ANDHRA PRADESH HIGH COURT

Syed Jaleel Zane

Vs.

P. Venkata Murlidhar

Letters patent Appeal No.109 of 1977

(Gangadhararao and Jeevan Reddy, JJ.)

14.03.1980

JUDGMENT

Jeevan Reddy, J.

1. This Letters Patent Appeal and Cross-Objections are directed against the Judgement of our learned brother. M. Ramachandra Raju. J. The dispute is between landlord and tenant. The suit properties are two shop- malgies in Secunderabad.

2. By a registered lease-deed dated 31-12-1963 (Ex. A-12), the landlady leased out the premises to the appellant for a period of five years on a monthly rent of Rs. 550/-. The tenancy was to commence on and from 1-1-1964. The lease-deed stipulated that thetenant shall not commit acts of waste or otherwise cause damage or loss to the premises and that, any such act on his behalf shall render him liable to eviction. The following clauses are relevant for the present purposes:-

> "3. That the tenancy under this agreement shall be for a period of five years from the date of this agreement and if the tenant vacates within the said period, the tenant is liable to pay the full rent for the remaining period out of the said five years. After the said five years if the tenant desires to continue the tenancy he can do so on the same terms and conditions as stated herein, provided he does not violate any of the terms and conditions herein.
> XXX XXX XXX
> (13) If the tenant or landlady wants to terminate the tenancy they should do so with one month's notice to the other party.
> (14) If the tenant fails to comply with any of the terms the landlady is at liberty to evict the tenant without any notice after the maturity of the period mentioned here......".

3. Under a settlement deed (Ex. A-13), dated 22-9-1965 the landlady settled this premises upon her minor children, who are the plaintiffs-respondents herein.

4. Sometime before the expiry of five years, the plaintiffs terminated the tenancy of the appellant for causing damage to, and committing acts of waste in the premises, and instituted a suit for eviction on 10-1-1969. (It may be noticed that the five year period prescribed under the lease-deed expired on and with 31st December, 1968).

5. The defendant (appellant) in his written statement denied the acts of damage and waste and submitted that under the lease-deed he had a right to continue for the full period of five years. He further submitted:

> "the defendant in fact before the expiry of the lease period exercised his option through a notice dated 25-12-1968 which has been acknowledged by the plaintiff on 30-12-1968. The contract of renewal having come into force, confers immediate right on the defendant to hold the property for a further period on the same terms and conditions as in the registered rental agreement, and accordingly the defendant is enjoying the property under subsisting lease. The said contract of renewal and continuation of lease runs with the land and the plaintiffs, who claim to be the assignees of interest of the original lessor are equally bound by the same. Hence the question of handing over possession of the property to the plaintiffs does not arise........".

He therefore, submitted that the suit is misconceived.

6. On the above pleadings, the learned trial Judge framed appropriate issues and, on a consideration of the oral and documentary evidence placed before him, found (i) that the defendant is not guilty of acts of damage and waste, alleged against him, and (ii) that, the defendant has validly exercised his option of renewal in terms of clause (3) of the lease deed and, therefore, has a right to continue in possession for a period of five years from 31-12-1968 to 30-12-1973. (It is significant to notice that this Judgment was rendered on 16-2-1973. In other words, the renewal period of five years was not over by that date). Accordingly, he dismissed the suit. (It is unnecessary to refer to other findings which have no relevance at this stage).

7. The plaintiffs preferred an appeal to this Court which was heard by our learned brother M. Ramachandra Raju, J. The learned Judge agreed with the trial Judge that, the defendant was not guilty of acts of damage and waste alleged against him. The appeal was heard and the Judgment was rendered by the learned single Judge on 24-3-1977, by which date the renewed period of five years had already expired. (It came to an end on 30th of December, 1973). The learned Judge, therefore, considered the question whether the tenant had any right to so continue. Construing clause (3) of the lease-deed, the learned Judge observed :

> "I should think that as provided under clause 3, the tenant can exercise the option to continue the tenancy for another period of five years after the expiry of the initial period of five years. I cannot agree with the argument of Sri Sitaramayya, learned Counsel for the defendant, that when it is mentioned in clause 3 that the tenancy can be continued on the some terms and conditions the tenant will continue to have that option even after the expiry of the second period of five years also, and so on. I do not think the in tention of the parties in making the provisions under clause would have been for the tenant to have

> the option to continue the tenancy any number of times, each time for a period of five years. I do not think the defendant can have any more option to continue the tenancy after the expiry of the present period of five years which he got by exercising the option by giving Ex. A-26 notice to the plaintiffs. Therefore, I do not find any merits in the appeal.......".

The Present Letters Patent Appeal is preferred by the tenant against the said observation, or finding, as the case may be, and the main contention put forward by Mr. Challa Seetharamaiah, the learned Counsel for the appellant (tenant) is, firstly that the said observation/finding of the learned Judge was wholly uncalled for, in the facts and circumstances of this case; and secondly that as a matter of construction of the lease, the view taken by the learned Judge is incorrect. He contended that the tenant is entitled to continue in possession of the premises as long as he does not violate the terms of the lease and that, he is entitled to exercise the option of renewal before the end of each successive period of five years. Learned Counsel told us, that, before the 30th of December, 1973 his client has again exercised his option to continue the lease for five years, and before the end of December, 1978 also he has exercised similar option over again.

8. The cross-objections are preferred by the plaintiffs submitting that once the learned Judge had held, rightly, that the tenant is entitled only to one renewal under clause (3) and nothing more, he ought to have decreed the suit for eviction because the renewed period was over long prior to the date of Judgment of the learned single Judge. The submission is that in this very suit and in the interests of justice, the Court ought to take notice of the subsequent circumstances and mould its relief accordingly. It is submitted that such a course would not only meet the ends of justice but would also avoid the multiplicity of proceedings.

9. It is brought to our notice by both the Counsel that the plaintiffs have instituted another suit for eviction apparently based upon the observations of the learned single Judge, which suit is said to have been stayed pending disposal of this appeal.

10. Three questions arise for our consideration, viz., (i) what was the true intention of the parties when entering into the lease-deed, Ex. A-12. and whether they intended that the tenant should have a permanent right of renewal at the end of each successive period of five years (ii) whether the learned single Judge travelled beyond the confines of the suit in making the observations impugned in the appeal; and (iii) in case we find that, the learned single Judge is right, in the construction, he placed upon clause (3) whether we should pass a decree for eviction in this proceeding itself, notwithstanding the pendency of the fresh suit instituted by the plaintiffs?

11. We shall take up the second question for our consideration first. Mr. Seetharamaiah's submission has been that the only issue in appeal was whether the tenant was guilty of any acts of waste and damage and that, there was no issue whether the tenant is entitled to second or successive renewals. In the state of pleadings in this case, he contended, the learned Judge ought not to have expressed any opinion on the said question. Counsel stated before us that, after the conclusion of the arguments the learned Judge put him a question whether his client is entitled to continue even after the renewed period of five years, and when he said yes, the learned Judge perused Clause 3 and made the observations impugned herein. He further submitted that, had this question been in issue, his client would have led oral evidence with respect to the circumstances

surrounding the execution of the lease deed, which would have helped the Court in appreciating the meaning of the said clause. He submitted further that, at the time of Ex. A-12, his client had paid a substantial amount by way of goodwill to the previous tenant, who was no other than the husband of the landlady.
12. On a consideration of the pleadings and the material, we are not prepared to agree with the learned Counsel. We do not think that any oral evidence is relevant for the construction of clause 3. The clause has to be construed in its own language, and in harmony with the other clauses of the deed. See *Sewakaram v. Municipal Board*[1], Similarly, the payment of any amount towards goodwill to the previous tenant, is of no relevance on the question of the construction of the deed. Had the previous tenant been a third-party, the payment of any amount to him towards goodwill would have, admittedly, been of no relevance. Merely because he happens to be the husband of the landlady, we cannot conceive any valid connection between that payment and the entering into of the lease-deed. In any event, as we shall presently explain, the defendant had himself taken up the plea that he is entitled to the renewal as a matter of right, and it is reasonable to presume evidence which he wished to.

13. Now coming to the pleading, it is true, the plaint did not contain a plea that the tenant was not entitled to successive renewals; but, in the written statement the defendant himself had clearly raised the plea, that, he is entitled to continue for a further period on the same terms and conditions, as per clause 3 of the lease-deed. There was also an issue, viz., issue No. 2, to the effect.

> "Whether the defendant has validly exercised his option to renew the lease and so he is not liable to be evicted." Mr. Seetharamaiah wants to read the said plea in the written statement, as pertaining to the first renewal only, and not to the tenant's right to second or successive renewals. We are not prepared to construe the plea, which we have already extracted while setting out the respective pleadings, in such a narrow manner. Even assuming, that is the correct purport of the plea, even then, the learned Judge was perfectly justified in going into the question, in view of the circumstances of this case.

The original lease was for a period of five years, which came to an end with year 1968. The tenant exercised his option of renewal, and that renewed period also came to an end, with the end of the year 1973. By the date the appeal came up for hearing before the learned Judge, more than three years had elapsed, after the renewed period was over, and still the tenant was continuing on the same terms and conditions. The position today is that even the second renewed period has expired with the end of the year 1978. Even though the landlords have failed to establish their allegation of damage and waste, still the tenant cannot be permitted to indefinitely continue in the premises against the consent of the landlords, and subject to the same terms and conditions which were agreed upon as far back as 1963. In view of the fact, that, this suit for eviction having been filed in Civil Courts, no objection has been taken to the jurisdiction of the Civil Court to try the suit, we would be justified in presuming at least *prima facie* that, this is a building not governed by the provisions of the Andhra Pradesh Buildings (Lease. Rent and Eviction)

[1] AIR 1937 All 328

Control Act, 1960. Since the year 1963, it needs no reiteration, the rents of such buildings in the twin cities have gone up substantially, and the landlord can reasonably claim that he is entitled to some additional rent and income over what was agreed in the year 1963. If we take into account

the inflation as well, along with other circumstances, it would be clear that the tenant is trying to reap an unfair advantage over and at the cost of the landlords. The inherent power of the Court to take notice of the subsequent circumstances to do complete justice between the parties and to mould the relief accordingly, is undoubted. Where such a course tends to avoid multiplicity of proceedings, it is all-the-more desirable that, the Court exercises its jurisdiction and inherent power in this direction. The legal position which we shall set out hereinafter, reinforces our view that this Court ought to take notice of the subsequent circumstances in this case, and mould the relief to accord with the requirements of justice.

14. We will now deal with the first and the main issue in the appeal. The question to be answered is, whether clause 3 of the lease-deed, construed properly and in its real context, entitles the tenant to continue as long as he chooses by exercising the option of renewal at the end of such successive period of five years, subject to the same terms and conditions? It needs no reiteration that such documents have to be read as a whole and an effort made to ascertain the intention of the parties while entering into the contract. No single clause or term should be read in isolation so as to defeat the other clauses. The interpretation must be reasonable, harmonious, and be deduced from the language in the document. We have set out the relevant clauses i. e. clauses 3, 13 and 14, hereinbefore. Clause 3 says that after the expiry of the original five year period.

> "If the tenant desires to continue the tenancy he can do so on the same terms and conditions as stated herein, provided he does not violate any of the terms and conditions herein."

It may also be noticed that the very clause provides that if the tenant vacates within the original period of five years, he shall be liable to pay the full rent for five years. Yet, clause 13 says if the tenant or the landlady wants to terminate the tenancy, they should do so with one months notice to the other party. How are these two clauses to be reconciled?

15. Three different interpretations are placed before us : (i) that, clause 3 contemplates only one renewal for a period of five years, and no more. After the end of the renewed period of five years, the tenant is no longer entitled to exercise any further option of renewal; (ii) that the tenant is entitled to exercise the option of renewal at the end of each successive period of five years, and is thus entitled to continue in possession so long as he does not violate the terms of the lease; and (iii) that, after the expiry of the first fiveyear period, the lease becomes a monthly lease governed by the provisions of the Transfer of Property Act.

16. Mr. Seetharamaiah, the learned counsel for the appellant espouses the second interpretation and alternately, the third, but with the proviso that the monthly lease is not terminable except on proof of violation of the terms and conditions of the lease. Both the Counsel have cited certain decisions before us, on the question of proper construction to be placed upon such language occurring in the lease-deed, to which a brief reference is necessary.

17. The Calcutta High Court has consistently taken the view that where there is a covenant for renewal, if the option does not state the terms of renewal, the new lease would be for the same period and on the same terms as the original lease, in respect of all the essential conditions thereof, except as to the covenant for renewal itself; (see *Secretary of State v. Digambar Nanda*[2], *Guru Prosanna Bhattacharjee v. Madhusudan*[3], and *Sirish Chandra v. Doa Mahammad*[4],

renewal and that, in order to establish that there was a covenant for perpetual renewal, the intention has to be unequivocally expressed. It would be sufficient if we refer to the facts in *Sirish Chandra v. Doa Mahammad,* supra. A 'Kabuliat' was executed on January 3. 1916 under which the period of tenancy agreed was three years. It was recited that, at the end of the term of three years, the lessee has the right to take a new settlement of land covered by the lease as well as any excess land which would come into his possession, at the same rate. The document did not state for what period the tenant had the right to obtain renewal? Following the decision in *Secretary of State v. Digambar Nanda*[5], the learned Judge held that the option of renewal can be exercised only for one term, and not thereafter.

18. The Travancore-Cochin High Court expressly referred to the decision in *Secretary of State v. Digambar Nanda*[6], and applied its principle in its decision in *Yohannan v. Vasudevan*[7], A Bench of the Allahabad High Court as well has taken the same view in *Sewak Ram v. Municipal Board, Meerut*[8]. It quotes with approval the observations of the Calcutta High Court in *Secretary of State v. A. H. Forbes*[9] to the following effect :

> ".........Similarly, Earl of Selborne observed in *Swinburne v. Milburn*[10] that though there is no sort of legal presumption against a perpetual renewal, yet the authorities certainly do impose upon anyone claiming such a right the burden of strict proof, and are strongly against inferring it from any equivocal expressions which may fairly be capable of being otherwise interpreted. The substance of the matter therefore is that the covenant will not be construed as a covenant for perpetual renewal unless intention in that behalf is clearly shown, for instance, when the covenant expressly states, that the lease is to be renewed forever, otherwise the agreement is satisfied and exhausted by a single renewal....... ".

To the same effect is the statement of law in Halsbury's Laws of England (Third Edition). Vol. 23, at pages 627628:

> "The covenant may be a covenant for perpetual renewal, but the court will not give it this effect unless the intention in that behalf, is clearly shown:
> as, for instance, where the covenant expressly states that the lease is to be renewable forever. If the intention to renew perpetually is clear, the court will give effect to it notwithstanding that certain other terms of the lease appear to be inconsistent with such an intention. A provision that the new lease shall contain the same covenants as the old lease does not entitle the tenant to have the covenant
> for renewal inserted, so as to give him perpetual renewal, unless the provision expressly includes "this present covenant". The intention to renew perpetually must be clear on the language of the lease; the fact that several renewals have been

[2] AIR 1919 Cal 620 [4] AIR 1939 Cal 77 [6] AIR 1919 Cal 620
[3] AIR 1921 Cal 574 [5] AIR 1919 Cal 620 [7] AIR 1955 Trava Coc 161
[8] AIR 1937 All 328 [10](1864) 9 AC 844
[9](1912) 17 Ind Cas 180

> granted is not admissible to explain the intention of the parties to the lease.........".

19. The principle that emerges from the above decision is that, while in India, the law does not prohibit a perpetual lease, clear and unambiguous language would be required to infer such a lease. If the language is ambiguous, the Court would opt for an interpretation negativing the plea of a perpetual lease. The Court always lease against a perpetual renewal, and hence where there is a clause for renewal subject to the same terms and conditions, it would be construed as giving a right to renewal for the same period as the period of the original lease, but not a right to second or third renewal and soon unless, of course, the language is clear and unambiguous. Now, if we examine the cases cited by the learned Counsel for the appellant from this stand-point, it would be clear that they do not lay down any contrary proposition. In *F.W. Higgins v. Nobin Chander Sen*[11] the lease-deed provided.

> "the lessee shall be entitled to continue to hold and possess the said premises on the conditions as reserved hereinbefore, even after the expiry of the said period of five years, and so long as he desires to do so without any interruption or hindrance on the part of the lessor........."

(emphasis added).

In view of the clear and unambiguous language of the lease-deed, it was held that, the lessee could not be ejected on the expiration of the original term by giving a suit notice and that he was entitled to hold and possess the premises all his life, or until due surrender by him during his lifetime, by means of a month's notice, as provided by the deed.

20. *Indian Cotton Co. Ltd. v. Raghunath*[12]. was again a case where the lease-deed prescribed an initial term of five years, and then provided.

> "After the agreement has expired, if subsequently you require the land, I shall go on giving it to you on receiving the money at the above rate of rent. I shall not give it to another. If I make any objections in this behalf, the same are void..........."

(emphasis added).

In view of the clear language of the deed, the Court held that the lease would enure for the lifetime of the Company and that, the lease cannot be regarded as an annual lease after the expiry of the initial period.

21. *Girindra Chandra v. Kamini Nath*[13], was again a case where on the particular language of the lease-deed, it was held that an unqualified option was given to the lessee to ask for renewal for a further period and that, once the lessee exercises such option, the landlord is not entitled to recover possession.

[11](1906) 11 CWN 809
[12] AIR 1931 Bom 178
[13] AIR 1949 Ass 78

22. Mr. Seetharamaiah placed strong reliance upon an English decision in *Austin v.*

Newham[14] The tenant in that case obtained possession of the premises under an agreement of tenancy "for a period of twelve months with the option of a lease after the aforesaid time at the rental of z30 per annum. The first Court held that, the tenant was entitled to a lease for a further period of one year only after the expiry of the initial period of one year, and no more. That opinion was confirmed by both the Judges constituting the Bench namely, Kennedy and Lawrence, JJ., in their separate opinions. Mr. Seetharamaiah, however relies upon certain observations of Kennedy, J., who while holding that the tenant is entitled to hold the premises only for one year more as contend for by him, observed:

> "As the defendant does not ask for more, it is unnecessary to decide whether that term was sufficient. Having regard, however, to the case of *Kusel v. Watson*[15] I am inclined to think that the option of 'a lease' entitled him to claim a lease for life. Bramwell, L. J. there said 'the agreement provides that the tenant may come at any future time and apply for a lease. What kind of lease? The proper legal meaning of the term is a lease for the life of the tenant and I think that the meaning the law puts on the words is a reasonable one'. It is true that in that case, there was a special provision that the plantiff's lessor should not disturb him or raise his rent after he had laid out money in improving the premises, which pointed to an intention that the plaintiff's tenancy should be on considerable duration. But I do not think that Bramwell L. J.'s statement of law affected by that consideration I am inclined to think that in the present case the defendant might have claimed a lease for as lent a period as he is capable of holding it. In any ease, he is entitled to a year at least after the 12 months had expired. It would be altogether unreasonable to suppose that it was intended that he should be liable to be turned out at the end of the first twelve months. .. "

Firstly, it may be noticed that these observations are in the nature of obiter. Even there, the learned Judge did not express a final opinion, but qualified it by saving that, in any event, the tenant is entitled to renewal for twelve months after the expiry of the initial period. It is unnecessary for us to scrutinize the correctness of these observations, in view of the well settled rule of construction of such clauses, set out hereinbefore.

23. Lastly, Mr. Seetharamaiah relied upon an unreported decision of Bench of this Court in C.M.S.A. No. 72 of 1963, D/-13-9-1968. On a perusal of the JUDGEMENT, we do not find, that it lays down any contrary proposition. On the other hand, it expressly refers to, and follows the principle enunciated in *Secretary of State v. A.H. Forbes*[16] *Yohannan v. Vasudevan*[17], and *Sewak Ram v. Municipal Board Meerut*[18], among other decisions, referred to by us earlier. The Bench observed.

> "The English Courts having always leaned against a perpetual lease, it was held that a covenant to that effect, must be clear otherwise, the Court would lean against creating a perpetual lease by way of renewal."

[14](1906) 2 KB 167
[15]((1879) 11 Ch D 129)
[16](1912) 17 Ind Cas 180 (Cal)
[17] AIR 1955 Trav Co. 161
[18] AIR 1937 All 328

The contention before the Bench was that there can be no stipulation for permanent renewal in a lease. That contention was negatived and it was held that a covenant for renewal can as well be a

term of the lease and that there can be no abjection thereto.

24. We are, therefore, of the opinion that clauses 3 and 13 of the lease-deed read together do not provide for a perpetual renewal and that the parties intended and contemplated only one renewal for a period of five years, after the expiry of the initial period of lease, and no more. Once that is so, the tenant is not entitled to hold the premises on or after 31st December, 1973. The learned single Judge was thus right in construing clause 3, accordingly.

25. The final question which we have to decide is, whether we should grant a decree for eviction in this suit itself, notwithstanding the pendency of a subsequent suit instituted by the landlords, obviously in pursuance to the observations of the learned single Judge. The power of the Court to take note of the subsequent circumstances and to mould its relief accordingly, is beyond doubt. Particularly where such a course tends to avoid multiplicity of proceedings, such a course is all-the more desirable. It is true that the Court would not adopt such a course if it is likely to prejudice the parties, in the sense that they are prevented from putting forward all the contentions open to them or that they could not adduce the evidence which they would have done otherwise. But in this case, as we have pointed out above, the matter turns solely upon the interpretation of clause 3 of the lease-deed, and no oral evidence can be looked into on that question. That deed has to be construed as a whole, and the intention of the parties deduced. We have already pointed out that the question of renewal was in issue in this suit, and particularly now that, the tenant has been given a full opportunity of putting forward his case with respect to the said clause, there can be no ground for complaining that he has not been heart. We think it unjust to allow the tenant to continue in the premises on the same terms and conditions, agreed to in 1963. Indeed, in this case, the tenant is trying to reap an unfair advantage over the landlords by insisting upon and by continuing in possession of the premises even after the second term of five years. The tenant is clearly taking an unreasonable and unjust stand, which we cannot allow. He is not entitled to continue in possession of the premises either in law, or on any principle of justice or equity.

26. We, therefore, dismiss the appeal L.P.A. 109/1977, and allow the cross- objections preferred by the plaintiff-respondents. With the result, there shall be a decree for eviction of the tenant-appellant. But, since we have decreed the eviction taking note of the subsequent events, we direct the parties to bear their own costs in this Letters Patent Appeal, and Cross- Objections. The tenant is given two months time from today for vacating and delivering vacant possession of the suit premises.

27. Mr. Challa Sitaramayya, learned counsel for the appellant, makes an oral application for leave to appeal to the Supreme Court. We however do not think that this appeal involves any substantial question of law of general importance, which, in our opinion, requires to be considered by the Supreme Court. The oral application is accordingly rejected.

28. This appeal having been set down this Friday the 28th March, 1980 for being mentioned consequent upon the office note dated 26-3-1980 in the presence of Mr. Challa Sitaramaiah, Advocate for the Appellant and of Mr. K.R. Narasimham, Advocate for the Respondents and Cross Objections this Court made the following Order:

(Order of the Bench delivered by Jeevan Reddy. J.)

29. The office has put up this matter for orders on the question of payment of court fee. Suit was filed in forma pauperis and it was dismissed. The first appeal in this Court was also preferred by the plaintiffs in forma pauperis. We decreed the suit in cross-objections in Letter Patent Appeal, taking note of the subsequent circumstances and for the reasons given in the JUDGEMENT. In the ordinary course we would have directed the defendant to pay the Court-fee payable on the plaint, memorandum of appeal and the cross-objection in L. P. A. because the plaintiffs have now succeeded. But this is a case where we granted the decree to the plaintiffs taking note of the subsequent circumstances. In the circumstances, we think it just to direct the plaintiffs and the defendant to pay the Court-fee payable on the plaint, memorandum of appeal and the cross-objections in L. P. A., half and half.

Appeal dismissed.