

Sinthamani Chetti and ors. Vs. Arunachalam Chettiar and ors.

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Court : Chennai

Decided On : Dec-07-1926

Reported in : AIR1927Mad1060a

Appellant : Sinthamani Chetti and ors.

Respondent : Arunachalam Chettiar and ors.

Judgement :

Devadoss, J

1. This case has been very fully and ably argued on both sides. The plaintiff took a sub-lease of some property from the lessees of the Sivaganga Zamindari and contracted to transfer it to defendant 2's father. As he refused to carry out the contract O. S. 195 of 1911 was filed for specific performance of the contract. It was decreed by the District Munsif, and on appeal the District Court confirmed the District Munsif's decree and the plaintiff, who was the defendant in that suit, preferred S. A. No. 248 of 1916 which was dismissed by a Bench of the High Court; thereupon the plaintiff executed Exhibit-B in accordance with the decree of the High Court in second appeal. He now sues the defendants for recovery of rents and charges paid by him during the pendency of the suit for specific performance. The Subordinate Judge dismissed the plaintiff's suit and the District Judge of Ramnad has given him a decree for Rs. 2,644-5-7. Defendants 3 and 4 and the legal representatives of defendant 5 have preferred this second appeal. Two contentions are raised by Mr. Varadachariar for the appellant.

(1) The liability of the defendants to pay rent and charges in respect of the property which is the subject of the sublease arose only on the date of Exhibit B and they are not liable to pay rent and charges which accrued due before that date and the plaintiff has no cause of action against the defendants in respect of them.

(2) The cause of action, if any, is barred by limitation as the suit was filed more than three years after the date of the payments made by the plaintiff.

2. A few facts are necessary to understand the contentions. The sub-lease in favour of the plaintiff was on 27th April 1908. The contract to transfer the sublease in favour of the defendant 2's father was on 10th September 1908. The suit for specific performance O. S. 195 of 1911, was filed on 2nd May 1911 and the District Munsif's decree was passed on 31st March 1914. The decree of the High Court in S. A. 248 of 1916 was on 8th March 1917. Exhibit, B the transfer-deed by the plaintiff in favour of the defendants according to the decree of the High Court, was executed on 19th June 1917. The present suit was filed on 11th November 1917. The payments by the plaintiff in respect of the lease-hold property were between 1909 and 1915. It is

admitted that if the three years' rule were held applicable to the present suit all but Rs. 200 odd would be barred by limitation.

3. Taking the first point first: The seller is bound to pay all public charges and rents accrued due in respect of the property up to the date of the sale and the liability of the vendee to pay them arises only on the date of the sale: vide Section 55, Cluses (1) (g) and (5) (d) of the Transfer of Property Act. In the absence of a contract to the contrary the liability of a vendee of property or the transferee of a lease to pay rents and charges arises only on the date of sale or transfer of the lease. There is no distinction between the sale of immovable property and the transfer of a lease in this respect. This contention is sought to be met by the argument that the defendant's title related back to the date of the contract for transfer of the sublease. It is difficult to follow the argument of Mr. Rajah Aiyar that the title of the defendants should be held to relate back to the date of the contract to transfer. The title passes in the case of a sale on the date of the execution of the sale-deed and in the case of a lease on the date of the execution of the transfer- deed. Though a sale-deed is registered some time after its execution it takes effect from the date of the execution and not from the date of registration. This is specifically provided for in the Registration Act. The title of the defendants cannot on any principle of law be held to relate back to the date of the contract for the transfer of the sub-lease and the terms of Ex. B do not warrant such a contention. Under Ex. B the right of the plaintiff, as it was on the date of the sub-lease, was transferred to the defendants. The defendants have only acquired the right of the plaintiff under the sub-lease as it was on the day the sub-lease was executed and not as it was on the date of the contract of sale or at any other time. This does not mean that the defendants' title to the lease should be taken to relate back to the date of the contract of sale. The sublease and the contract to transfer it were on different dates, and if the contention of the respondent is tenable the question would arise whether the title of the defendants related back to the date of the sub-lease or the date of the contract to transfer it. The only answer to this contention is that the title of the defendants commenced only from the date of Ex. B.

4. It is contended that the defendants had an equitable right to the sub-lease by reason of the contract to transfer it to them and, therefore, they were liable to pay the rent and charges. A mere contract of sale of immovable property does not confer any right to the property on the prospective vendee. His right is only to have a conveyance effected in his favour. The defendants, therefore, cannot be said to have acquired any right to the sub-lease on the date of the contract for its transfer.

5. In *Thethalan v. Eralpad Rajah* [1917] 40 Mad. 1111 it was held that a privity of estate arises only when the whole of the lessee's interest is assigned over and not where a subsidiary interest is carved out of the lessee's interest. It is only on the execution of the transfer deed Ex. B that the defendants could be said to have acquired a title to the sub-lease. In law, therefore, the liability of the defendants to pay rent and charges in respect of the property sub-leased arose only on the date of Ex. B and that too for the rent and charges accruing due on or after the date of Ex. B.

6. Let us see whether there was any contract under which the defendants were liable to pay the rent and charges before they became owners of the sub-lease. The judgment in Second Appeal 248 of 1916 does not create a contract between the parties. The observation of the learned Judges that

the plaintiffs are no doubt bound as soon as the ownership passes to them to, pay all

public charges and rent etc., from the date of such passing (Section 55, Clause 5 (d), Act 4, 1882). But as the document of conveyance has not yet been executed and delivered to the plaintiffs they cannot be compelled to pay the public charges and rent paid already by the defendant as a condition precedent to the execution of the conveyance by the defendant who must be left to recover the same after plaintiff's title becomes perfected when only plaintiff's obligation to pay such charges accrues,

was only in answer to the contention of the defendant in that suit that the plaintiffs therein should be made to pay the rent and charges which he had paid as a condition precedent to the execution of the transfer deed. This observation of the learned Judges cannot be taken to have either created a contract between the parties or to have decided on the liability of the defendants herein to pay rent and charges already paid by the plaintiff herein.

7. Though ordinarily in the case of vendees of property and the transferees of leases the liability to pay rents and charges arises only on the date of sale or transfer, yet in this case under a contract to transfer the sub-lease the defendant 2's father agreed to take over the lease on payment of Rs. 100 to the plaintiff as profit and got possession of the property on the date of the contract and he and the defendants remained in possession all along. The possession of the defendants was not that of trespassers but that of transferees whose title had to be perfected by the execution of a proper deed and the suit for specific performance was instituted only for getting that deed executed and when the deed was executed it did not alter the character of the possession of the defendant but made it only secure; to put the matter slightly differently could the plaintiff have successfully sued to eject the defendants from possession of the property, and if he did bring a suit for possession, would not the defendants have pleaded the contract to transfer the sub-lease and set up the plea of part performance of the contract inasmuch as possession had been given and Rs. 100 was paid to the plaintiff as profit. I think they would have had a good defence if an action for ejectment had been brought by the plaintiff and, therefore, their position was that; of transferees of the sub-lease. Such being the case they were bound to pay rent and charges on the property in their possession.

8. It is fairly conceded by Mr. Varadachariar that the payments by the plaintiff were not voluntary payments and that he as sub-lessee was bound by the terms of the sub-lease in his favour to pay rent and charges even though he agreed to transfer his right to another, and his liability continued till the Sivaganga lessees consented to the transfer of the sub-lease and to release him from his liability. The question of voluntary payment, therefore, does not arise in this case. Section 69, Contract Act, applies to this case. The question is when did the plaintiff's cause of action against the defendants arise? Did it arise on the date of the payments by the plaintiff or on the date of the execution of Ex. B. Mr. Rajah Ayyar very naturally relies upon the observation of the learned Judges in the judgment in the Second Appeal 248 of 1916 which is as follows:

who must be left to recover the same after the plaintiff's title becomes perfected when only the plaintiff's obligation to repay such charges accrues.

9. The observation that the liability of the defendants to pay rent and charges paid by the plaintiff during the pendency of the suit would arise only on the defendants' title being perfected by the execution of a transfer deed is only obiter. At best it is only an expression of opinion and cannot be treated as a decision on the point as to the

liability of the defendants to pay rent and charges paid before the date of the decree. This point has to be decided in this case and with all respect to the learned Judges I am unable to hold that the cause of action for the plaintiff's claim arose only on the date of Ex. B. As the execution of the transfer deed was required by law only in order to give a legal title to the defendants who were already in possession of the leasehold property and enjoyed the income in the capacity of transferees, the cause of action arose on the date of the several payments made by the plaintiff. This brings us to the second point which is one of limitation.

10. Mr. Rajah Ayyar urges that if Art. 61 were really applicable to the case there was no one whom he could sue, for the defendants had not acquired a title to the sub-lease and, therefore, his cause of action did not arise till there was some one who could be sued. Art. 61 gives three years, for money payable to the plaintiff for money paid for the defendant and time begins to run from the day when the money is paid. The defendants, being in possession of the property and suing only for perfecting their title, were in equity bound to pay the rent and charges and the plaintiff who paid them could have brought a suit against them after the decision of the District Munsif in their favour. The District Munsif passed a decree in O. S. 195 of 1911 on 31st March 1914. On that day the defendants had by reason of the decree become entitled to the sub-lease. There was nothing to prevent the plaintiff from suing them after 31st March 1914. The cause of action which arose on 31st March 1914 could not be said to have been suspended till the decision of the second appeal in 248 of 1916. The principle of the decision in *Juscurn Boid v. Pirthichand Lal A. I. R. 1918 P. C. 151* applies to the present case. In that case the question was, when did the cause of action arise for recovery of money paid upon an existing consideration which afterwards failed under Art. 97, Limitation Act. Sir Lawrence Jenkins, in delivering the judgment of the Privy Council observes at page 678:

Both the Courts have held that the failure of consideration was at the date of the 1st Court's decree. Their Lordships feel no doubt that as between these two decrees this is the correct view for whatever may be the theory under other systems of law, under the Indian Law and procedure an original decree is not suspended by presentation of an appeal nor is its operation interrupted where the decree on appeal is one of dismissal.

11. The plaintiff who could have brought a suit the day after the District Munsif gave a decree in defendants' favour is not entitled to plead that the title of the defendants was decreed only when the High Court disposed of the second appeal.

12. Mr. Rajah Ayyar for the respondent has relied upon a number of cases but it is unnecessary to consider all of them. His main contention is that he could not have sued before the date of the decree in second appeal and he relies upon *Dwijendra v. Jogesh Chandra : AIR1924Cal600* as supporting his contention. In that case the plaintiff along with the defendant 3 instituted a suit against the defendant 1 to enforce the registration of certain documents under the provisions of Section 77, Indian Registration Act. The defendant contended that the deeds had been materially altered after he executed them. Finally the suit was decreed. The plaintiff instituted a suit for recovery of possession of mesne profits on the strength of his title. The Subordinate Judge decreed the plaintiff's suit. Mr. Justice Mookerjee and Mr. Justice Suhrawardy held that the plaintiff's suit was not barred, They Observed at page 55:

The cause of action arises when and only when the aggrieved party has the right to

apply to the proper tribunals for relief *Whalley v. Whalley* 3 Bligh. 1 The statute does not attach to a claim for which there is as yet no right of action and does not run against a right for which there is no corresponding remedy or for which judgment cannot be obtained. Consequently the true test to determine when a cause of action has accrued is to ascertain the time when plaintiff could first have maintained his action to a successful result. (*Angell on Limitations*, S. 42).

13. In that case the plaintiff without getting a registered document could not maintain a claim to the property and he could not, therefore, sue for mesne profits, But here the defendants had obtained a decree for specific performance and they were in possession of the property under the contract to transfer the sublease and they were bound to pay the rent and charges on the property. The plaintiff who no doubt was under a liability to see that the rent and charges were paid and who paid in consequence of his liability could have brought a suit the day after the decree of the District Munsif was pronounced in favour of the defendants for the execution of a proper transfer deed.

14. In *Matanjien Debya v. Prasannamoyi Debya* [1906] 3 C. L. J. 93 a putnidar purchased his co-putnidar's share in a sale for arrears of rent. The sale was set aside as the putnidar was not competent to bid having regard to the provisions of Section 9, Putni Regulation Act 8, 1819. The plaintiff who after the purchase was the owner of the putni paid the arrears of rent and instituted a suit for contribution in respect of the payment made by him. *Macleay, C. J.*, held that the cause of action arose when the sale was set aside and

that the payment must be regarded as payment on his own account and not for the co-putnidar. In this view the statute would not begin to run until after the 12th June 1899. The plaintiff would have no cause of action against the defendants until the 12th June 1899. To revert for a moment to Art. 61, it cannot be said that there was any money paid for the defendants until the sale had been set aside. Up to that time the money must be taken as paid by the plaintiff on his own account.

15. This case is distinguishable on the facts of the present case. *Bijoy Chand Mahatab v. Nilmoni Lahiri* A. 1925 Cal. 1216 does not help the respondent. In that case the learned Judges followed *Juscurn Boid v. Prithichand Lal Choudhury* A. I. R. 1918 P. C. 151.

16. It is next contended that Art. 120, Limitation Act, applies to this case. This is a residuary article and when there is no other article applicable to the case then only the Court should see whether Art. 120 would be applicable. In this case Art. 61 is clearly applicable and therefore Art. 120 cannot be held to apply to the facts of the present case. In this view it is unnecessary to consider at length the case in *Viswanatha Vija Kumara Bangaroo v. R. G. Orr* [1918] 45 I. C. 786 and *Sundara Aiyar v. Ananthapadmanabha Aiyar* A. I. R. 1923 Mad. 64 In both the cases the cause of action was held to arise on the date when the defendant had the benefit of the plaintiff's payment or acts. Here the defendant had the benefit of the payments on the dates on which they were made. If the plaintiff had not made those payments the defendants should have paid them and if they defaulted to pay them, due charges, the sub-lease would have been forfeited and the defendants would have lost possession of the property.

17. *Venkatadri Appa Rao v. Parthasaradhi Appa Rao* does not help the respondent.

There the Privy Council held that in the case of a legacy time began to run only from the time when the executor had funds with which he could pay the legacy.

18. After a careful and anxious consideration of the case I hold that Art. 61 applies to this case and the cause of action arose on the dates of the several payments. It is admitted that a sum of Rs. 248-10-9 was paid within three years before suit and therefore I modify the decree of the District Judge by reducing the amount to Rs. 248-10-9 with 12 per cent. interest from the date of payment to the date of the District Court's decree and six per cent. interest thereafter. Considering all the circumstances of this case I direct that both the parties should bear their costs throughout.

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