
(1966) 04 MAD CK 0029
In the Madras High Court
Case No : Civil Suit No. 116 of 1964

S.M. Abdul Jameel

APPELLANT

Vs

Simson and Machonochy Limited and Others

RESPONDENT

Date of Decision : 25-04-1966

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 2, 26, 3, 30, 30(3)
Transfer of Property Act, 1882 — Section 106

Citation : (1967) ILR (Mad) 324

Hon'ble Judges : Ramamurti, J

Bench : Single Bench

Advocate : A. Srirangachariar and P. Shabee Mohammed, for the Appellant;
King and Partridge and A.B. Krishnaswamy, for the Respondent

Judgement

Ramamurti, J.—The only point that survives for decision is whether the second Defendant is entitled to rely upon Section 3 of Madras Act XI of 1964 amendment to the Madras Buildings (Lease and Bent Control) Act of 1960. The brief facts of the case may be stated.

2. The suit property known as Badshaw Buildings situated in Errabalu Chetty Street and Sembudoss Street was leased out by the Plaintiff to the first Defendant for a period of ten years commencing from 1st January 1954, under the registered deed of lease exhibit P-1 on a monthly rent of Rs. 1,750 for the entire premises. This lease deed under Clause 6(3) empowered the lessee to assign, let or sub-let all or any portion of the demised premises as the lessee may deem fit during the currency of the lease. In pursuance of that power, the first Defendant had sub-let two separate portions of the premises to second and third Defendants. The period of termination of the lease is 31st December 1963, but during that last year of the lease the first Defendant made some attempts with the Plaintiff to obtain a renewal of the lease but without success as the Plaintiff would not agree to a renewal of the lease and insisted upon having possession of the premises after the expiry of the ten year period. In view of this

insistence of the Plaintiff to obtain possession on the termination of the lease, the first Defendant had duly informed Defendants 2 and 3, the sub-lessees, that on the expiry of the lease by 31st December 1963 they must vacate and hand over possession. While matters stood thus, the Plaintiff wrote to the first Defendant that the lease would stand terminated and determined by 31st December 1963, that vacant possession of the premises should be handed over to the Plaintiff on or before 1st January 1964, and that in default, the Plaintiff would be entitled to damages for use and occupation of the building at the rate of rupee one per square foot per mensem. Thereupon, the first Defendant wrote to the Plaintiff, exhibit P-6, dated 2nd December 1963 informing the Plaintiff that the first Defendant had recently purchased a building in Sydenhams Road, Periamet, that some repairs had to be carried out in that building, and that within a period of four months, they would effect the repairs and shift to the new building after handing over possession of the suit premises to the Plaintiff. In that letter, the first Defendant wanted the lease to continue till 1st April 1964 for a period of three months on the same terms as to rent as in the lease deed, exhibit P-1. The Plaintiff did not agree to this suggestion and insisted upon having possession of the premises on 1st January 1964 and in default, damages for use and occupation at the rate of rupee one per square foot per mensem. Under their reply, exhibit P-8, dated 27th December 1963, the first Defendant reiterated the same attitude, insisting upon an extension of the lease till the first Defendant was in a position to shift to its new building. It is unnecessary to refer to the further correspondence between the parties, and it is sufficient to mention that under exhibit P-9, the letter sent by the Plaintiff to the Counsel for the first Defendant on 2nd January 1964, the Plaintiff still adhered to his decision. The first Defendant ultimately vacated that portion of the premises in its occupation on 30th April 1964 and handed over the keys thereof to the Plaintiff. As Defendants 2 and 3, however, refused to vacate, the Plaintiff was told that he may take symbolical possession of the portion in the occupation of Defendants 2 and 3, and that necessary letters of attornment would be obtained from them. Exhibit P-15, the letter written by the 1st Defendant to the Plaintiff on 30th April 1964, shows that on that day, the first Defendant sent a cheque for Rs. 1,750 being the rent for the month of April 1964, and also sent the keys of the locks in respect of the portion which was in the occupation of the first Defendant. On the same day, the Plaintiff sent the letter, exhibit P-16, protesting at the failure of the first Defendant to hand over possession of the property in the possession of Defendants 2 and 3. For these 4 months, January to April 1964, it is the case of the first Defendant, that the sum of Rs. 1,750 per month was sent to the Plaintiff and received by the Plaintiff towards rent while the case of the Plaintiff is that the said sum of Rs. 1,750 per month was received by the Plaintiff not as rent but only as compensation for use and occupation of the building from 1st January 1964 without prejudice to other rights and claims of the Plaintiff.

3. The Plaintiff filed the present action on 31st July 1964 seeking to recover possession of the portion in occupation of Defendants 2 and 3, and also claiming

damages for use and occupation as well as some damages for restoration of electric installations and repairs to the ground floor. In respect of the portion which was in the occupation of the first Defendant and which was handed over to the Plaintiff by the end of April 1964, the Plaintiff claimed rupees five thousand per month as damages for use and occupation and after deducting the sum of rupees seven thousand paid by the first Defendant at the rate of Rs. 1,750 per month under this head for the period of four months, the Plaintiff claimed a sum of rupees thirteen thousand from the first Defendant. For the portions in the occupation of Defendants 2 and 3, the Plaintiff claimed damages for wrongful continuance, a sum of rupees fourteen thousand at the rate of rupees two thousand per month from January 1964 till the date of suit. The third Defendant had handed over possession of the portion in its occupation and the Plaintiff is, therefore, not seeking any relief as against the third Defendant. The second Defendant took out an application, Application No. 3214 of 1965, seeking permission to file a supplemental written statement containing the plea that as a result of the passing of the Madras Amending Act XI of 1964, the Plaintiff was not entitled to any relief as against the second Defendant on the ground that the first Defendant was not liable to be evicted under the Madras Act XI of 1964 aforesaid, and that the second Defendant was entitled to resist the claim of the Plaintiff in the right of the first Defendant.

4. The Plaintiff filed an application, Application No. 3323 of 1965, for amending paragraph 16(6) of the plaint in the relief portion to the effect that the claim for damages for use and occupation in respect of the portion in the occupation of the second Defendant was confined to the second Defendant, to the extent of rupees seven thousand for the past and future at the rate of rupees one thousand till delivery of possession. The claim for damages for use and occupation as against the first Defendant was restricted to rupees thirteen thousand confining it to the portion in the occupation of the first Defendant. This amendment was allowed by me and at that time learned Counsel for the Plaintiff stated that his client was not pressing as against the first Defendant relief of recovery of possession of the property in the possession of the second Defendant. After evidence was let in, on the question of the quantum of the compensation and damages for use and occupation and wrongful possession and as to the circumstances under which the first Defendant was allowed to continue in possession of the property from January to April 1964 and in the course of arguments, learned Counsel for the Plaintiff stated on behalf of his client that the Plaintiff was giving up his claim for damages for use and occupation as well as the damages for restoration of electrical connection, etc., as against the first Defendant, with the result that the suit survived only as against the second Defendant with regard to the relief of recovery of possession of the property in its possession, and with regard to the relief of damages and compensation for use and occupation and for wrongful possession. On the side of the Plaintiff, three witnesses had been examined; rent receipts, cheque counterfoils, and lease deeds have been filed in support of the Plaintiff's claim that he would be entitled to a minimum rupees one thousand per

month from the second Defendant with regard to the portion in its occupation. The second Defendant did not adduce any rebutting evidence and was content to argue on the evidence adduced by the Plaintiff and in the light of suggestions made to the Plaintiff and his witnesses, in the course of the cross-examination done by learned Counsel for the first Defendant. In fact the second Defendant did not even participate in the cross-examination.

5. Before I proceed further it is necessary to refer to the amending Act, Madras Act XI of 1964 (which received the assent of the President on 5th June 1964) in particular Sections 2 and 3 of the Act.

6. The Madras Rent Control Act, Act XXV of 1949, did not fix any ceiling limit and the Act applied to all the buildings as defined under the Act, irrespective of the rent for which they were let out. But under the Rent Control Act of 1960, Madras Act XVIII of 1960, a ceiling limit was fixed u/s 30. Section 30 exempted the application of the provisions of the Act to residential buildings, the rental value of which exceeded Rs. 250 per month, and non-residential buildings, the rental value of which exceeded rupees four hundred per month as entered in the property assessment books of the municipality. This provision was amended by Madras Act II of 1962 to provide that this exemption would apply to either a building or a part thereof and instead of the rental value as entered in the property tax register, the actual rent paid by the tenant was taken as the basis for the ceiling limit of Rs. 250 (for residential buildings) or rupees four hundred for the non-residential buildings. Under Madras Act XI of 1964, the exempting provision relating to non-residential buildings was deleted with the result that so far as non-residential buildings were concerned the tenant was given protection under the Act irrespective of the rent that he may be paying either for the building or a portion thereof. Sections 2 and 3 of Madras Act XI of 1964 are in these terms:

Section 2-Amendment of Section 30, Madras Act XVIII of 1960.-In Section 30 of the Madras Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as the principal Act)-

(i) in Clause (ii) the word "or" occurring at the

end shall be omitted;

(ii) clause (iii) shall be omitted ;

(iii) in the Explanation, for the words, brackets and figures "clauses (ii) and (iii)", the words brackets and figures "clause (ii)" shall be substituted.

Section 3-Certain pending proceedings to abate.- Every proceeding in respect of any non-residential building or part thereof pending before any Court or other authority or officer on the date of the publication of this Act in the Fort St. George Gazette and instituted on the ground that such building or part was exempt from the provisions of the principal Act by virtue of Clause (iii) of Section 30 of the principal Act, shall abate in so far as the proceeding relates to such

building or part. All rights and privileges which may have accrued before such date to any landlord in respect of any non-residential building or part thereof by virtue of Clause (iii) of Section 30 of the principal Act, shall cease and determine and shall not be enforceable:

Provided that nothing contained in this section shall be deemed to invalidate any suit or proceeding in which the decree or order passed has been executed or satisfied in full before the date mentioned in this section.

7. The point that arises for decision relates to the proper interpretation of Section 3, the saving clause.

(i) All proceedings which have been initiated on the ground that the non-residential building or a part thereof was exempt from the provisions of the Act are to abate and cannot be prosecuted any further.

(ii) All rights and privileges which may have accrued to the landlord in respect of the non-residential building by virtue of the old provision in Section 30(3) shall cease and shall not be enforceable. These rights for example, may include, right to institute suits for eviction, right to sue for damages for use and occupation or mesne profits for wrongful possession and the right to execute decrees for eviction already obtained but not executed.

(iii) If any decree or order already passed has been executed or satisfied in full before the Act came into force the same shall not be invalidated, nor can it be re-opened. The question that arises for decision is whether the saving clause, Section 3, affords any protection to the sub-tenant the second Defendant. The provision, being the deprivation or curtailment of the vested rights already accrued before the commencement of the amended Act should naturally receive a strict construction with the necessary presumption that Legislature does not intend to interfere retrospectively with existing rights, except to the limited extent clearly manifested in the Act.

8. Such statutes should not be construed to have a greater retrospective operation than its clear language renders it necessary. If there is any doubt about the meaning of the language employed the rights already acquired would continue to be enforceable.

9. If the main lease terminates or if a decree or order for eviction is passed against the main tenant, the landlord will be entitled to obtain possession of the property leased, the sub-tenants having no independent rights. The determination of the main lease may arise in any manner known to law, either by the lessee himself consenting to the termination of the lease, or rendering himself liable to eviction under the provisions of the Act, or by efflux of time and if rights flowing therefrom are sought to be enforced by the landlord the sub-tenants cannot successfully resist such proceedings. It may be that as between sub-tenant and his lessor, that is the lessee, the sub-tenant may not be liable to be evicted under the provisions of the Act. But this right of the sub-tenant to

continue in possession as against his own lessor, the main lessee, can avail nothing in a proceeding by the lessor. Decisions have even gone to the extent that a sub-tenant need not even be a party to the proceeding for eviction against the main tenant. Section 26 of the present Act provides that an order for the eviction of the tenant passed under the Act shall be binding on all sub-tenants who are made parties in the application for eviction. Vide Ramachandra Sastri v. Md. Hussain (1965) 2M.L.J. 102. In a recent judgment of mine in Abdul Bavoof v. Kannappan ILR [1966] Mad. 588 this aspect of the matter has been considered in full detail and all the relevant decisions have been examined. In my judgment I have followed and applied the principle of the Bench decisions of this Court in Devaraja Bhatt Vs. V.S. Raja and Others, and Express Estates Ltd. v. Modern Furnishing House I.L R. [1953] Mad. 195 as well as the latest decision of the Supreme Court in Rup Chand Gupta Vs. Raghuvanshi Private Limited and Another, . In this connection it is important to notice that in the Bench decision Express Estates Ltd. v. Modern Furnishing House I.L R. [1953] Mad. 195. RAJAMANNAJS C.J., delivering the judgment on behalf of the Bench had adverted to the significance of the amendment introduced in 1951 to the Madras Rent Control Act of 1949 by which an inclusive definition of a tenant was introduced to the effect that a tenant, who sub-lets shall be deemed to be landlord within the meaning in relation to the subtenant. It was pointed out that this definition would not affect the rights of the original landlord and its object was only to give a limited protection against eviction as between the tenant and the sub-tenant.

10. This defeasible nature of the rights of the subtenant was also considered by a Bench of this Court in Kathaperuma v. Muihiah ILR [1964] Mad. 320 in a case arising under the Madras Cultivating Tenants Protection Act. RAMACHANDRA AYYAB, C.J., put the matter thus at page 324:

It is well settled that there is neither privity of estates, nor privity of contract, between the head lessor and the sub-lessees and that, therefore, the sub-lessee will not be liable for rent nor on any covenants in respect of the lease granted by the head-lessor to the chief tenant. But ordinarily speaking the chief tenant stands in the same relationship to the sub-tenant as his own landlord stands towards him. For example, a sub-tenant will be estopped from denying the title of his landlord, namely, the chief tenant to grant the sub-tenancy, just in the same way as the chief tenant will be precluded from denying the title of head-lessor at the time of the grant of the lease. The head-lessor's rights will not be affected by the sub-lease ; sub-tenant's right will, therefore, stand or fall with the right of the main tenant. For example, if the main lease comes to an end either by efflux of time or by forfeiture, then the sub-lessee will lose his right to possession as well. But the case will perhaps be different where the head-lessee voluntarily surrenders in favour of his landlord in derogation of the right granted by him to the sub-lessee. But so long as the main lease is subsisting the sub-tenant will have all rights secured to him under his contract with his own lessor as well as those rights which a statute might give him as against the lessor. For example, if a main tenant obtains a lease from the head-lessor for a term of ten

years and he lets into possession of the land a cultivating tenant as sub-lessee for a period of one year, such sub-lessee would be a cultivating tenant within the meaning of the Act and be entitled to all the privileges, for the duration of his lessor's title. If such title terminates on the expiry of the term, the sub-lessee's right to remain in possession of the land notwithstanding the fact that it had been given to him under the statute, will have to automatically come to an end, as he cannot have a higher right than what his own lessor had.

. . . To put it differently, such statutory rights of protection as a sub-tenant can have against his own lessor will be determined and be limited by the duration of that lessor's right. For example, if the main tenant's tenancy is for a term, the sub-tenant entitled to protection under the Act will, notwithstanding the expiry of his contract, be entitled to remain in possession for the duration of that term. But it can extend no further. Where the main tenant is himself protected by the statute, his subtenant can, as against him, obtain protection under the Act for the duration of the statutory right of the main tenant.

11. Reference may also be made to my decision in *Ramachandra Chetti v. Mothaliyandan Chettiar* (1965) 2 M.L.J. 265. From the foregoing it will be clear that the statutory right of protection of the sub-tenant is limited by the duration of the right of his own lessor (that is the main lessee) and it can extend no further. The result, therefore, is that if the Plaintiff has got a right to evict the first Defendant and recover possession of the entire premises the second Defendant will have no independent or superior right on the basis of the sub-lease in his favour.

12. My attention was drawn to some of the decisions in England and in India rendered under similar Rent Restriction Acts in which the relative rights of the landlord, the tenant and the sub-tenant came up for consideration. In some of them the landlord was held entitled to obtain possession from the sub-tenant while in some it was held that even though as between the

13. landlord and the main lessee there was a determination of the lease by the surrender on the part of the main lessee, the landlord would not be entitled to evict the sub-tenant. It may not be necessary to examine those in great detail as in all those cases the relevant statutes contained an important distinguishing provision that on the determination of the main lease the sub-tenant shall be deemed to have become a tenant of the lessor. A brief reference to the same shall be made later.

14. Learned Counsel for the second Defendant did not seriously controvert this position that in the case of a statutory tenancy the rights of the sub-tenant would perish along with that of the main tenant, but he distinguished all the cases cited at the Bar as cases dealing with statutory tenancies simpliciter. His argument is that after the expiry of the lease on 31st December 1963 there was a monthly tenancy created between the Plaintiff and the first Defendant and so long as that tenancy had not been validly determined by the issue of the

requisite notice u/s 106 of the Transfer of Property Act the contractual tenancy between the Plaintiff and the first Defendant would continue. The Plaintiff not having given a valid notice to determine and having no right to evict the first Defendant during that situation and that during all that period when the Plaintiff was labouring under the disability of having no right to secure possession from the first Defendant, the second Defendant who was in possession under a derivative title from the first Defendant would be entitled to resist the Plaintiff's claim for possession. In substance his argument was that if during the currency of a contractual tenancy the main tenant created a sub-lease, the sub-lessee would be entitled to continue in possession for the duration of the period of the main lease, and his right would not be in any way affected by the conduct of the main lessee in either agreeing to an earlier determination of the lease or a surrender of the same. Developing this aspect, the learned Counsel contended that the monthly lease did not terminate in April, that before the Plaintiff validly terminated the monthly contractual lease, the amending Act, Madras Act XI of 1964 had come into force and operated as a bar to the Plaintiff seeking possession of the property from the first Defendant thereafter, and that this bar against the Plaintiff would operate not only for the benefit of the first Defendant, but for the second Defendant as well, since he was in possession under a derivative title from the former. On the facts learned Counsel urged that when the first Defendant sent the rent of Rs. 1,750 every month from January to April 1964, he sent it as rent for the respective months, and that even the Plaintiff had protested and claimed to receive the monthly payments not as rent but merely as damages for use and occupation with a reservation of his express rights, the acceptance of these payments, in law would, however, amount to the recognition of the status of the first Defendant as a tenant from month to month under the principle of the decision in *K.B. Capadia v. Bai Jerbai Warden and Anr.* [1949] F.C.R. 262 following and applying the principle of the decision in *Croft v. Lumley* 10 E.R. 1459. This argument cannot be accepted as it proceeds upon a wrong and incorrect appreciation of the true events and the real factual position. The correspondence referred to earlier clearly shows that the extension of the lease desired by the first Defendant was for a limited purpose and for a limited period. Vide the first defendant's letter to the Plaintiff, exhibit P-6, dated 2nd December 1963. The first Defendant has made it clear that they would continue in the premises only till they shift to the new premises in Sydenhams Road, Periamet, on or before 1st April 1964, and for that purpose they desired the tenancy to be continued for a period of three months from 1st January 1964. That it was a tenancy for a limited period is again reiterated in the letter sent on behalf of the first Defendant, exhibit P-8, dated 27th December 1963. This contingent lease for a period of three months later on become by the turn of subsequent events a lease for four months as the first Defendant could complete the repairs and shift only on 30th April 1964. Whatever may be the protests of the Plaintiff when he received monthly payments of Rs. 1,750 even applying the principle of the decision in *K.B. Capadia v. Bai Jerbai Warden and Anr.* [1949] F.C.R. 262 it would only mean that the Plaintiff's protest will have to be ignored and the Plaintiff will

be bound by the terms on which the first Defendant made the payment. In this case the condition is not a lease from month to month, but a lease for a particular period, namely, till the first Defendant was in a position to vacate and shift to their own new premises. It must be noticed that it is only an accident that this shifting occurred on 30th April 1964. It is just a coincidence perhaps due to the fact that the first Defendant did not desire to shift in the middle of the month. But that does not affect the factual position that the extension of the lease insisted upon by the first Defendant is only for a definite limited period upto the contingency of their shifting to the new premises.

15. At this stage it is necessary to refer to exhibit P-13, letter written by the first Defendant to the Plaintiff. Even though that letter was written during the currency of a month, 11th April, it is clear that as a result of that letter the tenancy gets crystallised to a period of four months till 30th April 1964 and the first Defendant did not desire to be a tenant any longer. That letter also shows that even in respect of the portion in the possession of the Defendants 2 and 3 the first Defendant never asserted any right as a tenant and he had even suggested that letters of attornment can be obtained from them (Defendants 2 and 3) as direct tenants of the Plaintiff. I am clearly of the view that in such a situation there is no need for any valid notice passing between the Plaintiff and the first Defendant for determining the lease u/s 106 of the Transfer of Property Act. At that time Act XI of 1964 had not come into force and it was purely a matter of arrangement between the Plaintiff and the first Defendant. The position will be made clear if for purposes of argument it is assumed that at that time there was no Rent Control Act, Madras Act XVIII of 1960. The contractual tenancy would have clearly come to an end by 30th April 1964 under exhibit P-13, and it would not be open to the second Defendant to say that the lease had not been validly determined and, therefore, the second Defendant would be entitled to continue in possession in the right of the first Defendant. I am clear in my mind that looked at from any point of view the first Defendant ceased to be a tenant after 30th April 1964. Even if it were to be held that it was a lease from month to month, this letter exhibit P-13, is sufficient to put an end to the lease and has actually determined the lease, and the second Defendant cannot thereafter claim any rights.

16. There is another important reason why it is impossible to accept this contention of the second Defendant, that there was a contractual tenancy between the Plaintiff and the first Defendant after 31st December 1963. The first Defendant himself never claimed any such right and on the other hand he claimed only the rights of a statutory tenant under Madras Act XI of 1964, in his written statement and in the arguments submitted on his behalf. The contention of the second Defendant too was the same and in fact they filed a supplemental written statement claiming rights as a statutory tenant under Act XI of 1964. This point was presented only now in the course of the arguments when the second Defendant was confronted with the insuperable difficulty as revealed by judicial decisions of this Court and of the Supreme Court regarding the rights of a

sub-tenant when the main tenancy comes to an end. It will be a perversion of facts to hold in this case that the first Defendant was a contractual tenant. It is meaningless to inflict upon him a contractual tenancy in respect of the portion occupied by Defendants 2 and 3 because so far as the portion in the occupation of the first Defendant was concerned he vacated and handed over the keys. During that four months period it is very doubtful whether the first Defendant will have a right to sub-let because it is impossible on the facts of this case to hold that acceptance of the payments of Rs. 1,750 every month would also include the recognition of a right to sub-let. One thing which is perfectly clear and beyond any shadow of doubt is that the first Defendant never intended to claim nor claimed any right in respect of any portion of the premises after 30th April 1964. The first Defendant simply pleaded his inability and his legal difficulties to get possession from the second and third Defendants as the first Defendant wrongly thought that they would be entitled to make some claim to remain in possession because the second and third Defendants were not paying rent exceeding Rs. 250 per month. It has been held that if the main tenancy is determined and if the landlord gives the sub-tenant notice of this termination as well as the notice terminating the subtenancy the fact that the sub-tenant remains in possession claiming to be a statutory tenant will not render the tenant liable for rent or damages for use and occupation as the main tenant must be held to have done everything legally possible to give the landlord vacant possession. Vide Woodfall on Landlord and Tenant, twenty-sixth edition, page 1042. It is sufficient to refer to the leading decision in Reynolds v. Bannerman [1922] 1 K.B. 719. In that case the tenant gave his landlord due notice to quit and also a similar notice terminating the lease to the sub-tenant. The sub-tenant claiming protection under the Rent Restriction Act continued in occupation and refused to quit. The main tenant duly gave up possession to the landlord of his portion of the premises but was unable to give vacant possession of the portion in the occupation of the sub-tenant, and it was held that if the tenant had done all he could do to give vacant possession the tenant was not liable to the landlord for damages for use and occupation. My conclusion, therefore, is that factually there is no contractual tenancy between the parties, and the second Defendant cannot be permitted to rely upon a contractual tenancy when not only did he not raise any such plea in the written statement but on the other hand claimed protection only as a statutory tenant in his own independent right as well as in the right of the first Defendant. In paragraph 6 of his written statement the first Defendant has claimed protection only as a statutory tenant. In paragraph 5 and 10 the first Defendant had clearly stated that his tenancy extended only up to 30th April 1964 and that from 1st January 1964 to 30th April 1964 the possession of the first Defendant was as a statutory tenant. In the second Defendant's written statement in paragraphs 5 and 6 and 12 and 13 the second Defendant had stated that he is entitled to the benefits of a statutory tenant under the Rent Control Act. In the face of this specific pleading it is futile for the second Defendant to rely upon any contractual tenancy. In my opinion the instant case is governed by the principle of the Bench decision in Express

Estates, Ltd. v. Modern Furnishing House ILR [1953] Mad. 105 already referred to. The facts in that case were almost identical. In that case the properties were leased to Bosotto Brothers who sub-let to a sub-leasee, the Modern Furnishing House. The Bench held that if Bosotto Brothers did not raise any objection to the decree for possession, the Modern Furnishing House who was merely a sub-tenant under Bosotto Brothers cannot resist delivery of possession. There a decree was passed in a suit for possession against Bosotto Brothers and the dispute arose in execution proceedings. In the present case in the very suit itself the first Defendant in the course of the arguments conceded the right of the Plaintiff to recover possession provided the Plaintiff gave up the claim for mesne profits as against the first Defendant. Reference must also be made to the oft-quoted decision in *Solomon v. Orwell* [1954] 1 All E.R. 874 in which the statutory tenant vacated that portion of the premises occupied by her by removing therefrom and by giving the keys to the landlord as in the instant case. But the subtenant refused to vacate from the portion in his occupation. It was held that a statutory tenant had no interest capable of existing in law as an estate after the main tenant had vacated the premises, and that the sub-tenant's rights of occupation automatically came to an end and that the landlord was entitled to possession of the entire property.

17. Even if it is a contractual tenancy from month to month the position of the second Defendant is no better. As a tenant from month to month the first Defendant has two rights: (a) to terminate the lease by fifteen days notice ; (6) to surrender at the end of any month even without any prior notice. The tenant's right is not restricted to a right to terminate the lease by fifteen days notice. Both the rights are available. After 31st December 1963 when the second Defendant continued under the first Defendant he can continue only subject to the termination of the lease from month to month in one or two ways mentioned earlier. He continues and could continue in possession only subject to that risk or contingency of the first Defendant putting an end to the lease by surrendering at the end of any month. This was what has actually happened in the instant case. The derivative right which the second Defendant claims to have acquired from the first Defendant based upon a contractual tenancy from month to month is defeasible and would automatically come to an end when that monthly tenancy is terminated.

18. There is the further fact which I have already adverted to, that the Plaintiff has elected to regard the first Defendant having performed his obligation to deliver back the property to the lessor. If the Plaintiff accepts that, by delivery or surrender the lease comes to an end and immediately the Plaintiff gets a present right to possession of the property and whoever is in possession will be a trespasser as against the Plaintiff. It is quite competent to the Plaintiff to give a quitclaim to the first Defendant with regard to his obligation and pursue the second Defendant for recovery of possession. This election can be made at any time either before the suit or in the course of the suit. Looked at from any point of view, I am clearly of the view that the second Defendant cannot resist the

Plaintiff's claim for possession.

19. Learned Counsel for the second Defendant placed considerable reliance upon the decision of the Supreme Court in *Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others*, . In my opinion this decision, far from supporting the second Defendant, is against him. In the majority judgment delivered by SHAH J., it has been held that the rights of a sub-tenant would come to an end when the main tenant vacated the premises or when the main lease comes to an end. The decision in *Solomon v. Orwell* [1954] 1 All E.R. 874 was referred to with approval and followed. From the majority judgment it is clear that a statutory tenant has no right to sub-let and that a statutory tenant who continues in possession on the determination of his contractual tenancy is permitted to remain in occupation so long as he observes and performs the conditions of the tenancy and pays rent, and that his personal right of occupation does not carry with it a right to transfer or assign or sub-let the property. The main point that was stressed and urged in that case on which there was a difference of opinion between the majority and the minority (SIRKAR J.) as he then was, was whether a statutory tenant has a right to sub-let. SIRKAR J., as he then was, took the view that a statutory tenant has a right to sub-let while the majority view was to the contrary. This case turned upon the peculiar provisions of the Bombay Rent Control Act of 1947 and the Bombay Rent Control and Lodging House Ordinance of 1959 which contained the particular provision that if any portion of the rented premises has been lawfully sub-let the sub-lessee shall be deemed to have become the tenant of the landlord on the same terms and conditions if the interest of the main tenant is determined for any reason. This provision is absent in the Madras Act and the instant case is, therefore, governed by the well established rule that the termination of the main lease automatically puts an end to the rights of the sub-tenant. Repeated stress was laid by learned Counsel for the second Defendant on the fact that in the main lease deed, exhibit P-1, Clause 6 contains a special provision authorising sub-letting. In my opinion this does not help the second Defendant in any manner.

20. It is necessary to refer to the decision of the Supreme Court in *Ganga Dutt Murarka Vs. Kartik Chandra Das and Others*, . In that case it was held that if a contractual tenancy came to an end by efflux of time and if the tenant continues in possession and the landlord accepts the rent after such expiration that will not afford ground for holding that the landlord has assented to a new contractual tenancy. The matter was put thus at page 1070:

The High Court was in our judgment right in holding that by merely accepting rent from the Appellant and by failing to take action against him, the Appellant did not acquire the rights of a tenant holding over. It is true that in the notice, dated October 10, 1950, the Appellant is described as "monthly tenant", but that is not indicative of conduct justifying an inference that a fresh contractual tenancy had come into existence. Within the meaning of the West Bengal Premises Rent Control Act, 1950, the Appellant was a "tenant" and by calling the

Appellant a tenant the respondents did not evince an intention to treat him as a contractual tenant. The use of the adjective "monthly" also was not indicative of a contractual relation. The tenancy of the Appellant was determined by efflux of time and subsequent occupation by him was not in pursuance of any contract express or implied but was by virtue of the protection given by the successive statutes. This occupation did not confer any rights upon the Appellant and was not required to be determined by a notice prescribed by Section 106 of the Transfer of Property Act.

21. This decision is against the second Defendant and a complete answer to his contention based upon a contractual tenancy from January 1964.

22. In my view there is no conceivable manner in which the second Defendant can seek the aid of the provisions of Madras Act XI of 1964. After the first Defendant surrendered the portion in his possession and disclaimed all interest in the portion in the possession of the second and third Defendants and never asserted any rights thereto, nor claimed a tenancy therefor, the right of the Plaintiff as against the second Defendant and the third Defendant to recover possession of the properties in their possession is not based upon Section 30(3) of Madras Act XVIII of 1960. The right of the Plaintiff is the result of the first Defendant accepting the termination and surrendering possession of the rest of the premises. No right had accrued to the Plaintiff in respect of the portion in the possession of Defendants 2 and 3 u/s 30 which alone is saved under Madras Act XI of 1964. In other words Section 30 of Madras Act XVIII of 1960 would have operated only between the Plaintiff and the first Defendant.

23. My attention was also drawn to the decision in *Cow v. Casey* [1949] 1 K.B. 474 which arose under the English Bent Restriction Act. In that case too the main tenant agreed to a determination of the lease and went out of the house but the sub-tenant refused to vacate. It was held that after the termination of the main lease the sub-tenant become a trespasser, as in that case the Act too did not apply to the building in question. In our case too the Rent Control Act of 1960 did not apply to non-residential building as the rent was more than Rs. 400 per month. LORD GREENE M.R., observed that if any right of the sub-tenant were to be recognised after the main tenancy had come to an end it would result in the anomalous position that the main tenant while vacating from his portion would be entitled to leave the landlord saddled and foisted with a statutory sub-tenant. For all these reasons I hold that the Plaintiff is entitled to a decree for possession against the second Defendant in respect of the portion in its occupation. There is no need to pass any decree as against the first Defendant, as the first Defendant claims no rights over this portion of the property.

24. On the question of mesne profits it will be seen that the Plaintiff will not be entitled to recover mesne profits till 30th April 1964 but only from 1st May 1964. The evidence adduced on the Plaintiff's side which stands unrebutted besides being amply corroborated by documentary evidence clearly justifies an award of Rs. 1,000 per month as against the second Defendant in respect of the portion in

its occupation. This property is in a very busy locality in the city and this particular portion abutts two most important and busy streets in the city, Errabalu Chetty Street and Sembudoss Street. In my opinion, in fixing the rent the usual practice which is now invariably observed in the business locality is to be followed, namely, fixing the rate of rent per square foot in the locality and in the adjacent areas. From the evidence it is seen that the rent is invariably fixed based upon the total area, that is rented out, and much importance is not attached to the age of the building or the particular pattern. They are not used as show rooms but used as business premises for carrying on business in hides and skins and such commodities where space is the guiding factor. In fact, a godown fetches practically the same rate of rent as even a show room. Virtually this is more a question of utility than any other consideration. The Plaintiff has filed a lease deed to show that for the portion which the first Defendant surrendered the rent is at Rs. 5,000 per month. The Plaintiff's agent has also given evidence that for the entire building the lessee, Lakshmi and Co., was prepared to pay a rent of Rs. 7,000 per month. He has given evidence that for godown the rent is eight annas to twelve annas per square foot; upstairs, first floor and second floor between 5 and 6 annas per square foot. He has also given evidence about the lease of another property belonging to the Plaintiff's son to Best and Co., at 8 annas per square foot. He has also given evidence that there are also other offers for twelve annas per square foot for godown space from other persons. The accommodation in the occupation of the second Defendant will be about 2,408 square foot. P.W. 2, the partner of Lakshmi and Co., has given evidence and he has also filed the counterfoils and cheques and the lease deed which show that Lakshmi and Co., has taken out the portion surrendered by the first Defendant on a monthly rent of Rs. 5,000 per month. P.W. 2 has also given evidence that Lakshmi and Co., made an offer of Rs. 7,000 per month for the entire building. He has also given evidence that in the portion facing Singanna Naicken street an area of 1,500 square feet has been leased out at 8 annas per square foot. I have no hesitation in accepting this evidence as true and also corroborating the evidence of P.W. 1, the Plaintiff's agent. If in respect of a building facing one street alone, forming part of the main building rent is charged at eight annas per square foot it is clear that the property in the possession of the second Defendant facing two important streets in a very big business locality will undoubtedly fetch very much more. I closely followed the cross-examination of P. Ws. 1 and 2 and except making some suggestions at random I did not get the impression that the cross-examination in any way detracted from the substance of the impression formed by me that the suit property will easily fetch "twelve annas per square foot. P.W. 2 is a very respectable person and I see no reason whatsoever why his evidence should not be accepted. P.W. 3 is the son of the Plaintiff and he has also given evidence producing the registered lease deed with respect to the property in Jaffar Serang street. It is true that this property is not exactly in the same locality but this evidence is in general and undoubtedly it corroborates the evidence of P. Ws. 1 and 2. As observed earlier there is really no rebutting evidence on the side of the

Defendants. When D.W. 1, Arumugha Mudaliar, was examined he was not able to give any useful evidence. The following question and answer at page 30 of the evidence shows that this witness would not say that the rate of rent spoken to by the plaintiff's witnesses is exaggerated:

Q.-Plaintiff's witnesses have spoken about the rate of rent per square foot round about the suit property. Is it correct ? What do you say ? You cannot say whether it is correct or not ?

A.-I cannot say.

Q.-By Court: Have you made any enquiries of persons who are occupying buildings in the neighbourhood ?

A.-No.

25. I am clearly of the view that a rent of Rs. 1,000 per month would be quite reasonable and if at all will be only on the side of leniency. The Plaintiff will, therefore, be entitled to recover at the rate of Rs. 1,000 per month from the second Defendant till the second Defendant delivers possession of the property.

26. The result is the Plaintiff will be entitled to a decree for possession of the property in the occupation of the second Defendant and a decree for mesne profits at the rate of Rs. 1,000 per month from the second Defendant from 1st May 1964 till delivery of possession. The Plaintiff will be entitled to his costs, i.e., Court-fee and Advocate's fee on the relief of possession of the property in the possession of second Defendant and also Court-fee and Advocate's fee for the mesne profits decreed against the second Defendant. In other respects the Plaintiff will bear his own costs while Defendants 1 and 3 will bear their own respective costs.

27. Learned Counsel for the second Defendant wants some time. But it is objected to by learned Counsel for the Plaintiff on the ground that the second Defendant has got several buildings and there is no need to grant any time in view of the attitude of the second Defendant. I grant time to the second Defendant till 30th April 1966. I accordingly also pass a decree for mesne profits against the second Defendant for a sum of Rs. 24,000 till 30th April 1966 and thereafter the Plaintiff will be entitled to recover a sum of Rs. 1,000 per month till he is able to obtain possession from the second Defendant.