
(1956) 03 MAD CK 0031
In the Madras High Court

T.S. Karthikeya Mudaliar

APPELLANT

Vs

Singaram Pillai and Another

RESPONDENT

Date of Decision : 07-03-1956

Acts Referred:

Transfer of Property Act, 1882 — Section 53A

Citation : AIR 1956 Mad 603 : (1956) 69 LW 697 : (1956) 2 MLJ 515

Hon'ble Judges : Krishnaswami Nayudu, J

Bench : Division Bench

Judgement

Krishnaswami Nayudu, J.—The short point for determination in this appeal is whether the second defendant is entitled to continue in

possession by virtue of the application of the doctrine of part-performance u/s 53-A of the Transfer of Property Act. The plaintiff appellant

instituted the suit out of which this appeal arises for an injunction or in the alternative for possession against the two defendants. The first defendant

was impleaded as a lessee for one year, 1950-51 under a lease deed dated 15th July, 1950 (Exhibit A-14) and the second defendant who was a

previous lessee was impleaded as the person who was in possession of the property but not entitled to continue in possession, as he has no manner

of right to be in possession and that as he is an absolute stranger. So far as the first defendant is concerned, he admitted the lease and there is no

difficulty in granting relief to the plaintiff as against him. But the second defendant contested the suit as not being liable to be ejected by virtue of an

arrangement entered into after the expiry of the previous lease, which was admittedly in favour of the second defendant and one Vaidyanatha, the

first defendant's brother. The lease in their favour expired some time in 1949 and it was for a period of five years. It is the case of the second

defendant that there was an arrangement to grant a lease for an extended period of five years on an annual rent of 400 kalams of paddy and incorporating also other conditions and that a hand-letter was executed on 3rd June, 1949, embodying the said arrangement which was signed by the second defendant and that it is with the plaintiff. But P.W. 2, the father of the plaintiff, admitted that Vaidyanatha, the co-lessee with the second defendant under the earlier lease, requested him in June, 1949 and executed a hand-letter personally agreeing to pay 400 kalams of paddy per year and agreeing to execute a lease deed in two weeks for five years in his sole name. The finding of the Courts below is that there was such a letter and the plaintiff was suppressing the same and that the execution of that letter must have been by the second defendant. Applying the principle of the doctrine of part-performance as embodied in Section 53-A of the Transfer of Property Act, they upheld" the contention of the second defendant and dismissed the action.

2. It is now contended in Second Appeal that the lower Courts erred in applying, the principle of Section 53-A of the Transfer of Property Act, the contention being that the hand-letter which constituted the agreement on which reliance was placed by the second defendant was not stamped and therefore inadmissible in evidence and secondly evidence of such an agreement could not be received. The further contention is that to entitle the second defendant to rely on the protection afforded by Section 53-A of the Transfer of Property Act, it was necessary for him to express his readiness and willingness to perform his part of the contract. As regards the first contention, Section 53-A only requires that the contract to transfer must be in writing, signed by the person or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty. In the present case the agreement is not forthcoming and it is found to have been suppressed by the plaintiff. In these circumstances the contents of the agreement and the terms necessary to constitute the transfer and which have to be ascertained" with reasonable certainty, can only be obtained from the oral evidence of the witnesses and on the admission of the plaintiff and his father P.W. 2. No doubt a document which is required to be stamped and not stamped is inadmissible in evidence u/s 35 of the Indian Stamp Act. But a document in the

nature of an agreement to enter into a lease does not become inadmissible in evidence by reason of want of registration and would certainly be inadmissible by reason of the provisions of Section 35 of the Stamp Act. But that document could be received in evidence as provision is made under the said Act for payment of stamp duty and penalty. In the present case the agreement itself not being before Court, it could not be contended by the plaintiff, especially when he has been found responsible for its suppression, that no evidence could be given of the existence of such an agreement in writing and its terms thereof. Section 53-A of the Transfer of Property Act does not refer that the agreement in writing should be in any particular form. But what is required is that there must be proof of there having been an agreement in writing and evidence of its contents should be available from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty. Such evidence is available in this case not only by reason of the admission of P.W. 2. but also by the notice sent on behalf of the plaintiff, Exhibit A-5, to both the second defendant and Vaidyanatha, calling upon them to execute a lease deed for a further period of four years since a year had elapsed by, the date of Exhibit A-5 dated 22nd June, 1950. That such proof of a formal agreement is unnecessary is not only evident from the language of Section 53-A but it also received support from the judgment of their Lordships of the Supreme Court in *Sheth Maneklal Mansukhbhai v. Hormusji Jamshedji Ginwalla & Sons* (1950) 2 M.L.J. 344 : (1950) S.C.J. 317 . In that case the evidence of the agreement was afforded by secondary evidence obtained from certain correspondence and after examining the evidence Mahajan, J., who delivered the judgment of the Bench, observed:

It furnishes proof of the fact that there was an acceptance in writing...No objection as to admission of secondary evidence could be taken in this case as the primary evidence was in the, possession either of the plaintiff or of the talukdars, the predecessors in interest and in spite of notice it was not produced.

It is further observed, with reference to Section 53-A that it furnishes a statutory defence to a person who has no registered title deed in his favour to maintain his possession if he can prove a written and signed contract in his

favour and some action on his part in part-performance of 1 hat contract and that there can be no manner of doubt that the defence u/s 53-A is available to a person who has an agreement of lease in his favour, though no lease has been executed and registered. It is seen that the requirements of Section 53-A of the Transfer of Property Act as to the proof of an agreement in writing have been satisfied in this case.

3. In regard to the other contention that the second defendant has not expressed his readiness and willingness to perform his part of the contract, I

am unable to see anything either in the pleadings or in the evidence or in the correspondence that passed between the parties that there was not

such readiness and willingness on the part of the second defendant to comply with his part of the agreement, as in the reply notice Exhibit A-6 the

second defendant maintains that there were yet four years more of the lease subsisting and that as regards the demands made on the 2nd

defendant, they were payable only after the expiry of the aforesaid four years. It is not suggested that he was not willing to perform the other terms

of the agreement as regards the payment of rent at the rate agreed upon, viz., 400 kalams of paddy per year. Reliance was placed on the judgment

of the Nagpur High Court in AIR 1947 188 (Nagpur) , wherein observations have been made that the party relying on Section 53-A must show

that he has either fulfilled or is prepared to fulfil his part of the bargain and that that readiness and willingness must be pleaded and that it is a

prerequisite to the application of the section. Section 53-A, however, does not provide that there must be a plea in a suit for possession, where the

defendant seeks the aid of Section 53-A, that he is ready and willing to perform his part of the contract. The readiness and willingness to perform

his part of the contract must no doubt be established by evidence and that readiness and willingness must be shown to have existed ever since the

time of the agreement and not necessarily when the suit is filed. It may be that such a pleading may be absolutely necessary in a suit for specific

performance on the part of the plaintiff. But the absence of an averment in the written statement in a suit for possession, where the defendant raises

plea u/s 53-A, does not appear to me to be fatal, as Section 53-A does not in terms provide for any such requirement. In this view I consider that

the absence of plea of readiness and willingness on the part of the second

defendant to perform his part of the contract in the written statement there being, however, no refusal to perform it in the written statement, while on the other hand in the written statement reliance is placed on Section 53-A would not bar the second defendant from relying upon the protection afforded by Section 53-A. But, however, it has been found not only from the correspondence but also from the evidence in this case that there was such readiness and willingness on the part of the second, defendant to comply with the terms of the agreement. The only term which remained not complied with was the execution and registration of the lease deed, which however has to be executed by both parties. It is not as if the plaintiff tendered such a lease deed and the second defendant refused to execute and register it. On both these contentions I find that the evidence in this case establishes that the second defendant is entitled to continue in possession by virtue of Section 53-A of the Transfer of Property Act.

4. The result is the appeal fails and is dismissed with costs.