Ahmedsaheb(D) By Lrs.& Ors vs Sayed Ismail on 19 July, 2012

Equivalent citations: AIR 2012 SUPREME COURT 3320, 2012 (8) SCC 516, 2012 AIR SCW 4287, 2012 (5) AIR BOM R 576, (2012) 6 MAH LJ 58, (2012) 4 MPLJ 571, (2012) 3 ICC 770, (2012) 4 CIVILCOURTC 634, (2012) 4 MAD LW 331, (2012) 2 RENCR 283, (2012) 6 SCALE 505, AIR 2012 SC (CIV) 2821, (2013) 3 CAL HN 41, (2012) 3 ALL RENTCAS 495, (2012) 117 REVDEC 382, (2013) 1 RENTLR 305, (2012) 6 ANDHLD 115, (2012) 117 ALLINDCAS 224 (SC), (2012) 94 ALL LR 229, (2012) 5 ALL WC 5056, (2013) 2 BOM CR 448

Bench: Fakkir Mohamed Ibrahim Kalifulla, T.S. Thakur

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 5316-5318 OF 2012
(@ SLP (C) NOS. 26049-51 OF 2011)

Ahmedsaheb (D) by LRs. & Ors. ….Appellants

VERSUS

Sayed Ismail ….Respondent

WITH

SLP (C) NO.23457 OF 2011

Shaikh Ahmed S/o Sk. Mehtab (D) by LRs …Petitioners

VERSUS

Mohd. Ismail S/o Syed Saheb …Respondent

J U D G M E N T

Fakkir Mohamed Ibrahim Kalifulla, J.

1. The parties in the above special leave petitions are common and the issue relates to the shop premises with regard to which proceedings were initiated before the Courts below which were dealt with by the High Court in the orders impugned in these petitions and, therefore, the same are being disposed of by this common order.

CIVIL APPEAL NOS.5316-5318 OF 2012(@ SLP (C) NOS. 26049-51 OF 2011)

2. Leave granted.

Challenge in these appeals is the orders of the learned Single Judge of the High Court of Bombay at Aurangabad dated 06.05.2011 passed in Second Appeal Nos. 148-150/1992.

3. To trace the brief facts, the appellants herein filed Regular Civil Suit No.167 of 1974, RCS No.211 of 1977 and RCS No.240 of 1980 against the respondent herein for recovery of arrears of rent for the period covering October 1971 to November 1980. The suits were decreed by the trial Court and the same was also confirmed by the lower appellate Court. However, the High Court set aside the judgment and decree of the Courts below on the sole ground that the rent deed marked as Exhibit-69 cannot be legally accepted in evidence for the purpose of recovery of rent and consequently the decree granted in favour of the appellants based on such inadmissible document cannot be sustained. While holding so, the High Court placed reliance on Anthony v. K.C. Ittoop & Sons & Ors.[2000 (6) SCC 394].

4. Assailing the judgment of the High Court, the counsel for the appellants contended that even if the rent deed was not registered, as required under the provisions of the Registration Act and Transfer of Property Act, it can be relied upon for the collateral purpose of ascertaining the rent and as to whether the respondent was liable to pay such rent for the period for which it was claimed by the appellants. Counsel for the respondent would, however, contend that there is no question of relying upon such document by way of collateral means and, therefore, the impugned judgment of the High Court does not call for interference.

5. Having heard learned counsel for the respective parties and having perused the material papers, we are constrained to state that though there can be no two opinion that the rent deed relied upon by the appellants being an unregistered document cannot form the basis to support the claim of the appellants for recovery of rent due, if we are able to find that in the case on hand there were other uncontroverted evidence available on record to support the claim of the appellants that would be sufficient to uphold the decree for recovery of rent from the respondent. We also wish to point out that such other materials which existed should have been accepted by the High Court while examining the correctness of the order of the Courts below. We also wish to state that that very decision which was relied upon by the High Court, while laying down the principle that an unregistered document cannot be legally accepted in evidence to support the claim of the parties in regard to the respective status as lessor and lessee and vice versa as well as other recitals therein relating to rent, etc., in the light of the provisions contained in second para of Section 107 of Transfer of Property Act itself, the status of the parties on the basis of undisputed facts pertaining to the demised premises as landlord and tenant can always be accepted and the rights of the parties can be worked out on that basis.

6. To elaborate our conclusions, we wish to point out that when the appellants filed the first suit in RCS No. 167/1974, the suit was laid for recovery of the rent amounting to Rs. 3150.68/- being the rent payable by the respondent for the immediately preceding three years of the filing of the suit. According to the appellants, it was let out on 19.10.1971 for one year on a monthly rent of Rs. 83.32/- based on a rent note and that from the very first date the respondent failed to pay the rent. It was also averred that while initially it was governed by Exhibit 68 in which the rent was fixed at Rs.83.32/- the rent was subsequently revised at Rs. 1150/- per year from 26.10.1973 under Exhibit

69. It was contended that such revised rent was payable by the respondent from then onwards and that he failed to pay that rent as well.

7. As against the above claim, according to the respondent the tenancy was entered into by him with the 8th respondent, namely, Abdul Rehman in the Second Appeal in the year 1968 and the rent was fixed at Rs.800/- per year. As far as non-payment of rent was concerned the same was not disputed by the respondent. The respondent however sought to explain it by saying that he carried out repairs by investing a sum of Rs. 5000/- and the appellants agreed to adjust the said sum from the rents payable to him. It was based on the above pleas that the parties went into trial.

8. The trial Court after examining the evidence rendered a categorical finding that the stand of the respondent was not supported by any legally admissible evidence, that the said Abdul Rehman himself admitted that the plaintiff Smt. Imambee wife of SK Mehtab Saheb who is none other than his mother was the owner of the shop and that the shop was rented out to the respondent only by his mother Imambee. The other respondents were the brothers and sisters of Abdul Rehman who also took a clear stand that it was only Imambee who was the owner of the demised premises. The Courts below also reached a definite finding that right from 1971 the respondent has not paid any rent to the plaintiff or even to the said Abdul Rehman.

9. As far as the adjustment of rent was concerned, the trial Court rendered a finding that though it was claimed in the written statement that the accounts registers were maintained to show the adjustment of rents to cover the expenses of repairs carried out in the demised premises, nothing was placed before the Court in support of the said stand. Exhibit-85 was relied upon by the respondent which was a receipt issued by the said Abdul Rehman for Rs. 300/- towards rent for the shop and that the said document did not in any way support the stand of the respondent. Such findings were recorded by the trial Court in all the three suits based on the evidence before it. The lower appellate Court also sifted the evidence in detail and concurred with the conclusions of the trial Court as regards the non-payment of rent right from day one of the respondent's induction into the demised premises.

10. Keeping the above undisputed facts in mind, when we examine the legal issue, at the very outset, it will have to be stated that even while holding that Exhibits 68-69 being unregistered documents cannot be accepted in evidence, the relationship of the appellants and the respondent as landlord and tenant was not in controversy. Even according to the respondent himself the rent payable was Rs.800/- per year which was admittedly not paid by him right from day one when the tenancy commenced. It was an admitted case of the respondent that the rent was due from him from October, 1971 till the third suit was filed. We are unable to appreciate as to how the appellants could have been non-suited solely on the ground that Exhibit-69 was not admissible in evidence. It is needless to emphasize that admission of a party in the proceedings either in the pleadings or oral is the best evidence and the same does not need any further corroboration. In our considered opinion, that vital aspect in the case (viz) the admission of the respondent in the written statement about the rate of rent and the further admission about its non- payment for the entire period for which the claim was made in the three suits was sufficient to support the suit claim. The High Court failed to note the said factor while deciding the Second Appeal which led to the dismissal of the appeals. Even

while eschewing Exhibit-69 from consideration, the High Court should have noted that the relationship of landlord and tenant as between the plaintiffs and the defendants was an established factor and the rate of rent was admitted as Rs. 800/- per year.

11. In this context, when we refer to the decision in Anthony (supra) relied upon by the High Court, we wish to point out that while the learned Judge placed reliance upon paras 8 and 11 of the said decision, the learned Judge ought to have looked into other paragraphs of the same decision where this Court has made a specific reference to the second para of Section 107 of Transfer of Property Act to lay down the principle as under in paras 12 to 14:

> "12. But the above finding does not exhaust the scope of the issue whether the appellant is a lessee of the building. A lease of immovable property is defined in Section 105 of the TP Act. A transfer of a right to enjoy a property in consideration of a price paid or promised to be rendered periodically or on specified occasions is the basic fabric for a valid lease. The provision says that such a transfer can be made expressly or by implication. Once there is such a transfer of right to enjoy the property a lease stands created. What is mentioned in the three paragraphs of the first part of Section 107 of the TP Act are only the different modes of how leases are created. The first para has been extracted above and it deals with the mode of creating the particular kinds of leases mentioned therein. The third para can be read along with the above as it contains a condition to be complied with if the parties choose to create a lease as per a registered instrument mentioned therein. All other leases, if created, necessarily fall within the ambit of the second para. Thus, dehors the instrument parties can create a lease as envisaged in the second para of section 107 which reads thus:
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> "All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession." "13.When lease is a transfer of right to enjoy the property and such transfer can be made expressly or by implication, the mere fact that an unregistered instrument came into existence would not stand in the way of the Court to determine whether there was in fact a lease otherwise than through such deed".
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> 14. When it is admitted by both sides that the appellant was inducted into the possession of the building by the owner thereof and that the appellant was paying monthly rent or had agreed to pay rent in respect of the building, the legal character of the appellant's possession has to be attributed to a jural relationship between the parties. Such a jural relationship, on the fact situation of this case, cannot be placed anything different from that of lessor and lessee falling within the purview of the second para of Section 107 of the TP Act extracted above. From the pleadings of the parties there is no possibility for holding that the nature of possession of the appellant in respect of the building is anything other than as a lessee." (emphasis added)

12. When we apply the above principles laid down by this Court in juxtaposition with the stand of the respondent that the lease was in fact created in respect of the demised premises on an annual rent of Rs.800/-, and the trial Court, based on the evidence placed before it, reached a categorical finding that such lease was between the plaintiff and the respondent based on unimpeachable evidence available on record, having regard to the clear cut finding as regards the arrears of rent payable by the respondent, the High Court ought to have upheld the decree for payment of arrears of rent by either directing the trial Court to calculate the actual amount payable by respondent or by modifying the decree to that extent.

13. In the written submissions of the appellants, it was contended that Exhibit 69, though an unregistered document, can still be relied upon for collateral purposes. In support of the said contention reliance was placed upon the decision of this Court in S. Kaladevi Vs. V.R. Somasundaram and Ors. - (2010) 5 SCC 407. The said decision is clearly distinguishable. In the case on hand Exhibit 69 was relied upon not for any collateral purpose but for the support of the main claim of arrears of rent. The suit was for arrears of rent and Exhibit 69 was filed to show the agreement of lease of the demised premises, the other terms of the lease and the rate of rent between the parties. Therefore, the contention that the document was filed merely for establishing some collateral transaction cannot be accepted. In that respect, the conclusion of the High Court as regards Exhibit 69 cannot be faulted. However, for reasons set out in the earlier paragraphs of our judgment we reiterate that the claim of the appellants for recovery of rent was established by the Defendant's own categorical admission about the rate as well its non-payment right from day one.

14. As far the decision now relied upon (viz) Kaladevi(supra) is concerned, that was a case where the suit was laid for specific performance and stress was made on the proviso to Section 49 of the Registration Act which specifically exclude the mandatory requirement of registration in the substantive part of Section 49 read along with Section 17 of the Transfer of Property Act. This Court, therefore, held that the reliance placed upon the unregistered Sale Deed at least for the purpose of proof of an oral agreement of sale as a collateral transaction was permissible. This Court also made it clear that in such a situation the document in question can be received in evidence by making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the Registration Act. Therefore, the said decision in the facts and circumstances of the case is clearly distinguishable.

15. We are, therefore, of the view that the dismissal of the suit on the simple ground that Exhibit 69 was not a registered document cannot be accepted. Having regard to our above conclusion, the appeals deserve to be allowed. Since the claim of the plaintiff has been lingering from the year 1971, we do not wish to relegate the parties once again to the Court below for the simple purpose of ascertaining the arrears. Since the respondent admitted the annual rent payable as Rs.800/- per year, the claim being from October 1971 to November 1980, namely, for 9 years by simple arithmetic, the arrears can be worked out to a sum of Rs.2400/- in RCS No.167/1974, Rs. 2400/- in RCS No.211/1977 and another Rs.2400 in RCS No. 240/1980, in all a sum of Rs.7200/-.

16. Therefore, while upholding the judgment and decree of the trial Court as confirmed by the lower appellate Court in holding that the respondent is liable to pay arrears of rent for the period from

October 1971 to November 1980, we only modify the rent payable with actual rent due in a sum of Rs. 7200/- and the decree to that extent is granted. The appeals stand allowed. The impugned order of the High Court is set aside and the judgment and decree of the trial Court and the lower appellate Court stand restored with the above modification as regards the rent and the total amount due.

17. This Special Leave Petition arise out of the judgment and decree passed by the Single Judge of the High Court of Judicature at Bombay in Civil Revision Application No.424 of 1987 dated 06.05.2011. The said revision was preferred by the respondent challenging the order of the Rent Controller dated 13.01.1986 in file No.1979.R.C.A.3 in Rent No.1/86. The said petition was filed before the Rent Controller under Section 15 of Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 for eviction of the defendant from House No.3-3-32 situated at Udgir. The plaintiff in RCS No.167/1974 along with her son Ahmed Saheb was the petitioner. The plaint for eviction was on the ground that RCS No.167/74 for recovery of rent was decreed, that the default in making the payment of rent was willful, that the tenancy was terminated on 6.12.1978, that the statutory period of six months was over and, therefore, the respondent was liable to be evicted. The respondent in the eviction petition did not file the written statement for a period of six years. The rent controller found that even on the date of final hearing the tenant and his Advocate failed to appear and, therefore, it was decided ex parte. After hearing the arguments of the plaintiff the application for eviction was allowed and the respondent was directed to deliver vacant possession. The respondent-tenant preferred file No.1979.R.C.A.3 in Rent No.1/86 before the District Judge, Latur. The appellate Court declined to interfere with the order of the Rent Controller and the appeal was dismissed.

18. By the impugned order, the High Court held that the respondent tenant should be directed to place on record the written statement by giving an opportunity of hearing. While holding so the learned Judge also noted that since even the appellant did not lead any evidence, while permitting the respondent to file written statement, the appellant can be directed to comply with the requirements of Section 15 (2)(i) of the Hyderabad Houses (Rent, Eviction and Leases) Control Act, 1954 in respect of tendering of rent and whether default was committed by the respondent and accordingly set aside the orders of the Court below and remit the matter back to the Rent Controller for rendering a decision in accordance with law by fixing a time schedule.

19. Before us the learned counsel appearing for the respondent submitted that after the order of remittal the Rent Controller dismissed the application. Learned counsel also contended that as against the order of dismissal by the Rent Controller, the petitioner has preferred an appeal before the District Judge which is stated to be pending. Counsel for the petitioner in his submissions contended that since the petitioners in Special Leave Petitions are common if the judgment in Second Appeal No.148-150/1992 is to be set aside, there should be a direction for eviction as against the respondent. Having regard to the subsequent development relating to the Rent Control proceedings in which the appeal preferred by the petitioner is stated to be pending before the Learned District Judge, we are not inclined to accede to the submission of the learned counsel for the petitioner though we have allowed C.A. Nos.5316-5318/2012 (@ SLP (C) Nos.26049-51/2011 preferred against the common judgment in Second Appeal Nos.148-150/92. Such a shortcut method cannot be resorted to based on the submission of the learned counsel for the petitioner. It is for the

petitioners to work out their remedies in the Rent Appeal No. 2/2012 pending before the learned Principal District Judge, Latur in the light of the judgment passed in the Civil Appeal Nos.5316-5318/2012 (@ SLP© Nos. 26049-51/2011). In the light of our above conclusion, we do not find any necessity to traverse from the various other submissions made in the written submission of the respondent.

20. In the light of the decision in C.A.Nos.5316-5318/2012(@ SLP (C) Nos.26049-51/2011) and in the light of the fact that after the order of remittal passed in Civil Revision Application No.424 of 1987 dated 06.05.2011, the Rent Control Proceeding having been concluded before the Rent Controller, it will have to be held that SLP (C) No.23457/2011 has to be dismissed as having become infructuous. Accordingly, while C.A.Nos.5316-5318/2012(@ SLP (C) Nos.26049-51 of 2011) stand allowed with specific directions as regards the Rent arrears payable by the respondent, the Special Leave Petition No.23457 of 2011 stands dismissed as having become infructuous.

There will be no orders as to costs.

.....J. [T.S. Thakur] .....J. [Fakkir Mohamed Ibrahim Kalifulla]
New Delhi;

July 19, 2012
