Varkey Yohannan Vs Narayanan Vasudevan Chakkiyar

Court: High Court Of Kerala

Date of Decision: March 11, 1954

Citation: AIR 1954 Ker 161

Hon'ble Judges: Koshi, C.J; Menon, J

Bench: Division Bench

Advocate: K.P. Abraham, for the Appellant; T.S. Venkiteswara Iyer, for the Respondent

Final Decision: Dismissed

Judgement

Menon, J.
Defendants 2 and 3 in O.S. No. 12 of 1113 of the District Court of Kottayam, a suit for redemption, are the appellants before

us. Though a number of points were indicated the only point pressed before us by Mr. K.P. Abraham, learned counsel for the appellants, is that an

option for renewal obtains under Ex. A dated 9-1-1074 and in view of that, redemption should have been refused by the court below. The clause

in Ex. A on which reliance has been placed reads as follows:

12. Kollam kazhinju avasyappattal kanom pattri vasthu Ozhiyukayo kanothinnu pathinonnum 15 nilathul 15 30 vethamulla adakkuratha vakasangal

thannu adaram mari ezhuthi pidikkukayo Cheyyunnathinnum sammathiche ezhuthikkoduthe enna Punnande magan Varki (Oppa).

(The Malayalam portion may be translated thus:

It is hereby agreed that after 12 years, when demanded, the property will either be surrendered after receiving the kanom amount or will be

renewed after paying one for every ten of the kanom amount as also the Adukkuvathu rights at the rate of 15.30 in the 15th Nilam. Varkey, son of

Purman Sd. -Ed.)

2. The provision for renewal embodied in the clause extracted above as we understand it, will be available only for one renewal at the end of 13

years from 9-1-1074 and not for similar renewals in perpetuity at the end of every cycle of 12 years from the said date. According to us the option

must be considered as having spent itself in 1086 and as no longer available as a defence to redemption at present.

3. There can be no doubt that the proper way of construing a covenant for renewal is as stated by Lord Selbourne in - ''Swinburne v. Milburn'',

(1884) 54 LJQB 6 (A):

I am not inclined to adopt the language which is to be found in some authorities, to the effect that there is a sort of legal presumption against a right

of perpetual renewal in cases of this kind; but these authorities certainly do impose upon any one claiming such a right the burden of strict proof,

and are strongly against inferring it from any equivocal expressions which may fairly be capable of being otherwise interpreted.

4. In - ''Lewis v. Stephenson'', (1898) 67 LJQB 296 (B) the words ""with the option of renewal"" in a lease for a term of three years came up for

consideration. Bruse, J. agreed that in such cases what the option for renewal meant was ""the renewing of the old lease for the same period and on

the same terms"" and went on to say:

Unless such a meaning is given to the word ''renewal'' the words in the present agreement are deprived of all legal significance, and I am reluctant

to come to the conclusion that the words inserted in a legal document ought to be taken as having no effect. But then it is said that if the terms of

the renewed lease are to be the same as the terms of the original lease, the renewed lease must contain a stipulation for renewal, and so on in

perpetuity. But such a construction is, I think, manifestly unreasonable. ''With option of renewal'' does not mean with continued options of renewal

after renewal. There is, I think, sufficient authority to support the view that an express provision that all covenants in the original lease shall be

inserted in the renewed lease will not include a covenant for a further renewal.

5. To the same effect are the observations of Mukerji J. in - ''Secy. of State v. Digambar Nanda'', AIR 1919 Cal 620 (C):

Where there is a covenant for renewal, if the option does not state the terms of renewal, the new lease would be for the same period and on the

same terms as the original lease in respect of all the essential conditions thereof, except as to the covenant for renewal itself.

6. In - ''Green v. Palmer'', (1944) 1 All ER 670 (D) a more difficult provision for renewal came up for consideration:

The tenant is hereby granted the option of continuing the tenancy for a further period of six months on the same terms and conditions including this

clause, provided the tenant gives to the landlord in writing four weeks'' notice of his intention to exercise his option.

7. Uthwatt J. held that no perpetual right of renewal was conferred on the tenant and that the option, if exercised, only entitled him to occupation

for a period not exceeding 18 months from the dale of the original agreement:

Turning to the actual language of the clause, the first thing one observes is that in terms, there is granted to the tenant a single option exercisable

only once upon the named event, and the subject-matter of that option is an option of continuing the tenancy for a further period of six months ''on

the same terms and conditions including this clause''. To my mind, what that means is this: the tenant is to be allowed once, and once only, the

opportunity of continuing the tenancy-continuing it for a further six months. Then we come to the critical words ''on the same terms and conditions

including this clause''. As I read it, that means there is included in the new tenancy agreement a right in the tenant, if he thinks fit, to go on for one

further six months, and when you have got to that stage you have finished with the whole matter. In other words, it comes to this: ''Here is your

present lease. You may continue that, but I tell you, if you continue it you continue it on the same terms as you were granted the original lease. You

may continue it for a further 6 months with the right to go for another 6 months''.

Upon that footing, in the events which have happened, all that the landlord was bound to do under this arrangement was to permit the tenant to

occupy for a period not exceeding 18 months in the whole from the time when the original lease was granted.

8. Mr. Abraham had a further contention that even if the option for renewal can be exercised only once, the time at which the appellants were

entitled to exercise it was not at the end of 12 years from the date of Ex. A but when an actual demand for surrender was made by the lessor. In

this case the only demand for surrender was made by the suit itself and so according to him his clients were entitled to exercise the option in these

proceedings. We cannot agree. The wording of Ex. A affords no support for such an argument. The option conferred by Ex, A was an option

which would have been exercised at the end of the term of 12 years granted & was only for the purpose of effecting a renewal for a further period

of 12 years from the said date. In other words Ex. A and the exercise of the option together will not take the lease beyond 24 years from the date

of Ex. A.

9. The appeal fails and is dismissed with costs.