

(1983) 08 MAD CK 0041
In the Madras High Court

B. Rama Subba Reddi and Others		APPELLANT
	Vs	
P. Subbayamma and Others		RESPONDENT

Date of Decision : 16-08-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(11)

Citation : (1984) 1 MLJ 390

Hon'ble Judges : M. Fakkir Mohammed, J

Bench : Division Bench

Judgement

M. Fakkir Mohammed, J.—The revision petitioners are the respondents 1 to 8 in the eviction petition, H.R.C. No. 4596 of 1981 on the file of the Rent Controller, XI, Judge, Court of Small Causes, Madras. The respondents herein filed the petition for eviction on two grounds, one u/s 10(2) (i) for wilful default in the payment of rent by the revision petitioners 1 to 5 from September, 1980 to August, 1981 and for the subsequent period and another u/s 10(2) (ii) (a) of the Tamil Nadu Act X of 1960 (hereinafter referred to as the Act) for having sublet the demised building in favour of respondents 6 to 9 in the petition eviction petition without the knowledge and consent of the landlords. After sending a lawyer's notice on 3rd September, 1981, terminating the tenancy on the grounds of wilful default and sub-letting which elicited a reply from the first revision petitioner alone respondents 1 to 5 filed eviction petition and the petitioners 1 to 5, as respondents 1 to 5 in the eviction petition filed a common counter stating that the revision petitioners 2 and 5 are not in any way connected with the business carried on in the demised premises, that the first revision petitioner and one Jayarama Reddy were the persons directly involved in the business run under the name B. Nagi Reddy in the demised building, that the revision petitioners, 1,3,4, and Jayarama Reddy have been continuing the business of B. Nagi Reddy as proprietary one to the knowledge of the respondents herein, that there was a partnership deed dated 1st January, 1966 between Nagi Reddy and his brother Jayarama Reddy to the knowledge of the father of the respondents herein, that the firm was paying rents of P. N. Surya Rao father of the

respondents herein, that after Supya Rao's death the respondents herein have deliberately refused to receive the rents from the firm, which necessitated the filing of H. R. C. No, 704 of 1980 by the firm for the permission of the Court for depositing of the rents into the Court, that as Surya Rao, landlord, died on 10th March, 1981 during the pendency of the petitioner, H. R. C. 704 of 1980 the revision petitioners 1, 3, 4 and Jayarama Reddy filed M. P. No 384 of 1981 for impleading the respondents herein as the legal representatives of Surya Rao, that the respondents herein opposed that application and the same was dismissed on 23rd December, 1981, that the Money Orders and Demand Drafts sent to the respondents herein were refused and that the allegation of sub-letting is act true, since the revision petitioners 6 to 8 and another were only employees and coolies of the revision petitioners 1 to 5.

The learned Rent Controller has found on point No 1 for consideration that the individual B. Nagi Reddy is the tenant and not the firm, B. Nagi Reddy, and hence the revision petitioners 1 to 5 alone are the legal representatives of the deceased B. Nagi Reddy; on point No. 2 for consideration that the revision petitioners 1 to 5 are guilty of wilful default in the payment of arrears of rent as contended in the eviction petition and on point No. 3 for consideration that the revision petitioners 1 to 5 have sub-let the demised building in favour of respondents 6 to 9 in the eviction petition without the written consent of the respondents herein. Accordingly the eviction was ordered by the learned Rent Controller.

3. The revision petitioners filed R. C. A. No. 1026 of 1982 before the appellate authority without success and the appellate authority has confirmed the order of eviction passed by the learned Rent Controller.

4. The two points that arise for consideration are : (1) Whether B. Nagi Reddy took lease of the demised building in his individual capacity for his individual business and if so, whether the revision petitioners 1 to 5 are not legal representatives as defined in Section 2(8) of the Act. (2) Whether the sub-letting in favour of respondents 6 to 9 in the eviction petition without the written consent of the landlord is not true?

5. As regards the first point, even at the outset the learned Counsel for the revision petitioners has stated that the demised building was taken on lease only by B. Nagi Reddy in his individual capacity in or about 1949 from Mr. P. N. Surya Rao, the predecessor-in-interest of the respondents herein, that only in 1966 a partnership was constituted between late B. Nagi Reddy and his brother Jayarama Reddy under Exhibit R-52, dated 1st January, 1966 and that after the death of B. Nagi Reddy on 24th October, 1980, Exhibit R-4 deed of partnership dated 12th November, 1980, was constituted between petitioners 1, 3 and 4 and their uncle Jayarama Reddy. The learned Counsel for the revision petitioners has contended that on the death of Nagi Reddy on 24th October, 1980, Jayarama Reddy alone will be the legal representative of Nagi Reddy u/s 2(8) of the Act. Significantly Jayarama Reddy did not and could not file any application to implead himself as a respondent in the eviction petition filed by the respondents

herein. Even though the revision petitioners did not claim to be the tenants, according to the above contention of the learned Counsel, as the legal representative of deceased B. Nagi Reddy, it is they who have been fighting tooth and nail against the eviction proceedings. From the above facts and circumstances the first question has to be disposed of.

6. Section 2(8) of the Act defines a tenant as follows:

"Tenant" means any person by whom or on whose account rent is payable for a building and includes the surviving spouse or any son, or daughter, or the legal representatives of a deceased tenant who--

(i) in the case of a residential building, had been living with the tenant in the building as a member of the tenant's family up to the death of the tenant; and

(ii) in the case of a non-residential building, had been in continuous association with the tenant for the purpose of carrying on the business of the tenant up to the death of the tenant and continues to carry on such business thereafter, and a person continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a building by its tenant or a person to whom the collection of rents or fees in a public market, cart-stand or slaughter-house or of rents for shops has been farmed out or leased by a municipal council or a panchayat union council or the Municipal Corporation of Madras or the Municipal Corporation of Madurai.

Admittedly, the demised building is not a residential building. Therefore, Section 2(8) (i) is not applicable to the present case. It is only Section 2(8) (ii) and the last limb of the said section that are attracted. Admittedly, the original tenant, B. Nagi Reddy, who took lease of the building in his individual capacity in 1949 for non-residential purpose, died on 24th October, 1980. The revision petitioners have examined Jayarama Reddy as their witness, In oral evidence, it was admitted by the witness of the revision petitioners that Nagi Reddy was doing his business in the demised building, that Nagi Reddy was paying rents to the landlord, P. N. Surya Rao, and that rent receipts were given only to B. Nagi Reddy and not to the partnership firm. Since, admittedly, the partnership firm came into existence only in 1966 under Exhibit R-2 the rent should have been paid only by Nagi Reddy in his individual capacity from 1949 to 1966 and Surya Rao would have issued receipts only to the individual B. Nagi Reddy. It is not the plea or evidence that Surya Rao issued the receipts to the partnership firm from 1966 or that Surya Rao gave consent to Nagi Reddy for starting a partnership business in the demised building. Under these circumstances, it has to be found as to who are the legal representatives of deceased B. Nagi Reddy as per Section 2(8) (ii) of the Act and the last limb of Section 2(8),

7. There are two qualifications to be a tenant after the death of the previous tenant u/s 2(8) (ii). The first qualification is that after the death of the tenant, there must be the surviving spouse, or any son, or daughter or the legal representative and the second qualification is that among the aforesaid persons

all or such of them should have been in continuous association with the tenant for the purpose of carrying on business of the tenant up to the death of the tenant and continued to carry on such business thereafter. It does not contemplate any other corporate body, or any association of persons engaged in business in which the deceased tenant was a partner or sharer or member. The revision petitioners 1, 3 and 4 claimed to be the partners along with Jayarama Reddy under a partnership deed that came into existence after the death of the tenant, B. Nagi Reddy, under Exhibit A-4, dated 12th November, 1980. Exhibit R-4, dated 12th November, 1980 is intended to take effect from 25th October, 1980, a day after the death of Nagi Reddy on 24th October, 1980. This Jayarama Reddy alone had associated with the tenant Nagi Reddi, in the business carried on by Nagi Reddy in the demised building up to 24th October, 1980 and the said Jayarama Reddy has continued to carry on the business of Nagi Reddy along with petitioners 1,3 and 4 herein with effect from 25th October, 1980, till the date of the eviction. Learned Counsel for the revision petitioners also contended that u/s 2(8) (ii) of the Act, Jayarama Reddy along became the legal representative of the tenant, B. Nagi Reddi on the date of his death. Since Jayarama Reddy continued to carry on the said business of the deceased tenant along with the revision petitioners 1, 3 and 4 as partners under Exhibit R-4 with effect from 25th October, 1980, till the date when the eviction petition was filed all the four of them were continuing the business of the deceased tenant as his L. Rs. in the demised building. Therefore, according to the definition of the term, "tenant", in relation to a non-residential building u/s 2(8) (ii) of the Act Jayarama Reddy and revision petitioners 1, 3, and 4 along were the tenants in their capacity as the legal representatives of the deceased tenant, Nagi Reddy, and not the entire heirs of the deceased Nagi Reddi.

8. The above proposition has " been succinctly stated by the Division Bench of this Court in M.A.B. Mohd. Sultan Mohideen and Others Vs. Official Trustee and Another, , in paragraph 4 at page 50 in the following lines:

On an examination of the two limbs of the definition of "tenant" in Section 2(8) as amended in 1973, one gains the impression that in, order to secure continuity in the tenancy, the heirs should prove, as a fact, that they were in the case of residential building, residing with the deceased tenant as members of his family till his death and equally prove in the case of a non residential building, that they were in continuous association with the tenant for the purpose of carrying on the business of the tenant and continued to carry on such business thereafter. It is therefore fairly clear that such a commercial association with the deceased tenant in the business or non-residential activity which was carried on by the deceased tenant in the premises is an essential sine qua non to claim the benefits u/s 2(8) (it) of the Act.

9. Similar view was expressed by another Bench of this Court in Haji Abdullah Sait Vs. K. Sanjeevi Rao and Others, , and in paragraph 54 at page 447 the following observations have been made:

That definition clearly shows that the expression "tenant" includes only the surviving spouse, or any son or daughter, or the legal representative of a deceased tenant, who had been living with the tenant in the building as a member of the tenant's family up to the death of the tenant. This will clearly indicate that the same was referable only to tenancy in respect of residential building, and would have no application to tenancy in respect of non residential building since the expression "living with the tenant in the building as a member of the tenant's "family" is totally inapposite with reference to the tenancy of a non-residential building. It will also be clear that the definition of "tenant" under the Act took in only certain enumerated relations or legal representatives who had been living with the tenant in the building as members of the tenant's family...

10. The following observations have been made in the end of paragraph 55 at page 448 with reference to both residential and non-residential buildings:

The sine quo non for a person enumerated in the definition to become tenant under the Act in respect of a residential building is that such person should have been living with the tenant in the building as a member of the tenant's family upto the death of the tenant. With regard to a non-residential building the sine qua non is that such a person should have been in continuous association with the tenant for the purpose of carrying on the business of the tenant upto the death of the tenant and continue to carry on such business thereafter.

Thus, Section 2(8) of the Act enumerates the surviving spouse, or son, or daughter or the legal representatives of a deceased tenant in defining the word "tenant" with two qualifications.

11. There is no definition of legal representative in Section 2(8) of the Act. In Section 2(11) of the Code of Civil Procedure, the definition of legal representative means a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character any person on whom the estate devolves on the death of the party so suing or sued. According to the above definition u/s 2(11) of the Code of Civil Procedure, it is not always a legal requisite that inevitably only the heirs, all of them or any of them, should figure as legal representatives and that anybody who intermeddles with the estate of the deceased will be a legal representative. But that definition has been narrowed down by Section 2(8) of the Act by qualifying as o who had been in continuous association with the tenant for the purpose if carrying on the business of the tenant up to the death of the tenant and continues to carry on such business there after.

12. Relying upon the above definition of the term, "legal representative" in Section 2(11) of the CPC and the qualifications contained in Section 2(8) (ii) of the Act, the learned Counsel for the revision petitioners has argued that revision petitioners 1,3, 4 and Jayarama Reddy alone, who were continuing the business

carried on by the late tenant in the demised building in their capacity as partners of the firm, became tenants and as such on the date when the eviction petition was filed they alone were the tenants and not all the revision petitioners. The learned Counsel further contended that the respondents herein have significantly omitted to plead in the eviction petition that all the revision petitioners, who are the children of late Nagi Reddy, had associated themselves with Nagi Reddy in the business carried on by him in the demised building till his death or that they continued to carry on the said business after his death and hence in their status as the sons and daughters of late Nagi Reddy they cannot, claim to be tenants after the death of Nagi Reddy and revision petitioners 1, 3, 4 and Jayarama Reddy alone an claim to be the tenants. c

13. The documents produced on the side of the revision petitioners conclusively show that till the death of the tenant, B. Nagi Reddy, the business conducted in the demised building is the partnership business in which the brother of Nagi Reddy, viz., Jayarama Reddy was a partner, and after the death of Nagi Reddy the partnership has been reconstituted in which only the revision petitioners 1, 3, 4 and Jayarama Reddy alone have joined as partners and not the other revision petitioners. Thus, it is established that Jayarama Reddy, brother of the deceased tenant had associated himself with the business of Nagi Reddy as a partner in the demised building from 1966 and that after the death of the tenant the said business of Nagi Reddy has been carried on by the petitioners 1, 3 and 4 along with their uncle Jayarama Reddy.

14. Learned Counsel for the respondents herein has argued that, admittedly the tenancy was only in favour of late Nagi Reddy, that the said Nagi Reddy did not take the consent of the landlord for converting his business into a partnership business, that if the tenant had converted his business into a partnership business by taking in other partners who were not recognised by the landlord as tenant in the demised building, such partnership will not bind the landlord, that the tenant's conversion shall be deemed as if the tenant had placed some other persons in occupation of the building without the consent of the landlord and that the said act of the tenant will come within the exclusion of the last limb of Section 2(8) (ii) of the Act, which says "but does not include a person placed in occupation of a building by its tenant", Admittedly, Nagi Reddy continued to do his business, according to the contention of the respondents herein, till the time of his death and he had only taken in partners with him in the course of the continuation of his business from 1966. His business is already there and continued to be there before 1966 and that after 1966 he had shared his rights in the business with others. Therefore, his taking other partners in his business will not at all amount to placing the other in occupation of the building by the tenant.

15. If Nagi Reddy had no connection at all in the business carried on by him till his death, then it can be said that the tenant has let in somebody to be in the occupation of the demised building without the consent of the landlord. The

tenant has not sold away his business as a whole to others. It is not the plea of the respondents that the heirs of late Nagi Reddy claimed any share in the business left by Nagi Reddy. The heirs of Nagi Reddy could have claimed share in the business even in 1966, when the business was converted by Nagi Reddy as a partnership business. The business in partnership is governed by the provisions of the Contract Act and the Partnership Act and not by the general principles of the Personal Law. From 1966 to 1980 the family members of Nagi Reddy did not claim any interest in the partnership business of Nagi Reddy. Therefore, the question of claiming any interest in the partnership business of Nagi Reddy after his death by the family heirs is ruled out. Only such as the surviving spouse or son or daughter or legal representative of the deceased tenant, Nagi Reddy who had been in continuous association with Nagi Reddy for the purpose of carrying on the business up to his death and who continued to carry on such business thereafter, alone can claim to be the tenant under the Act. In the above view of the matter, the finding of the appellate authority against the revision petitioners is held to be erroneous in law on that point and the revision petitioners are held to be the tenants in law.

16. Learned Counsel for the respondents herein has cited several judicial decisions in support of the argument that even assuming that petitioners 1, 3 and 4 alone have become the legal representatives as per Section 2(8)(ii) of the Act, there is a substantial compliance, since the revision petitioners 1, 3, and 4 are impleaded as respondents in the eviction petition, though Jayarama Reddy is not impleaded, and that the respondents herein will be entitled to an order of eviction on the ground of wilful default. It is not disputed that the revision petitioners and Jayarama Reddy tendered the rents through their partnership firm to Surya Rao till the death of Surya Rao and after his death to the respondents herein by cheques and Money Orders and because they refused to receive the rent, the revision petitioners have deposited the rents into Court by filing an application under the Act and that the respondents refused to get themselves impleaded, when the petitioners filed an application to implead them, on the ground that the revision petitioners herein are not the tenants under respondents herein or under Surya Rao. Since it has been held that the revision-petitioners 1, 3, 4 and Jayarama Reddy are the tenants u/s 2(8) (ii) of the Act, it shall be deemed that the rents were tendered regularly by the lawful tenants and the refusal to receive the rent by Surya Rao and the respondents herein on the ground that the revision-petitioners herein are not tenants will not amount to any wilful default in the payment of rent.

17. Of course, neither Nagi Reddy nor Jayarama Reddy informed the landlord Surya Rao during his lifetime about their partnership business after the execution of Exhibit R-2 partnership deed and they have not taken the written consent of the landlord. There is no dispute about them, but the fact remains that the partnership had come into existence between Nagi Reddy and his brother Jayarama Reddy, which is evident from Exhibit R-3 acknowledgment of Registration of Firm, dated 3rd February, 1966 notwithstanding that the tenant

Nagi Reddy was also assessed to Income Tax as a firm from 1966-67 onwards as seen from Exhibit R-5 series. Therefore, it cannot be said that Exhibits R-2 is a document fabricated by the tenant Nagi Reddy after the disputes had arisen in 1977. The learned appellate authority as well as the learned Rent Controller did not consider the effect of Section 2(8) (ii) of the Act in construing as to who will be the tenant, after the death of Nagi Reddy. There cannot be any dispute that Surya Rao let out the building only to Nagi Reddy and not to the partnership firm but special Act wants to take only the surviving legal representatives, or wife, or son, or daughter who had associated with the tenant in his business till his death and who continued to carry on the business after his death and not the entire heirs of the tenant under the Personal Law. Therefore, the findings of the appellate authority and the Rent Controller are that the tender of the rent from September, 1980 was not made by the revision petitioners herein as the heirs of Nagi Reddy, that though the rents were tendered by the firm of Nagi Reddy. It is not a valid tender of payment of rent and that therefore there is a wilful in the payment of rent by the revision petitioners. The initial error committed by the courts below in treating as to who is the tenant in the demised buildings after the death of Nagi Reddy has led to the further commission of error in construing the tender of rents made by Jayarama Reddy as not valid tender and hence there was wilful default. In the face of the conclusion that the above findings are incorrect, it automatically follows that the tender of the rents by Jayarama Reddy as the legal representative u/s 2(8) (ii) of the Act is a valid tender and hence there was no wilful default in the payment of rent. The fact that Jayarama Reddy and the firm of B. Nagi Reddy remitted the amounts by drafts and Money Orders in spite of the refusal to receive the same by the landlord and that later on the rents were deposited in a bank by Jayarama Reddy and revision petitioners 1,3 and 4 on behalf of the partnership firm is not disputed or denied, rather it is established. Therefore, it is found that there was no wilful default in the payment of rent by the revision petitioners 1, 3, 4 and Jayarama Reddy.

18. So far as the second ground on which the eviction petition has been filed viz., subletting of the premises in favour of respondents 6 to 9 without the written consent of the landlord, is concerned the Courts below have given concurrent findings on the question of fact that there was sub-letting in favour of respondents 6 to 9. Among respondents 6 to 9, the 9th respondent did not appear and contest the eviction proceeding. Respondents 6 to 8 alone filed a common counter stating that they are only employees in the firm of B. Nagi Reddy. In the common counter, it is specifically pleaded that the 6th respondent is a salaried employee going out to various places of supply and arranging for the supply of vegetables regularly for the firm B. Nagi Reddy, where as respondents 7 and 8 were actually attending to the sale of vegetables daily at the place and that they were paid daily wages on the basis of the sale turnover. It is further pleaded that there is no person by the name of Chinnasami alias Dadi under the employment of the firm and that false allegation has been made against the respondents 6 to 9. In the counter of respondents 1 to 5, while alleging in

paragraph 5 of the counter that there was no sub-letting in favour of respondents 6 to 9, it is stated that the type of the business carried on by the firm is Mundy Type business dealing in perishable articles, that the loading and unloading had to be done with the help of paid-employees and coolies and that as such the presence of employees of the business cannot be interpreted to mean parting of business in favour of anybody.

19. The present eviction petition has been filed against all the issues of deceased Nagi Reddy (sons and daughters) treating them as his legal representatives and Jayarama Reddy has not been impleaded.

20. The lower Courts have held that all the revision petitioners are the legal representatives of deceased Nagi Reddy and that Jayarama Reddy who is in the partnership firm, is not the tenant. It is only in this revision, it is held the petitioners 1, 3, 4 and Jayarama Reddy, who is not a party to this proceeding, are the real tenants in their capacity as partners as per Section 2(8) (ii) of the Act. In view of the findings that the demised building has been sub-let unauthorisedly without the written consent of the landlord, the lower authorities have held that the landlord is entitled to evict the tenant. Now, therefore, the question arises whether without impleading Jayarama Reddy an order of eviction can be passed.

21. In paragraph 21 of the petition, it is alleged that during the lifetime of B. Nagi Reddy the shop was sub-let to respondents 6 to 9 herein for enhanced rent without obtaining the consent or permission from the deceased Surya Rao. There is no averment as to from which time or year respondents 6 to 9 are occupying as subtenants. It is averred that the 6th respondent orally admitted that he is occupying as a sub-tenant. Even there, it is not stated as to from which year he is occupying as a subtenant. Respondents 6 to 8 in the eviction petition have stated in their counter that they are only the employees in the partnership firm and that they were employed on daily wages basis. Exhibit P-6 is the certified copy of the counter filed by the deceased Nagi Reddy himself in H. R. C. No. 917 of 1977 filed by the landlord, Surya Rao, on the ground of requirement of the premises for own occupation. In paragraph 5 of Exhibit P-6, Nagi Reddy has specifically averred that the landlord Surya Rao himself has been carrying on the vegetable business in the remaining portion of the ground floor of the demised building, which had been let out to Nagi Reddy, that the landlord is also residing in the first, second and third floors of the demised building and that on account of business competition and business jealousy the landlord Surya Rao filed H. R. C. No. 1917 of 1977 on the ground of owner's requirement. The above averment made by Mr. Nagi Reddy in 1977 has not been disputed. In fact in the present eviction petition also the address of petitioners 3 to 6 is given as No. 63, Malaiya Perumal Maistry Street, viz., the demised building. In the earlier eviction petition corresponding old No, viz., No, 37, Malaiya Perumal Maistry Street, was given. Therefore, Surya Rao and the respondents herein, who are his legal representatives were fully aware of the business conducted by Nagi Reddy as

well as the persons employed under Nagi Reddy. Still, it is not specifically stated as to from which year the respondents 6 to 9 are occupying as sub-tenants.

22. In paragraph 9 of Exhibit P-6, late Nagi Reddy had averred in his counter in 1977 that he was carrying on the whole-sale onion and retail vegetable business in Malaiya Perumal Maistry Street from 1949, that he has established his flourishing business with good reputation, that his business turnover was nearly Rs. 10 lakhs to Rs 15 lakhs in a year, that he was having ten employees in his business place and that it would be impossible for him to get any alternative accommodation. It is not as though that for the purpose of the present eviction petition the revision petitioners have alleged that respondents 6 to 9 and other employees have been working in their partnership business place. Probably in collusion with some of the employees working under the revision petitioner, the respondents herein might have invented and set up the plea of sub-letting in paragraph 5. That is supported by Exhibit P-16 letter said to have been written by the 6th respondent subsequent to the filing of the counter by respondents 6 to 8 and during the course of the enquiry in the present petition. Thus, the collusion is apparent. That is why, respondents 1 to 5 herein have not chosen to examine the 6th respondent to prove Exhibit P-16 in the Court, though he is the proper person to prove Exhibit P-16. Therefore, on account of the non-examination of the 6th respondent, no weight can be attached to Exhibit P-16. Except the ipse dixit of P. W. 1, there is no other other proof that respondents 6 to 9 are occupying as sub-tenants.

23. Only one shop-building has been demised in favour of Nagi Reddy and it is impossible to believe that respondents 6 to 9 have been let into possession as subtenants. Exhibits P-17 and P-18 have not been properly explained as to how they can lead to the inference that there was subletting, since admittedly the revision petitioners are doing wholesale as well as retail business in vegetables and other perishable articles. R. W. 1 has sworn to the fact that there is no sub-letting and that respondents 6 to 9 are only employees. Significantly, the respondents herein, who have colluded with the 6th respondent, have not produced any professional-tax receipt or any other record either from the 6th respondent or from other respondents, viz , respondents 7 to 9 to prove their independent business as sub-tenants. Thus, the lower Courts have failed to discuss the above facts and evidence. Therefore, their finding regarding sub-letting cannot be sustained in law and requires to be set aside.

24. We have already discussed about late Nagi Reddy's plea in paragraph 9 of Exhibit P-6 counter filed in 1977 that he Was carrying on the wholesale onion and vegetable business in the demised building from 1949 and developed the same resulting in an annual turnover of Rs. 1,00,000 to Rs. 15,00,000 by employing about 10 persons. In the said counter he did not set up the defence that his partnership firm has been doing the business. It appeared as though that he set up the plea that he was carrying on his own independent business, though actually he was carrying the partnership business from 1966 onwards. In the

above circumstances, the landlord cannot be expected to implead the partners of the firm of Nagi Reddy either at the time of filing the eviction petition during his lifetime or after his death. Therefore, the non-impleading of Jayarama Reddy will not be fatal for the continuation of the enquiry in the eviction proceedings, since the landord has impleaded the petitioners herein among whom petitioners 1, 3 and 4 are partners. It is for the said purpose, the learned Counsel for the respondents has cited several judicial decisions, which have upheld the contention that the proceedings can be continued, even after the death of a party, if it is represented by sufficient number of legal representatives of the deceased party. Even though respondents 2 and 5 have pleaded that they are not legal representatives, so far as the business carried on by Nagi Reddy is concerned, they have been contesting from the trial stage upto the revision stage in the High Court. Therefore, the eviction proceedings cannot be said to be not maintainable for the nonjoinder of Jayarama Reddy or the partnership firm.

25. In the light of the above discussion of facts and circumstances, the findings and orders of the appellate authority are held to be erroneous in law and the same are set aside. The revision petition is allowed, but in the circumstances of the case without costs and the eviction petition shall stand dismissed without costs.

26. Revision petitioners, 1, 3, 4 and Jayarama Reddy, who is not a party herein shall have to pay the arrears of rent due to the landlord since they are held to be the tenants. Time for payment one week from this date.

27. This petition having been set down for being mentioned in this day in the presence of Mr. N. Sivamani, advocate for the petitioner and of Mr. R. Sundararaghavan for Mr. J. R. K Bhavanantham, advocate for the respondents the Court made the following order:

28. The matter having been set down for being mentioned to-day, the following order is passed:

29. The learned Counsel for the revision petitioners, 1, 3, and 4 offers to pay the arrears of rent of Rs. 16,000 upto July, 1983 behalf of revision petitioners 1,3, 4 and another Jayarama Reddy to the respondents 1 to 5, who are the landlords and the respondents 1 to 5 are permitted to receive without prejudice, and continue to receive and pass receipt.