IN THE SUPREME COURT OF SEYCHELLES

Krishnan Chetty

of La Louise, Mahé **Plaintiff**

Vs

P. Subramaniyan Pillay
of Market Street, Victoria, Mahé
Defendant

Civil Side No: 358 of 2009

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Mr. B. Georges for the plaintiff

Mr. F. Bonte for the defendant

D. Karunakaran, J.

JUDGMENT

The plaintiff in this matter claims Rs1.5 Million from the defendant alleging that the said sum remains due and payable by the defendant, being rental receipts the defendant collected from the plaintiff's tenants in respect of certain shop-premises situated in Town.

It is not in dispute that the defendant Mr. S. Pillay was and is the owner of a commercial building consists of several shop-units hereinafter called the "premises" situated at Market Street, Victoria, Mahe. In 1996, the defendant, by a special power of attorney, had appointed one Ms. Celine Francis as his agent and had authorized her to manage his affairs in

Seychelles as he was away from the Republic. The said power of attorney inter alia, had authorized the agent to let and hire out the premises or the units thereof to third parties and to execute such deeds or instruments as may be necessary for the management of the premises. The agent on 23rd July 1999, executed a lease agreement leasing out the entire premises to the plaintiff herein (Mr. K. Chetty) - on a long term lease - that was for a period of 30 years, using that special power of attorney and without the owner's knowledge, although the said special power of attorney had purportedly been given by the principal only for administrative purposes in respect of the premises.

The owner, who subsequently came to learn about the long term lease, filed a suit in CS No: 212 of 2001 before the Supreme Court and sought a declaration that the lease agreement executed by the agent in favour of the plaintiff using the said power of attorney, was null and void ab initio. The Supreme Court in that suit gave judgment in favour of the owner declaring that the said lease was void *ab initio.* Being dissatisfied with that Judgment of the trial court, Mr. Chetty appealed against it to the Court of Appeal. The appellate court presided by Perera, J. in SCA20 of 2004, allowed the appeal. In his judgment dated 19th May, 2006, Perera, J. (ex officio Justice of Appeal) with the concurrence of other two, held that the lease in question was not "*void" ab initio* as was found by the trial court, but according to him, it was merely *"ineffectual"* between the parties. The appellate court having thus found that the lease agreement was ineffectual in the eye of law, it surprisingly went on to give "life and force" to the said ineffectual lease agreement and made it effectual stating that it created ***"right in personam"*** between the parties, which the parties obviously never intended to attribute to the so called lease-deed they originally entered into. Be that as it may, the Court of Appeal in the process of determining the appeal, made so to say "a new contract" for the parties, as the one they originally entered into, was invalid and did not serve its purpose.

The purported lease was subsequently, on 26th October 2006, terminated by the owner. Later in 2008, the owner applied to the Rent Board for an eviction-order against one of his tenants in the premises, namely, Nichol Chetty, who is none else than the son of the plaintiff, for non-payment of rent in respect of a shop-unit he had been occupying in the premises. The Rent Board accordingly, made an eviction-order on 17th June 2008 against that tenant and ordered him to pay the arrears of rent to the owner, which sum remained due and payable to the owner. Being aggrieved by the said order of the Rent Board, the tenant appealed against it to the Supreme Court. This appeal was also dismissed. The Court again affirmed that the owner Mr. Pillay is entitled to the rent arrears from the tenant and accordingly, dismissed the said appeal and upheld the order of the Rent Board.

Subsequently, by a plaint dated 30th December 2009 the plaintiff Mr. Chetty, the former lessee has now instituted the present suit claiming the sum of Rs 1, 500,000/- from the owner contending that the defendant has, since 2005, been collecting the rents directly from those tenants and refused to pay the said rental receipts to the plaintiff. According to the plaintiff, all those rental receipts in the total sum of Rs 1, 500,000/- collected by the defendant are due and payable to the plaintiff. Therefore, the plaintiff in this action prays for a judgment ordering the defendant to pay the said sum to him, with interest and costs.

On the other side the defendant in essence contended that the main-lease with the plaintiff in respect of the “premises” was terminated on 25th October 2007. Therefore, the defendant being the owner of the premises is entitled to collect the rents from the tenants, who occupied his premises. Besides, it is the case of the defendant that there wasn’t any agreement between the parties that the defendant should collect the rent from his

tenants and pay that sum to the plaintiff. Therefore, the defendant sought dismissal of this action.

Having sieved through the entire pleadings and having carefully analysed the submissions made by both counsel, to my mind, the only legal question, which is fundamental that arises for determination in this matter is this:

> *Is the plaintiff Mr. K. Chetty legally entitled to the rental amounts, which the defendant collected from the tenants in respect of the premises in question?*

Obviously, the apex court has already held in SCA No:20 of 2004, that the purported lease agreement between the plaintiff and the defendant in this matter was ineffectual and it created only a ***"right in personam"*** in favour of the plaintiff. Therefore, it goes without saying that the plaintiff under such incompetent agreement cannot make any claim based on any real right in the premises such as lease, charge etc, as it is a ***"right in rem"***. Hence, I find that the plaintiff's claim since based on an alleged lease (a real right), against the defendant for the surrender of the rental receipts, which the latter collected from the tenants of his own premises, is not maintainable in law and liable to be dismissed.

In any event, even if one assumes for a moment that there had been a valid and effective lease agreement between the parties that enabled the plaintiff to substantiate his claim for rents in respect of the premises in question, undisputedly, that agreement was duly and lawfully terminated by the defendant on 26th October 2006. Therefore, the plaintiff evidently, cannot claim any interest arising out or in respect of the premises under the lease agreement that had been terminated. In the circumstances, I conclude that the plaintiff is not entitled to make any claim for rental payments against the defendant exhuming the dead lease from its grave. Hence, the plaintiff has

no *locus standi* to pursue the present claim against the defendant in this matter and so I find.

Besides, I note that the defendant in this matter, is deemed to be the lessor in the eye of law, in respect of the letting or sub-letting of his premises and as such he is legally entitled to receive rents from the occupants of the premises, since he had allowed them to enjoy use and occupation of his premises. In fact, Section 2 of the CONTROL OF RENT AND TENANCY AGREEMENTS ACT defines a *lessor* thus:

"Lessor" means any person who receives or ***is entitled to receive rent in respect of the letting or sub-letting,*** (underline mine) as the case may be, of a dwelling-house, and also includes any persons who allows another person to enjoy the use and occupation of a dwelling-house for which an indemnity is payable or not, a sub-lessor and any person deriving title from the original lessor"

For avoidance of doubt, it should be mentioned here that Section 13(l) of the above Act states that references to a "dwelling-house", wherever it appears in this Act includes references to any premises used for business, trade or Professional purposes or for the public service.

Having said that, in the light of all the above, I find the answer to that the above question in the negative. That is, the plaintiff Mr. K. Chetty is not entitled in law to receive the rental amounts, which the defendant had collected from the tenants in respect of the premises in question. The suit is therefore, dismissed with costs.

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D. Karunakaran

Judge

Dated this 16th day of November 2011

Further Order:

In view of the dismissal of the suit, I hereby vacate or cancel the order made by the Court on 4th January 2010 for the Provisional Attachment of the cheque/money in the sum of Rs490, 765/- which is in the hands of the Registrar of the Supreme Court. Accordingly, I order the release of the said sum from attachment and direct the Registrar of the Supreme Court to pay forthwith the said sum to Mr. P. Subramanian Pillay, the defendant in this matter.

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D. Karunakaran

Judge

Dated this 16th day of November 2011