
(1984) 09 MAD CK 0043
In the Madras High Court
Case No : W.A. No. 96 of 1981

G. Annamalai Pillai

APPELLANT

Vs

District Revenue Officer, Cuddalore and Others

RESPONDENT

Date of Decision : 14-09-1984

Acts Referred:

Hindu Minority and Guardianship Act, 1956 — Section 8, 8(2), 8(3)

Citation : AIR 1985 Mad 357 : (1985) 98 LW 410

Hon'ble Judges : V. Ramaswami, J;David Annousamy, J

Bench : Division Bench

Advocate : K.V. Sankaran, for A.V. Ilango, P. Rathinam and I.M. Vasudevan, for the Appellant; M.A. Sadanand, Government Advocate and Radha Gopalan, for the Respondent

Judgement

V. Ramaswami, J.—Under a registered deed dated 27-12-1971, the fourth respondent, father of the 5th respondent, executed a lease deed for a period of five years in respect of his minor son 5th respondent's separate property in favour of the appellant herein, on the date when the lease deed was executed, the fifth respondent was a minor, his date of birth being 27-9-1957. Claiming to be a cultivating tenant by virtue of the lease deed executed by the 4th respondent, the appellant filed an application before the Tahsildar, the 3rd respondent, under the provisions of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act (Act 10 of 1969), praying to register him as a tenant in the tenancy records as per the provisions of the Act. The 5th respondent contested the said proceeding on the ground that the lands are his properties, that his father had no manner of right or title to deal with the same and lease the property contrary to the provisions of S. 8 of the Hindu Minority and Guardianship Act (XXXII of 1956), that he had no knowledge of the same, that he avoided the lease executed by his father on 15-9-1978 and that, therefore, the appellant could not claim any right under the Act. Though there was some dispute as to whether the land belonged to the 5th respondent or not, all the authorities have held that it belonged to the 5th respondent and there is no

dispute about the same in this appeal. On the question whether there was any valid tenancy, the 3rd respondent Tahsildar, held that in view of Sec. 8(2)(b) of the Hindu Minority and Guardianship Act, and the lease having been avoided by the minor after he attained the age of majority, there was no valid lease and the appellant could not claim the status of a cultivating tenant and accordingly he dismissed the petition.

2. On appeal, the Revenue Divisional Officer, Tirukoilur, the second respondent herein, however, held that the appellant was a contractual tenant and that, therefore, he is entitled to be registered as a cultivating tenant.

3. The 5th respondent preferred a revision to the first respondent, the District Revenue Officer, South Arcot at Cuddalore, who set aside the order of the Appellate Authority, and restored the order of the Tahsildar, holding that the appellant is not a cultivating tenant. The writ petition filed by the appellant, having been dismissed, the present appeal has been filed against the order in W. P. No. 3143 of 1978.

4. The learned counsel for the appellant contended that on 27-12-1971, when the lease deed was executed and he was given possession of the land by the father of the minor, there was a valid and enforceable lease and even if the 5th defendant had any right for avoiding the sale after he attained the age of majority, the lease being initially valid, he is entitled to the benefits of a cultivating tenant. In support of this contention he relied on two decisions, one Full Bench of this court, reported in Chandrasekaran Vs. Kunju Vanniar and Others, and another by the Supreme Court, reported in G. Ponniah Thevar Vs. Nalleyam Perumal Pillai and Others, . In the Supreme Court case, a lease deed was executed by a life estate holder. On the cessation of the life estate the successor claimed that the lease executed was not binding on him and that so far as he is concerned, the tenant could not claim the benefits of the Cultivating Tenants Protection Act. The Supreme Court held that the life estate holder is entitled to create a tenancy and by virtue of the provisions of the Act, such a tenant created by her could legally extend beyond her lifetime and bind the successor. The ratio of the Supreme Court judgment thus is that there could be no doubt that a life estate holder is entitled to lease the property in her own right. He does not deal with it, as the property of the successor. Though the lease itself may be valid only during the lifetime of the life estate holder, the authority to lease could not be questioned. If once initially there was a valid tenancy, by reason of succession the rights of the tenant under the statute is not taken away. It may also be mentioned that the statutory definition of "landlord" relates not only to the person who created the lease, but contemplates and takes in. every successive holder., who has the right at the time of filing the suit, to realise rents or evict persons in wrongful occupation. It is in these circumstances, the Supreme Court held that there is nothing in the Act to show that the protection given to the cultivating tenant was given only against his original lessor and did not extend to subsequent holders of land occupying the capacity of the landlord.

5. The decision reported in *Chandrasekaran v. Kunju Vanniar*, (197.6) 2 Mad U 243, related to a lease by a usufructuary mortgagee. The question that was referred to the Full Bench was whether the tenants under the usufructuary mortgage are entitled after the redemption of the usufructuary mortgage to claim the protection granted under the Tamil Nadu Cultivating Tenants Protection Act 1955 as against the mortgagor. The Full Bench held that since the tenancy originated in an agreement, though because of the redemption such an agreement came to an end, the tenant continued to be in possession and he will be entitled to the benefits of the Act as a cultivating tenant. It will not be a case of a usufructuary mortgagee conferring upon the tenant a higher title than what he is possessed of. It is only the statute that gave the right to the tenant even after the cessation of the tenancy agreement. It may also be seen from this decision that the usufructuary mortgagee was entitled to lease the property, though that may enure for the benefit of the tenant only during the period when the mortgage was subsisting. However, in view of the special definitions and the rights conferred under the statute, the tenant gets the statutory right as a cultivating tenant.

6. Sec. 8(2) of the Hindu Minority and Guardianship Act, 1956 provides that the natural guardian shall not, without the previous permission of the court, lease any part of the minor's property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority. In this case, though the lease deed was for a term not exceeding five years, it is hit by the other provision viz, "for a term extending more than one year beyond the date on which the minor will attain majority. "We have already noticed that the fifth respondent minor was born on 27-9-1957 and, therefore, he would have attained the age of majority on 27-9-1975. Since the lease deed was up to 29-12-1976. it is hit by the provisions of S. 8(2)(b) of the Act. After prohibiting a lease of that type, cl. (3) of S. 8 stated that any disposal of immovable property by a natural guardian, in contravention of sub-sec. (2), is voidable at the instance of the minor or any person claiming under him. In exercise of this power of avoidance, the minor, as already stated, on 15-9-1978 has terminated the lease and avoided the transaction.

7. The short question, therefore, for our consideration is whether the avoidance of the lease deed is effective from the date of the transaction itself, so as to make the transaction void and unenforceable from the inception, so that the principles enunciated in *G. Ponniah Thevar Vs. Nalleyam Perumal Pillai and Others*, , and in *Chandrasekaran Vs. Kunju Vanniar and Others*, are not applicable or the lease was initially valid and on the avoidance of the same, it becomes invalid from the date of avoidance. If it becomes invalid only on and from the date of avoidance, the ratio of the Supreme Court judgment will apply. If it becomes void from the inception, the tenant cannot claim any statutory right against the respondent.

8. We have already seen that cl. (3) of S. 8 of the Hindu Minority and

Guardianship Act 1956, specifically makes the transaction voidable. The lease executed by the guardian in this case is prohibited and in that sense it was without any authority. On the legal efficacy and the distinction between valid, void and voidable agreements, we find the following passage in Salmond on Jurisprudence, 12th Edition at page 341 -

"A valid agreement is one, which is fully operative in accordance with the intent of the parties. A void agreement is one which entirely fails to receive legal recognition or sanction, the declared will of the parties being wholly destitute of legal efficacy. A voidable agreement stands midway between these two cases. It is not a nullity, but its operation is conditional and not absolute. By reason of some defect in its origin it is liable to be destroyed or cancelled at the option of one of the parties to it. On the exercise of this power the agreement not only ceases to have any efficacy, but is deemed to have been void ab initio. The avoidance of it relates back to the making of it. The hypothetical or contingent efficacy which has hitherto been attributed to it wholly disappears, as if it had never existed. In other words, a voidable agreement is one which is void or valid at the election of one of the parties to it".

9. This distinction has also been judicially noticed in the Privy Council judgment reported in AIR 1932 89 (Privy Council) and in the Division Bench judgment in S.N.R. Sundara Rao and Sons, Madurai Vs. Commissioner of Income Tax, Madras, . The Division Bench held, following the Privy Council judgment, as follows :

"...When a person, who is entitled to dissent from the alienation, does so, his dissent is in relation to the transaction as such and not merely to the possession of the alienee on the date of such dissent.

The effect of the avoidance is, therefore, to get rid of the transaction, with the result that in law it is as if the transaction had never taken place

10. We have, therefore, no doubt, that when the fifth respondent avoided the lease executed by his father, the fourth respondent, the lease became void from its inception and no statutory rights could, therefore, accrue in favour of the appellant herein. There are no grounds to interfere. Hence, the writ appeal fails and is dismissed. But there will be no order as to costs.

11. Appeal dismissed.