



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.07.2021

CORAM:

THE HONOURABLE Mr.JUSTICE M.SUNDAR

S.A.No.654 of 2020

The Divisional Manager
Retail Sales
Indian Oil Corporation Ltd.,
(Marketing Division)
Coimbatore.

... Appellant/ Defendant

Vs.

1.R.Pradeep
2.R.Gowri Pradeep

... Respondents/ Plaintiffs

Prayer:

Second Appeal has been filed under Section 100 of Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated 16.03.2020 made in A.S.No.28 of 2017 on the file of the III Additional District and Sessions Judge, Erode at Gobichettipalayam and confirming the judgment and decree dated 20.09.2017 made in O.S.No.118 of 2016 on the file of the Subordinate Judge of Sathyamangalam.

For Appellant : Mr.Mohammed Fayaz Ali

For Respondents : Mr.AR.L.Sundaresan
Senior counsel
for Mr.S.Saravanan

JUDGMENT

This day, half a decade ago, a plaint was presented in the 'Subordinate Judge's Court, Sathyamangalam' [hereinafter 'trial Court' for the sake of convenience and clarity] and the same was taken on file as O.S.No.118 of 2016. To put it differently, a plaint was presented exactly five years ago i.e., on 05.07.2016 in the trial Court. Therefore, the age of the lis which has lead to captioned second appeal is now five years.

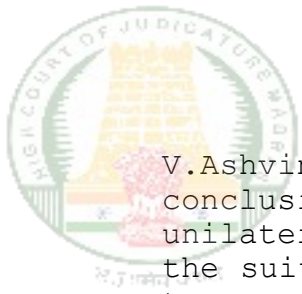
2. The aforementioned suit was laid by the 'two respondents in captioned second appeal' [hereinafter 'plaintiffs' in plural and 'plaintiff' in singular besides being referred to as 'first plaintiff' and 'second plaintiff' wherever necessary for the sake of convenience and clarity] arraying 'Indian Oil Corporation Limited' [IOC] [hereinafter 'defendant' for the sake of convenience and clarity] as lone



3. The facts are fairly straight and simple. The aforementioned suit was filed with a prayer to direct the defendant to vacate and deliver vacant possession of suit property after removing the superstructure that has been put up thereon by the defendant. To be noted, plaintiffs are lessors and defendant is lessee qua suit property. The usual limb of a plaint prayer for costs and residuary limb also form part of the prayer.

4. Pleadings of plaintiffs which are imperative for appreciation of this judgment are that plaintiffs leased out the suit property to defendant in and by a registered lease deed dated 22.10.1997 (Ex.A1) for a period of 20 years; that there is a provision for renewal for another 20 years; that lease subsisted till 29.06.2016; that prior to the lease elapsing on 29.06.2016, plaintiffs vide notices dated 10.09.2015, 21.09.2015 and 12.05.2016 (Ex.A9, Ex.A10 & Ex.A15 respectively) inter alia made it clear that they are not willing for renewal of lease, terminated the lease and called upon the defendant to remove the superstructure, vacate and hand over vacant possession of suit property; that this Court is informed that the demised property was a vacant land but this Court considers it is unnecessary to delve into those facts as the captioned second appeal is under Section 100 of CPC and the central theme of the lis is recovery of possession of suit property by lessors simplicitor; Defendant entered appearance, filed a written statement dated 17.10.2016 and the suit was resisted primarily on the ground that there is a provision (covenant/clause) in the lease deed (Ex.A1) and that provision, more particularly, clause 4(j) provides for lease being extended for another 20 years i.e., 40 years in all and that such extension is at the option of the defendant lessee and lessors have no say in the same.

5. On the aforementioned rival pleadings, trial Court framed as many as five issues and the parties went to trial on these five issues. Out of the five issues framed by the trial Court, the first issue which turns on whether the defendant is entitled as a matter of right for renewal for another period of 20 years qua Ex.A1 dated 22.10.1997 lease deed is pivotal. In the trial Court, the first plaintiff examined himself as P.W.1 and as many as 21 documents were filed and marked as exhibits (Ex.A1 to Ex.A21). On the side of defendant, one Raju was examined as D.W.1 and no documents were marked. After full contest, trial Court by placing reliance on D.Packiaraj and another Vs. P.Kulanthaivel Nadar and another reported in 2001-1-LW-789, Indian Oil Corporation Ltd., and another Vs. Lakshmi Subrahmanyam and others reported in 2011-4-LW-937, Shanti Prasad Devi & another Vs. Shankar Mahto & Others reported in CDJ 2005 SC 154, Naveen Chand & another Vs. Nagarjuna Travels & Hotels Pvt. Ltd., reported in CDJ 2002 SC 466, Santhal Parganas Gram Udyog Sa Vs. Dwarika Sao, reported in 2009 SCC Online Jhar 439, and Bharat Petroleum Corporation Ltd., Vs.



V.Ashvinraj reported in 1994 SCC Online Mad 318, came to the conclusion that the defendant cannot claim renewal unilaterally as a matter of right. The trial Court decreed the suit in and by judgment and decree dated 20.09.2017 giving two months time to the defendant to remove the superstructure, vacate and handover the vacant possession of suit property to plaintiffs/lessors.

6. Defendant carried the matter in appeal by way of a regular First Appeal under Section 96 of 'The Code of Civil Procedure, 1908' [hereinafter 'CPC' for the sake of brevity] vide AS.No.28 of 2017 on the file of 'III Additional District and Sessions Judge's Court, Erode at Gobichettipalayam' [hereinafter 'First Appellate Court' for the sake of convenience and brevity] and the First Appellate Court after full contest dismissed the defendant's first appeal in and by judgment and decree dated 16.03.2020 confirming the judgment and decree of the trial Court. The points for determination framed by the First Appellate Court are three in number and here again, the first of the point for determination turns on renewal qua Ex.A1 lease deed as this is the crux and gravamen of the lis between the parties. First Appellate Court in a crisp and terse judgment has dismissed the first appeal by relying on the principle laid down by this Court in Vivekanandan & others Vs. The Indian Oil Corporation Limited, Southern Regional Office, Rep. by its Chief Manager, Chennai and another reported in (2020) 3 MLJ 628 for the principle that a lease agreement of this nature cannot give unilateral power of renewal of lease period overriding the consent of lessor.

7. In the aforesaid backdrop, execution was launched and the trajectory the matter has taken in reaching this Court resulting in an order of interim stay and C.M.P.Nos.13495 of 2020 & 5261 of 2021 in this regard came to be disposed of by a common order dated 19.04.2021 made by this Court. It is not necessary to advert to those details as the main second appeal is now being heard out and it is being given a closure vide instant judgment.

8. A perusal of case file reveals that the captioned main second appeal has been admitted by Predecessor Hon'ble judge on 01.03.2021 on a lone question {which was proposed by defendant as a 'substantial question of law' albeit at the admission stage and obviously, subject to rights of the respondents under Sub-Section(5) of Section 100 of CPC} and reads as follows:

'(a) Whether the Courts below have drawn wrong inference from the lease deed dated 22.10.1997 by constructing the lease to be only for a period of 20 years contrary to Clause j?'

9. A perusal of the above makes it clear that the entire second appeal now turns on covenant/clause 4(j) of Ex.A1 lease



deed which reads as follows:

'j. The lessee shall at the expiration of further renewal period (ie) after 40 years from 1.3.1996 yield up and delivery peaceful and vacant possession of the demised premises and in the event of any installation, erection, alteration or substitution having been made thereon or underneath the surface restore the same to their original state and conditions in which the same has been demised. All buildings, structures, installations, fittings, fixtures and reaction of whatsoever kind and nature whether in, upon or underneath the demised premises shall during the said term and at the expiry thereof entirely belong to and revert to the lessee who shall be entitled to take away the same. The lessor will not have any right title or interest thereon nor shall they be entitled to appropriate or retain the same or any part thereon.

PROVIDED ALWAYS AND IT IS AGREED AND DECLARED that at the expiration of the said term of twenty years, this lease will be renewed on mutually agreed terms for a further period of 20 years from the expiration of the said term hereby granted unless the lessee shall prior to the expiration of the last mentioned term give to the lessors one calender month's previous notice in writing of their intention not to take any renewed lease. The renewed lease will be on a rental to be negotiated.'

{underlining and double underlining
made by this Court for highlighting,
supplying emphasis and ease of reference}

10. This Court now embarks upon the exercise of capturing submissions, discussion and giving its dispositive reasoning.

11. A careful perusal of aforementioned clause 4(j) makes it clear that there is a provision for 'renewal' and not for 'extension'.

12. Learned counsel for appellant contended that the term 'renewal' has been used loosely and what was actually intended was an extension of lease. Thereafter, learned counsel for appellant pressed into service State of U.P. and others Vs. Lalji Tandon (dead) through LRs reported in (2004) 1 SCC 1 and Smt.Renuka Seal & Ors. Vs. Smt.Sabitri Dey & Ors. reported in 2007 SCC Online Cal 501. To be noted, these two case laws, relate to extension in contradistinction to renewal. In the considered view of this Court, these two case laws do not come to the aid of the defendant (appellant in captioned second appeal) as case on hand is one where it has been made clear that renewal shall be on mutually agreed terms and the issue, if at all and if that be so, is whether the defendant lessee



has an overriding contractual right to impose a unilateral renewal upon lessors. Therefore, the principle that there cannot be unilateral renewal of a lease deed and that unilateral renewal cannot be thrust on lessors comes into play.

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13. There is no dispute between parties on facts that lease vide Ex.A1 subsisted till 29.06.2016. In other words, post 29.06.2016 there is no lease deed as between the parties. There are no agreed terms as between the parties. Therefore, this leads to a scenario of there being no contract governing the parties. This also leads to there being no contract to the contrary scenario, more so in the light of the lessors having made it clear vide Ex.A9, Ex.A10 & Ex.A15 as alluded to supra that there is no intention on their part to agree for renewal. Assuming for a moment, on an extreme demurrer, even if the argument that renewal is at the option of the lessee alone is to be accepted, there is obviously no mutually agreed terms and that floors the entire argument on which the suit was predicated on as this is still a case of 'no contract to the contrary scenario inter alia within the meaning of Section 106 of the Transfer of Property Act, 1882'.

14. In the light of the aforesaid discussion, answering the aforesaid question which has been formulated as substantial question of law (at the admission stage) on which the second appeal has been admitted becomes fairly simple and easy.

15. Hon'ble Supreme Court has laid down Kanailal principle vide Kanailal and others Vs. Ram Chandra Singh and others reported in (2018) 13 SCC 715, wherein Order XLI Rule 31 of CPC has been telescoped into a legal drill under Section 100 CPC also. Therefore, this Court deems it appropriate to set out and say that the lone point for determination in the case on hand is answering the aforementioned substantial question of law which in turn turns on Clause 4(j) of Ex.A1 and as to whether the renewal can be unilaterally thrust on an unwilling lessee.

16. For examining this point of determination and giving this Court's decision thereon with reasons for decision, it may be necessary for this Court to remind itself as to what the expression 'substantial question of law' occurring in Section 100 of CPC means. The expression 'substantial question of law' occurring in Section 100 of CPC has been elucidatively explained in a long line of authorities and a catena of case laws starting from the celebrated Sir Chunilal Mehta's case [Sir Chunilal V.Mehta and Sons Ltd., Vs. Century Spinning and Manufacturing Co. Ltd., reported in AIR 1962 SC 1314] wherein a Constitution Bench of Hon'ble Supreme Court reiterated the principles laid down by a Full Bench of this Court (Madras High Court) in Rimmalapudi Subba Rao's case [Rimmalapudi Subba Rao Vs. Noony Veeraju And Others reported



in AIR 1959 Madras 969 (FB)], without extracting and reproducing those principles, suffice to say that this is the obtaining position of law as Hon'ble Supreme Court as recently as 27.08.2020 in Nazir Mohamed case [Nazir Mohamed Vs. J.Kamala reported in 2020 SCC OnLine SC 676] has reiterated the celebrated Sir Chunilal Mehta's case principles qua what is the expression 'substantial question of law' occurring in Section 100 CPC means. Most relevant paragraphs in Nazir Mohamed case are Paragraph Nos.29, 30 and 35 to 37 and the same read as follows:

'29. The principles for deciding when a question of law becomes a substantial question of law, have been enunciated by a Constitution Bench of this Court in Sir Chunilal v. Mehta & Sons Ltd. v. Century Spg. & Mfg. Co. Ltd.¹, where this Court held:—

"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

30. In Hero Vinoth v. Seshammal , this Court referred to and relied upon Chunilal v. Mehta and Sons (supra) and other judgments and summarised the tests to find out whether a given set of questions of law were mere questions of law or substantial questions of law.

35. Whether a question of law is a substantial one and whether such question is involved in the case or not, would depend on the facts and circumstances of each case. The paramount overall consideration is the need for striking a judicious balance between the indispensable obligation to do justice at all stages and the impelling necessity of avoiding prolongation in the life of any lis. This proposition finds support from Santosh Hazari v. Purushottam Tiwari .

36. In a Second Appeal, the jurisdiction of the High Court being confined to substantial question of law, a finding of fact is not open to challenge in second appeal, even if the



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appreciation of evidence is palpably erroneous and the finding of fact incorrect as held in Ramchandra v. Ramalingam . An entirely new point, raised for the first time, before the High Court, is not a question involved in the case, unless it goes to the root of the matter.

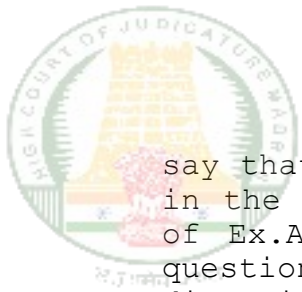
37. The principles relating to Section 100 CPC relevant for this case may be summarised thus:

(i) An inference of fact from the recitals or contents of a document is a question of fact, but the legal effect of the terms of a document is a question of law. Construction of a document, involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue.

(iii) A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the Court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iv) The general rule is, that High Court will not interfere with the concurrent findings of the Courts below. But it is not an absolute rule. Some of the wellrecognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. A decision based on no evidence, does not refer only to cases where there is a total dearth of evidence, but also refers to case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.'



say that nothing debatable, nothing that is res integra arises in the aforementioned question that is pivoted on clause 4(j) of Ex.A1. It certainly does not qualify as a 'substantial question of law' arising in this case owing to elucidation and dispositive reasoning set out supra. Likewise, there is nothing demonstrable before this Court qua settled principle of law being disregarded. This is not a case of misconstruction of a document or a wrong application of a principle of law in construing a document as clause 4(j) more particularly the underlined and double underlined portions in the extract supra make the covenant/clause so clear and unambiguous that it is not even ambivalent. Therefore, the answer to the aforementioned question is in the negative. To put it differently the substantial question of law is answered against the appellant. This Court has no difficulty in agreeing with the submission of learned Senior Counsel Mr.AR.L.Sundaresan, instructed by Mr.S.Saravanan learned counsel for respondent that in exercise of respondent's rights under Sub-Section (5) of Section 100 of CPC it can also be gainsaid that no substantial question of law arises in the instant case as there is no difficulty in construing clause 4 (j) of Ex.A1. Therefore, the substantial question of law is answered against the appellant and it is held that no other substantial question of law arises in the case on hand. This draws the curtains on the captioned second appeal.

18. In the light of the narrative thus far, discussion and dispositive reasoning, the captioned Second Appeal is dismissed. In the light of the trajectory the matter has taken and submissions made before this Court, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mk

To

1. III Additional District and Sessions Judge,
Erode at Gobichettipalayam.
2. The Subordinate Judge
Sathyamangalam.
3. The Section Officer,
V.R Section, High Court, Madras-104.

+1cc to M/s.S.Saravanan, Advocate, S.R.No.31349

+1cc to M/s.Mohammed Fayaz Ali, Advocate, S.R.No.31257

S.A.No.654 of 2020

RR(CO)