

(1969) 10 SC CK 0014
In the Supreme Court Of India
Case No : Civil Appeal No. 548 of 1966

Lakhi Ram Ram Das, Bombay	Vs	APPELLANT
Vidyat Cable and Rubber Industry, Bombay		RESPONDENT

Date of Decision : 06-10-1969

Acts Referred:

Citation : (1970) MhLj 113 : (1969) 1 UJ 745

Hon'ble Judges : M. B. Shah, J;K. S. Hegde, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hegde, J.—The only question that arises for decision in this appeal by special leave is whether the defendant is the tenant of the plaintiff in respect of the suit premises as contended by, the defendant or is a mere licensee as pleaded by the plaintiff ?

2. The plaintiff obtained on lease certain land in Goregaon in the city of Bombay. Therein he constructed a shed in 1960 which according to him cost him about Rs. 20,000/-. He separated a portion of that shed measuring about 1475 Sq. ft. and gave it to the defendant under Exh. A dated February 1, 1960 for starting some industry on a rent of Rs. 460/- per month. The plaintiff sued for the possession of that premises on February 8, 1961 on the allegation that the defendant was a mere licensee. 'The defendant resisted the suit contending that the premises had been leased to it and that it is entitled to protection under the provisions of the Bombay Rent Hotels and Lodging House Rates Control Act, 1947.

3. Both the trial court and the High Court have come to the conclusion that Exh. A evidences a lease and that the defendant is a tenant under the plaintiff. They have further come to the conclusion that the defendant's is in exclusive possession of the premises in question. At the same time they have rejected the defendant's plea that it did not come into possession of the suit premises under Exh. A; the said deed was merely a make believe document and it came into

possession of the premises under an oral lease.

4. In order to find out whether Exh. A evidences a license or a lease, we have to read that document, as a whole. Alongwith that we have also to take into consideration two other important circumstances viz. (1) that the defendant has been put in exclusive possession of the premises and (2) that it had incurred heavy expenditure for installing machineries in that premises. The trial court as well as the High Court have held that the defendant had installed the machineries with the consent of the plaintiff. It is conceded by the learned Counsel for the plaintiff that the circumstance that the defendant is in exclusive possession of the premises does lend support to the conclusion that the defendant was a tenant in the land though according to him that circumstance is not conclusive.

5. It is common knowledge that several landlords do attempt to by-pass the provisions of the statutes affording protection to the tenants against evictions by entering into contracts which have a superficial appearance of licenses. Therefore it is the duty of courts to go behind the facade and find out the real nature of the contract.

6. Most of the clauses in Exh. A have no bearing on the question that we are called upon to decide. Therefore we shall only refer to those clauses which are relevant. The deed says that it is an agreement of Leave and License. But we have to see how far that recital is genuine. Similarly the preamble reads :

"Whereas the Licensees have approached the Licensor for temporary permission to use a portion of the Shed of his said Mills at Goregaon and whereas the Licensees on terms and conditions herein laid down, this Agreement to Leave and Licensee witnesseth".

This clause is in keeping with the title of the document referred to earlier. Clause (1) of the deed says :

"The Licensor shall permit his Licensees to use a portion of shed at Goregaon about 1475 Sq. feet in area temporarily for manufacturing purposes for compensation of Rs. 460/- (Rupees four hundred and sixty only) per month.

Much reliance was placed by Mr. S.V. Gupte, learned Counsel for the plaintiff on the word 'temporarily' found in this clause but what it means is made clear by Clause (2) which says :

"The term of this Agreement is 11 months from 1-2-1960. but after the expiry of 11 months, the licensees shall have option of renewal for a period of 22 months more on the same terms and conditions except the term of renewal provided the Licensees give notice of their intention to exercise the option, at least two months before the expiry of 11 months. After the expiry of option period, the parties may by mutual consent and will enter into a fresh. Agreement on terms and conditions acceptable to both."

In spite of saying in Clause (1) that the defendant is permitted to occupy the premises temporarily, it is clear from Clause (2) of the deed that he is to be in possession of the premises initially for a period of all months with a right of renewal for 22 months more if he so chooses. This clause coupled with the fact that exclusive possession was given to the defendant definitely shows that what the parties intended was a lease and not a license. Clause (15) of the deed says ;

"The licensees shall be responsible for effecting necessary repairs to the shed or the premises at his own cost."

8. This clause is more consistent with a lease than with a license. Taking into consideration all the aspects mentioned above we have no doubt under Exh. A an interest in the suit premises was created in favour of the defendant.

In *Associated Hotels of India Ltd., v. R. V. Kapoor* this Court observed :

The following propositions may, therefore, be taken as well established: (1) To ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form; (2) the real test is the intention of the parties whether they intended to create a lease or a licence; (3) if the document creates an interest in the property, it is a lease; but if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence; and (4) if under the document a party gets exclusive possession of the property *prima facie*, he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease."

If those tests are applied to the facts of the present case, there can be hardly any doubt that Exh. 4 evidences a lease. Hence the appeal is dismissed with costs.