
(1952) 02 MAD CK 0008

In the Madras High Court

Case No : Civil Miscellaneous Petition No. 6445 of 1951

Gundalapalli Rangamannar Chetty

APPELLANT

Vs

Desu Rangiah and Others

RESPONDENT

Date of Decision : 15-02-1952

Acts Referred:

Madras Buildings (Lease and Rent Control) Act, 1949 — Section 7(2)

Citation : AIR 1954 Mad 182 : (1952) 65 LW 462 : (1952) 1 MLJ 652

Hon'ble Judges : Subba Rao, J

Bench : Single Bench

Advocate : K. Umamaheswaram and A. Subramanian, for the Appellant; M.S. Ramachandra Rao, for the Respondent

Final Decision : Dismissed

Judgement

Subba Rao, J.—This is an application for issuing a writ of certiorari, and for quashing the order of the Subordinate Judge of Nellore in C.

M. A. No. 35 of 1950.

2. The first respondent, Desu Rangaiah, took the premises bearing door No. 258, Ward No. 5, Stonehousepet, Nellore belonging to the petitioner

on rent 10 years ago for his business. Two years back he entered into a partnership with Thadikamalla Venkateshayya and Posa Veeranna for

carrying on business in onions. The partnership arrangement was embodied in a deed, Ex. B. 1. Under Ex. B. 1 the leasehold interest was not

transferred to the partners. That related only to the partnership business to be carried on Jointly by the first respondent Desu Rangiah,

Venkateshayya and Posa Veeranna. It regulated only the rights and liabilities in regard to the business. The first respondent continued to be in

possession of the premises with a liability to pay rent to the petitioner.

The rent originally was a sum of Rs. 10. It was enhanced from time to time till it reached the present rate of Rs. 60. Further requests for enhanced

rent by the landlord were not acceded to by the first respondent. Presumably this circumstance made the landlord to file M. B. C. No. 32 of 1950

on the file of the House Rent Controller, Nellore for evicting the first respondent from the premises. The main ground for eviction was that the first

respondent had sub-let the premises to the second respondent's firm. It was alleged that the first respondent was carrying on business in

Srigangarajapuram after sub-letting the premises to the second respondent who was described in the petition as Tadikamalla Vehkataseshaih Posa

Veeranna, represented by its two partners. The Rent Controller dismissed the petition. In appeal the Subordinate Judge held that there was no

sub-letting, and on that finding dismissed the appeal. The petitioner filed the above writ.

3. Learned counsel for the petitioner raised before me the same point, which has been negatived by the Subordinate Judge. He contended that by

reason of the partnership, in law there was a subletting of the premises to the second respondent within the meaning of Section 7(2)(ii) of Act 25 of

1949. The relevant portion of the section reads:

Section 7(2) : A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the

tenant a reasonable opportunity of showing cause against the application is satisfied (ii) that the tenant has after 23-10-1945 without a written

consent of the landlord (a) transferred his right under the lease or sublet the entire building or any portion thereof, if the lease does not confer on

him any right to do so, the controller shall make an order directing the tenant.....

Under this clause, a landlord would be entitled to evict his tenant if he transferred his right under the lease or sublet the entire building or any

portion thereof. It was not stated in the petition that the first respondent transferred his right under the lease deed; nor was that point raised before

the Subordinate Judge. The petitioner would therefore be entitled to evict the first respondent, only if he established that the first respondent sublet

the premises to the second respondent.

4. The scope of the word "sub-let" has been the subject of Judicial

determination in connection with covenants prohibiting subletting and imposing the penalty of forfeiture, if the covenants are contravened. In -- "Pebbles v. Glosthwaite", 13 LT 37 (A), Romer J. considered the scope of such a covenant. One Phillip took from the defendant's predecessor-in-title a lease of the first and second floors of a premises. It contained a proviso for re-entry by the lessors in case of a breach of the lessee's covenants, and one of these covenants was that he would not assign, underlet or part with the possession of the demised premises without the previous licence in writing of the lessors.

After the death of Philip, his executors sold the premises and business to a limited company called A. M. Pebbles and Son Ltd. The stock was delivered to the company which put its name upon the demised premises. The property was not assigned to the company and no licence to assign or part with the possession was obtained from the lessors. The executors had a large shareholding in the new company, and two of them were directors of it, who attended at the premises and took part in the management of the company's business. The question was whether the executors of the tenant had broken the covenant.

The learned Judge observed:

Clearly there was no assignment or under-letting, but it was said that there had been a parting with possession without the necessary consent

.....The legal possession was still theirs, although pending completion and the obtaining of a licence to assign they had allowed the company to use the premises for the purposes of the companyIf a lessee retained possession he did not commit a breach of such a covenant by allowing other people to use the premises.

The Court of Appeal confirmed the judgment.

Lindley L. J. made remarks much to the same effect. The learned Judge said:

They were informed by their solicitor, Mr. Soames, that they should not part with possession. No doubt they let the company into possession but they did not part with possession themselves and so long as it was true in fact that the lessees had not parted with possession they had committed no breach of the covenant.

5. in -- "Jackson v. Simons", (1923) 1 Ch. 373 (B), the question was whether the

tenant broke a similar covenant. The defendant who was the tenant, without the plaintiffs' consent or knowledge agreed for the sum of ₹1½ 7 per week to allow the proprietor of a night club carried on in a basement beneath the shop to the front part of the shop between the hours of 10-30 p. m. and 2 a.m. for the sale of tickets of admission to the club. Romer J. held that the arrangement conferred no estate or interest in the demised premises but was a mere privilege or licence to use portion thereof, the defendant retaining the legal possession of the whole and did not, therefore, constitute a breach of the covenants not to assign, underlet, or part with the demised premises or any part thereof.

The same view was expressed by the Court of Appeal in -- "Chaplin v. Smith", (1926) 1 K.B. 198 (C). In that case, the lessee had covenanted with his lessor that he would not assign or underlet or part with possession of the demised premises or any part thereof. He assigned his business to a company of which he was the managing director and in which he held a controlling interest. He carried on the business of the company on the premises which were stated to be its registered address and on which the name of the company was exposed. He kept the key of the premises in his possession. The company agreed to indemnify him in respect of the rates and taxes. Subsequently, a second company was formed of which the lessee was the managing director, and which took over the business, assets and liabilities of the first company. In negotiating for this transfer the lessee stipulated that he should remain in possession as actual tenant of the demised premises. On those facts the Court of Appeal held that there had been no breach of the lessee's covenant.

At page 211 Scrutton L. J. made the following observations:

He did not assign; nor did he underlet. He was constantly on the premises himself and kept the key of them. He did business of his own as well as business of the company. In my view he allowed the company to use the premises while he himself remained in possession of them.

Eoa on Landlord and Tenant, 6th Edn. at page 333 summarised the law on the subject in the following words:

The mere act of letting other persons into possession by the tenant, and permitting them to use the premises for their own purposes, is not, so long as he retains the legal possession himself, a breach of the covenant.

6. It is clear from the aforesaid decisions that there cannot be a sub-letting, unless the lessee parted with legal possession. The mere fact that another is allowed to use the premises while the lessee retains the legal possession is not enough to create a sub-lease. Section 105 of the Transfer of Property Act defines a lease of immovable property as to transfer of right to enjoy such property. Therefore to create a lease or sub-lease a right, to exclusive possession and enjoyment of the property should be conferred on another. In the present case the exclusive possession of the premises was not given to the second respondent. The first respondent continued to be the lessee, though in regard to the business carried on in the premises he had taken in other partners. The, partners are not given any exclusive possession of the premises or a part thereof. The first respondent continues to be in possession, subject to the liability to pay rent to his landlord. The partnership deed also, as I have already stated, does not confer any such right in the premises on the other partners. If therefore hold that in the circumstances of the case the first respondent did not sublet the premises to the second respondent, and therefore he is not liable to be evicted under the provisions of Act No. 23 of 1949.

7. The application therefore fails and is dismissed with costs, advocate's fee Rs. 100.