
(1985) 11 MAD CK 0002
In the Madras High Court
Case No : C.R.P, 732 and 4225 of 1983

Sokunthala Ammal

APPELLANT

Vs

Indira Dye Works and Others

RESPONDENT

Date of Decision : 22-11-1985

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(2)(ii)(a), 2(8)

Citation : (1985) 11 MAD CK 0002

Hon'ble Judges : V. Ramaswami, O.C.J.

Bench : Single Bench

Advocate : M.R. Narasimhan, for the Appellant; K. Palaniswami and D. Shanmukham, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramaswami, Offg. C.J.

1. The landlady is the petitioner. She filed the petition for eviction under S. 10(2) (ii) (a) of the Tamil Nadu Buildings (Lease and Rent Control)

Act, 1960, as amended by Act 23 of 1973, on the ground that without the written consent of the landlady, the tenant has transferred his rights

under the lease or sublet the building. The facts as seen from the records may now be stated. The demised premises was originally let out to one

Varadaramanujulu Reddi sometime in 1940 for the express purpose of carrying on the tenant's business which he was carrying on in the name and

style of "Indira Dye works". At the time when the tenancy was created, Indira Dye Works was a proprietary concern of the said

Varadaramanujulu. The first respondent in C.R.P. 4225 of 1983 is the wife, the second respondent, the daughter and the third and fourth

respondents are the sons of the said Varadaramanujulu.

2. Sometime in 1957, the tenant took in one of his sons, the third respondent in the eviction petition, as, a partner in the business and the partnership continued to carry on the business in the same name and style of "Indira Dye Works". Later in 1971, another son, the fourth respondent in the petition, was also taken into the partnership business. Immediately thereafter, Varadaramanujulu retired from the partnership and the two sons, namely, the third and the fourth respondents, continued the business. In the year 1974, there was again a reconstitution of the firm. The father joined the firm and the third respondent retired from the firm. In 1976, Varadaramanujulu retired again from the partnership and the fourth respondent continued the business as his sole proprietary concern. Varadaramanujulu died in 1979 and thereafter this petition was filed in October 1981 claiming that Varadaramanujulu had sublet the premises to the fourth respondent and that, therefore, she is entitled to an order for eviction.

3. The contention of the learned counsel for the landlady-petitioner is that the tenancy was in favour of Varadaramanujulu individually when it was a proprietary concern, that by the induction of a son as a partner, the son does not become a tenant or a joint tenant with Varadaramanujulu and that on and from the date of death of Varadaramanujulu there shall be deemed to be a sub-tenancy in favour of the son, and, therefore, the landlady is entitled to an order for eviction. Though the learned counsel for the fourth respondent wanted to rely on the pleadings and contend that this was not the clear case of the landlady in the petition, let me first consider whether there is any legally acceptable case for the landlady, assuming the facts as stated above are true. I would also proceed on the assumption that the landlady did not know about the induction of partners or retirement of partners and that all along she was under the impression that Varadaramanujulu was continuing the business as sole proprietor and that the issuing of receipts in the name of Indira Dye Works makes no difference. There can be no doubt that Varadaramunujulu when he took his sons as partners could not be said to have transferred the tenancy in favour of his sons, the partners. There can also be no doubt that "when a new person is inducted as a partner there is no transfer of the tenancy. The partnership firm being a compendious way of referring the partners, when the

tenancy is given to a partnership firm, the firm itself is not considered to be the tenant but the individual partners comprising the partnership are the tenants. That has been so held in a number of decisions including that of the Supreme Court reported in *Murlidar v. Chuni Lal and others* 1970 R C.J. 922 (S.C.). If that is the real position, so long as any one of the partners is alive and continues as a partner is the partnership, the tenancy could not be said to have been transferred to the other newly inducted partners. The ratio of this principle, will apply, in my opinion, even to a case where a proprietary concern is converted into a partnership and the newly inducted partner will not get the tenancy rights in his favour directly, nor can it be considered to be a case of subletting. Number of cases have been cited at the Bar in this regard, but only that which is relevant to a partnership may be referred to. That is reported in *Dhushan Drug House v. Desraj* A.I.R.1980 C.J. 218.. In that case also, a tenant who was a proprietor of the firm took the lease in his own name. He took another person as a partner subsequent to this lease and at a later stage he retired from the partnership. It was held that the newly constituted firm was not the tenant nor the newly inducted partner can claim any tenancy right. If this is the legal position, what is the effect is the question-whether on the death of Varadaramanujulu in 1976 there was any transfer of the tenancy in favour of his sons or whether there was any sub-letting because, even according to the petitioner, as we have found, Varadaramanujulu continued to be a tenant till his death. It is also the case and I have already stated that by the induction of the partners, there was no transfer or no sub-letting and, therefore there could not have been any transfer or subletting on the death of Varadaramanujulu. The building shall be treated to be vacant and anybody in possession is not holding as a tenant or transferee from Varadaramanujulu. In that case, either the petitioner should have asked for in a suit, recovery of possession of the building, in a civil court, or, treating it as vacant claimed possession for owner's occupation. The landlady has done neither, in this case. Her case is rested only on transfer of tenancy or sub-letting of tenancy falling under S. 10(2)(ii) (a) of the Act. and, therefore, this petition for eviction is not maintainable.

4. However, for the sake of completeness, I may also mention that the learned counsel for the fourth respondent pointed out that it is the

petitioner's own case that after the death of Varadaramunujulu, respondents 1, 2 and 3, who are the legal heirs of the deceased tenant, are entitled to tenancy rights. It may also be mentioned that the first and second respondents referred to are the wife and daughter of the deceased and the further case set one in the pleading is that the first, second and third respondents parted with the possession of in favour of the fourth respondent without the consent of the landlady rendering themselves liable to be evicted. On these pleadings, certainly the learned counsel for the fourth respondent is right in contending that there is no specific case that Varadaramanujulu has transferred the tenancy or sub-let the tenancy entitling the petitioner to get an order for eviction. The learned counsel for the respondent is also well founded in his contention that in any case he would be a tenant within the meaning of S. 2(8) of the Act. The tenant is defined as meaning, any person by whom or on whose account rent is payable for a building and includes the surviving spouse, or any son, or daughter, or legal representative of a deceased tenant who in the case of a non-residential building had been in continuous association with the tenant for the purpose of carrying on the business of the tenant upto the death of the tenant and continues to carry on such business thereafter. Though the petitioner disputed the status of the fourth respondent as a son, the lower appellate authority has found with reference to the will and the other evidence available that he is the son of Varadaramanujulu. It is also the admitted ease that the fourth respondent was continuing the business with his father till the date of his death and, therefore, he will be a tenant within the meaning of the Act itself and he will be entitled to continue so long as he complies with the provisions of the Act. In the circumstances, therefore, neither on the ground of transfer nor on subletting the landlady is entitled to an order for eviction and the petition for eviction was rightly dismissed by the appellate authority. The civil revision petition No. 4225 of 1983 is therefore dismissed. but there will be no order as to costs. In view of order in C.R.P. 4225 of 1983, C.R.P. 732 of 1983 is also dismissed. No costs.