.Presiding Officer and Anr. (1997) 1 SCC 9, State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead) and Ors. (1996) 1 SCC 435 and Tayabbhai M. Bagasarwalla Anr. v. Hind Rubber Industries Pvt. Ltd. etc. (1997) 3 SCC 443, where this Court has held that an order will remain effective and lead to legal consequences unless the same is declared to be invalid by a competent court.

26. It is true that in some of the above cases, this Court was dealing with proceedings arising under Article 226 of the Constitution, exercise of powers whereunder is discretionary but then grant of declaratory relief under the Specific Relief Act is also discretionary in nature. A Civil Court can and may in appropriate

cases refuse a declaratory decree for good and valid reasons which dissuade the Court from exercising its discretionary jurisdiction. Merely because the suit is within time is no reason for the Court to grant a declaration. Suffice it to say that filing of a suit for declaration was in the circumstances essential for the plaintiffs. That is precisely why the plaintiffs brought a suit no matter beyond the period of limitation prescribed for the purpose. Such a suit was neither unnecessary nor a futility for the plaintiff's right to remain in possession depended upon whether the lease was subsisting or stood terminated. It is not, therefore, possible to fall back upon the possessory rights claimed by plaintiffs over the leased area to bring the suit within time especially when we have, while dealing with the question of possession, held that possession also was taken over pursuant to the order of termination of the lease in question.

27. In the light of what we have said above, we consider it unnecessary to examine the question whether the suit in question was barred by Section 120 of the Major Ports Act which stipulates a much shorter period of limitation of six months. We also consider it unnecessary to examine whether the suit filed by the original plaintiff-transferee of the lessee was barred by the principle of constructive res judicata or Order II, Rule 2 of the Code of Civil Procedure, 1908 in view of the fact that the first suit filed by the lessee in the year 1980 for permanent prohibitory injunction could and ought to have raised the question of validity of the termination of the lease as the termination of the lease had by that time taken place. So also the question whether the transferee, who had not been recognised by the Port Trust, could institute a suit against the Port Trust so as to challenge the termination of the lease in favour of his vendor also need not be examined. All that we need mention is that the addition of the lessee as a co-plaintiff in the suit also came as late as in the year 1999 when the original plaintiff transferee of the lease appears to have realised that it is difficult to assert his rights against the Port Trust on the basis of a transfer which was effected without the permission of the lessor-Port Trust.

28. In the result, we allow this appeal, set aside the impugned judgment and decree passed by the Courts below and dismiss the suit filed by the respondents but in the circumstances without any order as to costs.