

(1954) 11 AP CK 0021

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1506 of 1953

Mandalika Venkatasubba Rao

APPELLANT

Vs

Alla Annapurnamma and Others

RESPONDENT

Date of Decision : 23-11-1954

Acts Referred:

Citation : AIR 1955 AP 140

Hon'ble Judges : Umamaheswaram, J

Bench : Single Bench

Advocate : D. Suryaprakasa Rao and A. Satyanarayana, for the Appellant; N. Chandramouli, M. Seshachalapathi and A.V. Krishna Rao, for the Respondent

Judgement

(1) This Civil Revision Petition is filed as against the findings of the Subordinate Judge, Guntur in O. S. No. 29 of 1952 holding that the terms of S. 7 Cl. (xi) (cc) of the Court Fees Act do not apply and that the Court Fee should be paid as in a suit for possession under S. 7 Cl. (v), Court Fees Act. The suit was filed by the petitioner herein for recovery of possession of a site in Guntru town. According to the allegations in the plaint, the suit site was leased by the father of defendants 6 to 8 and the husband of defendant 9 in favour of one Koteeswara Rao the husband of defendant 1 and the father of defendant 2 to 4.

During the currency of the lease in favour of Kotteeswara Rao a lease was executed in favour of Tadikonda Lakshmikantha Rao, by Sri Ayodhya Balamukhunda Doss Bavaji the father of defendants 6 to 8 and the husband of defendant 9, providing that the lease should take effect on the expiry of the earlier lease, and Lakshmikanta Rao assigned his leasehold interest in favour of the plaintiff by a registered deed of assignment dated 20.7.1946. The heirs of the original lessee did not hand over possession to the heirs of the lessor, and consequently, the suit had to be instituted by the assignee from the new lessee as against the heirs of the original lessee who were holding over.

Defendants 10 to 12 were impleaded as parties on the ground that they had

instituted a suit O. S. No. 85 of 1950, on the file of the Additional Subordinate Judge's Court, Guntur, for recovery of possession from defendants 1 to 9. In para. 10, the plaintiff stated that he was seeking to enforce his rights as lessee and "in so doing is in the same position as his lessor recovering possession from the tenant." Court fee was paid in respect of the relief for recovery of vacant possession of the leased site under S. 7 Cl. (xi) (cc).

(2) Defendants 1 to 4 and 10 contended that the plaintiff was not entitled to value the suit as one between a landlord and a tenant and that the terms of S. 7 (xi) (cc) did not apply. They contended that as the plaintiff sought to recover vacant possession of the suit site, the terms of S. 7 (v) apply. The Subordinate Judge followed the decision in -- Ganesh Gopal Vs. Moreswar Narayan, (A), in preference to a direct decision of the Madras High Court reported in -- "Ghulam Dastagir Saheb v. Marudai Pillai", AIR 1948 Mad 409 (B), and held that S. 7 Cl. (xi) (cc), Court-fees Act did not apply to the facts of the case

(3) The short question for determination is as to whether the interpretation of Bell J., in regard to S. 7, cl. (xi) (cc) is correct or not. Section 7, cl. (xi) (cc) is in the following terms :

"In the following suits between landlord and tenants

* * * * * (cc) for the recovery of immovable property from a tenant, including a tenant holding over after the determination of a tenancy according to the amount of rent of the immovable property to which the suit refers, payable for the year next before the date of presenting the plaint."

It is clear from the terms set out that the suit must be between a landlord and his tenant or a landlord and a tenant holding over after the determination of the tenancy. Clauses (a) to (c) and (d) to (f) deal only with suits between the landlord and the tenant. In interpreting the terms of the Act, extraneous consideration such as hardship to the parties or that the supposed intention of legislature was different, are out of place. The terms of the Act have to be understood within their natural and ordinary sense. It is for the Legislature to step in and amend the Act, if the intention is not clearly brought out or if a literal application of the terms of the Act involves hardships.

(4) In "Ghulam Dastagir Saheb v. Marudai Pillai" (B), Bell J., held as follows :

"It would be in my opinion a most artificial approach to the Court Fees Act to say that a valid lessee could only exercise his undoubted rights under S. 108, T. P. Act at great cost under S. 7 cl. (v), Court Fees Act, while the landlord, if he chose to bring the same suit in ejectment, could avail himself of S. 7, cl. (xi) (cc)."

(5) The reasons given by him for coming to that conclusion are stated at p. 410 and are in the following terms :

"The new clause namely, cl. (xi) was meant to ease the position of a landlord endeavouring to obtain his rights as between himself and his tenant and of a tenant endeavoring to obtain his from the landlord and to give both a quick, easy and cheap remedy. If cl. (v) were the only one to apply it would involve very heavy Court fees. Sub-cl. (cc) of cl. (xi) was intended to enable a landlord to bring a cheap suit against a tenant guilty of holding over after the determination of his tenancy."

(6) The learned Judge then proceeds to state :

"That the word "tenant" must not be taken too literally, is to be found in numerous cases including if the word "tenant" can be extended, as it has been extended by many different Courts to include a person who is not in law a tenant at all, to say that the word "landlord" may cover a lessee who under S. 106 T. P. Act has every legal right to pursue such a remedy, does not seem at all difficult."

(7) In my view, the reason by the learned Judge are not convincing . The words "landlord" and "tenant" should be given their normal connotation. In S. 7 cl. (xi) (cc) the Legislature has specifically provided for two classes of suits : (1) suits by landlord against a tenant and (2) suits by landlord against tenants holding over for recovery of possession. As already stated, in construing the terms of cl. (xi) the Court ought not to be guided by the object of the supposed intention of the Legislature for so enacting it. A lessee from a landlord may no doubt be entitled to recover possession from a tenant holding over after determination of the tenancy, but he cannot in any sense be regarded as a landlord within the meaning of cl. (xi).

Such a construction may no doubt lead to an anomaly, namely, the Court fee paid by a lessee would be different from that paid by the landlord in a suit filed against the tenant holding over, but it is the duty of the Court to give effect to the terms of the section. But if the Legislature had intended that the lessee from the landlord should also pay the same Court fee in a suit for recovering Immovable property from a tenant holding over according to the amount of the rent of the Immovable property to which the suit refers, it would have used appropriate words in cl. (cc) such as in suits between landlord or his lessee for the recovery of immovable property according to the amount of the rent of the immovable property presenting the plaint." In the absence of the words "or his lessees" I am not prepared to strain the language of the section or import any equitable consideration.

(8) In "Ganesh Gopal v. Moreshwar Narayan" (A), Chagla C. J., considered the identical question and dissented from the decision in "Ghulam Dastagir Saheb v. Marudai Pillai" (B). I agree, with the view of Chagla C. J., that the terms of cl. (xi) (cc) cannot be applied to a case of this description. If the suit had been instituted by the landlord along with the new lessee and he had prayed that possession should be delivered by the tenancy holding over to his new lessee,

there can be no doubt that the court fee is payable only under S. 7 cl. (xi) (cc).

Similarly, if the landlord had assigned his rights to recover possession from the tenant holding over in express terms and if the assignee had sued for recovery of possession, it would also fall under S. 7 cl. (xi) (cc). From the mere fact that the landlord is bound, in law to put the new lessee in possession, a suit by the new lessee as against the tenant holding over cannot be regarded as one instituted by the landlord or on his behalf in exercise of his rights, so as to fall within cl. (xi). The landlord might not support the new lessee, but collude with the tenant holding over and the new lessee might be constrained to seek relief both as against the landlord and the tenant holding over. In such a case, it is impossible to regard the suit as having been instituted by a landlord. So, in my opinion, it is not right to hold that the suit filed by a lessee is equivalent to a suit filed by the landlord.

(9) I, therefore, adopt the reasoning of Chagla C. J., in preference to that of Bell J., and hold that the decision of the Court below is right. In this view, it is not necessary for me to refer in detail on rely upon the decisions in -- Panangipalli Suryanarayanacharyulu Vs. Ravi Narasimhaswamy and Others, , or -- "Palaniappa Chetty v. Sithravelu", 31 Mad 14 (D), which are not directly applicable to the facts of this case.

(10) In the result, the Civil Revision Petition fails and is dismissed, but without costs. Time for payment of Court fee till the reopening of the Court after Christmas vacation.

(11) Revision dismissed.