(2001) 06 KL CK 0036

In the High Court Of Kerala

Case No : O.P.No. 7284 of 1995

Abdulrahiman APPELLANT

Vs

Tirur Municipality RESPONDENT

Date of Decision : 11-06-2001

Acts Referred:

Kerala Stamp Act, 1959 — Article 33, 2(1)
Transfer of Property Act, 1882 — Section 105, 107

Citation : (2001) 06 KL CK 0036

Hon'ble Judges : J.B. Koshy, J

Bench : Single Bench

Advocate : K.K. Mohamed Ravuf, for the Appellant; P.K. Baby, Government Pleader, B. Suresh Kumar and P. Suseela, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Koshy, J.—Petitioners are petty traders. They have taken on rent the shop rooms of first respondent Municipality. It is also stated in the Original Petition that they are in possession of the respective rooms for the past several years. It is also stated in the Original Petition that first petitioner was holding the room Nos. 8 and 9 on a monthly rent of Rs. 573/- and 608/- which was subsequently enhanced to Rs. 678.60 and 729.60 respectively. With regard to the rent paid by others also details are mentioned in the Original Petition itself. Specimen copy of the agreement is produced as Ext. P1. In the agreement the arrangement is termed as licence. The rooms were constructed by the Municipality and the terms of the licence provided payment of a non-refundable premium and monthly rent. In paragraph 4 of Ext. P1 the word ''rent'' is used. In paragraph 9(1) the amount is called as ''monthly licence fee rent.'' In paragraph 8 it is stated as follows:

"8. To surrender vacant possession of the premises with fixtures and additions thereto and all the improvement, if any, effected by the licence on the property without claiming or getting any compensation for the improvements so effected at the termination of the licencer or at the time of expiry of the period of licence in good and tenable repair and condition in accordance with the covenants herein contained."

Officers of the Municipality are also given right to inspect the condition of the rooms from time to time and are allowed to carry out the repairs. It is also agreed that alternation can be done only with the permission of the Municipality. Consequent upon the circular of the Government, notice was issued by the Municipality to execute proper agreement in stamp paper as provided under the Kerala Stamp Act failing which they will be evicted and the petitioners approached this Court when Ext. P2 and similar notices were issued to them.

2. The only question to be considered is whether Ext. P1 agreement creates a ''lease'' within the meaning of S. 2(1) of the Kerala Stamp Act so as to attract stamp duty as provided under Art. 33 of the Act. The word ''lease'' has acquired a meaning in the legal and commercial circle in view of the definition of lease in Transfer of Property Act, 1882 unless otherwise defined. Since only an inclusive definition is given in the Stamp Act, definition of lease in the Transfer of Property Act has to be gone through to find out the transaction in a lease or licence. In S. 105 of the Transfer of Property Act the ''lease'' is defined as follows:

"105. Lease defined.- A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms".

It is creation of an interest in immovable property or a right to possess it that distinguishes a lease from a licence. An agreement executed by the highest bidder of the right to pluck, cut, carry away and appropriate forest produce for a period was only a licence as held by the Supreme Court in Board of Revenue and Others Vs. A.M. Ansari and Others, . But here possession of the rooms is transferred to the petitioners on monthly rent for doing business and facts are different.

3. A reading of Ext. P1 clearly shows that even though the word ''licence'' is used in the agreement, possession of the rooms in question is transferred to the petitioners for the period of the agreement exclusively, even though Municipality can enter into the rooms with notice periodically for inspection and carrying out the repairs. It is not a case where the petitioners were given right to enter and do something for a particular time. It is also not an agreement to collect and remove something. The decision of this Court in Anandan v. Dy. Director of Panchayats (2000 (1) KLT 1) also may not be of much use in this matter on the facts of the case, as it deals with agreements for ''profit a prendre''. Here the rooms were given to the petitioners on monthly rent and they are in exclusive possession and even though the word licence is used, it is actually a lease. Nomenclature in the agreement may not be decisive in all respects when the

agreement is construed as whole. Ext. P1 is not merely an agreement to enter into the rooms and do something thereon. Written document which contains an undertaking to pay rent for the premises occupied by the executor as specified therein to the landlord every month is lease notwithstanding the fact that the word licence is used in agreement. Apex Court in Anthony v. Ittoop (2000 (3) KLT 123) held as follows:

"When lease is a transfer of a right to enjoy the property and such transfer can be made expressly or by implication, the mere fact that an undersigned instrument came into existence would not stand in the way of the court to determine whether there was in fact a lease otherwise than through such deed.

When it is admitted by both sides that appellant was inducted into the possession of the building by the owner thereof and that appellant was paying monthly rent or had agreed to pay rent in respect of the building, the legal character of appellant''s possession has to be attributed to a jural relationship between the parties. Such a jural relationship, on the fact situation of this case, cannot be placed anything different from that of lessor and lessee falling within the purview of the second paragraph of S. 107 of the T.P. Act extracted above. From the pleadings of the parties there is no possibility for holding that the nature of possession of the appellant in respect of the building is anything other than as a lessee".

Periodical payment of money (call it rent or monthly licence fee rent as in Ext. P1 agreement) as consideration for right to possess and doing business in the rooms is provided in Ext. P1 agreement. Therefore, Ext. P1 creates a ''lease'' for the purpose of Transfer of Property Act.

4. Even if the transaction covered by Ext. P1 does not amount to lease under S. 105 of the Transfer of Property Act, it will be covered under the definition of ''lease'' in the Stamp Act. Now we will consider the definition of a lease in the Kerala Stamp Act which reads as follows:

"S.2(1) : "lease" means a lease of immovable property, and includes also

(i) Marayapattom;

(ii) Kanapattom;

(iii) an agreement or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy, or pay or deliver rent for immovable property;

(iv) an agreement or other undertaking in writing, executed by renters of abkari and opium farms;

(v) any instrument by which tools of any description are let;

(vi) any writing on an application for a lease intended to signify that the application is granted; and

(vii) a patta".

A reading of Ext. P1 shows that it is a lease of immovable property in the ordinary meaning and in any event, it is an agreement to occupy and pay or deliver rent for immovable property. Art. 33 also provides stamp duty for lease including an underlease or sublease and any agreement to let or sublet. Here Ext. P1 is an agreement to let out the building. Therefore, it is clearly an agreement of lease coming within the definition under S. 2(1) of the Kerala Stamp Act and stamp duty has to be paid in terms of the Act and I see no ground to set aside. Ext. P2. However, petitioners are granted two months time to execute proper agreement.

5. The Original Petition is dismissed with the above observations.

