

(1970) 06 MAD CK 0014
In the Madras High Court

A. Rangaswamy Naidu alias A.R. Naidu	APPELLANT
Vs	
B.V. Venkatalakshmi Ammal and Another	RESPONDENT

Date of Decision : 22-06-1970

Acts Referred:

Citation : (1970) 83 LW 712 : (1971) 1 MLJ 266

Hon'ble Judges : G. Ganesan, J

Bench : Division Bench

Judgement

G. Ganesan, J.—The tenant is the petitioner herein and he is aggrieved that the District Judge of Coimbatore, the first revision authority had ordered eviction rejecting his plea that the Rent Controller had no jurisdiction because the lease was of a vacant site and upholding the contention of the landlady that there was default in the payment of rent and that the landlady wanted the suit premises for her own use.

2. The learned Counsel for the petitioner presses before me the only contention that the lease is of vacant site and that, as such by virtue of the decision of the Supreme Court in A.R. Salay Mohamed Sait v. Jaffar Mohamed Salt's Memorial Dispensary Charity (1969) 1 M.L.J.16 : (1969) 1 n. W.R. 16 : (1969) 1 S.C.J. 63, the proper forum for eviction would be the civil Court, and not the Court of the Rent Controller. I have anxiously gone through the petition and the connected papers and I have come to the conclusion that the lease is only of a vacant site of 50 cents. It is true that, when the parties entered into a lease arrangement in the year 1944, some buildings were in the western portion and that the lease, Exhibit A-6, was of not only the vacant site but also the said building. But it is now conceded that, subsequently in or about March, 1954, there was a subsequent lease arrangement between, the parties whereby the petitioner was allowed to enjoy only the eastern portion which consists of 50 cents, of vacant site only. The agent of the respondent landlord, when examined as P.W. 1 has distinctly conceded in his evidence that the subsequent lease arrangement was only of a vacant site and that it was in pursuance of that subsequent

arrangement that the petitioner herein is in possession. A reference to the application for eviction filed by that respondent herein also leads to the same conclusion. In the description of property, the property is shown as a vacant site and the superstructures found therein are said to have been built by the petitioner herein and the prayer is that the petitioner herein should surrender vacant possession of the said 50 cents after removing the temporary structures admittedly put up by the petitioner herein. I may also add that the parties have proceeded so far on the footing that the lease in question is only of a vacant site of 50 cents. land and not of the superstructure which are found therein; which, as I already said, are now admitted to have been put up only by the petitioner herein.

3. The Supreme Court has observed in *Saley Mohamed Sait v. Jaffar Mohammed Salt's Memorial Dispensary Charity and Ors.* (1969) 1 M.L.J. 16 : (1969) 1 n. W.R. 16 : (1969) 1 S.C.J. 63, the case referred to above that, in order to determine whether a lease is of a vacant land or of a building within the meaning of the Madras Buildings (Lease and Rent Control) Act, 1960, both the form and the substance of the transaction must be taken into account and that by the mere fact that there were structures on the demised land at the time of the original lease or at the time of renewal of the lease, which do not belong to the lessor, the demise of the land cannot be construed as demise of a building on the ground that the land became an integral part of the building. The Supreme Court has disapproved of the Madras decisions in *Ramaswami Pathar Vs. Jayankondam Sri Kulumalairatnaswami Devasthanam and Another*, , *M.P.S. Palaiappa Chettiar and Others Vs. V.E. St. Vairavan Chettiar*, , and also *Palaniappa Chettiar Vs. Babu Sahib alias Sheik Mytheen Sahib and Others*, .

4. The law is now fairly clear. Where there are no buildings and vacant land alone is demised, there is no problem at all. The lease will be one of vacant site alone and the operation of the Madras Buildings (Lease and Rent Control) Act (XVIII of 1960), would be excluded and the civil Court will be the appropriate forum for eviction of the tenant. Where, however, there were buildings in the premises at the time of the demise, the question for consideration would be whether the buildings belonged to the lessor or the lessee and whether they were also comprised in the lease. If the building belonged to the lessor and was comprised in the document the lease will be deemed to be one of vacant site and buildings and the Rent Controller alone will have jurisdiction. In arriving at an answer to the nature of the transaction, the form and substance of the lease arrangement must be looked into and the parties would be entitled to act on the general assumption that a man can lease out only the property with belongs to him.

5. It is well established that the lease arrangement which now is admitted to be in force is of a vacant site only and that the buildings thereon have been temporarily put up by the petitioner herein, the tenant. It necessarily follows that the civil Court is the only forum open to the respondent landlady for eviction of the tenant and that resort to the rent control Court was misconceived.

6. The revision petition is allowed and the order of eviction is set aside, but under the circumstances each party has to bear his or her own costs throughout.