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IN THE PRIVY COUNCIL
ON APPEAL FROM THE COURT OF APPEAL
OF THE REPUBLIC OF SINGAPORE

No. 15 of 1983

B E T W E E N :

V.M. PEER MOHAMED
(Defendant)

Appellant

- and -

THE GREAT EASTERN LIFE ASSURANCE
COMPANY LIMITED
(Plaintiffs)

Respondents

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CASE FOR THE APPELLANT

A. The Jurisdiction

RECORD

1. This is an appeal from a judgment dated 9th September 1982 of the Court of Appeal of the Republic of Singapore (Wee Chong Jin, C.J. and Lai Kew Chai and F.A. Chua, JJ.), dismissing an appeal from a judgment dated 23rd June 1981 of the High Court of the Republic of Singapore (Kulasekaram J.) and giving leave to appeal. The High Court had allowed an appeal by the Respondents from a judgment dated 27th March 1978 of the District Court of the Republic of Singapore (HH Judge Dalip Singh) dismissing the Respondents' claim for possession of premises known as 449 East Coast Road, Singapore ("the premises").

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B. The Facts

2. This appeal concerns the effect in law of an agreement under seal dated 9th December 1953 ("the Deed") and made between D. Abdullah of No. 449, East Coast Road, Singapore, trader (called therein "the Vendor") of the first part, Murugaiyan also known as

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Murugiah son of Kathan also of No. 449, East Coast Road, Singapore (called therein "the Attorney") of the second part and the Appellant of No., 725 North Bridge Road, Singapore, trader (called therein "the Purchaser") of the third part

3. The Respondents to this appeal are and were at all material times the Landlords of the premises. On a date unknown in or before 1953 the Respondents let the premises to one D. Abdullah on a monthly tenancy ("the tenancy"). The terms of the tenancy contained no prohibition against assigning or subletting the premises. The tenancy was one to which the provisions of the Control of Rent Act Chapter 266 applied. On 9th December 1953 the Deed was entered into and the Appellant has been in occupation of the premises, paying rent to the Respondents, ever since. By a Notice to Quit dated 2nd November 1976 addressed to the said D. Abdullah and served at the premises by registered post the Respondents purported to terminate the tenancy on 31st December 1976. When the Respondents learnt that the said D. Abdullah had returned to India and was possibly deceased, a further Notice to Quit in respect of the premises dated 24th December 1976 was served on the Chief Justice of the Republic of Singapore purporting to terminate the tenancy on 31st January 1977.

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C. The History of the litigation

4. In March 1977 the Respondents commenced proceedings in the District Court of the Republic of Singapore claiming, inter alia, possession of the premises from the Appellant, alleging that he was in unlawful occupation thereof. The Statement of Claim dated 8th March 1977 and 10th September 1977 set out the material facts stated in paragraph 3 of this Case. The Defence was dated 10th September 1977.

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5. The action came on before the District Judge, His Honour Dalip Singh, on 6th March 1978. The District Judge gave judgment on 27th March 1978 dismissing the Respondents' claim, and on 31st August 1978 gave his Grounds of Judgment.

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6. By a Petition of Appeal dated 23rd September 1978 the Respondents appealed to the High Court of the Republic of Singapore. The appeal case came on before T. Kulasekaram J. on 15th January 1980, and the Learned Judge gave judgment on 23rd June 1981, allowing the appeal and ordering that the Appellant deliver up possession of the premises.

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7. By a Notice of Appeal dated 15th July 1981 the Appellant appealed to the Court of Appeal of the Republic of Singapore. The appeal case came on before Wee Chong Jin, C.J., and Lai Kew Chai and F.A. Chua, JJ. The judgment of the Court of Appeal was delivered on 9th September 1982. It said

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"the sole issue in this appeal is whether on the true construction of the deed the tenancy of the premises had been transferred by way of assignment to the Appellant by D. Abdullah. It is conceded on behalf of the Appellant that a transfer of the tenancy by way of an assignment would have to be made by deed. The High Court came to the conclusion that under the documents the tenancy of the premises had not been assigned by D. Abdullah to the Appellant and held that it was merely an agreement evidencing the sale of the furniture and fittings on the premises by D. Abdullah to the Appellant. We agree with the conclusion and finding of the High Court."

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lines

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Accordingly the Learned Judge dismissed the appeal with costs.

D. The Appellant's submissions

8. There are three possible objects of the transaction effected by the Deed :

A. to transfer the furniture and fixtures;

B. to transfer the furniture and fixtures, and also to assign the tenancy;

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- C. to transfer the furniture and fixtures, and also to grant a sub-tenancy;

Object C is wholly inconsistent with Clause 6, and has not been pleaded or argued. The choice is therefore between objects A and B.

Object A is achieved by Clause 1. If that were the sole object, Clauses 2 to 6 were unnecessary and inappropriate, as was the agreement under the second half of the last recital.

To construe the Deed as "merely evidencing the sale and transferring possession of the furniture and fixtures" is to give 10 no effect to the greater part of the document.

It follows that a construction which gives effect to Object B is to be preferred.

9. The Appellant respectfully submits that the judgment of the Court of Appeal of the Republic of Singapore was wrong and ought to be reversed, and this appeal ought to be allowed with costs, the following (amongst other)

REASONS

(1) BECAUSE upon a true construction the Deed effected an immediate assignment of the tenancy to the Appellant. 20

(2) BECAUSE it was common ground that if the tenancy was ever assigned to the Appellant, the Landlords' claim for possession must fail.

RONALD BERNSTEIN Q.C.

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