

(1999) 03 MAD CK 0044

In the Madras High Court

Case No : Second Appeal No's. 1184 to 1186 of 1993

M/s. Ram Mohan and Co. and another	APPELLANT
Vs	
Ganesar Ginning Co.P.Ltd., Coimbatore and twelve others	RESPONDENT

Date of Decision : 19-03-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, 11
Registration Act, 1908 — Section 17, 49
Transfer of Property Act, 1882 — Section 100, 106

Citation : AIR 2000 Mad 1 : (1999) 3 CTC 40 : (2000) 1 LW 143 : (1999) 3 MLJ 423

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : Mr. K. Alagiriswamy, for Mr. A. Veerasamy, for the Appellant; Mr. Ashok Menon, for Mr. K. Azhaguraman, Mr. P.T.S. Narendravasan, for the Respondent

Judgement

1. These Second Appeals are directed against a common judgment of the learned District Judge, Coimbatore, in A.S.Nos. 150, 215 and 216 of 1992.

2. O.S.No. 1397 of 1987 on the file of the Sub-Court, Coimbatore, was filed on 10.11.1987 by the appellants in the above Second appeals

(hereinafter called ""appellants"") for a declaration that they are entitled to receive rents from the defendants as and when they fall due and for a

consequential injunction against the defendants. The suit property admittedly belongs M/s. Ganesar Ginning Company, the 11th defendant in the

suit (hereinafter called ""Landlord/first respondent"") and according to the appellants the property is a Ginning factory which was leased out to the

third plaintiff-firm. Plaintiffs 2 and 3 being the partners of the firm and that

defendants 1 to 10 are sub-tenants in possession of various portions and that the landlord was aware of the sub-tenancy and had also acquiesced for the last several years. The plaintiffs also contended that they took the suit properties on lease in the year 1967 and the terms of lease were also reduced in writing. The lease deeds were executed till 31.12.1972 and the plaintiffs thereafter continued as tenants on the same terms and the landlord received rent at the rate of Rs.7,000 per annum. O.S.No. 512 of 1983 was filed by the landlords against the plaintiffs and their sub-tenants for possession and for damages and the said suit was dismissed as the notice terminating tenancy was found to be defective. In the said judgment the rights of the present plaintiffs to sub-lease the property had been upheld, The said judgment has become final and binding on the parties and the plaintiffs continued in possession as tenants whose rights and liabilities were governed by the provisions of the Transfer of Property Act and the period of notice to quit in accordance with Section 106 of the Transfer of Property Act. On 12.5.1987 the landlords had issued a legal notice to quit in accordance with Section 106 of the Transfer of Property Act notice was to expire only on 12.1.1988 and therefore according to the plaintiffs the tenancy could not be terminated earlier. They had a right to continue as tenants as per the provisions of the Transfer of Property Act and their possession and right to collect rent from the sub-tenants will continue till eviction is ordered by the Court. It was further contended that the suit for possession can be instituted by the landlords only after 12.1.1988. But however, the landlords filed a vexatious suit in O.S.No. 194 of 1987 for a declaration that the sub-lease granted by the plaintiffs were ultra vires and illegal and for injunction restraining the plaintiffs from collecting rents. The said suit was transferred to the Court of District Munsif, Coimbatore and as per ad-interim orders in force, the plaintiffs have been restrained from taking third parties into the suit property and from collecting rent from the other defendants. According to the plaintiffs, the said suit was a mis-use of process of Court and the decision in the earlier suit in O.S.NO. 512 of 1983 was binding on all the parties. The 11th defendant/the first respondent/landlord was not originally impleaded as a party, but was subsequently added as a party to the suit.

3. In the written statement of the 11th defendant, it was contended that the suit

was an abuse of process of Court and having made serious allegations against the 11th defendant, the plaintiffs did not implead the 11th defendant as a party. This conduct of the plaintiffs alone will expose the vexatious nature of the suit. According to the 11th defendant the suit property was leased out to the third plaintiff in the year 1967 and was being renewed from time to time on yearly basis. It was renewed up to 31.12.1972 but subsequently the lease was not renewed. The plaintiff-concern was originally managed by Rajamanickam who has now died and it was false to state that the defendants were aware of the induction of the sub-tenant and they had acquiesced the same for the past several years. The lease which was granted in 1967 was a composite lease comprising of both movables and immovables with valuable machineries. The property comprises of factory building, office-room, quarters, godowns, Roller gins and complete line shed pedestal and accessories with 50 H.P. electric motor, ceiling fans and furniture. All the said items of machineries are imported machineries and they are very valuable and they are all in good condition when the property was leased out and they worth several lakhs. The plaintiff had inducted the third party in the suit property unauthorisedly without the consent of the land owner. Therefore, the sub-tenants are mere trespassers as far as this defendant was concerned. It was also true that the defendant had filed O.S.No. 512 of 1983 for possession and other reliefs and the said suit was dismissed only on a technical ground that the proper notice to quit had not been issued. Thereafter a registered notice terminating the tenancy as contemplated u/s 106 of the Transfer of Property Act had been issued and hence the plaintiffs as well as other defendants are liable to vacate the property and hand over possession on 1.1.1988. It was also not correct to say that the sub-lease had been upheld. There was no decision on the issues which were in controversy. The defendants had already filed a suit in O.S.No. 379 of 1987 for delivery of possession and for other reliefs which has been presently transferred to the Sub- Court and re-numbered as O.S.No. 894 of 1999. The contention that the period of notice expired only on 12.1.1988 was also false. The orders passed in O.S.No. 1065 of 1987 were perfectly valid and the plaintiffs were bound by the said orders. If they are aggrieved by the orders of the Court they should have pursued

their remedies thereunder and the present suit was not maintainable. The other contentions raised in the plaint were also denied.

4. About six months prior to the filing of the suit on 20.5.1987, the first respondent/landlord had filed O.S.No. 920 of 1991 praying for declaration

that the sub-lease arrangement between defendants 1 to 3 on the one hand and defendants 4 to 15 on the other hand was illegal and ultra vires and

for a consequential injunction restraining the defendants 1 to 3 from demanding any amount either by way of rent or otherwise. In the said suit, the

first respondent-landlord had raised the very same contentions as stated earlier. According to the first respondent he was greatly prejudiced on

account of the conduct of the appellants who was paying only a paltry sum of Rs. 7,000 per annum and the appellant was making huge profits to

the tune of Rs. 17,000 per month on account of illegal occupation of sub- tenants and thus the appellant was enriching himself at the cost of the

plaintiff which had to be prevented in law. The said suit was resisted by the appellants in their written statement contending that in as much as the

land owner had not filed any appeal against the suit in O.S.No. 512 of 1983, the findings in the said suit were binding on the land-owner. The

contention that appellants were collecting excess rent was also denied. The respondents had not suffered any injury and no illegality was committed

by the appellant. The Sub-lease was lawful and binding on the plaintiff.

5. Subsequently the landlord filed another suit in O.S.No.894 of 1991 praying for directing the defendants to deliver vacant possession of the

property for directing the defendant to submit true and proper accounts to the plaintiff from 1.1.1988 till delivery of possession and for directing

the defendants or such of them who may be found liable to pay damages for use and occupation from 1.1.1988. In the said suit also the first

respondent/land owner had raised the same pleadings as in their written statement in O.S.No. 1397 of 1987. It was contended that the lease was

composite lease and that the defendants were not properly maintaining the suit property and had committed several acts of waste rendering the

property to ruin

6. In the written statement filed by the appellant the said allegations were denied. They also denied that the lease was composite one. According to

them the movables mentioned in "B" Schedule were taken as on lease separately

and moreover the movables were housed only in one room on the west of the "A" schedule property and there were a number of godowns situate in the property and the same constituted distinct building and cannot be clubbed alongwith the Gin room and the machines situated therein. The lease for the movables was fixed separately from that of the lease for immovables. Therefore, according to the appellants the allegation that the lease was composite was false, The appellants further submitted that they were entitled to the protection of the Tamil Nadu Buildings (Lease and Rent Control) Act. The allegations pertaining to purchase of machinery were also denied by the appellants. It was further contended that defendants 4 to 15 were sub-tenants who were lawfully inducted in possession to the knowledge of the land-owner. The machineries were not in working condition and they were removed and given for repair even in the year 1985 and this fact was known to the land owner. The suit premises were maintained by the appellants to the best of their ability and they have been repairing the premises at their own cost. They have also incurred a lot of expenditure to the tune of Rs. 3,00,000, but they restricted their claim only to Rs. 25,000. A sum of Rs. 15,000 was also spent for re-building the eastern compound wall. The appellants also denied that the lease expired on 1.1.1988. They were also not liable to pay anything for use and occupation.

7. The learned Subordinate Judge who tried all the suits together, by a common judgment dated 20.11.1991, held as follows:

(A) The lease was a composite lease and hence the provision of the Tamil Nadu Buildings (Lease and Rent Control) Act were not applicable.

(B) The sub-leases were not illegal and hence the appellant/lessee was not liable to render accounts to the landlord.

(C) The lease had been terminated validly and hence the lessee was liable to pay damages.

(d) There was no proof of any improvement alleged to have been made by the lessees.

8. With the result the suit in O.S.No. 920 of 1991 filed by the landlord was dismissed while the suit in O.S.No. 894 of 1991 seeking vacant possession and for damages, was decreed. The suit in O.S.No. 1397 of 1987 filed by the appellant/lessees was decreed holding that the lessee

was entitled to receive rent from the sub-lessees.

9. On appeal before the District Court, the appellant filed in A.S.No. 150 of 1992 as against the decree for possession in O.S.No. 894 of 1991

while the first respondent/landlord filed A.S.No. 215 of 1992 against the decree in O.S.No. 1397 of 1987 and A.S.No. 216 of 1992 against the

dismissal of O.S.No. 920 of 1991. The first appellate Court on a consideration of all the appeals held as follows:

(a) The lease was a composite lease. In this context the parties were also bound by the finding to the same effect (*res judicata*) in an earlier suit

between the parties in O.S.No. 5112 of 1983 on the file of Sub-Court, Coimbatore.

(b) The sub-leases were valid.

(c) The notice of termination of tenancy was valid and enforceable as against the sub-tenants also.

(d) The landlord was entitled to receive damages subsequent to the termination of the lease.

(e) The lessee/appellant was not entitled to continue to receive rents from the sub-tenants.

10. With the result, while the appeal in A.S.No. 150 of 1992 was dismissed and two months time was granted for delivering vacant possession,

the appeals in A.S.No. 215 and 216 of 1992 were allowed setting aside the judgment of the trial Court. Being aggrieved by the adverse verdict in

all the three suits, the appellant/lessee has come forward with the present three Second Appeals,

11. Mr.K. Alagiriswamy, learned senior counsel for the appellant mainly contends as follows:

(i) The lease was not a composite lease and the finding rendered in O.S.No. 512 of 1983 to the effect that the lease was a composite one cannot

operate as *res judicata* since the suit was dismissed only for want of proper notice and there was no scope for filing an appeal against a mere

finding.

(2) Even if the lease at the inception was to be construed as a composite lease, subsequent conduct of parties would clearly reveal that to the

knowledge of the lessee, the factory ceased to function and the premises was being put to a different user and therefore the nature of the lease

cannot be treated as a composite lease.

(3) Exs. A.22 and A.23 lease deeds executed in the years 1967 and 1972 respectively, being unregistered are not admissible in evidence and

cannot be accepted as proof of the terms of the lease.

12. Per contra Mr. Ashok Menon, learned counsel representing the landlord/first respondent contends as follows:

(i) The findings in O.S.No. 512 of 1983 would operate as res judicata and even otherwise the admissions made by the father of the appellant

whose evidence has been marked as evidence in these proceedings are sufficient to establish the nature of the lease being composite.

(ii) There was neither any conversion of the lease nor any acquiescence or consent on the part of the lessor in converting the composite lease into

an ordinary lease. But pleadings in the very plaint filed by the appellant in O.S.No. 1397 of 1987 would establish that the lease was always and

continues to be only a composite one and admittedly governed by the provisions of the Transfer of Property Act.

(iii) Though Exs. A.22 and A.23 are unregistered they were marked in evidence only after being impounded and payment of necessary stamp

charges and are definitely admissible to prove the collateral purpose of the nature of the lease.

13. The main issue which arises for consideration in these appeals is as to whether the lease is a composite one or not and consequently whether

the notice under the Transfer of Property Act and a suit for possession is maintainable. There are certain other ancillary issues which arise for

consideration as mentioned above, but all those issues depend only on the decision as regards the nature of the lease.

14. The admissibility of Exs. A.22 and A.23 may be conveniently dealt with immediately. According to learned Senior Counsel for the appellant

they are registrable documents as required u/s 17(1)(d) of the Registration Act and hence inadmissible to prove the purpose for which the property

was leased which is not a collateral purpose.

15. Reliance is placed upon the judgment of a Division Bench of the Calcutta High Court reported in Kalimoyee Ghosh and Others Vs. Narendra

Nath Ghosh and Others, , in which it was held that a document recording partial partition being compulsorily registrable, if unregistered has to be

expunged from evidence. This decision is not directly relevant for the issue on hand. The judgment of a learned single Judge of this Court reported

in Kousalya Ammal Vs. Valliammai Ammal and Another, is closer to the issue under consideration. The learned Judge (AR. Lakshmanan, J.) held

that an unregistered lease deed can be received in evidence only to prove the character of possession and not for proving the terms of the lease. In

support of his conclusion, the learned Judge relied on one of his own earlier judgments reported Ranganathan v. Venkatesan, 1995 (I) M.L.J. 159

in which it was held that unregistered lease deed cannot be looked into to determine whether the lease was a composite lease or not. It was held

that the said issue cannot be a collateral purpose but an issue which would affect the immovable property as it would consequently entitle the

landlord to avail exemption under the Act.

16. With due respect I am unable to subscribe to the view that a mere possibility of an adverse effect on a party to the litigation would be the

testing factor to decide whether the purpose is collateral or not. Otherwise there can never be a collateral purpose which will not have some

adverse effect on the party who opposes the reception of the document. The test would be whether the party relying on the unregistered document

seeks to rely on its terms for ""affecting such property or conferring such power"". - Section 49(c) of the Registration Act. For instance, an

unregistered lease deed cannot be relied upon to enforce the terms of the agreement such as the period of tenancy, quantum of rent, mutual

obligations under the agreement, whether the lessee has the right to sub-lease or to carry out the repairs to the building etc. In other words, what is

prohibited is the attempt to enforce the terms of the unregistered document. In considering a similar issue a Full Bench of this Court in the judgment

reported in Muruga Mudaliar (Deceased) and Others Vs. Subba Reddiar, , held that an unregistered agreement of lease can be used as evidence

for the breach of agreement in a suit for damages. Satyanarayana Rao, J. speaking for the majority, pointed out the difference between the

language in Section 49 of the Registration Act 20 of 1866 and the language in the present Section. In the former Act the Section was worded thus:

No instrument required by Section 17, to be registered shall be received in evidence in a Civil Proceeding in any Court or shall affect any property

comprised therein if unregistered.

17. The learned Judge pointed out the distinction between the corresponding provisions and held thus:

The prohibition in that section was against reception in evidence altogether and not, as in the present section, receiving it as evidence of any transaction affecting immovable property; so that the scope of the prohibition in the present section is not absolute as in the Act of 1866, but is a limited and narrower one.

18. The learned Judge proceeded further to observe as follows:

So that if the document is not the foundation of the suit of the plaintiff and the plaintiff does not seek to establish his title under the document, there is no objection to receive the document in evidence to establish the agreement and also to prove the acts which constitute the breach of the agreement.

19. Therefore, relying on the unregistered lease agreement to establish the purpose for which the property was leased out cannot be treated as

affecting" the property, but would only be an attempt to establish a collateral purpose. This reasoning is directly covered by a judgment of the

Supreme Court reported in Rai Chand Jain Vs. Miss Chandra Kanta Khosla, which has not been brought to the notice of the learned Judge while

deciding the cases reported in Ranganathan v. Venkatesan, 1995 (I) M.L.J. 159 Kousalya Ammal Vs. Valliammai Ammal and Another, . In the

case before the Supreme Court the question arose as to whether the lease was for residential or for non-residential purpose. Section 11 of the

U.P. Urban Rent Restriction Act prohibited conversion of residential building into a non-residential building. The terms of the unregistered lease

deed was sought to be relied upon by the landlady. But the Appellate Authority held that the purpose of the lease cannot be a collateral purpose.

The High Court disagreed with the Appellate Authority and the Supreme Court confirmed the view of the High Court, and held as follows:

It had been urged before us that the appellate authority has found that the demised premises were not let out for residential purposes but the same

were let out for the purpose of running the press under the name and style of M/s. Navneet Parkashan. It has also been held that the lease deed,

Ex.P.1, which was an unregistered document could not be read into the evidence

except for collateral purposes and so the purpose of renting out of the demised premises cannot be said to be for collateral purposes and the contention of the learned counsel for the landlady had no substance. It has also been found on a consideration of the rent receipts Exs.R1 to R10 that the purpose of letting out was for running the printing press and not for residence and so reversed the findings of the Rent Controller on issue Nos.1 and 2. The above findings of the appellate authority are not at all borne out by the evidences on record. Firstly, the lease deed Ex.P1 dated May 19, 1978 executed both by the appellant and the respondent i.e. the landlady and the tenant, Rai Chand Jain, though unregistered can be considered for collateral purposes and as such the findings of the appellate authority to the effect that the said deed cannot be used for collateral purposes namely to show that the purpose was to lease out the demised premises for residential purposes of the tenant only is not at all legally correct. It is well settled that unregistered lease executed by both the parties can be looked into for collateral purposes.

20. A single Judge of the Delhi High Court has also taken the same view holding that the purpose of the lease is a collateral one and the unregistered document can be looked into for ascertaining the said purpose vide judgment reported in Veena Vs. Makhan Lal, .

21. Therefore, in my opinion Exs.P.22 and P. 23 can be relied upon to ascertain the purpose and nature of the lease and a reading of the same discloses undoubtedly a composite lease.

22. Another issue argued by both sides pertains to whether the finding rendered in O.S.No. 512 of 1983 could be held as binding on the parties.

That was a suit filed by the lessee/first respondent for eviction which was ultimately dismissed for want of proper notice u/s 106 of the Transfer of

Property Act. In considering the merits of the case the Court held that the lease was a composite lease. This finding is about to be utilised by the

lessee/first respondent and it is contended that the finding would operate as res judicata and was binding on the lessee/appellant. Mr.K.

Alagiriswamy, learned Senior Counsel, however contends, and in my opinion rightly, that in as much as the suit ended in their favour and there was

no scope for the lessee to have filed an appeal against the mere finding, the said findings cannot operate as res judicata. In support of his contention

that no appeal can be filed against a mere finding by a party in whose favour the suit had been concluded, and that in such circumstances the

Finding cannot operate as res judicata, Learned Senior Counsel had relied on the following rulings:

- (i) Marisami v. Bluemount S. Associates (P) Ltd, 1969 (I) M.L.J. 573.
- (ii) Tarabai Mohata and Others Vs. Union of India (UOI),
- (iii) Smt. Ganga Bai Vs. Vijay Kumar and Others, ,
- (iv) Corporation of Madras Vs. P.R. Ramachandriah and Others, .
- (v) U.P. Junior Doctors' Action Committee Vs. Dr B. Sheetal Nandwani and Others, .

A perusal of the above judgments leads to a clear conclusion that a party in whose favour the proceedings have ended, could not have filed an

appeal against a finding and such a finding cannot operate as res judicata. An appeal can lie only as against the decree or Order for which an

appeal is expressly provided under Order 43, Rule 1 C.P.C. and no appeal can be allowed as against a mere finding.

23. Per contra, Mr. Ashok Menon refers to the judgment of S. Jagadeesan, J. reported in Mrs. Achamma George v. R. Krishnaswamy, 1998 (1)

L.W 498. In that judgment the issue which arose for consideration is as to whether an exparte decree would operate as res judicata. The parties

against whom the exparte decree was passed took up the matter further by filing an application to set aside the same and also a further appeal and

failed to have the decree set aside. The learned Judge held that such a decree had become final and would operate as res judicata. Therefore, the

said judgment has no relevance to the present case.

24. The entire purpose behind the consideration of both the issues dealt with above namely admissibility of the unregistered lease deed and the

binding nature of the findings rendered in O.S.No.512 of 1983, is for establishing whether the lease was a composite one or not. I find that even

ignoring both the said issues, there is overwhelming evidence and on the basis of the facts and circumstances as revealed by the pleadings and

evidence on the side of the lessee/appellant, to hold that the lease which was granted was only a composite one. The said facts and circumstances

are dealt with below in order to avoid repetition. Therefore, I have no doubt in my mind that at the inception of the lease the object and purpose of

the lease was only a composite one, which is also a concurrent finding of fact by both the Courts.

25. The alternative endeavour on the part of the appellant/lessee is that even if the lease at the inception was for a composite purpose, in course of

time, all the machineries became worn out and the usage of the premises for running factory and to the knowledge and with the acquiescence of the

land owner, the premises was put to different user and therefore, the lease ceased to be a composite one. To substantiate this contention reference

is made to the evidence of the lessee P.W.1, a Director of the lessor Company, who deposed that at present it was not in a running condition and

that he cannot say when exactly the factory stopped functioning.

26. Reference is also made to the lessor's admission about the removal of the machineries in the earlier suit in O.S.No. 512 of 1983 in paragraph

2 and 7 of the judgment rendered in the said suit (Ex.A.1). Learned Senior Counsel also refers to the evidence on the side of the lessee to show

that the activities of the factory had ceased due to the machineries having become old. He would further contend that notwithstanding the

conversion of the nature of the tenancy, the lessor continued to receive the rent and hence the lessor cannot be heard to contend as though the

lease continued to be a composite one and hence the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act would apply. In

support of his submission learned counsel refers to the judgment of the Supreme Court reported in Bhawanji Lakhamshi and Others Vs. Himatlal

Jamnadas Dani and Others, . Per contra, learned counsel for the first respondent contends that the lessee cannot seek to take advantage of his

own misdeeds in violating the terms of the lease and that the lessor took action immediately after it came to the knowledge that the premises was

being put to different user and was being subjected to damages and waste. Mere acceptance of rent will not mean that a new tenancy had

commenced without proof of actual agreement to convert the purpose of the lease. Reference is made to the following judgments:

(a) Laxmibai Kisanrao Tamhane and Others Vs. Trivenibai, .

(b) Vittal Vel Press v. Sri Ranganathaswamy Temple, 1996 (II) M.L.J. 304.

(c) Kapanipathi Rao v. Meyyappan, 1973(86) L.W.629.

(d) Bombay Burmah Trading Corporation Ltd v. A.T. Narayanaswami Pillai,

1981(94) L.W. 334.

28. As regards the point now raised before me, it is pertinent to note that there has been no specific pleading by the lessee to the effect that the

purpose of the lease had become changed by efflux of time. That is the reason why the said issue had not been considered in detail by the Courts

below. At the stage of hearing, I did entertain a feeling that the appeal requires to be remanded to the Court below to decide as to whether there

was a conversion of the user and if so was it with the consent or acquiescence of the lessor. But on a detailed analysis of the very pleadings of the

lessee/appellant himself and the admissions in the evidence and the contradictory stand taken by him, I find that such a plea cannot be sustained.

The facts and circumstances mentioned below would disclose that there are absolutely no bona fides on the part of the lessee/appellant in

contending either that there was no composite lease or that" at any rate the purpose was converted by efflux of time with the consent of the lessor.

(a) Exs A 22 ad A.23 clearly establish that the lease was for a composite purpose.

(b) The father of the lessee who had in fact obtained the lease from the lessor had clearly admitted the nature of the lease being composite, in the

earlier proceedings which had been marked as Ex.A.21. The son as a witness in these proceedings has admitted that his father knew about the

facts pertaining to the lease very well and that his father had stated the facts correctly.

(c) The plaint filed by lessee himself in O.S.No. 1397 of 1987 clearly establishes the nature of the lease. The property is described as a Ginning

factory. It is also admitted that the lease deeds were executed till 1972 and that the plaintiffs (Lessee) have continued as tenants thereafter on the

same terms. Therefore, the tenant cannot be heard to say that there was a conversion of the lease. In the description of property also, it is clearly

stated that the premises is a ginning factory and the schedule of items are also given as factory premises, godowns, Platt Bros English make double

Roller Gins with line shafts with pedestals, its accessories, foundation bolts, spares 50 H.P. Electric Motor with starter, switches, Tube lights, Fans,

furniture and all accessories. The said plaint was filed on 5.11.1987 and it is futile to contend that the nature of the lease became converted by

efflux of time. In fact he would also further plead that they continued in

possession as tenants whose rights are governed by the provisions of the Transfer of Property Act. I am conscious that the said admission cannot be taken as an estoppel against the statute, but the other factual admissions made by the plaintiff as regards the continuing nature of the lease are crucial.

(d) In the written statement filed in O.S.No. 920 of 1991 also, which was filed on 24.8.1987, there is no mention about the conversion of the purpose of the lease.

(e) It is only in the written statement filed in O.S.No. 894 of 1991 which was filed in March, 1989, the lessee has taken the stand that the lease was not a composite one. Such a contradictory stand is obviously taken in order to avoid adverse legal consequences. Even in the said written statement there is no specific pleading regarding the conversion of the lease with the knowledge or acquiescence of the lessor.

(f) In none of the pleadings is there any reference to the repairs to the machineries or stoppage of the functioning of the factory.

(g) In the evidence of the lessee, it is admitted that as per the agreement, the lessee was obliged to maintain the factory as well as the machineries in a proper condition. It is also stated in the evidence of the tenant himself that the gins had not broken down (Tamil Matter) and that they had been sent outside the factory only for regular maintenance at the time when the Court-Commissioner had inspected the premises.

29. Therefore, all the aforementioned facts would clearly establish that not only the lease at the inception was only a composite one, but also continued to be so till the year 1987, when disputes arose between the parties. The lessee cannot also be permitted to take advantage of his own default in not keeping the machinery in a proper and working condition. It is admitted by the tenant that it is their responsibility to maintain the factory in proper condition. Even otherwise, the machinery admittedly, had been sent out only for regular maintenance. Therefore, by no stretch of imagination, can it be held that there was any conversion of the user of the factory much less, there is any evidence of acquiescence or consent by the lessor for the conversion of the lease for a different user.

30. Therefore, viewed from any angle I am unable to find any reasons to set aside the ultimate conclusions of the appellate Court and with the

result all the Second Appeals are dismissed. No costs. The appellant is given a time of three months from today, to vacate the premises and to hand over possession to the lessor. The sub-tenants have already suffered a decree for delivery of possession and no appeal had been filed by them. Even otherwise they are bound by the decree against the Chief-tenant.