

1978 Present: Malcolm Perera, J. and Tittawella, J.

VELAUTHAN ELLAYATHAMBY, Respondent-Petitioner
and
RAMALINGAM KANDASAMY and ANOTHER,
Complainants-Respondents

S.C. 551/75—M.C. Mannar 3672

Administration of Justice Law, No. 44 of 1973, section 62—Scope and meaning of the words “dispute affecting land”—Inquiry as to who was in possession on date of issue of notice—Not necessary where parties agreed.

Held: (1) That a dispute between parties over the running of a business which is run in premises in respect of which the complaint is made to the Magistrate’s Court is a “dispute affecting land” within the meaning of section 62 of the Administration of Justice Law, No. 44 of 1973.

(2) That there was no need to hold an inquiry as to who was in possession of the land on the date of issue of notice under section 62(1) where the parties were agreed as to who was in possession of the land.

Cases referred to:

Kanagasabai v. Mylvaganam, 78 N.L.R. 280.

Dilworth v. Commissioner of Stamps, (1899) A.C. 99; 79 L.T. 473; 15 T.L.R. 61.

APPLICATION to revise an order of the Magistrate’s Court, Mannar.

V. S. A. Pullenayagam, with S. C. Chandrahasan and Mrs. S. Gnanakaran, for the petitioner.

C. Ranganathan, Q.C., with G. F. Sethukavalar, K. M. B. Ahamed and R. Sirinivasa, for the respondents.

Cur. adv. vult.

February 14, 1978. MALCOLM PERERA, J.

Two points have been raised by the learned attorney for the petitioner in the application. They are:

Firstly, that the learned Magistrate had no jurisdiction to proceed under section 62 of the Administration of Justice Law, No. 44 of 1973, in as much as, the subject matter of the dispute between the parties was not one affecting “land” but a building.

Secondly, that the learned Magistrate did not hold an inquiry as to who was in possession of the land on the date of issue of notice under section 62(1).

Briefly the facts are as follows :

The business of Nagapooshani Vilas was being carried on in premises No. 22, Bus Stand Road, Mannar. Petitioner had rented out the premises from one Kachu Mohamed about 30 years ago, and had carried on a business of an hotel and a plantain and betel shop under the business of Nagapooshani Vilas.

Some years later, Mohamed had donated the premises in question to his son-in-law M. Ratnam, the 2nd complainant respondent.

The petitioner then became the tenant under Ratnam. Due to his ill-health the petitioner had given over the business of the hotel to one Kandasamy the 1st complainant-respondent, to run the same on basis of a monthly commission. However the plantain and betel shop continued to be run by the petitioner.

In or about September 1974 the petitioner noticed the 1st complainant-respondent to hand back the business but, the latter failed to do so, and stopped paying the aforementioned commission, as from November 1974.

There thus arose a dispute between the petitioner and the 1st complainant-respondent, over the running of the business, of the eating house, run in the said premises.

I have to decide whether this dispute is one that relates to "land". Section 62(4) reads as follows :

"In this section, "dispute affecting land" includes any dispute as to the right to the possession or to the boundaries of any land or part of the land, or as to the right to the crops' or produce of any land, or as to any right in the nature of a servitude affecting land".

The use of the word "includes" indicates that the definition is not an exhaustive one. "Include" is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases, occurring in the body of the statute, and when it is so used, these words and phrases must be construed as comprehending not only such things as they signify according to their natural import, but also those things, which the interpretation clause declares that they shall include". Lord Watson in the case of *Dilworth v. Commissioner of Stamps*, (1899). A.C. 105-106.

Under our law, a building accedes to the soil, and it becomes a part and parcel of land upon which it stands. The building thus loses its independent existence. Therefore a dispute in respect of a building is one that necessarily involves the land on which it stands.

In the case of *Kanagasabai v. Mylvaganam*, 78 N.L.R. 280, Sharvananda, J. held that "land in our Law includes houses and buildings, and when the legislature employs the term 'land' in any statute, the word is presumed to include houses and buildings. The language of section 62 does not repel such an inclusive meaning"

I therefore hold that a dispute in respect of a building on a land is a "dispute affecting land".

With regard to the second point raised by Mr. Pullenayagam, it is clear from the admissions made before the Magistrate by counsel on both sides, that the land in question was in the possession of the 1st complainant-respondent, on the date of the issue of notice under section 62 (1). In view of this admission, the parties were agreed, as to who was in possession of the land. Thus there was good reason for the Magistrate to have held that the 1st complainant-respondent was in possession of the land.

For the reasons I have set out I do not assent to the two submissions made by learned attorney for the petitioner.

I accordingly refuse the application of the petitioner.

The petitioner will pay a sum of Rs. 300 to each of the two complainant-respondents, as costs of the application to this Court.

TITTAWELLA, J.—I agree.

Application refused.

