

A THE SECRETARY, TALIPARAMBA EDUCATION SOCIETY

v.

MOOTHEDATH MALLISSERI ILLATH M.N. AND ORS.

MARCH 3, 1997

B [K. RAMASWAMY AND G.T. NANAVATI, JJ.]

C *Lease—User of leased property—Terms of lease—Deed stipulating that lessor cannot claim to recover property so long as it is used for the purpose of educational institution—Notice of termination given—Subsequently suit filed on the grounds of trespass into property and user thereof for cultural purposes and receipt of amount from such user—Held, initially under the lease, a right of property was actually granted—Trial court and appellate court recorded concurrent findings that in fact there was no trespass and there is no misuse or contravention of terms of the lease—Though some shops were constructed on the land and some of the rooms were let out for cultural purposes and marriage purposes, but the rent derived therefrom is being used for the maintenance and running of the educational institute—The user was not detrimental to the purpose for which lease was granted—Educational institution.*

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1872 of 1997.

From the Judgment and Order dated 24.6.96 of the Kerala High Court in S.A. No. 2 of 1993.

C.S. Vaidyanathan and Ramesh Babu M.R. for the Appellant.

F T.L.V. Iyer, S. Balakrishnan, A. Raymond, M.K.D. Namboodri and G. Prakash for the Respondents.

The following Order of the Court was delivered :

G Leave granted.

This appeal by special leave arises from the judgment of the learned Single judge of the Kerala High Court, made on June 24, 1996 in S.A. No. 2/1993.

H The short question that arises for consideration is : whether the

respondents are entitled to terminate that lease granted to the appellant? A
Clause 6 of the lease-deed reads as under :

"The lessee need not surrender and the lessor cannot claim to recover the property or the management of the institution from the Society so long as it is used for the purpose of an education institution. But if it over happens that the site and buildings are used for purpose other than those for which they are intended and or the lessee finds it not possible to manage the institution as an education institution, the lessor will have the absolute right to re-entry." B

In exercise of the right under the said convent, notice of termination was given by the respondents. Resultantly, the respondents filed a suit. Though elaborate contentions were raised for grant of the relief, namely, user of the property for cultural purposes and receipt of the amount from such user, to allow others to trespass into the property and make use thereof as grounds to terminate the lease, they were negatived by civil Court. Incidentally, it was also a lease of the management of the institution. The trial Court as well as the appellate Court negatived the contentions and concurrently upheld the claim of the appellant that there was no breach of the covenant. But in the Second Appeal, the learned Judge on appreciation of evidence has held that the respondents had allowed the property to be trespassed, used the property for purposes other than the one for which it was intended and, therefore, the respondents are entitled to terminate the lease. Consequently, he decreed the suit. Thus, this appeal by special leave. C D E

Shri Vaidyanathan, learned senior counsel for the appellant, has contended that in view of the concurrent findings recorded by the courts below, the view taken by the High Court is wholly unjustifiable. We find the contention is well founded. Shri Vishwanatha Iyer, learned senior counsel for the respondents, has contended that in view of the finding recorded by the High Court, the various points discussed and the finding recorded by the Courts below the claims made out by the respondents to have the lease terminated is correct. Initially, under the lease a right of property was actually granted. It was argued that since the property was misused by the management which was handed over to the appellant, the respondents are entitled to terminate the lease. We find no force in the F G H

- A contention. The question whether the property was allowed to be trespassed was gone into by the trial Court and a finding was recorded that they did not acquiesce to the trespass and in fact there was no trespass. It has not been established that user of the property was for purposes other than those for which it was intended. It is true that the shops were constructed on some portion of the land but the rent derived therefrom is being used for the maintenance and running of the educational institution. Therefore, the user was not detrimental to the purpose for which lease was granted. It is also an admitted position that some of the rooms were let out for cultural purposes and marriage purpose, but that is not detrimental to the running and imparting of education to the students. Obviously, these acts are done to augment the funds of the Society for proper management. Under those circumstances, the trial Court and the appellate Court came to the concurrent conclusion that there is no misuser or contravention of covenant No. 6 of the lease. The High Court was grossly in error in trenching upon appreciation of evidence under Section 100 CPC and recorded reverse finding of fact which is impermissible.
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The appeal is, accordingly allowed. The judgment of the High Court is set aside. The decrees of the trial Court and the appellate Court stand confirmed but without costs.

R.P.

Appeal allowed.