

(1994) 07 SC CK 0117

In the Supreme Court Of India

Case No : Civil Appeal No. 2461 Of 1984

Ramchandra Bhausahab Gawde (Dead) by Lrs.

APPELLANT

Vs

Sakrulla Rasulbux

RESPONDENT

Date of Decision : 27-07-1994

Acts Referred:

Citation : (1995) 4 SCC 637 Supp

Hon'ble Judges : S. Mohan, J; S. C. Agrawal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal arises out of a suit for eviction filed by the respondent in respect of the premises of which he is a tenant. The case of the respondent was that the appellant was inducted as a licensee in the premises on 21/4/1961 and the said licence was terminated on 20/3/1964. It has, however, been found that the appellant was inducted as a sub-tenant on 21/4/1961. The said suit was dismissed by the trial court on the principle of pan delicto for the reason that the sub-tenancy was illegal having been prohibited under Section 15(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the "Act"). On appeal the learned Single Judge of the High court decreed the suit and held that although the sub-tenancy in favour of the appellant was prohibited in view of Section 15(1) of the Act the respondent could not be non-suited on the basis of the principle of pari delicto because the respondent was not placing reliance on the sub-tenancy and it was the appellant who was relying on the same. The letters patent appeal filed by the appellant against the judgment of the learned Single Judge was dismissed in limine

2. During the pendency of this appeal Section 15 of the Act has been amended by Maharashtra Act No. XVIII of 1987. The relevant provisions as contained in Ss. (2) of Section 15, as amended, read as under:

"15. (2) The prohibition against the sub-letting of the whole or any part of the

premises which have been let to any tenant, and against the assignment or transfer in any other manner of the interest of the tenant therein, contained in Ss. (1), shall, subject to the provisions of this sub-section, be deemed to have had no effect before the 1st day of February, 1973 in any area in which this Act was in operation before such commencement; and accordingly, notwithstanding anything contained in any contract or in the judgement, decree or order of a court, any such sub- lease, assignment or transfer of any such purported sub-lease, assignment or transfer in favour of any person who has entered into possession, despite the prohibition in Ss. (1), as purported sub-lessee, assignee or transferee and has continued in a possession on the date aforesaid, shall be deemed to be valid and effectual for all purposes, and any tenant who has sub-let any premises or part thereof, assigned or transferred any interest therein, shall not be liable to eviction under clause (e) of Ss. (1) of Section 13.

The provisions aforesaid of this Ss. shall not affect in any manner the operation of Ss. (1) after the date aforesaid."

3. As a result of the said amendment the sub-lease which was created prior to 1/2/1973 has been given legal recognition and sub-tenants under such sub-leases have been granted protection from eviction. Since the sub-tenancy in favour of the appellant in the present case was created prior to 1/2/1973 he is entitled to protection from eviction under Section 15(2) of the Act. In that view of the matter the suit filed by the respondent must fail.

4. The appeal is, therefore, allowed. The judgment and decree of the learned Single Judge of the High court dated 23/3/1984 in First Appeal No. 445 of 1975 as well as the order passed by the division bench of the High court on 16/4/1984 in LPA No. 30 of 1984 are set aside and the suit filed by the respondent against the appeal is dismissed. No order as to costs.