
(1999) 10 MAD CK 0008
In the Madras High Court
Case No : Second Appeal No.1840 of 1998

Sengappan

APPELLANT

Vs

Arumbatha Veda Vinayagar Temple and 10 Others

RESPONDENT

Date of Decision : 23-10-1999

Acts Referred:

Evidence Act, 1872 — Section 116

Registration Act, 1908 — Section 17, 49

Transfer of Property Act, 1882 — Section 106, 107

Citation : (1999) 10 MAD CK 0008

Hon'ble Judges : S.S. Subramuni, J

Bench : Single Bench

Advocate : R. Subramanian, for the Appellant; SP. L. Palaniappan, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Subramuni, J.—The defendant in O.S.No.203 of 1992 on the file of the First Additional District Munsif Court at Pondicherry is the

appellant. The plaintiff filed the suit for eviction and for recovery of arrears of rent. Ex. A.3 is the lease deed dated 1.10.1980. It is stated in the

plaint that the defendant in the year 1980 approached the plaintiff for taking of lease of the vacant site which is scheduled in the plaint for his,

residence and the plaintiff agreed for the same and on 1.10.1980, the defendant executed the lease deed, agreeing to pay monthly rent of Rs.5/-

and the lease period agreed is three years and an amount of Rs.50/- was also paid as advance. The lease period expired on 1.10.1983 and the

defendant is holding over the tenancy. The defendant has defaulted in paying rent from October 1990 and continued to default till date. A notice

was issued terminating the tenancy on 23.1991. But the defendant has neither

vacated, the premises nor he has paid the rental arrears. It is further alleged that the property is required for the own occupation of the plaintiff. A suit was therefore laid for evicting the defendant from the plaint

scheduled property and also for recovery of arrears of rent from the month of October 1990 to February 1992 at the rate of Rs.5/- per month.

2. In the written statement filed by the defendant, he contended that the suit is not maintainable. He further averred that he has put up the building

and the building is situated in Government Poramboke land. He has also admitted in paragraph 12 of the written statement that when the plaintiff

demanding the lease agreement from the defendant and since the defendant is a new entrant to the village in 1980 and since he did not know the

title of the occupied area, he gave a lease agreement to the plaintiff. But later, on verification, he found that it is a Government Poramboke Land.

According to him, he has not paid rent at any time and the suit is liable to be dismissed.

3. The trial Court as well as the lower Appellate Court decreed the suit. The Trial Court held that Ex. A.3 was properly executed by the appellant

and he cannot deny the title of the lessor u/s 116 of the Evidence Act. The Trial Court held that the defendant came into the possession of the suit

property only on the basis of the lease executed in favour of plaintiff and all the other grounds are also found to be in favour of the plaintiff and the

suit was decreed.

4. When the matter was taken in appeal, the lower Appellate Court also did not think of deviating from the reasoning adopted by the trial Court.

The appeal was dismissed with costs.

5. The concurrent judgment is assailed in the Second Appeal on the following substantial questions of law:-

(i) Whether the lower appellate Court was right in holding that Ex. A.2 being unregistered and insufficiently stamped could be looked into to prove the

relationship of landlord and tenant?

(ii) Whether Ex. A.2 being unregistered and insufficiently stamped could be admitted in evidence?

(iii) Whether the reliance placed by the learned Subordinate Judge on the Proviso to Section 49 of the Registration Act is correct in law?

6. "The only point that is urged by the Learned Counsel for the appellant is that

the lease deed dated 1.10.1980 being for a term exceeding one year is compulsorily registerable and having not registered it cannot be admitted in evidence for any purpose. A further contention has also been raised that the lease deed is not stamped properly and therefore, it shall not be looked into even for a collateral purpose.

7. As against that contention, Learned Counsel for the respondent submitted that the document dated 1.10.1980 is created as a tenancy at Will

and therefore did not require, registration. It is further contended that at the time when the occupant was admitted in evidence, no objection was

raised on such admissibility since it is not properly stamped. It is further contended that once it has been admitted in evidence, the same shall not be

called in question at any stage of the proceedings thereafter.

8. If is further argued by the Learned Counsel for the respondent that the document dated 1.10.1980 was the result of prior negotiation and atleast

for the purpose of providing prior negotiation Ex. A.3 can be looked into.

9. Heard both sides.

10. Ex. A.3, the document dated 1.10.1993 reads thus:-

11. Since both the parties agreed for the lease deed, the only question that requires consideration is whether the document requires registration u/s

17 of the. Indian Registration Act. Learned Counsel for the appellant submitted that the fixed term is provided and the same exceeds one year, it is

compulsorily registered. As against the said contention, it is submitted by the counsel for the respondent that even though the term is fixed, if the

parties are given liberty to terminate the arrangement by notice, that will amount to tenancy.

12. It is better to extract that portion of Section 107 of the Transfer of Property Act which is relevant for our purpose. It is reads thus:-

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

registered instrument.

In Mulla's ""The Transfer of Property Act"" 8th Edition commenting Sections 106 and 107 at page nos.835 and 836, the learned author has said

thus:-

The reservation of a yearly rent creates a presumption that the lease is from

year to year, but this presumption may be rebutted, having regard to the other parts of the instrument (x). As the Sections, both of this Act and the Registration Act, refer to leases from year to year as well as to leases reserving a yearly rent, it would appear that registration is necessary whenever the rent is reserved yearly (y). The Section also has no application to a lease reserving a yearly rent but containing a clause enabling the lessee to surrender possession at Will, for this is a tenancy at Will.

13. In *Ghasi Ram v. Malomy Club-through Seth Chiranji Lal* (AIR 1923 Allahabad 382 (2)) the similar question came for consideration which

reads thus:-

On the very words of the agreement, dated the 24th November, 1898, the suit was bound to succeed. This document which purports to be one

for 30 years and reserves an yearly rent of Rs.4-8 says that the defendant will vacate the land in case he fails to pay the rent reserved or whenever

the Board, the lessor, requires him to do so. It is clear from this condition that the lease could not be said to be for a term exceeding one year as

the Board could on the very day succeeding the grant of the lease ask him to vacate the land. The lease therefore did not require registration.

14. Similar question came up for consideration in the recent judgment reported in *Narayan Balkrishna Vs. Shivshankardas Shivilaldas*, . At page

495 it reads thus:-

The relations between the parties must be governed by the terms of this document. This is not a Government village and in view of the definition of

an occupant in the Land Revenue Code, which means a holder of unalienated land and tenants cannot be occupants. They can only claim to be

permanent tenants. They can only to be permanent lease by the plaintiff. The first Court found that the execution of this kabuliyat was not proved,

but the lower appellate Court has found it proved. That is a finding of fact which must be accepted. It has been contended by the learned

advocates for the appellant that Ex. 40 being a lease from year to year, requires registration. A similar point came before me in regard to the same

plaintiff regarding land in another village, and the judgment is reported in *Pandu v. Shivashankaradas* (1928) 118I.C.702. I only prefer to that case,

because the cases on the question of the compulsory registration of tenancies-at-will are collected there, or some of them. In my opinion, Ex. 40 is

a tenancy-at-will, because the lesser has the power to eject the lessee. He might even do so on the day after the lease was executed, and that is

contained in the sentence, T will without any objection, vacate and deliver the said numbers when you demand the same. ""It has been argued that

the lessee equally has the right to gave up the land whenever he likes, and that will prevent it being a tenancy-at-will, but every tenant unless he

cares to be a tenant for a fixed term, of years, must necessarily be able to give up the land if he wishes. In my opinion, this document, Ex. 40 is

clearly a tenancy-at-will, and as such it does not require registration. The cases which have been quoted on this point, are Khuda Baksha v. Sheo

Din (1886) 8 All 405 : (1886) A.W.N.170, Khavali v. Hussain Bakhsh (1886) 8 All. 198 : (1886) A.W.N. 56, Apu Budgavda v. Narhari Annjee

(1878) 3 Bom 21 Benin Menahim Yousaf Vs. John Poleologo, Jaglivandas Javhardas v. Narayan (1884) 8 Bom 493. In addition to these, Jivaraj

Gopal v. Atmeram Dayaram (1889) 14 Bom 319 and Rathnasabapathv v. Venkatachalam (1891) 14 Madras 247 are quoted in Pandu v.

Shivshankaradas (1928) 118 S.C.702. If therefore, the lease does not require registration, and that was a point which was not taken in either of

the Courts below, the case must be decided on the contractual relations between the parties which are evidenced by it.

15. In T.K.Subramania Pillai v. The Bennington Committee through its Secretary, Srivilliputhur (1987-2-M.L.J.39) at page 44, paragraph 17 of

the judgment Mr. Justice M. Srinivasan as he then was, has also taken the same view and taking into consideration, the other decision, the learned

Judge has held thus:-(relevant portion)

Before concluding, I should refer to one another aspect of the matter. The lease deeds Ex. A1 to A7 entered into between the defendant's brother

and the plaintiff are unregistered lease deeds. In the beginning of the argument, Learned Counsel for the defendant submitted that they being

unregistered documents were not admissible in evidence. But he also fairly admitted that the objection was not raised in the Courts below. To this,

the answer of Mr. Lakshminarayana Reddy is that the lease deeds do not require any registration as they contain a clause enabling the landlord to

terminate the lease whenever it wants to do so. In both the lease deeds, there are clauses to the effect that whenever the landlord wanted the

property for this purpose, the tenancy could be terminated and the tenant should vacate within a period of three months after the intimation from

the landlord. Of course, it must be pointed out that both the lease deeds prescribed a period of three years as the life of the lease. According to the

Learned Counsel for the respondent if there is a clause which provides for termination of the lease at any time when the landlord so desires that

would make it a tenancy at Will and it will not require registration. He relies upon the decisions of this Court in His Holiness Sri-La-Sri

Ambalavana Pandara Sannathi Avergal Vs. State of Tamil Nadu and Another, : Ambalavana Pandara Sannathi Avergal Vs. State of Tamil Nadu

and Another, Indian Decision New Series, 14 Madras 271 and Chittilappalli Mathai Vs. Chittilappalli Kochouseph, . The former is that of a

Division Bench. It was held by the Division Bench that if a lease deed contained a clause whereby the tenancy thereunder was absolutely

determinable at any moment at the option of the lessor then the deed was not compulsorily registerable, notwithstanding that it also contained

provisions for an ""annual rental"", and for payment of ""rent in advance each year"". That decision has been followed by a Single Judge in the latter

case. There is also a decision of the Allahabad High Court in Kishori v. Ram Sharup, (1966) 1 All 229 to the same effect. That was also a case

where the lease deed fixed the annual rent but stipulated that in case of default the tenant would be liable to ejectment and that the lessor would

always have a right to eject the tenant after giving him one month's notice. The Court held that the document did not require registration.

16. In Mulla's The Indian Registration Act, Ninth Edition, at page 91, the learned author has stated thus:-

Lease for one year more with power to lessors to eject tenant at any time.

Where a person grants a lease to another at a fixed annual rent with a stipulation that the latter shall vacate the property when asked to do so by

the former, the lease is not one even for a year, and it does not require registration. The same principle applies to a lease for an indefinite period

which can be terminated by either party at the end of any month.

Below these, the learned author has taken into consideration an early decision of the Allahabad High Court reported in Khuda Beksh v. Sheo Din

(1886) 8 All 405 and the facts of that case have been given as ""illustration""

which reads thus:-

A grants a lease to B for 6 years on a specified years by rent. The lease contains this stipulation: ""And if the said Shaikh (lessor) wishes to have the land vacated within the said term, he shall first give us 15 days" notice, and we will vacate it without objection"". This does not create even the usual lease from month to month, and it does not require registration: Khuda Baksh v. Sheo Din (1886) 8 All.405.

17. In view of the said legal position, I do not think the contention of the Learned Counsel for the appellant to be accepted. Even though a term of 3 years is Fixed, either party have given the liberty to terminate the lease by giving three months notice that means, within the next day of executing the lease by giving three months notice, the lease could be terminated. Therefore it cannot be said that the lease is for a term exceeding one year. It really amounts to tenancy-at-will asking the tenant to surrender possession after a period of three months.

18. In the plaint it is specifically averred that the defendant approached the plaintiff for taking possession of the vacant site and the plaintiff agreed for the same and on 1.10.1980 the defendant executed the lease deed. It is clear from the above statement that the document dated 1.10.1980 was executed and the terms were finalised and contract is also concluded and a document is executed thereafter. Even if the Court assumes that the tenancy is for a term exceeding one year, and therefore compulsorily registrable. I do not think that the document could be ignored for all purposes. The document can be relied upon to establish the jural relationship between the parties. The document can also be relied on to prove the admission of the defendant in what capacity he is occupying the building and the nature of possession. In the documents also reference is made to the earlier concluded discussion in 1975 K.L.T.128 (Nelakantan Sreedharan v. Subba Bhakthan Narayana Bhakthan) the relevant portion which reads thus:-

The rent deed is executed by the lessee alone. It is also not registered and therefore it is inadmissible to prove the creation of a lease by an instrument. But, it is admissible to prove the creation of a lease by oral agreement accompanied by delivery of possession as mentioned in S. 107 of the T.P. Act. The rent deed can be relied on to establish the jural relationship

between the parties. It contains an admission or an acknowledgment by the defendant who is sought to be made liable that he is a tenant and that it is the best evidence that one can possibly have as to the oral agreement of a lease. It is well known that documents relating to sales, leases and mortgages come into existence only after agreements are arrived at between the parties to these transactions. The lessor and lessee generally agree to the terms of the tenancy before hand and then reduce to writing what has been agreed upon. In such cases oral agreement of tenancy can be spelt out of the rent deed executed by the lessee and there can be no bar for a court from looking into such a document for the purpose.

19. The further question arises for consideration is whether the Courts below were justified in admitting the document in question, when the same is not properly stamped.

20. It is not disputed that at the time when the document was marked as exhibit no objection was raised and the Court has also marked it. What is

the consequences of marking a document when no objection was raised came for consideration before the Hon"ble Supreme Court in the decision

reported in *Javer Chand and Others Vs. Pukhraj Surana*, wherein it has been held thus:-

Where a question as to the admissibility of a document is raised on the ground that it has not been stamped or has not been properly stamped, the

part challenging the admissibility of the documents has to be alert to see that the document is not admitted in evidence by the Court. The court has

to judicially determine the matters as soon as the document is tendered in evidence and before it is marked as an exhibit in the case. Once a

document has been marked as an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses, S.

36 comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the Trial Court itself or to a Court

of Appeal or Revision to go behind that order-Such an order is not one of those judicial orders which are liable to be reviewed or revised by the

same Court or a Court of superior jurisdiction.

In the light of the above decisions, both the questions of law are found against the appellant and consequently the Second Appeal is dismissed.