

(1974) 09 MAD CK 0015

In the Madras High Court

Case No : Appeal No's. 98 and 99 of 1969

Sivakami Sundarithai

APPELLANT

Vs

Ramu Ammal and Another

RESPONDENT

Date of Decision : 27-09-1974

Acts Referred:

Citation : (1975) ILR (Mad) 61

Hon'ble Judges : Ramaprasada Rao, J;Maharajan, J

Bench : Division Bench

Advocate : K. Sarvabhauman and T.R. Mani, for the Appellant; R. Gopalaswami Ayyangar and R. Sundararajan, for the Respondent

Judgement

Ramaprasada Rao, J.—The Defendant in Original Suit No. 53 -of 1965 and the Plaintiff in Original Suit No. 5 of 1967 on the file of the

Sub-Court, Tinunelveli is the Appellant in each of these appeals. The issues in both the suits did arise on common facts. The relevant facts may,

therefore, be stated even in the first instance.

2. On 4th June 1958, under exhibit B-1, the registration copy of which is exhibit A-4, a rice mill belonging to the Appellant which, according to

her, was run under the name and style of Sivagami Rice Mill, was leased to one Arjuna Raja who was originally the Plaintiff in Original Suit No. 53

of 1965 and on whose death his mother was added as the 2nd Plaintiff thereto and who figured as the Defendant in Original Suit No. 5 of 1967.

The lease was for a period of 7 years with a right to obtain extension of the period of three years. The annual rent was fixed at Rs. 2,050. An

advance of Rs. 2,000 paid by Arujuna Raja was to be refunded on the expiry of the period of the lease. Inter alia it was provided in the lease deed

that Arjuna Raja could spend about Rs. 3,000 and put up structures in the precincts of the demised premises and the same should be recouped in three years by adjustment against the rent payable by Arjuna Raja. The Plaintiff was also enabled to add further machinery or buildings to the existing structures in the mill premises and it was agreed that the Appellant should pay for such machinery or structures erected on the expiry of the lease period. Though the lease started from 10th September 1958, it is the admitted case of the parties that its possession was handed over to Arjuna Raja only on 25th October 1958. Not far off from the date of such taking over, the friendly relationship between the parties slowly deteriorated resulting practically in the exchange of acrimonious correspondence between both. According to Arjuna Raja, one of the items mentioned in the lease deed exhibit A-4 was not entrusted to him and the claim of the Appellant in Original Suit No. 5 of 1967 for return of the said mill is obviously without any foundation. The grievance of the Appellant which could be gathered from her plaint in Original Suit No. 5 of 1967 and from the written statement in Original Suit No. 53 of 1965 could broadly be summarised thus.

3. According to the Appellant Arjuna Raja, without obtaining a licence in her name sought to put up a paddy boiling plant and obtained licence in

the name of one Ven-kataperumal Raja, a relation of his, for the financial year 1960-61. Secondly Arjuna Raja put up a chimney in the mill

precincts which was abnormally big and constructed the same without obtaining the permission of the Appellant. Again, Arjuna Raja put up a

boiler tank without a licence and the Appellant had threat of prosecution in regard to such an illegal activity of the lessee. The complaints to the

contrary made by the lessee are that the Appellant failed to pay the additional security claimed by the Electricity Department, that he was obliged

to deposit the additional sum demanded that the Defendant failed to make necessary repairs to the machinery, that she did not provide the

elementary necessity of a latrine in the rice mill that she gave a false complaint to the police as if the Plaintiff attempted to remove the machinery,

and above all that she sent a letter to the electricity department to disconnect the supply of energy and such disconnection was effected on 26th

October, 1961. The case of Arjuna Raja and later his representative, is that the Appellant completely and effectively prevented him from running

the rice mill and that it was a clear breach of covenant for good and quite enjoyment of the demised property and hence the Appellant was liable

for damages for the consequent loss which resulted to Arjuna Raja. Notices were exchanged prior to suit, but as they served no purpose, Arjuna

Raj had to come to Court. Arjuna Raja claimed a return of the advance, besides other sums due to him under the various clauses of the lease deed

exhibit A-4 and estimated the compensation due for breach of covenant of quiet enjoyment at Rs. 1,000 per month, but limited his claim to a sum

of Rs. 16,445-46 on that account. Adding the various sums such as advance, the amount due towards constructions made by Arjuna Raja while

he was running the mills, etc., he claimed in all a sum of Rs. 20,000 as per particulars set out in the plaint.

4. The Appellant in her written statement, which is practically the plaint allegation in her suit Original Suit No. 5 of 1967 stated as follows. Apart

from the grievances already set out, the case of the Appellant was that her good-will has been spoiled and that Arjuna Raja was setting up an

adverse title in the name of a third party in respect of the demised property, that the Electricity Board Department cut off the supply or he was

consuming more energy than that was sanctioned and that she never failed to construct any latrine in the suit premises and there was no necessity

for the same. The Appellant also would say that one flour milling machine was entrusted to Arjuna Raja that he was provided with funds from time

to time for renewal of licences and that such renewed licences were not even handed over to her and was committing many other unlawful and

unjustifiable acts. The Appellant also would allege that Arjuna Raja demolished an old chimney and constructed a new one without obtaining a

licence and that in the background of events she had to write to the Electricity Department to disconnect the electric supply and that she demanded

surrender of possession of the rice mill from Arjuna Raja which he did not do so. According to the Appellant, Arjuna Raj had no right to hold on

to the demised property after 25th October, 1961 and that he is not entitled to any damages since he remained in the property on his own volition

and that he is liable to pay rent for such possession and holding over of the suit property till the receiver took possession of it. In any event the

Appellant would say that Arjuna Raja ought to have mitigated the damages by surrendering possession of the demised premises. She firmly denied

liability to pay over the other claims made by Arjuna Raja in his suit, but would set up her particulars of claim which comprises of the rent payable

by Arjuna Raja and moneys payable under other heads and in that context denied the liability as made out by Arjuna Raja.

5. The following issues were framed in both the suits:

Issues in OS No 51 of 1965:

1. Whether the lease was taken under the premises and circumstances as alleged?

2. Whether the Defendant was guilty of the charges made against her?

3. Whether the counter charges made by the Defendant are true?

4. Whether the Defendant was guilty of breach of covenant for quiet enjoyment?

5. Whether there was no valid surrender and even otherwise the Plaintiff was entitled to possession after 26th October, 1961 the date of demand

for surrender by way of lien or otherwise?

6. Whether the Plaintiff having retained possession is entitled to damages for the period during which he was so in possession after 26th October,

1961 and whether during such period of possession the Plaintiff is not liable to payment?

7. Whether the Defendant was estopped from disputing such lien?

8 Whether the Defendant was entitled to forfeit the tenancy as on 26th October, 1961 and such forfeiture was valid and enforceable?

9 Whether the Plaintiff was guilty of waste of the leased property?

10 To what damages, if any is the Plaintiff entitled?

11. Whether a suit as framed for a liquidated amount is maintainable there being claims and counter claims?

12. Whether the suit is premature?

13. Whether the suit for damages is maintainable without surrendering possession?

14. Whether the Plaintiff was a minor on the date of the lease and if so, whether the lease was void? and

15. To what relief, if any is the Plaintiff entitled?

Issues in O. S. No 5 of 1967:

1. Whether the first Defendant's son committed any waste as contended by the

Plaintiff, and if so, what is the damage suffered by the Plaintiff?

2. Whether any and if so what sum is due to the Plaintiff as arrears of rent from the first Defendant and her son?

3 Whether the suit is barred by limitation?

4 Whether any and if so what interest is payable? and

5 To what relief if any is the Plaintiff entitled?

Both the suits were tried together. In the result, in Original Suit No. 53 of 1965, that is, in the suit filed by Arjuna Raja, the Court directed the

Appellant Sivagami Sundarithai Ammal to pay a sum of Rs. 3, 159.54 consisting of Rs. 2,000 for advance amount and Rs. 1,159-54 for balance

due in respect of the cost of construction of the buildings which were admittedly done by Arjuna Raja with future interest thereon at 6 per cent per

annum from 18th June, 1965, till date of realisation and created a charge on the suit rice mill in respect of such payment. The Appellant was also

directed to pay Arjuna Raja's mother who was brought in as legal representative of Arjuna Raja, the sum of Rs. 8,000 as damages for wrongful

interference with the peaceful possession of the mill and its working. The suit was also decreed with proportionate costs.

6. In the suit filed by the Appellant Sivagami Sundarithai Ammal, the lower Court directed Ramu Ammal, mother of Arjuna Raja, to pay a sum of

Rs. 3,035 consisting of Rs. 2,392 as arrears of rent from 26th August, 1960 till 25th October, 1961, the date when electricity was cut off in the

premises plus Rs. 643 as interest due on the said amount from 26th October, 1961, till date of suit with future interest on the arrears till date of

payment and also proportionate costs Ramu Ammal was also directed to put the Plaintiff in possession of the suit rice mill. It was also found that

the flour mill, for which the Appellant laid a claim was not handed over to Arjuna Raja though one such recital appears in the lease deed exhibit A-

4. In other respects, the Appellants' claims were disallowed. As the Appellant sued *informa-pauperis*, Ramu Ammal was directed to pay the

Court fee due to Government. No costs were awarded to the 1st Defendant on the balance disallowed.

7. It is common ground that there was a settlement of account on 21st September, 1960, as between the Appellant and Arjuna Raja and that on

that date a sum of Rs. 4,977 was agreed to be due to the Appellant herein.

Thereafter no rent was paid. It is also accepted that on 5th March 1966, a receiver was appointed to take possession of the suit properties and on and from that date the right of the Appellant to claim rent, even if she is entitled to, is not available to her. In fact, the Appellant obtained possession of the suit properties on 1st April, 1969, apparently pursuant to the decree for possession and that too from the receiver. The main contention of Mr. Sundaram Iyer, learned Counsel for the Appellant in these appeals, is whether Arjuna Raja or after his death Ramu Ammal, his mother as legal representative, could continue to remain in the property after the electric connection was cut off on 25th October, 1961 and in the absence of proof that Arjuna Raja or Ramu Ammal, hereinafter referred to as the lessee, has taken reasonable steps to mitigate the damages to which the Appellant would be entitled to as lessor, whether they would be entitled to be relieved on the responsibilities of paying the rent from 25th October, 1961 till 5th March, 1969, when the receiver was appointed over the suit properties. We may at once point out that Mr. Sundaram Iyer in his usual fairness, after taking us through the acrimonious correspondence that passed between the parties, could not place sufficient material before us to dislodge the findings of the Court below regarding the entitlement of the lessee for the return of the advance and for the refund of the cost of construction of the buildings. But he would state that the damages awarded by the Court below in the sum of Rs. 8,000 is excessive. On the other hand, Mr. Gopalswami Iyengar, learned Counsel for the lessee, would state that there is an automatic cessation of the liability to pay rent on the part of the lessee from the moment when the quiet and peaceful enjoyment of the demised premises has been interfered with wrongfully by the lessor Appellant. In that context it was stated that the lessee is not liable to pay any rent beyond 25th October, 1961 as that has resulted in the cessation of the working of the mill and thereby the peaceful enjoyment of the subject-matter of the lease.

8. Though so many issues were framed by the learned trial Judge, the only two points that were urged before us are whether the lessee in the circumstances and as of right can suspend payment of rent from 25th October, 1961, to 5th March, 1966, when the mill was taken over by the receiver and also claim concurrently the damages towards which the lower Court

has awarded a sum of Rs. 8,000. The second ancillary point for determination is whether the Appellant lessor is entitled to recover any more moneys either towards rent or otherwise from the lessee.

9. We may at once make it clear in so far as the decree for a sum of Rs. 2,000 and a sum of Rs. 1,159.54 in favour of Ramu Ammal, the lessee as

legal representative of Arjuna Raja, is concerned no dispute has been raised. That portion of the decree of the Court below in Original Suit No. 53

of 1965, is, therefore, confirmed. Similarly, the decree in favour of the lessor Appellant granted by the Court below is also confirmed and there is

no dispute. As the lessor has already recovered possession of the suit rice mill, no further orders on that portion of the decree of the Court below

is necessary.

10. Thus the surviving question is whether the decree for damages in the sum of Rs. 8,000 to the lessee is excessive and whether the lessor is

entitled to the rent for the mill premises from 25th October, 1961, to 5th March, 1966, when the receiver took possession of the subject-matter of

the suit.

11. We shall now consider the question whether in the circumstances of the case there is a total abatement in rent resulting in the lessee claiming

immunity from paying such rent for the period as above on the only ground that the electricity to the mill premises was cut off on 25th October,

1961.

12. We may briefly refer to the circumstances which led to the disconnection of the electricity. No doubt, it was at the instance of the Appellant as

lessor the electricity was cut off. But she would rely upon exhibits A-1 and A-2, as also exhibit A-27 and A-7, which were the notices exchanged

as between herself and the Panchayat in the matter of the renewal of licences to the mill premises. The above correspondence discloses that a

boiler plant was installed in the premises without a licence and that the lessee himself was attempting to renew the licence in his own name for the

main mill and as such attempts are irregular besides being illegal, the lessor was threatened that unless matters were set at rest she would be

prosecuted. In the reply notice which was sent long after the cessation of supply of electrical energy the lessee took up the position that the

demand of the lessor to surrender possession was illegal and he denied that, he

committed any irregularities. Incidentally, however, he made a claim that on account of the cut in the electricity at the instance of the lessor he was losing a profit of Rs. 1,000 per month which he was normally earning from the rice mill. The other correspondence that passed between the parties merely reflects the acrimony and temper which one party was prepared to shower on the other either at or about the time when the electricity was disconnected or thereafter. The fact, however, remains that the lessee committed certain irregularities in the sense that he put up certain chimney without express authority from the lessor and constructed a boiler tank and obtained a licence in the name of one of his relations ignoring the rights of the lessor. These irregularities obviously provoked the lessor who in her turn took the extreme step of informing the Electricity Department to cut the electric supply and thereby putting an end to the object of the said lease, namely, the running of the rice mill. Before us the learned Counsel for the Appellant rightly did not take us through the entire correspondence, but was satisfied to refer to the above exhibits, his main contention, however, being that the lessee cannot have a double benefit in the circumstances in the sense that he cannot relieve himself of the responsibility of paying the rent even though he admittedly squatted on the demised premises after 25th October, 1961 and contemporaneously claim damages for not allowing him to peacefully run the machinery.

13. In a case where parties enter into an engagement to take on lease property which comprises of immovable and movable property such as machinery, for the purpose of running the mill, then the obligation to pay the rent as contracted is an element which cannot be avoided by the lessee, unless he is evicted from the whole of the property leased. A mere breach of the conditions governing the lease cannot always form the foundation for such suspension or abatement of rent. What is however, to be borne in mind is that the lessee should have been ousted from the premises by a deliberate act on the part of the lessor, and on the establishment of such ouster the lessee's right to claim suspension of rent might normally arise. But in a case where there is an express stipulation that even if the electricity fails the rent is payable vide Clause 10 of the lease-it is for consideration whether the lessee can take advantage of the general law as to abatement or suspension of rent, merely because such electricity

has been snapped by an overt action the part of the lessor. As already stated by us, eviction or partial eviction from the demised premises might

give rise to a cause of action favourable to the lessee. But as that question does not directly rise in the instant case, we are not expressing our

opinion on the same as it is not necessary. But in a case where the lessee elects to remain on the property notwithstanding the cessation of the

electrical energy which is the main element of the lease and the continuous supply of which would enable the lessee to carry on the lease, whether it

would entitle him to claim such abatement or suspension of rent is a matter which has to be decided on the facts and circumstances of each case.

The fundamental principle of law is that if a person wants to claim relief by way of compensation or damages, it is essential that he should take all

reasonable steps to lessen or mitigate such damages. He cannot blow hot and cold and by his own conduct increase such compensation or

damages and yet maintain that he is entitled to the totality of such compensation notwithstanding the fact that he was a party to the increase in the

quantum of such damages or compensation. As a matter of fact, our Courts have taken the view that the rule of English Law that when a lessee is

evicted owing to default of his land-lord he can suspend payment altogether although he remains in possession of a portion of the property does

not appear to have been applied in this country-vide *Hanumantha Goundan v. Doraiswami Pillai* 54 M.L.J. 354 Again in *Meenakshi Sundara*

Nachiyar v. Chidambaram Chetty (1912) M.W.N. 813 a Bench of our Court has laid down the law in very clear terms which it is better to quote

rather than to summarise:

The English rule that where there was material obstruction to the enjoyment of the lease premises the entire rent for the year should be suspended

is based on the peculiar feudal system which prevailed in that country.

Where rights to remove property are created by contract of parties ordinarily each party is entitled to enforce his rights as against the other and

neither party can refuse to perform his obligation on the ground that the other party has not performed his. This is undoubted law in the case of

contracts of sale and even of mortgages except in the case where the mortgagee has failed to advance the whole amount.

A lease gives rise to recurring obligations between the lessor and lessee and the

law applicable is that relating to covenants. The ordinary rule in regard to covenants is that one of the parties to a contract cannot demand of the other party the performance of his obligations unless he has himself performed all his own obligations or is prepared to do so and the repudiation of his obligations by one party may, in some cases entitle the other to rescind the contract.

There can be no constructive eviction without the tenant surrendering possession of the premises.

A land-lord must be held entitled to an apportionment of the rent for the portion of the land in possession of the tenant if he does not throw up the lease. The tenant in such case must be held estopped.

When the tenant has once been let into occupation and he is subsequently deprived of the possession of a part thereof his right is only to damages.

He will be liable to pay the rent but as a rule of convenience, he should be allowed to enforce his right to damages by setting them off in the land lord's action for rent.

14. Thus it is seen that the law is settled that as a lease projects reciprocal obligations which are continuous in nature there cannot be an abatement of such covenants unless the facts of a particular case strictly warrant. A lessee who blames a lessor for having snapped such one or more of such

recurring obligations cannot claim relief by way of damages particularly in the matter of abatement of rent unless he surrenders possession of the premises. The theory of constructive eviction on the ground that there has been an interference of peaceful and quiet enjoyment of the demised

premises is a very strange theory. As pointed out by the learned Judges, in such circumstances the lessee is bound to pay the rent, but with the

concurrent right to claim damages and, if successful, to set off the same as against the lessor's right to recover such rent. We have already referred

to the fundamental, principle involved in a claim for damages. The person projecting such a claim must be in a position to establish that he has

taken all possible steps to mitigate the loss consequent upon the breach complained of on the part of the other contracting party and if no such

steps are taken by him to in any event no particulars are available on record to show that he has taken such steps then he would be debarred from

claiming the totality of the damages to which he would otherwise be entitled to,

for he has to be blamed for his neglect in not having taken such steps-vide Murlidhar Chiranjilal v. Harishchandra Dwarakadas. (1961) 2 K.L.R. 90 (S.C.) All the above principles make it clear that Arjuna Raja and after his death Ramu Ammal cannot have it both ways by claiming damages for the unlawful interference in the quiet and peaceful enjoyment of the demised property due to an overt act on the part of the lessor Appellant and also contemporaneously claim that they are relieved from the responsibility of paying the rent for the premises. If the essee is allowed to gain such double advantage it would lead to miscarriage of justice. The lessee chose to remain in the property notwithstanding the complaint made by him that he was unable to run the mill. If he had fairly surrendered the mill even on the date of disconnection of electrical energy or soon thereafter, equities might have interfered in his favour and he would be characterised as one of the contracting parties who has taken diligent and reasonable steps to mitigate the damages. But, on the other hand he chose to squat on the property until the receiver got possession of the same. Under the contract and even under the general law, the lessee cannot escape the liability to pay the rent for the period commencing from 25th October, 1961 till 5th March, 1966.

15. As regards the quantum of damages awarded by the Court below to the lessee which has been assessed by it as flowing from the deliberate and unjustifiable act on the part of the lessor in having caused the snapping of electrical energy to the mill, there has not been much of an argument before us. We agree with the Court below that the lessor was not justified in having instructed the Electricity Department to cut the electric supply to the mills knowing that such supply of electrical energy is absolutely necessary for the enjoyment of the demised premises. But, as we said earlier, such an interference in the quiet enjoyment of the demised property is not equitable in the circumstances of this case for constructive eviction of the lessee from the premises. In the absence of clear and telling circumstances prompting us to hold that the lessee has been evicted from the premises we are unable to accept the contention of Mr. Gopalaswami Iyengar that the lessee is entitled to the total benefit granted by the Court below. Whilst, therefore, confirming the decree for Rs. 8,000 granted by the Court below in favour of the lessee as and towards damages, we would

modify the decree of the trial Judge to this extent, namely, that the lessee Ramu Ammal, the Respondent in each of these appeals shall be liable to

pay to the lessor Appellant the contract rent for the period commencing from 25th October, 1961, to 5th March, 1966 and this shall be paid by

her together with interest at 6 per cent per annum from the date of suit till date of payment.

16. We have already expressed ourselves that the flour Mill, though recited as one of the items which ought to form the subject-matter of the lease,

Was never delivered to the lessee and therefore, the claim of the lessor under this head for its possession is an empty one and we agree with the

Court below on this aspect.

17. The result is that we confirm the judgment and decree of the Court below in both the suits, but modify the decree in Original Suit No. 5 of

1967, by stating that the lessor Appellant would be entitled further to the rent at the contract rate for the period commencing from 25th October,

1961 to 5th March, 1966, together with interest at 6 per cent per annum on the reckoned amount from the date of suit till date of payment and she

would be entitled to set it off against the damages of Rs. 8,000 granted to the lessee in Original Suit No. 53 of 1965. The parties in these two

appeals and in the Cross Objections before us shall bear their own costs. The Court fee payable in Appeal No. 98 in this Court shall be paid by

the Respondent.