

(1999) 03 MAD CK 0090
In the Madras High Court

Ram Mohan and Co. and Another	APPELLANT
Vs	
Ganesar Ginning Co. P. Ltd. and Others	RESPONDENT

Date of Decision : 19-03-1999

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : (1999) 03 MAD CK 0090

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

Bench : Division Bench

Judgement

K.P. Sivasubramaniam, J.—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 10.11.1998 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 fell due and for a consequential injunction against the defendant. The suit property admittedly belongs to M/s. Ganesar Ginning Company, the 11th defendant in the suit (hereinafter called "landlord/first respondent) and according to the appellants the property in 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 landlord against the plaintiffs and their subtenants 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. On 12.5.1987 the landlord had issued a legal notice to quit in accordance with Section 106 of the Transfer of Property Act and the period of 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 subtenant 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 landlord 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 misuse 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, Officeroom, 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 plaintiffs had inducted the third party in the suit property unauthorisedly without the consent of the land owner. Therefore, the subtenants 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 plaintiff 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 inasmuch 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 situated in the property and the same constituted distinct building and cannot be clubbed along with tire 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 provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act were not applicable.

(B) The sub-lease 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 appellants/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 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. 512 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 appeal in A.S. Nos. 215 of 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:

(1) The lease was not a composite lease and

(i) 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 contend 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 conversion of the lease nor any acquiescence of consequent 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 continuous 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 these issues depending 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 registerable 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 document recording partial partition being compulsorily registerable 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 (A.R. 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 in *Ranganathan v. Venkatesan* (1995)1 M.L.J., 155, 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 Mudanar v. Subba Reddiar* (1950)2 M.L.J. 818 , 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 two 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 narrowed 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 as 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 case reported in *Ranganathan v. Venkatesan* (1995)1 M.L.J. 159 and *Swadharma Swarajya Sangha Vs. Indian Commerce and Industries Company (P) Ltd.*, : *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.

Navreet Parkashan. It has also been held that the lease deed, Ex.P-1, which was as 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 contentions of the learned Counsel for the landlady had no substance. It has also been found on a consideration of the rent receipt Exs.R-1 to R-10 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 issues 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.P-1 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 pertain 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 leasee/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 sought 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 inasmuch as the suit ended in their favour and there was no scope for the lessee to have filed an appeal against a 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 Brothers Vs. Bluemount Switchgears Associates (Pte.) Ltd. and Others*, ; (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) *Ramesh Chandra v. Shiv Charan Dass* 1990 S.C.C. 633.

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. in *Mrs. Achamma George Vs. R. Krishnaswamy*, . In that judgment the issue which arose for consideration is as to whether an *ex parte* decree would operate as *res judicata*. The parties against whom the *ex parte* 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 pleading and evidence on the side of the lessee appellant, to held 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 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 paragraphs 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, .

27. 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 and Others Vs. Sri Ranganathaswamy Temple, ; (c) Kapanipathi Rao v. Meyyappan, 86 L W. 629; (d) Bombay Burmah Trading Corporation Ltd. v. A.T. Narayanaswami Pillai, 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 lease/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 a that at any rate the purpose was converted by efflux of time with the consent of the lessor.

(a) Exs.A-22 and 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 had 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 Rollar Gins with line shafts with pedestals, its

accessories, foundation belts, 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 admission 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 C.S. No. 894 of 1991 which was filed in (sic) 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 acquiescences 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 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 conclusion of the appellate court and with 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 subtenants have already suffered a decree for delivery to possession and no appeal had been filed by them. Even otherwise they are bound by the decree

against the chief-tenant.