

(2000) 10 KL CK 0046
In the High Court Of Kerala
Case No : S.A. No. 343 of 1990 (G)

Parol Mammoo, Timber Merchant

APPELLANT

Vs

Camp Bazar Palli Sabha and Others

RESPONDENT

Date of Decision : 20-10-2000

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 106
Transfer of Property Act, 1882 — Section 106

Citation : AIR 2001 Ker 20 : (2000) 2 KLJ 688

Hon'ble Judges : D. Sreedevi, J

Bench : Single Bench

Advocate : V.R. Venkatakrishnan and M.A. Manhu, for the Appellant; S.V. Balakrishna Iyer and P.B. Krishnan for No. 1 and A.K. Basheer, for No. 3, for the Respondent

Final Decision : Dismissed

Judgement

D. Sreedevi, J.—This Second Appeal is directed against the decree and judgment in A.S. 5/1998 on the file of the Additional Sub Court, Tellicherry, which was filed against the decree and judgment in O.S. 189/1983 of the Principal Munsiff's Court, Cannanore. The first defendant before the trial Court is the appellant. The first respondent/plaintiff filed the above suit for recovery of possession with arrears of rent,

2. The plaintiffs case in brief for the purpose of this appeal is this: The building in the plaint schedule property belongs to the plaintiff, which is a Society registered under the Societies Registration Act. The Society is maintaining and conducting the mosques in the Camp Bazar area. The first defendant was put in possession of the building as per an oral entrustment dated 8-12-1964 on an agreement to pay rent at the rate of Rs. 60/- per month. The defendant paid rent up to 8-3-1981. Thereafter as the tenant committed default in payment of rent, the plaintiff wanted the defendant to surrender the building as they wanted to extend the Shaduli Pally Building for which this building site is necessary. As the first

defendant did not surrender the building, the plaintiff filed the above suit. On the basis of the contention in the written statement the second defendant was impleaded. During the pendency of the appeal, the second defendant died and additional 3rd respondent was impleaded.

3. The defendants filed separate written statements. The first defendant contended that the suit is not maintainable; that the allegation that the building was entrusted to him on an oral lease is not correct; that there was no default in payment of rent and that the transaction between the parties is a commercial lease and as such he is not liable to be evicted as he is entitled to fixity of tenure u/s 106 of the Kerala Land Reforms Act.

4. The second defendant supported the plaintiff and wanted a decree in favour of the plaintiff.

5. The trial Court after taking evidence dismissed the suit, accepting the finding of the Land Tribunal on the issue referred to by the trial Court as to whether the appellant is entitled to benefit u/s 106 of the Kerala Land Reforms Act, against which the plaintiff filed A.S. 5/1988. The first appellate Court allowed the appeal and the decree and judgment of the trial Court were set aside and the plaintiff was given a decree to recover vacant possession of the building together with future rent at the rate of Rs. 60/- per mensem. Aggrieved by the said decree and judgment, this Second Appeal has been filed.

6. The questions of law involved in this case are the following :--

(i) Whether on the facts and circumstances of the case the learned Subordinate Judge was right in holding that the transaction evidenced by Exhibit P1 is not a lease coming within the scope of Section 106 of the Kerala Land Reforms Act?

(ii) Whether on the facts and circumstances of the case the Court below was right in holding that even without a notice terminating the tenancy u/s 106 of the Transfer of Property Act the suit was maintainable?

7. Admittedly the site over which the disputed building stands belongs to the plaintiff. There was an agreement, Exhibit P1 (marked before the Land Tribunal) between the plaintiff and the first defendant on 15th Kanni; 1138 (M.E.). By virtue of the said agreement, the first defendant has agreed to put up a shed in 3 cents of land spending an amount not exceeding Rs. 1,500/- within one month from the date of agreement and after constructing the said shed, the plaintiff agreed to let out the same on a monthly rental of Rs. 40/-. The first defendant agreed that the property tax for the shed will be paid by him. It is also agreed that the first defendant will have only landlord-tenant relationship, as seen from paragraph 3 of the agreement. Paragraph 3 of the agreement provides that he will be liable to execute a rent deed in favour of the plaintiff. Accordingly, the shed was constructed and as agreed to in Exhibit P1 agreement, he has executed Exhibit P2 rent deed on 23rd Thulam, 1138, corresponding to 9th November, 1962 and as per this agreement, he is occupying the said shed and is doing

business.

8. The first defendant contended that the transaction between the parties is a tenancy, coming under the provisions of Section 106 of the Kerala Land Reforms Act and as such he is not liable to be evicted from the shed and the site wherein the shed stands.

Section 106 of the Kerala Land Reforms Act reads as follows :--

"106. Special provisions relating to leases for commercial or industrial purposes.-- (1) Notwithstanding anything contained in this Act, or in any other law, or in any contract, or in any order or decree of Court, where on any land leased for commercial or industrial purpose, the lessee has constructed buildings for such commercial or industrial purpose before the 20th May, 1967, he shall not be liable to be evicted from such land, but shall be liable to pay rent under the contract of tenancy, and such rent shall be liable to be varied every twelve years.".

In order to get the benefit under this provision, the tenant has to establish that there was a lease of land for commercial or industrial purpose and that the lessee has constructed the building for such commercial or industrial purpose before May 20, 1967.

9. The learned counsel Mr. Venkatakrishnan submitted that there was a contract between the parties under Exhibit P1, whereby three cents of land has been leased out to the first defendant for putting up a shed and after putting up the shed, he had executed a rent deed under Exhibit P2 and, therefore, it has to be found that the land was leased out to the first defendant for commercial purpose and that after putting up the building, before the relevant date, viz., 20-5-1967, he continued to occupy the building for his business purpose and as such he is not liable to be evicted.

10. Exhibit P1 goes to show that there was no lease of land. It was a contract, whereby the first defendant agreed to put up a shed by spending an amount not exceeding Rs. 1,500/- and on constructing the said shed, the same will be leased out to him by the plaintiff on a monthly rental of Rs. 40/-. Therefore, Exhibit P1 cannot be said to be a lease of land. It is only an agreement to put up a shed at the cost of the plaintiff. By Exhibit P2, the building was let out to the first defendant. The schedule clearly shows that it was a lease in respect of the shed and not the land.

11. Mr. Venkatakrishnan, learned counsel for the appellant submitted that in order to see whether the first defendant is entitled to the benefit u/s 106 of the Kerala Land Reforms Act Exhibit P1 and P2 should be read together. According to him, the intention of the parties is to lease out the land for the purpose of putting up the shed for doing business and, therefore, the transaction is a commercial lease. Exhibit P2 is the lease deed, under which the first defendant is occupying the building. Exhibit P2 is a pure lease of building, coming under the

provisions of Transfer of Property Act. The learned counsel for the appellant submitted that even PW-1, who was examined on behalf of the plaintiff, has stated that all the statements made in the plaint are incorrect and hence the Court cannot grant any relief. In the plaint what is stated is that the defendant was put in possession of the building on 8-12-1984. That is not the case put forth in evidence. PW-1 also stated that all the statements made in the plaint are incorrect and hence the plaintiff has to be non-suited. In this connection, the learned counsel for the respondents Mr. P.B. Krishnan relied on the decision reported in V. Kamalaksha Pai v. Keshava Bhatta 1971 KL J 538 : (AIR 1971 Ker 110) wherein this Court held that the plaintiff can be granted the relief even if it was not asked for. It is also submitted that as per the earlier arrangement he had surrendered the shed and thereafter a new lease was created and hence he can claim only the right under the new lease. Therefore, the tenant can claim only the benefit under the new lease, viz., Exhibit P2. The learned counsel for the appellant submitted that Section 106 only requires that the lessee should have constructed the buildings. Whether he did so by leave and license or with permission of some third party or with the materials of the third party seem to make little difference. For this, he relies on the decision in Raman Pillai v. George 1974 KLT 246. It reads :--

"Section 106 only requires that the lessee should have constructed the buildings. Whether he did so by leave and license or with permission of some third party, or with the materials of the third party seem to make little difference. In this case, the 1st defendant under some arrangement with the 2nd defendant had installed the structures. That satisfies the requirement of "construction" within the meaning of the Section; the rest is a matter inter se between the 1st and 2nd defendants".

That decision is not applicable to the facts of this case as in that case the tenant was holding the land as a lessee and while holding the land as lessee, he had constructed building. In this case Exhibit P1 does not give him a right to occupy the land as a lessee.

12. On going through Exhibits P1 and P2 and also the oral evidence adduced by the plaintiff, I can come to the conclusion that the first defendant is not entitled to get the benefit u/s 106 of the Kerala Land Reforms Act. He was holding the building under Exhibit P2 lease deed as there is lease of building only. Therefore, the learned Sub Judge has come to the conclusion that Exhibit P2 is a lease of building. I agree with the finding that Exhibit P2 is a lease of the building. Exhibit P2 provides that the tenant is liable to surrender the building under certain conditions. As there is a contract to the contrary; no notice u/s 106 of the Transfer of Property Act is necessary to terminate the lease before filing a suit for eviction. Therefore, the learned Sub Judge has allowed the appeal allowing the plaintiff to evict the first defendant/appellant. I carefully went through the judgment and find that the Court below has correctly answered the questions of law on the point. The decree and judgment of the first appellate Court are,

therefore, confirmed.

In the result, this Second Appeal is dismissed.