(2001) 07 KAR CK 0096

In the Karnataka High Court

Case No : Writ Petition No. 19721 of 2001

R. Sreekanth and Another — APPELLANT

Vs

The Divisional Commissioner, Bangalore Division and Others — RESPONDENT

Date of Decision : 03-07-2001

Acts Referred:

Karnataka Rent Control Act, 1961 — Section 3 (r)
Transfer of Property Act, 1882 — Section 105, 107

Citation : (2003) 2 KarLJ 231

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : H.N. Nagamohan Das and Associates, for the Appellant; P. Satyanarayana, Additional Govt. Advocate for Respondents 1 and 2 and K.G. Raghavan, for Caveator Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

V. Gopala Gowda, J.—The petitioners are the lessees of Anjana Theatre in Bangalore City. They have filed this writ petition seeking to quash the endorsement at Annexure-C, dated 24-3-2001 issued by the 2nd respondent refusing to renew the licence of the theatre on the ground that the period of lease is over and the order at Annexure-D, dated 4-5-2001 rejecting the appeal preferred against the order passed by the 2nd respondent. A direction is sought to the 2nd respondent to renew the licence of the theatre.

2. The brief facts of this case are, Anjana Theatre belongs to the 3rd respondent-M/s. Anjana Enterprises. The petitioners took the said theatre on lease under the lease deed at Annexure-A, dated 25-7-1995. The period of lease was five years and eight months from 25.-7-1995 to 25-3-2001. Pursuant to the lease deed, the petitioners were put in possession and they were exhibiting the films in the theatre. It is stated that on 23-11-2000 the 3rd respondent attempted to dispossess the petitioners from the theatre and hence the petitioners filed suit in O.S. No. 7899 of 2000 in the City Civil Court at Bangalore. In the said suit

temporary injunction had been granted protecting the possession of the petitioners. The petitioners submitted application on 20-3-2001 to the 2nd respondent for renewal of licence. Pursuant to the said application the 2nd respondent issued the impugned endorsement at Annexure-C stating that since the period of lease is expired, renewal cannot be granted. The petitioners filed appeal before the first respondent-Divisional Commissioner challenging the said endorsement. The appeal had been rejected by the impugned order at Annexure-D. The petitioners have filed this writ petition seeking the aforesaid reliefs.

3. In the objections filed by the 3rd respondent to the writ petition, the claim of the petitioners that they are in lawful possession of the theatre is denied. It is stated that since the period of lease came to an end, petitioners have no right over the theatre. It is contended that the theatre was not taken on lease by the petitioners but they were given licence to run the theatre on behalf of the 3rd respondent. A contention is taken that the rent/license fee per month works out to Rs. 8,823.52 p.m. and therefore eviction of tenants under the Karnataka Rent Control Act is not applicable in view of Section 31 of the said Act. Defending the impugned endorsement and the order, the 3rd respondent sought for dismissal of the writ petition.

4. Mr. Nagamohan Das, learned Counsel for the petitioners contended that the petitioners are in possession and enjoyment of the theatre and they have been screening the films on the basis of the lease deed, which is seriously disputed by the 3rd respondent. It is contended that even though the lease deed at Annexure-A though not registered, having regard to the terms and conditions mentioned therein it has the character of lease deed and not licence. It is contended that though the period mentioned therein had expired, by efflux of time the petitioners continued as statutory tenants and therefore they are not in juridical possession but are in lawful possession as per Rule 6 of the Karnataka Cinemas Regulation Rules. The Counsel submits that the 2nd respondent has passed the impugned order refusing to renew the licence on the erroneous conclusion that the petitioners are not in lawful possession and the said finding has been wrongly affirmed by the first respondent while rejecting the appeal. The Counsel has placed reliance upon the following decisions in support of his contentions.-

1. M.C. Chockalingam and Others Vs. V. Manickavasagam and Others, ;

2. Doddappa and Others Vs. Basavanneppa Basappa Chinniwalar, ;

3. Satish Chand Makhan and Others Vs. Govardhan Das Byas and Others, .;

4. Venugopal Vs. District Magistrate,

Mr. Nagamohan Das submitted that the authorities below failed to consider the legal submissions made before them and their findings are erroneous apparent on the face of the record. Therefore, he prays that this Court should exercise the discretionary power and grant reliefs to the petitioners.

5. Mr. K.G. Raghavan, learned Counsel for the 3rd respondent justified the

impugned orders. He contends that the petitioners are only licensees and they were permitted to run the theatre for a particular period and the said period was over on 25-3-2001. Thereafter, the petitioners are not in lawful possession as required u/s 8 of the Karnataka Cinemas Regulation Act read with Rule 6 of the Rules framed thereunder. The Counsel contends that the finding recorded by the authorities below are based on facts and the same shall not be disturbed. The learned Counsel placed reliance upon the following decisions in support of his submissions.-

1. M.C. Chockalingam and Others Vs. V. Manickavasagam and Others, ;

2. Technicians Studio Private Ltd. Vs. Smt. Lila Ghosh and Another, .;

3. M/s. Bhagyashree Combines, Bellary Vs. The District Magistrate, Bellary District, Bellary and Others, ;

4. Bajaj Auto Limited v. Behari Lal Kohli. The learned Counsel has sought for dismissal of the writ petition.

6. Sri P. Satyanarayana, learned Additional Government Advocate supported the 3rd respondent justifying the impugned orders.

7. On the basis of the pleadings and the rival contentions urged, the following points arise for consideration:

(a) Whether the petitioners are statutory tenants of the theatre in question and are in lawful possession thereof?

(b) Whether the impugned endorsement and the order are legal and valid?

8. In order to answer the above points, it is necessary to refer to the relevant covenants of the lease deed and the definition of ''tenant''. The crux of the matter revolves round the interpretation of Clauses 1 and 2 of the lease deed at Annexure-A and the same is extracted below:

"1. The lease period is five years and eight months commencing from 25-7-1995 to 25-3-2001 certain. Beyond this date, the lessees have no right, to screen films in Anjana Theatre. The lessees shall not demand for the extension of any further lease period of this theatre under any circumstances. If the lessees fail to vacate the demised premises in the condition in which it was delivered to them after the lease period which expires on 25-3-2001 with all machinery and fixtures as noted in paras (5) and (6) below the lessees shall pay monthly damage of Rs. 30,000/- (Rupees Thirty Thousand Only) to the lessors and the lessees will be held liable for the future legal consequences".

2. The lessees have paid to the lessor a sum of Rs. 6,00,000/- (Rupees Six Lakhs Only) towards screening of films in the theatre for live years and eight months only in advance, instead of paying monthly rent every month. The amount of Rs. 6,00,000/- (Rupees Six Lakhs Only) is not refundable. It carries no interest".

The word ''tenant'' is defined u/s 3(r) of the Karnataka Rent Control Act and the same is as under:

"3(r) "Tenant" means any person by whom or on whose account rent is payable for a premises and includes the surviving spouse or any son or daughter or father or mother of a deceased tenant who had been living with the tenant in the premises as a member of the tenant''s family upto the death of the tenant and a person continuing in possession after the termination of the tenancy in favour, but does not include a person placed in occupation of a premises by its tenant or a person to whom the collection of rents or fees in a public market, cart stand or slaughterhouse or of rents for shops has been framed out or leased by a local authority".

9. The period of lease under the lease deed is more than a year and it is an unregistered document. Therefore, it is necessary to look into Section 107 of the Transfer of Property Act, 1882 (hereinafter referred to as ''TP Act'') and it reads thus:

"107. A lease of immovable property from year to year, or for any term exceeding one year, or reserving, an yearly rent, can be made only by registered instrument".

As per Section 17(1)(d) of the Indian Registration Act, 1908 to place reliance upon the lease deed, the same was required compulsory registration. In the instant case since the lease deed is not registered, it is a void document as held by the Supreme Court in the case of Anthony Vs. K.C. Ittoop and Sons and Others, (which is hereinafter referred to as ''Anthony''s case''). In view of the law laid down by the Apex Court after interpretation of the provisions of Sections 105 and 107 of the Transfer of Property Act and the relevant provisions of the Kerala Buildings (Lease and Rent Control) Act, 1965, the transfer of property in favour of the petitioner is held to be lease and occupation of the premises on the basis of void documents are held to be lawful as they are statutory tenants.

10. The effect of lease based on unregistered document has been considered by the Supreme Court in paragraphs 13 to 16 in Anthony''s case, supra, and it has been laid down as under.--

"13. When lease is a transfer of a right to enjoy the property and such transfer can be made expressly or by implication, the mere fact that an unregistered instrument came into existence would not stand in the way of the Court to determine whether there was in fact a lease otherwise than through such deed.

14. When it is admitted by both sides that the appellant was inducted into the possession of the building by the owner thereof and that the appellant was paying monthly rent or had agreed to pay rent in respect of the building, the legal character of appellant''s possession has to be attributed to a jural relationship between the parties. Such a jural relationship, on the fact situation of this case, cannot be placed anything different from that of lessor and lessee falling within the purview of the second paragraph of Section 107 of the TP Act

extracted above. From the pleadings of the parties there is no possibility for holding that the nature of possession of the appellant in respect of the building is anything other than as a lessee.

15. Shri P. Krishnamoorthy, learned Senior Counsel contended that a lease need not necessarily be the corollary of such a situation as possession of the appellant could as well be permissive. We are unable to agree with the submission on the fact situation of this case that the appellant''s possession of the building can be one of mere permissive nature without any right or liabilities attached to it. When it is admitted that legal possession of the building has been transferred to the appellant there is no scope for countenancing even a case of licence. A transfer of right in the building for enjoyment, of which the consideration of payment of monthly rent has been fixed, can reasonably be presumed. Since the lease could not fall within the first paragraph of Section 107 it could not have been for a period exceeding one year. The further presumption is that the lease would fall within the ambit of residuary second paragraph of Section 107 of the TP Act.

16. Taking a different view would be contrary to the reality when parties clearly intended to create a lease though the document which they executed had not gone into the processes of registration. That lacuna had affected the validity of the document, but what had happened between the parties in respect of the property became a reality. Non-registration of the document had caused only two consequences. One is that no lease exceeding one year was created. Second is that the instrument became useless so far as creation of the lease is concerned. Nonetheless the presumption that a lease not exceeding one year stood created by conduct of parties remains unrebutted".

11. In this case it is not in dispute that the petitioners had been inducted into the theatre pursuant to the lease deed at Annexure-A and they were put in possession thereof. Thus, there is transfer of immovable property in favour of the petitioners as stipulated in Section 105 of the TP Act pursuant to the lease deed. Now, the point to be resolved is, whether the petitioners were lessees as claimed by them or they are licensees as asserted by the 3rd respondent.

12. In order to resolve the above point, the intention of the parties is to be examined. The very instrument at Annexure-A is titled as ''Lease Deed'' and throughout in the said deed the words ''Lessor'' and ''Lessee'' are used. In Clause 2 of the said deed, which is extracted above, it is clearly stated that the sum of Rs. 6,00,000/- paid by the lessees was for five years and eight months and the same was paid in advance instead of paying monthly rent every month. It is thus clear that instead of paying the rent month-to-month, the total amount for the period of lease was received in advance. The recitals in the lease deed is binding upon the 3rd respondent as the execution of the said document is not in dispute. Having agreed so, it is not open now for the 3rd respondent to turn round and say that it was not a ''lease'' but ''licence'' and such licence was given to the petitioners to run the theatre for and on behalf of him. If really the petitioners were permitted to run the theatre for and on behalf of the 3rd respondent, the

terms and conditions of the lease would have been entirely different. The 3rd respondent would not have received the amount of Rs. 6,00,000/- from the petitioners for the period mentioned therein and there was no occasion for the petitioners to pay such huge amount to the 3rd respondent. On the other hand, the 3rd respondent himself would have paid amount to the petitioners for the services rendered by them and the money realised from the sale of tickets would have been taken by the 3rd respondent. The stand taken by the 3rd respondent in this regard is wholly untenable and such a stand is taken to suit his convenience. It is pertinent to note that in paragraph 9 of the objections filed, the 3rd respondent has admitted that the monthly rental of the premises would be Rs. 8,823.52. In the light of this admitted position, and the law laid down in Anthony''s case, referred to supra, the plea of 3rd respondent that the petitioners were licensees of the theatre is rejected.

13. It is no doubt true that the lease deed is not registered and it is void. In view of the law laid down by the Apex Court in the case of Anthony, supra at paragraphs 13 to 16 extracted above, it has to be held that non-registration of lease deed does not take away the relationship of landlord and tenants between the 3rd respondent and the petitioners. Therefore, it is held that the petitioners are statutory tenants under the 3rd respondent and their possession is lawful.

14. The next aspect to be dealt with is, what is the status of petitioners after the expiry of lease period under the lease deed? The answer is very simple. Since petitioners are in lawful possession, until they are evicted under due process of law, their possession continues to be as such. In order to evict them, the 3rd respondent has to approach the Civil Court and file original suit for obtaining possession of the theatre as the Karnataka Rent Control Act, 1961 is not applicable to the instant case in view of Section 31 of the said Act. The relevant portion of the said section reads as under.-

"31. Exemption in respect of certain buildings.--Nothing contained in this part shall apply to a non-residential building the monthly rent of which exceeds five hundred rupees or the annual rental value of which exceeds six thousand rupees".

15. Admittedly, the theatre is a non-residential building. As admitted by the 3rd respondent in paragraph 9 of the statement of objections, the monthly rental of the theatre would be Rs. 8,823.52 p.m. for a period of 68 months if the amount of Rs. 6,00,000/- paid by the petitioners to the third respondent under the lease deed is worked out. Hence, the Karnataka Rent Control Act is not applicable for tiling eviction petition. Therefore, for the eviction of the petitioners, the 3rd respondent has to file a suit for ejection, after determining lease of the premises.

16. The decision in Anthony''s case, supra, squarely applies to the case on hand. Therefore, the decisions relied upon by the learned Counsel for the 3rd respondent are of no assistance to the 3rd respondent.

17. Adverting to the impugned endorsement at Annexure-C, since it is held that the possession of the petitioners is lawful and the 3rd respondent has to institute

suit for their ejectment, the reasons assigned in the impugned endorsement stands nullified. The petitioners challenged the impugned endorsement before the Appellate Authority. The appeal was disposed of affirming the endorsement by placing reliance upon Rule 6 of the Karnataka Cinema Regulation Rules, which states lawful possession and also placing reliance upon the Division Bench judgment in M/s. Bhagyashree Combines case, supra and Apex Court in the case of M.C. Chockalingam, supra. The petitioners took possession of the theatre by virtue of the lease deed, pursuant to which possession was delivered to them. Thus, they entered into the possession of the theatre lawfully. After the expiry of lease period, under the lease deed referred to supra their continuance in possession will not be unlawful until they are evicted by due process of law as they are the statutory tenants under the provisions of the Karnataka Rent Control Act, in view of the law impounded by the Apex Court in Anthony''s case referred to supra. In this view of the matter, both the impugned endorsement and the order of the Appellate Authority are bad in law and are liable to be quashed.

18. For the reasons stated supra, the writ petition is allowed. The impugned endorsement at Annexure-C and the order at Annexure-D are quashed. The 2nd respondent is directed to reconsider the matter in the light of the law declared by the Supreme Court in Anthony''s case, supra and pass appropriate orders within two weeks from the date of receipt of a copy of this order.

