
(1991) 03 MAD CK 0045
In the Madras High Court

Sree Venkateswara Varukadalai Mills

APPELLANT

Vs

Smt. Vijayalakshmi

RESPONDENT

Date of Decision : 05-03-1991

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(2)(a)
Transfer of Property Act, 1882 — Section 105

Citation : (1991) 2 MLJ 156

Hon'ble Judges : Somasundaram, J

Bench : Division Bench

Judgement

Somasundaram, J.—The first respondent-tenant in R.C.O.P. No. 25 of 1981 on the file of the rent Controller (District Munsif), Tiruppur is the petitioner in this civil revision petition. The petitioner in the said R.C.O.P. is the respondent in this civil revision petition. For the sake of convenience the parties are referred to in this order as per the nomenclature given to them in the R.C.O.P. 2. The petitioner filed an application for eviction against the first respondent-partnership firm and respondents 2 to 7 in the said R.C.O.P., who are the partners of the first firm u/s 10(2)(a) and (b) and (iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act XVIII of 1960, hereinafter called the act. The case of the petitioner is as follows:

The petitioner is the owner of the petition mentioned building. The first respondent is the partnership firm and the respondents 2 to 7 are the partners of the first respondent-firm. The respondents as partners of the first respondent-firm entered into a registered tenancy agreement in respect of the petition mentioned A schedule property on 30.8.1976 and they also entered into another lease agreement on 30.4.1977 in respect of the petition mentioned B Schedule property. It is specifically agreed in the lease agreements that the respondents should not sublet the petition mentioned premises to any other person without the consent of the petitioner. Contrary to the terms of the lease agreements the respondents have sublet a portion of the petition mentioned premises to M/s. Ambika Traders and on the ground of subletting the respondents are liable to be

evicted from the petition mentioned premises. The respondents also committed acts of waste impairing the utility and value of the building.

3. The respondents resisted the application for eviction contending as follows : The respondents took the demised property on lease for running a Varukadalai mill. The respondents have not sublet any portion of the petition mentioned premises to M/s. Ambika Traders. M/s. Ambika Traders is only a sister-concern of Venkateswara Mills. The respondents have permitted the sister concern M/s. Ambika Traders to use the petition mentioned premises along with the respondents as the sister concern M/s. Ambika Traders, was started for the purpose of purchase of greengrams on behalf of the respondents. There is no parting with legal possession of the premises by the respondents. The partners of the first respondent firm and the partners of M/s. Ambika Traders are close relations. Originally M/s. Ambika Traders was started with four partners and it was subsequently reconstituted by increasing the number of partners to nine and most of the partners of the first respondent firm have become the partners of the reconstituted firm of M/s. Ambika Traders. M/s. Ambika Traders are not put in exclusive possession of any portion of the petition mentioned premises by the respondents.

4. The rent Controller, on a consideration of the entire evidence on record, found that the respondents sublet the petition mentioned premises to M/s. Ambika Traders and consequently passed an order of eviction against the respondents. The rent controller found that the respondents have not committed any acts of waste.

5. As against the order of the rent Controller the respondents filed R.C.A. No. 9 of 1989 before the Appellate Authority (Sub-Court), Tiruppur. The Appellate Authority confirmed the finding of the rent Controller that the respondents sublet the petition mentioned property and dismissed the appeal. As against the judgment of the Appellate Authority the respondents have filed the present civil revision petition.

6. Mr. V.K. Muthuswamy, learned Counsel for the respondents would submit that the first respondent-firm and M/s. Ambika Traders are sister-concerns; the respondents never parted with possession of the petition mentioned premises; M/s. Ambika Traders was never put in exclusive possession of any portion of the petition mentioned premises, M/s. Ambika Traders being a "sister-concern, of the first respondent-firm is only permitted to use the petition mentioned premises along with the respondents, No rent is paid by M/s. Ambika Traders to the respondents, the respondents retained the legal possession of the petition mentioned premises and, the before, it cannot be said that the respondents sublet the petition mentioned premises to M/s. Ambika Traders. In support of his contention, the learned Counsel for the respondents would rely upon the decisions reported in M/s. Delhi Stationers and Printers Vs. Rajendra Kumar, .

7. The relevant portion of Section 10(2)(ii)(a) of the Act reads as follows:

A landlord who seeks to evict his tenant shall apply to the controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied-

....

(ii) that the tenant has after the 23rd October, 1945 without the written consent of the landlord-

(a) transferred his right under the lease or sublet the entire building or any portion thereof, if the lease does not confer on him any right to do so....

The scope of the word "sub-let" came up for consideration before this Court in *In Re: Ravipati Sitaramayya, . Subba Rao, J.*, as he then was, after reviewing the English Cases on this aspect, held as follows:

It is clear from the aforesaid decisions that there cannot be a sub letting unless the lessee parted with legal possession. The mere fact that another is allowed to use the premises while the lessee retains the legal possession is not enough to create a sub lease. Section 105 of the Transfer of Property Act defines a lease of immovable property as a transfer of right to enjoy such property. The before to create a lease or sub lease a right to exclusive possession and enjoyment of the property should be conferred on another.

The learned Judge, while coming to the above conclusion relied on the following passage from *Fee on Landlord and Tenant*, Sixth Edition, at page 323:

The mere act of letting other persons into possession by the tenant, and permitting them to use the premises for their own purposes, is not, so long as he retains the legal possession himself, a breach of the covenant.

8. In *Petroleum Workers Union Vs. A. Mohamed and Co., Madras, .* This Court, dealing with the meaning of sublease falling u/s 10(2)(ii)(a) of the Act, has observed as follows:

A sub-lease is a demise by a lessee for a lesser term than he himself has. Every lessee, however short his term may be, may make a sublease unless he is refrained by the contract of the tenancy from sub-letting. If the demise is for the whole term or for a period beyond the term, it amounts to assignment. If the lessee divests himself he becomes a stranger to the demised property and he has no right to have possession delivered up to him. It is true that a covenant against sub-letting will restrain the assignment, but a mere covenant against subletting does not prohibit under letting a part of the premises. As long as the lessee remains in possession, he may permit another person to use the demised premises without committing a breach of covenant, namely not to assign, underlet or part with the possession of the demised premises.

Recently in *Delhi Stationers and Printers v. Rajendra Kumar* AIR 1990 S.C. 1298, the Supreme Court, dealing with the meaning of "subletting" has held as follows:

Sub-letting means transfer of an exclusive right to enjoy the property in favour of the third party and the said right must be in lieu of payment of some compensation or rent. Parting of the legal possession means possession with the right to include and also a right to exclude others. Mere occupation is not sufficient to infer either sub-tenancy or parting with possession....

9. On the basis of the principles laid down in the decisions referred above, the position of law on the question of subletting may be stated as follows:

A tenant can be said to sublet the demised premises to a third party only when the tenant had permitted the third party to occupy the premises and had divested himself completely of the possession of the premises or part thereof. In other words, there must be transfer of the exclusive right to enjoy the demised premises by the tenant in favour of a third party and the said right must be in lieu of payment of some compensation or rent. If a tenant had permitted a third party to use the premises along with him while the tenant retains legal possession, it will not amount to sub-letting. There cannot be a sub-letting unless the lessee parted with legal possession. In the light of the position of law on the question of subletting as stated above, let us now examine whether the respondent has sub-let the petition mentioned premises to M/s. Ambika Traders. The evidence in this case discloses that under Exs. A-2 and A-3 the petitioner has let out the petition mentioned premises to the respondents. The petitioner has not let in any evidence to show that the respondent parted with exclusive possession of the petition mentioned premises or that M/s. Ambika Traders are put in exclusive possession either the entire petition mentioned premises or any specific portion of the petition mentioned premises. In the notice, Ex. A-4, the petitioner has stated that the respondents have sublet the petition mentioned premises to M/s. Ambika Traders. However, in para 7 of the petition in R.C.O.P. No. 25 of 1981 the petitioner has stated as follows:

The petitioner came to know that a portion of the premises mentioned in Schedules A and B herein had been sublet to the firm M/s. Ambika Traders.

But, in the petition for eviction, the petitioner has not specified the exact portion in the petition mentioned premises which is sub-let to M/s. Ambika Traders. P.W. 1 has admitted in her evidence that she does not personally know about subletting of the petition mentioned premises by the respondents to M/s. Ambika Traders. Her further admission in evidence is that she never visited the petition mentioned premises after it was let out to the respondents. P.W. 1 has also admitted in her evidence that the custody of the key of the petition mentioned premises is only with the respondents. P.W. 1 has not stated in her evidence that M/s. Ambika Traders are in exclusive possession of any specific portion of the petition mentioned premises. R.W. 1 has stated in his evidence that the respondents are in possession of the petition mentioned premises as tenants, that they have not sublet the petition mentioned premises to M/s. Ambika Traders and that M/s. Ambika Traders is only a sister-concern of the first respondent-firm. R.W. 1 has further stated in his evidence that the partners of M/

s. Ambika Traders are closely related to the partners of the first respondent-firm and that the respondents permitted the firm M/s. Ambika Traders to use the petition mentioned premises and to carry on their business, but, no specific portion in the petition mentioned premises was given to M/s. Ambika Traders for their business. Exs. B-6 to B-12 account books pertaining to the business of M/s. Ambika Traders do not show that any rent was paid by M/s. Ambika Traders to the first respondent-firm for using the petition mentioned premises. R.W. 2 is the clerk writing accounts relating to the business carried off by both the firms. His evidence is that M/s. Ambika Traders and the first respondent firm are sister concerns, that M/s. Ambika Traders purchases greengrams from other States for that first respondent firm and that first respondent-firm fry the green-grams and sell the same to the third parties and that for the work done by M/s. Ambika Traders for the first respondent firm they are paid only a commission of 2%. Mr. A. Sivaji, learned Counsel for the petitioner referred to the evidence of R.W. 2 that M/s. Ambika Traders is carrying on business in the western portion of the petition mentioned premises and contended that the western portion of the petition mentioned premises was sublet to M/s. Ambika Traders. But, there is no evidence to show that M/s. Ambika Traders was put in exclusive possession of the western portion of the petition mentioned premises. The evidence in this case discloses that the partners of the first respondent-firm are related to the partners of M/s. Ambika Traders. Ex. B-14 goes to show that after the reconstitution of the firm M/s. Ambika Traders most of the partners of the first respondent-firm have become the partners of M/s. Ambika Traders also. The evidence in this case further discloses that M/s. Ambika Traders is only permitted to use the petition mentioned premises by the respondents. The petitioner has not let in any evidence to show that the respondents have parted with possession of either the entire petition mentioned premises or any portion of the petition mentioned premises to M/s. Ambika Traders. In these circumstances, it has to be held that the respondents have not sublet the petition mentioned premises to M/s. Ambika Traders. The conclusion arrived at by the rent Controller as well as the Appellate Authority that the respondents sub-let the petition mentioned premises to M/s. Ambika Traders is clearly erroneous. Further the reasoning of the Appellate Authority that when the petitioner has let out the petition mentioned premises only to the respondents, the act of the respondents permitting M/s. Ambika Traders to use the petition mentioned premises will amount to subletting is also equally erroneous and cannot be countenanced. Both the rent Controller and the Appellate Authority failed to approach the whole question of subletting in the proper perspective and in the light of the principles laid down in the decisions referred above. The infirmity in the orders of the authorities below is that they failed to draw proper inferences from the evidence available on record. The above discussion of mine obliges me to interfere with the orders of the rent Controller and the Appellate Authority in this revision. Accordingly the civil revision petition is allowed, the orders of the Rent Controller and the Appellate Authority are set aside and R.C.O.P. No. 25 of 1981 is dismissed. No costs.