1971 KHC 393
Kerala High Court

V.R. Krishna Iyer, J.

Kamalaksha Pai v. Kesava Bhatt
Parallel citation(s): 1971 KHC 393 : 1971 KLJ 538 : AIR 1972 Ker. 110

Code of Civil Procedure, 1908 -- O.7 R.7 -- O.7 R.7 allows the Court to grant reliefs which may always be given by it as it may think just 'to the same extent as if it had been asked for' -- Relief to be specifically stated in plaint -- Plaintiff can be granted the relief he seeks, if he could have put forward as an alternative ground the facts pleaded by the defendant to make out an earlier lease. Important Para(s):5

Transfer of Property Act, 1882 -- S.107 -- Lease -- Registration Act (16 of 1908) S.49 -- Term less than a year --S.49 of the Indian Registration Act leaves no room for doubt that any document required to be by any provision of the Transfer of Property Act 1882, to be registered shall affect any immovable property unless it has not been registered -- Para.3 of S.107 requires an instrument purporting to create a lease to be executed by both the lessor and the lessee -- Ext. A1 as such fails to produce a landlord-tenant relationship between the plaintiff and the defendant

Important Para(s):4

Referred: AIR 1951 SC 177; AIR 1954 TC 152; AIR 1941 Nag. 95; Referred to

Advocates:

V. Rama Shenoi; R. Raya Shenoi; For Appellant
V. R. Venkitakrishnan; For Respondent

JUDGMENT

1. Concurrent findings notwithstanding, the learned counsel for the appellant has raised a point of law which he cautioned, was not technical and insisted that the suit was liable to be dismissed. Learned counsel on both sides have argued at length and rulings

galore have been cited which undoubtedly shed not only light but also demonstrated how simple factual situations may present themselves with puzzling visages wearing legal masks. Even here, I may state that the best that could be done to transmute a technicality into a substantial point has been done by appellant's counsel and I shall proceed to consider what I regard are the essential questions which seek resolution in this case. At the outset I may also state that have always adopted the view - and do so here - that law is essentially an instrument of justice although it may occasionally be at logger heads with it and the endeavour of the court should be to grant relief where it is due unless compelled by legal obstacles.

2. The plaintiff brought the present suit praying for a decree for delivery ofpossession of the shop building scheduled to the plaint together with arrears of Q rent, Rs. 519. 86, calculated at the rate of Rs. 50/-per month, together with interest at 6%. The court fee paid and the allegations in the plaint leave no one in doubt that the suit was one by a lessor against his lessee. The tenancy relied on was a vadaka cheettu or rent bond dated 6-9-1967, marked Ext. A-1 in the suit. This deed is for a period of 7 months and reads like a lease although it is signed only by the defendant. It fixes a monthly rent of Rs. 50/-. The period having expired and a notice purporting to terminate the tenancy having been sent (vide Ext. A-2) the plaintiff claims that he is entitled to a decree for eviction with arrears of rent. The defendant in his written statement admits his possession and the execution of Ext. A-1, but pleads that the rate of rent has been wrongly shown as Rs. 50/- with ulterior purposes, the current rent being only Rs. 15/- and that notwithstanding Ext. A-1, I the clause fixing the rate of rent at Rs. 50/- has not been acted upon.

3. He has also pleaded discharge of rent. It is useful to extract a portion of the specific plea of the defendant relating to the lease. "The defendant begs to submit that the terms of the lease were that the defendant is liable to pay only Rs. 15/- per month for a term of 7 months." The defendant has also contended that long prior to Ext. A-1 he had been in possession for more than 10 years and that Ext. A-1 showing a higher rent was brought into existence more to help the plaintiff to find a better buyer for the building since he had intended to sell it.

Indeed, both the courts have concurrently held that the defendant was in occupation of the suit-building for well over 10 years before Ext. A-1. The defendant himself gave evidence to the effect that the rent before Ext. A-1 was Rs. 15/- per month. The courts below, holding that Ext. A-1 was binding in all its terms on the defendant and negativing the plea of discharge of rent, decreed the suit as prayed for.

4. The only question mooted in court by counsel for the appellant is that Ext. A-1 is the foundation of the action but being unregistered cannot operate to (create a lease when read in the light of S.107 of the Transfer of Property Act and S.49 of the Indian Registration Act. There being no valid lease in this view, the suit brought by the plaintiff as lessor on the strength of Ext. A-1 - and Ext. A-1 alone must fail. It was argued that S.107 insisted on registered leases in cases falling under Para.1. The term in Ext. A-1 being less than a year, we are concerned with Para.2 which prescribes that leases may be made "either by registered instrument or by oral agreement accompanied by delivery of possession." There is no plea, says counsel, of any oral agreement coupled with delivery of possession and, therefore, a registered instrument becomes inevitable if a lease is to be created. Ext. A-1 admittedly is unregistered and cannot have the effect of a lease. S.49 of the Indian Registration Act leaves no room for doubt that any document I required by any provision of the Transfer of Property Act 1882 to be registered shall affect any immovable property unless it has not been registered. The conclusion is irresistible that Ext. A-1 as such fails to produce a landlord-tenant relationship between the plaintiff and the defendant. Moreover, as Para.3 of S.107 requires an instrument purporting to create a lease to be executed by both the lessor and the lease and Ext. A-1 being executed only by the defendant, there is no escape from the result already reached that Ext. A-1 cannot be treated as valid lease. The next enquiry is to find out what follows from this conclusion and whether the plaintiff can be given relief at all in this suit. The admitted facts gleaned from the pleadings and the concurrent findings are that the plaintiff and his predecessor-in-interest have been in possession for over 10 years, that prior to the execution of Ext. A-1 the rate of rent was Rs. 15/- and that the plaintiff has received a notice to quit. Even if Ext. A-1 cannot be the basis of a suit for recovery of possession as landlord, it is still open to the court to grant reliefs to the plaintiff subject to certain conditions. On the defendant's own showing he has been a lessee of the plaint building. If that lease has not been modified or superseded by Ext. A-1 - on account of the very contention put forward by the defendant's counsel here, Ext. A-1 is ineffectual as a lease - the plaintiff may, perhaps, be entitled to reliefs on the footing of the earlier lease which subsisted on the date of the plaint. It is certainly not open to a defendant, on whose plea a court seeks to grant relief to the plaintiff to contend that such a course should not be resorted to and that the facts set out by him should not be accepted. It may happen that a court chooses to take a defendant at his word and grant a relief to the plaintiff. On that footing the former should not then turn round and say that the court should not believe him. Every party must pay the penalty for his being treated as honest in court and in this case I may examine whether the plaintiff can be given a decree on the assumption that the defendant who he set up the alternative lease with a rental of Rs. 15/- per mensem was speaking the truth. There are two difficulties

in his way. Could such a relief be granted according to the procedural law of the land? Secondly could the plaintiff sustain an incomplete cause of action since the notice terminating the tenancy proceeded on the basis of Ext. A-1 being the lease and so it could not have been a termination of the specific tenancy put forward by the defendant.

5. O.7 R.7 of the Civil Procedure Code while enjoining upon every plaintiff to state specifically the relief which he claims either singly or in the alternative, allows the court to grant reliefs which may always be given by it as it may think just "to the same extent as if it had been asked for". Where a relief is asked for in the plaint on a certain basis, the fact that the plaintiff asks virtually for the relief on different ground at the time of the trial will not disentitle him to that relief, provided the defendant is not prejudiced. The court has jurisdiction to adjust the rights of the parties on the facts ascertained by it and to grant reliefs accordingly, the golden rule being that the defendant should not be taken by surprise or be embarrassed by such relief being granted or on account of the minor shifting of ground. It may not be out of place to refer to a decision of the Supreme Court in Firm Srinivas Ram Kumar v. Mahabir Prasad (AIR 1951 SC 177). Mukherjea J. (as he then was) observed: "A plaintiff may rely upon different rights alternatively and there is nothing in the Civil P.C. to prevent a party from making two of more inconsistent sets of allegations and claiming relief thereunder in the alternative. The question, however, arises whether, in the absence of any such alternative as in the plaint it is open to the Court to give him relief on that basis. The rule undoubtedly is that the Court cannot grant relief to the plaintiff on a case for which there was no foundation in the pleadings and which the other side was not called upon or had an opportunity to meet. But when the alternative case, which the plaintiff could have made, was not only admitted by the defendant in his written statement but was expressly put forward as an answer to the claim which the plaintiff made in the suit, there would be nothing improper in giving the plaintiff a decree upon the case which the defendant himself makes. A demand of the plaintiff based on the defendant's own plea cannot possibly be regarded with surprise by the latter and no question of adducing evidence G on these facts would arise when they were expressly admitted by the defendant in his pleadings. In such circumstances when no injustice can possibly result to the defendant, it may not be proper to drive the plaintiff, to a separate suit" In Velu Pillai Padakalingam v. Paramanandan Yesudasan (AIR 1954 TC 152) the plaintiff brought a suit on a specific lease which he could not establish and the defendant had admitted in his written statement another lease, the court made the following observations in that context: "The only question is whether it is competent for the court to award a relief to the plaintiff when the specific case of the lease alleged by him is found against and when another arrangement of lease is admitted by the defendant .... When a plaintiff brings a suit on a specific lease which is not established but the defendant admits a different lease it is

competent for the court to award relief to the plaintiff based upon the admitted lease." Reliance is placed in this decision on the earlier Supreme Court ruling mentioned by me. To the same effect is another decision reported in Udhao Nanaji Gadewar v. Narayan Vithoba Mangilwar (AIR 1941 Nag. 95). The law, is, therefore, clear that the plaintiff can be granted the relief he seeks, if he could have put forward as an alternative ground the facts pleaded by the defendant to make out an earlier lease. In the present case, it would have been perfectly possible for the plaintiff to have stated alternatively that if Ex A-1 was not valid for any reason, he should be given a decree for recovery of possession and arrears of rent on the strength of the earlier lease.

6. The further contention raised by the appellant is that a lease has to beterminated in the manner prescribed under S.106 of the Transfer of Property Act. Indeed, such a termination is part of the cause of action as has been pointed out in the decision reported in Narayanan Nair v. Kunhan Mannadiar (AIR 1949 Mad. 127). A notice has been sent in this case and no finding, nor even an issue, that the lease has not been terminated validly has been made. But the specific contention is that what was terminated was the supposed lease created by Ext. A-1 while what is required, if the relief on the alternative lease pleaded by the defendant ought to be granted, is the termination of the earlier lease. Granting a landlord-tenant relationship between the parties and further granting that both the leases are capable of being terminated by notice to quit, unless there are special circumstances, we may construe the provisions regarding the determination of the lease by a notice under S.106 of the Transfer of Property Act liberally so as to relate to the only Case out of the two that subsists. The rule has been to make lame and inaccurate notices sensible where the recipient cannot have been misled as to the intention of the giver (Mulla, Transfer of Property (5th Edn.) p. 666). A liberal construction is put upon a notice to quit so that it is not defeated by minor errors. The authorities establish the position that notices to quit, may notwithstanding erroneous particulars, be still good and effective so long as the recipient is not mislead. In the present case, I am unable to see any circumstance which may reasonably misled the defendant or prejudice him if I accept Ext. A-2 as a proper notice terminating the only lease that bound the plaintiff and the defendant in jural relationship. In substance, and with reasonable clarity, Ext. A-2 indicates to the defendant the intention of the plaintiff I to determine the existing tenancy between them. This settles the question of the sufficiency of the notice.

7. Counsel for the respondent wanted me to disallow the plea of non registration and consequent invalidity of Ext. A-1 as a lease, basing himself upon a ruling of the Privy Council reported in the Official Liquidator of M. E. Moola Sons. Ltd. v. Perin R. Burjorjee (AIR 1932 PC 118). Of course, their Lordships of the Judicial Committee were inclined to

the view that in certain circumstances such a plea may be disallowed when taken for the first time in the higher courts but indicated that where the unregistered document is the foundation of the judgment affecting immovable property, such a plea may be raised even at that very late stage. In the instant case, the respondent's submission that had he known about this plea he might have resorted to alternative reliefs and even may have sought recovery of possession on title, lends substance to his objection, but in view of the fact that I am able to give the plaintiff relief on the facts set out in the written statement, I do not wish to make a final pronouncement on the legal objection.

8. The consequence of rejecting Ext. A-1 as an invalid lease, and relying upon the facts stated in the written statement of the defendant as constituting the terms of the lease is that the rate of rent will be reduced to Rs. 15/- from Rs. 50/-. In these circumstances, I confirm the decree so far as the relief of recovery of possession is concerned, but in so far as the arrears of rent and future rent have been decreed, the rate of rent and for use and occupation of the building would be pared down to Rs. 15/- per month, Counsel for the appellant has submitted that he may be given a reasonable time to shift his business in the event of eviction being directed. It must be remembered that in the Kerala State, it is difficult to find an alternative accommodation at short notice and to drive a man out of his business all of a sudden may cause him injury far beyond the calculations of the parties. I would, therefore grant him time till the 30th of September, 1971 to vacate.

9. The appeal, with the modifications I have indicated above, is dismissed with costs.