
(2007) 07 MAD CK 0123
In the Madras High Court
Case No : S.A. (MD) No. 235 of 1997

V.K. Bheemaraja	Vs	APPELLANT
The Deity of Mayuranathaswamy Devasthanam Premises		RESPONDENT

Date of Decision : 18-07-2007

Acts Referred:

Transfer of Property Act, 1882 — Section 108

Citation : (2007) 07 MAD CK 0123

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : Balasubramania Iyer, for the Appellant; P.T.S. Narendravasan, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Shivakumar, J.—The defendant in the original suit is the appellant in this second appeal.

2. The suit property is an extent of 16 cents of land comprised in Survey No. 276 A/1 in Rajapalayam Town, Virudhunagar District. The

respondent Devasthanam is the owner of the said property. After getting necessary permission from the Deputy Commissioner of Hindu Religious

and Charitable Endowments, Madurai in his proceedings Oo.Mu. 20556/78 dated 17.10.1978, the said property was leased out as a vacant site

to the appellant herein/defendant for a period of one year starting from 01.07.1978 to 30.06.1979. The sanction order of the Deputy

Commissioner of Hindu Religious and Charitable Endowments, Madurai has been marked as Ex. A-1. The rent for the said period was fixed at

Rs. 720/-. In the above said order according sanction for the lease to be granted in favour of the appellant herein/defendant, three conditions were

incorporated, out of which, the third condition is to the effect that no superstructure of permanent in nature should be erected in the above said property by the lessee. Pursuant to the above said order, lease deeds and renewal lease deeds happened to be executed from time to time till the dispute arose in the month of January 1991. Two of such documents are Exs. A-2 and A-3. Complaining that the appellant/defendant was making arrangements to put up permanent structures violating the above said condition on which the lease was granted, the present suit was filed by the respondent/plaintiff Devasthanam represented by its Executive Officer, for permanent injunction not to put up any superstructure of permanent in nature and for a mandatory injunction for the removal of the superstructures put up by the appellant/defendant.

3. The suit was resisted by the appellant/defendant by filing a written statement, denying the allegations that there was an attempt made by him to put up any new superstructure and contending that all the superstructures had been put up even ten years prior to the date of institution of the suit and that no new superstructure was sought to be put up. The further contention raised on behalf of the defendant was that since the lease was in respect of a vacant site, the appellant/defendant was entitled to the benefit of the provisions of City Tenants' Protection Act, 1921; that the nature of the building put up by the appellant/defendant was irrelevant, in view of the condition found in Section 108 of the Transfer of Property Act, 1882 and that in the event of termination of lease, the lessee shall have a right to remove the structures put up by him or the superstructures also will vest with the landlord in case the lessee chooses to surrender possession along with the superstructure without removing the same.

4. The trial Court framed as many as four issues and conducted trial in which P.W. 1 was examined as the sole witness on the side of the plaintiff and Exs. A-1 to A-3 were marked. Likewise, D.W. 1 was examined as the sole witness and Exs. B-1 to B-6 were marked on the side of the defendants. The report filed by the Advocate Commissioner and the rough sketch prepared by him were marked as Exs. C-1 and C-2. At the conclusion of trial, on an appreciation of evidence, the trial Court came to the conclusion that the respondent/plaintiff was not entitled to the reliefs of permanent injunction and mandatory injunction as prayed for in the plaint, non-suited the respondent/plaintiff and dismissed the suit with cost by

its judgment and decree dated 25.10.1993.

5. As against the said judgment and decree of the trial Court, the respondent herein/plaintiff in the suit preferred an appeal in A.S. No. 107 of

1994 on the file of the learned Principal District Judge, Kamarajar District, as it was then called (presently Virudhunagar District) at Srivilliputhur.

The appellate Court, relying on the amendment made to the City Tenants' Protection Act, 1921, by which the properties belonging to public

religious institution were exempted from the purview of the said Act held that the appellant/defendant was not entitled to the benefit of the said Act.

Regarding the other issues, the learned appellate Judge found that the lessee, according to the terms of contract, was not entitled to put up any

permanent structure without the consent of the landlord and that the lessee, namely the appellant herein/defendant was making arrangements to put

up permanent structures in the suit property at the time of filing of the suit and completed the construction after institution of the suit. Based on such

finding of fact, the learned appellate Judge held the respondent herein/plaintiff in the suit entitled to the reliefs of permanent injunction and

mandatory injunction as prayed for in the plaint and thus, reversed the judgments of the trial Court and decreed the suit as prayed for.

6. Aggrieved by and challenging the judgment of the learned Principal District Judge, Srivilliputhur, the appellant herein/defendant in the suit has

brought forth this second appeal before this Court.

7. This Court heard the arguments advanced by Mr. Balasubramania Iyer, learned Counsel appearing for the appellant and also by Mr. P.T.S.

Narendravan, learned Counsel appearing on behalf of the respondent. This Court also perused the materials available on record, including the

judgments of the lower Courts and paid its anxious consideration to the same.

8. Admittedly, the appellant/defendant is a lessee under the respondent/plaintiff in respect of 16 cents of vacant site. Since the property belongs to

the plaintiff Devasthanam, as per the provisions of the Hindu Religious and Charitable Endowments Act, 1959, sanction was accorded by the

Deputy Commissioner of Hindu Religious and Charitable Endowments, Madurai in his proceedings Oo.Mu. 20556/78 dated 17.10.1978 for

granting a lease of the said property in favour of the appellant/defendant for a period of one year from 01.07.1978 to 30.06.1979 and the annual

rent fixed was Rs. 720/-. Sanction order passed by the Deputy Commissioner, Hindu Religious and Charitable Endowments is Ex. A-1. Pursuant to the sanction order, lease deeds and renewal lease deeds happened to be executed. Two of such deeds are produced and marked on the side of the plaintiffs as Exs. A-2 and A-3. Subsequently, rent was increased from Rs. 720/- to Rs. 900/- per annum. Admittedly, present annual rent is Rs. 900/-. We are not concerned with the validity of the lease deeds, as the same is not the subject matter of dispute in the case on hand. It is an admitted case of both parties that the respondent is the landlord and the appellant is the lessee in respect of the vacant site. The dispute in this case between the parties to the litigation is with reference to the applicability of the provisions of City Tenants' Protection Act, 1921 and the right of the lessee to put up superstructures of permanent nature in the lease hold land. Though the suit was defended by the appellant/defendant mainly on the ground that the appellant/defendant, being the lessee of vacant site, was entitled to the protection of the provisions of City Tenants' Protection Act, in view of an amendment brought to the said Act by the legislature, of course subsequent to the filing of the suit, the said defence is no longer available to the appellant/defendant. Mr. Balasubramania Iyer, learned Counsel for the appellant also fairly conceded that the appellant/defendant shall not be entitled to the protection under the City Tenants' Protection Act, 1921, as the properties belonging to public religious and charitable endowments have been taken away from the purview of the Act by the above said amendment.

9. So far as the next contention is concerned, the defence taken by the appellant/defendant seems to be two folded. They are:

(i) No new construction was sought to be put up as pleaded by the plaintiff in the plaint and the superstructures found in the suit property were in

existence for more than 10 years prior to the date of filing of the suit; and

(ii) The said superstructures either permanent or temporary could be removed by the lessee at the time of termination of the lease and even in case

the lessee chooses to surrender possession of the property to the landlord without removing the superstructures, the superstructure will become

vested with the landlord and hence the prayer for injunction or mandatory injunction should be rejected as misconceived.

10. The appellant/defendant got the lease hold right, by virtue of a sanction order passed by the Deputy Commissioner of Hindu Religious and Charitable Endowments, the competent authority to grant sanction of leases in respect of immovable properties belonging to the public religious institutions coming within the purview of the Hindu Religious and Charitable Endowments Act, 1959. A specific condition was incorporated in the order granting sanction that no permanent superstructure should be erected in the land leased out. That being so, the appellant/defendant cannot say that the nature of superstructure either put up already or to be put up by the lessee is quite irrelevant. In support of the said contention of the appellant/defendant, the reference made to Section 108 of the Transfer of Property Act, 1882 is also inappropriate. The lease is governed by the terms of the contract between the lessor and lessee. A lessee cannot be allowed to contend that since there is some protective clause u/s 108 of the Transfer of Property Act, 1882 and no harm will be caused to the lessor, the condition mutually agreed upon need not be respected or need not be given effect to. Having accepted a condition that no superstructure of permanent nature will be put up in the suit property, the lessee cannot be allowed to contend that such a condition can be ignored in the right of the protection available under the above said Section 108 of the Transfer of Property Act, 1882.

11. It is the further contention of the appellant that the learned appellate Judge failed to record a finding as to the nature of constructions put up by the appellant/defendant and hence the judgment of the appellate Court has to be interfered with. A faint attempt was also made on behalf of the appellant to show that in the absence of any finding regarding the age of the building, the question of limitation for the grant of mandatory injunction for the removal of the superstructures could not be conveniently answered and that in view of the specific contention raised by the appellant/defendant that the buildings were in existence for more than ten years, the respondent/plaintiff should have been non-suited on the question of limitation also. Though the defendant had taken a stand in the written statement that the buildings in existence at present were constructed even ten years before the date of institution of the suit, there are materials to show that all the buildings that were in existence prior to

the date of suit were demolished and removed and new structures were sought to be put up which, according to the appellant/defendant, are only

temporary in nature. This submission was made on behalf of the appellant after the learned Counsel for the respondent drew the attention of the

Court to Ex. B-6 - letter written by the appellant/defendant dated 28.01.1991 informing the respondent/plaintiff that all the temporary structures

were removed and the suit property itself was levelled for putting up temporary new constructions and contended that the said letter would amply

prove that the superstructures now available in the suit property are of new origin.

12. In view of the admission found in Ex. B-6, the above said question of limitation does not arise in the instant case. Admittedly, the property was

made a vacant site as on the date of Ex. B-6 namely 28.01.1991. Therefore, any superstructure found in the suit property as on today should

have been erected only subsequent to the above said date. The suit has been instituted on 26.03.1991 i.e. within two months from the date of Ex.

B-6. Therefore, the above said contention of the learned Counsel for the appellant that the respondent/plaintiff should be non-suited for the relief of

mandatory injunction on the ground of limitation has got to be discountenanced.

13. The next contention raised by the learned Counsel for the appellant is that without giving a definite finding as to the nature of the building

erected by the appellant/defendant, the learned appellate Judge has chosen to grant the relief of permanent injunction as well as mandatory

injunction. It is true that the respondent/plaintiff cannot succeed in the suit, if the plaintiff is not able to prove that the superstructure put up by the

appellant/defendant is permanent in nature. But the above said contention of the learned Counsel for the appellant has got to be discountenanced

for the simple reason that there is deemed admission on the part of the appellant/defendant that the superstructure put up by him is permanent in

nature. Specific averment has been made in the plaint that the defendant was making attempts and in fact proceeding with the construction of a

building of permanent nature violating the condition on which the lease was granted in favour of the defendant. This aspect was not disputed in

unambiguous terms by the defendant in his written statement. The entire allegation in the written statement proceeds on the assumption that the

superstructure was permanent in nature aged more than ten years and no new superstructure was sought to be put up. Therefore, the argument advanced by the learned Counsel for the appellant/defendant can be discountenanced on that score alone. In addition to that, there are ample evidence in the form of evidence of P.W. 1 and the report and plan submitted by the Advocate Commissioner appointed by the trial Court and marked as Exs. C-1 and C-2. Upon a proper appreciation of the above said evidence alone, the learned appellate Judge has come to the conclusion that the defendant started putting up permanent superstructures just before the institution of the suit and completed the constructions during the pendency of the suit. The well considered finding of the learned appellate Judge on a question of fact cannot be interfered with in this second appeal. The said finding of the appellate Judge cannot even be stated to be perverse to elevate such a question of fact to the level of a substantial question of law.

14. Under the above said facts and circumstances of the case, this Court is of the considered view that no substantial question of law has arisen in this second appeal and that the questions of law propounded on behalf of the appellant/defendant have been correctly decided by the lower appellate Court warranting no interference of this Court in the second appeal. There is no scope, whatsoever, for interference with the judgment of the learned appellate Judge. There is no merit in the second appeal and the same deserves to be dismissed.

15. In the result, this Second Appeal is dismissed with costs.