

PETITIONER:
KOTI SARROJ ANAMMA & ANR.

Vs.

RESPONDENT:
JONNALAGADA MALLESWARA RAO

DATE OF JUDGMENT 28/03/1995

BENCH:
MANOHAR SUJATA V. (J)
BENCH:
MANOHAR SUJATA V. (J)
AGRAWAL, S.C. (J)

CITATION:
1995 AIR 1401 1995 SCC (3) 347
JT 1995 (3) 329 1995 SCALE (2) 445

ACT:

HEADNOTE:

JUDGMENT:

MRS. SUJATA V. MANOHAR, JJ.

1. The appellants. had filed a suit being G.S.No.159/83 before the Additional Munsiff, Guntur to evict the respondent from their property consisting of vacant site, zinc sheet shed and Saw mill machinery which had been leased in the year 1967 to the respondent under an oral lease. The property is situated in Guntur Town, Nagarmelem Old Ward No. 17, New ward No. 23, Block No. 14, TS No.411. The respondent contended, inter alia, that the Civil Court had no Jurisdiction to entertain and try the suit-, the Rent Controller alone had jurisdiction in the matter under, the provisions of the Andhra Pradesh Buildings(Lease, Rent and Eviction) Control Act, 1960. The respondent also contended that there was no valid quit notice, that he was entitled to continue in the suit premises till April, 1986 and that the appellants did not require the premises for their personal use as was contended by them. The Additional Munsiff, Guntur decreed the suit of the appellants. He held that the tenancy was from month to month and the quit notice was valid. He also held that the lease in question was in relation to land and machinery. The zinc sheet shed being only an accessory to the main lease hold premises, being meant for covering the machinery, the lease in question did not come within the purview of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960.

2. Being aggrieved by this judgments and order, the respondent preferred an appeal before the District Court at Guntur. The District Judge, however, confirmed the findings of the Munsiff's Court and dismissed the appeal.

3. The respondent preferred a second appeal before the High Court of Andhra Pradesh challenging the concurrent findings of the two courts below. The High Court came to the conclusion that the lease was in respect of a building as defined in the Andhra Pradesh(Lease, Rent and Eviction) Control Act, 1960 and hence the Civil Court had no

jurisdiction to entertain the suit. On this ground, the appeal of the respondent was allowed by the High Court. The present appeal is from this judgment and order of the High Court of Andhra Pradesh.

4. The narrow question before us is whether the lease in question is of a building as defined in the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1961 Section 2 (iii) of the said Act defines a building thus:

"2 (iii): 'building, means any house or hut or part of a house or hut, let or to be let separately for residential or non-residential purpose and includes-

(a) the gardens, grounds, garages and out-houses, if any, appurtenant to such house, hut or part of such house or hut and let or to be let along with such house or hut or part of such house or hut;

(b) any furniture supplied or any fittings affixed by the landlord for use in such house or hut or part of a house or hut, but does not include a room in a hotel or boarding house;"

5. It is contended by the respondent that the zinc sheet shed which covers the machinery was leased out to him by the appellants. The shed falls within the defini-

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tion of building under Section 2 (iii). This contention requires examination.

6. There is no written lease in the present case. The case of the appellants throughout has been that what was leased out to the respondent was their Saw mill machinery and land consisting of approximately 10,000 square yards. The Saw mill machinery was covered by a zinc sheet shed to protect the machinery. The lease was essentially a lease of the Saw mill machinery. It was not a lease of a house or a hut. In the plaint in paragraph 111, the property which has been leased out is described thus:

"the property mentioned in the schedule annexed consists of vacant site, zinc sheet shed and machinery belonging to the first plaintiff herein....."

The schedule to the plaint describes the property as:

"Guntur town, Nagaramalem old ward No. 17, ward No.23, Block No. 14, TS No.411, total area 10156 square feet municipal assessment No. 22214 bounded by-

West : Compound Wall in this site; and Rakulu of ILTD Co., 105'.08'

South : Road and gate and compound wall 70'

West : Compound Wall in this Rakulu of ILTD Co., 106'

North : Compound Wall and Rakulu zinc sheet shed 60' - 06"

within the above boundaries wherein there zinc doria rakulu shed, with saw mill with all accessories attached to the mill, 10 Hp Electric motor, current connection metre etc.,"

7. The case of the appellants throughout has, therefore, been that the land together with Saw mill and accessories attached to the Saw mill covered by zinc doria rakulu shed was leased out to the respondent. The trial court came to the conclusion that it was the Saw mill with machinery covered with zinc sheet which was taken on lease by the respondent in 1967. It came to the conclusion that the mere fact the machinery of the Saw mill was housed in a zinc

sheet shed will not make the lease that of a non-residential building within the meaning of Section 2 of the said Act. The same view has been upheld by the Appellate Court. The appellate Court has also observed that there is no dispute with regard to the description of the property leased out as made out in the plaint and the schedule to it, It has also held that the respondent had taken the Saw mill machinery and the schedule property on lease for doing Saw mill business.

8. Learned counsel for the appellants also produced before us the deposition of witnesses examined between the trial court. The second plaintiff in his examination - in chief has said that the property leased out is a vacant site along with Saw mill shed. In his cross-examination he has reiterated that only the machines and shed were leased out. The defendant had constructed an office in the premises later on. The defendant in his examination -in- chief has also deposed that he took the schedule site on lease in 1967 for doing timber business. He has said that when he took the premises on lease, there was a saw mill machine and shed. He has further stated that he constructed an office room in the, premises after he took the premises on

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lease. In his cross examination, the defendant had stated that the shed is erected to house the machinery.

9. Looking to this evidence, it is clear that the shed, which has a zinc sheet roof, was erected only to protect the Saw mill machinery. What was leased out to the respondent was substantially the Saw mill machinery for the purpose of carrying on timber/ Saw mill business. The shed was merely erected to shelter the machinery. The dominant purpose of the lease was to lease out the Saw mill machinery. In order that the lease should be covered by the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, the lease should be of a building as defined in Section 2 (iii). It should, therefore, be lease of any house or a hut or a part of a house or a hut let for residential or nonresidential purposes. It would include gardens, grounds, garages and out-houses appurtenant to such a house or a hut. In the present case, however, the lease is not of any house or a hut or part of a house or a hut. The lease is of saw mill machinery which is covered by a zinc sheet shed. The dominant purpose of the lease is to lease (not the machinery). The shed is only an adjunct. It is also pointed out that a covering over the machinery in the shape of a structure consisting of zinc sheets supported on poles can hardly be called a house or even a hut. In any case, looking to the dominant purpose of the lease, the two courts below have rightly come to the conclusion that the lease is not covered by the provisions of the Andhra Pradesh Buildings (Lease Rent and Eviction) Control Act, 1960.

10. The respondent relied upon a decision of a Full Bench of the Andhra Pradesh High Court in the case of Mohammad Jaffar Ali v. S. Rajeswara Rao (1971) 1 Andhra Pradesh Weekly Reports 194). In that case, there was a lease of the cinema theatre. The Court held that the lease was essentially a demise of the building with accessories like furniture and machinery, the dominant purpose of the demise was to lease the cinema theatre building and hence, the provisions of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 apply to such a lease. In the present case, the dominant purpose is clearly to lease out the Saw mill machinery. A zinc sheet shed which has been erected merely to cover the machinery, cannot be a predominant reason for the lease. The High Court, therefore,

was not right in coming to the conclusion that the lease was governed by the provisions of Andhra Pradesh Buildings (Lease, Rent, and Eviction) Control Act, 1960.

11. The appeal is therefore, allowed. The impugned judgment and order of the Andhra Pradesh High Court dated 20.2.1992 is set aside and the judgment and the order dated 2.4.1990 of the third Additional District Judge, Guntur is confirmed. The respondent shall pay to the appellants costs of the appeal.

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JUDIS