

(1949) 07 MAD CK 0049

In the Madras High Court

Case No : Civil Miscellaneous Petition No. 1450 of 1949

K. Devarajulu Naidu

APPELLANT

Vs

C. Ethirajavathi Thayaramma by power-of-attorney agent C.
Ranganayakulu Chetty and Others

RESPONDENT

Date of Decision : 12-07-1949

Acts Referred:

Transfer of Property Act, 1882 — Section 111

Citation : AIR 1950 Mad 25 : (1949) 62 LW 653

Hon'ble Judges : Rajamannar, C.J;Mack, J

Bench : Division Bench

Advocate : V. Ramaswami Ayyar and M. Natesan, for the Appellant; V.C. Gopalaratnam, for Respondents 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

Rajamannar, C.J.—This application for the issue of a writ of certiorari arises out of a petition filed by respondent 1 before the Rent

Controller, Madras, for eviction of three persons, of whom the petitioner before us is one. Respondent 1 is the owner of house No. 210,

Govindappa Naicken Street, George Town, Madras. It is common ground that this house was let by respondent 1 to a firm called "Devarajulu

Naidu & Co.," which consisted of these three persons as partners. This partnership firm was dissolved sometime in 1943 and thereafter no fresh

business was done, but the affairs of the partnership were wound up. By 14th November 1946 the winding up was completed and accounts were

finally settled. Meanwhile on 15th March 1944 respondent 1 purported to terminate the tenancy by notice to quit and followed up the notice with a

suit for eviction in the Court of Small Causes (S. No. 252 of 1944). That suit was

dismissed on 16th August 1944 and respondent I was directed to obtain relief from the Rent Controller. On 9th December 1946, after the Madras Buildings (Lease and Rent Control) Act of 1946 came into force, an application was filed by respondent I against the three erstwhile partners for eviction. The main grounds on which eviction was sought were, (i) that the three tenants had sublet the premises to another firm which consisted of the petitioner before us and two others, not parties to the application and (ii) that the premises were being used for a purpose other than that for which they were leased.

2. The Rent Controller dismissed the application. He held that it had not been conclusively proved that the petitioner before us was carrying on a new business with other partners and even so, such business commenced long before 1st October 1946 when the present Act came into force. On appeal, the Third Judge of the Court of Small Causes reversed the decision of the Rent Controller and directed eviction of all the three persons against whom the application had been filed. So far as we can gather from his order, the learned Judge's findings are that after the termination of the tenancy by respondent 1 the three partners should be deemed to have continued as tenants both individually and collectively and the firm must be deemed to have continued till 14th November 1946 when it was finally wound up, that between 1943 and November 1946 the petitioner before us was in sole charge of the dissolution of the firm and that simultaneously he started a business on the said premises in his own name on 9th

December 1945. On these findings of fact he arrived at the conclusion that in law it must be held that the three partners sublet the premises to the petitioner before us in his individual capacity for his separate business; to use his own words, the petitioner (landlord) was therefore justified in treating the respondents as collectively the tenant of the property and respondent 1 (petitioner here) as a sub-tenant from and after 14th November 1946.

3. In our opinion the learned Judge fell into an obvious error of law in arriving at this conclusion. The position was shortly this The original tenancy was in favour of three persons who were partners in a firm. After the dissolution of the firm, one of the partners was allowed to wind up the affairs

of the partnership and thereafter was allowed to use the premises for his sole business. This act on the part of the two partners other than the petitioner cannot amount to a transfer or sub-letting of the premises to the petitioner. It is true that the Courts in England have taken up an extreme view that even when one of two partners after the dissolution of the partnership assigns to the other partner the interest of the partnership in premises which had been taken on lease by the partnership, it would amount to a breach of the covenant prohibiting an assignment of the lease without the consent of the lessor. See : Varley v. Coppard, (1872) 7 C. p. 505 : 26 L. T. 882. But this Court was not inclined to apply this doctrine to Indian conditions. In Koragalava v. Jakri Beary 62 M. L. J. 8: A. I. R. 1927 Mad. 261, Devadoss J., held that the transfer by a co-lessee in favour of another lessee of his right in the lease would not be a breach of a covenant against assignment without the consent of the landlord. The learned Judge was of the definite opinion that we should not introduce into our Indian system the rigour of the English law as regards the relation of landlord and tenant. The appellate tribunal in this case was therefore in error in holding that the landlord was entitled to eviction on this ground. The other finding as regards the user of the house for a different purpose, it is clear, was treated as a corollary to the main finding which we have held was erroneous.

4. The order therefore as it stands is vitiated by an error of law apparent on the face of the record and must therefore be quashed.

5. The order is defective also in another material respect and that is that the appellate tribunal did not deal with and give a finding on the really

important question which arose on the landlord's application, namely, that the three original tenants sublet the premises to a different firm which

consisted of one of them and two other strangers. That was the specific case set up in the landlord's application. This question has not been

properly dealt with by the appellate tribunal. The appellate tribunal shall therefore hear the appeal afresh after giving the parties an opportunity of

being heard, and, if necessary, after making such further enquiry as it thinks fit either personally or through the controller, and shall decide the

appeal in the light of the observation which we have made.

6. There will be no costs in this application.