

Chandrasekharan Vs. Alexander

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Court : Kerala

Decided On : Oct-29-2002

Reported in : AIR2003Ker95

Judge : R. Bhaskaran, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 108; Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 11

Appeal No. : S.A. No. 898 of 1991

Appellant : Chandrasekharan

Respondent : Alexander

Advocate for Def. : N. Subramanian,; M.S. Narayanan and; A.K. Chinnan, A

Advocate for Pet/Ap. : P.V. Chandra Mohan, Adv.

Disposition : Appeals allowed

Judgement :

R. Bhaskaran, J.

1. The defendants in a suit for perpetual prohibitory injunction are the appellants in the Second Appeal. The defendants are admittedly tenants of a building owned by the plaintiff. The case of the plaintiff is that the defendants had tried to alter the

building and the plaintiff obtained a decree in O.S. 129/1981 for injunction restraining them from doing so. Thereafter the plaintiff came to know that the defendants had approached the Municipality for giving water connection to the house. The case of the plaintiff is that the defendants cannot get water connection without his permission. If the defendants are allowed to get water connection the building of the plaintiff will be damaged. Therefore the suit is filed for permanent injunction restraining the defendants 1 and 2 from drawing water connection to the plaintiff schedule premises.

2. The defendants filed written statement contending that water being an essential requirement they have got every right to get water from the municipal pipe line. Though there was a well near the plaintiff schedule building the plaintiff has put waste in the well and water is not pure for drinking. During the summer season there will be no water in the well. Therefore drawing of pipe connection for drinking water is absolutely essential.

3. The trial court after taking the evidence disposed of the suit in the following manner:

'Under the circumstances it is only just and proper that the defendant be permitted to have the pipe line drawn to the premises without making any damage to the structure, and if the wall is to be pierced or floor is to be dug, it is imperative on the part of the defendant to obtain the prior permission from the landlord and in the absence of that the defendant can lay the pipe line in such a way that it shall not disturb the existing structure in any manner whatsoever. The defendant at the time of vacating the premises shall remove the pipe line and they are bound to hand over possession in such a state as it had been prior to the laying of the pipe line. Subject to the above observation these issues are answered against the plaintiff'.

The suit was ultimately dismissed.

4. The plaintiff filed appeal before the lower appellate court and the lower appellate court has allowed the appeal and granted a decree restraining the defendants from drawing water pipe connection to the plaintiff schedule building without written permission of the plaintiff. But it was made clear that the injunction will not be a bar

for the defendants obtaining water connection to the court yard of the building without touching the building. The reasoning of the lower appellate court is that the defendants 1 and 2 are under a contractual obligation not to commit any act of waste or damage to the demised premises during the subsistence of tenancy and they are duty bound to deliver the premises in good condition on terminating the tenancy. A tenant is not entitled to make structural alterations Or additions without the consent of the landlord. It is also stated that whether the condition amounts to impairment of the building is to be looked into from the view point of the landlord. The lower appellate court found that since the defendants have no right to get water connection without permission of the plaintiff, the plaintiff was entitled to get a perpetual injunction restraining the defendants from drawing pipe connection to the plajnt schedule building.

5. In this second appeal the following questions of law have been formulated at the time of admission:

1. Does the act of laying a pipe line for supply of drinking water amount to an act injurious to a building?

2. Is the laying of a water supply connection an act of prudent use referable to Section 108 of the Transfer of Property Act?

6. Drinking water is an absolute necessity for human existence. By drawing pipe line to the building in which the defendants are residing it cannot be said that the building will be in any way damaged or wasted. So long as the tenancy subsists and the plaintiff has not obtained an order of eviction under the Kerala Buildings (Lease and Rent Control) Act, 1965 on any of the grounds specified in Section 11, the defendants cannot by indirect means be driven out of the building by preventing taking of water connection. Under Section 108(p) of the Transfer of Property Act the prohibition is only for the lessee from erecting any permanent structure. Section 108(c) enables the lessee to use the property as a person of ordinary prudence would use them if they were his own and he should not use the property for the purpose other than for which it was leased. Under Section 108(q) the tenant is bound to put the lessor into possession of the property on the termination of tenancy. Under Section 108(m) the tenant is also bound to keep the property in

good condition and to restore the property as in the same condition as it was entrusted subject to changes caused by reasonable wear and tear, Therefore, it can be seen that the mere drawing of pipe line to a building will not come under any of the categories mentioned above so as to prevent the defendants from taking water connection to the building. As a matter of fact the trial court had while disposing of the suit made all necessary conditions to safeguard the interest of the landlord. But still he filed the appeal and the appellate court thought it fit to allow the appeal merely for the reason that the matter has to be viewed from the point of view of the landlord. That may not be a proper approach in a case like this where the question of drinking water is involved. The court is not expected to view the matter either from the point of view of the landlord or of the tenant but according to the provisions of law and the agreement between the parties.

7. Will the drawing of pipe connection amount to violation of the liability of a lessee for use of the tenanted premises as a person of ordinary prudence? The Supreme Court noted with approval various decisions in *Om Pal v. Anand Swamp* (1988 (4) SCC 545). Though the court was considering the meaning of the words 'material impairment' under Section 13(2)(iii) of E.P, Urban Rent Restriction Act, the discussion is relevant from the point of view of Section 108(o) of the Transfer of Property Act also. One case was of drilling of a hole to let out the smoke in a building used as a hotel. That was in *G. Natarajan v. P. Thandavarayan* (1969 RCJ 733).

8. The plaintiff has not produced the agreement prohibiting the defendants from taking water connection to the building. The only document produced is Ext. A1 which is the copy of the judgment in O.S. 129/1981. In that case the plaintiff had obtained a decree for injunction when the defendants tried to construct an additional room. The plaintiff has no case that taking of water connection to the residential house will amount to violation of the injunction decree. No doubt he has not approached the courts below for taking action for violation of injunction decree also.

In the above view of the matter I am of the opinion that the substantial questions of law framed at the time of admission of the second appeal are to be answered in

favour of the appellants. The second appeal is allowed and the judgment and decree of the lower appellate court are set aside and those of the trial court are restored. Parties shall bear their costs in the second appeal.

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