
(1983) 08 MAD CK 0053

In the Madras High Court

Case No : C.R.P. No's. 727 and 728 of 1982

Rupalochani Saraswathiammal and Others

APPELLANT

Vs

Sundaranarayanan and Others

RESPONDENT

Date of Decision : 17-08-1983

Acts Referred:

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

Citation : AIR 1984 Mad 266 : (1984) 1 MLJ 366

Hon'ble Judges : Ratnam, J

Bench : Single Bench

Judgement

1. In these revisions, the correctness of the, order of eviction passed against the petitioners in R. C. O. P. 106 of 1974 and 78 of 1977, by the Rent Controller, Salem, and confirmed in, C. M. A. 20 and 21 of 1981 by the Appellate Authority (Sub Court), Salem, is questioned. The facts may now be briefly stated. The first respondent in these revision petitions is the owner of the properties forming the subject matter of these revisions. On 29-9-1965, a lease in favour of the second respondent herein for a non-residential purpose, namely, for the purpose of running an X-ray clinic on a monthly rental of Rs. 150/- was given in, respect of one of the items. Again on 1-4-1966, a lease was granted to the second respondent herein on a monthly rental of Rs. 25/- for non-residential purposes, in respect of another item. In so far as the lease dated 29-9-1965 is concerned, it was specifically granted only for the running of an X-ray clinic. There was also a prohibition regarding the subletting of the premises. In the subsequent lease of 1-4-1966, the, premises let out was described as a shop and the period of letting was 4 years and 8 months and subletting was prohibited. The two items are situate contiguously and really form one block. Even after the expiry of the period under the lease deeds dated 29-9-1965 and 1-4-1966, the second respondent was allowed to continue in the premises on the same terms. The first petitioner is the wife of the second respondent and the second and third petitioners are the sons of the second respondent. Misunderstandings and disputes having arises between the second respondent on the one hand and the

petitioners on the other, the second respondent executed a settlement deed on 19-1-1972 in respect of the X-ray clinic, among other items of Properties. According to the first respondent the execution of the settlement dated on 19-1-1972, by the second respondent in favour of the Petitioners was not known to him until the receipt of a notice dated 22-1-1974, by him from the first petitioner. Claiming that the transfer of possession of the premises where the X-ray clinic was situate by the second respondent in favour of the petitioners without his knowledge and consent and a transfer in turn by the petitioners in favour of the third respondent in the revisions would amount to subletting, that the petitioners had converted the premises in their occupation for purposes of residence without his consent been also been using it for a purpose other than that for which it was leased out and that the Petitioners had also committed wilful default in the payment of rents from November, 1973 till May, 1974, the first respondent filed R. C. O. P. 106 of 1974 Praying for an order of eviction against the petitioners herein and the second and third respondents as well.

2. Though initially the second respondent stated in his counter that he continued as a tenant even after the settlement deed by paying the rent to the first respondent and that, there was no wilful default or subletting or conversion of the building for a different user, he remained *exparte* at the time of the enquiry. To the counter filed on behalf of the petitioners, they contended that the second respondent was using the premises for residential as well as non-residential purposes, that after the settlement by the second respondent in favour of the petitioners on 19-1-1972, the first petitioner was paying the rent to the first respondent and that under those circumstances there was no subletting by the second respondent in favour of the Petitioners, that the petitioners had leased only the machineries to the third respondent and not the premises, that the third respondent had also surrendered, possession of the machineries even on 23-4-1974, that there was no default or wilful default in the payment of rents and that the different user of the premises is not true and, therefore no ground was established for evicting the petitioners.

3. On a consideration of the oral as well as the documentary evidence, the learned Rent Controller found that though there was no wilful default in the payment of rents, yet, subletting without the consent of the landlord and the user of the Premises for a purpose other than that for which it was let out had been established. On, this conclusion, an order for eviction was passed against the petitioners. Aggrieved by that, the petitioners preferred an appeal in C. M. A. 20 of 1981 to the Appellate Authority (Principal Subordinate Judge, Salem). On a reappraisal of the evidence, the Appellate Authority concurred with the conclusions of the Rent Controller and dismissed the appeal. It is the correctness of this that is challenged in C. R. P. No. 727 of 1982.

4. It is now necessary to advert to the circumstances giving rise to C. R. P. 728 of 1982. During the pendency of R. C. O. P. 106 of 1974, according to the first respondent, the petitioners altered the premises in their occupation and inducted

into possession a cloth shop under the name "Thangam Silk Palace", and this, according to the first respondent, would amount to subletting and also conversion of the premises for a different use and in R. C. O. P. 78 of 1977, the first respondent prayed for an order of eviction. This application was resisted by the petitioners on the ground that according to the terms of the tenancy, the second respondent was permitted to use the premises for the X-ray clinic and also for residential purposes and that a new business under the name and style of "Thangam Silk Palace" had been started as the X-ray clinic could not be run and that that cannot be characterised to be a subletting of the premises or the user or conversion of the premises for a different purpose, which would justify the passing of an order for eviction against the petitioners.

5. The learned Rent Controller considered the claim of the first respondent as well as the petitioners on the basis of the materials placed before him and upheld the claim of the first respondent and directed the eviction of the petitioners. Aggrieved by this, the petitioners preferred an appeal in C. M. A. 21 of 1981, before the Appellate Authority (Sub Court), Salem and the Appellate Authority found that the Premises had been put to a different user and that the order for eviction cannot be taken exception to. In this view, the appeal preferred by the petitioners was dismissed confirming the order of eviction. In C. R. P. 728 of 1982, the correctness of this order is questioned.

6. The principal contention urged by the learned counsel for the petitioners in these civil revision petitions is that the execution of the settlement deed by the second respondent in favour of the petitioners would not amount to a sub-lease of the premises leased out in favour of the second respondent by the first respondent and, therefore, the authorities below were in error in ordering the eviction of the petitioners on that ground. Elaborating this submission, the learned counsel submitted that it should be established that the second respondent had, by an act of sub-leasing, parted with the property leased out in his favour for valuable consideration and in its absence, subletting as a ground for passing an order of eviction against the Petitioners cannot be stated to have been established. On the other band, the learned, counsel for the first respondent would submit that t under the lease deeds Ext. A.1 dated 29-9-1965 and Ext. A-2, dated 1-4-1966, there was a specific prohibition that the second respondents should not sublet the premises to any body else, that the legal effect of the execution of the settlement deed would be to substitute the petitioners in the place of the second respondent as persons entitled to remain in legal possession of the property and since such possession had been given by the second respondent to the petitioners, without the consent in writing of the first respondent, though under the guise of a settlement deed., it would nevertheless in law amount to subletting, leading to the consequence of such subletting as provided in the TamilNadu Buildings (Lease and Rent Control) Act.

7. Exhibits A1 and A2 clearly state that the second respondent is entitled to remain in possession of the properties leased cut to him. Apart from this, there is

also a clear interdict against the second respondent parting with the possession of the Properties in favour of anybody else. It may be that the petitioners stand in a very close relationship to the second respondent, but the jural relationship for purposes of the Act between the petitioners and the second respondent cannot be considered with reference to their blood relationship. So looked at, in spite of a definite term in the lease addressed to the second respondent not to part with possession of the premises leased out to him, he had proceeded to put the petitioners in possession of the premises resorting to the device of a settlement deed in their favour. Whatever may be the form of transaction resorted to for the purpose of transferring the possession of the premises from the second respondent to the petitioners, it is obvious that legal possession of the premises was given by that transaction to the petitioners without the consent of the first respondent in writing and in the teeth of the prohibition contained in Exts. A1 and A2. That would, in my view, suffice to satisfy the requirements of subletting for purposes of securing an order for eviction on the very ground. It is not in dispute that the petitioners are in possession of the premises let out to the second respondent by, the first respondent. unless it be that the second respondent had divested himself of possession and had put the petitioners in possession, the petitioners cannot otherwise account for their possession. It may be that the change of possession did not take place through the form of a lease as such. Yet, in law, the transfer of legal possession from the second respondent to the petitioners, though effected through the medium of a deed of settlement would nevertheless have the effect of sub-lease in favour of the petitioners by second respondent. It is not the case of the petitioners that the first respondent permitted them to remain in possession of the property pursuant to the deed of settlement executed by the second respondent in favour of the petitioners under Ext. A4 dated 19-1-1972, the original of which is Ext. B14. In view of this, the admitted possession of the petitioners cannot be otherwise explained except by an act on the part of the second respondent in having parted with his possession without the consent in writing of the first respondent in favour of the petitioners and that would suffice to satisfy the requirements of the Provision under the Tamil Nadu, Buildings (Lease and Rent Control) Act. Under those Circumstances, the authorities below were quite justified in holding that the second respondent had subleased the premises in favour of the petitioners and in ordering their eviction.

8. The matter may also be looked at differently. The authorities below did not accept the case of the petitioners that after they came into possession of the premises they had been paying the rents to the first respondent. Exhibits B1 to B12 relied on by the petitioners in this connection were rejected. Even assuming the petitioners can be considered to be the tenants of the first respondent, it is seen from the materials that the petitioners had not been running the X-ray clinic with effect from 29-12-1972. Exhibit A6 dated 29-12-1972 is the lease deed executed by the petitioners in favour of the third respondent for the purpose of running the X-ray clinic. The petitioners have not in any manner disputed the

execution of Ext. A6, but would contend that the lease was only in respect of the machinery and not the premises. In addition, the petitioners had also pleaded that the third respondent had surrendered possession of the machineries on 23-4-1974 and under those circumstances, there could not be any subletting by the petitioners in Rupees 540/- and the admitted rent payable by the second respondent to the first respondent for the premises is Rs. 140/-. Evidently, the sum of Rs. 406/- represents the rent for the machinery and Rs. 140/- the rent for the premises. It is, therefore, not possible to accept the stand taken by the petitioners that only the machinery had been leased out. In addition, it may be useful in this connection to refer to the decision in *M. Rodgers Vs. M. Prakash Rao Naidu*, . In that case also an order for eviction was prayed for on the ground of subletting of a premises wherein a press was housed. It was pleaded that there was only a lease of the machinery and, therefore, there was no question of subletting the premises. Repelling this stand of the tenant, *Alagiriswami, J.* held as under: -

"The machinery cannot be run unless it re placed in the premises where it is situate. So, the lessee of the machinery also gets the advantage of the: use of the business premises also. Therefore, the lease amount which the lessor receives should contain in it an element of rent for the building which is used to house the machinery as well as the rent for the use of the machinery. This is mere commonsense;"

The aforesaid, observation would apply to the instant case also and therefore, it follows that this is only a case of subletting of the premises and not the machinery only as claimed by the petitioners.

9. Even on the footing that the third respondent had surrendered on 23-4-1974, the petitioners cannot escape the consequence of the subletting. All that the relevant provision of the Act requires is that after 23-10-1945, the tenant should have sublet The premises without the written consent of the landlord and when once that requirements satisfied, the protection afforded to the tenant is forfeited and he renders himself liable to be evicted. It is not the, further requirement of the Statute that the sublessee must continue to remain in possession continue the property sub-leased during the entire course of the eviction petition. This has also been clearly laid down in the decision of this Court in *K.M. Mohammed Yusuf Zulaika Unima and Others Vs. P.A. Abdul Khader (Died) and Another*, . Therefore, viewed at any point pf view, the petitioners have either come into possession as sublessee from the second respondent or, have sub-leased the property in favour of the third respondent with out the contest in writing of the first respondent. That is sufficient to establish the order of eviction passed against the petitioners.

10. The learned counsel for the petitioners next contended that there is no evidence to show that the premises had been converted and put to residential purposes. It is seen from the lease deeds Exts. A1 and A2 that at the inception the purpose of the lease was only non-residential Indeed Exhibits A1 and A2

clearly recite this. It is further seen from the report of the Commissioner marked as Ext. A14 and also the admission made by the petitioners in the evidence that a portion of the premises is used for residential purpose. Obviously, therefore, in the present case, the premises had been used for a purpose other than that for which it was let out. Bearing in mind the principles laid down by the Full Bench in *T. Dakshinamoorthy Vs. Thulja Bai and Another*, and taking into account the recitals in the lease deeds Exts A1 and A2," it is manifest that the purpose of The lease under Exts. A1 and A2 is only non-residential and in view of the undisputed use of a portion of the building for residential purposes, such user by the petitioners would be a different user. In other words, the petitioners have used the premises for residential purpose which is very different from the purpose for which the premises had been let out to the second respondent namely, non-residential user. On this ground also, the first respondent is entitled to an order of eviction.

11. It has earlier been noticed how even in the counter in R. C. O. P. 78 of 1977, the petitioners have admitted that they have started a new business under the name and style of "Thangam Silk Palace" as they could not run the X-ray clinic. Though under Ext. A1 the premises had been let out, for the specific purpose of carrying on the X-ray clinic, yet, under Ext. A2, the shop had been let out as such without specifying any particular business.

12. Encouraged by this, the learned counsel for the petitioners contended that since there is no restriction about the nature of the business, to be carried on in the premises leased out under Ext. A2, the carrying on of the cloth business "Thangam Silk Palace", cannot be taken exception to by the first respondent. In my view, it is not really necessary to go into the question of sub-letting and premises for residential purpose when the premises had been let out for non-residential user would suffice to give relief to the first respondent and maintain the order of eviction. Consequently the civil revision petitions fail and are dismissed with costs in C. R. P. 727 of 1982.

13. The learned counsel for the petitioners requests that the petitioners may be granted some time to enable them to vacate the Premises in their occupation. The learned counsel for the first respondent has no objection to grant two months' time for this purpose. Accordingly the petitioners will have two months' time from this day to vacate and handover vacant possession of the premises in their occupation to the first respondent.

14. Petitions dismissed.