
(1981) 12 MAD CK 0039
In the Madras High Court

Gnanasoundarapandian

APPELLANT

Vs

Thomas Nadar and Others

RESPONDENT

Date of Decision : 23-12-1981

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : (1982) 2 MLJ 454

Hon'ble Judges : V. Sethuraman, J

Bench : Division Bench

Judgement

V. Sethuraman, J.—This second appeal has been filed by the plaintiff in O.S. No. 29 of 1978 in the Court of the District Munsif of Thiruvaiyaru. He has been unsuccessful throughout. The suit properties measuring 9.28 acres are situate in Keeraikollai Vattam within the Municipal limits of Thanjavur Town. It is not in dispute that these properties belong to the plaintiff. He and his brother executed a mortgage over those and other properties in favour of one Ramanathan Chettiar of Karaikudi on 6th July, 1967, as security for a loan of Rs. 55,000. The mortgagee assigned his interest by a registered assignment dated 2nd September, 1972, in favour of defendants 1 and 2, who are husband and wife respectively. The plaintiff's case was that on the same day, he entered into an oral arrangement by which the defendants were to be in possession of the suit properties for a period of three years, so that the income from the properties could be adjusted against the loan. After the said period of three years it was stated that possession was to be; surrendered to the plaintiff. One of the items of properties viz., Item No. 2, is a cocoanut thope. The possession would, therefore, have to be surrendered by 2nd September, 1975. According to the, plaintiff, it was actually so surrendered. But on, 5th May, 1976, defendants 1 and 2 and their agent, the third defendant, prevented him from harvesting the crops. Though originally he came forward with the suit for permanent injunction, subsequently he amended the plaint to the effect that even if the Court found that the plaintiff was not in possession of the suit properties on the date of the suit, the defendants may be directed to deliver the suit properties to the plaintiff.

2. In the written statement, while admitting that there was an assignment of the mortgage in favour of defendants 1 and 2, the plea taken was that on 17th April, 1973, possession was handed over to the first defendant under Exhibit B-1, an unregistered lease deed. The plea was that the first defendant was a cultivating tenant and that he could not be evicted from the properties. It was also pleaded that the civil Court has no jurisdiction to go into the question of possession in the hands of a cultivating tenant.

3. The trial Court held that the arrangement as if the defendants were to be in possession of the properties for a period of three years and enjoy the usufruct in discharge of the mortgage was not true. It was also held that the plaintiff was not in possession of the suit properties on the date of the suit. The plea of the defendants that they were the cultivating tenants was found against. As the suit was for a permanent injunction and as the plaintiff was found not to be in possession of the properties, the trial Court refused the prayer for injunction. With reference to the plea of the defendants that there was a lease agreement on 17th April, 1973, the trial Court held that there was such a lease and it was not vitiated by any fraud or undue influence. In the result, the suit was dismissed.

4. On appeal by the plaintiff, the learned Subordinate Judge of Thanjavur was also of the opinion that the lease deed Exhibit B-1 was not brought into existence by any fraud, coercion or under influence, that it was valid and that the defendants were in possession of the properties. Even if the first defendant was taken to be a cultivating tenant and even if he was not entitled to the benefit of the Tamil Nadu Cultivating Tenants' Protection Act, the lease in his favour had not been properly terminated u/s 106 of the Transfer of Property Act, so that the suit was liable to be dismissed. The appeal was accordingly dismissed.

5. In the second appeal the learned Counsel for the appellant Mr. O.V. Baluswami, contended that the Court below had not considered the adangal registers which showed the plaintiff to be in possession of the properties and that the finding as regards possession was, therefore, erroneous and liable to be set aside. He contended also that Exhibit B-1, the lease deed, was vitiated by undue influence. In any event, according to him, the defendants were not entitled to the benefits of the Tamil Nadu Act XXV of 1955, as they were not the cultivating tenants within the meaning of the said Act. He contended also that Exhibit B-1, the lease deed, could not have been looked into for any purpose, as it was an unregistered lease deed. Mr. R.G. Rajan, the learned Counsel for the respondents disputed every one of these propositions.

6. The question as to whether the first defendant is a cultivating tenant may first be examined even on the footing that Exhibit B-1 is a valid document and is liable to be looked into in support of the plea of possession. Section 2(aa) of the Tamil Nadu Cultivating Tenants' Protection Act, 1955, defines "cultivating tenant" as meaning "a person who contributes his own physical labour or that of any member of his family in the cultivation of any land belonging to another, under a tenancy agreement express or implied". This provision was construed in

L.R. Ganapathi Thevar (dead) by his legal representatives Vs. Sri Navaneethaswaraswami Devasthanam, , as meaning that a person should carry on personal cultivation which requires that he should contribute his own physical labour. The use of physical labour was stated to include physical strain, the use of muscles and sinews and mere supervision of work, or maintenance, of accounts or distribution of wages would not be such contribution of physical labour as to attract the definition. There is no evidence to show that the first defendant utilised his own physical powers in cultivating the lands. There were, of course, an agent, who is P.W. 3, and a watchman, who was P.W. 4. But the services rendered by these persons or by others will not satisfy the requirements of the, statute. It is, therefore, clear that he is not a cultivating tenant. It is obvious that he is a man of affluence, as he has been in a position to advance such a large sum of Rs. 57,000 on a mortgage of these properties. He is referred to as an Industrialist in Kovilpatti. It would be too much to expect him: to have used his own physical labour in cultivating these lands in Thanjavur when he had other interests in and was a normal resident of Kovilpatti.

7. Even assuming that he is not a cultivating tenant, if there was a lease in his favour and if the lease was not properly terminated, then he would be entitled to continue in possession of the lands. It is thus necessary to find out whether there was a lease of the lands in his favour and whether the lease deed relied on is admissible in evidence. If he was a lessee, then it would be necessary also to go into the question as to whether a notice u/s 106 of the Transfer of Property Act, was necessary.

8. Exhibit B-1 is in Tamil. It is dated 17th April, 1973, and is styled "a lease deed". The annual rent provided is 160 kalams of paddy and Rs. 2,000. It requires the party of the second part viz., the first defendant, to make the necessary repairs for the irrigation channels and tend the properties. The first defendant was also to manure the properties in due time and plant the Kuruvai seedlings by the 15th of Adi and Samba seedlings by the, 15th of Purattasi. He was required to see that others did not use the channels in the properties for irrigating their lands. Clause 4 requires the payment of rent in kind by the 31st of October and 31st March and in cash by 31st March. Interest was provided for the arrears. If the wet lands were utilised for dry crops or the dry lands were utilised for wet crops, or if single crop lands were used for double crops, then according to the village custom, the plaintiff would be entitled to the extra share. If there was any non-cultivation or if there were any damage by floods or drought, there would be no reduction in the rent. The possession of the properties was to be taken by the plaintiff when the time fixed for the lease was over. These in substance are the terms of the document.

9. The learned Counsel for the appellant contended that this document was obtained under undue influence. The relevant allegations in the plaint are as follows:

The fabricated lease deed filed by the first defendant reads that it secures an

annual rental of 160 kalams per annum besides a cash rent of Rs, 2,000 per annum which on the face of it is thoroughly unconscionable and unjust. The Court is in law entitled to infer from the circumstances proved and otherwise that the transaction of lease is brought about by undue influence.

10. This plea was denied in the written statement. The trial Court framed an additional issue as to whether the lease in favour of the first defendant was vitiated by fraud and undue influence. It was pointed out that the plaintiff had admitted that he himself had arranged for the transaction of the assignment of the mortgage in favour of defendants 1 and 2, that the parties to the suit were all rich men and industrialists having a large number of day-to-day transactions, that the plaintiff could have had independent and disinterested advice and that there could be no domination of the will of the lessor by or on behalf of the lessee. It was also pointed out that the relationship of debtor and creditor subsisting between the plaintiff and the first defendant could not lead to the inference that the lease deed was a forged and fabricated one. The lower appellate Court has also rejected the plea. The question as to whether there was undue influence or not is a question of fact and I do not think it possible to interfere with the concurrent finding of the Courts below on this point.

11. As regards the execution of Exhibit B-1, by the plaintiff, there is the evidence of D.W. 2, who was one of the attestors. His evidence has been accepted as true by both the Courts and it is not, therefore, possible to hold that the plaintiff signed on a blank form, which had been filled up by the first defendant later on. In the light of the above discussion, it follows that Exhibit B-1 was a valid document. It is also not clear in evidence as to what happened between 2nd September, 1972 and 17th April, 1973 to show that the first defendant, who was himself brought on the scene by the plaintiff for the purpose of the assignment of the mortgage was trying to act adversely to the interests of the plaintiff.

12. On the footing that Exhibit B-1 was a proper and valid document and that it was not vitiated by any undue influence, I have to consider whether Exhibit B-1 can be relied on in support of the defendant's case of possession. The contention urged is that Exhibit B-1 is a document which required registration. The tenor of the document shows that the lease deed is not merely for one fasli. Though Clause 8 of the document provides that the plaintiff was to take possession when the lease expired, there is no period fixed in the document itself. The document appears to require the payment of rent for each fasli in kind to the extent of 160 kalams of paddy and in cash of Rs. 2,000. Further, in Clause 4, there is a provision for measuring the paddy by the local official measure of a marakkal and again for payment of rent, the date fixed is 31st March of each year. It thus follows that this is a document of lease for more than one year.

13. If it is a lease for more than one year then u/s 17(1)(d) of the Indian Registration Act, it is compulsorily registrable. The contention urged is that it is only a licence and not a lease. Several cases bearing on the point were cited before me and I do not think it necessary to go into all of them, as the latest

decision of Ramanujam, J., in Venkatachalapathy Odayar Vs. Rajalakshmi Ammal, , has brought out the principle to be applied in a case like this as follows:

To decide whether a particular transaction is one of licence or lease, Courts have applied various tests. If a right is created in respect of a land for a specified time and the grantee is expected to exploit the land for purposes of his own, then the transaction can be said to be one of lease. But, where without creating any interest in the land the right to collect the usufructs from the trees standing on the land alone is given, the grantee cannot claim to be a lessee, he can be said to be a licensee only. In determining whether a particular transaction is a lease or a licence, we have to be guided by the substance of the deed evidencing the transaction and the intention of the parties.

14. By this test, in the present case, exclusive possession has been granted to the first defendant. He has to cultivate the land as is clear from the fact that he has to measure 160 kalams of paddy. Exhibit B-I contemplates that he may cultivate Nanja crops in Punja lands and vice versa. He may also utilise the lands for double crop cultivation, even though the particular field may be a single crop one. Extra share is provided in accordance with the village custom for such use. Interest is created in the land. Exclusive possession was given. Taking into account the tenor of the document and the terms described above, it has to be held that the document is only a lease and not a licence.

15. One of the three items of properties; as mentioned already, is a garden land where there are coconut trees. While the plaintiff alleges that there are about 800 trees, according to the defendants there are only about 300 trees. In either event, it is not in dispute that the transaction covers lands which are garden lands. In the case of such garden lands, it is contended that where the person in occupation is only entitled to the usufruct, the transaction could only be a licence. Even assuming that this contention is to be accepted with reference to the garden land, still so long as the transaction is a composite and in divisible one, which covers both the lease and licence and so long as a part of it can be entered into only by a registered document, the document would have to be registered. Section 17(1)(d) of the Indian Registration Act provides that a lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent would have to be by a registered instrument. In the present case, the terms of the document show that it is a lease from year to year. At any rate, there is a provision regarding payment of yearly rent. A part of it has to be paid at the time of the first crop and another part at the time of the second crop. As far as the cash consideration is concerned, it has to be paid by 31st March. Thus, it is a clear case where the lease was for yearly rent, so that the document falls within the scope of Section 17(1)(d) of the Indian Registration Act. The document, therefore, has to be registered.

16. The learned Counsel for the respondents contended that even assuming that the documents had to be registered, still the unregistered document could be looked into for the purpose of finding out the nature of possession in the hands

of the first defendant. Section 49 of the Indian Registration Act, provides that no document required by Section 17 to be registered shall affect any immovable, property comprised therein, or be received as evidence of any transaction affecting such property, unless it has been registered. The reception of the document is thus barred by Section 49 of the Act. The learned Counsel for respondents contended that the proviso contemplates that an unregistered document may be received as evidence of any collateral transaction not required to be effected by registered instrument. It is also contended that the document could be looked into for any collateral purpose. In the present case, the purpose for which Exhibit B-1 is produced cannot be considered to be a collateral purpose. The purpose is to show that the first defendant is in occupation of the properties under a lease deed. I have not been referred to any case where a lessee, who is in possession under an unregistered document, is entitled to plead in defence that under an unregistered lease document he is entitled to continue in possession and rely on such a document.

17. The learned Counsel for the respondents contended that though Section 107 of the Transfer of Property Act provides that a lease of Immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, could be made only by a registered instrument, still Section 117 of the Transfer of Property Act, clearly exempted leases for agricultural purposes from the scope of the provisions of Chapter V dealing with leases of Immovable property, unless the State Government notified that the provisions of the Transfer of Property Act were applicable in the case of agricultural leases. In the absence of such notification, according to the plaintiff, exemption prevailed and, therefore, the non-registration would not stand in the way of the document being received in evidence. In making this submission, the learned Counsel has overlooked the specific provision of Section 17(1)(d) of the Indian Registration Act, which deals with all leases of immovable properties whether they are agricultural or non-agricultural. It has been held by this Court in *Sivasubramania Thevar Vs. Dewan Bahadur T.N.S. Theerthapathi, Zamindar of Singampatti*, that if an agricultural lease is made in writing, it would return registration u/s 17(1)(d) of the Act if it was from year to year or for any term exceeding a year for reserving a yearly rent. In view of this decision, it has to be held that if the lease is in writing, then registration of the document is essential and its non-registration involves the consequences provided in Section 49 of the Registration Act.

18. There was a plea that Section 106 of the Transfer of Property Act applied to the present lease and that in the absence of notice of termination of the lease as contemplated by the said provision, the suit is not competent. In the light of the contention that Section 117, exempted the agricultural leases in Chapter V, it would follow that Section 106 also cannot be invoked. The Court below was, therefore, not justified in non-suiting the plaintiff on the ground that there has been no termination of the lease in accordance with the provisions of Section 106 of the Transfer of Property Act. It is not proper to suggest that even if Section 106 of the Transfer of Property Act did not apply, there is need to terminate the

lease by a notice as a condition precedent to the maintainability of the suit. If Section 106 does not apply, it would not be proper to invoke it under the justice, equity and good conscience rule. See *Namdeo Lokman Lodhi Vs. Narmadabai and Others*, . The circumstance that Exhibit B-I was properly entered into without any undue influence is of no significance in the present case. When the document is ruled out of consideration and when there is no question of any notice of termination of any lease, as such, the plaintiff would be entitled to take over possession of the properties. There will be a decree for possession. Possession in the respondent's hands will not be disturbed for 3 months from this date.

19. The second appeal is accordingly allowed and the suit is decreed with costs in this Court.