(1948) 02 MAD CK 0027

In the Madras High Court

W. Kanniah Lal by his duly constituted agent W. Narasingh Prasad — APPELLANT

Vs

The Corporation of Madras — RESPONDENT

Date of Decision : 20-02-1948

Acts Referred:

Citation : AIR 1948 Mad 508 : (1948) 61 LW 390 : (1948) 1 MLJ 435

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—For a long period the plaintiff has been the owner of a market at Mylapore. In the preceding year with which we are concerned, he leased the market to a contractor who, under the terms of the lease, paid him a fixed sum of Rs. 225 a month, the contractor being allowed to collect what he could from the various stall holders in the market. In 1936 there was an amendment to the City Municipal Act, whereby the Municipality was entitled to demand as licence fee 15 per cent. of the gross income of the owner from the market in the preceding year. Purporting to act under this section, the Revenue Officer of the Corporation demanded of the plaintiff a licence fee equal to 15 per cent. of the gross income from the market, although the plaintiff himself received a sum of only Rs. 225 a month. Criminal proceedings were instituted; and in order to settle the question that there arose the plaintiff filed the present suit for a declaration that the licence fee payable by him was only Rs. 405. The suit was dismissed.

2. The argument on behalf of the plaintiff is that he was the owner of the market and that since the section referred to the gross income of the owner from the market, the Revenue Officer of the Corporation was not entitled to ignore the words " of the owner " and to charge a licence fee of 15 per cent. of the gross income from the market. Dealing with that point the learned Additional Judge of the City Civil Court said:

If the term '' income '' had been used in the section, it would have meant the net income, and then the construction suggested by the plaintiff would have been correct... By the use of the term ''gross income'' it is clear that what was meant was the income which was derived from the market without deducting the expenses of collection, management, etc., ... The contractors in this case must be deemed to be nothing but agents of the plaintiff. The income derived from the various stall holders is therefore the gross income of the plaintiff though after allowing the contractors something for managing the property and for making the collections, he is receiving a lesser sum every month as representing the net income from the market.

We are not concerned with the legal relationship between the plaintiff and his contractor. Suffice it to say that the plaintiff was not entitled to receive from the contractor anything more than the sum of Rs. 225 agreed upon, however little the gross income from the stalls might have been. So that there was no relation between the amount received by the plaintiff and the gross income from the stalls. The sum received by the plaintiff as a result of his contract cannot therefore be regarded as the gross income minus some sum allowed for the expenses of collection. The argument of the learned Additional City Civil Judge therefore seems fallacious.

3. In this Court the learned advocate for the Corporation has laid emphasis on the definition of '' owner '' in Section 3(17) of the Act, which says that "owner" includes the person for the time being receiving or entitled to receive... the rent or profits of the property in connection with which the word is used.... This definition of "owner" would clearly therefore include the lessee. That does not however mean that the plaintiff, who is the owner in the general sense of the word, was not a owner within the meaning of the Act. Both he and his contractor were owners. If that is so, and the word '' owner'' in Section 304-B is taken to include the plural as well as the singular, then the gross income of the owner from the market was the gross income from the market and the fee was rightly calculated.

4. It is argued that if this meaning be placed on the word " owner " in Section 304-B the result would be that the word " owner " must be interpreted in Section 304 in one way and in Section 304-B in another; for the person who applied for the renewal of the licence was not the contractor and the plaintiff, but the plaintiff alone. I do not think that this is any real objection to the interpretation of Section 304-B given above. Section 304-B refers to the state of affairs in the preceding year. Supposing, for example, that in the previous year there were two joint owners and each of them received a half of the gross income from the market and in the year in which the new licence was sought, only one of the two joint owners applied; could it then be said that because that owner had received only a half of the gross income from the market, that he should receive a renewal of the licence for the whale market on the payment of a fee calculated on half the income? Clearly not. The word " owner " in Section 304 must be taken to refer to the person who is conducting the market in the year in

question, while the word " owner" in Section 304-B refers to the owner in the preceding year.

5. In view of the above finding it is not strictly necessary to consider some of the other points raised by the learned advocate for the Corporation in support of the judgment of the lower Court. One of his arguments is to the effect that the Rs. 225 received by the plaintiff is but the net income. Enough has been said on that question in the preceding paragraph. The other argument is that the lease by the plaintiff was not a valid lease and that since no oral evidence is permissible to prove an unregistered lease that should have been registered, there is no legal evidence of a lease. That however seems to me to be beside the point. What we are concerned with in this case is not whether there was, or was not, a valid lease or what were the rights of the plaintiff and his contractor; but the gross amount received by the plaintiff from the market. It seems to me immaterial whether he received the Rs. 225 as a lessor entitled to receive that amount from his lessee or whether he received it on a contract that was not legally enforceable.

6. In the result the appeal is dismissed with costs.

