

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 7647 OF 2004

T. DEIVOO

Appellant (s)

VERSUS

K. VIJAYAVEL

Respondent(s)

(With office report)

Date: 21/10/2009 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Appellant(s) Mr. V. Prabhakar, Adv.
Mr. Ramjee Prasad, Adv.
Ms. E.R. Sumathy, Adv.

For Respondent(s)
Mr. V. Balachandran, Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard learned counsel for the parties.

For the reasons stated in the signed order, the
appeal is allowed and the judgment and order of the High
Court as well as that of the Rent Controller are set
aside. No order as to the costs.

(Ajay Kr. Jain)
Court Master

(Indu Satija)
Court Master

(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7647 OF 2004

T. Deivoo

.... Appellant

Versus

K. Vijayavel

.... Respondent

O R D E R

1. Heard learned counsel for the parties.
2. This appeal by special leave has been filed

against the judgment and order dated 20.2.2003 of the High Court of Judicature at Madras.

3. The facts leading to the present appeal are that the landlord-respondent filed an eviction petition against the tenant-respondent on the ground that the tenanted premises were let out for a particular business but later the tenant started doing some other business. The learned Rent Controller (District Munsif) Tuticorin allowed the eviction petition and passed a decree in favour of the respondent-landlord. The High Court by the impugned judgment and order has upheld the judgment and decree of the learned Rent Controller.

4. We have perused the lease-deed entered into between the landlord and tenant, a copy whereof is annexed as Annexure-R1 to the counter affidavit filed by the respondent. The lease - deed only states that the premises when taken on rent will be used for running a shop under the name and style of "Thai Shopping Centre". The nature of the business or trade which will be carried on in the said shop has not been mentioned in the lease deed. We have also perused the eviction petition as also the evidence led by the landlord. In paras 3 and 4 of the eviction petition it is stated as under :-

"3) The petition Schedule property belongs to the petitioner. The respondent is a tenant under the Petitioner on a monthly rent of Rs. 600/- including the fixtures. The respondent took the Schedule building for running shop in the name and style of 'Thai Shopping Centre' and the respondent has entered into a written agreement with the Petitioner on 12.7.1988. The agreement may be read as part and parcel of this petition. As per the terms and conditions of the agreement the respondent should

not use the building for the purpose other than that for which it was leased.

4) The respondent has violated the conditions of the agreement and has changed the purpose for which the building was leased in or about December 1992. The respondent from December 1992 is running 'Dhanalakshmi Jewellers' at the petition Schedule building without written consent of the Petitioner. 'Thai Shopping Centre' has been now modified into jewellery mart which is certainly a different user."

Thus, in the eviction petition also it is not mentioned as to what business was being run by the tenant in the premises in question. In the evidence of the landlord also which is Annexure-P/6 the landlord has not mentioned as to what was the business that was being done by the tenant when he took the tenancy.

5. From the above discussion it is clear that in all the three documents, namely, the lease deed, eviction petition as also in the evidence led in support of the eviction petition, the nature of business being done by the tenant when he took the premises on rent has not been mentioned and all that has been mentioned is the name of the shop 'Thai Shopping Centre'. In our opinion, the name of the shop is not indicative of the nature of the business being done by the tenant. This being the position, in the case at hand, it cannot be said that the tenant has changed the nature of his business.

6. It may also be mentioned here that there is no restraint clause in the lease deed for changing the name of the shop and the restraint is only in respect of the change of business by the tenant.

7. Learned counsel for the respondent-landlord has relied upon a decision of this Court in the case of

M. Arul Jothi & Anr. Vs. Lajja Bal (Deceased) and Anr.

(2000) 3 SCC 723. In our opinion, the said decision is clearly distinguishable because in the said case it has

been pointed out that in the lease deed it was specifically mentioned that the leased premises will be used by the tenant only for carrying on the business of radios, cycles, fans, clocks and steel furniture etc. and the tenant shall not carry on any other business.

Thereafter, the tenant changed the nature of the business to provisions such as chillies, dals etc.

Hence, there was clearly a change of business in the said case from the one mentioned in the lease deed.

8. For the reasons stated above, this appeal is allowed and the judgment and order of the High Court as well as that of the Rent Controller are set aside.

Appeal allowed. No order as to the costs.

.....J.
(MARKANDEY KATJU)

.....J.
(ASOK KUMAR GANGULY)

NEW DELHI;
OCTOBER 21, 2009