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A. MAHALAKSHMI

v.

BALA VENKATRAM (D) THROUGH LR. & ANR.

(Civil Appeal No. 9443 of 2019)

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JANUARY 07, 2020

[ASHOK BHUSHAN AND M. R. SHAH, JJ.]

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 – ss. 10(2)(1), 10(2)(ii)(a)(b) and 10(2)(iii) – Eviction on the ground of sub-letting and arrears of rent – The owner of the suit property had executed a power of attorney in the name of the appellant and in respect of the said property – Appellant let out the premises in question to original respondent no. 1 for commercial purposes – Appellant noticed a change in the name as well as ownership of the shop in the tenanted premises – Consequent to which, the appellant filed a suit for eviction on the ground of sub-letting and arrears of rent – It was a case on behalf of the respondent no. 1-original tenant that on the basis of an oral agreement, respondent no. 1 and respondent no. 2 were running the business as partners and there was no sub-letting of premises in favour of respondent no. 2 – Eviction petition was dismissed by the Rent Controller – Thereafter, Rent Control Appellate Authority passed the eviction decree on the ground of sub-letting – However, the High Court set aside the eviction order passed by the Rent Control Appellate Authority – On appeal, held: In cross-examination, the respondent no. 1-original tenant had specifically admitted that in the bank accounts of the firm, respondent no. 2 was shown as owner of the premises – He specifically admitted that he had handed over the premises to the respondent no. 2 through power of attorney and respondent no.2 was running the premises as owners – The application/sales tax in respect of the suit property was registered in the name of respondent no. 2 – Thus, from the disposition of original respondent no. 1 and material/evidence on record, it was a clear case of sub-letting – There was no genuine partnership between respondent no. 1 and respondent no. 2 – The High Court committed error in setting aside the decree of eviction on the ground of sub-letting – Therefore,

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impugned judgment and order passed by the High Court set aside and judgment passed by the Rent Control Appellate Authority restored. A

Rent Control and Eviction – Sub-letting – Held: Sub-letting means transfer of an exclusive right to enjoy the property in favour of the third party – To constitute a sub-letting, there must be a parting of legal possession, i.e., possession with the right to include and also right to exclude others – Sub-letting, assigning or otherwise parting with the possession of the whole or any part of the tenancy premises, without obtaining the consent in writing of the landlord, is not permitted and if done, the same provides a ground for eviction of the tenant by the landlord – When the eviction is sought on the ground of sub-letting, the onus to prove sub-letting is on the landlord. B C

Allowing the appeal, the Court

HELD: Applying the law laid down by this Court in the various decisions to the facts of the case on hand and on appreciation of evidence on record, this Court is of the opinion that there is no genuine partnership between respondent no.1 and respondent no.2. Respondent no.1 has come out with a case of partnership only to get out from the allegation of sub-letting. The exclusive possession of the suit premises is with respondent no.2. Respondent no.2 is running the business in the suit premises as an owner. Sales Tax Certificate and the licence are also in the name of respondent no.2. The bank accounts are in the name of respondent no.2 and respondent no.2 is exclusively dealing with the bank accounts. Under the circumstances, a clear case of sub-letting has been made out. The High Court has committed a grave error in setting aside the decree of eviction on the ground of sub-letting. [Para 9] [18-B-D] D E F

Associated Hotels of India Limited v. S.B. Sardar Ranjit Singh AIR 1968 SC 933 : [1968] SCR 548 ; G.K. Bhatnagar v. Abdul Alim, (2002) 9 SCC 516 ; Helper Girdharbhai v. Saiyed Mohmad Mirasaheb Kadri, (1987) 3 SCC 538 : [1987] 3 SCR 289 ; Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar, (2010) 1 SCC 217 : [2009] 15 SCR 558 – relied on. G

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- A **Case Law Reference**
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| [1968] SCR 548 | relied on | Para 8 |
| (2002) 9 SCC 516 | relied on | Para 8 |
| [1987] 3 SCR 289 | relied on | Para 8 |
- B [2009] 15 SCR 558 relied on Para 8
- CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9443 of 2019.
- From the Judgment and Order dated 24.04.2017 of the High Court of Judicature at Madras in Civil Revision Petition (NPD) No. 2898 of 2013.
- Aniruddha Joshi, Rajeev Maheshwaranand Roy, P. Srinivasan, Gunjan Kumar, Advs. for the Appellant.
- C. Paramasivam, Rakesh K. Sharma, Advs. for the Respondents.
- D The Judgment of the Court was delivered by
- M. R. SHAH, J.**
1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 24.04.2017 passed by the High Court of Judicature at Madras in CRP (NPD) No. 2898/2013, by which the High Court has allowed the said revision application preferred by the respondents herein – original defendants, the original plaintiff has preferred the present appeal.
2. The facts leading to the present appeal in nutshell are as under:
- F That one Dr. Sanjeevi and his wife Mrs. Porkodi, the earlier owner of the suit premises in question had executed a power of attorney dated 01.11.2016 in the name of the appellant herein and in respect of the said property. That by way of rental agreement dated 23.05.2007, the appellant let out the premises in question to original respondent no.1 herein – Bala Venkatram (now dead and represented through legal heirs) for running
- G ‘Best Mark Super Market’ from June, 2007 to July, 2009 on a monthly rent of Rs.11,000/-. That an advance amount of Rs.1,00,000/- was paid by way of security. That the rent was payable on 7th day of every English calendar month. That the appellant – landlady filed an eviction suit on the ground of sub-letting as well as on the ground of arrears of rent
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against the respondents herein – original defendants – Bala Venkatram and another under Sections 10(2)(i), 10(2)(ii)(a)(b) and 10(2)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as the ‘Act’) in the Court of District Munsiff, Pollachi. According to the landlady the rent was initially paid by original defendant no.1 – Bala Venkatram till October, 2007. It was the case on behalf of the landlady that upon default in payment of rent and noticing a change in the name as well as ownership of the shop in the tenanted premises from ‘Best Mark Super Market’ to ‘Amutham Super Market’, she made enquiries and discovered that not only there was a change in the name but a complete change of hand from original defendant – Bala Venkatram to respondent no.2 – Shahu Hameed which also on the face of it was a gross breach of the rent agreement. According to the landlady, the sub-letting was evident from the Certificate of Registration, Government of Tamil Nadu, Commercial Tax Department. Therefore, the landlady issued a legal notice to original defendant – Bala Venkatram pointing out the said breaches and called upon him to collect balance amount from the advance payment deposited after adjusting the arrears of rent and handover possession of the tenanted premises within 15 days failing which the appropriate legal action would be taken. There was no reply to the legal notice from respondent no.1 – original defendant no.1. Therefore, the landlady, the appellant herein, filed R.C.O.P. No. 4 of 2008 for decree of eviction on the ground of sub-letting and arrears of rent.

2.1 The suit was resisted by original defendant no.1 – the original tenant by filing a written counter. It was stated that the landlady has received the rent till December, 2007 and that the first respondent has no necessity to get the permission from the landlady for running business in any other name. It was the case on behalf of original respondent no.1 – the original tenant that since the landlady was trying to evict the respondents, they filed O.S. No. 122/2008 for permanent injunction. According to the first respondent – the original tenant, they were running ‘Amutham Super Market’ in the suit property. According to the original tenant there were many branches, namely, ‘Amutham Jewellery, Amutham Foods, Amutham Electronics, Amutham Textiles etc. According to the original tenant since the respondents refused to give the business in the name of the landlady, she filed eviction petition with an ulterior motive. A similar written counter was filed on behalf of original respondent no.2 – sub-tenant.

A 2.2 That the learned Rent Controller dismissed the eviction petition. Aggrieved by the same, the landlady preferred R.C.A. No. 1 of 2012. That the learned Rent Control Appellate Authority allowed the appeal in part. The learned Rent Control Appellate Authority passed the eviction decree on the ground of sub-letting only and therefore allowed the petition filed under Sections 10(2)(i) and 10(2)(ii)(a)(b) of the Act. However, B dismissed the petition filed under Section 10(2)(iii) of the Act – wastage & material alteration of the premises. That the original tenant – Bala Venkatram died. Therefore, the legal heirs of the original tenant – Bala Venkatram and the second respondent – sub-tenant preferred the revision application before the High Court. That by the impugned judgment and C order, the High Court has allowed the said revision application and has quashed and set aside the eviction order passed by the Rent Control Appellate Authority.

D 2.3 Feeling aggrieved and dissatisfied with the impugned Judgment and order passed by the High Court in quashing and setting aside the eviction decree on the ground of sub-letting, the landlady has preferred the present appeal.

E 3. Shri Aniruddha Joshi, learned Advocate appearing on behalf of the original plaintiff – landlady has vehemently submitted that in the facts and circumstances of the case, the High Court has committed a grave error in quashing and setting aside the eviction decree on the ground of sub-letting. Learned Advocate appearing on behalf of the appellant has vehemently submitted that the High Court has committed a grave error in holding that the landlady has not established and proved the sub-letting by the original tenant in favour of respondent no.2 herein – sub-tenant.

F 3.1 It is further submitted by the learned Advocate appearing on behalf of the original plaintiff that the finding recorded by the High Court that the landlady has failed to establish and prove the sub-letting by original respondent no.1 in favour of original respondent no.2 is contrary to the evidence on record. It is vehemently submitted that when the first G appellate authority on appreciation of evidence specifically found that there was a sub-letting of the premises by original respondent no.1 in favour of original respondent no.2, the same was not required to be interfered with by the High Court in exercise of its revisional jurisdiction.

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3.2 It is further submitted by the learned Advocate appearing on behalf of the original plaintiff that there were ample material/evidence on record, such as, sales tax certificate, licence of the shop which stood in the name of original respondent no.2 which establish and prove the sub-letting by the original tenant – respondent no.1 in favour of sub-tenant – original respondent no.2. It is submitted that the aforesaid documents/evidence on record have not at all been considered by the High Court.

3.3 It is further submitted by the learned Advocate appearing on behalf of the original plaintiff that the High Court ought to have appreciated that though the original tenant – respondent no.1 in his cross-examination set up a case that he was a partner in the business run by respondent no.2, however, no document was placed on record to show the partnership.

3.4 It is further submitted by the learned Advocate appearing on behalf of the original plaintiff that as all the ingredients of sub-letting are established and proved by the landlady, such as, parting with possession of the tenancy in favour of respondent no.2 with exclusive rights of possession and that such parting with possession has been done without the consent of the landlady, the landlady filed an eviction petition.

4. The present appeal is vehemently opposed by Shri C. Paramasivam, learned Advocate appearing on behalf of the respondents. It is vehemently submitted on behalf of the respondents that as the appellant is not the owner of the suit premises and is only a power of attorney holder of the owner of the premises, the eviction petition itself is not maintainable. It is submitted that therefore the appellant cannot be said to be a landlady and therefore the eviction petition at the instance of the appellant is not maintainable.

4.1 Now so far as the impugned judgment and order passed by the High Court is concerned, it is vehemently submitted by the learned Advocate appearing on behalf of the respondents that on appreciation of evidence and considering the fact that the appellant has failed to prove that respondent no.1 had sub-let the suit premises to the second respondent, the High Court has rightly set aside the order passed by the Rent Control Appellate Authority.

4.2 It is further submitted by the learned Advocate appearing on behalf of the respondents that even in the deposition/evidence of the

A landlady, it has come on record that respondent no.1 and respondent no.2 – Shahu Hameed were running the shop as partners. It is submitted therefore that when both, respondent nos. 1 & 2 were running the shop as partners, there is no question of sub-letting. It is submitted that therefore the High Court has rightly set aside the eviction decree on the ground of sub-letting.

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5. In rejoinder and on the maintainability of the eviction petition by the appellant, as objected by the respondents, learned Advocate appearing on behalf of the landlady has submitted that as such no such contention was raised in the written counter to the eviction petition. It is submitted that no such issue was framed. It is submitted that as such in the written counter, they have not disputed the status of the appellant as landlady. It is submitted that even otherwise and considering Section 2(6) of the Act and even considering the fact that lease deed was executed by the appellant in favour of respondent no.1, the appellant can be said to be a landlady/landlord and therefore the eviction petition at the instance of the appellant would be maintainable.

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6. We have heard the learned Counsel for the respective parties at length. We have also perused the impugned judgment and order passed by the High Court. We have considered and appreciated the entire evidence on record, more particularly the rental agreement as well as deposition of original respondent no.1 – Bala Venkatram.

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6.1 At the outset, it is required to be noted that the suit premises was leased in favour of original respondent no.1 – original tenant – Bala Venkatram pursuant to the rental agreement dated 23.05.2007 executed by the appellant herein. Therefore, the rental agreement was between the appellant and original defendant no.1 – Bala Venkatram. Defendant no.1 was put in possession as a tenant pursuant to the aforesaid rental agreement dated 23.05.2007 executed by the appellant in favour of original defendant no.1 – original tenant – Bala Venkatram. Therefore, as such, it would not be open for the respondents to deny the status of the appellant as a landlady. Therefore, the original respondents cannot challenge the authority of the appellant to file an eviction petition. Even otherwise, considering Section 2(6) of the Act and considering the fact that respondent no.1 was paying the rent to the appellant pursuant to the aforesaid rental agreement dated 23.05.2007, the appellant can be said to be the landlord/landlady and therefore the eviction petition at the instance of the appellant would be maintainable. At this stage, it is

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required to be noted that as such no such objection was raised either before the High Court and/or before the Rent Control authorities. Be that as it may, as observed hereinabove, the appellant can be said to be the landlady even within the definition of Section 2(6) of the Act and therefore the eviction petition at the instance of the appellant would be maintainable.

6.2 Now so far as the merits of the case are concerned, at the outset, it is required to be noted that the landlady filed a suit for eviction mainly on the ground of arrears of rent as well as on the ground of sub-letting. The Rent Controller dismissed the eviction petition. However, the Rent Control Appellate Authority passed the eviction decree on the ground of sub-letting and arrears of rent which has been upset by the High Court by the impugned judgment and order. Therefore, the short question which is posed for consideration of this Court is, whether in the facts and circumstances of the case, the High Court is justified in setting aside the eviction decree on the ground of sub-letting and arrears of rent?

7. It is not in dispute that in the rental agreement dated 23.05.2007, the suit premises was let out to respondent no.1 – the original tenant for running ‘Best Mark Super Market’ for a period of two years from June, 2007 to July, 2009. However, it has been found that in the suit premises, respondent no.2 was running the business in the name of ‘Amutham Super Market’ and the original tenant was confronted with the same and was served with a legal notice, initially original respondent no.1 – tenant did not respond to the legal notice. However, before the Rent Control Authority, it was the case on behalf of respondent No.1 – Bala Venkatram that because of the old age he was not in a position to manage the affairs of the shop and that is why he has handed over the possession of the shop to Shahu Hameed – original respondent no.2 through a general power of attorney. It was also the case on behalf of the original tenant that on the basis of an oral agreement, he and Shahu Hameed were running the business as partners. However, in the cross-examination, the original tenant has specifically admitted that in the bank accounts of the firm – Amutham Super Market, Shahu Hameed is shown as the owner of the shop. He has also admitted that licence for the shop is also in the name of Shahu Hameed. He has also specifically admitted that Shahu Hameed is running the shop as the owner. He has also specifically admitted that he is not in possession of any document to show that he is

- A running the shop. He has also specifically admitted that he has handed over the shop to Shahu Hameed through a power of attorney. He has also specifically admitted that the application/sales tax certificate in respect of the suit property is registered in the name of Shahu Hameed. He has also specifically admitted that the bank accounts are maintained by Shahu Hameed in the capacity of owner of the shop. Thus, from the deposition of original respondent no.1 – the original tenant and the material/evidence on record, we are of the opinion that this is a clear case of sub-letting. All the ingredients suggesting sub-letting are established and proved. As such, the High Court has not at all discussed the evidence on record including even the deposition of original respondent no.1 – the original tenant.

8. Sub-letting means transfer of an exclusive right to enjoy the property in favour of the third party. To constitute a sub-letting, there must be a parting of legal possession, i.e., possession with the right to include and also right to exclude others. Sub-letting, assigning or otherwise parting with the possession of the whole or any part of the tenancy premises, without obtaining the consent in writing of the landlord, is not permitted and if done, the same provides a ground for eviction of the tenant by the landlord. When the eviction is sought on the ground of sub-letting, the onus to prove sub-letting is on the landlord. As held by this Court in the case of *Associated Hotels of India Limited v. S.B. Sardar Ranjit Singh*, AIR 1968 SC 933, if the landlord prima facie shows that the third party is in exclusive possession of the premises let out for valuable consideration, it would then be for the tenant to rebut the evidence. At the same time, as held by this Court in the case of *G.K. Bhatnagar v. Abdul Alim*, (2002) 9 SCC 516 and *Helper Girdharbhai v. Saiyed Mohmad Mirasaheb Kadri*, (1987) 3 SCC 538, where a tenant becomes a partner of a partnership firm and allows the firm to carry on business in the premises while he himself retains the legal possession thereof, the act of the tenant does not amount to sub-letting. It is further observed and held that however inducting the partner in his business or profession by the tenant is permitted so long as such partnership is genuine. It is further observed that if the purpose of such partnership is ostensible in carrying on business or profession in a partnership but the real purpose is sub-letting such premises to such other person who is inducted ostensibly as a partner then the same shall be deemed to be an act of sub-letting. After considering catena of

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decisions of this Court on sub-letting, in the case of *Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar*, (2010) 1 SCC 217, this Court has summarised in paragraph 25 as under: A

”25. The legal position that emerges from the aforesaid decisions can be summarised thus :

(i) In order to prove mischief of subletting as a ground for eviction under rent control laws, two ingredients have to be established, (one) parting with possession of tenancy or part of it by tenant in favour of a third party with exclusive right of possession and (two) that such parting with possession has been done without the consent of the landlord and in lieu of compensation or rent. B C

(ii) Inducting a partner or partners in the business or profession by a tenant by itself does not amount to subletting. However, if the purpose of such partnership is ostensible and a deed of partnership is drawn to conceal the real transaction of sub-letting, the court may tear the veil of partnership to find out the real nature of transaction entered into by the tenant. D

(iii) The existence of deed of partnership between tenant and alleged sub-tenant or ostensible transaction in any other form would not preclude the landlord from bringing on record material and circumstances, by adducing evidence or by means of cross-examination, making out a case of sub-letting or parting with possession in tenancy premises by the tenant in favour of a third person. E

(iv) If tenant is actively associated with the partnership business and retains the control over the tenancy premises with him, may be along with partners, the tenant may not be said to have parted with possession. F

(v) Initial burden of proving subletting is on landlord but once he is able to establish that a third party is in exclusive possession of the premises and that tenant has no legal possession of the tenanted premises, the onus shifts to tenant to prove the nature of occupation of such third party and that he (tenant) continues to hold legal possession in tenancy premises. G

(vi) In other words, initial burden lying on landlord would stand discharged by adducing prima facie proof of the fact that a party H

A other than tenant was in exclusive possession of the premises. A presumption of sub-letting may then be raised and would amount to proof unless rebutted.”

9. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and on appreciation of evidence on record, we are of the opinion that there is no genuine partnership between respondent no.1 and respondent no.2. Respondent no.1 has come out with a case of partnership only to get out from the allegation of sub-letting. The exclusive possession of the suit premises is with respondent no.2. Respondent no.2 is running the business in the suit premises as an owner. Sales Tax Certificate and the licence are in the name of respondent no.2. The bank accounts are in the name of respondent no.2 and respondent no.2 is exclusively dealing with the bank accounts. Under the circumstances, a clear case of sub-letting has been made out. The High Court has committed a grave error in setting aside the decree of eviction on the ground of sub-letting.

D 10. In view of the above and for the reasons stated above, the present appeal is allowed. The impugned judgment and order passed by the High Court is set aside and the judgment and decree passed by the Rent Control Appellate Authority is hereby restored. There shall be a decree on the ground of sub-letting. Respondents to handover the peaceful possession of the suit premises to the appellant herein within a period of three months from today on filing usual undertaking before this Court and on payment of full arrears of rent within a period of four weeks from today.