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Court : Kerala

Decided On : Mar-26-1996

Reported in : AIR1996Ker274

Judge : P.A. Mohammed, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 105

Appeal No. : S.A. No. 169 of 1996

Appellant : C. Devadas

Respondent : The Calicut Corporation

Advocate for Pet/Ap. : A.P. Chandrasekharan and Kodoth Pushparajan

Disposition : Appeal dismissed

Judgement :

P.A. Mohammed, J.

1. The plaintiff in O.S. No. 340 of 1987 on the file of the Additional Munsiff's Court, Kozhikode is the appellant. This appeal has been filed against the judgment and decree of the District Court, Kozhikode in A.S. No. 94 of 1989 confirming the judgment and decree of the trial Court.

2. The short facts of the case is thus: The plaint schedule property is a room in a commercial building owned by the Corporation of Calicut. It was given to the appellant for use and occupation as per Ext. B3 agreement executed between the parties on 31st July, 1985. The licence fee as per the agreement was fixed at Rs. 325/- which was later bilaterally enhanced to Rs. 390/-. Sub-sequently, with effect from 1-4-1986 the Corporation has increased the licence fee to Rs. 428/- per month. The case of the appellant was that on 1-7-1987, the officials of the Corporation of Calicut threatened that the appellant would be evicted if the rent as increased was not paid. It was in that background, the suit was filed. The prayer in the suit is for a decree of prohibitory injunction from enforcing the demand notice dated 30-3-1987 issued by the respondent. It is further prayed for a decree restraining the defendant from dispossessing the appellant from the plaint schedule room. The above suit was resisted by the Corporation contending that the appellant is only a licensee and not a lessee. The period of licence as per Ext. B 3 agreement was for a period from 1-7-1985 to 31-3-1986. The appellant was only given the permission to use the plaint schedule room. The Corporation decided to increase the licence fee by 10 per cent and in view of that, the increase in the licence fee in the case of the appellant was made. It is specifically pleaded by the respondent that the relationship between parties is that of a licensor and licensee and not that of landlord and tenant.

3. After the trial, the learned Munsiff held that the appellant is not entitled to declaration or injunction as sought for. The suit was accordingly dismissed. The plaintiff being aggrieved by the abovesaid judgment and decree filed an appeal before the lower appellate Court. The lower appellate Court by the judgment dated 10-8-1995 dismissed the appeal in confirmation of the judgment and decree of the trial Court. Hence this second appeal is filed.

4. The first and foremost question to be considered is whether Ext. B 3 agreement creates any interest in immovable property. While evaluating whether a particular transaction is a lease or licence, the ordinary test employed is this. 'If an interest in immovable property entitling the transferees to enjoyment is created, it is a lease; if permission to use the land without right to exclusive possession is alone granted, a licence is the legal result.' *Qudrat Ullah v. Bareilly Municipality*, AIR 1974 SC

396. The intention of parties to a document is also a relevant test. When Ext. B 3 is read as a whole it does not manifest an intention of creating any interest in immovable property. The learned counsel has drawn my attention to different clauses in Ext. B3 in channelizing his submission. I have anxiously gone through the recitals contained in Ext. B3 and have come to the conclusion that there is no exclusive transfer of possession but only permission to use the room in favour of the appellant. In the course of granting permissive possession, the grantor may hand over the key of premises to the grantee but that does not by itself create exclusive possession. The creation of relationship between the parties as licensee or lessee is largely dependent on the intention of parties. This is what is mainly emphasised in the decision of this Court in *Rajappan v. Veeraraghava Iyer*, 1969 Ker LT 811. The different clauses contained in Ext. B3 clearly evince what the parties intended is the creation of a licence and not a lease. What I can definitely say is that the intention of the parties to Ext. B3 is apodictic. In this premises it cannot be said that the above decision of this Court has been misapplied in this case.

5. The lower appellate Court has examined Ext. B3 applying the correct legal test and came to the conclusion that it cannot be treated to be a lease arrangement. On this question, the conclusions of the Courts below are concurrent in character.

6. However, learned counsel has further pointedly argued before me that the above decision of the Supreme Court in *Qudrat Ullah's case* (AIR 1974 SC 396) though laid down certain tests for determining whether a given transaction is a lease or licence, gives us sufficient guidelines as to how a transaction would transform itself into a lease in the case of buildings owned by public bodies. The counsel makes particular reference to the following passage contained therein (at p. 400 of AIR).

'Internal connecting walks within a market or a park or entertainment complex cannot be equated with public streets and highways but have a quasi-private touch although vested in a public body. The bazar dues constitute a benefit arising out of the land and may be immovable property which can be leased out.'

The facts involved in the aforesaid decision are totally dissimilar to the facts in the present case. The Supreme Court was dealing with an 'ambiguous deed' in that case. Certain clauses in that deed were compatible only with the creation of a lease. It was pointed out by the Supreme Court that there was compelling grounds for arriving at the conclusions in the above decision. In this context it is apt to quote the following observation of the Supreme Court (at p. 400 of AIR):

'We would have been reluctant, having regard to the social consequences, to read more than a licence into Exts. 1 and 4 but for compelling grounds already referred to.'

No compelling ground is there before this Court to say that the document in question is a lease deed despite the nomenclature of the document. This is a case where after executing Ext. B3 agreement, the shop room was taken over by the appellant for use and occupation as a licensee and he continued to use it in spite of the expiry of the period of licence. At one time, the increased licence fee was paid by the appellant. But when it was enhanced with effect from 1-4-1986, he thought fit to challenge in a Court of law, while he was enjoying the benefit of continuance in possession even after the expiry of the period of licence. It is significant to note that there is no order of eviction. The grievance is mainly directed against the enhancement of the licence fee and for that reason the appellant seeks an injunction against the Municipal authorities from interfering with his possession and from collecting the enhanced licence fee. The Court below therefore correctly refused the injunction sought for. From the findings entered by the Courts below, I do not see any question of law arises for decision by this Court under Section 100 of the Code of Civil Procedure.

The Second Appeal is dismissed accordingly.

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