

(1964) 08 RAJ CK 0014
In the Rajasthan High Court
Case No : First Appeal No. 11 of 1957

Lokashan Jain Udyog Mandir Ltd.

APPELLANT

Vs

Kalooram and Another

RESPONDENT

Date of Decision : 25-08-1964

Acts Referred:

Registration Act, 1908 — Section 17(1), 2(6)
Transfer of Property Act, 1882 — Section 3

Citation : AIR 1965 Raj 15

Hon'ble Judges : I.N. Modi, J;B.P. Beri, J

Bench : Division Bench

Advocate : Sumerchand, for the Appellant; Hastimal, for the Respondent

Final Decision : Allowed

Judgement

Modi, J.—This is a civil regular first appeal by the plaintiff Lokashan Jain Udyog Mandir Ltd., a registered company under voluntary liquidation through its liquidators, against the judgment and decree of Senior Civil judge, Jodhpur dismissing its suit on the ground that the agreement of lease on which the suit was founded was compulsorily registrable but it was not registered.

2. By this agreement dated the 2nd January, 1950 the defendant-respondent Kalooram obtained a lease from the plaintiff of the right to run a printing press for a period of three years together with the entire machinery, types, furniture etc., which was part and parcel of the press. It was stipulated between the parties that the defendant would pay a sum of Rs. 4511/- annually for the right he had acquired. It was further agreed between them that this agreement was to last for a period of three years certain on either side and that if the defendant should give up the contract before the stipulated period of three years, he would be responsible for reimbursing the plaintiff for such loss as might be caused to it thereby. A list of the entire machinery, types, furniture etc., was prepared, and signatures of the defendant were obtained thereon, and it was also agreed that the defendant would return certain quantities of unused types as well as used

types, which had been given over to him, or their price at the end of the expiry of the lease.

Another important condition of the agreement was that liberty was reserved for the defendant to be able to remove the printing machines to any other place in the city of Jodhpur (where the press was situated) provided that the defendant would bring the machines back to such place as the plaintiff might desire. Yet another condition was that in case the defendant should think it fit to hire another house for carrying on the business of the press, then such alternative accommodation should be obtained with the consent of the directors of the plaintiff company and the rent note therefore executed in the name of the plaintiff company and the defendant would continue to pay the rent on behalf of the plaintiff, and if he failed to do so, he would be responsible for compensating the plaintiff for such losses as might be caused to it.

It was also agreed between the parties that the defendant would pay all expenses himself for the running of the press including the repairs to the machinery and the salary of the staff and the rent for the house in which the press was situated. There were certain other stipulations mentioned in the agreement but we do not consider it necessary to refer to them for the purposes of this appeal.

3. Now the plaintiff's case, put briefly, was that the defendant had paid the rent for the press at the stipulated rate for the first two years but failed to pay the third year's rent amounting to Rs. 4522/-. It was further alleged that the defendant had also failed to return a certain quantity of the printing types on the expiry of the lease, the estimated cost of which was Rs. 4,000/- at the rate of Rs. 1/4/- per lb. To this the plaintiff added the sum of Rs. 1718/- as interest on the amounts aforesaid and thus filed a suit for the total amount of Rs. 10,240/- in the Court of District Judge, Jodhpur on 6th of November, 1954, which was later transferred to the Court of the Senior Civil Judge, Jodhpur.

4. Respondent No. 2 Bastimal was also impleaded as a defendant in the suit because it was alleged that he had agreed to stand as a surety for the due compliance of the agreement by the defendant No. 1 Kalooram by virtue of a surety bond of the same date as the main agreement itself. Both the defendants completely traversed the allegations made by the plaintiff in the plaint. Their case was that neither the main agreement nor the surety bond had been executed as alleged by the plaintiff nor was there any occasion to do so and therefore, the plaintiff's suit deserved to be dismissed. It was inter alia further contended in the alternative that the main agreement upon which the suit was founded was compulsorily registrable as it amounted to a lease relating to Immovable property within the meaning of Section 17(1)(d) of the Indian Registration Act.

5. It appears that part of the plaintiff's evidence was recorded after a number of issues were framed by the trial Court, when an application was moved on behalf

of the defendants that the suit could be finally decided on the issue of registration and therefore the trial of the case need not be proceeded with. The learned trial Judge accepted this plea, and, by his judgment under appeal, dismissed the plaintiff's suit. Hence the present appeal.

6. The only question which thus emerges for decision in this appeal is whether the finding of the learned Judge that the suit agreement was compulsorily registrable is correct. At the very outset, we should like to point out that the order of the learned Judge by which he came to the conclusion that the agreement in question was compulsorily registrable is more or less superficial. All that he says in this connection is that the agreement amounted to a lease, that it was executed both by the lessor and the lessee, that the rate of hire was mentioned, therein, and so also the period for which it was to subsist, and that it related to both moveable and Immovable property, and further it was a completed document of lease and not merely an agreement to that end. The learned Judge has not at all discussed the question how the so-called lease in the present case related to Immovable property.

As we have already given the gist of the Agreement, which was executed between the parties, it clearly seems to us that defendant-respondent No. 1 had acquired the right, one may call it lease or not, for a period of three years including the entire machinery and printing material and furniture etc., which was necessary to run the press and which was the property of the plaintiff. The principal question which, therefore, arose in the case was whether the right to use the machinery of the press related to Immovable property within the meaning of that expression as used in the General Clauses Act or the Transfer of the Property Act or the Registration Act, and it is to be regretted that the attention of the learned Judge does not seem to have been directed to that aspect of the case, and it was more or less assumed that the right to run the press involved the use of machinery, some part of which was admittedly attached to earth, and so this agreement related to Immovable property.

7. The position, however, was not as simple, having regard to the facts and circumstances of the case, as the learned Judge seems to have thought, and this leads us to a discussion of the question as to whether the machinery in the present case fell within the definition of Immovable property. Section 2(6) of the Indian Registration Act gives the following inclusive definition of the expression Immovable property:

"2(6) 'immovable property' includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass."

The part of this definition which is relevant for our purposes is that which speaks of "things attached to the earth or permanently fastened to anything which is attached to the earth". Now the phrase "things attached to the earth" is not

defined by the Registration Act, but the Transfer of Property Act defines it as follows:

"Attached to the earth" means:

- (a) rooted in the earth, as in the case of trees and shrubs
- (b) imbedded in the earth, as in the case of walls or buildings; or
- (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached;"

8. The relevant clause of this definition, for our purposes, is (c) and therefore the question is whether it can be said of machinery in this case that it was attached to something which is imbedded in the earth for the permanent beneficial enjoyment of the building to which it was attached. Or can it be said within the definition of the expression immovable property as given in Section 2(6) of the Registration Act that the machinery was permanently fastened to something which was attached to the earth. We have given our most careful and anxious consideration to this aspect of the case and are unable to agree with the conclusion of the learned Judge below that the machinery in the present case fulfils any of these requirements.

9. Now, it has been conceded before us, and, even if it were not conceded no other conclusion is possible, that the building in which the press was situated did not belong to the plaintiff itself. There is plenty of material on the record to show that the building itself belonged to a third party, and that the plaintiff was in possession of that building merely as a tenant. There is nothing on the record to show what were the terms of the tenancy between that third party and the plaintiff, and, in the absence thereof, we can only presume that it was not at all a case of permanent or a long term tenancy but in all probabilities it was a monthly or a yearly one, or perhaps it was a tenancy for a period of three years certain from the date the suit agreement was executed. That being so, there could be no question of the machinery in this case being permanently fastened to anything which is attached to the earth. We hold accordingly.

10. The only other question which remains to consider is whether it could be reasonably accepted that the plaintiffs' object in fixing the machinery in the premises in question was for the permanent beneficial enjoyment thereof. It clearly seems to us that the plaintiffs' own occupation being of a temporary nature, they need not and indeed could not have thought of installing any machinery in these premises as a permanent measure in the sense of an enduring beneficial enjoyment of the building in which they happened to be installed. A careful perusal of the suit agreement clearly leads us to this conclusion, for it was specifically provided therein that not only the defendant-respondent would be at liberty to obtain alternative accommodation for the running of the press but it was also left open to him to remove the machinery if and when he liked to do so.

What was further stipulated in this connection was that the new premises should be obtained in consultation with the directors of the plaintiff company, and that a lease deed for any such accommodation should be executed in their name, the obvious object behind this arrangement being that the press or its machinery should not be without a habitation on the expiry of the lease and that the plaintiff should not find itself stranded for want of immediate accommodation, to run the press, at that time. The point to note is that it was clearly within the contemplation of the parties that the machinery of the press need not remain fastened to or in the premises where the press was situate at the time of the agreement. Having regard to these circumstances we are disposed to think that the machinery in the present case was not fixed by the plaintiff for any such object as the permanent, beneficial enjoyment of the building in which the press was located and therefore it does not fulfil the essential requirements of the clause which we are considering and which is relevant for the present purpose.

11. In support of the view to which we have felt persuaded to come, we may cite a few cases.

12. In *N.C. Macleod v. Kikabhoy Khushal*, ILR 25 Bom 659 by a certain instrument the defendant covenanted with the plaintiff that the machinery, engines, plant etc., belonging to him and specified in a schedule appended thereto should stand charged with, and remain as security to the plaintiff for a sum of Rs. 8,000/- and the power was vested in the plaintiff to sell the same on default in payment. The question arose whether the plaintiff's charge was invalid for want of registration. It was held that of the annexed articles none were attached to the earth; they were at most fastened to that which was attached to the earth, but that was not enough because they must have been permanently fastened. It was further held that the evidence as to the extent and intention of annexation was rather meagre, but, having regard to the consideration that the defendant who erected them was only a monthly tenant, it could not be held that they were permanently fastened; therefore, Section 17 of the Registration Act would not apply.

13. In *Khanchand v. Nur Muhammad*, AIR 1936 Lah 242 the question was whether a flour mill which could be removed from one place to another was immovable property within the meaning of Section 2(6) of the Registration Act. The flour mill in this case was a heavy machine consisting of large pieces of iron and other metals and was attached to the ground by means of nails and bolts and other appliances so that it may remain in a proper position, while it was being worked. The further important fact to be noticed about this case was that the person who installed the flour mill was the lessee of the premises and his interest in the land leased to him and on which he had established the flour mill was limited in point of time. It was held that normally speaking it would not stand to reason that such a person would erect on the land on which he was merely a tenant a permanent structure. The decision in ILR Bom 659 was followed and it was held that the flour mill was not Immovable property.

14. The same view appears to have been adopted in *S. P. K. N. Subramanian, firm, Trichinopoly v. M. Chidambaram Servai*, AIR 1940. Mad 527. This was a case of a machinery installed by a tenant for running a cinema in the premises which belonged to another. It was held that if the attachment was merely for the beneficial enjoyment of the chattel itself, then it remained a chattel, even though fixed for the time being so that it may be enjoyed. It was further observed that an engine installed in a factory may be Immovable property or it may be a chattel and in deciding whether or not a transaction relating to an engine is a transaction relating to Immovable property, one is entitled to have regard not merely to the nature of the attachment by which the engine was fixed on the ground but also to the circumstances in which it came to be fixed, the title of the person fixing it in the Immovable property, and the object of the transaction by which the engine was transferred.

As in this case, the tenants installed an engine as a part of the cinema in the premises obtained by them on lease from another not with the intention of making a permanent improvement but for the object of utilizing it so long as they had the use of the premises and selling it if and when their lease terminated, it was held that the suit bond should not be deemed to be one relating to the Immovable property.

15. Again in *J.H. Subbiah v. Govindrao Bhiwaji*, AIR 1953 Nag 224 it was held that in order to determine what is and what is not immovable property as a result of attachment or annexation to land, two tests have been laid down, viz. (i) the degree or mode of annexation, and (2) the object of annexation; and that of the two tests the latter is the more important, and the answer to that must depend upon the particular circumstances of each case. This was a case in which the machinery was erected by A on land which belonged to B and it was held that the machinery was erected by A either as a licensee or as a temporary tenant and that he could not have intended the machinery to form part and parcel of the immovable property to which it was attached for the time being.

16. The last case to which reference may be made is *Addu Achiar v. The Custodian, Evacuee Property* AIR 1953 Hyd 14. This was also a case of a tenant running a factory in the premises of another. It was held that the tenant installed the machinery with the intention of removing the same whenever he chose to vacate the premises and consequently the machinery did not constitute an Immovable property.

17. As against these cases, learned counsel for the contesting respondent invited our attention to two cases (i) *Musai Kurmi v. Sub Karan Kurmi*, 23 Ind Cas 250: AIR 1914 All 176 and (2) *Official Liquidator Vs. Sri Krishna Deo and Others*, . In the first case the question was whether a Kolhu i.e. an iron sugar-cane press was or was not an Immovable property. The first court of appeal held that it was and this finding was upheld by the High Court. With all respect, the judgment is a very short one and appears to have come to the conclusion to which it did, without discussing the relevant provisions of law, and, therefore, we do not think

that it is helpful to decide the controversy before us. In the second case the facts were that the machinery was set up by the owner thereof with the definite object of running an oil mill and not with the intention of removing it after a temporary use. It was held that this was Immovable property, and, in coming to this conclusion reliance was placed on the decision of the House of Lords in *Reynolds v. Ashby and Sons*, 1904 AC 466.

The facts of these cases are however quite distinguishable from those of the present, and therefore they do not in our respectful judgment afford any correct guidance for deciding the controversy before us. We should further like to point out that a careful perusal of the House of Lords' case clearly shows that the machines there were set up in order to fit up a factory in the building for which purpose it appears to have been made and it was held that the purpose for which the machines were obtained and fixed was unmistakable namely to complete and use the building as a factory. It was in these circumstances, further held that the mere fact that the machines could be removed if necessary would not be enough to come to the conclusion that these machines were not Immovable property.

18. With all respect, we would point out that it cannot be postulated of the case before us that the machinery which had been taken on hire in the present case by the defendant had been installed by the plaintiff in the premises in question which belonged to another for the purpose of fitting them up as a press or for the beneficial enjoyment thereof as a permanent measure, and the correct position appears to be is that the machinery was in fact installed for deriving benefit from them and therefore they stood essentially in the nature of moveable property and not immovable. We should like to stress even at the cost of some repetition that the plaintiff was a short term lessee and could hardly be expected to incur any outlay for the permanent improvement of the building in which the press was situate and which admittedly belonged to, a third party.

19. We, therefore, hold, on the whole, that the machinery in this case did not and does not fall within the definition of Immovable property in law, and consequently the agreement in suit, even if we were to accept it as a lease was not and would not be a lease with respect to Immovable property requiring compulsory registration within the meaning of Section 17(1)(d) of the Registration Act.

20. As we have pointed out already, the judgment of the learned Judge below does not deal with the merits of the other issues and the case does not appear to us to have been tried on the issues of fact and therefore, it is not possible for us to decide this case finally, though we should have liked to do so. We have, therefore, no alternative but allow this appeal and send the case back to the trial Court for further trial and decision de nova according to law. We may make it clear that it will be open to both the parties to lead evidence on the remaining issues and thereafter arguments will be heard and the case disposed of finally. The contesting defendant shall bear the costs of this appeal but the costs hitherto and hereafter shall abide the result. As this Appeal arises out of a 1954

suit, we would direct the court below to give it a high priority and dispose of it as expeditiously as possible. The parties are further directed to appear in the Court of the Senior Civil Judge No. 1, Jodhpur on 21st September, 1964 without fail.