

(1979) 11 MAD CK 0027

In the Madras High Court

Case No : C.R.P. No's. 3530 and 3532 of 1976

K.M. Mohammed Yusuf Zulaika Unima and Others

APPELLANT

Vs

P.A. Abdul Khader (Died) and Another

RESPONDENT

Date of Decision : 26-11-1979

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(2)

Citation : AIR 1980 Mad 143 : (1980) ILR (Mad) 131 : (1980) 93 LW 77 : (1980) 1 MLJ 218

Hon'ble Judges : Ismail, C.J.;Ratnam, J

Bench : Division Bench

Advocate : K.T. Palpandian, G.V. Srintvasalu and P. Ratnadural, for the Appellant; T. Martin and K.N. Chinnikrishnan, for the Respondent

Judgement

Ismail, C.J.—These two civil revision petitions are filed against the order of the Appellate Authority functioning under the Tamil Nadu Act

18 of 1960, dated 6th Oct. 1976, made In H. R. A. Nos. 259 and 260 of 1975. The petitioners herein are the owners of premises No 1/30

Vepery High Road, Madras-7. They leased out the premises in question to the predecessor-in-interest of the respondents- here in two lease

deeds, one in respect of the ground floor and the other in respect of the first floor the rent for the . ground floor being Rs. 351D and the rent for the

first floor being Rs. , 260 per month It was in respect of these two lease deeds that the petitioners filed two petitions H. R. C. 1325 and 1326 of

1976 under S. "10 (2) (ii) (a) of the Act, on the ground that the tenant had sublet the premises without-the consent of the landlords and that

consequently he had violated the terms of the lease. In the counter filed by him, the tenant disputed the allegation that he had violated the

conditions of the tenancy and that he had sublet the premises to another person. During the course of the trial evidence was let in to show that the tenant had sublet the premises to one Hydross and that after his death in Jan. 1975, he sublet the premises to one Moosa. As against this case of the landlord, two witnesses were examined on behalf of the tenant, the tenant himself as R. W. 1 and the said Moosa as R. W. 2. The Rent Controller, after considering the evidence adduced before him, held that there had been unauthorised subletting in favour of Hydross in the first instance and in favour of Moosa in the second instance and that consequently the tenant was liable to be evicted Accordingly, he allowed the two eviction petitions filed by the landlords. Against this order the tenant filed two appeals. H. R. A. 259 and 260 of 1976. appellate authority, by the impugned order dated 6-10-1976 held that the tenant had not sublet the premises to Hydross or to Moosa but had only hired out, the business to Hydross and thereafter to Moosa, with the result that they were carrying on the business in the premises in question as hirers. In view of his conclusion that the tenant had only hired out the business to Hydross and to Moosa, and had not sublet the premises, he allowed the appeals and dismissed the eviction Petitions filed by the landlords. It is against this order of the appellate authority that the present civil revision petitions have been filed by the landlords.

2. The first question for consideration is whether the subletting has been established in this case or not. For the purpose of considering this question, we have necessarily to refer to the appellate authority that there was no subletting but only a hiring out of the business by the tenant in favour of Hydross in the first instance and to Moosa subsequent It was nobody's case that the busy. 1989 Umma V.Abdul 145 Aess was hired out by the tenant to "ed. himself as the proprietor of the dross or to Moosa. In view of this, business. Having regard to this clinch- finding of the" appellate authority documentary evidence available, there can be no doubt whatever that in this behalf was, totally uncalled for, Hydross was the owner of the business and Mr. T. Martin, the learned counsel and that the tenant. Who was living for the tenant-respondent herein, had in Kerala carrying on other activities to concede that the appellate authority had sublet the premises in question to had no jurisdiction to render such a

Hydrods, to enable him to carry on the finding, because no such case was put business In the premises in question, forward by either of the parties.

Once and subsequent to the death of Hydrods this finding of the appellate authority to Moosa. Having regard to those goes, the question that then

arises for features, we have no doubt whatever consideration is whether the subletting that the Rent Controller was right in coming to the

conclusion that there had been unauthorised subletting in favour of Hydross in the first instance and to Moosa subsequently.

3. Mr. Martin, the learned counsel tenant was not carrying on the busy for the respondent herein having regard, to this overwhelming evidence, had

to resort to a technical plea, relying on a decision of this Court in Basappa v. Jurrinadass also known the said Hydross or Moosa was com as

Jumnadass Manickchand 1979 1 Mad LJ 317. Before we refer to this judgment, we have to refer to certain dates. It is stated before us that

Hydross died on 29-1-1975 and only after the death of Hydross the landlords sent notice to the tenant complaining unauthorised subletting. The

tenant issued a reply notice on 3-4-1975 under "Exs. R-1 and R-2, and the eviction petitions themselves filed on 7-7-1975. Basing himself on

these facts and the decision referred to above, Mr. Martin contended that even the notice complaining of- sub-letting in favour of Hydross was

issued only after the death of Hydross, that therefore on the date when the landlords issued the notice on 14-3-1975, as well as on 7-7-

1975, when they filed the petitions in question, there was no sub-tenant in physical occupation of the premises in question and that consequently, on

the basis of the decision referred to above, the landlords were not entitled to obtain an order for eviction in their favour. Now this argument of

Martin proceeds on the basis that subletting in favour of Hydross alone had been proved and not subletting in favour of Moosa. If subletting in

favour of Moosa also is established , there will be no scope for this argument because admittedly Moosa was alive on the date of the petition and

also subsequently. Even though we have held, agreeing with the Rent Controller, that there was subletting In favour of Hydross and also in favour

of Moosa subsequently, we proceed to consider this argument of the learned counsel for the respondents on the basis that subletting in favour of

Hydross alone had been established and subletting in favour of Moosa had not been proved. The question for consideration is whether there, is

any substance in this contention of the learned counsel for the respondents.

4. The decision of this Court referred to above, if we may say so fully supports this contention of the learned counsel. The reasoning and the

conclusion of the learned Chief Justice, who decided that case, are to be found in para 3 of the Order:

"The second ground, of attack was that there was subletting. Mr. Raja gopala Iyengar fairly concedes that on the date when the application for

eviction came up for hearing, the subtenant was not there physically. Therefore, the landlord was unable to sustain his ground under S. 10(2)(ii)(a)

of the Tamil Nadu Buildings (Lease and Rent Control) Act. That section provides that a landlord who seeks to evict his tenant shall apply to the

Controller for a direction in that behalf and that the Controller, after giving the tenant a reasonable opportunity of showing cause against the

application is satisfied that the tenant has after 23-10-1945, without the written consent of the landlord, transferred his right under the lease or

sublet the entire building on any portion thereof, if the lease does not confer on him any right to do so. The question is whether a past conduct on

the part of the lessee, when he sublet the building without authority, would still compel him to suffer an order of eviction under the above said

section, if in given facts and circumstances of the case, there was no such subletting or no subtenant physically in occupation of the demised

premises on the date when the petition comes up for hearing. Whatever may be" the truth in the pleadings of a particular case, it is essential for the

landlord, who seeks to secure possession u/s 10(2)(ii)(a) of the Act to show that on the date when he complains of subletting there is such

subletting in presenting and that it was provable as a physical fact. His suggestion and pleading that about the time when he came to court or

sometime before he filed the petition there was such subletting by the tenant with. Out authority, cannot avail him of the right to seek for eviction

under the above section. If he wishes to established that there was such subletting without authority, he should prove to the first court, namely, the

Rent Controller, and thereafter at every stage when the proceedings is in seisin of the statutory authorities dealing with the subject matter that such

physical fact of subletting is in fact in existence and the subletting is, therefore, at the instance of the tenant and that too without authority.

Therefore, a landlord on the mere fact that there was subletting of the premises cannot seek for an order under the above sub-section when he is

unable to establish that there is any physical and pragmatic act of subletting by the tenant without authority. In the instant case, as I said, Mr.

Rajagopala Iyengar fairly conceded that- on the date when the petition was taken up for hearing he was unable to establish that there was such

subletting. The subletting cannot be a matter of surmise, but such can only be the result of an actual investigation and adjudication and a resultant

finding. I am of the view that no such finding can be rendered in the instant case, as there was no physical subletting at site. The petition has to fail

on that ground also. The lower court therefore was right in having dismissed the petition. The civil revision petition is therefore dismissed.

When the matter came up before one of us, since it was not possible to agree with the conclusion of the learned Chief Justice, the matter was

directed to be posted before a Bench and that is how the matter came up before us. There are a number of difficulties in accepting the reasoning

and conclusion of the learned Chief Justice in the decision referred to above. In one place, the statement is

The question is whether past conduct on the part of the lessee when he sublet the building without authority, would still compel him to suffer an

order of eviction under the above said section if in given facts and circumstances of a case there was no such subletting or no subtenant physically

in occupation of the demised premises on the date when the petition comes up for hearing"".

Therefore this sentence will give an indication that the learned Chief Justice considered the date when the petition came up for hearing as the crucial

date for determining the question. However, lower down, the statement of the learned Chief Justice will give an indication that even the date, of the

of the hearing of the petition at subsequent stages would constitute crucial dates. This is apparent from the two sentences following the above

sentence in the passage extracted already. We are clearly of the opinion that such a reasoning and conclusion runs on contrary to the language of

the section and would also lead to unintended and absurd results. As a matter of fact, what consequences may follow from such a decision is

illustrated by, the Supreme Court itself in its decision in Gajanan Dattatraya Vs. Sherbanu Hosang Patel and Others, . In that case, the Supreme

Court was considering the scope of Section 13 (1) (e) of the Bombay Rents, Hotel and Lodging House Rates Control Act 1947. That statutory

provision read as follows:

13 (1) (e) That the tenant has, since the coming into operation of this Act, unlawfully sublet or after the date of commencement of the Bombay

Rents Hotel Lodging House Rates (Amendment) Act 1973 unlawfully given on licence the whole or part of the premises or assigned or transferred

in any other manner his interest therein".

The argument that was advanced before the Supreme Court was based on the use of the words "has sublet", and that therefore the subletting was

to subsist on the date of the suit. It was this argument which was rejected by the Supreme Court when it observed

"The appellant, repeated the same contentions which had been advanced before the High Court. The provisions of the Bombay Rents.. Hotel and

Lodging House Rates, Control Act 1947 indicate that a tenant is disentitled to any protection under the Act if he is within the mischief of the

provisions of Section 13 (1) (e). namely, that he has sublet. The language is that, if the tenant has sublet, the protection ceases. To accede to the

contention of the appellant would mean that a tenant would not be within the mischief of unlawful subletting, if after the landlord gives a notice

terminating the tenancy on the ground of unlawful subletting the sub-tenant vacates. The landlord will not be able to get any relief against the tenant

in spite of unlawful subletting. In that way the tenant can foil the attempt of the landlord to obtain possession of the premises the ground of

subletting every time by getting the sub-tenant to vacate the premises. The tenant's liability to eviction arises once the fact of unlawful subletting is

proved. At the date of the notice if it is proved that there was unlawful subletting, the tenant is liable to be evicted.

Applying the above ratio of the decision of the Supreme Court it will be seen that the decision of the learned Chief Justice of this court already

referred to would lead to unintended consequences. It will be seen from the, passage from the judgment of the learned Chief Justice extracted

above that, according to the learned Chief Justice, the subletting must subsist on the date of the petition for eviction, on the date of the hearing by

the Rent Controller, on the date of the hearing by the appellate authority and on

the date of the hearing by the revisional authority. If subletting does not subsist on all these four occasions cumulative, the landlord will not be entitled to obtain an order of eviction. Such a situation would be far worse than the one which the Supreme Court, was contemplating in the decision referred to above. If the landlord succeeds in proving the subsistence of subletting on the date of the filing of the petition for eviction and on the date of the hearing of the petition, still the tenant can defeat the landlord by getting the sub-tenant to vacate before If is appeal comes up for hearing. Similarly he can do the same thing before the matter comes up for hearing before the revisional authority. That cannot be the law, and, therefore, with great respect to the learned Chief justice, we are of the opinion that the reasoning and conclusion of the learned Chief Justice are not sound.

5. Mr. Martin then contended, relying on the sentence "in the judgment of the Supreme Court extracted above, namely, at the date of the notice, if it is proved that there was unlawful subletting, the tenant is liable to be evicted", that at least on the date when notice is issued by the landlord to the tenant, subletting must subsist, that in this case on 14-3-1975, when the landlords issued the notice to the tenant, Hydross was already dead, that therefore there was no subsisting subletting in his favour and that consequently the landlords were not entitled to get an order of eviction. We are afraid that this argument is misconceived. In the first place, the Supreme Court was dealing with the case of a suit and therefore the Supreme Court took into account the necessity to issue a notice terminating the tenancy and it was that which was referred to in the above paragraph from the judgment of the Supreme Court, namely, that on the date when the tenancy was terminated It must be proved that the tenant had already sublet the premises, thereby how that the said unauthorised subletting was the ground for termination of the tenancy. But, as far as the Rent Control Act is concerned, it has not been held by the Supreme Court that any such notice is necessary. Thus it is open to the landlord to file a petition for eviction on the ground of unauthorised subletting, without previously issuing a notice to the tenant. If the argument of Mr. Martin is accepted the reference to such a situation, the decision of the Supreme Court will be no application.

6. Independent of the above considerations, we are of the opinion that as a

matter of simple construction of S. 10 (2) (111 of the Act, we are unable to subscribe to the proposition laid down by the learned Chief Justice. Section 10 (2) (ii) of the Act reads as follows

10 (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 - - (R) that the tenant has, after 23rd Oct., 1945, without the 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, or (b) used the building for a purpose other than that for which it was leased." Thus it will be seen that S. 10 (2) (A)"

contemplates two situations; one dealing with the tenant transferring his, rights under the lease or subletting the entire building and the other dealing with the tenant using the building for a purpose other than that for which it was leased. On a harmonious construction of the above clauses, it will be seen that the expression "that the tenant has, after 23rd Oct. 1945, without the written, consent of the landlord, transferred his right under the lease or sublet the entire building or any portion thereof, from the very nature of the case, does not contemplate the continuance of the sub-letting,

All that is required is that subsequent to .23rd Oct. 1945, the tenant should have sublet the premises without the written requirment is satisfied, the tenant for his protection and becomes liable to be evicted, and the statute does not impose a further condition that the subletting must be continuing throughout the entire course of the eviction petition. If such construction were to be put on the statutory provision the tenant will be able to play a hide-and-seek game and the moment he comes to know of the landlord's intention to "file a petition, he can temporarily the tenant to vacate the premises question and occupy it himself, and as soon as the petition for eviction is dismissed he can re-induct the sub-tenant into the premises. This could not have bean the " intention of the legislature and the statutory provision like to one under consideration cannot also be construed in such a manner.

7. Under these circumstances, we allow the civil revision petitions., set aside the order of the Appellate Authority and restore the order of the Rent Controller. There will be no order as to costs.

8. The respondents are granted one month's time from now to vacate the premises.

9. As soon as we pronounced the above order, Mr. Martin the learned counsel for the respondent, orally requested for leave to appeal to the

Supreme Court under Art. 134-A of the Constitution of India. Having regard to the fact that we have simply followed the judgment of the Supreme

Court, which cannot be distinguished on the facts of this case we do not consider that the- present case, satisfies the requirements of Art 133(1),

namely, that it involves a substantial question of law of general importance which needs to be decided by the Supreme Court. Consequently, the

request for leave is rejected,

10. Petition dismissed.