

M. Ethirajulu Naidu - - - - - *Appellant*

v.

A Ranganatham Chetti and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 13TH NOVEMBER, 1944

Present at the Hearing :

LORD RUSSELL OF KILLOWEN

LORD GODDARD

SIR MADHAVAN NAIR

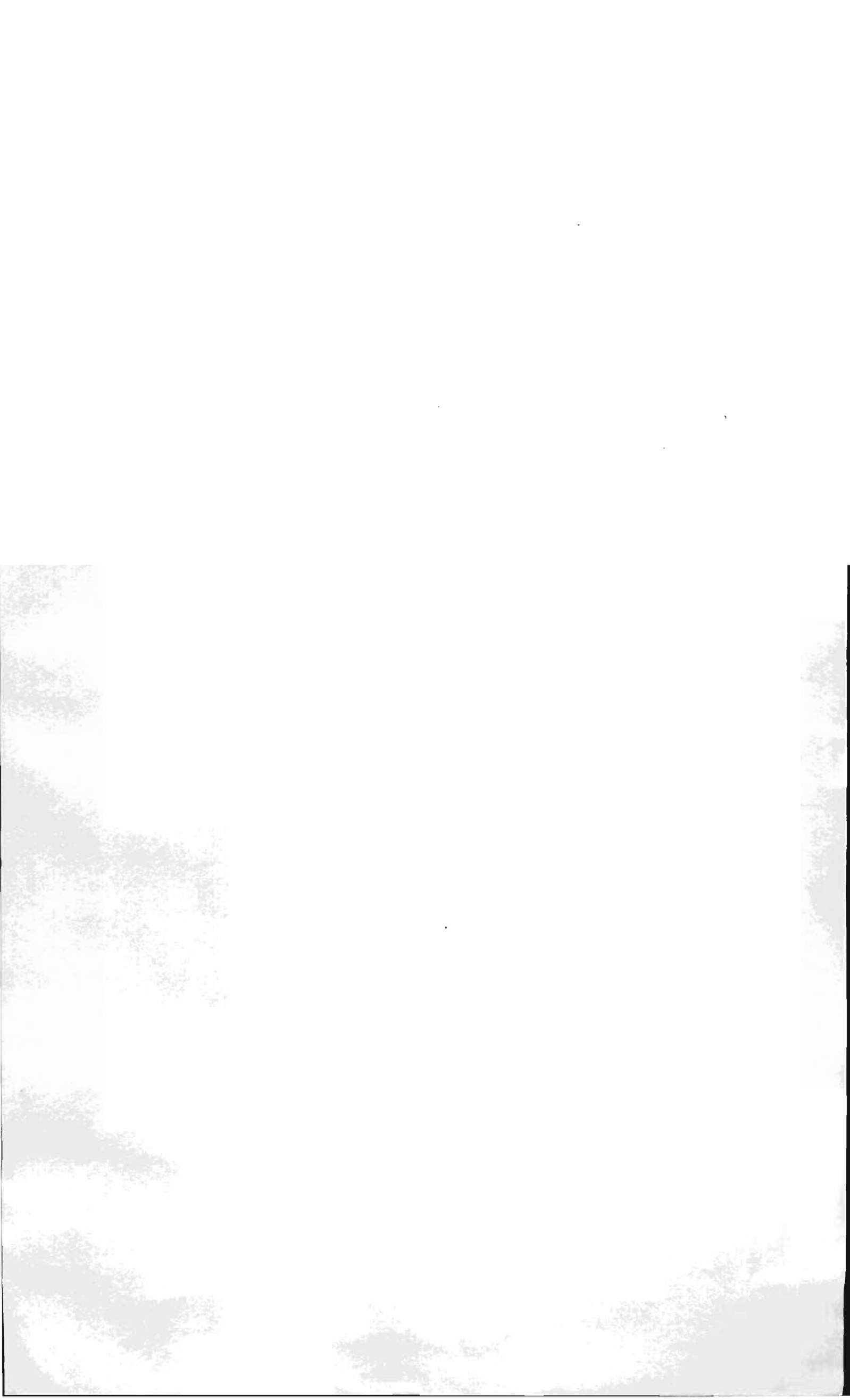
[*Delivered by* LORD GODDARD]

This is an appeal by special leave from a judgment of the High Court at Madras in its civil appellate jurisdiction affirming with modifications a judgment of that Court in its ordinary civil jurisdiction in an action in which the appellant claimed possession of certain land and the superstructure thereon and mesne profits. The case depends entirely on the true construction of clause 4 of a lease dated 1st February, 1923, made between the appellant and the predecessor in title of the respondents. The facts, which can be succinctly stated, are that on 18th October, 1912, the appellant and his brother granted a lease to the father of the respondents of a plot of land in the City of Madras for a term of 10 years from 1st October, 1912, at a rent of Rs.50 per mensem, the tenant to be at liberty to erect a building on the land demised. The tenant built a theatre on the land, and shortly before the lease expired the appellant, who had become the sole owner of the land, agreed to grant a new lease to the lessee. Accordingly on 1st February, 1923, a new lease for 10 years from 1st October, 1922, at a rent of Rs.100 per mensem was executed. The clause material in this action was in these terms:—

The lessee shall always and in any event be entitled to be paid the price of the superstructure built on the said plot of land before he surrenders possession of the land either on the expiry of the lease hereby granted or any other future lease or at any time. The price shall be fixed according to the market value of the buildings as at the time of ascertainment and payment.

On 9th October, 1932, the appellant's vakil demanded possession of the property and offered the sum of Rs.3,000 as representing the true market value. This offer was refused by the respondents, who had become entitled to the lease on the death of their father, and who contended, first that under the provisions of the City Tenants' Protection Act, which was passed before the execution of the lease, they were entitled to buy the property and that if not entitled to the benefit of that Act they were entitled to remain in possession by virtue of the aforementioned clause until they were paid the present market price which they alleged was Rs. 1 lac. The first contention of the respondents has been disposed of by a decision of the Board adversely to them and it is unnecessary to refer to it further. As to the second, the appellant contends that the

clause in question gives the respondents only a possessory lien as security for payment of the purchase price, and that as the respondents have remained in possession as though they were still lessees and have indeed granted a sub-lease they have acted inconsistently with their lien and must be regarded as trespassers and held accountable for mesne profits. The respondents on the other hand contended in the Courts below that they were entitled to hold over as tenants by virtue of the clause at the rent reserved by the lease until they were paid the present market price. On the true construction of the clause their Lordships are of opinion that the respondents' contention was clearly right. Until they are paid they cannot be required to surrender possession, and are therefore entitled to remain in possession, and if they remain they stay there as tenants on the same terms as were contained in the lease. Their Lordships do not doubt that the meaning of the clause is that the respondents could hold over till they were paid. In their opinion therefore the judgments in both Courts below were right in the result, but as they are not in agreement with some of the reasons given they will briefly refer to them. The case was first heard by Wadsworth J. On the question whether the respondents were wrongfully in possession of the property he held that it depended on whether or not the sum offered by the appellant was "ridiculously low" or whether it approximated to the true value of the superstructure and accordingly referred the action to an Official Referee to ascertain the value. On the reference the Referee found on the basis which was subsequently held to be correct that the value was Rs.18,000, six times what had been offered and about a sixth of what had been asked. On the matter coming up for further consideration before Venkataramana Rao J. on further consideration, while he expressed agreement with Wadsworth J. he went on to hold that this was not a case of lien but that the lessees could enjoy the property till the amount was paid and that they could not be treated as trespassers liable to account for mesne profits. On appeal to the appellate jurisdiction of the High Court, Sir Lionel Leach C.J. and Horwill J. took the same view as did Wadsworth J., that the respondents were not bound to accept an offer which was ridiculously inadequate. In their Lordships' opinion the case does not depend on whether an offer ought or ought not to have been accepted, unless perhaps the exact amount which was found to be the present market value had been offered. The clause contemplates that the price is to be fixed, which must mean by agreement or by valuation, and it could have been so fixed before the expiration of the term. The respondents were entitled to be paid the present market price, no less and no more, and until that price was paid or at least tendered they were entitled to remain in possession and enjoyment of the property. Their Lordships will humbly advise His Majesty that the appeal should be dismissed.



In the Privy Council

M. ETHERAJULU NAIDU

2.

A. RANGANATHAM CHETTI AND OTHERS

DELIVERED BY LORD GODDARD

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