IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 3RD DAY OF APRIL 2025 / 13TH CHAITHRA, 1947

RFA NO. 97 OF 2016 (J)

AGAINST THE DECREE AND JUDGMENT DATED 31.07.2015 IN O.S. NO.211 OF 1992

OF SUB COURT, KOTTARAKKARA

APPELLANT/DEFENDANT:

G.VISWANATHAN
AGED 75 YEARS
SABITHA HOUSE, LION'S COLONY, MUNDAKKAL, KOLLAM, PIN-691010,
PRESENTLY RESIDING AT SHAJI BHAVANAM, KILLINOOR PO,
KOLLAM, PIN- 691004

BY ADVS.
SRI.K.V.GOPINATHAN NAIR
P.VISWANATHAN (SR.)(K/000283/1986)

RESPONDENTS/PLAINTIFFS:

1 **ABRAHAM SALAMMA**
AGED 55 YEARS
W/O.T.V ABRAHAM, SALEM MANDIRAM, KOTTAPPURAM, KIZHAKKEKARA,
KOTTARAKARA VILLAGE, PIN-691532
NOW RESIDING AT BOTHUTHATSWANA, MAMABATHO 8681 P.B. 6238,
AFRICA

2 **T.V.ABRAHAM**
AGED 63 YEARS
SALEM MANDIRAM, KOTTAPPURAM, KIZHAKKEKARA, KOTTARAKARA
VILLAGE, PIN-691532
NOW RESIDING AT BOTHUTHATSWANA, MAMABATHO 8681 P.B. 6238,
AFRICA

3 **ABRAHAM LOVELY**
AGED 52 YEARS
W/O.CK.ALEXANDER, SALEM MANDIRAM, KOTTAPPURAM, KIZHAKKEKARA,
KOTTARAKARA VILLAGE, PIN-691532

RESPONDENTS ARE REPRESENTED BY THEIR POWER OF ATTORNEY

HOLDER, C.K. ALEXANDER, AGED 36 YEARS, SALEM MANDIRAM, KOTTAPPURAM, KIZHAKKEKARA, KOTTARAKARA VILLAGE, PIN-691532

BY ADVS.
SRI.B.ASHOK SHENOY
SRI.K.V.GEORGE
SRI.P.S.GIREESH
SRI.P.N.RAJAGOPALAN NAIR
SRI.RIYAL DEVASSY

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 24.03.2025, THE COURT ON 03.04.2025 DELIVERED THE FOLLOWING:

“C.R”

JUDGMENT

Dated this the 3rd day of April, 2025

This regular first appeal has been filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 [hereinafter referred as ‘CPC’ for short], challenging the decree and judgment dated 31.07.2015 in O.S. No.211/1992 on the files of the Sub Court, Kottarakkara. The appellant herein is the defendant and the respondents herein are the plaintiffs in the above suit.

2. Heard the learned senior counsel for appellant and the learned counsel appearing for the respondents, in detail. Perused the verdict under challenge, the records of the trial court and the decisions placed by both sides.

3. Parties in this appeal shall be referred with reference to their status before the trial court, hereafter.

4. The plaintiffs instituted this suit for recovery of possession of plaint A schedule property with vacant possession of plaint B schedule temporary cinema theater and for realization of Rs.48,200/- towards compensation for

use and occupation of plaint B schedule item till the date of the suit and Rs.1,500/- per mensum from the date of suit till recovery of possession. The plaintiffs also sought the relief of mandatory injunction directing the defendant to remove the machinery and furniture from plaint B schedule theater. The main contentions raised by the plaintiffs could be gathered from paragraph Nos.3 and 4 of the plaint. The same read as under:

> *3. By a tharavadaka agreement dated 23-5-1966 Geevarghese Abraham permitted one K.M.Cherian to construct a temporary theatre in the suit A schedule property for exhibition of films in that theatre. Accordingly K.M.Cherian put up a temporary theatre in the suit A schedule property in 1966 itself and he began exhibition of films in that theatre. That theatre was named by him as Jawahar theatre. The term of the tharavadaka agreement was fixed as ten years. K.M.Cherian was given an option to extend the term for a further period of 5 years if he was interested to do so. After the expiry of the period of 10 years K.M. Cherian exercised the option and the period of the agreement was further extended for 5 years. In the agreement executed by K.M.Cherian and Geevarghese*

Abraham dated 23-5-1966, K.M. Cherian covenanted to surrender the temporary theatre to Geevarghese Abraham on the termination of the tharavadaka agreement. By that tharavadaka agreement K.M.Cherian was a licensee of the suit schedule property. Permission granted to K.M.Cherian was restricted to the construction of temporary theatre and exhibition of films in that theatre. K.M.Cherian was not permitted to do any other act in the suit schedule property. K.M Cherian has not done any other thing in the suit schedule property. He paid theravadaka to Geevarghese Abraham as consideration for the licence.

4. At the fag-end of the term of the tharavadaka agreement K.M. Cherian had put the defendant in charge of the exhibition of films in the theatre. He conducted exhibition of films in the theatre as an employee of K.M Cherian.

5. The specific case of the plaintiffs before the trial court was that, a fresh tharavadaka agreement was executed between Mr.Geevarghese Abraham and the defendant on 18.02.1982, for a period of two years and thereafter the same was extended till 1989. According to the

plaintiffs, the status of the defendant is that of a licensee and therefore the reliefs sought in the plaint are liable to be granted.

6. The defendant resisted the suit by filing written statement and additional written statement. The contentions raised by the defendant could be gathered from paragraph Nos.3, 5, 9 and 11 of the written statement. The same read as under:

> *3. Plaint A schedule property is 23 cents of dry land. That 23 cents consist of 19 cents in Sy.No.17/8 and 4 cents in Sy.No.17/9. Sy.No.17/9 is situated on the southern side of Sy.No.17/8. The total extent of Sy.No.17/9 is 16 cents. The four cents included in schedule A constitute the middle portion of that 16 cents. Kollam- shencottah road is situated on the southern side of Sy.No.17/9.*
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> *5. By a lease deed dated 23-5-1966 Geevarghese Abraham demised A schedule land on lease to one K .M. Cherian. By that lease deed Geevarghese Abraham authorised K.M. Cherian to construct a theatre in B schedule land and to conduct the business of exhibiting cinematograph films in that theatre. K.M.Cherian covenanted to pay rent at the rate*

of Rs.100/- (Rupees One hundred only) per mensem. The term of the lease was fixed as ten years from 23-5-1966. Geevarghese Abraham also gave K.M. Cherian the option to extend the term of lease for a further period of five year.

9. After the expiry of the term of the renewed lease Geevarghese Abraham attempted to obstruct the exhibition of films in B schedule theatre by the defendant. Thereupon the defendant as the Attorney of K.M.Cherian filed a suit in the court of the Munsiff of Kottarakara as O.S.No.139 of 1981. The defendant filed that suit for an injunction restraining Geevarghese Abraham from trespassing into the plaint properties or from obstructing the defendant's possession and enjoyment thereof.

11. The defendant, K.M.Cherian and Geevarghese Abraham compromised the disputes between them. As per the compromise K.M.Cherian assigned his tenancy rights in A schedule land to the defendant. Accordingly the defendant and Geevarghese Abraham executed an agreement on 23-2-1982. By that agreement Geevarghese Abraham allowed the defendant to continue in possession of A

schedule property as a lessee. The defendant covenanted to pay rent at the rate of Rs.350/- per mensem, for a period of two years from 18-2-1982. Geevarghese Abraham also acknowledged that defendant was the owner of B schedule theatre. Pursuant to that agreement the defendant continued to be in possession of A schedule property as the lessee. He continued to be in possession of B schedule theatre as its owner.

7. The defendant has a contention further that, later the lease deed executed in between Mr.Geevarghese Abraham and the defendant was renewed on 01.08.1984, 01.11.1986 and 01.01.1989. Accordingly, the defendant claimed protection under Section 106 of the Kerala Land Reforms Act, 1963 [hereinafter referred as 'KLR Act' for short].

8. Initially, when the suit was pending before the trial court, in order to decide the question of protection under Section 106 of the KLR Act, I.A. No.120/1997 was filed to refer the matter to the Land Tribunal, Kollam. On reference, the Land Tribunal, Kollam passed an ex-parte

order dated 15.07.1998 in R.C. No.3/1997 and protection under Section 106 of the KLR Act found in favour of the defendant. On the basis of the said finding, the suit was dismissed as per the judgment dated 14.07.2009.

9. Thereafter, the plaintiffs filed appeal vide R.F.A. No.769/2009 before this Court. As per the judgment dated 30.01.2015 in R.F.A. No.769/2009, this Court set aside the decree and judgment of the trial court and the suit was remanded back to the trial court for fresh consideration. In paragraph No.5 of the judgment dated 30.01.2015 in R.F.A. No.769/2009, this Court observed as under:

> *5. The materials on record indicate that the plaintiffs have not appeared before the Land Tribunal pursuant to the reference made by the trial court. The decision of the Land Tribunal, in the circumstance, was ex parte. Though the learned counsel for the appellants submitted the reasons for their absence before the Land Tribunal, I am not referring to those reasons, as I am convinced that the impugned order is liable to be set aside on a point of jurisdiction. It is settled that there is no ouster of jurisdiction for the civil court to decide a claim for protection under Section 106 of the Act and that*

> *the said claim, if raised shall be decided by the civil court itself. It is so held by this Court in* ***Govinda Panicker v. Sreedhara Warrier*** *(2000 (2) KLT 43). The decision of the Land Tribunal, based on which the impugned judgment was rendered by the trial court is, therefore, without jurisdiction. The impugned judgment, in the circumstances, is liable to be set aside.*

10. After remand, the trial court, on appreciation of rival pleadings, raised necessary issues and tried the matter. PWs 1 and 2 were examined and Exts.A1 to A18 were marked on the side of the plaintiff. DW1 was examined and Exts.B1 to B12 were marked on the side of the defendants. Exts.C1 to C6 were also marked as court exhibits.

11. Finally, the trial court found that the defendant is a licensee and he could not get protection under Section 106 of the KLR Act. Accordingly, recovery of possession as well as mandatory injunction to surrender vacant possession of plaint A and B items were granted by the trial court. Further, the relief sought for by the plaintiffs with

regard to compensation and damages for use and occupation of plaint A schedule property was also granted by the trial court.

12. While challenging the verdict of the trial court, the learned senior counsel for the defendant argued that, since the status of the defendant is that of a tenant before 20.05.1967, he was protected under Section 106 of the KLR Act and thus Civil Court has no jurisdiction to entertain the suit. The learned senior counsel for the defendant pointed out that, Ext.A12 is the initial document executed on 23.05.1966 in between Mr.Geevarghese Abraham and Mr. K.M. Cherian. Ext.A12 would recite the same as a lease agreement and it was agreed to hand over the possession of plaint A schedule property for the purpose of running cinema theater, after constructing the same. According to the learned senior counsel for the defendant, the tenancy arrangement as per Ext.A12 agreement was periodically renewed thereafter by executing Exts.A6 to A9. Thus, it is emphatically clear that the arrangement in between Mr. Geevarghese Abraham and Mr.K.M.Cherian is not a license and the same is a lease. Therefore, the defendant, who is

continuing the tenancy, started originally before 20.05.1967, would get protection under Section 106 of the KLR Act. It is argued by the learned senior counsel for the defendant further that, the suit was not properly valued and the suit valued and court fee paid under Section 31 of the Kerala Court Fees and Suit Valuation Act, 1959, on the premise that the suit is based on license arrangement also is incorrect.

13. Decisions of this Court in ***Ratheesh v. V.S. Mary*** reported in ***[2023 (6) KHC 306 : 2023 KHC OnLine 610 : 2023 (5) KLT 588]*** and ***Karunagappally Coir Vyavasaya Cooperative Society Ltd. v. Sankaran Namboothiri Ramachandran Namboodiri*** reported in ***[2024 KHC 7338 : 2024 KHC OnLine 7338 : 2024 KLT OnLine 3030]*** have been placed by the learned senior counsel for the defendant to contend that the status of the defendant is that of a lessee and if he is found to be not entitled to get protection under Section 106 pf the KLR Act, then also the suit must fail for want of notice terminating tenancy under Section 106 of the Transfer of Property Act, 1882 [hereinafter referred as ‘TP Act’ for short].

14. In paragraph Nos.22, 23 and 24 of ***Ratheesh***'s case (supra) this Court held as under:

> *22. As regards to the third question, the learned counsel for the respondent placed decision of the Full Bench of this Court in Jacob Philip v. State Bank of Travancore & Others, reported in 1972 KLT 914 (F.B.) and submitted that when there is a contract to the contrary, Section 106 of the Transfer of Property Act (`TP Act' for short hereafter) has no application and in such cases, notice under Section 106 of the TP Act is not mandatory. He also placed another decision of the Apex Court in NOPANY Investments (P) Ltd. Vs. Santokh Singh (HUF), reported in (2008) 2 SCC 728 and submitted that in paragraph 22 of the above judgment, it was held by the Apex Court that it is well settled that filing of an eviction suit under the general law itself is a notice to quit on the tenant. Therefore, we have no hesitation to hold that no notice to quit was necessary under Section 106 of the Transfer of Property Act in order to enable the respondent to get a decree of eviction against the appellant. This view has also been expressed in the decision of this Court in V.Dhanapal Chettiar v. Yesodai Ammal.*
>
> *23. In this connection, it is necessary to*

refer another decision of the Apex Court in Vijayalaxmi M. v. G.Goverdhan Reddy, reported in 1997 KHC 3882 SC : 1997 KHC 3882 : (1997) 11 SCC 358. In the said case, the Apex Court considered a lease agreement providing 11 months period, wherein sufficiency of notice was challenged on the ground that the termination of tenancy with effect from 28.02.1985, in a case where the tenancy started on 02.04.1984 for a period of 11 months, is invalid. The Apex Court held in paragraph No.4 as under:

"4. The learned counsel for the respondent has urged that the suit filed by the appellant was based on the alleged termination of the tenancy by notice dated 28-1- 1985 and since the said notice was invalid the suit must fail. We are unable to agree. The suit was for recovery of possession of the premises after termination of the tenancy. Merely because the appellant had given a notice terminating the tenancy by notice dated 28-1- 1984 (sic 1985) would not mean that the appellant was not entitled to seek the possession of the property after tenancy had come to an end by efflux of time under S.111(a) of the Transfer of Property Act.

Therefore, even if it is held that the notice dated 28-1-1985 was not a valid notice under S.106 of the Transfer of Property Act it could be regarded as a notice indicating that the tenancy would not be continued after the term of the tenancy comes to an end. In these circumstances it cannot be said that the suit filed by the appellant was not maintainable and decree for eviction could not be passed in favour of the appellant."

24. To be on necessity of notice under Section 106 of TP Act. Section 106 provides as under:

"106: Duration of certain leases in absence of written contract or local usage:-- (1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice.

(2) Notwithstanding anything contained in any other law for the time being in force,

the period mentioned in sub-section (1) shall commence from the date of receipt of notice.

(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that subsection, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property."

On reading the provision, it is clear that in the absence of a contract or local law for usage to the contrary, a lease of immovable property from year to year shall be terminable by issuance of 6 months' notice and month to month shall be terminable by 15 days' notice. Therefore, in a case, where there is a contract and determination of lease by efflux of time is provided in the contract as per Section 111(a) of the TP Act, the lease shall come to an end.

> *In this matter, as borne out from the records, the lease arrangement started with effect from 01.08.2009 for 3 years and as on 31.07.2012, the term of lease came to an end and, therefore, the present suit is one filed after termination of tenancy by efflux of time and in such a case, notice mandated under Section 106 of the TP Act is not necessary and, therefore, this challenge is found against the defendant.*

15. Similarly, in ***Karunagappally Coir Vyavasaya Cooperative Society Ltd.****'s* case (supra), another Single Bench of this Court, after referring the decision of the Apex Court in ***[1984 KHC 580 : 1984 (1) SCC 369 : AIR 1984 SC 143] Satish Chand Makhan and Others v. Govardhan Das Byas and Others***, held in paragraph No.22 as under:

> *22. In the case of a lease, a suit could not be brought without serving a Termination Notice as required under Section 106(1) of the Transfer of Property Act. Ext.A5 is not a Notice of Termination as required under Section 106 of the Transfer of Property Act. The learned Counsel for the appellant invited my attention to*

the decision of the Hon'ble Supreme Court in Satish Chand Makhan and others v. Govardhan Das Byas and others[1984 (1) SCC 369] in which it is held that a suit for recovery of possession of the leased premises is not maintainable without determination of the lease by service of notice under S.106 of the Transfer of Property Act. I am of the view that without proper termination of lease as per Section 106(1) of the Transfer of Property Act also, the relief of recovery of possession could not be moulded and granted in a suit for mandatory injunction. The learned Counsel for the contesting respondents cited the decision of this Court in Kochu Krishna Pillai V. Ammalu Ammal [1972 KLT 223] to substantiate the point that sufficiency of notice under Section 106 of the Transfer of Property Act could not be raised for the first time in appeal. The said decision is clearly distinguishable from the facts of the present case. In the present case, the pleadings of the plaintiffs are to the effect that the arrangement is license, and hence, there was no occasion for the defendants to contend that the lease is not terminated in accordance with Section 106 of the Transfer of Property Act by issuing Termination Notice.

16. The learned counsel for the plaintiffs refuted the contention made by the learned senior counsel for the defendant and submitted that the arrangement between the parties is only license. It is submitted further that, if at all the arrangement is found as a lease, then also the defendant, who in fact, got occupation of the premises on the strength of Ext.A6, executed during 1982, would not get any protection under Section 106 of the KLR Act.

17. The learned counsel for the plaintiffs placed decision of this Court in ***Abraham Varghese v. Kerala State Civil Supplies Corporation Ltd.*** reported in ***[2023 (7) KHC 680 : 2023 KHC OnLine 831 : 2024 (1) KLT 561]***, with reference to paragraph Nos. 14 to 16, to contend that, going by the ratio of the decision referring the decisions of the Apex Court therein, on expiration of the term of the lease, if a tenant remains in possession after the determination of the lease, the common law rule is that he is a tenant on sufferance. Therefore, it is argued that, the question of sending notice under Section 106 of the TP Act does not arise.

18. The learned counsel for the plaintiffs placed

decision of this Court in ***Sulaikha Beevi v. Mathew*** reported in ***[2001 KHC 109 : 2001 (1) KLT 360 : 2001 (1) KLJ 221]***, ***Parameswara Panicker v. Bharathan*** reported in ***[1987 KHC 355 : 1987 (2) KLT 12 : 1987 KLJ 742]***, ***Thomas Varkey v. Arundhathi Ammal*** reported in ***[1981 KHC 282 : 1981 KLT SN 170 : 1982 KLJ 44]*** and ***Eldho v. Manual and Others*** reported in ***[2014 (3) KHC 611 : 2014 (3) KLT 787 : 2014 (3) KLJ 858]*** in support of his contention.

19. In view of the rival contentions advanced by both sides, points arise for consideration are:

1. Whether the finding of the trial court that the suit is maintainable is erroneous?

2. Whether the trial court went wrong in finding the defendant as a licensee?

3. What is the arrangement in between the predecessor of the plaintiffs and the defendant?

4. Whether the protection claimed by the defendant under Section 106 of the KLR Act is sustainable?

5. Deeming the arrangement as lease, whether the suit would fail for want of notice under Section 106 of the TP Act?

6. Whether the decree and judgment of

the trial court would require interference?

7. Reliefs and costs.

20. Point No.1:- In this matter, the trial court found that the suit is maintainable within the ambit of Section 9 of CPC. But, the learned senior counsel for the defendant submitted that, since the status of the defendant is that of a tenant, protected under Section 106 of the KLR Act, Civil Court has no jurisdiction to entertain the suit. In fact, this contention is no more available to the defendant, since at the time when the R.F.A. No.769/2009 was filed by the plaintiffs challenging the judgment dated 14.07.2009 of the trial court, this question was not raised before this Court. Even otherwise, when there is a dispute with regard to the nature of arrangement in between parties as lease or license, the question can well be decided by the trial court. That apart, in view of the finding in paragraph No.5 of the judgment dated 30.01.2015 in R.F.A. No.769/2009, for which there is no challenge raised by both sides, the said judgment has become final and the parties are bound by the findings thereof, conceding the jurisdiction of the Civil Court in the matter of deciding the nature of arrangement

between them as well as the protection under Section 106 of the KLR Act. Therefore, the finding of the trial court that the suit is maintainable is only to be justified.

21. Point Nos. 2 to 7:- The first point to be decided herein is whether the arrangement in between the plaintiffs and defendant is lease or license. In this connection, as pointed out by the learned senior counsel for the defendant, it is relevant to refer Ext.A12, the initial document executed on 23.05.1960 in between Mr.Geevarghese Abraham and Mr. K.M. Cherian. Ext.A12 would recite the same as a lease agreement and it was agreed to hand over the possession of plaint A schedule property for the purpose of running cinema theater, after constructing the same. Ext.A12 by nomenclature is a lease deed referring the premium as ‘tharavadaka’.

22. The case of the plaintiffs is that, Ext.A12 got terminated as per the compromise reached in between Mr.Geevarghese Abraham and Mr.K.M.Cherian and thereafter it was agreed to execute another agreement in favour of the defendant to conduct exhibition of films in the said theater and accordingly, Ext.A6 agreement dated

18.02.1982 has been entered into between the defendant and Mr.Geevarghese Abraham. The recitals therein would show that the property in possession of Mr.Geevarghese Abraham, after parting the right of Mr.K.M.Cherian, the right of running the cinema theater was entrusted to the defendant. Thereafter, Ext.A6 agreement was renewed as per Exts.A7 to A9, on the same conditions.

23. According to the learned senior counsel for the defendant, renewal of Ext.A12 agreement by way of Exts.A6 to A9, it is emphatically clear that the arrangement in between Mr. Geevarghese Abraham and Mr.K.M.Cherian is not a license, but the same is a lease, which started before 20.05.1967. Therefore, the defendant, who is continuing the said tenancy would get protection under Section 106 of the KLR Act.

24. But, the learned counsel for the plaintiffs refuted this contention and submitted that, if at all the arrangement is found as a lease, then also the defendant, who in fact, got occupation of the premises on the strength of Ext.A6, executed during 1982, would not get any protection under Section 106 of the KLR Act.

25. Section 106(1) of the KLR Act provides as under:

> ***106. Special provisions relating to leases for commercial or industrial purposes****.-(1) Notwithstanding anything contained in this Act, or in any other law, or in any contract, or in any order or decree of Court, where, on any land leased for commercial or industrial purpose, the lessee has constructed buildings for such commercial or industrial purpose before the 20th May, 1967, he shall not be liable to be evicted from such land, but shall be liable to pay rent under the contract of tenancy, and such rent shall be liable to be varied every twelve years.*
>
> ***Explanation****.- For the purposes of this section, -*
>
> *(a) "lessee" includes a legal representative or an assignee of the lessee; and*
>
> *(b) "building" means a permanent or a temporary building and includes a shed.*

26. It is true that, any land leased for commercial or industrial purpose before 20.05.1967, the lessee has constructed buildings for such commercial or industrial purpose, he shall not be liable to be evicted from such land.

27. In the instant case, as per Ext.A12, the original contract was in between Mr.Geevarghese Abraham and Mr.K.M.Cherian. Thereafter, on the strength of Ext.B3 power of attorney, the defendant was authorized to run the theater and to conduct cases on behalf of Mr.K.M.Cherian. However, Ext.B3 in no way would suggest that, apart from doing things for and on behalf of Mr.K.M.Cherian, nothing attorned in favour of the defendant.

28. Ext.B10 is a document which was given much emphasis by both sides. According to the learned senior counsel for the defendant, there was sale of the theater and its accessories as per Ext.B10. Therefore, the defendant is to be held as an assignee or a transferee of the lease by interpreting Section 106 of the KLR Act, a beneficial legislation in favour of the defendant.

29. But, the learned counsel for the plaintiffs asserted that, as per Ext.B10, there was an agreement to sell the theater and the movables therein and the same is not a deed of assignment or transfer of lease within the meaning of Section 106 of the KLR Act.

30. On perusal of Ext.B10, the projector, furniture,

the theater shed and accessories thereof were agreed to be sold for a total consideration of Rs.90,000/-, out of which only Rs.10,001/- was given as advance by the defendant. In fact, whether the sale was complete or not could not be gathered from Ext.B10.

31. On reading Exts.A12 and A6, it could be gathered that, even though the defendant, being the power of attorney holder of Mr.K.M.Cherian, held the plaint B schedule property for running the theater, he is not the legal representative of Mr.K.M.Cherian or an assignee of the lessee. In this case, originally Ext.A12 was executed in between Mr.Geevarghese Abraham and Mr.K.M.Cherian as early on 23.05.1966 and the specific case of the plaintiffs is that thereafter, the license arrangement in between Mr.Geevarghese Abraham and Mr.K.M.Cherian was closed. Later, as part of compromise, the right to run theater was entrusted to the defendant on the strength of Ext.A6, executed in the year 1982. Therefore, the arrangement in between Mr.Geevarghese Abraham and Mr.K.M.Cherian as per Ext.A12 was closed and a new agreement entered into between Mr.Geevarghese Abraham and the defendant in

the year 1982. Therefore, if at all the defendant is to be held as a tenant, he would not get protection under Section 106 of the KLR Act. On scrutiny of Section 106(1) of the KLR Act, any land leased for commercial or industrial purpose, where the lessee has constructed buildings for such commercial or industrial purpose before the 20.05.1967 is protected from eviction. As per explanation (a) of Section 106(1), "lessee" includes a legal representative or an assignee of the lessee. In the instant case, even though Ext.B10 has been given much emphasis to show assignment of the lease hold right, Ext.B10 would show that the same is only an agreement to sell the articles in the theater on getting advance payment.

32. On reading Exts.A12 and A6 in segregation, it is discernible that, before the execution of Ext.A6, as part of compromise, the arrangement between Mr.Geevarghese Abraham and Mr.K.M.Cherian came to an end and there is no assignment or transfer of lease as contended by the defendant. In fact, as per Ext.A6, the defendant obtained right to run the theater alone. Therefore, there is no reason to apply the protection under Section 106 of the KLR Act in

favour of the defendant, who got occupation of the theater alone, as per Ext.A6 in the year 1982. Therefore, the defendant could not succeed finding shelter under Section 106 of the KLR Act.

33. Coming to the question as to whether there is a lease agreement in between Mr.Geevarghese Abraham and the defendant as per Ext.A6, it is apposite to refer the earlier judgment rendered in between the same parties.

34. The trial court relied on Ext.A11 judgment in O.S. No.9/1991 dated 15.11.1993 on the files of the Munsiff Court, Kottarakkara, filed by the defendant against the plaintiffs herein and others. Even though, the trial court did not address the question regarding the arrangement between the parties as license or lease, granted interim injunction to keep possession of the theater by the defendant. In the said judgment, the learned Munsiff made clear that the decree granted so, would not mean that the defendant therein (plaintiffs herein) could be obstructed from entering into their own land and to take the usufruct from the trees.

35. Ext.A11 judgment has become final, since no

challenge raised against the same by both parties. As per Ext.A11 judgment, the right to possess the theater by the defendant alone is protected by an interim injunction, while allowing the plaintiffs herein to enter into their own land and to take the usufruct from the trees.

36. The difference between lease and license has been considered by this Court as well as the Apex Court in certain judgments. In paragraph No.20 of the decision of this Court in ***Varghese C.D. v. Joseph Mani*** reported in ***[2023 (7) KHC 123]***, it has been held as under:

> *20. In view of the above discussions, the cardinal features, which would distinguish `lease' from `licence' are as under:*
>
> *`Lease' is a transfer of a right coupled with exclusive possession with transfer of interest to enjoy an immovable property for certain period expressly, impliedly or in perpetuity. On the other hand, `licence' is a right to do, or continue to do, in or upon the immovable property of the grantor, given in occupation of the licencee, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property. To*

> *put it otherwise, the lessee of a building/premises, who got exclusive possession coupled with transfer of interest therein, has the right to possess and enjoy the building/premises; whereas a licensee of a building, who got only a mere right of occupation of the premises/building without transfer of any interest therein, does not have such a right of absolute possession and enjoyment of the building/premises and his right is to do or continue to do the specific business or trade only in the building/premises for which permission has been granted by the licensor as the occupant of the building/premises.*

37. Thus, going by Exts.A11 judgment of the trial court, what is obtained by the defendant is the permission to run theater in plaint A schedule property and the same is not an arrangement of lease. But, the available evidence would show that the arrangement between the predecessor of the plaintiffs and defendant could be held as only a license.

38. On scrutinizing the decisions, what is held by this Court in paragraph Nos. 22 to 24 of ***Ratheesh's*** case

(supra) is the legal position, insofar as notice under Section 106 of the TP Act is concerned. If so, there is no reason to hold that, if the arrangement between the predecessor of the plaintiffs and defendant is held as lease, then also for want of notice the suit is liable to fail.

39. In this matter, it is pointed out by the learned senior counsel for the defendant further that, the suit was not properly valued and the suit valued and court fee paid under Section 31 of the Kerala Court Fees and Suit Valuation Act, 1959, on the premise that the suit is based on license arrangement. Therefore, this question also to be considered by this Court.

40. Refuting this contention, the learned counsel for the plaintiffs argued that, Section 54 of the Kerala Court Fees and Suit Valuation, Act deals with the procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes and the procedure provided in Section 54(a) and (b) of the Act shall be followed. Section 54 of the Kerala Court Fees and Suit Valuation, Act reads as under:

> ***54.Procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes****.- (1) Notwithstanding anything contained in section 99 of the Code of Civil Procedure, 1908 (Central Act V of 1908), an objection that by reason of the over-valuation or under- valuation of a suit or appeal, a Court of first instance or lower appellate Court which had no jurisdiction with respect to the suit or appeal exercised jurisdiction with respect thereto shall not be entertained by an appellate Court, unless—*
>
> *(a) the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded, or in the lower appellate Court in the memorandum of appeal to that Court, or*
>
> *(b) the appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was over-valued or under-valued and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits.*

41. In this matter, the question of valuation of the suit and non payment of sufficient court fee not raised

before the trial court and the same is raised before this Court for the first time. No doubt, this Court has the power to consider the same, in view of Section 54(b) of the Kerala Court Fees and Suit Valuation, Act.

42. The finding of the trial court is that the arrangement in between Mr.Geevarghese Abraham and the defendant is a license and on re-appreciation of evidence, the said finding is upheld by this Court also. Therefore, payment of court fee after valuing the suit under Section 31 of the Kerala Court Fees and Suit Valuation, Act, is only to be confirmed. Therefore, the said challenge is also set at naught.

43. Summarizing the discussion, it is held that the decree and judgment under challenge are only to be confirmed. Therefore, there is no reason to interfere with the verdict of the trial court. Holding so, the trial court verdict does not require any interference.

44. In the result, the appeal stands dismissed and the verdict under challenge stands confirmed. Having considered the facts of the case, there shall be no order as to cost.

All interlocutory applications pending in this regular first appeal stand dismissed.

Sd/-

A. BADHARUDEEN

JUDGE

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