
(1961) 11 MAD CK 0039
In the Madras High Court

Sri Thiagarajaswami Devastanam

APPELLANT

Vs

Kamalappa Thevar and Others

RESPONDENT

Date of Decision : 03-11-1961

Acts Referred:

Madras Estates Land Act, 1908 — Section 8(5)

Citation : (1962) 75 LW 378 : (1962) 2 MLJ 394

Hon'ble Judges : Kailasam, J

Bench : Division Bench

Judgement

Kailasam, J.—This appeal is preferred by the plaintiff Sri Thiagarajaswami Devastanam by its hereditary trustee Sri La Sri Subramania Desika Gnanasambanda Pandarasannadhi against the judgment of the District Judge of East Tanjore dismissing its suit for a claim of Rs. 6,749-10-9 against the defendants and for a charge against certain items of properties.

2. The first defendants and one Subbiah Thevar now deceased, took on lease 51 acres, 78 cents of lands belonging to the plaintiff-Devastanam on 28th December, 1944. The lease was for a period of five years and the properties specified in the schedule to the plaint belonged to Subbiah Thevar and were given as security for the due payment of the rent and for fulfilment of the other conditions of the lease. The extent of security was limited to one year's lease, that is Rs. 2,100. Defendants 2 and 3 are Subbiah Thevar's son's widows. Defendant 4 is Subbiah Thevar's son's adopted son. Defendant 5 is the wife of the first defendant and defendants 6 and 7 are their children. Defendants 8 and 9 are the alienees of the properties secured under the lease deed. Defendants 2 to 7 are impleaded as legal representatives and persons in possession of the estate of Subbiah Thevar and defendant 6 is also sought to be made liable as the undivided son of the first defendant.

3. The defendants defaulted in payment of rent and the plaintiff filed O.S. No. 301 of 1946 on the file of the District Munsif's Court, Thiruthuraipundi, for recovery of rent due for faslis 1354 and 1355. The plaintiff also prayed for

enforcement of security given in the lease deed. The plaintiff obtained a decree for a sum of Rs. 1,250. The defendants again defaulted in payment of rent for fasli 1356 and the plaintiff filed O.S. No. 267 of 1947 for recovery of rent due for that fasli. After the filing of the suit O.S. No. 267 of 1947 the plaintiff applied for the appointment of a receiver to take possession of the leasehold lands. A receiver was appointed in O.S. No. 267 of 1947 and he continued to be in possession during faslis 1357 and 1358. The present suit was filed by the plaintiff for recovery of the rent for faslis 1357 and 1358 and for a charge on the properties secured under the lease deed.

4. The defendants resisted the suit on the ground that they surrendered possession during these two faslis and in any event as a receiver was appointed by the Court and as they were dispossessed they were not liable to pay any rent. According to the defendants, they found it impossible to cultivate the lands and they informed the plaintiff's agent early in 1947 that they could not and would not cultivate the lands thereafter and they would not continue in possession as lessees and they surrendered the unexpired portion of the lease. Later they sent a registered communication to the plaintiff on 23rd May, 1947, to the same effect. The defendants averred that the head clerk of the plaintiff came to the village and accepted the surrender of the unexpired portion of the lease of the defendants. They also Contended that the plaintiff applied for the appointment of a receiver to take possession of the leasehold right in O.S. No. 267 of 1947 and the defendants stated that they had nothing to do with the lands and therefore they had no objection to the plaintiff Cultivating the lands and for an appointment of a receiver. The defendants also contended that the plaintiff's suit for rent for faslis 1357 and 1358 was not sustainable and the only course open to them was for a claim for damages.

5. The lower Court found that the registered lease deed executed by the first defendant and Subbiah Thevar in favour of the plaintiff-Devastanam is true, valid and binding. The lower Court also found that there was no express surrender and that the unilateral surrender on the part of the defendants was not accepted by the plaintiff. But it held that there was an implied surrender by the relinquishment of the possession and by the conduct of the plaintiff in applying for the appointment of a receiver to take possession of the lands and cultivating them. The lower Court also found that the landlord by the appointment of a receiver should be deemed to have contravened the covenant to give the lessee quiet possession and enjoyment during the subsistence of the lease and thereby he was not entitled to sue for rent for these two faslis. The lower Court also found that the plaintiff was not entitled to enforce the charge on the properties secured by the lease deed.

6. The plaintiff has preferred this appeal against the decision of the lower Court. The learned Counsel for the plaintiff raised two contentions. Firstly he contended that he is entitled to enforce a charge on the properties secured by the lease to the extent of Rs. 2,100. Secondly, he contended that the plaintiff is entitled to

sue for arrears of rent for the two faslis 1357 and 1358, though a receiver was appointed and he was in possession of the leasehold rights. I will take up the second point first.

7. The plaintiff in Exhibit A-5, the plaint filed in O.S. No. 267 of 1947, averred that he did not accept the surrender by the defendants. He also stated that defendants 1 and 2 plucked the kuruvai seedlings and instead of transplanting the same on the suit lands, they transplanted them on their own lands and the plaintiff on making enquiry understood that the defendants have dropped the idea of cultivating the suit lands during the current fasli and that they were not going to take up any work. The plaintiff stated that it was the responsibility and duty of the plaintiff to reduce the loss sustained by the first and second defendants and to avoid the lands-being spoiled by allowing them to remain fallow and to support the production of food as far as possible in the present state. The plaintiff prayed for the appointment of a receiver for the management of the suit lands by bringing them under cultivation alleging that the suit lands would become damaged and the fertility of the soil would be reduced and the lands would become unfit for cultivation, if this was not done. The plaintiff also prayed for the appointment of a receiver to take possession of the suit lands and for cultivating and managing the same on the ground that the plaintiff came to understand that the defendants have dropped the idea of any further cultivation.

8. In the written statement in O.S. No. 267 of 1947 filed on behalf of the defendants, Exhibit A-7, the defendants averred that one of the implied conditions of the lease deed was that normal conditions for labour would prevail and on. their assumed continuance the defendants and the plaintiff entered into the lease arrangement. As there was agrarian trouble the defendants sent a registered communication, dated 23rd May, 1954, expressing their inability to continue the lease and stating that the contract became impossible of performance and that they had surrendered the lands and that the manager of the plaintiff had inspection of the lands and accepted the surrender. The defendants also averred that they had not the least idea to cultivate the lands and that the plaintiff also knew perfectly well that the defendants would not cultivate the lands. The defendants also stated that the plaintiff commenced cultivation on their lands. The first defendant raised kuruvai seedlings in a poramboke land not included specifically in the suit lease deed and transplanted the same on other lands leased to him. In the counter filed in the petition for the appointment of a receiver in O.S. No. 267 of 1947, Exhibit B-1, the defendants alleged that the agents of the plaintiff were fully aware that the seedlings had not been raised for the cultivation of the suit lands and that it was a mistake on the part of the plaintiff not to have leased the suit lands even from the beginning of the fasli. The defendants also specifically stated that as they have surrendered their leasehold without claiming any right therein, the defendants have no objection whatever in the plaintiff cultivating the lands. According to the defendants, the plaintiff was in possession of the lands. The defendants did not oppose the appointment of a receiver, for according to them, the surrender was

accepted by the plaintiff and they were no longer liable for payment of any rent.

9. On the facts it will be seen that the defendants gave notice to the plaintiff purporting to surrender the unexpired portion of the lease. The plaintiff refused to accept the surrender. The plaintiff in his suit O.S. No. 267 of 1947 for arrears of rent for fasli 1356 also prayed for appointment of a receiver for bringing the lands under cultivation and for management of the same. The plaintiff alleged that the defendants had abandoned all ideas of cultivation and that the lands were lying fallow. The defendants did not controvert these allegations. In fact, according to them, they did not have the least idea to cultivate the suit lands and the plaintiff knew perfectly well that the defendants would not cultivate the lands. The petition for appointment of a receiver to take possession of the suit lands under the circumstances was not opposed.

10. On the facts thus found the question for consideration is whether there is any implied surrender by the defendants and acceptance by the plaintiff. Mr. M. S. Venkatarama Aiyar the learned Counsel for the appellant contends that the appellant prayed for appointment of a receiver for preventing the lands from lying fallow and loosing its fertility, that the appellant had no idea of taking possession and that possession by the receiver should be deemed to be possession on behalf of the defendants and that therefore the respondents are liable for rent.

11. In Halsbury's Laws of England, 2nd Edn., Vol. 28, at page 58, it is stated as follows:

So also the possession by the receiver, though it necessarily displaces the possession of the owner or occupier to some extent for the purposes of the appointment, does not interfere with the rights and liabilities of the parties to the action in relation to strangers.

12. In *Portman v. Mill* (1839) 8 L.J. 161, the headnote is as follows:

The rights of parties are not affected by the appointment of a receiver by the Court. The receiver is an officer of the Court, holding the property for the party who may ultimately appear to be entitled to it.

The Lord Chancellor at page 165 observes as follows:

... the vendor, finding the property in a state which was destructive probably to the interests of whoever might ultimately turn out to be the owner of it, applies for a receiver. The rule of the Court is that it never alters possession; the Court never affects any right by the appointment of a receiver. Practically, it may affect the interest of the parties--it never affects their right by the appointment of a receiver.

The receiver is the officer of the Court, who holds the property for whosoever may ultimately appear to be entitled and without that title being in any way prejudiced in theory or principle by the appointment of a receiver.

13. In *Dreyfus v. Peruvian Cunno Co.* (1839) 42 Ch. D. 66 , the following passage occurs:

I can see no reason why the plaintiffs, having been compelled by the claim of the defendants to put the property in medio by an order to which all parties consented, or by appointing a receiver, should lose their right to compensation.

Again at page 75 the following passage occurs:

In short, where detention and the right to damages in respect thereof exists, it is not lost or taken away by the appointment of a receiver, even by consent.

14. In *Durran v. Durran* 91 L.T. 187 , the following passage occurs:

Does the receivership order make any difference in the rights of the parties, and does the existence of that receivership order make that to be a forfeiture by Mr. Gilmo, which would not have been a forfeiture if the receivership order had not been made? In my opinion the receivership order has no such effect, "was never intended to have such an effect, and could not have such an effect.

In *Walls v. Atcheson* 4 Bingham's Rep. 3 the plaintiff let furnished apartments to the defendant from 14th September, 1824, for a period of one year. The defendant paid rent upto the 14th December and then quitted the lodgings. The apartments remained vacant till the 9th January, 26 days when the plaintiff let them to another lodger, but in the beginning of April the defendant's attorney paid the plaintiff's attorney the sum of ?7, 5sh. which had been demanded of the plaintiff in respect of the rent of the apartments. The plaintiff continued to let the apartments to other lodgers till the beginning of July; but failing to procure lodgers from that time till the 14th September, she sued the plaintiff for ?211 Os. 6d. At page 463 it is observed as follows:

But the Court thought that the plaintiff having precluded the defendant from occupying his apartments by letting them to another person, must be taken to have rescinded the agreement, and to have dispensed with the necessity of a surrender, that she ought to have given the defendant notice, if her intention was to let the apartments solely on his account.

15. The above decision is an authority for the proposition that if it is the intention of the landlord to let the premises on account of the tenant, he must give notice of his intention to do so.

16. The learned Counsel also relied on a decision of the Kerala High Court in *The Jaya Motion Pictures Ltd. Vs. A. Ramakrishna Ayyar*, . There it was held that an order appointing a receiver to take possession of the building so as to collect the rent, passed in a suit for arrears of rent and eviction of a tenant, could not be said to be an order of eviction of the tenant as contemplated by the Lease and Rent Control Order and that the receiver order was merely intended to preserve the property for the benefit of the party, who might ultimately succeed in the suit and that the Court taking custody of the property through its receiver could not

be said to be evicting the tenant in the sense in which it was understood in law.

17. The learned Counsel for the respondents relied on a decision in *Dhunput Singh v. Mahomed Kazim Ispahain* I.L.R.(1896) Cal. 296. The two questions that arose for decision in that case were : (1) whether there was an eviction of the tenant by the act of the landlord so that the rent which would otherwise be due to the latter should be suspended during the period of such eviction; (2) whether the rent due upon the Lot Mirzapore might be apportioned, and a proportionate rent allowed to the landlord in respect of such portion of the property as to which there was no interference proved on his part. We are not concerned with the second question. Regarding the first question their Lordships after considering the various decisions summarised the principles as follows at page 303:

The principles to be gathered from these cases are, first, that where the act of the landlord is not a mere trespass, but something of a grave character interfering substantially with the enjoyment by the tenant of the property demised to him, there is a suspension of rent during such interference though there may not be an actual eviction.

This decision is not applicable to the present case, for the landlord did not interfere with the enjoyment by the tenants of the property, for as already found, in this case, the tenants vacated the lands and proclaimed that they had nothing to do with the lands at all and a receiver was appointed for the purpose of taking care of the lands and for preventing them from lying fallow and losing their fertility.

18. The next case relied upon by the learned Counsel for the respondent is *Jogendra Krishna Ray v. Kurpal Harshi & Co.* I.L.R.(1921) Cal. 345. At page 351 the following passage occurs:

As regards the third point, we have to consider, what are the reliefs which the plaintiff's may be granted. The suit was described in the plaint as one for arrears of rent and has been throughout treated as a suit of that character; but plainly the claim cannot be deemed as in the nature of a demand for arrears of rent. The tenancy was surrendered with effect from 1st April, 1918 and the landlords re-entered on the premises; thereupon the tenancy must be regarded as extinguished. There was in essence a breach of contract and the plaintiffs are entitled only to damages.

It may be observed that in this case the tenancy expired on the 1st April and the landlord re-entered the premises.

19. The decision in *Thota Seshayya and Others Vs. Madabhushi Vedanta Narasimhacharyulu*, , by a Bench of this Court was strongly relied upon by the learned Counsel for the respondents. At page 257 it is observed as follows:

Their appointment as receivers on 27th October, 1948, did in our opinion, deprive them of possession of these lands by transferring possession from them as tenants to them as receivers of Court. The fact that as receivers they were not

made to hand over possession to themselves (a rather meaningless procedure) will be of no avail to them. The passage in Kerr on the Law and Practice as to Receivers at page 155 relied on by the appellant will not help them. The learned author observes:

The appointment of a receiver does not of itself effect a change on the possession of land, nor does a receiver of rents and profits of land take possession unless the order directs him to do so"...But in every case, where he is appointed as general receiver under Order 40, Rule 1 he is a receiver and. Officer of Court in respect of the " property ", and when possession is passed to him either physically, or legally by operation of law, as where the party himself is made receiver, it is obvious that the possession is no longer with the original party. In other words, all these tenants ceased to have possession of the lands in dispute in these appeals, "as tenants", on 27th October, 1948....

This High Court was considering the question whether for purposes of Section 8(5) of the Madras Estates Land Act, the tenants were in possession as tenants on the relevant date in spite of having been appointed as receivers by Court. The High Court held that the character as tenants for the purposes of the Act did not continue. I do not find anything in the observations of the High Court that helps the respondents. It is no doubt true that possession was found to be no longer with the tenants as. lessees. But the High Court did not deal with the liability of a tenant on whose behalf a receiver is appointed.

20. Mr. K. S. Desikan appearing for one of the respondents relied on a decision Anandi Lal and Others Vs. Ram Sarup and Others, the following passage occurs:

It is impossible to say that merely because the receiver is an officer of the Court, he is taking over possession is not a dispossession of the person previously in possession. If his taking over possession of any property were not to amount to the removal of any person from the possession or custody of such property, then there was no occasion for Sub-rule (2) at all. It need not have been there. The very fact that it has been enacted shows that the Legislature intends that if a receiver takes possession of some property, then the person from whose custody or possession it is taken has been removed from, such possession or custody. As soon as a receiver is appointed, and property is taken possession of by him the property passes out of the possession and custody of the other person. Even where the person in possession is himself appointed the receiver, the character of his possession changes and his liability is of a different nature, as he becomes an officer of the Court and holds possession of the property on its behalf.

The learned Counsel contends that this case is an authority for the proposition that when a receiver is appointed for a property it amounts to dispossession of the person from whom possession is taken. The facts of the present case are entirely different and, as already observed, the tenants had abandoned possession and were not in the least interested in possession of the lands. On an examination of the authorities cited above it is clear that the landlord can hold

the tenant liable for rent provided he makes his intention clear of so doing. In this case the plaintiff refused to accept the surrender. In getting a receiver appointed the plaintiff made it clear that he was asking for the appointment of a receiver to save the property from lying fallow and getting deteriorated in fertility. The possession by the receiver was not intended for the plaintiffs benefit and the defendants never ceased to be liable to pay rent. In the circumstances I hold that in spite of the appointment of a receiver for faslis 1357 and 1358 the defendants did not cease to be liable for payment of rent. The lower Court was in error in holding that the appointment of a receiver operated to change possession and that the landlord acted in contravention of the covenant to give the lessee quiet possession and enjoyment. The lower Court was also in error in holding that the application for the appointment of a receiver in O.S. No. 267 of 1947 was not justified. The appointment of a receiver in O.S. No. 267 of 1947 was by consent and became final as between the parties as none of the parties took the matter up in appeal or in revision.

21. Now the question that remains to be considered is whether the plaintiff is entitled to ask for a charge on the properties mentioned in the lease deed. Clause 33 of the lease deed. Exhibit A-1, read with B Schedule shows that four items of properties belonging to Subbiah Thevar were given as security for the due performance of the lease limiting it for one year's rent, viz., Rs. 2,100. The terms of the lease deed make it clear that the extent of the charge is limited to Rs. 2,100 in all. The plaintiff in O.S. No. 301 of 1946 relating to arrears of rent for fasli 1354-55 asked for a charge for the arrears of rent. In execution of the decree in O.S. No. 302 of 1946 items 2 to 4 were brought to sale. The first defendant sold the property by private sale under Exhibit B-5 in favour of the 8th defendant for Rs. 1,900. The sale deed recited that for the arrears of rent due to the plaintiff a sum of Rs. 960-14-0 be paid to the plaintiff. This amount of Rs. 960-14-0 was received by the first defendant from the 8th defendant and paid to the plaintiff". According to the learned Counsel for the appellant, as the 8th defendant himself did not pay the amount to the plaintiff direct it cannot be said that this amount of Rs. 960-14-0 should be included in the security provided in the lease deed of Rs. 2,100. I am unable to accept this contention for the suit was for enforcement of the security as well and the property was sold by private sale with a direction to pay off this lease amount. It is not relevant whether the money was paid directly by the vendee or by the judgment-debtor. Again in the subsequent suit O.S. No. 267 of 1947 a decree was obtained. The first defendant sold the property by private sale to Swaminatha Gurukkal, the ninth defendant, and the ninth defendant paid to the plaintiff a sum of Rs. 961-6-0 as per the directions of the sale deed and obtained a receipt Exhibit B-2. An amount of Rs. 539-2-0 was paid as per Exhibit B-7 and another sum of Rs. 165 was paid to Swaminatha Gurukkal as per the directions in the sale deed. These payments admittedly amount to more than Rs. 2,100 and as the security of four items is restricted only to Rs. 2,100 the plaintiff is not entitled to enforce the charge on any of the four items of the Immovable properties.

22. In the result I hold that the plaintiff is entitled to a decree for arrears of rent for two faslis against the first defendant personally and against the assets of Subbiah Thevar in the hands of defendants 2 to 7 and the joint family properties of defendants 1 and 6. He will not be entitled to any charge on the Immovable properties. The appeal is therefore allowed with costs in both the Courts. The Memorandum of Objections is dismissed. No costs.