

Madras Bangalore Transport Co. (West) vs Inder Singh And Ors. on 5 May, 1986

Equivalent citations: AIR1986SC1564, 1986(1)SCALE989, (1986)3SCC62, 1986(2)UJ498(SC), AIR 1986 SUPREME COURT 1564, (1986) 2 APLJ 16, 1986 SCFBRC 310, 1986 HRR 432, 1986 MPRCJ 184, 1986 2 UJ (SC) 498, 1986 ALL CJ 397, (1986) 12 ALL LR 400, (1986) 2 RENCJ 377, (1986) 2 CURCC 771, (1986) ALL WC 849, (1986) 3 SUPREME 329, (1986) 2 RENCJ 404, (1986) 2 RENTLR 185, 1986 (3) SCC 62

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Bench: G.L. Oza, K.N. Singh, O. Chinnappa Reddy

JUDGMENT

O. Chinnappa Reddy, J.

1. The Madras-Bangalore Transport Company, a partnership firm, became the tenant of the disputed premises in July 1962. In 1967, there appear to have been some disputes between the partners of the Madras-Bangalore Transport Company. The disputes were settled by arbitration. The partnership firm was split up into two firms, the Madras-Bangalore Transport Company (West) and the Madras-Bangalore Transport Company (East) The business of the old firm was also divided between the new firms area-wise. Under the arrangement each of the new firms was forbidden from carrying on operations in the territory allotted to the other. However, the Madras-Bangalore Transport Company (East) appears to have ceased to function for practical purposes. Even so, the Madras-Bangalore Transport Company (West) could not operate in the territory allotted to the Madras-Bangalore Transport Company (East). So the partners of the Madras-Bangalore Transport Company (West) founded a Limited company styled as the 'Caravan Goods Carrier Private Limited' in order to secure the business in the territory which had been allotted to Madras-Bangalore Transport Company (East) and which business was going to be lost consequent on the Madras-Bangalore Transport Company (East) ceasing to function effectively. This was in 1968. The Madras-Bangalore Transport Company (West) was appointed as the agent of 'Caravan Goods Carrier Private Limited' in the territory of Delhi. The Caravan Goods Carrier Private Limited was in turn appointed as an agent of the Madras Bangalore Transport Company (West) for certain purposes. Both Madras-Bangalore Transport Company (West) and Caravan Goods Carrier Private Limited registered themselves under the Delhi Shops and Establishments Act disclosing their offices as located at the disputed premises. Almost 10 years after the Caravan Goods Carrier Private Limited was founded and started functioning from the disputed premises the landlord, in 1979, filed an eviction petition against the Madras-Bangalore Transport Company (West) alleging that the

tenant had unlawfully 'sublet, assigned or otherwise parted with the possession' of the disputed premises to the Caravan Goods Carrier Private Limited without obtaining the consent of the landlord. The Additional Rent Controller, Delhi allowed the petition and ordered eviction. On appeal by the Madras-Bangalore Transport Company (West) the Rent Control Tribunal confirmed the order of eviction. A second appeal to the High Court was dismissed in limine. The present appeal has been filed after obtaining the Special leave of this Court under Article 136 of the Constitution.

2. The submission of Dr. Chitaley, learned Counsel for the appellant, was that, there was no subletting, assignment or parting with possession of the premises as contemplated by No. 31(b) of Delhi Rent Control Act. He argued that the Madras-Bangalore Transport Company (West) was always in possession of the premises and that the Caravan Goods Carrier Private Limited, whose Directors were partners of Madras-Bangalore Transport Company (West) was in truth and reality no other than the Madras-Bangalore Transport Company (West) itself. On the other hand, the learned Counsel for the Respondent-Landlord urged that the Madras-Bangalore Transport Company (West) was a partnership firm and the Caravan Goods Carrier Private Limited was a Limited company and, therefore, they could never be the same as they were two distinct legal entities. It was argued that the Madras-Bangalore Transport Company (West) had gone out of the picture and the Caravan Goods Carrier Private Limited alone was in possession and, therefore, there was subletting, assignment or parting with possession of the premises as contemplated by Section 14(1)(b) of the Rent Control Act.

3. We have been taken through the Judgments of the Rent Controller and the Rent Control Tribunal. We have also been taken through the relevant evidence. The facts which emerge from the evidence are that the Caravan Goods Carrier Private Limited was formed with the partners of the Madras-Bangalore Transport Company (West) as its Directors, with the apparent object of circumventing the ban against the Madras-Bangalore Transport Company (West) from operating in the area allotted to the Madras-Bangalore Transport Company (East). Both the Caravan Goods Carrier Private Limited and the Madras-Bangalore Transport Company (West) had their sign-boards at the premises and they were both registered under the Delhi Shops and Establishments Act as having their offices at the disputed premises. Each was constituted as agent of the other. Detailed arrangements were made regarding the separate maintenance of accounts etc. From the facts established on the evidence we do not have any doubt that the Caravan Goods Carrier Private Limited was an alter ego or, if we may be permitted to use such an expression, 'the corporate reflection' of the partnership firm of Madras-Bangalore Transport Company (West). The question for consideration is whether, it could be said that there was subletting, assignment or parting with possession of the premises within the meaning of Section 14(1)(b) of the Delhi Rent Control Act merely because the Caravan Goods Carrier Private Limited was a legal personality distinct from the firm and its partners and it operated from the disputed premises.

4. Dr. Chitaley invited our attention to *Murli Dhar v. Chuni Lal* 1970 All India Rent Control Journal 922 (SC) *G. Rangamannar Chetty v. Desu Ragiah* A.I.R. 1954 Madras 182, *Vishwanath v. Chemmanlal* 1975 All India Rent Control Journal SC 514 and *Reliable Finance Corporation v. Clearing House*. 1984(2) Rent Control Reporter 449

5. In the first case (*Murli Dhar v Chuni Lal*) the facts were that a shop was let out originally to a certain firm of three partners. The business of the partnership was closed before November, 55 and thereafter a new firm consisting of an erstwhile partner of the original firm and a stranger started doing business from the same premises. The question arose whether in these circumstances it could be said that there, was subletting. The contention that the old firm and the new firm were different legal entities and therefore the occupation by the new firm amounted to subletting by the old firm was repelled by this Court with these observations:

This contention is entirely without substance. A firm unless expressly provided for the purpose of any statute which is not the case here, is not a legal entity. The firm name is only a compendious way of describing the partners of the firm. Therefore occupation by a firm is the occupation by its partners. Here the firm have a common partner. Hence the occupation has been by one of the original tenants.

The submission that the entry of a stranger as a partner of the new firm indicated that there was sub-letting was not also accepted and it was said, It seem to us that the point sought to be made was that when Meghraj was in possession as the partner of Meghraj Bansidhar, he was in possession of the shop in a capacity different from that in which he was in possession as a partner of Chuni Lal Gherulal. This is clearly fallacious. Meghraj was in possession all through in his individual capacity. It is impossible to treat him as possessing one legal personality as member of one firm and another such personality as member of another firm.

The question what was necessary to be proved when subletting was alleged was then considered and it was said, It seems to us that the landlord cannot succeed. He has to prove it as a fact that there was a sub-letting by his tenant to another person. He does not prove this merely by showing that his tenant was one firm and the premises are in the occupation of another firm as he sought to do in the present case. Mere possession by somebody other than the tenant would not necessarily prove that the premises had been sub-let by the tenant to the person in possession. It is admitted that there is no evidence in this case to prove the fact of sub-letting. In this case in particular, the premises continued in possession of one of the original tenants, Meghraj. It may be, as the learned Counsel for the appellant said, that the attention of the Courts below had not been directed to the fact in issue, namely, the proof of sub-letting. If that was so the fault was that of his client, the landlord, he cannot now claim any relief on that ground. As we have said, it is admitted that the evidence does not establish that there was any sub-letting by the tenant. There was nothing to prevent the landlord from leading evidence to establish that if it was a fact. If he has misconducted his case as he says, he must take the consequences.

6. In *G. Rangamannar v. Desu Rangiah* (supra), the original tenant, a few years after the commencement of the tenancy, entered into a partnership with two persons and carried on the partnership business in the very premises in which he was previously carrying on business. A question arose whether it could be said that he had sublet the premises. Subba Rao, J. (as he then

was) referred to several English cases on the question as to what was meant by the word 'sub-let' and finally observed:

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.

7. In *Vishwanath v. Chaman Lal* (supra), a learned single judge of the Delhi High Court held that if an individual took the premises on rent and then converted his sole proprietary business into a private Limited company in which he had the controlling interest he could not be said to have sub-let, assigned or otherwise parted with possession of the premises so as to entitle the landlord to evict him from the premises. In *Reliable Finance Corporation v. Clearing House* (supra), another learned single judge of the High Court held that where a private limited company was functioning from a rented premises and the Managing Director of that company allowed a firm of which he was a partner to function from the same premises, there was no sub-letting, assignment or parting with possession within the meaning of Section 14(1)(b) of the Delhi Rent Control Act.

8. As mentioned by us earlier, the Madras-Bangalore Transport Company (West) continued to be in occupation of the premises even after the Caravan Goods Carrier Private Limited came in. They never effaced themselves. The firm allowed Caravan Goods Carrier Private Limited Company, to function from the same premises but Caravan Goods Carrier Private Limited though a separate legal entity, was in fact a creature of the partners of Madras-Bangalore Transport Company (West) and was the very image of the firm. The Limited company and the partnership firm were two only in name but one for practical purposes. There was substantial identity between the limited company and the partnership firm. We do not think that there was any sub-letting, assignment or parting with possession of the premises by Madras-Bangalore Transport Company (West) to Caravan Goods Carrier Private Limited so as to attract Section 14(1)(b) of the Delhi Rent Control Act. In the result the appeal is allowed with costs.