

(1998) 10 MAD CK 0063

In the Madras High Court

Case No : C.R.P.Nos. 2785 and 2786 of 1994

Kodi Idi Kondaiyan Chettiar

APPELLANT

Vs

P. Sivasamy and another

RESPONDENT

Date of Decision : 29-10-1998

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 2(2)
Transfer of Property Act, 1882 — Section 108(2), 111, 117

Citation : (1998) 2 CTC 641 : (1998) 3 MLJ 754

Hon'ble Judges : K. Govindarajan, J

Bench : Single Bench

Advocate : Mr. T. Srinivasa Raghavan, for the Appellant; Mr. S. Baskaran, M/s. R. Muthukumaraswami and Mr. V. Rajasekaran, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner/landlord who failed in his attempt in getting the order of eviction has filed the above revisions.

2. The petitioner/landlord filed the petitions in R.C.O.P.Nos.12 of 1988 and 5 of 1987 on the file of the learned Rent Controller/District Munsif,

Srivilliputtur on the ground that the respondents/tenants had not paid the rent with respect to their respective premises in question and so such non-

payment amounts to wilful default and they are liable for eviction. The respondents though had admitted that they entered into tenancy with respect

to the properties in question, owned by the petitioner, and in 1986 the Government removed the superstructures, as they were put up in

Poromboke land. Thereafter, it cannot be construed that the respondents are the tenants, though they themselves put up the superstructures in the

said land and got "B" memos from the Government. The Rent Controller accepting the case of the tenants rejected the petitions as there is no

relationship of landlord and tenant between the parties, after 1986. Aggrieved against the same, the petitioner filed appeals in R.C.A.Nos.4 of

1990 and 15 of 1988 on the file of the learned Appellate Authority/Sub-Judge, Srivilliputtur. The Appellate Authority concurred with the findings

of the Rent Controller and rejected the appeals. Still aggrieved, the petitioner has filed the above Revisions.

3. The only issue to be decided in these Revisions is whether the relationship of landlord and tenant which existed initially will continue even after

the demolition of the superstructures of the petitioner, and whether the respondents are liable to pay rent after demolition of the superstructures in

question?

4. The undisputed facts are as follows:-

The respondents entered into possession of the properties in question as tenants. In 1986 the Government removed the superstructures of the

petition schedule properties, as the petitioner had constructed the same in Poromboke land. Subsequently, the tenants had put up their own

superstructures and are continuing as tenants. On the basis of the abovesaid undisputed facts the learned counsel appearing for the

petitioner/landlord has submitted that the lease shall not come to an end without the options being exercised by the lessees. In this case the options

were not exercised by the tenants/respondents and so it should be construed that the relationship of landlord and tenant continues.

5. The learned counsel appearing for the respondents have submitted that since the buildings in question are not in existence, it should be construed

that the relationship of landlord and tenant between the petitioner and respondents came to an end on demolition of the superstructures of the

petition schedule properties and so the petitions are not maintainable.

6. The word "building" has been defined u/s 2(2) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as follows:

Building means any building or hut or part of a building or hut, let or to be let separately for residential or non- residential purposes and includes -

(a) the garden, grounds and out-houses, if any, appurtenant to such building, hut or part of such building or hut and let or to be let along with such

building or hut,

(b) any furniture supplied by the landlord for use in such building or hut or part

of a building or hut, but does not include a room in a hotel or boarding house"".

To decide whether the lease has come to an end, it has to be decided whether the building alone is leased out or not. For that purpose, we have to

deal with the meaning assigned to the word "building". In Oxford English Dictionary, in the ordinary grammatical sense of the word, the meaning is adopted as follows:-

.....That which is built; a structure, edifice; now a structure of the nature of a house built where it is to stand....

In the Webster's New International Dictionary the meaning of the word "building" is defined as follows:-

.....That which is built specif:(a) as now generally used a fabric or edifice, framed or constructed, designed to stand more or less permanently and

covering a space of land for use as a dwelling, store house, factory, shelter for beasts or some other useful purpose. Building in this sense does not

include a mere wall, fence, monument, hoarding or similar structure though designed for permanent use where it stands, nor a steamboat ship or

other vessel of navigation....

7. Adopting the said meaning, the Apex Court in Ghansham Das Vs. Devi Prasad and Another, has observed that the question as to what is a

"building" must always be a question depending on the facts and circumstances of each case.

8. In Corporation of the City of Victoria v. Bishop of Vancouver Island, AIR 1921 PC 240, while referring to the meaning of the word "building"

it was held that ""the word must receive its natural and ordinary meaning as "including the fabric of which it is composed, the ground embraced

within those walls". That appears to be the correct meaning of "building" "".

9. While dealing with similar issue, the learned Judge of the Kerala High Court in the decision in George J. Ovungal Vs. Peter, , as held as follows:-

Adopting the above meaning of the word building and understanding the concept of building as one taking in the site of the building also as part of

it, it has to be held that the site of a shop room is an integral and inseparable part of it. Without the site, the superstructure of a shop room on land

cannot normally exist. Thus when a lease of a residential house or a shop room on land is granted for occupying the same, such a lease would

normally take in the site unless it is excluded either expressly or impliedly from the lease. In other words even in cases where house or shop room alone is leased out, the site of such house or shop room would ordinarily form part of the subject matter of the lease. It is difficult to hold that in the case of an ordinary lease of a house or shop room, the superstructure alone is the subject matter of the lease and not the site of the house or shop room".

From the above, it is clear that while leasing out the property the tenant is taking the site also along with the building, and, in this case there is no evidence available on record that the tenants have specifically taken the building alone for lease. So, in general terms it has to be concluded that the tenants have taken on lease including the site as part of it. Merely because it is a Poromboke land, it is not for the tenants to say that the petitioner is not having right to lease out the same to them.

10. On the basis of the above concept, now it has to be decided, by the destruction of the property, whether the tenancy in respect of the building was determined automatically.

11. In the earliest decision in *Simper v. Coombs*, 1948 All. E.R. 306, it has been observed as follows:-

.....The Position at common law is plain. She had a contractual tenancy, and that tenancy has never been determined by due notice to quit. It, therefore, continues in existence. The destruction of the house by a bomb did not determine the tenancy. It is well settled that the destruction of a house does not by itself determine the tenancy of the land on which it stands...".

12. In India, it has to be decided in the light of Sections 111 and 108(e) of the Transfer of Property Act 1882. Section 108(e) of Transfer of Property Act reads as follows:-

If by fire, tempest or flood, or violence of any army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void".

While dealing with the scope of section 108(e) of the said Act, the Apex Court in *Raja Dhruv Dev Chand Vs. Harmohinder Singh and Another*,

has held as follows:-

If any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purpose for which it was let out,

because of fire, tempest, flood, violence of an army or a mob, or other irresistible force, the lease may at the option of the lessee, be avoided. This

rule is incorporated in S. 108(e) of the Transfer of Property Act and applies to leases of land, to which the Transfer of Property Act applies, and

the principle thereof to agricultural leases and to leases in areas where the Transfer of Property Act is not extended. Where the property leased is

not destroyed or substantially and permanently unfit, the lessee cannot avoid the lease because he does not or is unable to use the land for

purposes for which it is let to him".

13. The learned Judge of the Kerala High Court in *George J. Ovungal Vs. Peter*, , has held as follows:-

So long as there is no total destruction of the subject matter of the lease in the sense that the superstructure as well as the land underneath the

superstructure are destroyed completely, the particular principle applied by the Courts below to find automatic termination of the tenancy of the

shop room in favour of the plaintiff cannot be applied to the facts of the present case. Even after the destruction of the superstructure of the shop

room the tenant is entitled to continue in possession of the land upon which the superstructure of the shop room stood before its destruction; as

part of the property demised subject to all the rights and liabilities as a tenant, since the landlord-tenant relationship between the plaintiff and

defendant continues to exist. The tenant may be bound to pay the rent under the lease. He may be entitled to exercise an option to give up tenancy

under S. 108(e) of the TP Act. So also it may be open to the landlord to claim rent to exercise any other right as landlord of the property including

a right to terminate the lease with reference to the part of the demised property even now remaining, namely, the land which formed the floor of the

shop room.

From the above, it is clear that in cases where total destruction of any material part of the property leased out is established or where material of

the property is wholly destroyed and rendered substantially and permanently unfit for the purposes for which it was let, the total destruction or

unfitness alone is not sufficient to put an end to the lease. Besides that, the lessee has to exercise his option to bring the relationship of landlord and tenant to an end. The abovesaid facts would only make voidable the tenancy at the instance of the lessee, and there will not be any automatic termination of tenancy. In this case, admittedly, no such option was exercised. So, it has to be construed that the leases were subsisting at the time of filing the petitions and so the petitioner can sustain the same. The Appellate Authority is therefore not correct in holding that there was no relationship of landlord and tenant between the parties on the date of filing of the petitions. The petitioner in R.C.O.P.No.5 of 1987 has filed the same on the ground that the tenant has not paid the rent from 1.3.1995 to 31.12.1986. Admittedly, in this case the building was demolished on 14.11.1985. So, it has to be considered whether the respondent is liable to pay rent after 14.11.1985.

14. In *Subramania Pattar v. Kattamballi Rama*, 1919 M.L.J. 654, it has been held as follows:-

Where the value of the land leased was inundated by sea- water and became unfit for cultivation, the tenant, could in the suit brought to recover rent, claim abatement"".

15. Similarly, in *Kunhayen Haji v. Mayan*, ILR 17 Mad. 98, the learned Judges have held as follows:-

We are clearly of opinion that a lease of a coffee garden is not an agricultural lease, within the meaning of section 117 of the Transfer of Property

Act. It is argued that section 108 does not apply, because the money sought to be recovered is not rent and the property was not destroyed.

Looking at the plaint and the karar B, we think the relation of lessor and lessee was asserted and in fact existed. It is rent which the plaintiff seeks

to recover. It is not disputed that the whole of the plants situated in the part included in the karar were absolutely destroyed, and the second

defendant in consequence abandoned the garden. If, as a matter of fact, the land only had been the subject of the demise it might be doubtful

whether section 108, Transfer of Property Act, applied. But that is not the case. As far as we can gather from karar B the lease was of the coffee

plants only. We think, therefore, the Subordinate Judge is right and accordingly dismiss the appeal with costs"".

In the abovesaid decision, the property was leased out to the second defendant in consideration of actual payment. The suit was filed for recovery

of rent. In the said case, the second defendant-tenant alleged that he was liable only for proportionate part of the property and also averred that

the coffee garden was destroyed. The District Munsif held that the second defendant is liable to pay the amount and passed a decree as prayed.

That decree was reversed by the learned Sub-Judge. In the appeal filed by the plaintiff, the learned Judges have held as stated above.

16. It was formerly held in India that the tenant of a house is bound to pay the rent notwithstanding the destruction of the house by fire etc. But

after the Transfer of Property Act 1882 came into force, it is not open to the tenant, when the property is destroyed, to treat the lease as void and

it thus absolved him from all obligation against the tenant. No provision is made in the said Act regarding the obligation of the tenant to pay the rent

after the demised premises/property is wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let. So,

after 14.11.1985 the tenant can ask for abatement of rent.

17. Now, it has to be found whether the tenant has committed wilful default in payment of rent from 1.3.1985 to 31.12.1986. But, the Appellate

Authority has mainly concentrated only on the issue as to whether the relationship of landlord and tenant was in existence, and not decided about

the issue whether the tenant was in existence, and not decided about the issue whether the tenant has committed default and the same was wilful or

not. So, the order of the Appellate Authority has to be set aside.

18. In view of the above discussion, the order of the Appellate Authority/Sub-Judge, Srivilliputtur are set aside, and the matters in R.C.A.Nos.4 of

1990 and 15 days of 1988 are remitted back to the Appellate Authority for fresh disposal on merits, on the basis of the discussion made above in

this order. These revisions are allowed accordingly. No Costs.