

(2000) 11 MAD CK 0128
In the Madras High Court

Tamil Nadu Electricity Board North Division and Others

APPELLANT

Vs

A.K.M.G. Anguchamy and Another

RESPONDENT

Date of Decision : 21-11-2000

Acts Referred:

Transfer of Property Act, 1882 — Section 108, 109, 109(m)

Citation : (2001) 1 MLJ 741

Hon'ble Judges : K. Gnanaprakasam, J

Bench : Single Bench

Judgement

K. Gnanaprakasam, J.—The defendants in O.S. No. 75 of 1984 before the Sub Court, Dindigul are the appellants. The plaintiffs filed a suit

for recovery of a sum of Rs. 1 lakh being the damages caused by fire to the building, but whereas, the trial Court awarded only Rs. 40,000 by the

decree and judgment dated 29.1.1987. Aggrieved by the same, the defendants have preferred this appeal.

2. The brief facts are as follows:

The first plaintiff is the owner of the suit building and he had let out the same to the second plaintiff, who in turn had sublet the suit property to the

defendants on a monthly rent of Rs. 925. The defendants became tenants on and from 1.3.1983. It is stated that the suit building is measuring 85

feet north to south and 45 feet east to west and it is a good, strong and sound building. The front portion is a tiled veranda and next to it there is a

hall and there were rooms on either side of the said hall and there is a big hall measuring 20 feet x 20 feet and also tiled hall There were two more

tiled rooms. The building was constructed with brick built walls and plastered and the walls were having 1 1/2 feet width. A good and costly

varieties of timber were used for the doors and windows. The building was in a good condition when it was let out to the defendants. On 9.6.1984

at about 3 a.m. fire broke out in the suit building and the entire building was burnt. Information was given to the fire service and after struggling for

2 1/2 hours they extinguished the fire. Due to the fire, 3/4th of the building were completely damaged. It is stated that the fire took place only due

to the carelessness and negligence of the defendants and therefore, the plaintiffs made a claim of Rs. 1 lakh being the damages caused to the

building.

3. The defendants in the written statement have denied the condition of the building at the time of lease. It is stated that the building was old and

aged more than 60 years and the entire wiring and electric apparatus were in a damaged condition. As there was no suitable building available for

the defendants' office, they have taken the suit building on a temporary measure. It is further stated that the suit house was taken on lease on the

assurance given by the second plaintiff that he would renew the building and also the wiring in the entire building with necessary change of wiring

and rafters, etc. on the tiled portion, but however, he has not done so. It is further stated that on the date when fire broke out in the suit building,

the watchman was on leave and one of the staff members of the defendants' department who was in charge of watchman duty apart from official

duty, noticed the fire in the building and immediately reported the same to the local fire service, which came and put out the fire in time. The

defendants denied all the claims of the plaintiffs and also denied that the fire did not broke out due to the negligence and carelessness of the

defendants. They have also stated that the fire that took place is only an act of God and therefore they are not liable to pay the damages claimed

by the plaintiffs. They have also stated that there is no legal agreement to pay the damages nor there is a privity of contract between the plaintiffs

and the defendants to pay the damages.

4. Based upon the abovesaid pleadings, the trial Court framed the following issues:

1. Whether the fire accident on 9.6.1984 in the suit building was not due to the carelessness and negligence of the defendants?

2. Whether the first plaintiff has suffered damages to the extent of 1.25 lakhs by

the fire accident?

3. Whether the defendants are liable to pay any amount to the first plaintiff by way of damages? If so what is the quantum? and

4. To what relief, if any, the first plaintiff is entitled?

5. The first plaintiff was examined as P.W.1 and three more witnesses were examined and documents A-1 to A-14 were marked. On behalf of the

defendants, two witnesses were examined and documents B-1 and B-2 were marked. The reports of the Advocate Commissioner and Plan were

marked as C-1 and C-2 and the two exhibits of the witnesses were also marked as X-1 and X-2. The trial Court after taking into consideration all

the aspects of the case came to the conclusion that the fire broke out only due to the negligence and carelessness of the defendants and awarded

damages of Rs. 40,000. Aggrieved by the same, the defendants have preferred this appeal.

6. The learned advocate for the appellants has submitted that the trial Court was not correct in holding that the fire broke out due to the negligence

and carelessness of the defendants. On the other hand, the cause of fire was not known and it was only an act of God. It is further urged that there

is no privity of contract between the plaintiffs and the defendants to pay damages for the loss incurred by the fire. It is further submitted that the

plaintiffs are not entitled to damages in the absence of any privity of contract and also under the provisions of Section 108 of the Transfer of

Property Act.

7. On the contrary, the learned advocate for the respondents/plaintiffs has submitted that the entire building was taken on lessee by the defendants

and except the defendants no one can have access to the building. If the building was not in a safe condition and if the wirings were also not

proper, the defendants could have brought these things to the knowledge of the plaintiffs and when especially the defendants being the electricity

department, they know much better than any one else or otherwise of the wiring and they would have brought to the knowledge of the plaintiffs,

but whereas, they have not at any point of time, complained of the building condition or the wiring and that therefore, it could be held that the

building was in a sound and good condition and the wiring was also properly done and the fire occurred only due to the negligence and

carelessness of the defendants.

8. The arguments advanced by the advocates on both sides were heard and considered.

9. The fact that the suit property owned by the first plaintiff and the same was let out by the second plaintiff, who in turn sublet to the defendants is

not in dispute. Admittedly, the suit property was taken on lease by the defendants for housing their office and also for keeping their records. The

relationship of the landlord and tenant between the plaintiffs and the defendants is not in dispute. It is also not in dispute that the entire building was

taken on lease by the defendants and the plaintiffs were not having any access to the building unless they are called for to have access or

inspection. Since the commencement of tenancy, the defendants at no point of time have complained to the plaintiffs either about any damage to the

building or about the wiring in the building which would go to show that there was nothing to be complained of by the defendants. It is therefore to

be held that the arguments advanced on behalf of the appellants that the building was very old and it was not in a good condition and the electrical

wiring was also not proper cannot be accepted.

10. The learned advocate for the appellants further pointed out that there was a watchman to the suit building, but on the particular date, when the

fire broke out i.e., on 9.6.1984, the concerned watchman was on leave and one of the staff members of the department was deputed to be on

watch-cum-official duty. The said person, namely Ramasamy was examined as D.W.2, who in his evidence had stated that he was doing some

office work and after finishing his office work slept in front of the veranda at 12 midnight, he woke up at about 4 or 4.15 a.m. to answer the

nature's call and found the building in flames. The trial Court observed: if really he was doing the work of watchman he would not have slept

carelessly, but he would have guarded the property. From the evidence of D.W.2, it is seen that he woke up accidentally and saw flames in the

building. Had he not woken up to answer the nature's call, he would have slept thereafter for some more time till the spreading of the fire to the

entire building. The official, namely D.W.2 Ramasamy did not appear to have taken any serious efforts to put off the fire by raising an alarm. He

did not shout for any help nor did he inform the fire service. He has stated that

he contacted one Narayanan of a tea shop and asked the said Narayanan to telephonically inform the fire service about the fire in the suit building. D.W.2 has not given any satisfactory explanation as to why he did not himself go to the telephone and inform the fire service about the fire in the building. This piece of evidence of D.W.2 as extracted above by the trial Court, would clearly go to show that D.W.2 is not at all diligent in guarding the property and there is absolutely no evidence available on the side of the appellants to say that they have taken care to safeguard the building and when especially they have kept their own records in the building and the said building was taken up by the electrical department.

11. Taking into consideration of all those overall situations only, the trial Court came to the conclusion that the fire took place only due to the negligence and carelessness of the defendants and I do not find any error in the said findings, which warrants any interference.

12. With regard to the damages caused in the building, the respondents/plaintiffs have claimed Rs. 1 lakh. The building was inspected by an

Advocate Commissioner, who inspected the property and filed a report Ex.C-1 and Ex.C-2. The Fire Service Officer Report was also filed and

marked as Exs.X-1 and X2 and the plan prepared by the Engineer Kuppusamy, who was examined as P.W.4 was marked as Ex.X-2. No doubt,

the appellants have filed objection to the report filed by the Advocate Commissioner and the same was also taken note of by the trial Court. The

estimate prepared and filed by the Engineer was also taken note of by the trial Court. As per the estimate filed by the engineer, it was shown that

the damage caused was Rs. 90,000, but the same was not accepted by the trial Court. But however, the trial Court took the trouble of assessing

the value of the damage caused to the building by assuming the value at the time when the building was constructed at Rs. 1,50,000 and allowed

depreciation, as it was an old building and arrived at Rs. 40,000. The procedure adopted by the trial Court in arriving at the damages appears to

be reasonable and acceptable.

13. Now the only point that arises for the determination of this Court is whether the appellants/defendants are liable to pay damages?

14. The relationship of the plaintiffs and the defendants as landlord and tenant is not in dispute. Section 109 of the Transfer of Property Act speaks

about the rights and liabilities of the lessor and lessees. As it has already been pointed out that the appellants-lessee at no point of time complained

about any damage to the building or in the electric wire in the building and as such I have already come to the conclusion that the fire took place

only due to carelessness and negligence of the defendants and not on account of the plaintiffs. Section 109(m) of the Transfer of Property Act

reads thus:

The lessee is bound to keep, and, on the termination of the lease, to restore the property in as good condition as it was at the time when he was

put in possession.

As such the appellants/defendants is liable to put the suit building in good condition as it was delivered to him at the inception of the tenancy. Now

that the building has been damaged due to the fire that took place on 9.6.1984, the defendants alone are responsible and liable to make good the

loss and also to bear the liability. The trial Court has observed the loss caused to the building at Rs. 40,000 and I have also accepted the said

finding of the trial Court that the amount arrived at by the trial Court is just and reasonable, and hence I hold that the defendants/appellants are

liable to pay the said amount for the damages caused to the building to the plaintiffs. I have also carefully considered the findings rendered by the

trial Court and also the evidence adduced on either side and there is nothing to reach any other conclusion other than the one, which has been

reached by the trial Court. In the said circumstances, I do not find any good or valid reasons to interfere with the decree and judgment passed by

the trial Court.

15. In the result, the appeal is dismissed. But however, in the peculiar circumstances of the case, there is no order as to costs.