

(1984) 04 MAD CK 0060
In the Madras High Court

P.N. Venkatesa Chettiar

APPELLANT

Vs

Annamalai Industrial Corporation

RESPONDENT

Date of Decision : 27-04-1984

Acts Referred:

Citation : (1984) 2 MLJ 92

Hon'ble Judges : R. Sengottuvelan, J

Bench : Division Bench

Judgement

R. Sengottuvelan, J.

The substantial questions of law that arise for determination in this second appeal are as follows:

1. Whether the lease of a Rice Mill consisting of the premises and the machinery intended for separating the husk from paddy and thereby converting the paddy in to rice is a lease for manufacturing purpose; and
2. Whether the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act are applicable to the lease of the premises and machinery.

The suit property comprises of the premises and rice milling machinery situate in T.S. No 1825, Thandampattu Road, Tiruvannamalai, and the same originally belonged to Annamalai Industrial Corporation which is under liquidation. The appellant herein had been in possession of the abovesaid premises as lessee from the year 1958 on an annual rental of Rs. 3,500/-. The liquidator of the respondent firm who was empowered to realise the assets of the firm and distribute the same among its creditors as per the orders of the Court advertised for the sale of the rice mill in public auction. Several persons including the appellant, the lessee, bid at the auction and one S. Kuppuswami, Proprietor, Pichandavar Transport, Tiruvannamalai, was declared as the successful bidder. Since the liquidator is bound to deliver possession of the premises to the successful bidder he issued a notice under Ex. A. 35, dated 7th August, 1981, terminating the tenancy and demanding delivery of possession of the premises

on 30th September, 1981. The said notice was served on the appellant on 10th August, 1981, as borne out by the postal acknowledgment. The appellant sent a reply Ex: A-35, dated 22nd September, 1981, alleging that he had spent a sum of 1,92,900/ towards several improvements and that he can be evicted only after the payment of the expenditure incurred by him for such improvements. The liquidator in the rejoinder Ex. A. 37, dated 23rd September, 1981, has stated that the alleged improvements are not admitted and that at the same time the appellant is not entitled to make improvements without the permission of the landlord and as such the appellant cannot claim any relief regarding the improvements. The stand taken by both the parties resulted in the suit O.S. No. 1919 of 1981 on the file of the Court of the District Munsif, Tiruvannamalai, in which the liquidator prayed for the relief of possession in respect of the suit premises. In his answer to the suit claim the appellant herein in addition to what he had stated in the reply notice also took a legal plea that the lease being one for a manufacturing purpose is a lease from year to year and the 15 days notice given as per Ex. A-35 dated 17th August, 1981, is not valid under law and as such the respondent is not entitled to the relief of delivery of possession. Though annual rent is payable for the premises yet in view of the fact that there was no registered rent deed the appellant was not in a position to plead that the lease is from year to year. Hence the appellant chose to plead that the lease is one for a manufacturing purpose which will be deemed to be a lease from year to year u/s 106 of the Transfer of Property Act and the tenancy is terminable only by six months notice expiring with the end of the year of tenancy. It is contended that 15 days notice given by the liquidator is not valid in law. On the evidence and the authorities cited both the courts below came to the conclusion that the lease in question is not one for a manufacturing purpose and held that the notice Ex A. 35 is valid in law since the lease of immovable property will be deemed to be a lease from month to month terminable by 15 days notice ending with the tenancy month.

3. On the question of improvements both the courts below came to the conclusion that it is a matter for a separate suit and the same need not be considered while determining whether the liquidator is entitled to the relief of delivery of possession.

4. This concurrent finding on the question of law is challenged in this second appeal. The main legal question that arises for decision in this second appeal is whether the process of converting paddy into rice by separating the husk from paddy is a "manufacturing purpose".

5. Mr. R.S. Venkatachari, learned Counsel for the appellant, contends that in the process of converting paddy into rice a different substance comes into existence in the sense that paddy is not fit for human consumption whereas the rice can be consumed. By dehusking, paddy assumes a different name viz., rice. In view of the process involved and the emergence of a new product viz., rice, converting paddy into rice is a manufacturing purpose. On the other hand the contention of

Mr. T.R. Ramachandran, learned Counsel for the respondent, is that the conversion of paddy into rice by dehusking it is merely a process and cannot be termed as a manufacturing process as the product turned out is not altogether different from paddy. A number of decisions have been cited by both sides in respect of this question.

6. Mr. R.S. Venkatachari, learned Counsel for the appellant, relied on the following decisions in support of his contention that the conversion of paddy into rice is a manufacturing purpose. In the case reported in Ganesh Trading Co., Karnal Vs. State of Haryana and Another, , a case arising out of Punjab General Sales Tax Act, the Supreme Court held that it is not true to say that paddy continued to be paddy although rice is produced out of paddy even after dehusking. Rice and paddy are two different things in ordinary parlance and therefore when paddy is dehusked and rice is produced there has been a change in the identity of the goods. In the case reported in Babu Ram Jagdish Kumar and Others Vs. State of Punjab and Others, , a case again arising under the Punjab General Sales Tax Act, the Supreme Court held as follows:

It is argued that because paddy and rice are not different kinds of goods" but one and the same, inclusion of both paddy and rice in Schedule "C" to the Act would amount to imposition of double taxation under the Act. There is no merit in this contention also because the assumption that paddy and rice are one and the same is erroneous

Taking this view the Supreme Court held that the inclusion of both paddy and rice in the Schedule to the Punjab General Sales Tax Act will not amount to double taxation. In the case reported in State of Karnataka Vs. B. Raghurama Shetty and Others, , the Supreme Court held that rice and paddy are two different kinds of things in ordinary parlance and therefore when paddy is dehusked and rice produced there is a change in the identity of goods and in such a process the trader consumes paddy in the manufacture of rice which was a different commercial commodity for sale. On a reading of the above decisions it is seen the main question that arose in those cases was whether paddy and rice are to be taxed separately as different commodities. It is also seen that under the Schedule to the Sales Tax Acts in question paddy and rice are mentioned as different commodities. The Supreme Court in its reasoning for coming to the conclusion that paddy and rice are different articles refers to the process involved and termed it as a manufacturing purpose. In considering whether both paddy and rice are to be taxed under the Punjab Sales Tax Act, the Supreme Court came to the conclusion that paddy and rice are different commodities and hence the inclusion of both the commodities in the schedule to the said Act will not amount to double taxation. The Supreme Court sounded a note of warning in the case reported in P.C. Cheriyan Vs. Mst. Barfi Devi, , that the definitions of "manufacture" given in enactments such as the Factories Act or the Excise Act should not be blindly applied while interpreting the "manufacturing purposes" in Section 106 of the Transfer of Property Act. In some enactments, for instance in

the Excise Act, the term "manufacture" has been given an extended meaning as including in it "repairs" also. In the above case arising u/s 106 of the Transfer of Property Act the Supreme Court came to the conclusion that the repairs of motor vehicle and incidental manufacture of certain parts will not amount to a "manufacturing purpose" In the course of the judgment the Supreme Court observed as follows:

The expression "manufacturing purpose" has not been defined in the Transfer of Property Act. It has therefore, to be construed in its popular sense. According to the Permanent Edition of Words and Phrases, No. 26, manufacture" "implies a change but every change is not manufacture and yet every change in an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation, a new and different article must emerge having a distinctive name, character or use.

The Supreme Court held that the principles laid down in Federal Commissioner of Taxation v. Jack Zinader Proprietary Ltd. 78 C.L.R. 336, that the conversion of old fur clothing into other usable articles is a manufacturing purpose within the meaning of the Australian Sales Tax Act and is liable to be taxed under the Australian Sales Tax Act, cannot be applied to Section 106 of the Transfer of Property Act. In the above two cases arising under the Sales Tax Acts the primary question that had to be considered was whether paddy and rice are different commodities or the same commodity. Whether the process of converting paddy into rice is a manufacturing purpose did not arise for decision in the said cases. The observation that by means of a manufacturing process paddy was converted into rice while coming to a conclusion that paddy and rice are different commodities cannot be taken as laying down the ingredients of the term "manufacturing purpose".

7. Apart from the above decisions the purport of the word "manufacturing" occurring in Section 106 of the Transfer of Property Act had been dealt with in the following decision of the Supreme Court. In the case reported in Allenbury Engineers Pvt. Ltd. Vs. Ramkrishna Dalmia and Others, , the Supreme Court observed as follows:

The expression "manufacturing purposes" in Section 106 is used in its popular and dictionary meaning, the dictionary of its own for that expression. The burden of proving that the lease was for manufacturing purposes must for the purpose of Section 106 of the Transfer of Property Act, lie on the party who claims it to be so, in the present case the appellant-company. The burden is to establish that the exclusive or at least the dominant purpose of the lease was the manufacturing purpose: See C. Mackertich Vs. Steuart and Co., Ltd,

The word manufacture, according to dictionary meaning, is the making of article or material (now on large scale) by physical labour, mechanical power. (Shorter Oxford English Dictionary, Vol. 7,1203.) According to the Permanent Edition of Words and Phrases, Vol. 26 "manufacture" implies a change but every change is

not manufacture and yet every change in an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; new and different article must emerge having a distinctive name, character or use. "The word "manufacture" said Abbott, C. 3. in *R. v. Wheeler*³ cited in Stroud's Judicial Dictionary "has been generally understood in denote, either a thing made which is useful for its own sake and vendible as such, as a machine, stove, a telescope, and many others; or to mean an engine or instrument, or some part of an engine or instrument, to be employed either in the making of some previously known article, or in some other useful purpose, as a stocking frame, or a steam engine for raising water from mines; or it may perhaps extend also to a new process to be carried on by known implements or elements acting upon known substance, and ultimately producing from other known substance but producing it in a cheaper or more expeditious manner, or of a a better or more useful kind. No mere philosophical or abstract principle can answer to the word "manufactures", something of a corporeal and substantial nature- something that can be made by man from the matters subjected to his act and skill, or at the least some new made of employing practically his art and skill, is required to satisfy the word."

In the case reported in *State of Maharashtra Vs. The Central Provinces Manganese Ore Co. Ltd.*, , a case arising out of Central Provinces and Berar Sales Tax Act, the Supreme Court held that when goods got mixed up in the process of unloading without employing any mechanical or chemical process of manufacture it cannot be said a new product has been manufactured and the new product name is not a manufactured goods got out of the manufacturing process. In the case reported in *Idandas Vs. Anant Ramchandra Phadke (Dead) by Lrs.* , a case arising under a Section 106 of the Transfer of Property Act, the Supreme Court laid down the following tests to ascertain whether a lease has been granted for the purpose of manufacturing process:

1. That it must be proved that a certain commodity was produced.
2. That the process of production must involve either labour or machinery;
3. That the end product which came into existence after the manufacturing process is complete. It should have a different name and should be put to a different use, In other words the commodity should be so transformed to lose its original character.

Applying the above tests the Supreme Court held that conversion of wheat into flour is a manufacturing process in which all the tests were satisfied, We will have to apply the principles laid down in the decisions rendered u/s 106 of the Transfer of Property Act to find out whether converting paddy into rice will amount to a manufacturing purpose. In converting paddy into rice it cannot be said that (1) the paddy loses its shape and identification as in the case of wheat when it was converted into flour: (2) the end product viz., rice, cannot be said to be different from that of paddy: and (3) no human ingenuity is involved

in the process of conversion of paddy into rice.

8. Though the process of converting paddy into rice involves application and use of machinery and labour yet such use of machinery and labour cannot amount to a manufacturing purpose unless there is a complete transformation of the article beyond recognition. Applying all the tests laid down by the Supreme Court in *Idandas Vs. Anant Ramchandra Phadke (Dead) by Lrs*, rendered u/s 106 of the Transfer of Property Act it cannot be said that the conversion of paddy into rice is a manufacturing process as per Section 106 of the Transfer of Property Act. In view of the above conclusion the first contention raised by Mr. R.S. Venkatachari, learned Counsel appearing for the appellant will have to be negatived,

9. The next contention of Mr. R.S. Venkatachari is that any event in this case only annual rent is paid and as such the lease is one of year to year. No doubt in this case there is an unregistered lease deed reserving payment of annual rent. But it could not be received in evidence for want of registration in view of Section 107 of the Transfer of Property Act. Annual rent seems to have been paid and accepted in this case. The question is whether in such cases the lease can be deemed to be one of year to year. It has to be borne in mind that whatever may be the terms of the lease deed the same is inadmissible in evidence for want of registration. The said document is admissible only for the purpose of proving the nature of possession by the appellant. As per the decision reported in *Satish Chand Makhan and Others Vs. Govardhan Das Byas and Others*, tenant in occupation of the premises under unregistered lease deed can only be treated as a tenant holding over and notice to quit u/s 106 of the Transfer of Property Act is necessary. In the case reported in *Ram Kumar Das Vs. Jagadish Chandra Deb Dhabal Deb and Another*, an identical question arose for determination. In that case the Supreme Court held that in a lease where the lease was intended to be for a period exceeding one year, but the intention was not expressed in the proper legal form, it could not be given effect to. In the absence of a valid agreement, the rights of the parties were held to be regulated by law in the same manner as if no agreement existed at all. Following the principle laid down by the Supreme Court there is no difficulty in coming to the conclusion that from the payment of annual rent in this case an inference of lease from year to year cannot be drawn.

10. The next legal contention raised by Mr. R.S. Venkatachari, is that the appellant is a tenant as defined in the Tamil Nadu Buildings (Lease and Rent Control) Act VIII of 1960 and as such he can be evicted only by means of an order of the Rent Controller and the civil Court has no jurisdiction to entertain the suit as per Section 10 of the abovesaid Act. Mr. T.R. Ramachandran appearing for Mr. T.R. Rajagopalan, learned Counsel for the respondent contends that as per Section 20(iii) of the said Act any lease of a building under which the object of the tenancy is to run the business or industry with the fixtures, machinery, furniture or other articles belonging to the landlord and situated in such building is exempt from the provisions of the Act. If the object of the lease is to run a

business or an industry with the fixtures and machinery belonging to the landlord and situated in the building then the provisions of the Act are not attracted. Reliance is also placed upon the case reported in *M/s. Insherdas Shani & Bros v. Rajeswara Rao* (1968) 81 L.W. 531, where Ramamurthi, J. held that the lease of a cinema theatre with fixtures and machinery is a composite lease and hence the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 did not apply in spite of the fact that different amounts of rent were fixed for the building and fixtures. In the case reported in *S. Raja Ghetty and Others Vs. Jagannathadas Govindas and Others*, a Division Bench of this Court held that the provisions of the T.N.B.(L.&R.C.) Act XVIII of 1960 would not apply to the lease of a cinema theatre with furniture, fittings, talkie equipments, etc. In the case reported in *Pals Theaters and Others Vs. B. Abdul Gafoor Sahib and Others*, a Division Bench of this Court held that the lease of a cinema theatre with all equipments for exhibition of films is not a lease of the building but would be a composite lease. Applying the principles laid down in the above decisions to the facts of this case there is no difficulty in coming to the conclusion that the lease of a rice mill consisting of the premises and the rice milling machinery belonging to the landlord and erected in the building is exempt from the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act XVIII of 1960 as per Section 30 the said Act.

11. In view of the conclusion arrived at on the points raised by the appellant, this second appeal is dismissed. However, there will be no order as to costs.