
(1982) 10 MAD CK 0030
In the Madras High Court
Case No : C.R.P. 2359 of 1981

T. Damodaram and others

APPELLANT

Vs

Kamalammal

RESPONDENT

Date of Decision : 22-10-1982

Acts Referred:

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

Citation : (1982) 10 MAD CK 0030

Hon'ble Judges : Sengottuvelan, J

Bench : Single Bench

Advocate : P. Haridoss and R. Subramanian, for the Appellant; R. Sadagopan, for the Respondent

Judgement

Sengottuvelan, J.—This Civil revision petition is filed by the tenant, T. Damodaran, proprietor, Kamaladhar Press & Phonex Traders and 3 others against whom an order of eviction was passed by the appellate authority and the IV Judge, Court of Small Causes, Madras in H.R.A. No. 1235 of 1980. The facts of the case are briefly as follows?The landlady, the respondent herein, filed an application in H.R.C. No. 3571 of 1979 against T. Damodaram, proprietor, Kamaladhar Press and Phonex traders (the first civil revision petitioner) under S. 10 (2) (i) and 10 (2) (ii) (a) of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 as amended by Act 23 of 1973, hereinafter referred to as the Act, in respect of the premises bearing door No. 245, Thambu Chetti St. Madras 1. The case of the landlady is that the above said premises was let out to the first civil revision petitioner for non-residential purpose on a monthly rental of Rs. 130, and the tenancy is according to the English calendar month. The tenant is always irregular in payment of rent and he is in default in payment of rent from 1st June, 1979 to 30th September, 1979 and as such he has committed wilful default in payment of rent. The landlady also contended that the tenant had sublet the premises to the civil revision petitioner 2 to 4 without her written consent and as such he is liable to be evicted on this ground also. In the counter-

affidavit the first civil revision petitioner contended that he is not the tenant under the landlady in his individual capacity but a firm under the name and style of Kamaladhar Press in the tenant. He further stated in his counter statement that he has transferred the rights, liabilities responsibilities assets, machineries, stocks in trade, good-will and other rights accrued therein to the civil revision petitioners 2 to 4 as early as on 29th October, 1979, which is well-known to the landlady. She was also present at the time of inauguration of the firm by the civil revision petitioners 2 to 4 on 29th October, 1979 and as such there is no subletting on the part of the first civil revision petitioner. He has also contended that the allegations regarding the wilful default is not true and that from 1st June, 1979 to 30th September, 1979 he has paid the rent to the landlady for which receipts had not been passed by the landlady. His further contention is that the landlady is keeping Rs. 560 as advance which is more than a month's rent in respect of the tenancy. The landlady is not in the habit of issuing receipts and in good faith the first civil revision petitioner used to send the rent by bearer. The rent was raised to Rs. 150 from July, 1979 onwards and he paid the increased rent. The rent for October, 1979 was sent by M.O. which was refused by the landlady. Hence, it is contended that there is no wilful default on the part of the tenant in payment of rent. The tenant (the first civil revision petitioner) also contended that he and the civil revision petitioners 2 to 4 met the landlady in October, 1979 and informed her that they are prepared to pay the enhanced advance and also the enhanced rent. But the landlady demanded exorbitant puggree which the civil revision petitioners were not willing to pay. Hence the landlady has come forward with the rent control application.

2. The learned Rent Controller on a scrutiny of the documents and oral evidence and also relying upon the accounts maintained by the tenant which shows the payment of rent to the landlady and also relying on the fact that the rent for October, 1979 was sent by M.O. which was refused by the landlady and also accepting the version of the tenant that the landlady never used to issue receipts for the payment of rent came to the conclusion that there is no wilful default in payment of rent from July, 1979 to October 1979; on the second ground of subletting the learned Rent Controller came to the conclusion that only Kamaladhar Press and Phonex traders is the tenant and the tenancy is only on behalf of the press and the receipts were issued to the first civil revision petitioner only in his capacity as the proprietor and not as an individual and in this case, there is only a transfer of leasehold right and the same is different from subletting and hence on facts there is no subletting at all and what was done is only a transfer of interest in a partnership firm and the press remains the same and the trade is also the same and dismissed the petition for eviction. As against the said order of dismissal, the landlady filed H.R.A. 1235 of 1980 on the file of the appellate authority and the IV Judge, Court of Small Causes, Madras. The appellate authority concurred with the finding of the Rent Controller on the question of wilful default in payment of rent but on the question of subletting the appellate authority came to the conclusion that the transfer of rights in the

Kamaladhar Press and Phonex traders to the civil revision petitioners 2 to 4 and putting them in possession thereof will fall squarely within the mischief of S. 10 (2) (ii) (a) of the Act and ordered eviction on this ground. As against the order of eviction passed by the appellate authority the above civil revision petition is filed.

3. In this revision petition the order of eviction of the tenant in occupation, viz., the civil revision petitioners 2 to 4 under S. 10 (2) (ii) (a) passed by the appellate authority is being questioned. Before examining the merits of the order of the appellate authority it will be useful to state certain facts based on the evidence that may have a bearing on the conclusion. The premises belongs to the respondent landlady and the same was originally leased out to the first civil revision petitioner T. Damodaram. The case of the tenant is that the lease is to the firm Kamaladhar Press and Phonex traders of which T. Damodaram is the proprietor and the lease is not to the individual. In support of this contention is pointed out that the receipts for the payment of rent, viz. Ex. R1 series stand in the name of Kamaladhar Press and Phonex traders. It is the case of the tenant that by means of the document Ex.R4 the business under the name and style of Kamaladhar Press and Phonex traders was transferred as a going concern to the civil revision petitioners 2 to 4 and even after such a transfer Kamaladhar Press and Phonex Traders existed and the transferee continued the business under the same name and style and as such there is no transfer of right in the lease or subletting. Such an assignment as a going concern according to the tenant will not amount to a transfer of right under the lease since the business is carried on under the same name and there is no subletting since the transferor did not retain any interest in respect of the firm. The first civil revision petitioner admits of having transferred the firm, viz, Kamaladhar Press and Phonex traders to the civil revision petitioners 2 to 4. On behalf of the landlady it is contended that such a transfer will amount to a transfer of rights under the lease coming within the mischief of S. 10 (2) (ii) (a) of the Act.

4. Reliance is placed upon the case reported in Venkatarama Iyer v. Renters Ltd. 1961-2- M.L.J. 57 S.N., in which Subba Rao, J. as he then was, held that if a company doing business in a particular premises (taken on lease) transfers its business as a going concern to another company and also the net assets for consideration and thereafter the transferee company takes over the business and carries on business in the premises let out to the former company it cannot be said that there was no transfer of the right of the former company under the lease to the latter company and on such transfer the tenant is liable to be evicted.

5. In M. Rodgers v. M. Prakash Rao Naidu 1969-1-M.L.J. 332=82 L.W. 112 a tenant who was running a press in the building (a business premises) with his machinery, stopped the business and his previous manager was running a press as a lessee of the machinery. The petitioner-tenant had no share in that business. In an application for eviction on the ground of sub-letting, Alagiriswami, J. as he then was, held that the tenant is liable to be evicted on the ground of subletting. Alagiriswami, J. expressed the view that the machinery

cannot be run unless it is placed in the premises where it is situate. So, the lessee of the machinery also gets the advantage of the use of the business premises also. Therefore the lease amount which the lessor receives should contain in it an element of rent for the building which is used to house the machinery. It is unbelievable that the lessor would take rent for the use of the machinery alone and not take any rent for the use of the business premises and agrees to pay the rent himself. It is not an answer under these circumstances against the charge of subletting to say that the lessor does not take anything separately from the lessees by way of rent for the building itself or that he himself is paying the rent to the landlord and sub-lessee is not paying the rent to the landlord.

6. In Pandit Kishan Lal Vs. Ganpat Ram Khosla and Another, the Supreme Court observed at follows :

Where a company who is a tenant of certain premises, lets into possession another person without the consent of the landlord and without determining the tenancy by a notice as required by law, there is an assignment of the tenancy and the assignee cannot be regarded as a trespasser. The assignee of the tenancy rights of the company is as such liable to be sued in the court of the Controller as the company for an order of ejectment.

Relying on the above decisions it is contended that what was done by the tenant in this case the transfer of the entire business to the civil revision petitioners 2 to 4 which will come within the mischief of S. 10 (2) (ii) (a) of the Act. S. 10 (2) (ii) (a) of the Act lays down that the landlord is entitled to an order of eviction in case of transfer of rights under the lease as well as sub-letting. On behalf of the tenant it is contended that the rent control application was filed only on the ground of sub-letting and not on the ground of transfer of rights in the lease and both are different causes of action and if an application for eviction is filed on the ground of sub-letting the tenant cannot be evicted on the ground of transfer of his right under the lease.

7. In support of the argument of the tenant that the transaction in the present case will amount to a transfer of right in the lease and sub-letting, reliance is placed upon Russel and another v. Beeham and another 1924-1-K.B. 525. In that case, there was a lease for 30 years from March 1899 which contained a covenant by the lessee that he would not assign or part with the lease or the premises or any part thereof without the licence and consent in writing of the lessor or his trustees. The lease also contained a proviso for re-entry by the trustees for breach of his covenants by the lessors. Basing upon underlease the landlord filed an application for recovery of possession. In the course of the judgment holding that an underlease will not amount to transfer the following observation is found?

Assign, transfer, and set over, are mere words of assignment?otherwise do, or put, away signifies any other mode of getting rid of the premises entirely and

cannot be confined to the making an underlease.

The principle laid down in this case applies to a case where the chief tenant had retained an interest in the lease hold property. But in the present case, the tenant, the first civil revision petitioner, did not retain any interest and hence the above principles cannot be applied to the facts of the present case.

8. In Hill and Redman's Law of Landlord and Tenant, 14th Edn. at page 644, following observation is found:?

"Covenant against assignment only does not prohibit under-letting?Covenant not to assign, transfer, or set over, or otherwise do or put away with" the lease or the demised premises... A sublease for one year from a future date is not a breach of a covenant not to sublet for more than one year.

In Adkin's Landlord and Tenant, 17th Edn. at page 65 the following observation is found?

An assignment is a parting with the entire interest which a person possesses in a property ; whereas a sub-lease is parting with only a portion of the interest and retaining a portion. A covenant not to assign is not broken by sub-letting.

The observations referred to in the abovesaid two text books are to the effect that when a tenant retains an interest in the leasehold property and transfers only a limited right, it will not amount to an assignment of the lease, hold right. In the present case, the tenant had assigned his entire interest and hence the above principle has no application to the present case. In Woodfall's Law of Landlord and Tenant, 24th Edn. at page 585 the following observation is found?

A covenant not to assign or part with the lease or the premises hereby demised, or any part thereof, is not broken by a sub-letting of part of the premises.

9. The present case is not one of sub-letting of part of the premises and hence the above principle has no application to the present case. In the present case, the tenant did not retain anything after the transfer under Ex.R4, and under the circumstances the transaction can only be construed to be a transfer of right under the lease. In the rent control application there is no plea regarding the transfer of rights under the lease but there is only a plea of sub-letting. It is contended on behalf of the tenant that having pleaded subletting as the ground of eviction, the landlord cannot turn round and ask for eviction, on the ground of transfer of rights under the lease. This contention will have to be considered in the proper perspective. Sub-letting in the ultimate analysis is also a transfer of right under the lease in which the chief tenant retains some interest.

10. Dealing with the difference between sub-letting and assignment the following passage occurs in Adkin's Landlord and Tenant, 17th Edn. at page 65?

An assignment is a parting with the entire interest which a person possesses in a property; whereas a sub-lease is a parting with only a portion of the interest and retaining the portion. A covenant not to assign is not broken by sub-letting.

In Hill and Redman's Law of Landlord and Tenant, 14th Edn. at page 177 paragraph 108 deals with the effect of underleases and the same is reproduced below?

108 : Effect of under leases?The lessee of property can, in the absence of agreement restricting his right, underlet it for any period less than the residue of his own term but if he purports to underlet by deed for a term equal to or greater than, the residue of his own term, this operates as an assignment of his term, and not as an underlease. Consequently, in such a case, no reversion remains in the underlessor, and he cannot distrain for rent reserved by the underlease, though he can sue for it as rent, and not merely as an independent sum.

In the commentary to the above passage 108 it is stated as follows?

When an underlease is made for the whole term less one day, and the underlessor is trustee for the underlessee of the nominal reversion, the underlessee can on the underlessor's death intestate obtain administration limited to the outstanding day for the purpose of getting it in.

From the above passages it is seen that subletting is transfer by a tenant of a right less than what he himself has and retaining the reversion whereas a transfer of the rights of tenant is parting with the entire interest the tenant has without retaining any right what is contained in S. 10 (2) (ii) (a) is that the landlord is entitled to an order of eviction in case of transfer of the tenant's right to another or sub-letting which is transfer of a limited right by the tenant. When sub-letting (transfer of a limited right) is pleaded and the transfer of the tenant is established, the landlord is entitled to succeed. It is laid down in the case reported in Mohamed Mousuf Zulaika Umma v. Abdul Khader 1980-1-M.L.J. 218=93 L.W. 77, a Division Bench of this Court observing as follows?

S. 10(2)(ii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as amended by the Act 23 of 1973, contemplates two situations, one dealing with the tenant transferring his rights under the lease or sub-letting the entire building, and the other with dealings by the tenant using the building for a purpose other than that for which it was leased. On a harmonious construction of the above clauses, it will be seen that the expression where the tenant has after the 23rd October, 1945, without the written consent of the landlord transferred his rights under the lease or sublet the entire building or any portion thereof, from the very nature of the case, does not contemplate the continuance of the sub-letting. All that is required is that subsequent to 23rd October, 1945, the tenant should have sublet the premises without the written consent of the landlord. Once this requirement is satisfied the tenant forfeits his protection and becomes liable to be evicted, and the statute does not impose a further condition that the sub-letting must be continuing throughout the entire course of the eviction petition. If such construction were to be put on the statutory provision, the tenant will be able to play a hide and seek game and the moment he comes to know of the landlord's intention to file a petition, he can temporarily cause

the tenant to vacate the premises in question and occupy it himself, and as soon as the petition for eviction is dismissed, he can re-induct the subtenant into the premises. This could not have been the intention of the Legislature and the statutory provision like the one under consideration cannot also be construed in such a manner.

The principle laid down in the above case can be extended to the present case, and viewed in the proper perspective the claim of the landlady cannot fail on account of want of a plea regarding the transfer of the right by the tenant.

11. In the case reported in V.S.K. Chetti Choultry v. Veerasami 1972-1-M.L.J. 184=85 L.W. 192 a single Judge of this Court observed as follows?

It is clear from S. 10 (2) (ii) (a) of the Madras Buildings (Lease and Rent Control) Act that a tenant cannot without the written consent of the landlord transfer his rights under the lease or sublet the entire building or part thereof, if the lease does not confer on him any right to do so. Hence if a tenant sublets even a portion of the leasehold premises it will entail liability for eviction.

12. Since the sub-letting is a transfer of the leasehold right in a limited way and assignment is a transfer of the entire interest of the tenant the plea of sub-letting, viz., the transfer of a limited right, will entail the landlord to an order of eviction in the case of a transfer of the entire interest if pleaded and proved. On a consideration of the entire circumstances the only conclusion that can be arrived at in this case is that the landlady is entitled to evict the tenant under S. 10(2) (ii) (a) of the Act There are no Merits in this civil revision petition and hence the same is dismissed. There will be no order as to costs. However, the tenant is given one year time to vacate the premises.