

(1996) 11 MAD CK 0009
In the Madras High Court
Case No : C.R.P. No. 929 of 1995

S. Jainmul Jain and Suraj Bal

APPELLANT

Vs

A.R. Nagarajan and M/s Premier Shipping Service 259,
Thambu, Chetty Street, George Town, Madras, 600 001

RESPONDENT

Date of Decision : 29-11-1996

Acts Referred:

Evidence Act, 1872 — Section 16

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 25, 7

Citation : (1996) 11 MAD CK 0009

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : T.R. Mani, for M/s S. Narayanan and T.M. Hariharan, for the Appellant; P. Veeraraghavan, Advocate for the 1st Respondent, for the Respondent

Final Decision : Allowed

Judgement

S.S. Subramani, J.—Landlords who failed before the Authorities below, have filed the Revision Petition before this Court, challenging the

legality of the orders of the Authorities below, invoking the powers under Sec. 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act,

1960 (Act 18 of 1960). Material averments that are required for disposal of this Revision Petition may be stated as follows:-

Petitioners are man and wife, and the schedule property belong to them. It is their case that the first respondent herein is a tenant under the

petitioners on a monthly rent of Rs. 1,000/- payable on the first of every month according to English Calendar. It is stated that the first respondent

is a chronic defaulter in paying rent, and only after lawyer's notice dated 24.11.1988, a reply was sent by him stating that he was arranging to send

the rent. Again he defaulted in paying the rent from May 1989 to December, 1989 (eight months), amounting to Rs. 8,000/-. It is said that in spite

of notice, no payment was made by first respondent towards rent. He is, therefore, a wilful defaulter. It is further said that the second respondent is

a sub-lessee who is occupying a portion of the premises in question. Notices were sent to both the respondents and were acknowledged by them.

In para 8 of the petition, a specific averment has, been made which reads thus:-

The tenant is only the first respondent although he describes himself as partner of Keerthi Warehousing Corporation". For the above reasons,

eviction petition was filed.

2. In the counter statement of the first respondent, it is said that there is a lease agreement dt. 21.3.1985, which is executed between petitioners

and one G. Sureshkumar, for the purpose of business of Messrs. Keerthi Warehousing Corporation. At that time, the rent was Rs. 800/-. Under

the said agreement, Rs. 10,000/- was received as advance. It is further said that the petition schedule building is occupied by the business concern

Messrs. Keerthi Warehousing Corporation and the petitioners are also aware of the same. After retirement of Sureshkumar from the partnership,

petitioners were informed about the same, and they were requested to transfer the advance amount of Rs. 10,000/- to the name of the firm,

namely, Keerthi Warehousing Corporation. In his letter dt. 1.6.1987 also, such a request was made by first respondent. Petitioners have not made

any attempt to execute any fresh rental agreement. It is said that it is only Keerthi Warehousing Corporation that has been remitting the rent from

July, 1988 and, therefore, it is the firm that is the tenant, and not the first respondent alone. The allegation that he is a chronic defaulter is also

denied. In paragraph 3 of the Counter Affidavit, it is said that on account of the change in the constitution of the firm and certain other routine

business matters, rent from May, 1989 could not be paid. The same was brought to the notice of the petitioners, and they agreed to receive the

same after some time. When there was such an understanding the petitioners have no right to file the petition for, eviction. It was further said that

the second respondent is associated with 1st respondent as a consultant in their business, and it has not been given exclusive possession. He is not

a tenant and, therefore, there is no question of any sub-lease. It was further

explained that tenancy entered into by the petitioners with Sureshkumar was on behalf of the partnership and therefore, without impleading the partnership, petition is not maintainable. It is said that the claim of the petitioners is lacking in good faith. Second respondent has been impleaded unnecessarily. They are not entitled to any relief.

3. An additional counter-affidavit was filed by first respondent alleging that the Rent Control has no jurisdiction, since on the date of petition, five years had not expired after construction of the building. Therefore, it was exempted from the purview of the Act.

4. Parties went on trial on the above pleadings. As per order dt. 10.4.1992, Rent Controller dismissed the petition. Rent Controller found that he

has got jurisdiction, and eviction petition was maintainable before him. It was further found that Messrs. Keerthi Warehousing Corporation is the

tenant, and without impleading it, the petition is not maintainable. The petitioner has impleaded First respondent in his individual capacity and not

representing the firm. It further found that even though various demands were made by respondents to have the tenancy changed in the name of the

firm, since the petitioners kept silent, an inference of acceptance that the firm is the tenant is correct. The question whether the second respondent

is sub-tenant or (sic) was not considered in view of the fact that the petition is dismissed as not maintainable.

5. When the matter was taken in appeal, all the findings of the Rent Controller were confirmed. It is this concurrent judgment that is challenged in this Revision.

6. Even though it is a concurrent finding, if the Authorities below have gone wrong in considering the material evidence before them and

misinterpreted the same, decisions of the Authorities below are liable to be interfered with.

7. When there is admission and conclusive evidence to prove that the landlord and tenant relationship is there between the parties, according to

me, it was not legal to hold that some other person is a tenant. I give the reasons below, for upsetting the concurrent findings of the Authorities

below.

8. The building admittedly belongs to the petitioners, and sometime in 1985, the same was let out to Sureshkumar. Sureshkumar was also at a

partner of Messrs. Keerthi Warehousing Corporation. Under Ex.R7 dt. 1.4.1980, a firm was constituted, in which Sureshkumar is also seen as a

partner. Tenancy began long after the constitution of the firm. A reading of Ex.R7. makes it clear that Suresh Kumar is not the Managing Partner.

Even though he was a partner, it is seen from Ex.R6. that the rent deed was executed in his personal name. On 11.5.1987, Sureshkumar, retired

from the firm. After retirement, first respondent wrote a letter to the first petitioner stating thus:-

Sub: change of rental agreement in favour of our firm.

Then it says:-

...The rental agreement for the portion of Third Floor, 259, Thambu Chetty Street, Madras 1. let out by you for our use was made out in the

personal name of one of our partners Mr. G. Sureshkumar.

We would like to inform you that Mr. G. Suresh Kumar has resigned from the partnership of our firm with effect from 11.5.1987 and therefore we

request you to kindly arrange to make out a fresh agreement in our firm's name and send the same to us for our execution. The deposit amount of

Rs. 10,000/- paid by him at the time of execution of the agreement may also be transferred in our name. We enclose herein the original letter

addressed to you by him, in this connection.

This letter is signed by first respondent as partner of Messrs. Keerthi Warehousing Corporation. Along with this letter, the letter written by

Sureshkumar is also enclosed. The letter written by Sureshkumar to the 1st respondent is marked as Ex.R5. That letter is addressed to the

petitioners herein. In second paragraph of that letter, it is said thus:-

The Rental Agreement in respect of the Office premises at 3rd Floor, 259, Thambu Chetty St., Madras 1. was entered into by me, with you and

the advance of Rs. 10,000/- was paid by me, "only on behalf of the firm M/s Keerthi Warehousing Corporation" and therefore, I request you to

kindly transfer the said agreement and the deposit in the name of M/s Keerthi Warehousing Corporation, Madras 1.

Exs. R1 to R4 are various rent receipt issued in the name of the first. respondent wherein he is addressed as "A.R. Nagarajan, C/o Keerthi

Warehousing Corporation". These are the main exhibits which require interpretation by this Court.

9. From Exs. R5 and R6, it is clear that the original rental arrangement was only with Sureshkumar. The rate of rent was Rs. 800/- on that date.

After he retired or resigned from the firm, first respondent herein was treated as tenant by petitioners. "Exs. R1 to R4 makes it clear that the

petitioners treated only A.R. Nagarajan as tenant, and not the firm. If the firm was the tenant, naturally, the receipt would have been issued in the

name of the firm and not in the name of the first counter-petitioner. Only while describing his address, it is stated as "C/o. Keerthi Warehousing

Corporation". By describing as "C/o. Keerthi Warehousing Corporation", petitioners were definite that they are not treating the firm as tenant, but

only Nagarajan as their tenant. Even the original tenancy was only with the individual is clear from Exs. R5 and R6. If Sureshkumar was

representing the firm and the firm was the tenant, there was no necessity for seeking transfer of the said agreement in the name of the firm and also

for requesting that the advance paid by him may also be transferred to the account of the firm. Along with the same, in Ex.R6 the first respondent

himself has admitted that Sureshkumar alone was the tenant. That is why he used the words "Change of rental agreement in favour of our firm", and

further down, it is said, "Let out by you for our use was made out in the personal name of our partner." So, the rental agreement was taken

personally is admitted by him, though the premises might have been used to the knowledge of the petitioner for the use of the firm. If the original

agreement itself was in the name of the Firm, there was no necessity for a fresh agreement as requested, and there was no further necessity for

transfer of the advance amount in the name of the firm.

10. Authorities below assumed that from the very inception, the firm was using the schedule premises to the knowledge of the petitioners and,

therefore, Sureshkumar as well as the first respondent can represent only the firm. When a written document is before Court, the Authorities below

were not right in assuming something.

11. Learned counsel for the respondents submitted that from 1988 onwards, rent was being paid only by the firm, and cheque was also being

issued only by it. Petitioners have not taken any objection in getting the cheque drawn by the firm and, therefore, landlord and tenant relationship is

created by acceptance of rent from the firm.

12. I cannot agree with the said submission. As said in the decision reported in Sheodhari Rai and Others Vs. Suraj Prasad Singh and Others, , if

the parties never had the intention of creating a relationship of landlord and tenant, the mere payment of rent will not create such a relationship. In

paragraph 5 of the judgment, at page 760, their Lordships said that payment of rent does not necessarily establish a landlord and tenant

relationship. The conclusions of Patna High Court which were fully approved by their Lordships of the Supreme Court were extracted in

paragraph 5 of the said judgment.

They read thus:-

In the ultimate analysis the position reduces itself to this: (1) that settlement of the disputed lands with the defendants first party in shikmi has not

been established;

(2) nor has it been established that they have ever paid any rent as Shikmidars in respect of the disputed lands;

(3) that As Kinsmen of the defendants second party, they were cultivating the lands and paying rents payable in respect of them to the proprietors

by virtue of an arrangement for permissive occupation;

(4) That any relationship of landlord and tenant was never contemplated between them....

(Emphasis Supplied)

The said decision was followed by the Supreme Court in Jt 1988 (1) S.C. 371 (Hiatal Kapur v. Shri Prabhu Choudhury). In that case, an

advocate wanted eviction of his tenant. Tenant contended that a portion of his premises is in the hands of society of which he is General Secretary,

and another portion in his occupation as a tenant. It was his contention that there are two tenancies, one in his individual name, and the other in the

name of the Society. The said contention was disputed by the landlord. The landlord proved that the original tenancy which was oral, was only

with the tenant in his individual capacity and not in favour of the Society. It was vehemently contended by tenant that for years together rent was

paid in two cheques, one in his individual name and the other as Secretary of the Society, and the total amount covered by these two cheques

covered the monthly rent payable for the building. An argument was advanced that since the landlord was accepting the cheque issued by the

Society, that amounts to accepting the tenancy. The said contention was repelled in paragraph 7 of the judgment, which reads thus:-

We are inclined to agree with this submission of the landlord. The initial tenancy was only an oral tenancy. Nevertheless there were two witnesses

who deposed that the original tenancy agreement was only between the petitioner and the respondent. At that time, admittedly, there was no

question of Balkunj being the tenant in respect of any portion of the premises. All that the respondent says is that subsequently cheques were being

issued in the name of Balkunj also and that this must be taken to lead to an inference that the petitioner had accepted Balkunj as its tenant. It is

very difficult to accept this argument. It is no doubt true that the rent has been paid by two cheques since November 1976, but the mere payment

of rent by two cheques, in the circumstances of this case, cannot mean that there were two tenancies. The landlord was entitled to a rent of Rs.

600 p.m. and so long as he got this amount, it was immaterial for him whether the amount was paid in a lump sum or by cheque or more than one

cheque and who the makers of the cheque were. It is not unusual to come across cases where a tenant pays the rent not by a cheque drawn by

himself but by a cheque drawn by some other concern in which he has an interest such as a partnership concern, A limited company or other entity

in which he is interested. So, the mere fact that for some reason the respondent chose not to issue a single cheque for the rent of Rs. 600/- but that

he gave two separate cheques, one for Rs. 250/- drawn by himself and one for Rs. 350/- drawn in the name of Balkunj cannot lead to an

irresistable conclusion that the tenancy ""was created in favour of Balkunj with the concurrence of the landlord. The letter dt. 26/11/68, far from

clinching"" the respondent's claim, as held by the High Court, does not in our view improve the tenant's case at all. It only evidences the fact that

the landlord was receiving the cheques issued in the name of the trust in discharge of the respondent's obligation to pay the rent of Rs. 600 p.m. It

is also true since the landlord was also occupying a part of the ground floor premises, he might have been aware that certain activities of Balkunj

were being carried on in the hall. But this can only mean that the landlord permitted the tenant to use a portion of the premises let out for running

the activities of the trust. Even assuming that, standing by themselves these two facts might have been sufficient to draw any such inference as is

suggested, the two letters of 5/8/77 and 15/1/78 place the matter beyond all doubt. The landlord categorically asserted in these letters that he does

not recognise Balkunj as his tenant and the respondent alone was his tenant. There was no reply to these letters from the respondent. In these

circumstances there-can be no doubt at all that the premises had been let out only to the respondent by the petitioner and that Balkunj cannot be

considered to be a tenant of the premises or any portion thereof.

(Emphasis Supplied)

In this case, by admission of parties, the original tenant was Suresh Kumar. The Firm wanted the same to be transferred to the name of the Firm

along with the advance amount paid. Petitioners never yielded to that request and insisted that they can recognise only the first respondent herein as

their tenant, is clear from Exs. R-1 to R-4. It is further clear that the landlords refused to accept the Firm as their tenant and one of the reasons for

non-payment of rent by the First respondent is also that since no fresh agreement was executed with the Firm, rent was not paid. As R.W. 1 first

respondent reiterated the said contention. According to him even though petitioners were aware that the premises are being used by the Firm and

in spite of request to them to have fresh agreement after transfer of the advance amount, since the petitioners had not acted on the same, there was

delay in payment of rent. From these admissions, which were not taken note of by the Authorities below, it is clear that the petitioners never

wanted the Firm to be their tenant. They recognised only the first respondent as individual as their tenant. They never objected to the first

respondent or Sureshkumar using the premises for the firm. It can also be inferred that the rental arrangement itself was entered for the purpose of

the firm. But that cannot be equated with that of a position that the firm is the tenant and not the individual.

13. The landlords are not concerned with the manner in which the rent is paid. They are interested only in getting rent from the tenant. Merely

because a stranger draws a cheque and the same is handed over by the tenant, the stranger cannot become the tenant of the landlord. It is not that

the firm that pays the rent. As held in JT 1988 Section 381(supra), first respondent being a partner of the firm can make use of the cheques of the

firm for paying rent. First respondent was interested in the firm as partner he

was also making use of the premises for the purpose of the firm and therefore, any payment by first respondent by making use of the funds of the firm will not make the Firm a tenant. The circumstances in this case have belied the said contention and there was no intention on the part of the petitioners to have a tenancy with the firm.

14. Learned counsel for the respondents submitted that even assuming that first respondent is the tenant, landlords are not entitled to get an order of eviction. It is said that when the notice was issued, only eight months rent was due, i.e., Rs. 8,000/- was payable. Landlords are already in possession of Rs. 10,000/- belonging to the firm. If the landlords are in possession of an advance for exceeding one month's rent, the same is liable to be adjusted towards the arrears. It is their case that Suresh Kumar as well as first respondent wanted Rs. 10,000/- already with the landlords to be credited as advance amount paid by the Firm. Learned Counsel for the respondents also relied on the decision reported in U.P.

Avas Evam Vikas Parishad and another Vs. Friends Co-op. Housing Society Ltd. and another, . In the case cited, the admitted tenant had paid

huge amount as advance and when the landlord sought eviction on the ground of wilful default in payment of rent. A contention was taken that

unless there was a demand by the tenant to adjust the arrears in the advance, the same was not liable to be adjusted. Their Lordships of the S.C

after considering the entire case-law, held that if the landlord is in possession of the amount belonging to the tenant in excess of one month's rent as

advance, even without a demand by the tenant, the same is liable to be adjusted under Sec. 7 of the Tamilnadu (Buildings Lease and Rent Control)

Act. Certain earlier decisions of this Court wherein a contrary view was taken, were overruled, in that case paragraph 8 of the judgment (at page

50 of the Reports) reads thus:-

The provision clearly enacts the course to be adopted in the case of any excess amount being paid by the tenant to the landlord taking into

account the factor that the tenant in certain circumstances may be compelled to make payment as advance or an amount in excess of that required

to be paid to the landlord according to law. For that situation the provision imposes the legal obligation on the landlord to immediately refund the

excess amount to the tenant unless the tenant exercises the option of requiring

the landlord to adjust that amount towards any dues of the tenant or in any other manner indicated by the tenant. This provision has the effect of creating a corresponding enforceable right in the tenant to recover the excess amount from the landlords or to have it adjusted for his benefit in case the landlord fails to discharge his obligation of refunding that amount. The provision of adjustment of the excess amount at the option of the tenant clearly visualizes its adjustments towards the rent due from the tenant since the jural relationship envisages payment only of rent by the tenant to the landlord towards which it can be adjusted. I do not think the said decision has any application to the facts of this case. Once it is held that the Firm is not a tenant, it follows that the amount paid by the Sureshkumar cannot be treated as the amount belonging to the Firm. Even if there is any adjustment or arrangement between Sureshkumar, first respondent and the Firm regarding the amount paid by him, that will not be binding on the landlords since they are not parties to such arrangement. The amount retained by petitioners, even if it belongs to the Firm, cannot be treated as the amount belonging: to the first respondent herein who alone has been recognised as tenant by the petitioners. Therefore, the question of adjustment of the arrears in the advance as contended by learned counsel for respondents is only to be rejected.

15. In view of the above finding, I hold that the first respondent is liable to be evicted on the ground that he has defaulted in paying the rent, Various defences taken by him will show that he did not want to pay the rent. He even denied the tenancy with him and pleaded that a third party is a tenant and liable to payment. Such a contention is barred under Sec. 16 of the Evidence Act. From his conduct, it is clear that he is a wilful defaulter.

16. The other ground of eviction is that the second respondent is the sub-lessee. Second respondent is Messrs. Premier Shipping Services, which is admittedly making use of portion of the demised premises. First respondent admitted the presence of second respondent in the building but said that as between them there is no rental arrangement and the second respondent is only a consultant of the first respondent. It is further said that no exclusive possession has been given. In chief examination, landlord said that the allegation that the second respondent is only a business Consultant

is wrong, and in cross-examination, he has further said that the second respondent is not a consultant and the suggestion that no portion of the premises is exclusively given to him is not correct.

17. Both the Authorities below, while considering the issue Nos. 3 and 4 respectively have not formed a definite opinion as to whether second respondent is a sub-lessee or not. Both the Authorities below came to the conclusion that the same need not be conclusively decided since the petition itself is not maintainable. But, learned counsel for both parties before this Court argued the point regarding Sub-lease, in detail, and wanted me to enter a finding on the same. In that view, I am considering that question also on merits

18. The landlords can get eviction on the ground of sub- lease if they are in a position to prove that a third person is in exclusive possession of atleast a portion of the demised premises. Since the arrangement between the tenant and sub-tenant will not be disclosed to any person and that is a matter within their personal knowledge, burden is on the tenant and subtenant to substantiate before Court the arrangement between them. The landlord can only prove that a third person is making use of the premise, and taking into consideration the work that is being done by it, exclusive possession can be inferred.

19. What is the consultation service that is given by second respondent is not disclosed by first respondent. What is the association of second respondent with first respondent is also not disclosed. When First respondent was asked about the income tax returns and whether second respondent was paid any fees for the services rendered by them by way of consultation, first respondent admitted that they are not entered in the Returns. While considering the exclusive possession, Court can take into consideration the quality of occupation, nature and degree of occupation and also find out whether from the user of the building, a third person can have control over the building. A person who occupies a building can be presumed to have physical control over the same. At any rate, under law, occupation cannot be divorced from possession. If the consultancy is not proved, and income tax returns and account books which are in the possession of the tenant are not produced before Court, an adverse inference can be drawn against him. Second respondent is running a Shipping Service.

From the activities, it cannot be doubted that he must have control over the premises. The same has nothing to do with the warehousing business of the first respondent. The two are entirely different. Under the above circumstances, I hold that the tenant is also liable to be evicted on the ground that he has unauthorisedly sub-let a portion of the premises to second respondent-Shipping Services which has put up its own name-board in the building. For these reasons, the concurrent judgments of the authorities below are liable to be set aside and I do so. Respondents are liable to be evicted from the schedule building for all the reasons stated in the eviction petition. The Civil Revision Petition is allowed with costs in all the three Courts.