

C. Mackertich vs Steuart And Co., Ltd on 14 October, 1969

Equivalent citations: AIR1970SC839, 1970LABLC1407, (1972)ILLJ99SC, (1971)3SCC39, AIR 1970 SUPREME COURT 839

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Bench: I.D.Dua, V. Ramaswami

JUDGMENT

V. Ramaswami, J.

1. These appeals are brought by certificate from the judgment of the Calcutta High Court dated March 27, 1962 in appeals from original decrees Nos. 55 and 268 of 1956.

2. By a registered lease dated December 22, 1913, M. Mackertich and Frank Earnest Bushby let out the subject matter of Title Suit No. 31/53, that is, a portion of the premises No. 38/1 Panditia Road, covering an area of approximately 7 bighas, 9 cottahs, 5 chittacks and 9 square ft. of land to four persons, namely Walter Bushby, Frank Earnest Bushby, Geoffrey B. Page and William Shenton carrying on business as coach builders. The term of the lease was for 50 years from January 1, 1915. By another registered lease dated January 31, 1919 between the same lessors and the lessees the premises which are the subject-matter of Title Suit No. 30/53 were leased out for a period of 46 years and three months from October 1, 1918. By memorandum and Articles of Association dated December 4, 1919 a company limited by shares namely Steuart and Co. Ltd., was incorporated. The objects of the company were to carry on the trade or business of coach and carriage builders and to buy, sell, import, export, manufacture, repair, let on hire, otherwise deal in carriages and vehicles of every description. On December 17, 1919 an agreement was made and signed between the partners of the partnership firm (Frank Earnest Busbby Geoffery Berridge Page and William Shenton; and Steuart and Co. Ltd., wherein it was stated that the partners of the partnership firm would sell the business and transfer all the assets of the firm with effect from the 31st day of December, 1919 to the incorporated company viz. Steuart and Co. Ltd. It was stipulated that the partners would sell and the incorporated company would purchase with effect from December 31, 1919 the goodwill of the business, the leasehold properties of the firm, machinery, office furniture etc., of the firm and generally all the assets of the firm. Under this agreement the incorporated company entered into possession of the leasehold premises of the partnership firm and also took charge of the business of the partnership firm and began to carry on the business itself. No separate deed of transfer in respect of the leasehold properties was executed by the partnership firm in favour of the new incorporated company. But the lessors treated the incorporated company as monthly tenants and

accepted rents from them. Frank Earnest Bushby ultimately sold his interest as owner of the property to M. Mackertich. The plaintiff C, Mackertich is the son of M. Mackertich and has inherited all his interests and is, therefore, the sole landlord of two premises in suit. He claimed that the tenancies were governed by the West Bengal Premises Rent Control Act, 1950 and on the ground that there had been default of payment of rent from May, 1952 to March, 1953 he claimed that the defendant company had forfeited the protection against eviction. Notice determining the tenancy was issued on March 12, 1953 by registered post and served on the defendant company on March 13, 1953 calling upon the defendant company to vacate the premises. As the defendant company did not give up possession of the premises, the plaintiff instituted the two suits on May 26, 1953 seeking decrees for the ejectment against the defendant company and a decree for Rs. 5,500 for arrears of rent for 11 months from May, 1952 to March, 1953 in Title Suit No. 31 of 1953 and a decree for arrears of Rs. 2,200 for the 11 months from May, 1952 to March, 1953 in Title Suit No. 30 of 1953. Plaintiff also claimed decrees for damages from the 1st of April, 1953 in both the suits. The defendant contested the suits on the ground that the tenancies were governed By the terms of the lease deeds dated December 22, 1913 and January 31, 1919 and that in the circumstances the tenancies were not governed by the West Bengal Premises Rent Control Act, 1950 and could not be determined by service of 15 days' notice. The defendant denied that there was any arrears of rent and contended that for repairs of the premises which had become dilapidated the defendant company incurred expenditure to the extent of Rs. 22,000 and until there was adjustment of the account between the parties it could not be said that there was any arrear of rent due by the defendant company. The Subordinate Judge found that the defendant company being a separate legal entity from the partnership firm the members of which had been granted two leases the leasehold could not be transferred to the defendant company without registered documents and in the absence of such registered documents the defendant company could not claim to be lessees governed by the registered lease deeds Ex. L and L (I). The Subordinate Judge held that the plaintiff accepted rent for many years from the defendant company as a tenant. In the circumstances the defendant company must be deemed to be tenant from month to month terminable by 15 days' notice under Section 106 of the Transfer of Property Act, 1882. The Subordinate Judge rejected the claim of the defendant company that the purpose of the tenancy was manufacturing and that therefore six months' notice ending with the year of tenancy was necessary. As regards the claim of the defendant company for adjustment the Subordinate Judge observed that the defendant company was not entitled to avail of any condition contained in the registered lease deed Ex. L and L (I) and that as between the defendant company and the plaintiff there was no evidence of any agreement that the plaintiff would ever undertake repairs of the premises. In the circumstances the Subordinate Judge held that the plaintiff was not bound to carry out the repairs and that therefore the defendant company could not claim a set-off for the cost of the repairs against the arrears of rent. The Subordinate Judge, therefore granted the plaintiff decree for ejectment as well as arrears of rent and mesne profits in both the suits. Against this decision the defendant company preferred appeals to the Calcutta High Court. By its judgment dated March 27, 1962 the High Court held that the plaintiff was not entitled to a decree for eviction as the purpose of the lease was manufacturing and, therefore, the notice was bad. The High Court, however, upheld the findings of the Subordinate Judge and held that the suit should be decreed in part for arrears of rent claimed but dismissed SO far as the claim for ejectment and damages and mesne profits is concerned.

3. In support of these appeals it was submitted on behalf of the appellant that the High Court was in error in holding that the tenancy was for manufacturing purpose and that six months' notice terminable with a year of tenancy was required. It was said that the onus of proving that the tenancy was for manufacturing purpose was upon the defendant and as that point was not raised in the written statement the High Court should not have allowed the respondent to raise the question. In our opinion there is substance in this argument. But we shall assume in favour of the respondent that such an objection could have been taken by it even without a specific plea in the written statement. Even upon that assumption we are of opinion that there is no evidence in the case to support the finding of the High Court that 'the purpose of the lease was dominantly for manufacturing purpose. Exhibit W is the Memorandum and Articles of Association. The objects of the company are given in paragraphs 3 and 4 and are to file following effect:

(3) To carry on the business of motor-cab, motor-car, motor-omnibus, motor-boat and motor-van proprietors, motor-engineers, manufacturers, builders, painters, decorators, and repairers of motor cars, cabs, omnibuses, vans and other vehicles of every description so constructed as to progress whether on land or water or in the air.

(4) To carry on the business of harness-makers and wheel-wrights, mechanical engineers and manufacturers of and dealers in lamps, whips, rugs, leather goods, India-rubber goods, wheels, springs, axles, upholsterings, India-rubber tyres and all component parts of any carriage or vehicle and other articles used in the manufacture or fitting up of the above mentioned or any similar articles, and manufacturers or factors of or dealers in all products or substances which may be used in or in connection with the said business or any of them or in which it may be considered advantageous to deal." It cannot be said from these paragraphs that the object of the company was dominantly manufacturing purpose. The High Court has in this connection referred to the evidence of Mr. J.N. Ghose, the Managing Director of the defendant company. In reply to question 235 the witness said that the company had business as "Automobile engineers, coach builders, refrigerators, motor, mechanical engineer, body builders and the like and that business is continuing". In answer to question No. 247 the witness said that the company had agency to deal in Austin cars. It is true that in the registered lease deed Ex. L and L (I) there is the description of the lessee as coach-builder. But it is obvious that the defendant company cannot claim to be holding under the registered lease deed Ex. L and L (I) and so the purpose mentioned in the lease deed cannot be taken into consideration. In our opinion neither the evidence of Mr. J.N. Ghose nor the statement in Ex. W, Memorandum and Articles of Association, can be taken as sufficient evidence to prove that the purpose of the lease was exclusively or even dominantly for a manufacturing purpose. It follows, therefore, that the High Court was in error in holding that the dominant purpose of the lease was manufacture and so 15 days' notice ending with the month of each tenancy must be held to be insufficient.

4. The High Court expressed the view that the test for applying the presumption of Section 106 of the Transfer of Property Act is to ascertain what was the dominant purpose of the lease and not

whether the lease was exclusively for manufacturing purpose. Section 106 of the Transfer of Property Act states:

In the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immoveable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Every notice under this section must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party or to one of his family or servants, at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

5. Counsel on behalf of the appellant referred to the decision of the Court of Appeal in *Howkins v. Jardine* 1951-1 KB 614. In that case the landlord granted to the tenant a tenancy from year to year, terminable within six months, of seven acres of land and three cottages on the land. The lease contained provisions usual in a lease of an agricultural holding. The tenant, who farmed other land in addition to the seven acres, sub-let the three cottages to persons who were not engaged in agriculture. After the death of the landlord his executors served on the tenant twelve months' notice to quit the cottages and land under Section 28, Sub-section (1) of the Agricultural Holdings Act, 1948. The tenant thereupon served a counter notice under Section 24, Sub-section (1) of the Act. The Minister of Agriculture having given his assent to the notice to quit, the tenant appealed to the Agricultural Land Tribunal, who allowed his appeal, holding that the notice to quit was inoperative. Proceedings were then brought in the county court by the executors as landlords, and they were granted by the county court judge a declaration that they were entitled to possession of the cottages and to mesne profits on the ground that the decision of the tribunal rendered the notice to quit invalid so far as it related to the land as distinct from cottages. In this state of facts, it was decided by the Court of Appeal that Section 1 of the Act of 1948 which defined 'Agricultural holding' as meaning "the aggregate of the agricultural land comprised in a contract of tenancy" did not effect a severance of agricultural land and non-agricultural land, and as the lease in question was in substance a lease of an agricultural holding, therefore, the whole of the subject-matter of the contract of tenancy came within the protection of the Act and the appeal of the tenant was accordingly allowed. It was submitted on behalf of the respondents that a similar principle must be applied in construing Section 106 of the Transfer of Property Act and if the purpose of the lease was mainly or in substance a manufacturing purpose, a presumption of yearly tenancy will arise and that it was incumbent upon the landlord to give a notice expiring with the end of the year of tenancy if the lease was to be validly determined. The opposite point of view is put forward on behalf of the appellant. It was argued that the test was exclusiveness of manufacturing purpose for applying the presumption under Section 106 of the Transfer of Property Act. Reliance was placed upon the decision of the Calcutta High Court in *Ramesh Chandra v. Surya Properties* and *Sati Prasanna v. Md. Fazel*. But we

do not propose in this case to express our concluded opinion regarding Section 106 of the Transfer of Property Act. We shall proceed on the assumption that the argument of the respondent is correct and that the test applicable under Section 106 of the Transfer of Property Act is not exclusiveness of purpose but what is the main or substantial purpose of the lease. As we have already shown there is no proper material on the record of the case from which it can be inferred that the dominant purpose of flue lease was manufacture or that the respondent substantially used the premises for manufacturing purposes. It follows, therefore that the trial court was right in holding that the tenancy was monthly and notices Exs. I and I-A were legally valid for termination of the tenancy.

6. For these reasons we set aside the Judgment of the High Court dated March 27, 1962 in both the appeals and restore the judgment of the Subordinate Judge, Second Court, Alipore in Title Suits Nos. 80 and 31 of 1953. The appeals are accordingly allowed with costs. One set of hearing fee.