

A

## KUPPAMMAL

v.

## KHAN

B

[COURT OF APPEAL, 1962 (Marsack P., Trainor J. A., Knox-Mawer J. A.), 6th, 23rd February]

## Civil Jurisdiction

C

*Landlord and tenant—extension of term—period unspecified—“extension” contrasted with “renewal”—construction of clause—right to reasonable extension. Interpretation—lease—extension—meaning of.*

D

A sublease for twenty-five years contained a provision that at the end or sooner determination of the term the sublessee should (as one of two alternatives) be re-imbursed by the sublessor for the value of the buildings erected by the sublessee on the demised premises, “if the sublessor shall . . . refuse to grant an extension of the sublessee’s term.” The sublessor offered an extension of ten years from the date of expiry of the sublease. The sublessee proceeded for a declaration that he was entitled either to re-imburement or to an extension of the term for a period of twenty-five years.

E

*Held:* 1. The terms “extension” and “renewal” are not synonymous; consequently, the principle that an option for a renewal of a lease upon unstated terms entitles the lessee to a new lease for the same period as the original lease, did not apply.

2. As the period of the extension was not specified it must be such as the sublessee could reasonably accept; the offer of a ten year extension could not be regarded as unreasonable or as a mere device for depriving the sublessee of his right to compensation.

F

Case referred to: *Muller v. Trafford* [1901] 1 Ch. 54; 70 L.J.Ch.72

Appeal from a judgment of the Supreme Court.

K. P. Mishra for the appellant.

K. C. Ramrakha for the respondent.

G

Judgment of the Court: [23rd February 1962]—

We have already dismissed this appeal and now proceed to give our reasons.

H

The only matter in issue is the construction of Clause 3 of sub-lease No. 12719 dated 29th October, 1935, from one M.T. Khan to C. Krishnan, the sub-lessee’s interest being subsequently transferred to the Appellant. Clause 3, which specifies the rights of the sub-lessee at the expiration of the lease with regard to the buildings erected on the land, reads as follows:

"3. At the end or sooner determination of the term hereby granted the Lessee shall have the right to pull down and remove all buildings erected by him on the demised premises OR in the alternative shall be reimbursed by the Lessor for the full value of the same at the said period if the Lessor shall elect to purchase the same or shall refuse to grant an extension of the Lessee's term subject always to the rights of the 'Head Lessor'."

This clause provides two alternatives, the first being unconditional, the second being made dependent upon the exercise of an election by the sub-lessor. These alternatives are:

- (a) the right to pull down and remove the buildings;
- (b) the right to receive payment from the sub-lessor of the current value of the buildings.

This second alternative, however, arises only if the sub-lessor either elects to purchase the buildings or refuses to grant "an extension of the sub-lessee's term."

It is, we think, clear that the sub-lessee has only one unqualified right with regard to the buildings at the expiration of the term, and that is to remove them. Such other rights as he may have under what we have referred to as the second alternative, can come into existence only if the sub-lessor exercises one of the two options given him under Clause 3, that is to say to purchase the buildings at the current market value or to refuse to grant "an extension of the sub-lessee's term."

It is common ground that the sub-lessor does not desire to purchase the buildings. It is also conceded that the sub-lessor made to the sub-lessee an offer of an extension of the term granted by the sub-lease for a period of 10 years from the date of expiration of the sub-lease, namely 25th September, 1959. At the hearing of the appeal Counsel for the Respondent, after consultation with the Respondent, informed the Court that the offer of an extension for the period of 10 years from the date of expiration of the sub-lease was still open to the Appellant.

The Appellant by his statement of claim asked for a declaration that the Appellant was entitled under Clause 3 of the sub-lease at the expiration of that sub-lease either to re-imburement by the sub-lessor of the full current value of the buildings erected on the land comprised in the sub-lease, or to an extension of the lessee's term for a period of 25 years. The learned trial Judge held that Clause 3 did not entitle the sub-lessee (if the sub-lessor did not elect to purchase the buildings) to an extension or renewal of the lease for the same period as that granted by the original sub-lease, namely 25 years, and that the sub-lessor had not in fact refused to grant an extension of the term. Consequently he refused to make the declaration sought by the Appellant.

Although the grounds stated in the notice of appeal are lengthy, they are somewhat vaguely drawn and the appeal itself was argued by Counsel for the Appellant mainly on the ground that the word "extension" used in Clause 3 means "a renewal of the original term."

A We are asked by Appellant to hold that any extension offered must be commensurate with the value of the buildings on the land, agreed to be the sum of £7,000, and that the only term so commensurate would be 25 years. We are also asked to imply a term in Clause 3 to the same effect, as being consistent with the general tenor of the document.

B During the argument, Counsel for the Appellant did, however, concede that the words "extension" and "renewal" are not synonymous. This question was considered in *Muller v. Trafford* [1901] 1 Ch. 54 where it was held (p.61) that a covenant by an under-lessee with his sub-lessee to grant an extension of the latter's term was not a covenant for renewal. Consequently the statement of the law set out in 23 *Halsbury's Laws of England* (3rd Ed.) at p.474 to the effect that if an option for renewal does not state the terms of renewal the new lease will be for the same period and on the same terms as the original lease, does not apply to the case before the Court.

C We entirely agree with the learned trial Judge that Clause 3 has not been very clearly worded, and it is open to some doubt as to what was in fact the intention of the parties at the time. We are also inclined to agree with the proposition of law put forward by the Appellant that if a doubt arises upon the construction of a grant, and the doubt can be removed by construing the deed adversely to the grantor, this will normally be done. But we think that it is possible to put a fair and reasonable construction on Clause 3 without going to the lengths suggested by Counsel for the Appellant. In our view, though the term of the extension is not specified, it should be such as the sub-lessee could reasonably accept. Had the extension of term offered been for a period which, in the circumstances of the case, was unreasonably short then, in our opinion, that would not have been such an offer of extension as to eliminate the right of the sub-lessee to be compensated for the value of the buildings. It would, in our opinion, be inconsistent with the general tenor of the document that the sub-lessor should be entitled to rely on an offer of an extension which was in reality a mere subterfuge for the purpose of depriving the sub-lessee of rights which he would otherwise acquire upon the expiration of the lease. But that is not the case here. In our view the offer of 10 years' extension from the date of expiration of the sub-lease was a genuine offer which cannot be regarded either as unreasonable or as a mere device for depriving the sub-lessee of his right to compensation. We find accordingly that the sub-lessor has not "refused to grant an extension of the lessee's term". The right to re-imburement of the value of the buildings therefore does not arise.

G For these reasons we are of opinion that the decision of the learned trial Judge was right and the appeal accordingly is dismissed. The Appellant must pay the Respondent's costs of the appeal.

H Appeal dismissed.