
(1915) 09 MAD CK 0008
In the Madras High Court

Govindasami Pillai

APPELLANT

Vs

Ramasami Aiyar and Another

RESPONDENT

Date of Decision : 23-09-1915

Acts Referred:

Registration Act, 1908 — Section 17(4), 49

Citation : AIR 1916 Mad 517 : 31 Ind. Cas. 604 : (1915) 2 LW 1186

Hon'ble Judges : Tyabji, J

Bench : Single Bench

Judgement

Tyabji, J.—The question in this petition is whether the plaintiffs are entitled to recover a sum of Rs. 290 from the defendant for the use and

occupation of certain lands.

2. There was a document between the parties purporting to be a lease but in as much as the agreement was reduced to writing hut not registered, it

could not affect the Immovable property by reason of Sections 49 and 17(4) of the Indian Registration Act, XVI of 1908.

3. The learned Subordinate Judge has, however, proceeded on the basis that, though this document is inadmissible for want of registration, to

prove the leasing or the tenants right to the term in it, ""yet it is admissible to prove", the rent agreed to be paid."" In my opinion this is an erroneous

view of the law. Section 17(d) of the Indian Registration Act provides that leases of Immovable property from year to year, or for any term

exceeding one year, or reserving a yearly rent shall be registered; and Section 49 provides that no document required by Section 17 to be

registered shall affect any Immovable property comprised therein...unless it has been registered."" The document Exhibit A, therefore, which

purports to be a lease of the property, cannot affect the Immovable property. It has been argued before me that, if the document is looked at for

the purposes of fixing the rent between the parties, it does not affect the property and, therefore, it may be operative in this regard

notwithstanding Sections 49. I cannot accede to this argument. When there is a lease with reference to Immovable property, it seems to me that

the terms on which the property is leased "affect" that property within the meaning of Section 49, and the rent reserved in the lease is the most

important of the terms.

4. In my view, therefore, the Subordinate Judge's finding on the question of the amount of occupation rent due from the defendant to the plaintiffs

is vitiated by the error. I find, however, that he refers to the terms of Exhibit B, which is a, previous registered lease of half the land now in

question. The rent fixed under that deed was Rs. 130 per annum, and the Subordinate Judge points out that if that document were taken as the

basis for fixing the occupation rent in respect of the whole land now in question, the defendant would be liable to pay Rs. 260 per annum. I take it,

therefore, that the Subordinate Judge indicates, with sufficient precision for my present purpose, that in his opinion the claim of Rs. 290 made by

the plaintiffs is a fair claim. I agree with him and I think it would be futile to call for a fresh finding on the point.

5. The next point argued before me is whether the plaintiffs have become entitled to this sum, assuming it to be a fair occupation rent. It is argued

before me that they are not entitled, because the plaintiffs became the owners of the property in question only by a sale in their favour, dated the

23rd October 1912, and that a part of the sum which is decreed to them as occupation rent became due prior to their sale-deed, that the claim for

occupation rent is not such a claim as can be validly transferred and that when such a claim is purported to be transferred, it is of no effect and

does not empower the alleged transferee to claim it.

6. The sale-deed, Exhibit E, in favour of the plaintiffs, provides that the plaintiffs shall hold and enjoy the said properties with the income accruing

therefrom from the date of Exhibit D the 8th December 1911, on which date the plaintiffs' vendor purchased the property.

7. I must here refer to a matter to which neither my attention nor the attention

of the lower Court was drawn and which is not taken in the grounds of revision. It is this that the claim is for rent for the period between 1st September 1911 to 14th November 1912 and it has been allowed for that period. But the plaintiffs' sale-deed empowers them to recover the rent only as from 8th December 1911. In spite of the fact that this point was not taken by the defendant, I considered it right to draw the attention of the Pleaders to it. Mr. N.S. Rangaswami Iyengar, who appeared for the plaintiffs, expressed his willingness to have a deduction made in the claim in respect of the period from 1st September 1911 to 8th December 1911, but said that as during this period also, his clients had a 1/4th share in the property, they should be allowed to recover 1/4th of the proportionate rent for that period. This offer, which I am informed, means a deduction of Rs. 48-12-0 from the decree amount, was not accepted. I do not think that I ought to interfere in this matter without the consent of the parties. Moreover, it seems to me that the calculation of the occupation rent is on a rough basis not too favourable to the plaintiffs, and I am not prepared to hold that on a fair basis, the deduction for the period between 1st September and 1st December ought necessarily to be proportionate or that the amount fixed for the period claimed would not be a fair amount for the period between 8th December and 14th November 1912.

8. I proceed to consider the question with reference to the period after the date of Exhibit D.

9. The argument for the petitioner before me has been that the terms of the Transfer of Property Act, IV of 1882, Section 6(e), prohibit the transfer to the plaintiffs of any right to recover the occupation rent due from the defendant prior to the sale-deed in their favour, namely, prior to the 23rd October 1912.

10. The question shortly, therefore, is whether the right to claim occupation rent is:

(1) "a mere right to sue" incapable of being transferred, or
(2) such an actionable claim as is defined in Section 3 of the Transfer of Property Act, which can be transferred under the sale-deed, and by being so transferred, empower the vendee to recover the occupation rent due on the land prior to the date of the conveyance.

11. In the Metropolitan Railway Co. v. Defries (1877) 2 Q.B.D. 387, it was

decided by the Court of Appeal in England, agreeing with the Divisional Court, that where premises are transferred with the rights to recover all rents and profits", the right to recover occupation rent is also transferred.

12. In that case, the facts were that the plaintiffs agreed to purchase certain property from the defendants and the purchase was to be completed on the 29th September 1869, from which time the plaintiffs were to receive all rents and profits and to pay interest on the purchase-money until the completion of the purchase. The purchase, however, was not as a matter of fact completed until the 13th March 1876. The defendants had remained in possession, but had paid no rent. It was held that the defendants were liable to pay occupation rent for the period in question. Mr.

Seshachariar sought to distinguish the Metropolitan Railway Company's case (1877) 2 Q.B.D. 387 : 36 L.T. 494, on the ground that the amount that ought to have been allowed for occupation rent was admitted there, whereas in the case before me that amount has had to be determined in

the manner mentioned in an earlier part of my judgment. This circumstance seems to me to be quite irrelevant to the real point. The Metropolitan

Railway Company's case (1877) 2 Q.B.D. 387 : 36 L.T. 494 seem to me to be indistinguishable from the present except on one point (which was

not taken before me), namely, that the occupation rent claimed there was not for a period prior to the date of the agreement for the date of the

properly; but I do not consider that to be an important distinction.

13. What seems to me to be of substance is that the right to recover occupation rent was considered to follow the title to the property and to be

included in the term "rents and profits." If the rent recoverable in respect of the period in question had been not occupation rent, but rent under a

valid lease, the plaintiffs would have been entitled to succeed, and it seems to me that the case of Metropolitan Railway Co. v. Defries (1877) 2

Q.B.D. 387 is authority for the proposition that in this regard, occupation rent is not different from rent due under a lease. The same point seems to

have been assumed, though it did not come up for decision, in Anker v. Franklin (1880) 43 L.T. 317.

14. A point was also taken before me that the defendant ought to have the benefit of Section 132 of the Transfer of Property Act. But it was not

suggested in the written statement or at the trial in the lower Court that there were any such equities or liabilities as the section contemplates. Mr.

Seshachariar took the point for the first time in his grounds, but is not able even now to give any particulars of the equities or liabilities that may be

in question. There is no substance, therefore, in this point.

15. It seems to me for these reasons that the plaintiffs were entitled to recover the amount decreed to them by the Subordinate Judge, and I

dismiss the petition with costs.