

(1979) 03 MAD CK 0029

In the Madras High Court

Case No : Civil Revision Petition No. 3082 of 1976

N. Lakshmi Ammal and Another

APPELLANT

Vs

P. Manicka Naidu and Another

RESPONDENT

Date of Decision : 05-03-1979

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(2)
Transfer of Property Act, 1882 — Section 116

Citation : (1980) ILR (Mad) 382

Hon'ble Judges : Ratnam, J

Bench : Single Bench

Advocate : S.Y. Raghuraman and S. Balakrishnan, for the Appellant; M. Venkatachalapathy, D.P.I. Rajakumar and A.A.S. Mustafa, for the Respondent

Final Decision : Allowed

Judgement

Ratnam, J.—The landlords of premises No. 114, Acharappan Street, Madras, who had failed in the Courts below are the Petitioners in this civil revision petition. Their application for eviction was filed under Sections 10(2)(ii)(a) and (b) of the Rent Control Act on the ground of different user of the premises let out and sub-letting. According to the case of the Petitioners, the first Respondent was a tenant of the premises in question on a monthly rental of Rs. 75 per mensem and the premises was leased out for the purpose of carrying on business in cattle food and it was claimed by the Petitioners that the first Respondent is now carrying on business in provisions and this according to them, constituted different user of the premises, which would enable them to seek an order of eviction. In addition, it was also alleged by the Petitioners that the first Respondent had sub-let the premises in favour of the second Respondent and this would afford a ground for their being put back in possession of their premises.

2. The application was resisted by the first Respondent, who admitted the tenancy, on the ground that the shop was let out for purposes of business and so

long as some business was being carried on in the premises in question, the nature of the business is immaterial and, therefore, the Petitioners are not entitled to an order of eviction on the ground of different user. In addition, he denied having sub-let the premises to the second Respondent herein, but claimed that he was carrying on business as a partner in the business of the second Respondent. It was further stated that the Petitioners demanded higher rent and on their refusal to pay, the application for eviction was filed. It was also the case of the second Respondent that they were in possession of the premises and were carrying on business there with the consent and permission of the Petitioners and further alleged collusion between the Petitioners and the first Respondent. An objection with reference to the validity of the notice to quit was also raised.

3. The learned Rent Controller held that at the time when the property was leased out, it was not stipulated that the first Respondent should do only a particular kind of business, namely, business in cattle food and, therefore, the carrying on of the business in provisions, will not constitute a different user, which would enable the Petitioners to obtain an order of eviction against the Respondent. On the question of sub-letting, the Rent Controller found that though the contractual tenancy, which had permitted sub-letting was entered into between the first Petitioner and the first Respondent under a registered lease deed in the year 1955, it had expired on 19th July, 1958 and after its expiry, under the provisions of Section 116 of the Transfer of Property Act, 1882, the lessee and the underlessee held over on the same terms and consequently, the Petitioners cannot seek an order of eviction against the Respondents. Regarding the notice to quit, the Rent Controller held that the notice is invalid and improper. On these findings, the application for eviction was dismissed. On appeal before the Appellate Authority in House Rent Appeal No. 116 of 1976, the question of notice to quit was not pressed and the findings of the Rent Controller were confirmed and the appeal was also dismissed.

4. In this civil revision petition by the landlords, the only two questions that arise are whether there was a sub-letting and whether the sub-letting was with the permission in writing of the landlord. It is necessary to set out Section 10(2)(ii) (a) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960:

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 23rd October, 1945, without the written consent of the landlord

(a) transferred his right under the lease or sub-let the entire building or any portion thereof, if the lease does not confer on him any right to do so.

The learned Counsel for the Petitioners contended that there has been a sub-letting without the permission of the landlords in writing in favour of the second

Respondent and consequently, the Petitioners will be entitled to an order of eviction. According to him, when once the contractual tenancy had expired as in this case on 19th July, 1958, the tenant is merely a statutory tenant and, therefore, unless the statutory tenant, first Respondent had been permitted in writing to sub-let the premises the sub-letting will not protect the Respondents from being evicted. In this connection, attention is drawn to the evidence of R.W. 2, who had in clear and categorical terms, admitted that the first Respondent was not a partner in the business and that there is no partnership deed. R.W. 2 was frank to admit that the first Respondent never used to attend to any of the business activities, but that he used to be paid Rs. 400 every month. However, the second Respondent would have it that this payment was made towards the advice tendered by the first Respondent. The second Respondent also has stated that the partnership consisted of himself, his brother, his father and his brother-in-law and that at no point of time, the first Respondent was a partner. A reading of the evidence of R.W. 2 discloses that the case of the first Respondent that he was carrying on business as a partner with the second Respondent falls to the ground and, therefore, it follows that the second Respondent had come into possession as a sub-tenant only and not, because the first Respondent was a partner in the business of the second Respondent carried on in the premises in question. The only other question that remains to be considered is whether the possession of the second Respondent by having been let into possession by the first Respondent is protected by the provisions of the Rent Control Act. The contractual tenancy in the instant case had come to an end by efflux of time on the expiry of the period reserved thereunder namely on 19th July, 1958. The learned Counsel for the Respondents would, therefore, urge that Section 116 of the Transfer of Property Act would apply and the sub-letting which was originally permitted under the terms of registered lease deed would tenure for the benefit of Respondents. It is necessary at this stage to examine as to whether the second Respondent, became a sub-tenant under the first Respondent during the subsistence of the contractual tenancy and, thereafter continued in possession as such sub-tenant. On this, R.W. 2 speaks to the starting of the business under the name and style of M.G.V. Ramachandran and Company in the premises in question, from January, 1960, onwards. He has not been in any manner cross-examined with reference to the date of commencement of the business. The position, therefore, is that after the expiry of the contractual lease on 19th July, 1958, the second Respondent has come into possession of the property as a sub-lessee. In other words, when the second Respondent came into possession as a sub-lessee in January, 1960, there was nothing in writing permitting such sub-letting. The Respondents can resist an application for eviction on the ground of sub-letting only if they succeed in establishing that such sub-letting was permitted by the landlord in writing. The question is whether after the expiry of the period of lease on 19th July, 1958, by efflux of time, there is any indication whatever to show that there was any act on the part of the landlords which would afford a ground for holding that the landlords have consented to sub-letting or permitted such sub-letting. In my view no material has been placed to

show that there has been in the instant case assent on the part of the landlords either for sub-letting or for holding that the landlords have assented for any contractual tenancy on the same terms as the earlier one. The Supreme Court in *Ganga Dutt Murarka Vs. Kartik Chandra Das and Others*, has held (at page 1069):

Where a contractual tenancy to which the rent control legislation applies has expired by efflux of time or by determination by notice to quit and the tenant continues in possession of the premises by virtue of statutory protection, acceptance of rent from the tenant by the landlord after the expiration or determination of the contractual tenancy will not afford a ground for holding that the landlord has assented to a new contractual tenancy.

5. Again the Supreme Court in *Bhawanji Lakhamshi and Others Vs. Himatlal Jamnadas Dani and Others*, had occasion to consider the question of the precise nature of the tenancy after the expiry of contractual tenancy by efflux of time, with reference to areas where the rent Control legislation was in operation. It was contended in that case on behalf of the lessees that since the original contractual tenancy was for a manufacturing purpose, they were entitled to six months' notice on the expiry of the contractual tenancy and on the creation of a tenancy by holding over. It was, therefore, contended that the determination of the tenancy by a month's notice was invalid. In this connection Section 116 of the Transfer of Property Act was pressed into service. Repelling this contention, the Supreme Court observed after referring to the judgment in *Ganga Dutt Murarka Vs. Kartik Chandra Das and Others*, thus (at page 821):

The act of holding over after the expiration of the term does not create a tenancy of any kind. If a tenant remains in possession after the determination of the lease, the common law rule is that he is a tenant on sufferance. A distinction should be drawn between a tenant continuing in possession after the determination of the terms with the consent of the landlord and a tenant doing so without his consent. The former is a tenant at sufferance in English Law and the latter a tenant holding over or a tenant at will. In view of the concluding words of Section 116 of the Transfer of Property Act, a lessee holding over is in a better position than a tenant at will. The assent of the landlord to the continuance of possession after the determination of the tenancy will create a new tenancy. What the section contemplated is that on one side there should be an offer of taking a new lease evidenced by the lessee or sub-lessee remaining in possession of the property after his term was over and on the other side there must be a definite consent to the continuance of possession by the landlord expressed by acceptance of rent or otherwise.

Again at page 823, the Supreme Court has further observed thus:

The basis of Section 116 of the Transfer of Property Act is a bilateral contract between the erstwhile landlord and the erstwhile tenant, if the tenant has the statutory right to remain in possession, and, if he pays the rent, that will not normally be referable to an offer for his continuing in possession which can be

converted into a contract by acceptance thereof by the landlord. We do not say that the operation of Section 116 is always excluded whatever might be the circumstances under which the tenant pays the rent and the landlord accepts it. We have earlier referred to the observations of this Court in *Ganga Dutt Murarka Vs. Kartik Chandra Das and Others*, regarding some of the circumstances in which a fresh contract of tenancy may be inferred. We have already held the whole basis of Section 116 of the Transfer of Property Act is that, in case of normal tenancy, a landlord is entitled, where he does not accept the rent after the notice to quit, to file a suit in ejectment and obtain a decree for possession and so his acceptance of rent is an unequivocal act referable only to his desire to assent to the tenant continuing in possession. That is not so where Rent Act exists, and if the tenant says that the landlord accepted the rent not as statutory tenant but only as legal rent indicating his assent to the tenant's continuing in possession, it is for the tenant to establish it. No attempt has been made to establish it, in this case as where is no evidence apart from the acceptance of the rent by the landlord, to indicate even remotely that he desired the Appellants to continue in possession after the termination of the tenancy. Besides, as we have already indicated the animus of the tenant in tendering the rent is also material. If he tenders the rent as the rent payable under the statutory tenancy, the landlord cannot, by accepting it as rent, create a tenancy by holding over. In such a case the parties would not be *ad idem* and there will be consensus. The decision in *Ganga Dutt Murarka Vs. Kartik Chandra Das and Others*, which followed the principles laid down by the Federal Court in *K.B. Capadia v. Bai Jerbai Warden* (1949) F.C.R. 262 is correct and does not require reconsideration. Indeed, in this case also, there is no attempt to show apart from the mere acceptance of the rent by the landlords, there was any desire on their part that the Respondents should continue in possession after the termination of the tenancy. In addition, in my view, the rent in the instant case had been paid only as rent payable towards the statutory tenancy with a view to avoid being removed from the premises for non-payment of rents and, there is nothing to indicate that the tenant tendered the rent and the landlords accepted it with the intention of creating a tenancy by holding over. In this case there could not have been any consensus *ad idem* as pointed out by the Supreme Court, because it is common ground that now both the Petitioners are entitled to the premises in question. In my view, there cannot be a tenancy by holding over in the instant case in view of the above considerations.

In *Kartar Singh and Others Vs. Tarlok Singh and Others*, it has been held (at page 36):

When permission to sub-let which was given in the lease deed itself, was for the fixed period of 20 years, and it automatically ended with the expiry of the period of lease. With the termination of the lease the terms and conditions contained therein were also extinguished. Besides if a lessee remains in occupation of the premises after the lease period is over, he becomes a statutory tenant and he is not, under the law authorised to sub-let the premises. Consequently, if the sub-

tenants continued on the property even after the expiry of the period of lease, then the tenants would be guilty of subletting without the written permission of the landlords.

6. In the present case, as pointed out already, the sub-letting itself was after the expiry of the period of lease, i.e., 19th July, 1958 and the second Respondent came into possession only in January 1960. Applying the principles laid down by the Supreme Court and referred to above it would follow that there is no tenancy by holding over u/s 116 of the Transfer of Property Act and the Petitioners cannot be resisted in their application for eviction on the ground that they had consented for sub-letting. The learned Counsel for the Respondent, however bring to my notice a judgment of the Calcutta High Court, in *Binani Properties Private Ltd. Vs. M. Gulamali Abdul Hossain and Co. and Others*, where Bijayish Mukherji, J., has held that:

Where there is a lease which embodies consent of the landlord for the purpose of sub-letting and the lease expires and the tenant holds over, the effect of such holding over u/s 116 of the Transfer of Property Act is that the lease is re-inducted with all its conditions and terms infact, in the absence of an agreement to the contrary.

7. Therefore, it was held that there was a tenancy by holding over with the same conditions of the expired lease which included the power to sub-let and consequently the learned Judge held that that power would save the tenants from an order of eviction being passed against them. In the instant case, as has already been pointed out, even at the time when sub-tenant came into possession, namely in January, 1960, the lease had expired very much before and in the instant case, there are certain features which would indicate that there could not have been a holding over with consensus ad-idem on the same terms u/s 116 of the Transfer of Property Act. Therefore the decision relied on by the learned Counsel for the Respondents will not be of any assistance.

8. Therefore, I am of the view that the tenants cannot be treated as tenants by holding over subject to the same rights and liabilities as were contained in the original lease deed of the year 1955, which admittedly expired on 19th July, 1958. Consequently, I hold that the sub-letting in the instant case is not permitted by the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. In this view, I hold that the Petitioners are entitled to an order for eviction. Accordingly, the orders of the Courts below are set aside and the civil revision petition is allowed with costs. Learned Counsel for the Respondent prays for three months" time for vacating the premises and the learned Counsel for the Petitioner has no objection to this course. Accordingly, the Respondents are granted three months" time to vacate the premises.