

(2006) 07 AP CK 0047
In the Andhra Pradesh High Court
Case No : SA No. 255 of 1994

George Coronation Club

APPELLANT

Vs

Potta Ramakrishna Rao (died) by LRs. and Others

RESPONDENT

Date of Decision : 19-07-2006

Acts Referred:

Transfer of Property Act, 1882 — Section 111

Citation : (2006) 6 ALD 555

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : M.V.S. Suresh Kumar and K.V. Subrahmanya Narasu, for Respondent Nos. 2 to 10 and Cross-Objectors 2 to 7, for the Respondent

Judgement

L. Narasimha Reddy, J.—The appellant is a Club. It filed O.S. No. 167 of 1984 in the Court of District Munsif, Rajam, against the respondents, for the relief of eviction from the suit schedule premises. It was pleaded that the suit schedule premises was leased to the deceased-first respondent, through a registered lease deed, dated 26-7-1956, marked as Ex.A1, for a period of 25 years, for an annual rent of Rs. 20/-. The original lessee is said to have sub-leased the said premises to certain others, who were also arrayed as defendants in the suit. It was urged that the lease under Ex.A1 expired on 26-7-1981, by operation of Section 111 of the Transfer of Property Act and thereby, the defendants became liable to be evicted. Certain other related pleas were also taken.

2. Respondents 2 to 4 herein filed a written statement, opposing the suit. They raised objection as to the maintainability of the suit as well as the jurisdiction of the civil Court to entertain it. It was urged that the suit schedule premises was located in the area, covered by the provisions of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short "the Act") and the suit was not maintainable. It was urged that a vacant land, together with a building thereon was leased out under Ex.A1 and thereby the jurisdiction of the civil Court is taken away. Several other contentions, touching on the correspondence that

ensued between the parties, were also referred to.

3. After framing necessary issues and conducting detailed trial, the trial Court decreed the suit, through its judgment, dated 14-3-1991. Aggrieved thereby, the respondents filed A.S. No. 10 of 1991 in the Court of Subordinate Judge, Rajam. The lower appellate Court allowed the appeal, through its judgment, dated 19-2-1994. Hence, this second appeal.

4. Sri M.V.S. Suresh Kumar, the learned Counsel for the appellant, submits that the recital in ExA.1 is very clear and unambiguous to the effect that it was only a vacant land that was leased out to the respondents. He contends that the mere fact that an inconsequential structure over such a vacant land, whether existed as on the date of lease or brought about subsequently, does not alter the character of lease nor it would attract the provisions of the Act. Placing reliance upon the judgments rendered by this Court as well as the Supreme Court, he contends that the predominant object in leasing out the suit schedule premises was to enable the respondents to park the buses and it cannot be treated as residential or non-residential, as provided for under the Act. He submits that the lower appellate Court reversed the findings recorded by the trial Court, without any factual or legal basis.

5. Sri K.V. Subrahmanya Narsu, the learned Counsel for the respondents, on the other hand, submits that there is no dispute that even by the date of execution of Ex.A1, there existed structures over the suit schedule premises and that it was sufficient to attract the provisions of the Act. He contends that even if there existed any doubt on this aspect, the recitals in Ex.B1 and the deposition of P.W.1 have clarified this; and no interference is called for with the findings recorded by the lower appellate Court.

6. The trial Court framed the following issues, on the basis of the pleadings before it

1. Is the plaint schedule correct?
2. Is the plaintiff entitled to any damages and if so, to what amount?
3. Is the suit as framed not maintainable?
4. Has the Court no jurisdiction to entertain the suit?
5. Are Defendants 2 to 4 and 10 not liable for ejectment in view of A.P. Buildings (Lease, Eviction and Rent) Control Act?
6. Is the suit bad for non-joinder of parties?
7. Are Defendants 2 to 4 and 10 entitled to any value of improvements?
8. Is the suit barred by time?

Additional Issues:

1. Whether the plaintiff is entitled for possession of suit schedule premises as prayed for?

2. Whether the suit abated in toto in view of non-bringing the L.Rs. of deceased D-I is true?

7. On behalf of the appellant, PWs. 1 to 3 were examined and Exs.A1 to A8 were marked. On behalf of the respondents, D.Ws.1 and 2 were examined and Exs.D1 to D4 were marked. Ex.A1 is the lease deed. Ex.A2 is a notice, dated 6-3-1969, and Ex.A3 is the reply received from the first defendant. Ex.A4 is another notice, dated 14-4-1994, and Exs.A5 to A8 are the resolutions passed by the appellant-Club. Ex.B 1 is the reply notice received from the appellant and Exs.B2 to B4 are the documents, which do not have any direct bearing on the dispute.

8. A perusal of the judgment of the trial Court discloses that no arguments were advanced by the Counsel for the parties on Issue No. 4, which related to the jurisdiction of the civil Court. Therefore, it was answered in favour of the appellant herein. Before the lower appellate Court, the only issue that was stressed upon by the respondents was the applicability of the provisions of the Act and the jurisdiction of the civil Court to entertain the suit. Almost, the same contentions are urged before this Court.

9. The definition of "building" under the Act, reads as under:

2(iii) "Building" means any house or hut or part of a house or hut, let or to be let separately for residential or non-residential purposes and includes:

(a) the gardens, grounds, garages and out-houses if any, appurtenant to such house, hut or part of such house or hut and let or to be let along with such house or hut or part of such house or hut;

(b) any furniture supplied or any fittings affixed by the landlord for use in such house or hut or part of a house or hut, but does not include a room in a hotel or boarding house;

10. From a perusal of this provision, it is evident that there must exist a structure of one form or the other, to attract the provisions of the Act, of course, subject to other conditions. The lease of a vacant land, pure and simple, does not attract the provisions of the Act. In Nandam Mohanamma and Others Vs. Markonda Narasimha Rao and Another, , this Court held that if what was leased out by the lessor is a vacant land, the mere fact that the lessee brought about a structure thereon, at a subsequent point of time, without the permission and authority of the lessor, does not attract the provisions of the Act.

11. In the instant case, it is no doubt true that Ex. A1 refers to vacant land alone. If that were to have been the situation through out, the contention advanced on behalf of the appellant could have been accepted, straight away. The evidence on record, however, indicates the otherwise.

12. Basically, Ex. A1 refers to vacant land, provides for construction of buildings

by the lessee i.e., respondents herein. Therefore, even if the vacant land alone was leased out at the initial stage, at least from the stage after the building is constructed with the permission of the appellant, the lease becomes amenable to the provisions of the Act. A different situation would arise, if such a structure is brought about, without the permission of the landlord.

13. An important piece of evidence, in the instant case, is the reply notice issued by the appellant. During the course of such a correspondence, it was replied on behalf of the appellant through Ex.B1, as under:

It is true that a registered lease deed dated 26-7-1956 has been executed between Sri K. Anantacharyulu and the then Secretary of G.C. Club, Rajam. But it is not true to state that only a vacant site was leased. By the time of the above said lease, as a matter of fact, there were structures on the site covered by the said lease.

This would clinch the controversy as to whether the vacant site alone or the site with a structure thereon was leased out under Ex.A1.

14. The learned Counsel for the appellant made strenuous effort to disconnect the recitals in Ex.B1 with the transaction under Ex.A1. The little doubt that persists, on this aspect, stands clarified, with the deposition of P.W.1 in the cross-examination. He stated as under:

There is a shed with brick walls in the suit site since a long time. It is also electrified. For some time the said shed and site were being used as motor work shop. Before nationalization Defendants 2 to 4 commanding the substantial extent of transport services in the place.

Therefore, it clearly emerges that the subject-matter of Ex.A1 was the vacant site together with structure thereon.

15. One of the points urged by the learned Counsel for the appellant is that even assuming that there existed structures, the predominant purpose of lease was to park buses and thereby, the provisions of the Act do not get attracted. He places reliance upon the Judgment of this Court in Kaligotla Venkata Sivarama Krishna Vs. Kaligotla Seeta Mahalakshmi and Others, , and the Judgment of the Supreme Court in Uttamchand Vs. S.M. Lalwani, . While the subject-matter in the Judgment of this Court was a Rice Mill, the one in the Judgment of the Supreme Court was a Dal Mill. The Supreme Court took the view that if what is let out was a mill, the fact that there existed structures to cover the mill and to provide other facilities thereto, does not alter the character. To be precise, the Supreme Court held as under:

The fixtures described in the schedule to the lease are in no sense intended for the more beneficial enjoyment of the building. The fixtures are the primary object which the lease was intended to cover and the building in which the fixtures are located comes in incidentally.

This Court followed the said principle. Reference was also made to the Judgment rendered by a Full Bench of this Court in Konijeti Venkayya v. Thammana Peda Venkata Subba Rao AIR 1957 AP 619 . In that case, the premises was an Oil Mill. Reliance was also placed upon a judgment of the Supreme Court in Koti Saroj Anamma and another Vs. Jonnalagada Malleswara Rao, . The subject-matter of that case is a Saw Mill. Therefore, one common factor that can be deduced from all the judgments, referred to above, is that if a mill or a manufacturing unit is leased, the fact that the premises comprises of certain buildings, does not alter the character and that the provisions of the Rent Control Legislations do not cover it. Such is not the case herein. Even assuming that the predominant object was to enable the lessee to park the vehicles, it cannot be said that the lease was in respect of a manufacturing unit.

16. Therefore, this Court does not find any basis to interfere with the judgment rendered by the lower appellate Court.

17. Hence, the second appeal is dismissed. There shall be no order as to costs.

Cross-Objections (SR) No. 60750 of 1994 in SA No. 255 of 1994

ORDER

1. The respondents filed cross-objections. They contend that during the pendency of the suit, the first defendant died and his legal representatives were not brought on record within time. The trial Court framed an issue, touching on this aspect. Extensive arguments were advanced by both the parties.

2. It is true that the legal representatives of the deceased-first defendant were not brought on record, within the stipulated time. The fact, however, remains that the learned Counsel for the deceased-first defendant did not file memo into the trial Court, as contemplated under Rule 10-A of Order 23 C.P.C. The trial Court took note of this fact and held that as long as the obligation under the said provision was not discharged by the learned Counsel for the deceased-first defendant, it cannot be said that there was any fatal lapse on the part of the appellant herein.

3. Another contention is that the Courts below ought to have held that the defendants have become entitled to the rights of a permanent occupant and that the suit was barred by limitation. It needs to be seen that if the respondents wanted any declaration as to their rights, they ought to have filed a separate suit or made a counter-claim in the suit. They have filed none. Further, the plea of limitation would have assumed significance, if the Courts below had dealt with the matter under the Transfer of Property Act or on the termination of lease. Once it was found that the suit was not maintainable, in view of the provisions of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960, this plea does not deserve any consideration.

4. This Court does not find any merits in the Cross-Objections and accordingly, they are rejected. There shall be no order as to costs.