Ram Bharose vs Ajeet Kumar And Anr. on 25 March, 1952

Equivalent citations: AIR1952ALL806, AIR 1952 ALLAHABAD 806

JUDGMENT

1. This is an appeal by Ram Bhrose defendant 2 from a decree for ejectment passed against him and defendant 1 who is dead.

2. The suit for ejectment was brought without permission of the District Magistrate on the ground that the defendant had illegally sublet the shop to a firm Har Oharan Das Hari Shankar (defendant 3), one of whose proprietors is Ganga Prasad defendant 4. The suit was contested on the ground that defendant 2 had not sublet at all and that he had entered into a partnership with Ganga Prasad and others and was in possession as one of the proprietors of the partnership. He admitted that the firm Har Charan Das Hari Shankar was in possession of the shop and carrying on business there, but claimed that he continued to be in possession as one of the partners of that firm.

3. Both the Courts held that the alleged partnership between Bam Bharose appellant and Ganga Prasad and others was not proved and that in fact he had sublet the shop to the firm Har Oharan Das Hari Shankar without the permission of the landlord and thus rendered himself liable to ejectment.

4. The appellant met the landlord's plea of subletting by setting up partnership with Ganga Prasad etc. The onus of proving that he was a partner in the firm lay upon him. He did not produce satisfactory evidence to prove it. No account books of the firm were produced nor was any of the other proprietors of the firm examined in support of his claim. The circumstances also do not favour his being a partner; it cannot be believed that without contributing towards the capital of the partnership, he would have been given an eight-anna share as claimed by him. His name does not find place in the name of the firm at all. The certificate of registration, which he has produced, does not show who are the partners of the firm. In these circumstances, the Courts below did not at all act illegally in holding that the applicant failed to prove that he is a partner in the firm.

5. When the appellant is not proved to have any interest in the firm, it is admitted that the firm is in possession of the shop and carrying on business there and it appears that it has been doing so with the consent and approval of the appellant, it follows that it is in possession as a sub-tenant. It was not essential for the landlord to prove that the firm has been paying rent to the appellant. Rent need not be payable by the firm to the appellant in order to create the relationship of landlord and tenant. The definition of "tenant" contained in the Rent Control Act makes it clear that in order that a person be a tenant of another, it is not essential that he is under a liability to pay rent. What is essential is that but for a contract, express or; implied, he is under a liability to pay rent. It was open to the appellant to sublet the shop to the firm on condition that no rent would be payable by the firm. The existence of a contract under which no rent would be payable by the firm to the appellant would not mean that the firm is not a sub-tenant of the appellant. Therefore, the landlord's failure to prove any contract of payment of rent or the fact of payment of rent" did not mean that the appellant

had not sublet to the firm. The circumstances, which have been admitted and proved in the case, fully support the conclusion of the Courts below that the appellant has sublet the shop to the firm, and admittedly he did so without the landlord's consent. He, therefore, rendered himself liable, to ejectment even without the District Magistrate's permission.

6. The argument that the landlord should have obtained the District Magistrate's permission before ejectment of the sub-tenant also is devoid of merit. The ordinary law is that a decree for ejectment passed against a tenant binds all those claiming under him such as his subtenants, etc. A tenant is unable to grant any larger estate in the property than he has himself. The law does not require those persons to be impleaded at all as defendants in the ejectment suit. The Temporary Control of Rent and Eviction Act does not make any change in this law, It does not make it imperative upon a landlord to include in the ejectment suit his tenant, subtenants, and their sub-tenants. Certainly that is not the meaning of the definition of "tenant" contained in the Act. According to that definition a tenant includes a sub-tenant, but this is quite different from saying that a tenant means a tenant together with his sub-tenants and their sub-tenants, i.e. something like a partnership consisting of a tenant, his sub-tenants, their sub-tenants, etc. What the definition means is not that the word means tenant and his sub-tenants in every case but that it means tenant-in chief in some cases and sub-tenant in other cases. In a given case the word must mean tenant-in chief or sub-tenant, but not both taken together. Whether it means tenant-in-chief or sub-tenant would naturally depend upon the context in which it is used. If it is used with reference to an owner or a suit brought by an owner it would mean tenant-in-chief and if it is used with reference to a tenant or a suit brought by him, it would mean sub-tenant.

An argument similar to the one advanced before me was advanced before, and repelled by, the King's Bench Division in Sherwood (Baron) v. Moody, (1952) 1 ALL E.R. 389. Under the Agricultural Holdings Act, 1948, a notice to quit served by a landlord or his tenant had in certain circumstances to be approved by the Minister. Baron Sherwood, the landlord of a firm gave a notice to quit to his tenant Moody who had sub let a part of the farm to Barnes. The notice to quit was approved by the Minister and Moody submitted to the approval and did not file an appeal. Moody also had given a notice to quit to Barnes, the notice expiring on the same day on which Baron Sherwood's notice served upon him was to expire. That notice was also approved by the Minister but on Barnes's appeal the Agricultural Land Tribunal reversed the Minister's decision and the notice became invalid. Still it was held that when Moody's tenancy was terminated, the sub-tenancy of Barnes also was terminated and he could not claim to remain in possession. It was conceded by Barnes's counsel that at common law if a tenancy is terminated by notice, any sub-tenancy comes to an end simultaneously, but it was contended by him that the position had been altered by the Agricultural Holdings Act. Barnes's counsel referred to the definition of "tenant" in the Act as including: "Other person deriving title from a tenant", and claimed that Barnes was protected from ejectment by the Act. Ormerod, J. rejecting the claim, observed at p. 394:

> "It may well be that in certain circumstances the word 'tenant' in the Agricultural Holdings Act, 1948, will include a sub-tenant, and other persons as well, but whether it does so in any particular case must depend on the context. Although a sub-tenant may have the privileges of a tenant in certain circumstances, a tenant is a tenant of an

> immediate landlord, and he has rights only in relation to that landlord and not in relation to some other person. If the Act is to be read in any intelligible way at all, it would not be possible under Section 24 or Section 25 to consider a sub tenant as being in the position of a tenant in relation to the head landlord."

In the same way the firm was not protected against ejectment. It need not have been impleaded as a defendant at all and the mere fact that it was impleaded did not confer upon it any right which it did not otherwise possess. In a suit brought by a landlord against the tenant, all that has to be seen is whether the suit was permitted by the District Magistrate or any of the grounds enumerated in Section 3 of the Act existed in order to make the tenant liable to be ejected. This position is not altered by the sub-tenant being impleaded in the suit and even by his ejectment also being sought specifically. If the sub-tenant is not a necessary party, it is evident that whether he committed any act of default or breach of contract rendering himself liable to ejectment cannot possibly arise; for, the law could not possibly have contemplated that a finding that a person, by committing some act of default, incurred a certain liability, can be given behind his back.

Further a scrutiny of the grounds enumerated in Section 3 would make it clear that they cannot apply to a tenant, his sub-tenants, their sub tenants and so on ad infinitum. Take the first ground, namely, that of wilful default; that cannot apply to any sub tenant. A landlord has no right to demand any rent from a sub-tenant; so there can be no question of a sub-tenant's wilfully failing to pay arrears of rent within a month of the receipt of a notice of demand. Take another ground, namely, that of illegally subletting without the landlord's consent; it would be absurd to suggest that if a landlord files a suit against his tenant on that ground and impleads the sub-tenant by way of abundant caution that is to-prevent his taking the position that he was not bound by the decree against the tenant J, then the tenant can be ejected but not the sub-tenant unless the subtenant has again illegally sublet to a third person. If such an argument were permitted, it would be impossible to eject any tenant on the ground of illegally subletting. I therefore, hold that the firm is not protected from ejectment by anything contained in the Rent Control Act.

7. The appeal is dismissed under Order 41, Rule 11, C.P.C.