TRAVENCORE COCHIN HIGH COURT

Nagamony Kumaraswamy

Vs

S. Thiruchittambalam

A.S.No. 584 of 1124

(Sankaran and Gangadhara Menon, JJ.)

03.06.1952

JUDGMENT

Sankaran, J.

1. Plaintiffs are the appellants. The suit is for recovery of the plaint property consisting of 62 cents of garden land together with the trees standing thereon, from the defendant who had taken the property under a lease arrangement for a period of one year as evidenced by the lease deed Ex.C. This property belonged to one Parameswaran Thampi who has been examined as Dw.2 in the case and the lease deed Ex.C dated 1-8-1116 had been executed in his favor by the defendant. After the expiry of the period fixed in Ex.C. Dw.2 sold the property to the plaintiffs under the sale deed Ex.B dated 16-4-1120 and authorised them to recover possession of the property from the defendant. Soon after taking the sale deed Ex.B the plaintiffs issued a registered notice to the defendant demanding surrender of possession of the property. But the defendant refused to surrender possession of the property and set up an agreement between himself and the original owner of the property enabling him to retain possession of the property for an additional period of 6 years over and above the period fixed in Ex.C. The plaintiffs therefore instituted the present suit for recovery of possession of the property with arrears of pattom and also future pattom at the enhanced rate of Rs.100/- per mensem. The defendant resisted the suit on the basis of the agreement already referred to. He also put forward a claim for Rs.3000/- towards value of the improvements effected by him in the suit property. The defendant further contended on the strength of the Travencore House Rent Control Order, 1120, which was in force during the relevant period that the plaintiffs were not entitled to claim any enhanced rent for the building in the suit property or to have the defendant evicted from the same. A separate petition, copy of which is Ex.K, was also filed by him before the House Rent Controller seeking protection under the Control Order. The Controller's jurisdiction to adjudicate upon the matters involved in the present suit was challenged by the plaintiffs. All the same that objection was overruled by the Controller and he passed an order fixing the rent payable by the defendant for the building in the

suit property at Rs.6/-per mensem. This order was confirmed by the appellate authority and Ex.II is copy of the appellate order. The validity of this order was questioned by the plaintiffs in the suit on the grounds that the order is void and ineffective in so far as it was passed by a Tribunal who had no jurisdiction to deal with the matter. This contention has been negatived by the lower Court which held that the Rent Controller's order is binding on the plaintiffs and that they are entitled to recover rent only at the rate of Rs.6/- per mensem for the building in the property. The defendant's claim for the value of improvements was also allowed by the lower Court and the amount payable on that account was fixed at Fanams 7573 Chs.3. Accordingly the decree passed in the case directed the plaintiffs to pay to the defendant this amount and also the cost of the commission taken out by the defendant to assess the value of the improvements in the property and to recover possession of the property with the arrears of rent claimed in the plaint as well as future rent at Rs.6/- per mensem. The plaintiffs were directed to suffer one-half of their costs. The present appeal preferred by the plaintiffs is confined to their claim for enhanced rent and also to the lower Court's directions regarding the costs of the suit.

2. It is mainly on the strength of the Rent Controller's order Ex.II that the lower Court has held that the plaintiffs could recover rent for the suit property only at the rate of Rs.6/-per mensem. It is argued on behalf of the appellants that the plaint transaction evidenced by Ex.C lease deed was clearly outside the scope of the Travencore House Rent Control Order, 1120, and as such the Rent Controller had no jurisdiction to entertain the petition Ex.K and to pass the order Ex.II. The provisions of the Rent Control Order were expressly limited to houses as defined in Clause 2 of S.2 of the order. This definition is as follows :

> " 'house' means any building or part of a building or hut, let or to be let separately for residential purposes and includes
> (a) the garden, grounds and out-houses (if any) appurtenant to such building or part of a building or hut; and
> (b) any furniture supplied by the landlord for use in such building or part of a building or hut; and....."

It is clear from this definition that in order that the provisions of the Travencore House Rent Control Order, 1120 could be invoked the essential condition to be satisfied is that there must have been the letting of a building or part of a building or hut separately for residential purposes. The question whether there is any garden or ground or outhouse appurtenant to such building or part of a building or hut, or any furniture supplied by the landlord for use in such building, will arise for consideration only if there has been the letting of the building or part of the building or hut, separately for residential purposes. A reading of the lease deed Ex.C makes it abundantly clear that the transaction was not one of letting out any building separately for residential purposes. In the first place Ex.C is styled as a lease deed. The property leased out is described as 62 cents of garden land with the trees and a small building standing thereon and the annual pattom was fixed at Rs.72/-. There is not even a remote suggestion or indication in Ex.C that the

defendant was taking this property on lease to enable him to reside in the small building that existed on the property. Any such idea is completely ruled out by the contention set up by the defendant himself in Para.9 of his written statement. He has stated that at the time of entering into the lease arrangement there was no building worth the name in the property and it was he who made the building now found in the property fit for residence. Thus, according to him, he rebuilt the old and dilapidated building that originally existed in the property and made the same fit for his residence. He could therefore have taken up his residence in the new building only a considerable time subsequent to the execution of the lease deed Ex.C. The lower Court has relied upon Exs.H and J in coming to the conclusion that the defendant has been residing in the plaint property even from the commencement of the lease arrangement. Exs.H and J do not relate to the plaint property or to the building existing thereoN.These documents were produced by the plaintiffs to show that the defendant and his wife have their own dwelling houses in the vicinity of the plaint property and that they have been residing in those houses. The lower Court has misread such evidence and has gone wrong in thinking that these documents relate to the plaint property. Apart from this aspect of the matter the fact that the defendant rebuilt the old building in the plaint property and made it fit for his residence subsequent to the lease arrangement under Ex.C cannot bring the arrangement under Ex.C within the scope of the Travencore House Rent Control Order, 1120. for the obvious reason that under Ex.C there was no letting out of the building separately for residential purposes. The provisions of a special statute like the House Rent Control Order which interferes and restricts the citizen's right under the common law have necessarily to be strictly construed and interpreted and it will be wrong and unjustified to construe such provisions liberally and to further enlarge their scope. In view of the definite stipulations contained in Ex.C, it is clear that the parties never bargained for letting out any building separately for residential purposes, but that they contemplated only a regular lease arrangement essentially in respect of the plaint garden and the trees standing thereon. It follow therefore that the arrangement under Ex.C could not come within the scope of the Travencore House Rent Control Order, 1120 and that the Controller had no jurisdiction to entertain the petition Ex.K and to pass the order Ex.II. The order is void and as such it cannot be taken to conclude the plaintiff in respect of their claim for the rent legitimately due to them in respect of the suit property

3. The next question is about the rate a which future rent can be allowed to be recovered by the plaintiffs. As already pointed out, the lease arrangement under Ex.C was only for a period of one year. The defendant lessee had also undertaken not to effect any improvements in the suit property but to unconditionally surrender possession of the property at the end of the period fixed in Ex.C All the same it is seen that even after the expiry of the period fixed, he was allowed to continue to be in possession and enjoyment of the property. He was thus merely holding over as a tenant-at-will and such tenancy could be brought to an end by the issue of a notice to quit. Such a notice was issued to the defendant by the original owner of the property immediately after he sold the property to the plaintiffs under the sale-deed Ex.B The defendant has admitted having received such a notice intimating him of the sale and directing him to surrender possession of the

property to the vendees. The plaintiffs also as vendees under Ex.B issued a similar notice to the defendant on 19-5-1120 and Ex.E is the anchal receipt evidencing the issue of that notice. Ex.F acknowledgment receipt dated 21-5-1120 shows that the notice was duly accepted by the defendant. Thus at least on 21-5-1120 the tenancy in favor of the defendant came to an end and thereafter his possession of the property has to be treated as wrongful possession and as such he is liable to the plaintiffs for the mesne profits obtainable from the property. His having effected certain improvements to the building in the property could not affect this positioN.He effected such improvements in violation of the definite stipulation to the contrary contained in Ex.C and he did so at his own risk and it was as a matter of concession that the plaintiffs to pay him the value of such improvements. Such a concession cannot have the effect of depriving the plaintiffs of their right to recover the mesne profits legitimately due to them. They have claimed mesne profits at the rate of Rs.100/- per mensem from the date of suit onwards. But they have not adduced any independent evidence to show that the property yielded income at such a rate. The interested evidence of plaintiff 1 as Pw. 1 cannot be accepted as it is. His estimate about the income of the property appears to be highly exaggerated. Similarly, the defendant appears to have under-rated the income of the property. For the building alone he has put the minimum monthly rent at Rs.6/-. Then there are 12 bearing cocoanut trees as admitted by the defendant himself. It is a matter of common knowledge and which can be taken judicial notice of, that by the year 1120 the price of cocoanuts had gone up considerably than what it was in the year 1116 the lease arrangement under Ex.C was entered into. The property itself is 62 cents in extent and the major portion of it was being used by the defendant as a cattle farm Such premises could naturally fetch a reasonable rent in view of the situation of the property at a busy portion of the Municipal Town of Nagercoil. On a consideration of all these aspects we think that it would only be fair and reasonable to fix the mesne profits of the plaint property inclusive of the rent of the building, at Rs.18 per mensem. The plaintiffs will get mesne profits at this rate from the date of suit onwards till recovery of possession of the property. (4) Lastly, there is the question of costs. The plaintiffs have substantially succeeded in this suit. It is also seen that the defendant had resisted the suit by setting up false and untenable contentions. Under such circumstances plaintiffs are entitled to get their full costs from the defendant. As per the stipulations contained in the lease deed Ex.C, the plaintiffs were not bound to pay the defendant anything by way of value of improvements effected by him in the property. It was to his own interest to take out a commission to assess the value of the improvements that existed in the property. He must therefore bear the cost of such commission and there is no justification to direct the plaintiffs to pay the same. Accordingly the lower Court's decree regarding costs is modified by directing that the defendant should suffer his own costs and should pay the whole costs of the plaintiffs.

4. In the result, this appeal is allowed in the manner and to the extent indicated above. The appellants will get their costs in this Court also to the extent of their success in the appeal. Interest on costs at 6 per cent.
Order accordingly