

(1962) 11 MAD CK 0021

In the Madras High Court

Case No : Appeal No. 355 of 1959, A.A.O. 222 of 1959 and Memo of objection in App. 355 of 1959

P.K. Palaniappa Gounder

APPELLANT

Vs

K.M. Sridharan Nair and Others

RESPONDENT

Date of Decision : 02-11-1962

Acts Referred:

Madras City Tenants Protection Act, 1922 — Section 12, 2(4), 3, 9
Madras Government Servants Conduct Rules, 1960 — Rule 7

Citation : AIR 1964 Mad 285 : (1964) ILR (Mad) 483 : (1964) 77 LW 32

Hon'ble Judges : Venkatadri, J; Ganapatia Pillai, J

Bench : Division Bench

Advocate : Advocate General and K. Parasurama Iyer, for the Appellant; V. Thyagarajan, N.K. Pattabhiraman, K. Radhakrishnan and K.N. Mahadevan, for the Respondent

Judgement

Ganapatia Pillai, J.—Appeal No. 355 of 1959 is directed against the judgment and decree of the Subordinate Judge of Coimbatore in O.S.

No. 78 of 1958. The plaintiff in that litigation is the appellant in the appeal. He brought that suit for recovery of possession, past mesne profits and

future mesne profits at the rate of Rs 100 per month till date of delivery of possession against Sridharan Nair, Padmanabha Menon and K.M.S.

Nair. The plaintiff in that litigation, who will hereafter be referred to as the appellant was the owner of a vacant site situated in Jail Road,

Coimbatore city. The appellant leased this site to one Vasudevan Nair on 27-9-1945 for a period of 12 years. The rent agreed was Rs. 25 per

month for the first six years and Rs. 30 per month for the next six years. It was also agreed under the lease arrangement that the lessee should put

up a building at the site as per specifications contained in the lease deed, enjoy

the building for 12 years and at the termination of the lease period surrender possession of the building along with the site to the appellant without any claim for compensation for the superstructure. The lease deed provided that in case the lessee did not put up the superstructure, the rent payable would be Rs. 40 per month. Vasudevan Nair, it was alleged, put up the superstructure at a cost of Rs. 5000 in accordance with the conditions laid down in the lease deed. The lease expired by efflux of time on 27-9-1957. Shortly before that the appellant issued a notice to Vasudevan Nair calling upon him to deliver possession of the superstructure along with the site in accordance with the terms of the lease deed. A copy of this notice was also sent to the second defendant - second respondent, who was occupying the building as a tenant under Vasudevan Nair. The first defendant - (first respondent, Silidharam Nair), claimed that he was the real lessee, that Vasudevan Nair was only a benamidar for him and that according to the terms of the lease deed he was entitled to a renewal of the lease, and for enforcing this claim he filed O.S. 1419 of 1957 in the District Munsif Court, Coimbatore. The appellant denied the right claimed by the first defendant as the real lessee of the property. Vasudevan Nair died and the third defendant, third respondent, K.M.S. Nair, has been impleaded as his legal representative.

2. Sridharan Nair, by his written statement, raised the plea that he was the real owner of the leasehold interest, that he constructed the superstructure with his own funds and that he was entitled to the benefits conferred by the Madras City Tenants Protection Act, which was extended to Coimbatore municipality on 19-2-1958. O.S. 1419 of 1957 was transferred to the file of the Subordinate Judge, Coimbatore, and was renumbered as O.S. 203 of 1958 and tried along with O.S. 78 of 1958.

3. On the main question for consideration in the first suit, the learned Judge in the court below found that whoever was the real lessee of the site was entitled to purchase the site u/s 9 of the Madras City Tenants Protection Act. The learned judge also found in both the suits that Sridharan Nair was the real lessee because Vasudevan Nair was only a benamidar for him. However, he refused specific performance of renewal of the lease for a period of 12 years claimed in the second suit on other grounds which, it would not be necessary for us to go into in this appeal since no

appeal has been preferred by the aggrieved party against the dismissal of O.S. 203 of 1958.

4. C.M.A. 222 of 1959 arises out of the order made by the learned judge in the lower court in I A. 227 of 1958 wherein Sridharan Nair, the main contesting respondent, sought a direction of the court to value the site for enabling him to purchase it. The learned judge allowed this request and valued the property and directed the deposit of the amount on or before 31-10-1959. The order in the appeal will decide the fate of the order appealed against in C.M.A. 222 of 1959.

5. The learned Advocate General, appearing for the appellant, contended that the right conferred by Section 9 of the City Tenants Protection Act would not come into operation in this case for the following reasons.

That Act will hereafter be referred to as the Act. The preamble to the Act sets out the evil which the legislation was intended to remedy. Tenants

of vacant site in municipal towns in the State of Madras had constructed buildings on such sites in the hope that they would not be evicted so long

as they paid a fair rent for the land. According to the ordinary law applicable to landlords and tenants, such tenants who had constructed buildings

on lands belonging to their landlords had no right to claim compensation for the superstructure, nor to purchase the landlord's interest in the site.

Thus, at the termination of the tenancy, the only prospect for the tenants was to demolish the building and take away the materials according to

Section 108(h) of the Transfer of Property Act Housing accommodation was very short after the close of the First World War in the towns of this

State, including the city of Madras. Allowing the ordinary law between the landlord and tenant to take effect, in the case of such buildings led to the

evil of such buildings being demolished and the available housing accommodation being diminished. It was to remedy this that the Act was put on

the Statute book. The main purpose of the Act, therefore, was not confiscatory in nature. The object of the legislation was to relieve the congestion

in housing accommodation by preventing demolition of houses built by tenants upon land belonging to their landlords.

In carrying out this object the legislature devised a dual plan. The first was to secure compensation to the tenant on his being required to vacate the

premises on the termination of the lease. Section 3 provides for this by insisting

upon every tenant being paid compensation for the value of the building erected by him on ejectment from the land. As an alternative to this right the tenant was given the right of purchasing the land itself from the landlord on terms to be fixed by the court. Section 9 provides for this alternative remedy.

Section 12 of the Act, while making provision for giving effect to certain stipulations made by the tenant in writing registered as to the erection of buildings, lays down that nothing in any contract made by a tenant shall take away or limit his rights under the Act. Certain other provisions were made in the enactment directing giving three months notice before institution of a suit for ejectment and also directing that application or suit for ejectment should be accompanied by an offer to pay compensation for the building and trees standing on the demised land. It follows, that on the court fixing the compensation payable to the landlord, if such amount is not paid within the period fixed, viz, three years, the landlord was free to eject the tenant and take possession." of the property after paying compensation to the tenant.

6. Thus, the Act interfered with the existing law between landlord and tenant in two material respects. Under the pre-existing law the tenant had no right to ask for compensation for the superstructure put up by him, but could only take away the building after dismantling it. The Act provided for compensation for the building being paid to the tenant and also an alternative right was given to the tenant to purchase the landlord's interest! in the land It must be noticed that both these right's are conferred on the tenant only on the basis that he is the owner of the superstructure put up by him.

7. The learned Advocate General contended that u/s 9 of the Act only a tenant entitled to claim compensation for the superstructure could"" offer to purchase the land from the landlord, and, according to him, in this case the first respondent was not such a tenant because, according to the terms of the contract, by reason of the reduced rent which the tenant obtained for the period of 12 years and the agreement to give up possession of the building without claiming compensation, the landlord had become the owner of the building at least on the expiration of the term fixed in the tenancy. The learned Advocate General also contended that the term in the contract of tenancy that the building should become the property of the

landlord on the expiration of the term of the lease and the same should be handed over along with the land to the landlord was a stipulation which would fall within the ambit of the proviso to Section 12.

8. As already noticed the Act came into force in Coimbatore town on 19-2-1958, while the term in the lease, viz., 12 years period had expired even on 24-9-1957. The Advocate General, therefore, contended that on the date when the Act was extended to Coimbatore, the tenant here was not the owner of the superstructure but the landlord had become the owner, and therefore, the provisions of the Act could not apply to this case.

9. On the construction of Section 12 the argument of the learned Advocate General was, the phrase "stipulations made by the tenant in writing registered as to the erection of buildings" would include a term in the contract as to ownership of the building to be erected by the tenant.

10. If the appellant had become the owner of the building even before the Act came into force, it follows that Section 3 could not confer a right to compensation for such building upon the tenant. The first respondent in this case, Sridharan Nair, would not therefore, be a tenant entitled to a compensation u/s 3 of the Act. Consequently he could not exercise the right u/s 9 to purchase the landlord's interest since giving effect to Section 9 in the context of this case would amount to confiscating the landlord's interest or title to the site without paying any compensation to him. In other words, the learned Advocate General stressed that the object of the Act was not to take away the landlord's property without paying compensation to him, but to enable the tenant to acquire the property of the landlord on payment of compensation. If the tenant himself was not entitled to compensation u/s 3 he could not exercise the other right of purchasing the landlord's interest under S. 9 by offering to pay the price for the land. The two rights conferred upon the tenant were thus interrelated, because a tenant who could exercise a right u/s 9 was only the tenant who was entitled to compensation u/s 3 of the Act.

11. On the other hand, Mr. Thiagarajan, for the respondent, contended relying upon Section 13 of the Act, that in applying the provisions of the Act, the court should disregard the provisions of the Transfer of Property Act to the extent necessary. Consequently, having regard to the definition

of "tenant" in Section 2 clause (4), a tenant holding over, who continued in possession after the termination of the tenancy, was still a tenant within the meaning of Section 3 and Section 9 of the Act and so he could enforce the rights conferred upon him by the Act despite the term in the contract between the parties as to the rights which the respective parties acquired on the termination of the tenancy in the building put up by the tenant.

12. The next contention of Mr. Thiagarajan was that notwithstanding the proviso Section 12 nullified the term in the contract as to transfer of ownership of the building on the termination of the lease, that is to say, he contended, whether the contract provided for the transfer of ownership of the building or not, the claim to compensation u/s 3 was saved by the proviso to Section 12 and consequently a tenant holding over was entitled to apply u/s 9 for purchasing the landlord's interest in the site. In support of this argument learned counsel pointed out that Section 3 merely mentioned "any building, which may have been erected by him, by any of his predecessors in interest...." and not any building of which he was still the owner.

13. In our opinion this contention cannot be accepted as it would conflict with the very basis, upon which relief is given to the tenant under the Act.

Certainly it was never intended by the legislature, as we understand the provisions of the Act, that the tenant who had constructed a building out of his own funds, but, who by operation of some valid term in the agreement between the landlord and the tenant had lost title to the building, would still be entitled to claim compensation for that building even though that building belonged to the landlord. Not only would such a construction mean that the legislation was expropriatory in character but it would also contradict the very basis upon which new rights were conferred upon the tenant by the legislation.

It is undeniable that the twin rights conferred upon the tenant, viz., either to claim compensation, or to purchase the site from the landlord, were both based on the assumption that the tenant was still the owner of the building at the time when he became entitled to these rights. The definition of a "tenant" in Section 2(4) must, therefore, be understood as indicating a tenant holding over after the termination of the tenancy, but who

continued to be qualified to claim, compensation u/s 3 and consequently to claim the right u/s 9 of the Act. To read the definition otherwise would be doing violence to the basic structure of the legislation.

A similar argument was repelled by a Bench of this court in *Narasram Naraindas v. Venkataswami Naidu*, L.P.A. No. 29 of 1961 D 7-21-9-

1962 (Mad) where the tenant had constructed the building in spite of a clause in the lease deed prohibiting the constructing of any building on the

demised site. If therefore, we are to hold by reason of the term in the contract the building put up by the tenant had become the property of the

landlord on the termination of the tenancy the first respondent could, not claim compensation for that building as a condition of his vacating the

demised property; nor could he exercise the right u/s 9 for purchasing the site from the landlord.

14. Mr. Thiagarajan's next argument was therefore to Contend that the direction in the lease providing for transfer of ownership of the building at

the termination of the tenancy was hit by the proviso to Section 12 of the Act. We shall presently examine this argument.

15. Learned counsel relied upon the Bench decision in *N. Vajrapuri Naidu and Another Vs. The New Theatres Carnatic Talkies Ltd.*, , to which

one of us was a party. There a vacant piece of land situated within the limits of Coimbatore Municipality was leased out in 1934 for period of 20

years. It was provided in the lease deed that on the expiry of the term of the lease, the lease could be renewed for further term of 20 years if the

parties were so agreeable. It was further provided in the deed that on the expiry of the lease period vacant possession of the land should be given

to the lesser after removing the buildings which the lessee might construct thereon. A building was constructed on the demised land, and, the

question arose whether the tenant was entitled to rely upon the provision to Section 12 in answer to the landlord's claim for vacant possession

after demolition of the building.

16. The argument addressed before the Bench there was that the effect of the stipulation in the contract as to the liability of the tenant to give

vacant possession at the expiration of the term in the contract, was to deny the tenant the rights conferred by the Act, and, Section 12 was

specifically put in the Statute for that very purpose namely to secure to him such

rights-despite the terms in the contract between the tenant and the landlord. The Bench had therefore to consider whether the proviso to Section 12 saving certain stipulations made in the contract could apply to such a term in the contract. After referring to the decision of Pandrang Row J. in Pamidi Vedavalli Thayarammal Vs. Junus Chettiar, the Bench, held that the condition of the contract as to giving vacant possession of the land was not a term or stipulation as to the erection of buildings, and consequently Section 12 would strike down such a term in the contract.

17. We are not satisfied that this decision is any authority for the question we are faced with in this appeal. We would quote the following passage from that judgment to substantiate our view:

The limited question we are called upon to decide is whether, when the building was put up conforms to the stipulations contained in the registered contract between the parties as to the erection; of the building, the tenant would forfeit his right of acquiring the landlord's title under the Act by reason of the term in the contract as to surrender of vacant possession. For thus construing Section 12, the words "any stipulation made by the tenant in writing registered as to the erection of building" must be held to include not only the size and nature of the building, but the very question of the tenant's right to erect the building. Such a construction of the proviso would exceed the purpose of the proviso. The object and purpose of every proviso in an enactment is not to destroy the general proposition to which it is a qualification but to limit the operation of the general proposition. The general proposition in this case contained in Section 12 is that no term in any contract made by a tenant shall take away his rights or limit his rights under the Act.

Relying upon this passage and also upon the decision of Ramachandra Iyer J. as he then was, in A. Ponnambala Achary Vs. K. Mani, Sri

Thiagarajan contends that the proviso should be limited to cases of stipulations made in the contract as to erection of buildings relating to their size, the nature of the buildings, the cost of the structure etc., and could not apply to a term in the contract providing that the building itself should

become the property of the landlord. The crucial question, therefore, is whether the term in the contract as to transfer of ownership of the building

at the termination of the lease could be construed to be a stipulation made by

the tenant as to the erection of the building.

18. We are unable to hold, giving our best consideration to this topic, why such a term should not be, included in the category of stipulations as

regards the erection of the building. In the Shorter Oxford Dictionary, 3rd Edn ""stipulation"" is defined thus:

(a) Rom. Law: The action of making a contract or agreement in the verbal forms legally binding: a contract .or agreement so made.

(b) A given security for the performance of an undertaking (current only in the language of the Admiralty Courts)

(c) The action of specifying as one of the terms of a contract of agreement; a formulated term or condition of a contract or agreement.

(d) The action of stipulating for something as a condition of agreement.

Having regard to this exposition of the shades of meaning of the word, it will be apparent that stipulations as to the erection of buildings would not

only include terms of the contract or agreement regarding the pattern of the buildings, and, the cost of if, but also the term regarding the condition

as to ownership under which the building is to be erected Therefore, the term in the contract in this case, providing for the transfer of ownership of

the building at the termination of the lease, is a stipulation as to the erection of the building, and is, therefore. saved by the proviso to Section 12 of

the Act.

19. Sri Thiagarajan contended that such a construction of Section 12 would destroy the very rights conferred by the Act, and, that is prevented by

the language of Section 12. There might appear to be some force in this argument of Sri Thiagarajan if the condition as to transfer of ownership in

this contract was not supported by consideration. It may not be necessary for supporting our view as to the interpretation of the term ""stipulations

..... as to the erection of buildings"" to refer to the consideration for the term in the contract for transfer of ownership. But, we are only mentioning

it to reject the argument because we think the rights conferred upon the tenant by the Act could not be availed of by the first respondent, that is to

say, the Act itself should not be so construed as to lead to the result of expropriating the landlord's interest without" compensation. It will be seen

from the terms of the contract in this case that the landlord agreed to receive a lesser rent for the entire period of 12 years if the tenant put up a

building as agreed. On the failure of the tenant to so put up the building, the contract provided for payment of an enhanced rate_ of rent. Thus, the

agreement between the parties whereby the landlord was willing to receive a lesser rent for the property for the entire period of 12 years is one of

the items of consideration Which passed from the landlord to the tenants as compensation for the value of the building which the latter had agreed

to put up. It is true the actual amount of consideration so deduced may not entirely cover the compensation which the tenant would be entitled to

claim u/s 3 of the Act in this case or in any other particular case. But, that is not the point we should take note of. In our opinion, the tenant is not

being called upon to give up his ownership of the building without any quid pro quo.

So understood, giving effect to the term in the contract as to the transfer or ownership of the building is not really depriving the tenant of

compensation for his property. That alone was the object of the Act which it secured by enacting Section 3. It should not be understood that this

question of consideration, which passed from the landlord to the tenant in the shape of acceptance of the reduced rent, is the reason why we

construe the term of the contract as to transfer of ownership as coming under the proviso to Section 12, because it may be that the reduction in

rent agreed to in this case is really not equivalent in value to the compensation for the building put up by the tenant.

Irrespective of this question we would be prepared to hold that a question as to transfer of ownership of the building put up by the tenant at the

expiry of the lease to the landlord, would be a stipulation as to the erection of the building agreed to between the parties. Thus, despite Section 12,

this class of cases whereunder the tenant had agreed to the transfer of ownership of the building to the landlord at the expiration of the term would

fall outside the ambit of the Act, provided, at the time when the Act came into force the landlord had become the owner of the building according

to the term of the contract. Neither the Bench decision in N. Vajrapuri Naidu and Another Vs. The New Theatres Carnatic Talkies Ltd., nor the

decision of Ramachandra Iyer J. as he then was in 1958 2 ML.T 516 is authority on the question we have to decide. Those decisions were only

concerned with instances where a tenant had contracted himself out of the right to claim either compensation for the building erected or the right to

purchase the landlord's interest in the entire site by reason of the term of the contract that on the expiry of the lease period the tenant shall vacate

the premises and give vacant possession of the land. In those cases there was no complication of any term of the contract which provided for the

transfer of ownership of the building put by the tenant to the landlord.

20. The question as to the legal effect of a term in a lease providing for transfer of the ownership of the building put up by the tenant came up

before the Supreme Court in two decisions *Bhatia Co-operative Housing Society Ltd. Vs. D.C. Patel*, and *K.A. Dhairyawan and Others Vs. J.R.*

Thakur and Others, . In the former case, a plot of vacant land belonging to the City Improvement Trust of Bombay was auctioned to a person with

a condition that the bidder was to put up a building of certain description at a certain cost and after the completion of the building the site and the

buildings were to be leased to the party for a period of 999 years at a fixed yearly rent. The highest bidder for the plot in question put up the

building as stipulated and also obtained a lease deed for 999 years. This lease was assigned to the appellant" before the Supreme Court. There

was a condition in the terms of the auction, embodied in the indenture of lease, that the building to be put up by the bidder should become the

property of the City Improvement Trust, Bombay. The site and the building ultimately became vested in the Bombay Municipality. On a notice to

quit the tenant raised the question as to want of jurisdiction of the Bombay City Civil Court on the ground of protection afforded by the Bombay

Rents, Hotel and Lodging House Rates Control Act LVII of 1947. The City Civil Judge decreed the suit for ejectment. On appeal the High Court

overruled that decision on the ground that the Bombay Act in question applied to the premises and consequently the City Civil Court by virtue of

Section 28 of that Act, had) no jurisdiction to entertain that suit and directed the plaint to be returned to the appellant for being filed in the proper

court. There was an exemption in the Bombay Act with reference to premises belonging to the Government or a local authority. The question of

jurisdiction thus depended upon the question whether the building belonged to the Bombay Municipality and was therefore exempt from the

provisions of the Act. On this question Das J. delivering the judgment of the Supreme Court, stated thus,

"It is true that the lessee erected the building at his own cost but he did so for the lessor and on the lessor's land on agreed terms. The fact that the lessee incurred expenses in putting up the building is precisely the consideration for the lessor granting him. a lease for 999 years, not only of the building but of the land as well at what may, for all we know, be a cheap rent which the lessor may not have otherwise agreed to do. By the agreement the building became the property of the lessor and the lessor demised the land and the building which in the circumstances, in law and in fact belonged to the lessor. The law of fixtures u/s 108 of the Transfer of Property Act may be different from the English law, but Section 108 is subject to any agreement that the parties may choose to make. Here, by the agreement the building became part of the land and the property of the lessor and the lessee took a lease on that footing. The lessee or a person claiming title through him cannot now be heard to say that the building does not belong to the lessor".

21. Thus the Supreme Court upheld the validity of the term in the lease arrangement as to transfer of ownership of the building to the lessor.

In the second case, there was no term in the lease which operated as a demise of the building also. There the lessor granted a lease of a parcel of

land to the lessees for 21 years at a rent of Rs. 50 per month. Under the terms of the lease, the lessees were to construct a double-storeyed

building on the land at a cost of not less than Rs. 10,000. The construction had to be made to the satisfaction of the lessors' engineers and the

building had to be insured for at least Rs. 12000 in the joint names of the lessors and the lessees with an insurance firm approved by the lessors,

On the termination of the lease, either at the end of 21 years or earlier, the lessees were to surrender and yield up the demised premises, including

the building with its fixtures and appurtenances, to the lessors without any compensation for the same. After the expiry of the 21 years period, the

lessors filed a suit for a declaration that they were entitled to the building and were entitled to claim possession of the same and to recover the rents

and profits thereof. The lessees pleaded that they were also lessees of the building and were protected from eviction therefrom by the provisions of

the Bombay, Rents, Hotel and Lodging House Rates Control Act, 1947 and that the covenant for delivery of possession of the building could not

be enforced as the lease^{1/2} in respect of the land could not be terminated on account of the protection given by that Act.

22. On these facts, the Supreme Court held that though the demise was only of the land and part of the building, the ownership in the building could pass to the lessor on the termination of the lease as provided in the contract. Consequently, the lessor was entitled to get a declaration that after the expiration of the lease, the building constructed by the tenant belonged to the lessor who was entitled to recover all the rents and profit from the same.

23. It is interesting to see in this decision of the Supreme Court that one of the arguments advanced against the right claimed by the lessor was dealt with. That argument was to this effect. If during the currency of the lease title to the building did not pass to the lessor and title passed only on the termination of the lease, in law the lease should not be held to be determined so long as the landlord could not obtain possession of the demised property by reason of the protection from eviction granted to the tenant by the Bombay Rents, Hotel and Lodging House Rates Control Act,

1947. This argument was repelled by the Supreme court thus:-

This contention is without force as the provisions of the Act do not provide for the continuation of a lease beyond the specified period stated

therein. All that the Act does is to give to the person who continues to remain in possession of the land, although the period of the lease had come

to an end, the status of a statutory tenant. That is to say, although the lease had come to an end but the lessee continued to remain in possession

without the consent of the lessor, he would nonetheless be a tenant of the land and could not be evicted save as provided by the Act.

By necessary implication the Supreme Court should be held to have ruled that mere prevention from eviction of a tenant after the expiry of the term

provided in the lease deed, which in common parlance is said to be the result of creation of a statutory tenancy, would not amount to

continuation of the tenancy, agreed upon by the parties to the contract. In other words, the provisions in the various enactments preventing

eviction of tenants after the termination of the period fixed in the lease is a right conferred by statute and not by the contract between the parties.

Such a right has nothing to do with the construction or effect of every term in

the contract. For example, in this case, it could not be said that merely because; by reason of some statutory enactment the tenant could not be evicted from the premises, the term in the contract as to transfer of ownership of the building at the expiration of the period fixed in, the lease deed would not or could not come into effect. In other words, the respondents could not contend that the provision as to transfer of ownership at the expiration of the 12 years period could not take effect despite the expiry of that period until and unless the tenant could be legally evicted from the premises. The question of eviction has no relevance on the operation of the term in contract as to transfer of ownership at the expiration of the lease period. The learned Judge in the Court below was, therefore, wrong in his view that the first respondent was entitled to apply for the purchase of the landlord's interest in the site u/s 9 of the Act, or that the landlord was bound to sell the site to him on a valuation to be fixed by the Court. There is really no impediment to the appellant recovering possession of his property in view of our conclusion as to the inapplicability of the provisions of the Madras City Tenants Protection Act to this case for the reasons given by us.

24. The next question for our consideration is the claim of the first respondent that he is the real lessee under the lease deed executed by Vasudevan Nair and that Vasudevan Nair was only a benamidar for him, and, consequently, he would be entitled to exercise all the rights of a tenant under the Madras City Tenants Protection Act.

25. The learned Judge in the court below found this claim of the first respondent to be well founded mainly by reason of the acts performed by the first respondent in raising funds for putting up the construction and in letting out the building to the second defendant-second respondent, Padmanabha Menon, and another during the course of the lease period. The learned Judge has also referred to the letters written by the first respondent to the Commissioner of the Municipality in connection with assessment of property tax. As against these circumstances, we have the fact that Vasudevan Nair executed a power-of-attorney, Ex. B. 3, in favour of the first respondent on 30-7-1956 authorising the first respondent to let out the property to others, collect the rents, pay the taxes, and pay the rent due to the plaintiff-appellant. The existence of the

power-of-attorney would be destructive of the case of benami set up by the first respondent but for the circumstance that the learned Judge in the

court below relies upon a recital in this power-of-attorney by which Vasudevan Nair has stated that the lease was taken in his name. The Tamil

words used are ""Vadagaikku En Peril Vangi"" According to the learned Judge, if the case of benami were not true, Vasudevan Nair should have

used words like ""Nan Vadagaikku Vangiyruppathai"" We are not impressed with this circumstance as it merely turns upon the language used by the

scribe of the document to indicate that the lease was taken in the name of Vasudevan Nair. Of course, we are aware of the argument that usually

documents brought into existence in a case of benami title $\frac{1}{2}$ would outwardly confirm to the ostensible title and would not be decisive of the

question of real title.

Equally, the mere fact that a particular recital in the power of attorney is equivocal and is capable of being interpreted in either way, viz. both in

support of and against the case of benami, would not be a decisive circumstance in deciding the question. One material circumstance relied upon

by the learned Judge for coming to his conclusion on this question is that the first respondent was a head constable and therefore not in a position

to take the lease in his name without the concurrence of the authorities of the Government. We have not been pointed out any service rule which

prohibits the obtaining of a lease of a site by a head constable without the concurrence of the higher authorities of the police department. Rule 7 of

the Madras Government Servants Conduct Rules 1960 which is the only rule applicable here does not prohibit the acquisition of property by way

of a lease without the sanction of the appropriate authorities but only regulates such acquisition. The learned Judge is, therefore, wrong in his view

that there existed any motive for Sridharan Nair, the first respondent, to take a benami lease in the name of his nephew Vasudevan Nair. It is true

the money required for the construction was raised by Sridharan Nair by executing promissory notes to a bank and to another individual. It is also

true that the management of property was left by Vasudevan Nair with the first respondent. But these by themselves, would not be sufficient to

bind the lessor and compel him to treat the first respondent as the lessee.

26. Vasudevan Nair himself has submitted plans to the Coimbatore Municipality

for the building put up and obtained the sanction of the municipality. Section Ex. B. 13, B. 16. B. 17 and B, 18. The collection of rents for the building by the first respondent is a matter which does not really affect the question of the benami character of the lease. The evidence of the appellant was that it was Vasudevan Nair who negotiated for the lease, and that he was not informed by Vasudevan Nair that the lease was really being taken for the benefit of the first respondent. The mere presence of the first respondent during the negotiations between the appellant and Vasudevan Nair for the conclusion of the lease, would be a neutral factor unless the appellant was informed by Vasudevan Nair that the lease was being taken for the benefit of the first , respondent. The payment of rent of the appellant by the first respondent would also be a circumstance having no decisive influence on the decision of the question of benami having regard to the fact that the first respondent had obtained a power-of-attorney from Vasudevan Nair. Whatever may be the effect of the circumstance relied upon by the learned Judge on this question of benami as between Vasudevan Nair and the first respondent, the same inference could not be drawn against the appellant, unless the appellant was made known of the fact of benami and had agreed to treat the first respondent as his tenant

27. The learned Judge relied upon the attitude taken up by the third respondent, the legal representative of Vasudevan Nair, as having a bearing on the question. We are not satisfied that this attitude of the third respondent, in disclaiming the benefit of the lease should have been taken into account by the learned Judge as having any bearing on the question. The benefit of the lease was not an undiluted benefit for the third respondent in view of the evidence that it was the first respondent who had found the money for the construction, and he had to repay that money if he claimed the benefit of the lease. In our opinion, the learned Judge came to a wrong conclusion when he held that the appellant was bound to treat the first respondent as the lessee on account of any arrangement between the first respondent and Vasudevan Nair as regards the benefit of the lease.

28. It follows, that the order of the learn Judge in I. A. No. 227 of 1958 directing the appellant to sell the suit site to the first respondent for sum of Rs. 2130 should be vacated, and, we hereby allow C. M. A. 222 of 1959 and set

aside that order.

29. On our finding as regards the inapplicability of the provisions of the City Tenants Protection Act to this case, the decree made by the learned

Judge in O.S. No. 78 of 1958 should be set aside, and we accordingly allow App. No. 355 of 1959 and set aside the decree, and in its place,

there will be a decree for recovery of possession of the property along with mesne profits at the rate of Rs. 80 per month from 27-9-1957 till date

of delivery of possession of the property to the appellant.

30. The appellant will get his costs in both the appeals and also in O.S. 78 of 1958, payable by the first respondent. The respondents will bear

their own costs, both in the trial court and here.

31. The Memorandum of cross objections preferred by the first respondent relates to the award of mesne profits by the learned Judge. On our

finding that the first respondent is not entitled to rely upon the provisions of the Madras City Tenants Protection Act, the appellant is entitled to

mesne profits. The memorandum also refers to the rate of mesne profits allowed by the lower court. But, we do not think that the rate allowed by

the lower court calls for any interference. The memorandum of cross objections is therefore dismissed. No costs.