
(1996) 01 MAD CK 0020
In the Madras High Court

S. Kandasami

APPELLANT

Vs

Aparanji Chettiar

RESPONDENT

Date of Decision : 05-01-1996

Acts Referred:

Citation : (1996) 1 MLJ 463

Hon'ble Judges : Srinivasan, J

Bench : Division Bench

Judgement

Srinivasan, J.—The defendant, who failed in the courts below, has preferred this second appeal. He entered possession of the suit property,

which is a building under a contract with one Velu, who was the owner of the building on 2.9.1975. He paid a sum of Rs. 4,000 to the said Velu,

who executed a promissory Note, marked as Ex. B-1. As per the recitals in the promissory note, interest was payable at the rate of 12% p.a. He

gave another sum of Rs. 1,000 on 1.5.76 as evident from Ex. B-2 and another promissory note was executed under which also, Velu had agreed

to pay interest at the rate of 12% per annum.

2. On the date of the execution of the first promissory note, a document was brought into existence, which is marked in the appellate court as Ex.

B-3. The caption in the document is (rental agreement muchalika). In the preamble, it is described as . It can be roughly translated into English as

a document of deposit muchalika relating to house rent"". In the body of the document, it is stated that the owner of the building had received Rs.

4,000 and had executed a promissory note for the same. It is further recited that for the purpose of interest due on the promissory note, the

defendant shall enjoy the property for a period of five years by residing therein.

There is no rent for the house and no interest for the promissory notes, as has been decided by the Panchayatdars and accepted by the parties thereto. That portion of the document reads as follows:

The next part of the document reads that at the expiry of the period of five years of enjoyment, the party of the first part, that is, the owner of the building, shall return the sum of Rs. 4,000 to the party of the second part and get possession of the property. It is also recited that even if the party of the second part does not reside in the house and simply keeps it locked, there is no question of payment of any interest on the amount given. It is also recited that if any repair is to be effected during the period of five years, it should be carried out by the party of the second part i.e., the defendant herein. The tax for the house is to be paid by the party of the first part i.e., the owner. Two copies of the document were made out, one copy was kept by the owner and the other given to the defendant.

3. The owner of the building, viz. Velu transferred the property by sale to the respondent herein under Ex. A-3 dated 6.12.1977 for a sum of Rs. 20,000. When the respondent sought eviction after the expiry of the five years, the appellant resisted the suit.

4. But, even before the filing of the suit, by the respondent herein in O.S. No. 1216 of 1980, the appellant filed O.S. No. 1006 of 1980 on the file of District Munsif, Sankari at Salem for an injunction restraining the respondent from interfering with his possession, claiming that he had a prior agreement for sale in his favour from Velu. That suit was transferred to the file of Sub Court, Salem and renumbered as O.S. No. 108 of 1982.

Both the suits were tried together. While the suit by the respondent was decreed, the suit of the appellant was dismissed. Two appeals were filed by the appellant and both of them were dismissed by the District Judge, Salem. The appellant has preferred this second appeal only against the judgment arising out of the suit for recovery of possession filed by the respondent. The appellant is not pursuing the suit filed by him for injunction, thus giving up his plea that he had an agreement for sale in his favour.

5. In the present suit, the defence raised by the appellant is that the document dated 2.9.1975 is a deed of lease and that the appellant is a lessee in that property. It is his contention that the lease is not terminated by a proper notice, as required by the provision of Transfer of Property Act and

that the appellant is entitled to the benefits of Tamil Nadu Buildings (Lease and Rent Control) Act, Act 18 of 1960 as amended by Act 23 of

1973. That contention has been rejected by both the courts below. The appellate court has held that the transaction is one of usufructuary

mortgage and on payment of money by the plaintiff to the defendant, he is bound to deliver possession to the plaintiff.

6. It is the contention of learned Counsel for the appellant that a perusal of the document shows that it is only a lease deed and a tenancy has been

brought into existence. He places reliance on the caption of the document at its top and the recital that the document relates to house rent as well

as the recital that a sum of Rs. 4,000 was received by the owner of the building as security for the rent. On the other hand, learned Counsel for the

respondent points out that the document is very clear in stating that no rent is payable for the building and no interest is payable for the loan. It is

also submitted that if at all it is only an anomalous transaction and cannot be treated as a lease. Further, it is contended that even if it is a lease, the

period has come to an end and the suit has been filed immediately after the expiry of the period and no notice is necessary for termination. It is also

submitted on behalf of the respondent that the appellant had denied the title of the respondent and filed a suit for injunction on the footing that he

was entitled to purchase the property under an agreement of sale and therefore he cannot claim any right of tenancy.

7. In my opinion, a perusal of the document shows that it is an anomalous transaction, which cannot be brought under any legal label either as a

lease or as a mortgage. But, it is very clear that the amount paid by the appellant to the previous owner of the building was only a loan and a

promissory note was executed on the very same date. Instead of paying interest for the loan, the owner permitted the appellant herein to reside in

the house. I have already extracted the recital, which says that that for the purpose of payment of interest on the amount, the appellant is to reside

in the house for five years and enjoy the same. Even though the caption is to the effect that it is a rental agreement muchalika, the nomenclature

cannot conclude the real nature of the transaction. It is a general rule that the law does not impute intention to enter into legal relationship where the

circumstances and the conduct of the parties negative any intention of that kind. If the court can find the true and real relationship between the

parties notwithstanding the ornamentation or exaggeration of the parties, the court should give relief according to law see Lakshmiammal Vs.

Sivakamu Natesan, . In my view, it is only anomalous transaction in which the appellant was put into possession of the property for a period of five

years and at the end of which he should deliver back possession of the property on receipt of the amount lent by him to the owner of the building.

Admittedly, the amount has been repaid to the appellant and he is obliged to deliver possession of the property.

8. Even assuming that it can be treated as a lease for a fixed period, it has come to an end and there is no holding over as no rent was either paid

by the appellant or accepted by the respondent. Hence, the respondent is entitled to maintain the suit for recovery of possession on the expiry of

the period of lease even if it is held that it is a lease transaction.

9. Thirdly, the appellant has denied the title of the respondent and he cannot claim at the same time that he is entitled to continue in possession

unless the lease is terminated.

10. There is a plea of availability of the benefit under the Tamil Nadu Buildings (Lease and Rent Control) Act, which has not been established by

the appellant. The trial court has given a finding on issue No. 5, pointing out that there was no material on record to show that the building is

situated in a major panchayat. The trial court has held that the Act is not applicable and the appellant is not entitled to the benefits of the Act. That

finding was not challenged before the lower appellate court. At any rate, no material has been placed before court that the property is situated in a

major Panchayat and that the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, would apply.

11. In the circumstances, I have no hesitation to uphold the decree for possession passed by the courts below. The second appeal fails and the

same is dismissed. No costs.

12. There is a memorandum of cross objections filed by the respondent in the appeal challenging the reduction of mesne profits by the appellate

court. While the trial court fixed the profits at Rs. 100 p.m., the appellate court has reduced the same to Rs. 50 p.m. The evidence on record is not

sufficient to warrant the award of Rs. 100 p. m. as has been done by the trial court. I do not find any justification to interfere with the finding of the

lower appellate court on that question. Hence, the memorandum of cross objections is also dismissed. No costs.