
(1955) 09 MAD CK 0006
In the Madras High Court

P.A. Aiyannah Chetty and Others

APPELLANT

Vs

Pala Muddukrishnayya and Co.

RESPONDENT

Date of Decision : 27-09-1955

Acts Referred:

Evidence Act, 1872 — Section 92

Citation : (1956) 69 LW 282 : (1956) 2 MLJ 54

Hon'ble Judges : Somasundaram, J

Bench : Division Bench

Judgement

Somasundaram, J.—This Civil Revision Petition is by the landlords against the Judgment of the Additional Judge, Court of Small Causes,

Madras, confirming the order of the Additional Rent Controller refusing to order eviction of the respondents herein.

2. The respondent company was occupying premises No. 84, Godown Street, G.T., Madras, as the tenant of the petitioner from 1928 onwards.

At the inception of the tenancy in 1928 there was nothing to indicate that there was any written lease between the parties. In 1943 there was a

written lease for a period of three years and this lease expired by 31st January, 1946. Subsequently there were negotiations between the parties

for the execution of a fresh lease. The landlords who are the trustees of a certain charity, known as Pappichetti Raghaviah Chetty's charities

through the manager of the charities sent a letter to the respondent for the purpose of executing a fresh lease which was more or less on the same

lines as that of the previous one. That letter is Exhibit R-1 (a). In reply to that letter the tenant, namely, the present respondent wrote a letter.

Exhibit R-3 was written by the Honorary Secretary of the charities on 28th of May, 1946, stating that one Sri G. Suryanarayana Chetty Garu has

been elected president of the charities and that the lease deed might be drafted on the same lines as before with slight alterations. The draft lease deed is Exhibit R-1 in the case and it contained a clause among other things that the lessees shall not assign, underlet or part with the possession of the premises, demised without the previous sanction of the lessors in writing. The tenant did not approve of this clause and so wrote Exhibit R-2, dated 20th November, 1946, stating that they have sent a copy of the lease deed with regard to Premises No. 84, Godown Street, after omitting the clause relating to sub-letting. It was further stated in that letter that this particular clause did not exist in the previous deed which was registered in 1943 and so it was requested that the new clause regarding sub-letting need not be inserted in the fresh lease deed. Finally, the draft of the lease deed as suggested by the respondent was accepted by the petitioner and the regular lease deed was executed on 28th February, 1947 and registered on 23rd June, 1947. The said lease deed is Exhibit P-8 in the case. It states that the lease shall be for a term of five years commencing from 1st February, 1946. The lease will expire by 31st January, 1951. But before the execution of this lease deed, the respondent let into possession two sub-tenants and therefore at the time of execution of the lease deed, P-8, there can be no doubt whatever that the respondent had sub-let the premises to two sub-tenants retaining a portion for themselves. In 1951 by Exhibit P-1 the president of the Charities caused a communication to be sent to the respondent wherein it was stated that the municipal authorities were revising the assessment and that this was because of the fact that the respondent was collecting rents from the sub-tenants. Further the respondent was asked to give particulars regarding the number of sub-tenants occupying the premises and the total amount of rent collected by them from such sub-tenants. The respondent sent a reply to this letter on 19th April, 1951, giving out all the particulars regarding the number of sub-tenants and the total monthly rents collected. Finally on the 4th of August, 1951, a notice was sent by the petitioner calling upon the respondent to quit and deliver vacant possession of the premises on the ground that the respondent had sub-let the premises without the written consent of the landlord. The premises not being vacated as required in the notice, Exhibit P-3, an application was filed before the Rent Controller which, as already stated, was dismissed and that order was

confirmed in appeal by the Additional Judge, Court of Small Cause, Madras.

3. It is clear from the evidence and other relevant documents in the case that the respondent was a tenant of the petitioner occupying premises No.

84, Godown Street, G.T., from 1928 onwards and that he had sub-let the premises to other tenants. In 1946 after the expiry of the lease under

Exhibit P-7 the respondent had sub-let portions of the premises to two persons, to one in March and to the other in August, 1946.

4. The petitioners have availed themselves of the sub-lease by the respondent for the purpose of evicting him. It is not disputed that at the time the

respondent sublet the premises in March and August, 1946, he had not obtained the consent of the landlords in writing. It may be mentioned that

by the time negotiations commenced in entering into a fresh lease in respect of the premises the Madras Buildings (Lease and Rent Control) Act

had come into existence by which a tenant cannot be evicted except on certain grounds provided in the Act. This was Madras Act XV of 1946

which came into force on the first of October, 1946. Under this Act there was no provision for the landlord to evict his tenant on the ground of

sub-letting. Under Sub-clause (2) of Section 7 it was provided that the Controller, after giving the tenant a reasonable opportunity of showing

cause against the application is satisfied that the tenant has after the commencement of the Act without the written consent of the landlord,

transferred his right under the lease or sub-let the entire building or any portion thereof the controller shall make an order directing the tenant to put

the landlord in possession of the building. Subsequent to this Act an amendment was introduced in 1951 by the Madras Act VIII of 1951 to

Section 7, Sub-clause (2), proviso 2; for the words, figures and letters ""after the 1st October, 1946"" the words, figures and letters ""after the 23rd

October, 1945,"" were substituted. After the commencement of the Act the tenant has no right to transfer his right under the lease or sub-let the

entire building or a portion thereof without the written consent of the landlord, if the lease does not confer any right on him to do so. If therefore

there was sub-letting without the consent of the landlord the controller can direct the tenant to-put the landlord in possession of the building. The

amendment came into force on 1st May, 1951. It is under this amended provision that the landlord now seeks to evict his tenant, the respondent.

Under the 1946 Act the landlord cannot ask for eviction of his tenant on the ground that he has sub-let the premises unless the sub-letting was after 1st October, 1946. Under the 1951 amendment the landlord can ask for eviction if the sub-letting is after 23rd October, 1945, without the written consent of the landlord. In the present case the sub-letting was in March and August, 1946 and was therefore not after the commencement of the 1946 Act. It was only by the subsequent amendment in 1951 that the landlord derived his right to evict the tenant on the ground that he had sub-let the premises without the written consent of the landlord at any time after 23rd October, 1945. What was not provided in the 1946 Act was specially provided for by the Madras Act VIII of 1951 and the landlord was given the right to evict his tenant on the ground that he had sublet the premises without his written consent under the new amendment. But under both the enactments, namely, the Madras Act XV of 1946 and the Madras Act VIII of 1951 the tenant has to obtain the written consent of his landlord before sub-letting the premises. In the present case it is not disputed that at the time, portions of the premises were sub-let in March and August, 1946, the respondent did not obtain the written consent of the petitioner. In these circumstances the question is whether the tenant can be evicted.

5. It was contended by the learned Counsel for the petitioners landlords that the terms of the statute are so clear and unambiguous that it could admit of only one interpretation, namely, that if there was sub-letting after 23rd October, 1945, without the written consent of the landlord then the landlord is entitled to evict his tenant notwithstanding the fact that he might have knowledge of sub-letting even earlier. Learned Counsel relies upon the terms of Sub-clause (2)(ii)(a) of Section 7 and urges that the sub-letting in the present case being after 23rd October, 1945, the landlord is entitled to evict the tenant on the sole ground that the tenant has not obtained the written consent of the landlord for sub-letting.

6. This argument of the learned Counsel for the petitioners is met by the learned Counsel for the respondent by contending that there was no sub-lease under the lease and that the sub-letting had been with the knowledge and acquiescence of the landlords and therefore the petitioners are estopped not only from questioning the sub-lease but that the provisions of Sub-clause (2)(ii)(a) of Section 7B of the Rent Control Act cannot

apply to the facts of the case.

7. With regard to the first contention that it was not a sub-lease under the lease it is pointed out that in between 1st August, 1946 and 1st

February, 1947, the tenancy was only on a monthly basis and it was only after the execution of the lease deed on 28th February, 1947, it became

a lease for a period of five years and that as the respondent had not sub-let portions of the premises after 28th February, 1947, the date of the

lease Sub-section (ii)(a)(2) of Section 7 of the Act would not apply. But the terms of the lease are clear that the lease was for five years from 1st

February, 1946 and according to the terms of the lease it would run from 1st February, 1946 to 31st January, 1951. Though the lease, as a matter

of fact, was executed on 28th February, 1947 and was registered still later on in June for the purpose of law it has to be construed as a lease from

1st February, 1946, for a period of five years. The mere fact that the lease was executed and registered subsequent to 1st February, 1946, would

not make the lease operative only from the date of its execution when both sides have agreed that the lease should run from 1st February, 1946,

for a period of five years. If the lease is treated as one for a period of five years from 1st February, 1946, then certainly the sub-letting is after 1st

February, 1946 and so it is a case of sub-letting under the original lease so that the provisions of Sub-clause (ii)(a)(2) of Section 7 of the Act will

apply. Assuming for a moment that the lease commenced only from 28th February, 1947, then it must be a monthly lease from 1st February,

1945, till 28th February, 1947. If that is so then sub-letting was during the period of the monthly lease without the consent of the landlord in writing

in which case also the provisions of (ii)(a)(2) of Section 7 of the Act will apply so that there is no force in the contention of the learned Counsel for

the respondent that there was no sub-letting under the lease. Looked at either way it seems to me that there was sub-letting under the lease. It is

next contended that the petitioner knowing that there was sub-letting by the respondent had agreed to give the lease for a period of five years and

that a clause in the draft lease relating to restriction in respect of sub-letting was omitted at the desire of the respondent and such being the case it

must be deemed that the landlord had given implied authority to the tenant to sub-let portions of the premises. Assuming for a moment that this

implied authority can be inferred from the circumstances, namely, that the landlord wanted a clause to the effect that the lessees shall not assign, under-let or part with the possession of the premises demised without the consent of the lessors in writing to be introduced in the lease deed, but that was not agreed to by the tenant and consequently this clause was withdrawn, the question is whether that will be sufficient to meet the requirements of the law regarding sub-letting under the provisions of the Madras Buildings (Lease and Rent Control) Act. In fact it was pointed out by Mr. Thyagarajan, learned Counsel appearing for the respondent, that in cases where documents are silent about these matters, oral evidence can be let in u/s 92 of the Evidence Act and that it is open to the Court to infer from the circumstances whether there was any oral agreement or implied authority for sub-letting. Assuming that both the possibilities are inferred in favour of the tenant the next question is whether that will meet the requirements of the statute. The section clearly says ""without the written consent of the landlord"". There is no ambiguity about it. The right, that is referred to in (ii)(a)(2) of Section 7 of the Rent Control Act has to be read along with Sub-section (2). If the lease does not confer any rights of sub-letting, in the context it can only mean that the consent must be in writing. Under the ordinary law a tenant or lessee has a right to sub-lease the property. But this right was taken away under the Act. In the lease deed there must be a specific clause authorising the tenant to sub-let the premises and in the absence of any such specific clause it cannot be said that the right, the tenant enjoys under the ordinary law with regard to sub-letting can be inferred. The Madras Buildings (Lease and Rent Control) Act curtails, abridges and modifies the ordinary law relating to landlord and tenant and the Act has, therefore, to be construed strictly. No doubt, the policy of the Legislature was that the rights of the tenants should not be affected unreasonably but subsequent experience showed that some benefits be conferred on the landlord also. It was with that object in view, that an amendment was introduced in 1951 by the Madras Act VIII of 1951 by which certain rights coupled with certain duties and liabilities were given to the landlord. It cannot be said that this law was intended mainly for the benefit of the tenants and therefore, every section in the statute must be construed only in favour of the tenant and against the landlord. The Act has to be taken as not merely conferring certain benefits on the

tenant but also affording protection to the landlord. In short the ordinary rule of interpretation which has to be applied to enactments, namely, that

the provisions of the statute are to be strictly construed are not in any way affected by the policy of this enactment. If the strict rule of interpretation

is applied there can be no doubt that on the facts of the present case there was sub-letting by the respondent during March and August, 1946,

without the written consent of the landlords (the petitioners herein).

8. The next point for consideration is whether the landlord is estopped from availing himself of the provisions of Sub-clause (ii)(a), of Sub-section

(2) of Section 7 of the Act by his knowledge of sub-letting and implied permission as contended by the learned Counsel for the respondent. That

there can be no estoppel against a statute is clear from the decision in"" Miss Dottie Karan v. Rai Bahadur Lachim Prasad Sinha (1930) 60 M.L.J.

441 where it was observed as follows:

Their Lordships are of opinion that they cannot constitute any estoppel in this case having regard to the fact that express provisions of the

Registration Act have not been complied with.

9. There is also the well known proposition that there can be no estoppel against the provisions of a statute. Learned Counsel for the respondent

contends that in this case the petitioner must be considered to have acquiesced or contracted out of the statute waiving his privileges under the

statute and he relied for this position on the decision in S. Raja Chetty and Another Vs. Jagannathadas Govindas and Others, .

10. Assuming that there can be a waiver the question is whether there is such a waiver in this case. Merely from the circumstance that a clause,

viz., that the lessees shall not assign, let or part with possession of the premises demised without the previous sanction of the lessors which was

sought to be introduced by the petitioner in the lease deed was later on dropped at the request or desire of the tenant it cannot be inferred that the

landlord had waived his right under the Act.

11. The next argument of the learned Counsel for the respondent was on the plea of equity. He contended that the respondent has been in

occupation of the premises in question from 1928 onwards sub-letting portions of the premises to others at reasonable rent and that in the absence

of any complaint that the respondent has been making profits by sub-letting, it is

not equitable to evict him. I would certainly have upheld this contention if it were a case under the ordinary law. But this is a case under a special enactment which curtails the rights of the owner in property to a very great extent. In interpreting or applying the provisions of the special enactment no question of equity arises. I do not, therefore, agree with Mr. Thyagarajan that this case should be governed by the principles of equity. I hold that the premises in question has been sub-let by the respondent without the written consent of the landlord, the petitioner after September, 1945 and, therefore, the landlord is entitled to evict the respondent on that ground. The orders of the Rent Controller and the Additional Judge, Court of Small Causes, are hereby set aside and there will be an order for eviction. The Civil Revision Petition is allowed with costs both here and in the Courts below. Time for vacating the premises six months.