

Muthukrishnan Vs. Ramaian

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Court : Chennai

Decided On : Nov-24-1997

Reported in : 1997(3)CTC161

Judge : S.M. Abdul Wahab, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 100

Appeal No. : S.A. No. 342 of 1984

Appellant : Muthukrishnan

Respondent : Ramaian

Advocate for Def. : K. Yamunan, Adv.

Advocate for Pet/Ap. : P. Veeraraghavan, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

S.M. Abdul Wahab, J.

1. The defendant is the appellant in the second appeal. The plaintiff filed suit for possession..

2. The case of the plaintiff is that the defendant is the plaintiff's paternal uncle. He went abroad and returned to India in 1996. He got married in 1970. He requested the plaintiff to permit him to occupy the house bearing door No. 93, Masthanapalli Street, Karaikal belonging to him. Sri Kailasanathaswamy Sri Nityakalyanaperumal Vagayara Devasthanam, Karaikal is the owner of the site. In 1970, the plaintiff was unmarried. Hence he permitted the defendant to live in the suit house. The plaintiff lived with his brother in Door No. 94, Masthan Palli Street, Karaikkal. The defendant agreed to vacate the house whenever requested. In 1979, the plaintiff got married and hence he wanted to vacate the house. As the defendant refused he sent a notice on 31.10.1981. But the defendant sent a reply with untenable contentions. Hence the suit for possession and mesne profits.

3. The defendant contended that originally the site on which both houses bearing Nos. 93 and 94 stood belonged to Devasthanam. Packirisamy Naidu, the grand father of the plaintiff and the father of the defendant was the lessee of the land from Devasthanam. He constructed the thatched house. Packirisamy's sons Govidaraju, Rengasamy, Gopalaswamy lived with him. The defendant went away to Singapore. They dismantled the thatched house and built two houses. The plaintiff and his family lived in the other house, while Gopalaswamy lived in the suit house. The defendant came to Karaikal in 1947 and lived with Gopalaswamy in the suit house. There was no permission or licence granted by the plaintiff to the defendant. When Gopalaswamy died in 1966, the house was kept vacant. In 1969 defendant occupied the suit house and started living there. The defendant is not aware of transfer of lease in favour of the plaintiff. There was no notice to him before the transfer. The lease was first transferred to Gopalaswamy and then to Kaliaperumal and then to Plaintiff without the knowledge and concurrence of the defendant. As the defendant is a co-owner, the plaintiff is not entitled to vacate and take possession from the defendant.

4. The trial court has framed as many as eight issues. The trial court found that the plaintiff was paying the rent for the house site and that there was no clear proof that the transferee of lease was binding on the defendant. It has also found that the plaintiff did not give permission to the defendant. Further, it held that mere transfer of lease in the name of the plaintiff or the payment of rent would not be

sufficient to vacate the defendant, who had 1/3rd interest in the property.

5. On appeal, the additional District Judge, Pondicherry reversed the judgment and decree of the Trial court and directed the defendant to vacate the suit property and deliver vacant possession within three months. It also directed the defendant to pay mesne profits at Rs. 2 per month from 1.11.1979 till date of delivery of possession.

6. Aggrieved by the judgment and decree of the lower appellate court, the defendant has preferred the second appeal. The learned counsel for the appellant Mr. P. Veeraraghavan contended that the plaintiff has not proved lease in his favour, and from the evidence permission also cannot be inferred. According to the learned counsel for the appellant, the original lessee was Packirisamy, the grandfather of the plaintiff and the father of the defendant. After him his three sons Govindaraju, Gopalasamy and the defendant are entitled to inherit, each having to 1/3rd share in the leasehold right. Since the building was constructed by Packirisamy himself, after his death, the defendant is co-sharer. Hence he cannot be evicted from the suit house. The tenancy must be construed only as a monthly tenancy and unless there was no termination of the same by the Devasthanam it continued and became heritable even after the death of Packirisamy by his sons including the defendant.

7. The learned counsel for the respondent Mr. K. Yamunan on the other hand contended that there is no evidence with reference to the period of the. It must be construed as a lease for indefinite period and it expired with the death of the lessor. Therefore, it is not heritable.

8. The learned counsel for the appellant contended that the original lease was a monthly lease. He relied on certain passages in the plaint and the written statement. But excepting the statement, that when the transfers were made in favour of Kaliaperumal and plaintiff no information was given to him and therefore, the transfer of the lease was improper and the transfer ought to have been made only in his name as he was the eldest living member of the family. There is no averment in the written statement that the lease granted in favour of Gopalasamy was a monthly lease. The learned counsel for the appellant was not in a position to

point out any portion in the plaint that there was any admission on the part of the respondent that the lease was a monthly lease.

9. The learned counsel for the appellant attempted to rely upon the rent receipts Exs. A1, A2, A4, A5, A6, A8 and A9. Exs.A1 and A2 receipts given to Kaliaperumal in 1970. Before the lease was transferred to Kaliaperumal, Gopalaswamy was having the lease in his name for some lease in favour of Gopalaswamy was continued. There is no evidence. All the receipts relate to payment made by Kaliaperumal and the plaintiff. Even assuming for the purpose of argument that from the receipts it can be inferred that rents were paid for months and therefore, the monthly tenancy should be inferred, it will not help the appellant at all. Because we are not concerned with the duration of lease with reference to Kaliaperumal and plaintiff. The defendant has to prove that the lease was a monthly one during the life time of Packirisamy. Only then the said lease could be deemed to have continued to Gopalaswamy then to Kaliaperumal and then to plaintiff.

10. The learned counsel for the appellant contended that since admittedly Packirisamy, the grandfather of the plaintiff and father of the defendant was having the lease and after him Gopalaswamy has continued the lease and later transferred to Kaliaperumal and plaintiff it must be presumed that the monthly tenancy, since the receipts show payment of monthly rents. This is only a conjuncture. Nothing prevented the defendant from summoning the Devasthanam authorities to produce the records and give evidence with reference to the duration of lease in favour of the deceased Packirisamy. There is also no evidence that after the death of Packirisamy the lease was continued uninterruptedly. The evidence show that there was only a thatched structure during the life time of Packirisamy. The thatched structure are not permanent structures. It is also possible that lease in favour off Packirisamy was discontinued or ceased to be in force after the death of Packirisamy.

11. There is also no evidence that the old superstructure constructed by Packirisamy continued to exist after his death. PW.1 has categorically stated that the two houses were there even before his birth and he has denied that they were constructed with the help of the materials from the old thatched structure. DW1

has left India about the year 1948. He did not bother to find out as to what happened to the super-structure or the lease hold right during his absence in India. Only after his return, he got married in 1970 and that year he was permitted to occupy the house. He has admitted that he left for Singapore, when he was 12 years old. About his return during 1947 and leaving back to Singapore during 1948 there is no evidence. He has stated that when he returned to India in 1947 there were two houses bearing door Nos. 93 and 94 and in House No. 93 his other brother Gopalaswamy and his mother were living. While the plaintiff and his father lived in No. 94. Subsequently when he returned in 1969, 93 was vacant. Hence he occupied it, without anybody's permission. Except the statement that Door No. 93 was built by Gopalaswamy there is no evidence at all to establish this fact. On the other hand, we have the evidence of PW2. He has stated that he has built the house No. 93 with the help of materials purchased by the plaintiff. From the evidence, it is not possible to accept that the same old house of Packirisamy was in existence when the appellant came to occupy the Door No. 93 Masthanpally street.

12. Apart from the fact that there is no specific plea in the written statement that the lease in favour of Packirisamy was monthly lease the defendant also has not stated anything about it in his evidence. Apart from saying that he was entitled to 1/3rd share in both door Nos. 93 and 94.

13. There is also no issue framed by the trial court with reference to the duration of the lease. However, the argument has been considered by the lower appellate court. The lower appellate court has found that as the lease in favour of Packirisamy Naidu was not for a specified period it came to an end with his death. It has also found that on the death of Packirisamy Naidu, the lease hold right in his favour granted by the temple came to an end. The learned counsel for the appellant contended that there is evidence that Gopalaswamy had lease hold right and it has been admitted. Therefore, on his death without any issue his brother is entitled to succeed. This contention is also untenable because the lease hold right has transferred to Kaliaperumal in 1960 itself. Here again, we do not see any evidence to show that under what terms, Gopalswamy had the lease with Devasthanam. It cannot also be presumed monthly tenancy in favour of

Gopalaswamy in the absence of any evidence. As we have seen earlier all the receipts stand in the name of Kaliaperumal and plaintiff.

14. The contention of the counsel for the appellant is the lease in favour of Packirisamy as well as Gopalaswamy must be presumed to be a monthly lease and there is no evidence that such leases were terminated as required by Sections 106 and 111-H of the Transfer of Property Act. The monthly lease must be presumed to be continued after the death of Packirisamy and Gopalaswamy and it became inheritable. In the absence of any material with reference to the duration of the lease, we cannot assume that the lease must be a monthly lease.

15. The learned counsel for the appellant cited the following decisions in support of his contentions.

1. Konijeti Venkayya and Anr. v. Thammana Peda Venkata Subbarao and Anr. AIR 1957 AP 619; 2. Mannalal Serowqie v. Ishwariprasad Jain and Anr. : AIR1966 Cal447 ; 3. Chapsibhai Dhanjibhai Dand v. Purushottam : AIR 1971 SC1878 ; 4. Smt Gian Devi Anand, v. Jeevan Kumar and Ors. : AIR 1985 SC796 .

16. In Konijeti Venkayya and Anr. v. Thammana Peda Venkata Subbarao and Anr., AIR 1957 AP 619 the father and son had a lease till their life time. Father died earlier and the son continued to enjoy the lease hold right. In the said case, it was held that the lessees both father and son took lease is tenants in common and there was no survivorship at all and the son continued only as lessee in his own right and not as joint lease. It is made very clear in the said decision that the lease in that case does not provide for devolution of the interest of the deceased lessee on the survivor or the reversioner. I do not know how the said case is helpful to the appellant.

17. In Mannanlal Serowige v. Iswariprasad Jai and Anr. : AIR1966 Cal447 the monthly tenancy is held to be heritable and it is also stated that when a person died leaving only a brother a heir, the brother is entitled to inherit the lease. As the monthly tenancy has not been proved in this case, the said decision is also not helpful.

18. In Chapsibhai Dhanjibhai Dand v. Purushottam : AIR 1971 SC1878 the Apex Court considered the lease as life time for putting up the building. The terms of the lease was for putting up building, after the expiry of the period of 30 years, the lessee can continue so long as he liked paying the rent every year. Another condition was that there should be no increase in the rent. There was another clause which said that the lessee and his heirs shall use the lands in whatever manner they please. So considering the terms of the lease, the Apex Court held that the lease in that case was for life time and not for permanent one. The Apex Court has also referred to Sivayogeswara Cotton Press v. M. Panchaksharappa : [1962]3SCR876 . The lease in that case was for building factories and other structures and so for a period of 20 years certain. But it provided that the lessee could continue to remain in possession so long as he desired and observed the terms of the lease which provided for a higher rent for the first 10 years and a still higher rent thereafter. Further one of the terms stated that the lease was binding on the lessee and his heirs executors, administrators, successors etc. Therefore, the decisions of the Apex Court are not helpful to the appellant.

19. The case in Gian Devi Anand v. Jeevan Kumar and Ors. : AIR 1985 SC796 is also not helpful to the appellant. In the said case the Apex Court was concerned with a statutory tenancy in aspect of the commercial purposes. The Apex Court has hold that heirs of statutory tenant are entitled to same protection against eviction as afforded to tenant under the Act. I do not find that this will help the appellant when there is no evidence or contention to show that the lease was a statutory one.

20. The learned Counsel for the respondent Mr.K.Yamunan cited the following decision is support of his contention that when there is no evidence with respect to the duration of lease must be deemed to be for a indefinite period. Hence the lease gets terminated on the death of the lessee.

1. Saldhaanha and Ors. v. Roman Catholic Church : AIR1930 Mad434 . 2. Raman Lal v. Bhawan Das : AIR1950 All583 ; 3. Chapsibhai Dhanjibhai Dand v. Purushottam : AIR 1971 SC1878 ; 4. R.S.Rammohanrai Jaswantraai Desai and Ors. v. Somabhai Nathabhai Patel and Ors. : AIR1950 Bom161

21. *Saldhanha and Ors. v. Roman Catholic Church* : AIR1930 Mad434 . In this case the Court held that in the absence of express words granting any higher right to the lessee, an indefinite lease would ensure only during the lifetime of the lessee, and that on the lessor's death the lease terminated and that on the landlord was not bound to give any notice to quit before he claimed possession of the properties.

22. *Raman Lal v. Bahgwan Das* : AIR1950 All583

In this Bench decision of the Allahabad High Court there was a lease for a short period of 11 months. After the expiry of the lease, the landlords accepted the land from the original tenant. After his death the son continued to occupy the shed. But the landlord did not accept the land from him. After the death of the original tenant, the landlord filed a suit for possession without giving notice to the son. The Bench of the Allahabad High Court held that the lessee was at the time of his death a tenant at will and that his lease was for an indefinite period; the lease, therefore, determined by his death and no interest passed to his heir. As no interest passed to him his possession of the shop was adverse and he could be sued as a trespasser and no notice to quit was required because there was no interest to be determined by a notice.

23. The learned counsel for the respondent cited *Chasibhai Dhanjibhai Dand v. Purshottam* : AIR 1971 SC1878 in his favour. We have already noticed the terms of the lease in the said case. In respect of these terms, the Apex Court found that the lease was only for the life time of the original lessess and was only for the life time of the original lessee and was not heritable. We have seen the terms of the said case. Inspite of the fact that the lessee can continue the possession after the expiry of the lease, the lease was considered to be for an indefinite period and hence it continued during his lifetime only.

24. In *R.S. Rammohanrai Jaswantraai Desai v. Sombabhai Nathabhai Patel* : AIR1950 Bom161 the Division Bench of the Bombay High Court has held as follows:

'In the absence of a provision in the terms of the grant that the tenancy is not to continue after the grantee's lifetime a lease for a definite period does not terminate on the death of the lessee but continues to the heirs for the remainder of the term. A lease for an indefinite period, on the other hand, ensures for the lifetime of the lessee only, unless there are words in the document or other circumstances indicating an intention to grant a perpetual lease.'

25. The aforesaid decisions indicated that if the lease is for an indefinite period, it will ensure during the life time of the lessee only and it is not heritable. We have also seen the contention of the counsel for the appellant that the lease must be construed to be a monthly one is untenable.

26. The learned counsel contended that when the plaintiff himself has admitted in his evidence that the appellant has 1/3 rd right, he cannot be evicted because he is a co-sharer. When we read the evidence of PW1, no doubt he has made admissions as follows:-

Later he added as follows:-

From the deposition, it is seen that even though he has admitted at the beginning of the cross examination that the appellant has 1/3rd right, he has denied it in the later portion and has asserted that the appellant has no right for the house and he occupied the said house as co-sharer.

27. The learned counsel for the appellant cited *Ramji Dayawala & Sons (p) Ltd. v. Invest Import* : [1981]1SCR899 . It is true that on the above case, the Apex Court has stated that the admission is the best evidence. But here in the cross examination, itself, the plaintiff has asserted that the defendant is not in occupation of the building in question as cosharer.

28. In *R. Anandvalli v. Alagammal and Ors.* : (1993)1MLJ15 it is stated that as per Section 21 of the the Evidence Act, the admission is the best evidence and can be relied upon when there was no attempt to show that the admission was wrong. As I have pointed out earlier, the plaintiff has in the later portion of the evidence assured that the defendant is not co-owner and has no right in the suit property.

Further, the plaintiff was questioned about the house owned by Gopalsamy and the house built by him only in the house that existed at the time when Gopalsamy was alive he had 1/3rd right. The admission refers to this only but in the evidence, we have seen that after Gopalsamy, the lease was transferred to Kaliapeumal and thereafter to the plaintiff. After getting the lease in his name he has put up new construction. Therefore, the admissions cannot be taken to mean that the plaintiff has admitted that the defendant was having 1/3rd right in the suit property after plaintiff constructed it.

29. In view of the discussions made above, I am of the view that the judgment and decree of the lower and appellate court do not require an interference. Hence the second appeal is dismissed. However, there will be no order as to costs.

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