

(1978) 11 BOM CK 0004

In the Bombay High Court

Case No : Spl. Civil Application No. 2205 of 1974

Kamalakant Sadashiv Satpute

APPELLANT

Vs

Madhav Dhondo Alwani and Another

RESPONDENT

Date of Decision : 30-11-1978

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 15, 15(1)
Constitution of India, 1950 — Article 227

Citation : AIR 1979 Bom 291

Hon'ble Judges : Naik, J

Bench : Single Bench

Advocate : C.R. Dalvi, for the Appellant; N.M. Awadhani and R.M. Purandare, for the Respondent

Final Decision : Dismissed

Judgement

1. This petition for a writ under Article 227 of the Constitution has been filed in proceedings arising under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 -- hereinafter referred to as "the Rent Act".

2. The facts giving rise to this petition, which are not in dispute, are briefly these:-- One Madhav Dhondo Alwani--respondent No. 1 is the owner of the disputed property. The property bearing City Survey No. 391 at Narayan Peth, Pune, consists of a temporary shed admeasuring 30 x 10 ft. constructed by the said Alwani and an adjoining site admeasuring 57'-6" x 10" and the entire area together with the temporary shed is described in the Rent Note (Ex. 24) as admeasuring about 1000 sq. ft. On 16th May 1945, Bhagwan Soman, the 1st defendant executed a registered rent note in respect of this property in favour of Alwani for a period of 5 years from 1st June, 1945 at the agreed rent of Rs.18 per month. The material conditions of the lease were that Soman was to erect a temporary shed on the open site for putting up his printing press and he had stipulated to remove the said shed after the expiry of the lease. Accordingly Soman constructed a shed and started running his printing press. He sold that

press and assigned the shed constructed by him on the open site and the remaining site even the original temporary shed constructed by the Landlord to the petitioner -- the second defendant, in May 1969 for Rs.17,000. That is why the landlord by his notice (Ex. 25) dated 8th May, 1972, terminated the tenancy of the 1st defendant on the ground that the 1st defendant had unlawfully sublet the premises to the 2nd defendant. The 1st defendant gave in a reply notice (Ex. 27) stating that it was not a sublease in favour of the 2nd defendant. That is why the plaintiff Alwani filed the suit giving rise to this petition being Civil Suit No. 25M of 1972 for eviction of the defendants on August 21, 1972.

3. The suit was resisted by both the defendants. By their joint written statement, they contended that there was no subletting in favour of the 2nd defendant and that he was in possession of the same as he had purchased the printing press which was housed in a shed.

4. Both the Courts below have concurrently held that there was an unlawful subletting by the 1st defendant to the 2nd defendant and decreed the plaintiff's suit for possession.

5. The correctness of the said judgments and findings is challenged by the 2nd defendant by filing this petition.

6. Mr. Dalvi, learned advocate for the petitioner-2nd defendant has assailed the judgments of the Courts below by contending that the Courts have ignored the fact that in the case of the leases of the type involved in this suit, there would be dual ownership, the land vesting in the original owner and the structure vesting in the lessee and he, therefore, argues that in such cases, there could not be a Sub-lease of a structure constructed by the tenant in favour of a Sub-tenant. In support of his submission Mr. Dalvi has relied upon a Division Bench decision of this Court reported in *Vinayak Gopal Limaye v. Laxman Kashinath*, 58 BomLR 592, which decision is approved by the Supreme Court in *Dossibai v. Parmanand Dipchand*, 64 BomLR 256 .

7. Mr. Purandare, learned advocate for the respondent-plaintiff has submitted that since what was leased was an open site together with a shed and what is found by the Courts below as having been sublet by the 1st defendant to the 2nd defendant is the entire premises consisting of the original open site plus the shed, in addition to the newly constructed shed on the remaining site by the 1st defendant in favour of the 2nd defendant, having regard to the provisions of S. 15 of the Rent Act, even after, taking into consideration the decisions relied upon by Mr. Dalvi, there is no reason to interfere with the decrees passed by the Courts below.

8. I find considerable force in the submission of Mr. Purandare.

9. As already stated the undisputed facts before me are that the lease was in respect of an open plot admeasuring about 1000 sq. ft. on a portion of which admeasuring about 30" x 10" there was a temporary shed belonging to the

landlord. Again it is an admitted fact that according to the rent note (Ex. 24), the tenant had stipulated to construct a temporary shed in the remaining open site for housing his printing press and he had further stipulated to remove that structure of his on the expiry of the lease and to deliver possession of the premises to the landlord, It is again admitted before me that what has been in fact found to have been sublet by the 1st defendant to the 2nd defendant, is not a mere structure which was constructed by the tenant-1st defendant for housing the printing press but the entire demised premises consisting of about 1000 sq. ft. including the landlord's original temporary shed of 30"x 10".

10. It is as against these admitted and undisputed facts that we have to consider the authorities relied upon by Mr. Dalvi. In Vinayak's case(B) this Court has taken note of the fact that some of the unusual features of building leased are that there is inevitably a doctrine of dual ownership which is recognised under the Indian law (page 597). The Division Bench has further observed that where, however, the doctrine of dual ownership is in operation Section 15 may not be available against the actual occupants of the building. It is on these observations that Mr. Dalvi wanted to rely. Now it is this decision which is approved by the Supreme Court in Dossibai's case(A). But then at page 259, the Supreme Court has observed that it was unnecessary for them to consider for the purpose of the appeals before them as to what may happen to the Sub-lessee, if and when on the terms of a particular lease the building ultimately vests in the owner of the land, nor as to what may happen if and when on the terms of a particular lease the lessee who has constructed the building gets the right to remove the building. At any rate as rightly submitted by Mr. Dalvi, since the Supreme Court has in terms approved the decision of this Court in Vinayak's case(B), we will have to take it that the observations in Vinayak's case at page 597, to the effect, "Where, however, the doctrine of dual ownership is in operation, Section 15 may not be available against the actual occupants of the building", are approved. But then these observations would be of no assistance to the petitioner in this case inasmuch as the suit is not restricted only to the open site on which the 1st defendant has constructed a shed of his own and has assigned it together with the printing machines installed thereon to the 2nd defendant. Undisputedly what has been transferred or assigned by the 1st defendant to the 2nd defendant is the entire premises together admeasuring about 1000 sq. ft. and also the temporary shed of 30 x 10 ft. which was constructed by the landlord and in addition to that there is the additional shed constructed by the tenant in which the tenant has housed a printing press and it is the whole of these premises which has been assigned by the landlord to the 1st defendant-tenant. Therefore, having regard to the observations in Vinayak's case(B) that "where, however, the doctrine of dual ownership is in operation, Section 15 may not be available against the actual occupants of the building", and the terms of the rent note, it would be relevant at this stage to peruse the provisions of Section 15(1) of the Rent Act.

11. Section 15(1) reads as under:

"Notwithstanding anything contained in any law, but subject to any contract to the contrary, it shall not be lawful after the coming into operation of this Act for any tenant to sublet the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein and after the date of commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973, for any tenant to give on licence the whole or part of such premises."

12. There is a proviso to this Sub-section with which we are not concerned.

13. Therefore the Section makes it clear that a Sub-lease or assignment would be within the mischief of Section 15(1), not only when the whole premises is sublet or assigned but even when any part of the premises is let or assigned. Since evidently even after excluding the portion in which a printing press is housed in a shed constructed by the tenant, the remaining premises out of a total area of 1000 sq. ft. including a temporary shed erected by the landlord has been sublet, on the facts of this case, it is definitely a case where a part of the premises, in fact a major part of the same, has been admittedly assigned by the 1st defendant to the 2nd defendant and hence, notwithstanding the observations in Vinayak's case(B) the decree of the Courts below has got to be confirmed although for different reasons.

14. In the result, the petition is dismissed and the rule is discharged without order as to costs. However, in the event of the 2nd defendant-petitioner giving an undertaking to vacate the shed in which the press is situate by the end of Dec. 1979 and on his immediately surrendering possession of the rest of the suit premises and on his filing the usual undertaking to that effect, the decree for possession in respect of the shed in which the press is housed would not be executed by the respondent-landlord till the end of December 1979 as stated by the plaintiff in person and his advocate Mr. Purandare. Undertaking to be filed by the petitioner-2nd defendant in this Court within a fortnight from today.

15. Petition dismissed.