Hiralal Vallabhram vs Kastorbhai Lalbhai & Ors on 31 March, 1967

Equivalent citations: 1967 AIR 1853, 1967 SCR (3) 343, AIR 1967 SUPREME COURT 1853

Author: K.N. Wanchoo

Bench: K.N. Wanchoo, Vishishtha Bhargava, G.K. Mitter

PETITIONER:
HIRALAL VALLABHRAM

Vs.

RESPONDENT:
KASTORBHAI LALBHAI & ORS.

DATE OF JUDGMENT:
31/03/1967

BENCH:
WANCHOO, K.N.
BENCH:
WANCHOO, K.N.
BHARGAVA, VISHISHTHA
MITTER, G.K.

CITATION:
1967 AIR 1853 1967 SCR (3) 343
CITATOR INFO :
D 1973 SC1099 (4)
E 1980 SC 226 (16)
R 1987 SC1823 (7)
D 1987 SC2179 (12)

ACT:
Bombay Rents, Hotel and Lodging House Rates, Control Act (57 of 1947), ss. 14 and 28-Notice by landlord terminating tenancy-If tenancy "is determined for any reason"-Sub-tenant's rights-Jurisdiction of court to order eviction.

HEADNOTE:
The landlords of certain premises gave notice to their tenants terminating the tenancy. After the period fixed in the notice for vacating the premises expired, the landlords

filed a suit for eviction under s. 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, in the Court of the Judge of Small-Causes. The suit was based on two grounds, namely : (i) that the rent was in arrears for six months, and (ii) that there was unlawful sub-letting by the tenants to the appellant. The tenants contended that the rent was not in arrears and that there was no sub-letting to the appellant, but that he was a partner of their firm. The appellant's contention was that he was not a sub-tenant but the tenant of the landlords because of a transfer by the tenants of their interest to him, and that, there were no arrears of rent. The trial Court held that, (i) there were no arrears of rent, and (ii) that the appellant was a sub-tenant, but that he could not be evicted because of s. 15(2) of the Act. In appeal by the landlords the appellate Court also held, (i) that there were no arrears but (ii) that since the appellant himself denied that be was a subtenant he could not be held to be a sub-tenant; and, as he bad failed to prove the assignment in his favour he was a mere trespasser. It therefore ordered his eviction on the ground that the benefit of s. 15(2) was available only to a sub-tenant. 'Me appellate Court, however, did not order the eviction of the tenants-in-chief. When the appellant took the matter to the High Court, in revision under s. 115, Civil Procedure Code, the High Court held, (i) that the appellate Court was not right in setting aside the finding that the appellant was a sub-tenant. and that the finding that the appellant was a sub-tenant stood unchallenged; but (ii) that the tenants and the sub-tenant, namely the appellant, were liable to be evicted because the rent was in arrear.

In appeal to this Court,

HELD :(1) Assuming that the finding that the appellant was a trespasser could not be assailed in revision, the High Court erred in not setting aside the decree for eviction, because, the appellate Court had no jurisdiction to pass any decree against a trespasser in a suit brought under s. 28. Such a decree against a trespasser could only be passed by an ordinary civil court in a regular suit under the Civil Procedure Code. It could not be passed by a Judge of the Small Causes Court before whom, as a special forum, a suit for eviction under s. 28 of the Act is brought. That section gives power to that Court to order eviction of a tenant (along with whom a sub-tenant will go) provided the provisions of s. 12 or s. 13 of the Act are satisfied. As far as the appellate Court was concerned,- though it was the Court of Extra Assistant Judge, its jurisdiction could not be wider than that of the trial Court. (347H; 348A-D].

(2) Even on the assumption that the appellant was a sub-tenant the High Court should have held that the appellate Court had no jurisdiction

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to order the appellant's eviction when there was no order

evicting the tenants-in-Chief. [348G]
Under the Act, the landlord cannot sue a sub-tenant alone for eviction. He has to sue the tenant, and if he succeeds against the tenant, the subtenant would be evicted along with the tenant-in-chief, unless he can take advantage of some provision of the Act. [348F]
(3) It could not be said that the interest of the tenants-in-chief was determined by the notice given by the landlords, that thereupon the appellant, who was a sub-tenant, -became a tenant by virtue of s. 14 and that therefore, it was unnecessary to order the eviction of the tenants-inchief. [349D, F]
Section 14 would come into play in favour of the sub-tenant only after the tenancy of the contractual tenant has been determined by notice and the contractual tenant has been ordered to be evicted under s. 28 of the Act on any of the grounds in ss, 12 or 13. Till that event happens, or till he gives up the tenancy himself, the interest of a tenant who may be a contractual tenant for purposes of s. 14 cannot be said to have been determined, that is, come to an end completely, in order to give rise to a tenancy between the pre-existing sub-tenant and the landlord. The interest of a tenant comes to an end completely only when he is not only no longer a contractual tenant but also when he has lost the right to remain in possession which s. 12 has given him and is thus no longer, even a statutory tenant. The words in s. 14, namely "is determined for any Yea,-,on" mean, that the interest of the tenant "comes to an end completely." They do not mean a determination by notice as in s. 111(h) of the Transfer of Property Act. [349H; 350A-E]
Anand Nivas (Pvt..) Ltd. v. Anandji Kalyanji Pedhi [1964] 4 S.C R. 892, explained.
(4) The High Court was also not justified in interfering with the concurrent finding of fact of the lower courts that there were no arrears of rent.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No, 695 of 1965. Appeal by special leave from the judgment and order dated June 17, 18, 1964 of the Gujarat High Court in Civil Revision Application No. 430 of 1961.

Purshottam Trikamdas and I. N. Shroff, for the appellant., S.V. Gupte, Solicitor-General, G. L. Sanghi and B. R. Agar- wala, for respondents Nos. 1 and 2.

The Judgment of the Court was delivered by Wanchoo, J. This is In appeal by special leave against the judgment of the Gujarat High Court. Brief facts necessary for present purposes are these. A suit was brought by respondents Nos. 1 and 2 (hereinafter referred to as the respondents) against the appellant and three Others in the Court of Judge Small Causes at Ahmedabad, under s. 28 of the

Bombay Rents. Hotel -and Lodging House Rates Control Act, No. LVII of 1947, (hereinafter referred to as the Act). The case of the respondents was that the other three persons who were defendants Nos. 1 to 3 were the tenants-in-chief of the premises while the present appellant who was defendant No. 4 was their sub- tenant. The respondents had given notice to the tenants-in- chief terminating the tenancy and asked them to vacate the premises from after November 30, 1956, which was the end of the month of tenancy. The suit was filed on March 1, 1957 and was based on two grounds, namely, (i) that the rent had not been paid for six months, and (ii) that there had been unlawful sub-letting by the tenants-in-chief to the appellant. The suit was resisted by the three tenants-in-chief. One of them took the defence that the premises had been taken by a firm at a time when it consisted of the three defendants. But later defendant No. 1 no longer remained a partner of the firm and had nothing to do with the premises and the suit against him was not maintainable. Defendants Nos. 2 and 3 on the other hand contended that the rent claimed (i.e., Rs. 26) was excessive and prayed that standard rent should be fixed for the premises. These defendants further said that defendant No. 1 was no longer a partner of the firm and that in his place defendant No. 4 (i.e., the present appellant) had become partner. Thus defendants Nos. 2 and 3 denied that there was any sub- letting, unlawful or otherwise, to the appellant. It was further stated that the rent due had been deposited on the first date of hearing and in consequence there were no arrears due to the respondents. The appellant also filed a written-statement. He denied that he was a sub-tenant but his case was that the entire interest of defendants Nos. 1 to 3 in the business along with the interest in the premises had been transferred to him and he was thus the tenant of the respondents and not a sub-tenant, He further said that the arrears of rent had been paid into court and thus there were no arrears due to the respondents.

On these pleadings, the trial court framed four issues. The first issue was whether defendants Nos. 1 to 3 were in arrears and it was held that they were not in arrears. The second issue was about the standard rent of the premises and the trial court held that it was the same as the contractual rent, namely, Rs. 26 per mensem. The third issue was whether defendants Nos. 1 to 3 had sublet the premises and the fourth issue was whether there was an assignment in favour of the present appellant by defendants Nos. 1 to 3 of their interest. The trial court held that defendants Nos. 1 to 3 had sub-let the premises to the present appellant and did not accept the contention of defendants Nos. 2 and 3 about partnership or of the appellant about assignment. Finally the trial court held on the basis of the amendment of the Act in 1959 that there could be no eviction. It therefore dismissed tie suit against all the four defendants, namely, the three tenants-in-

chief and the appellant so far as eviction was concerned. It further ordered the tenants-in-chief to pay rent from September 1, 1956 upto date at the rate of Rs. 26 per mensem. It further said that the amount of rent had been deposited by the tenants in court and should be taken away by the respondents with the rider that in case the amount fell short the respondents would be at liberty to recover the deficiency if any from the person and property of the tenants-in-chief. Finally the suit was dismissed in toto against the present appellant.

The respondents then went in appeal against the dismissal of the suit so far as eviction was concerned. To this appeal the three tenants-in-chief and the appellant were made parties, and the main contention of the respondents in the appellate court was that the suit for eviction should have

been decreed both on the ground of arrears of rent and on the ground of sub-letting. Two main questions were formulated by the appellate court for decision, namely(i) whether the tenants-in-chief were tenants in arrears and

(ii) whether the respondents were entitled to possession from the present appellant on the ground that he was not a sub-tenant and also on the ground that he was not protected under s. 15 (2) of the Act as amended in 1959. On the question of arrears, the appellate court held that there were no arrears. But on the other question the appellate court seems to have taken a curious view. It did not examine the correctness of the view taken by the trial court that the present appellant was a sub-tenant. It took the view that as the present appellant had in his written- statement denied that he was a sub-tenant, he could not be a sub-tenant. It then went on to hold that as the present appellant was in possession and as he was not a sub-tenant on his own showing he must be held to be a trespasser because be had failed to prove assignment. So holding that the present appellant was a trespasser, it ordered his ejectment on the ground that benefit of s. 15 (2) as amended in 1959 could only be available to a sub-tenant, which the present appellant was not on his own showing. The appellate court therefore allowed the appeal, set aside the decree of the trial court and ordered that the present appellant should hand over possession of the suit premises to the respondents within six months of the order of the appellate court. We have said that the view taken by the appellate court was curious because the appellate court does not seem to have ordered the ejectment of the tenants-in-chief. At least there is nothing in the judgment of the appellate court to show this, though it is certainly said therein that the trial court's decree was set aside.

Then followed a revision under s. 115 of the Code of Civil Procedure in the High Court by the present appellant. It seems that the tenants-in-chief took no action after the judgment of the appellate court, may- be because there was nothing in that judgment which went against them. Tile High Court held that the appellate court was not right in setting aside the finding that the present appellant was a sub-tenant of the three tenants-in-chief without going into it. The High Court also seems to have held that in the circumstances the finding of sub-letting stood unchallenged and in view of that finding the present appellant was entitled to contend that he was protected under s. 15 (2) of the Act. The High Court then went on to consider the question whether arrears of rent were due from the tenants-in-chief and held in spite of the concurrent finding on this question of the two courts that the tenants-in-chief were in arrears and were liable to ejectment under the Act; and if so, the appellant who was a sub-tenant would have to go with them. The High Court further rejected the contention of the present appellant that s. 14 of the Act protected him. Finally therefore the, High Court upheld the order of the appellate court, though on different grounds. The High Court having refused leave to appeal to this Court, the appellant obtained special leave from this Court, and that is how the matter has come before us.

The main contention on behalf of the appellant before us is that the High Court had no jurisdiction under s. 115 of the Code of Civil Procedure to set aside the concurrent finding of the courts below that nothing was due as arrears of rent, and in this connection reliance is placed on the judgment of this Court in Vora Abbas Bhai Alimahomed v. Haji Gulamnabi(1). On the other hand, learned counsel for the respondents contends, relying on the same judgment of this Court, that no question of jurisdiction being involved in the revision before the High Court, the High Court could not

interfere with the decision of the appellate court however wrong it might be.

We do not think it necessary to decide the question of jurisdiction of the High Court under s. 1 IS of the Code of Civil Procedure in the circumstances of this case, for we have come to the conclusion that though the question of jurisdiction had not been urged before the High Court it stares one in the face on the judgment of the appellate court. We are satisfied that the appellate court had no jurisdiction to pass a decree for ejectment against the present appellant in the manner in which it did so. We have already indicated that the appellate court took the curious view that the present appellant was a trespasser. Now this was no one's case in the present litigation. The respondents alleged that the present appellant was a sub- tenant. The present appellant contended that he was an assignee while two of the tenants-in-chief contended that lie was their partner. In the circumstances it is curious that the appellate court came to the conclusion that he was a trespasser. But assuming that that finding, if correct, cannot be assailed in revision under s. 115 of the Code of Civil Procedure. a question (1) [1964] 5 S.C.R.157.

of jurisdiction of the appellate court to pass a decree for ejectment immediately arises on the finding that the present appellant Was a trespasser. The suit was brought in the court of the Judge Small Causes under s. 28 of the Act. That section gives power to the Small Cause Court to proceed to evict a tenant (along with whom a sub-tenant would also go) provided the provisions contained either in s. 12 or s. 13 of the Act are satisfied. But when the appellate court held that the present appellant was a trespasser, there was no jurisdiction under the Act to pass a decree for ejectment against a trespasser. Such a decree against a trespasser could only be passed by a regular civil court in a suit brought under the Code of Civil Procedure. It could not be passed by a Judge, Small Cause Court, before whom a suit for eviction as a special forum is maintainable under s. 28 of the Act. Therefore when the appellate court after holding that the appellant was a trespasser went on to order his eviction on that ground it had no jurisdiction to do so in a suit brought under s. 28 of the Act. It is true that the appellate court was the court of an Extra Assistant Judge, but its jurisdiction could not be wider than that of the trial court and it would be equally circumscribed within the four corners of s. 28 of the Act. Though this point was not raised in the High Court, it is so obvious that we have permitted the appellant to raise it before us. We are of opinion that on the finding that the appellant was a tres- passer, the appellate court had no jurisdiction to order his ejectment in a suit brought under s. 28 of the Act. There is another aspect of the matter which equally affects the jurisdiction of the appellate court and which also does not seem to have been urged in the High Court. We have already indicated that there is nothing to show in the appellate court judgment that it ordered the ejectment of the tenants-in-chief. If it did not do so, it could not in a suit brought by the landlord order the ejectment of the sub-tenant, which the present appellant had been held to be the trial court. It is not disputed that a landlord cannot sue a sub-tenant alone for eviction; he has to sue the tenant, and if he succeeds against the tenant, the sub- tenant would be ejected along with the tenant-in-chief unless he can take advantage of any provision of the Act. But if the tenant-in-chief is not ordered to be ejected and there is no such order by the appellate court, it follows that the appellate court had no jurisdiction to order the ejectment merely of the sub-tenant assuming that the appellant was a sub-tenant. But it has been urged on behalf of the respondents that on the determination of the tenancy by notice on November 30, 1956, the appellant became a tenant-in-chief under S. 14 of the Act, and reliance in this connection is placed on the decision of

this Court in Anand Nivas (Pvt.) Ltd. v. Anandji Kalyanji Pedhi(1). Section 14 is in these terms (1) [1964] 4 S.C.R. 892.

> "Where the interest of a tenant of any premises is determined for any reason, any sub-tenant to whom the premises or any part thereof have been lawfully sub-let before the commencement of the -Bombay Rents, Hotel and Lodging House Rents Control (Amendment) Ordi- nance, 1959, shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms and conditions as he would have held from the tenant if the, tenancy had continued."

The argument is that s. 14 related to contractual tenancy and the interest of a tenant is determined as soon as a notice determining the tenancy is given, and therefore immediately the period fixed in the notice expires, the contractual tenancy comes to an end, and if there is a sub- tenant he becomes the tenant of the landlord on the same terms and conditions as he would have held from the tenant if the tenancy had continued. It is therefore submitted that on the determination of the interest of the tenants-in- chief by notice on notice on November 30, 1956, the appellant became a tenant by virtue of s. 14 and therefore it was unnecessary to order ejectment of the tenants-in-chief. Reliance in this connection is placed on the decision of this Court in Anand Nivas (Pvt.) Ltd.(1) where this Court held that s. 14 contemplated sub-tenancies created by a contractual tenant while the contractual tenancy was in existence; it did not take in the case of a sub-tenancy created by what may be called a statutory tenant who had only the right to remain in possession under s. 12 (1) of the Act after the determination of the contractual tenancy until ejected by suit on any of the grounds mentioned in s. 12 or s. 13. No further proposition is laid down in that case and it does not support the contention on behalf of the respondents that as soon as a notice is given determining a contractual tenancy, the sub-tenant of the contractual tenant who was there from before has to he deemed a tenant under s. 14 from the date the notice expires. If anything the following observation in the said case at p. 917 goes against the contention of the respondents, namely :-

> "The object of s. 14 is to protect sub- tenants. By that section forfeiture of the rights of the tenant in any of the contingencies set out in s. 13 does not in all cases destroy the protection to the sub- tenants."

Learned counsel for the respondents however contends that the words "is determined" used in s. 14 are analogous to the determination of tenancy by notice under s. 1 1 1 (h) of the Transfer of Property Act, (No. 4 of 1882) and all that s. 14 requires is that there should be determination of the tenancy under s. 111(h) of the Transfer of Property Act. We are of opinion that in the con-

(1) [1964] 4 S.C. 892.

text of the Act this is not the meaning to be given to the words "is determined for any reason". These words in the context of the Act mean that where the interest of a tenant comes to an end completely, the pre-existing sub-tenant may, if the conditions of s. 14 are satisfied be deemed to be a tenant of the landlord. The interest of a tenant who for purposes of S. 14 is a contractual tenant comes to an end completely only when he is not only no longer a contractual tenant but also when he has lost the

right to remain in possession which s. 12 has given to him and is no longer even a statutory tenant. In other words s. 14 would come into play in favour of the sub-tenant only after the tenancy of the contractual tenant has been determined by notice and the contractual tenant has been ordered to be ejected under S. 28 on any of the grounds in s. 12 or s. 13. Till that event happens or till he gives up the tenancy himself the interest of a tenant who may be a contractual tenant for purposes of s. 14 cannot be said to have determined i.e., come to an end completely in order to give rise to a tenancy between the pre-existing sub-tenant and the landlord. In the present case we have already indicated that the interest of the tenants-in-chief does not seem to have come to an end by their eviction, for the appellate court does not seem to have ordered their eviction nor have they given up the tenancy themselves. In that view the sub-tenant, namely, the present appellant, cannot be deemed to be a tenant-in- chief of the landlord. Therefore, as the tenants-in-chief have not been ejected, the appellate court had no jurisdiction to eject merely the sub-tenant. Thus the judgment of the appellate court is without jurisdiction on this ground in the alternative and is liable to be set aside.

As to the ground on which the High Court upheld the judgment of the appellate court, though it did not agree with the reasons given by that court, it is enough to say that there was a concurrent finding of the trial court as well as the appellate court that no arrears were due. In the circumstances we do not see why the High Court should have interfered with a concurrent finding of fact. It is also remarkable that there is no decree even by the High Court against the tenants-in-chief, for all that the High Court did was to dismiss the revision petition.

We therefore allow the appeal, set aside the judgment of the High Court as well as of the appellate court and restore the judgment of the trial court. In the circumstances we order parties to bear their own costs throughout.

V.P. S. Appeal allowed.