Mrs. M. N. Clubwala And Anr vs Fida Hussain Saheb And Ors on 3 February, 1964

Equivalent citations: 1965 AIR 610, 1964 SCR (6) 642, AIR 1965 SUPREME COURT 610, 1964 2 SCJ 448, 1964 6 SCR 642, 1964 (1) SCWR 750, 1964 SCD 842

Author: J.R. Mudholkar

Bench: J.R. Mudholkar

PETITIONER:
MRS. M. N. CLUBWALA AND ANR.

Vs.

RESPONDENT:
FIDA HUSSAIN SAHEB AND ORS.

DATE OF JUDGMENT:
03/02/1964

BENCH:
MUDHOLKAR, J.R.
BENCH:
MUDHOLKAR, J.R.
SUBBARAO, K.

CITATION:
1965 AIR 610 1964 SCR (6) 642
CITATOR INFO :
R 1968 SC 919 (7)
R 1974 SC 396 (8)
RF 1976 SC1860 (12)
F 1988 SC1845 (13)

ACT:
Licence or Lease-Provision requiring notice to vacate-If inconsistent with licence-Intention of parties-To be ascertained from Agreement-Inference from circumstances and conduct, if formal document absent-Exclusive possession if conclusive evidence of lease.

HEADNOTE:
in disputes regarding extra fees in respect of meet-stalls in a private market owned by the appellants, the

respondents--stall-holders filed a suit alleging that the relationship between them and the appellants was that of lessees and lessors; while according to the appellants, the respondents

643

were only their licensees. The stall-holders have been executing agreements, signed by the stall-holders alone, in which the payment is styled as rent. Though the building in which the market is located is owned by the appellants it could not be used as a market for the sale of meat or comestibles without the permission of the municipal council, and a number of duties have been imposed upon the owners including that of closing the market and that market functioned only within 'he stated hours. The City Civil Court Judge finding that the respondents were bare licensees dismissed their suit. His decision was affirmed in appeal. On a further appeal the High Court reversed the findings of the Courts below holding that from the general tenor of the document the terms created only a tenancy in respect of the stalls and not a mere licence or permissive occupation saying that if the occupation of the stall-holders was only permissive the condition as to the payment of rent, eviction for default in payment of rent for more than 3 days, the provision for annual repairs being carried out by the landlord, the further provision that repairs that might be occasioned by the carelessness of the respondents should be carried out at their expense and the adequate provision for 30 days notice for vacating the stalls if they were required by the landlord would all seem to be inconsistent and irrelevant. On appeal by special leave:

Held: (i) While it is true that the essence of a licence is that it is revocable at the will of the grantor the provision in the licence that the licensee would be entitled to a notice before being required to vacate is not inconsistent with a licence, and the mere necessity of giving such a notice would not indicate that the transaction was a lease.

Whether an agreement creates between the parties the relationship of landlord and tenant or merely that of licensor and licensee the decisive consideration is the intention of the parties, which has to be ascertained on a consideration of all the relevant provisions in the agreement. In the absence, however, of a formal document the intention of the parties must be inferred from the circumstances and conduct of the parties.

(ii)The fact that a person has exclusive possession is not conclusive evidenceof his being a lessee. If, however, exclusive possession to which a personis entitled under an agreement with a landlord is coupled with an interest in the property, the agreement would be construed not as a mere licence but as a lease.

Associated Hotels of India Ltd. v. R. N. Kapur, [1960] 1 S.C.R. 368, Errington v. Errington and Woods, [1952] 1 K. B.

290, Cobb. v. Lane, [1952] 1 All. E.R. 1199, Clove v. Theatrical Proprietors Ltd. and Westby & Co. Ltd. [1936] 3 All. E.R. 483. Smith & Son v. The Assessment Committee for the Parish of Lambeth, [1882-831 10 Q.B.D. 327 and vutrum Subba Rao v. The Eluru Municipal Council, I.L.R. [1956] A.P. 515, referred to.
(iii) In view of the duties cast upon the landlord and the circumstances of the present case the intention of the parties was to bring into existence merely a licence and not a lease and the word 'rent' was used loosely for 'fee'.
644

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 151 of 1963. Appeal by special leave from the judgment and decree dated February 17, 1959 of the Madras High Court in Second Appeal No. 252 of 1957.

S. T. Desai and R. Ganapathy Iyer, for the appellants. R. Gopalakrishnan, for the respondents Nos. 1-6. February 3, 1964. The Judgment of the Court was delivered by MUDHOLKAR J.-This is an appeal by special leave from the judgment of the High Court of Madras reversing the decisions of the courts below and granting a number of reliefs to the plaintiffs-respondents.

The main point which arises for consideration in this appeal is whether the plaintiffs-respondents are the lessees of the appellants who were defendants 4 and 5 in the trial court or only their licensees. In order to appreciate the point certain facts need to be stated.

The appellants are the owners of a private market situate in Madras known as Zam Bazar Market. There are about 500 odd stalls in that market and meat, fish, vegetables, etc., are sold in that market. The practice of the appellants has been to farm out to contractors the right to collect dues from the users of the stalls. Defendants 1 to 3 to the suit were the contractors appointed by the appellants for collecting rent at the time of the institution of the suit. Two of these persons died and their legal representatives have not been impleaded in appeal as they have no interest in the subject-matter of litigation. The third has been transposed as respondent No. 7 to this appeal. They were, however, alive when the special leave petition was filed and were shown as appellants 1 to 3, but two of them were struck out from the record after their death and the third trans- posed as Respondent No. 7. Though the building in which the market is located is owned by the appellants it cannot be used as a market for the purpose of sale of meat or any other article of human consumption without the permission of the municipal council under s. 303 of the Madras City Municipal Act, 1919 (hereafter referred to as the Act). Before such a permission is granted the owner has to obtain a licence from the Municipal Commissioner and undertake to comply with the terms of the licence. The licence granted to him would be for one year at a time but he would be eligible for renewal at the expiry of the period. Section 306 of the Act confers power on the Commissioner to require the owner, occupier or farmer of a private market for the We of any animal or article of food to do a number of things, for example to keep it in a clean and proper state, to remove all filth and

rubbish therefrom, etc. Breach of any condition of the licence or of any order made by the Commissioner would result, under s. 307, in suspension of the licence and thereafter it would not be lawful for any such person to keep open any such market. Section 308 of the Act confers powers on the Commissioner to make. regulations for markets for various purposes such as fixing the days and hours on and during which any market may be held or kept for use, requiring that in the market building separate areas be set apart for different classes of articles. requiring every market building to be kept in a clean and proper state by removing filth and rubbish therefrom and requiring the provision of proper ventilation in the market building and of passages of sufficient width between the stalls therein for the convenient use of the building. We are told that regulations have been made by the Commissioner in pursuance of the powers conferred upon him by S. 308 of the Act. Thus as a result of the Act as well as the regulations made thereunder a number of duties appear to have been placed upon the owners of private markets. It would also appear that failure to comply with any of the requirements of the statute or the regulations would bring on the consequence of suspension or even cancellation of the licence. We are mentioning all this because it will have some bearing upon the interpretation of the documents on which the plaintiffs have relied in support of the contention that the relationship between them and the appellants is that of tenants and landlord.

The suit out of which this appeal arises came to be filed because disputes arose between the plaintiffs and the defendants 1 to 3 who became the contractors for collection of rent as from February 9, 1956. These disputes were with regard to extra carcass fees and extra fees for Sunday Gutha which were claimed by the contractors. The respondents further alleged that the relationship between them and the appellants was, as already stated, that of lessees and lessors while according to the appellants, the respondents were only their licensees. The respondents further challenged the extra levies made by the contractors, i.e., the original defendants 1 to 3 who are no longer in the picture. The reliefs sought by the respondents were for an injunction against the appellants and the defendants 1 to 3 restraining them from realising the extra levies and for further restraining them from interfering with their possession over their respective stalls as long as they continued to pay their dues. The First Additional City Civil Court Judge before whom the suit had been filed found in the respondents' favour that the extra fees sought to be levied by the contractor were sanctioned neither by the provisions of the Municipal Act nor by usage but upon the finding that the respondents were bare licensees dismissed their suit.

The appellate bench of the City Civil Court before whom the respondents had preferred an appeal affirmed the lower court's decision. The High Court reversed the decision of the courts below and in the decree passed by it pursuant to its judgment granted a number of reliefs to the respondents. Here we are concerned only with reliefs (ii) (e), (f) and

(g) since the appellants are not interested in the other reliefs. Those reliefs are :

> "(ii) that the respondents defendants, in particular defendants 1 to 3 (respondents 1 to
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> 3) be and hereby are restrained from in any manner interfering with the appellants-

plaintiffs 1 to 4, 6 and 7 carrying on their trade peacefully in their respective stalls at Zam Bazar Market, Rovapettah, Madras and imposing any restrictions or limitations upon their absolute right to carry on business as mentioned hereunder

(e) Interfering with the possession and enjoyment of the respective stalls by the appellants plaintiffs 1 to 4, 6 and 7 so long as they pay the rents fixed for each stall;

(f) increasing the rents fixed for the appellants-plaintiffs' 1 to 4, 6 and 7 stalls under the written agreements between the said plaintiffs and defendants 4 and 5;

(g) evicting of the appellants-plaintiffs 1 to 4, 6 and 7 or disturbing the plaintiffs and their articles in their stalls by defendants 1 to 3."

Further we are concerned in this case only with the relationship between the meat vendors occupying and using some of the stalls in the market (as the plaintiffs- respondents belong to this category) and the appellants- landlords. What relationship subsists or subsisted between the appellants and other stall-holders vending other commodities is not a matter which can be regarded as relevant for the purpose of deciding the dispute between the appellants and the respondents.

It is common ground that under the licence granted by the Municipal Corporation, the market is to remain open between 4 A.m. and II P.m. and that at the end of the day the stall- holders have all to leave the place which has then to be swept and disinfected and that the gates of the market have to be locked. None of the stall-holders or their servants is allowed to stay in the market after closing time. In point of fact this market used to be opened at 5 A.M. and closed, at 10 P.m. by which time all the stall-holders had to go away. It is also common ground that the stalls are open stalls and one stall is separated from the other only by a low brick wall and thus there can be no question of a stall-holder being able to lock up his stall before leaving the market at the end of the day. The stall-holders were required to remove the carcasses brought by them for sale by the time the market closed. Meat being an article liable to speedy decay the stall-holders generally used to finish their business of vending during the afternoon itself and remove the carcasses. They, however, used to leave in their stalls wooden blocks for chopping meat, weighing scales, meat choppers and other implements used by them in connection with their business. These used to be left either in boxes or almirahs kept in the stall and locked up therein. It is also an admitted fact that some of the stall-holders have been carrying on business uninterruptedly in their stalls for as long as forty years while some of them have not been in occupation for more than five years. It is in evidence that these stall-holders have been executing fresh agreements governing their use and occupation of stalls and payment of what is styled in the agreements as rent whenever a new contractor was engaged by the appellants for collecting rents.

The next thing to be mentioned is that the agreements referred to the money or charges payable by the stall- holders to the landlords as 'rent' and not as 'fee. It has, however, to be noted that the dues payable accrue from day to day. Thus in Ex.A- 1 the rent of Re. 1 /- is stid to be payable every day by 1.00 P.m. In all these agreements there is a condition that in case there is default in payment of rent for three days the stall-holder was liable to be evicted by being given 24 hours' notice. A further

condition in the agreements is that a stall-holder may be required by the landlord to vacate the stall after giving him 30 days' notice. There is a provision also regarding repairs in these agreements. The liability for the annual repairs is placed by the agreement upon the landlord and these repairs are ordinarily to be carried out in the month of June every year. Where, however, repairs became necessary on account of the carelessness of a stall-holder they were to be carried out at the expense of that stall- holder. It may be also mentioned that these agreements are obtained by the contractors from the stall-holders in favour of the landlord and bear the signatures only of the stall- holder,.;.

It was contended before us by Mr. R. Gopalakrishnan that in order to ascertain the relationship between the appellants and the respondents we must look at the agree-

ments alone and that it was not open to us to look into extraneous matters such as the surrounding circumstances. It is claimed on behalf of the respondents that the lease in their favour is of a permanent nature. But if that were so, the absence of a registered instrument would stand in their way and they would not be permitted to prove the existence of that lease by parol evidence. From the fact, however, that with every change in the contractor a fresh agreement was executed by the stall-holders it would be legitimate to infer that whatever the nature of the right conferred by the agreement upon the stall-holders, it could not be said to be one which entitled them to permanent occupation of the stalls. It could either be a licence as contended for by the appellant or a tenancy from month to month. In either case there would be no necessity for the execution of a written agreement signed by both the parties. Here, the agreements in question are in writing, though they have been signed by the stall-holders alone. All the same, oral evidence to prove their terms would be excluded by s. 92 of the Evidence Act. To that extent Mr. Gopalakrishnan is right. Though that is so, under the 6th proviso to that section the surrounding circumstances can be taken into consideration for ascertaining the meaning of the word 'rent' used in the agreements. Indeed, the very circumstance that rent is to fall due every day and in default of payment of rent for three days the stall-holder is liable to be evicted by being given only 24 hours' notice it would not be easy to say that this 'rent' is payable in respect of a lease. On the other hand, what is called rent may well be only a fee payable under a licence. At any rate this circumstance shows that there is ambiguity in the document and on this ground also surrounding circumstances could be looked into for ascertaining the real relationship between the parties. Indeed, the City Civil Court has gone into the surrounding circumstances and it is largely on the view it took of them that it found in favour of the appellants.

The High Court, however, has based itself upon the agreements themselves. To start with it pointed out-and, in our opinion rightly-that the use of the word 'rent' in, Ex. A-1 did not carry the respondents' case far. The reasons.

given by it for coming to the conclusion that the transaction was a lease, are briefly as follows :

> (1) Notice was required to be given to the stallholder before he could be asked to vacate even on the ground of non-payment of rent; (2) the annual repairs were to be carried out by the landlord only in the month of June; (3) the stall-holder was liable to carry out the repairs at his own expense when they are occasioned by his carelessness;

(4) even if the landlord wanted the stalls for his own purpose he could obtain possession not immediately but only after giving 30 days' notice to the stall-holder;

(5) the possession of the stalls by the respondents had been continuous and unbroken by virtue of the terms of the agreement and that the terms of the original agreement were not shown to have been substituted by fresh agreements executed by the respondents.

The High Court, therefore, held that from the general tenor ,of the documents it is fairly clear that as between the appellants and the respondents the terms created only a tenancy in respect of the stalls and not a mere licence or permissive occupation. After saying that if the occupation of the stall-holders was only permissive the condition as to payment of rent, eviction for default in payment of rent for more than 3 days, the provision for annual repairs being carried out by the landlord, the further provision that repairs that might be occasioned by the carelessness of the respondents should be carried out at their expense and the adequate provision for 30 days' notice for vacating the stalls if they were required by the landlord would all seem to be inconsistent and irrelevant, it observed :

"As a matter of fact, there is no evidence whatsoever to show that any of these plaintiffs were at any time turned out of their possession of their stalls at the will of the landlords or for default of any of the terms and conditions stipulated in the agreements. The specific provision for 30 days' notice for vacating and delivering possession seems to be conclusive of the fact that the plaintiffs were to occupy the stalls as permanent tenants and not as mere licensees. The terms of the agreements further disclose that the plaintiffs were to be in exclusive possession of these stalls for the purpose of their trade as long as they comply with the terms and until there was a notice of termination of their tenancy in respect of the shops held by them. The very tenor of the agreements, the intention behind the terms contained in the agreements and the measure of control established by the terms of the agreements, all point only to the fact that the plaintiffs were to be in undisturbed and exclusive possession of the stalls as long as they paid the rent and until there was a valid termination of their right to hold the stalls as such tenants."

While it is true that the essence of a licence is that it is revocable at the will of the grantor the provision in the licence that the licensee would be entitled to a notice before being required to vacate is not inconsistent with a licence. In England it has been held that a contractual licence may be revocable or irrevocable according to the express or implied terms of the contract between the parties. It has further been held that if the licensee under a revocable licence has brought property on to the land, he is entitled to notice of revocation and to a reasonable time for removing his property, and in which to make arrangements to carry on his business elsewhere. (See Halsbury's Laws of England 3rd edn. vol. 23, p. 431). Thus the mere necessity of giving a notice to a licensee requiring him to vacate the licensed premises would not indicate that the transaction was a lease. Indeed, s. 62(c) of the Indian Easements Act. 1882 itself provides that a licence is deemed to be revoked where it has been either granted for a limited period, or acquired on condition that it shall

become void on the performance or non-performance of a specified act, and the period expires, or the condition is fulfilled. In the agreements in question the requirement of a notice is a condition and if that condition is fulfilled the licence will be deemed to be revoked under s. 62. It would seem that it is this particular requirement in the agreements which has gone a long way to influence the High Court's finding that the transaction was a lease. Whether an agreement creates between the parties the relationship of landlord and tenant or merely that of licenser and licensee the decisive consideration is the intention of the parties. This intention has to be ascertained on a consideration of all the relevant provisions in the agreement. In the absence, however, of a formal document the intention of the parties must be inferred from the circumstances and conduct of the parties. (lbid p. 427). Here the terms of the document evidencing the agreement between the parties are not clear and so the surrounding circumstances and the conduct of the parties have also to be borne in mind for ascertaining the real relationship between the parties. Again, as already stated, the documents relied upon being merely agreements executed unilaterally by the stall-holders in favour of the landlords they cannot be said to be formal agreements between the parties. We must, therefore, look at the surrounding circumstances. One of those circumstances is whether actual possession of the stalls can be said to have continued with the landlords or whether it had passed on to the stall-holders. Even if it had passed to a person, his right to exclusive possession would not be conclusive evidence of the existence of a tenancy though that would be a consideration of first importance. That is what was held in Errington v. Errington and Woods(1) and Cobb v. Lane(1). These decisions reiterate the view which was taken in two earlier decisions: Close v.Theatrical Properties Ltd. and Westby & Co. Ltd.,(1) and Smith & Son v. The Assessment Committee for the Parish of Lambeth(1). Mr. S. T. Desai appearing for the appellants also relied on the decision of the High Court of (1) [1957] 1 K.B. 290. (2) [1952] 1 All. E.R. 1190. (3) [1936] 3 All. E.R.483. (4) (1882-83) 10 Q.B.D. 327 at

330. Andhra Pradesh in Vurum Subba Rao v. The Eluru Municipal Council (1) as laying down the same proposition. That was a case in which the High Court held that stall-holders in the municipal market who were liable to pay what was called rent to the municipality were not lessees but merely licensees. The fact, therefore, that a stall-holder has ,exclusive possession of the stall is not conclusive evidence of his being a lessee. If, however, exclusive possession to which a person is entitled under an agreement with a landlord is coupled with an interest in the property, the agreement would be construed not as a mere licence but as a lease. (See Associated Hotels of India Ltd. v. R. N. Kapoor(2). In the case before us, however, while it is true that each stall-holder is entitled to the exclusive use of his stall from day to day it is clear that he has no right to use it as and when he chooses to do so or to sleep in the stall during the night after closure of the market or enter the stall during the night after 11-00 P.m. at his pleasure. He can use it only during a stated period every day and subject to several conditions. These circumstances, coupled with the fact that the responsibility for cleaning the stalls, disinfecting them and of closing the Market in which the stalls are situate is placed by the Act, the regulations made thereunder and the licence issued to the landlords, is on the landlords, would indicate that the legal possession of the stalls must also be deemed to have been with the landlords and not with the stall-holders. The right which the stall-holders had was to the exclusive use of the stalls during stated hours and nothing more. Looking at the matter in a slightly different way it would seem that it could never have been the intention of the parties to grant anything more than a licence to the stall-holders. The duties cast on

the landlord by the Act are onerous and for performing those duties they were entitled to free and easy access to the stalls. They are also required to see to it that the market functioned only within the stated hours and not beyond them and also that the premises were used for no purpose other than of vending comestibles. A further duty which lay upon the landlords was to guard the entrance to the market. These duties (1) I.L.R. [1956] A.P. 515 at pp. 520-4.

(2) [1960] 1 S.C.R. 368.

could not be effectively carried out by the landlord by parting with possession in favour of the stall-holders by reason of which the performance by the landlords of their duties and obligations could easily be rendered impossible if the stall-holders adopted an unreasonable attitude,. If the landlords failed to perform their obligations they would be exposed to penalties under the Act and also stood in danger of having their licences revoked. Could, in such circumstances, the landlords have ever intended to part with possession in favour of the stall-holders and thus place themselves at the mercy of these people? We are, therefore, of the opinion that the intention of the parties was to bring into existence merely a licence and not a lease and the word rent' was used loosely for 'fee.

Upon this view we must allow the appeal, set aside the decree of the High Court and dismiss the suit of the respondents inso far as it relates to reliefs (ii) (e), (f) and (g) grantedby the High Court against the appellants are concerned. So far as the remaining reliefs granted by the High Court are concerned, its decree will stand. In the result we allow the appeal to the extent indicated above but in the particular circumstances of the case we order costs throughout will be borne, by the parties as incurred. Appeal partly allowed.