

Goppulal vs Thakurji Shriji Shriji Dwarkadheeshji ... on 12 March, 1969

Equivalent citations: 1969 AIR 1291, 1969 SCR (3) 989

Author: R.S. Bachawat

Bench: R.S. Bachawat, S.M. Sikri, K.S. Hegde

PETITIONER:

GOPPULAL

Vs.

RESPONDENT:

THAKURJI SHRIJI SHRIJI DWARKADHEESHJI & ANR.

DATE OF JUDGMENT:

12/03/1969

BENCH:

BACHAWAT, R.S.

BENCH:

BACHAWAT, R.S.

SIKRI, S.M.

HEGDE, K.S.

CITATION:

1969 AIR 1291 1969 SCR (3) 989

1969 SCC (1) 792

CITATOR INFO :

F	1974	SC2331	(3)
D	1975	SC2156	(12,13,15,16)
D	1980	SC1866	(7)
RF	1981	SC1284	(30)
R	1987	SC2016	(13)
APL	1989	SC 467	(10,11)
E&F	1990	SC 879	(6)

ACT:

Rajasthan Premises (Control of Rent & Eviction) Act, (Raj. 17 of 1950), s. 13(1)(e)-Sub-letting before enforcement of the Act-Ejectment, if possible-Landlord and tenant-Increase of rent-If imports new demise-Sub-letting-How established.

HEADNOTE:

The respondent-landlord let out to the appellant four shops

and later one let out to him two more shops. The respondent filed a suit alleging that subsequent to the letting of the shops, by a contract, the rent was consolidated and increased and that the shops were sub-let by the appellant, so the appellant be ejected from all the six shops under s. 13 (1) (e) of the Rajasthan Premises (Control of Rent and Eviction) Act. The appellant denied the contract and denied the subletting altogether. The trial court dismissed the suit, and the first appellate court affirmed the decree. Both these courts concurrently found that new contract of tenancy was not created, it was only an increase of rent, the other terms of the tenancy remained unaltered, and that the two shops were sub-let but with the permission of the landlord. The High Court, in second appeal, reversed the decree of the courts below, and held that there was one integrated tenancy of all the shops, that the four shops were sub-let with the permission of the landlord, but the later two were sub-let without permission, and that having sub-let a part of the premises without the permission, the decree for possession of all the shops must be passed. appeal to this Court, the appellant-tenant contended that (i) the tenancy of all the six shops were not one integrated; (ii) two shops were not sublet without the permission of the landlord; and (iii) the sub-letting was before the Jaipur Rent Control Order, 1947 came into force, which was repealed and continued by the promulgation of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950, and therefore ejectment could not be claimed under s. 13(1) (e) of the Act.

HELD : The appellant could not be ejected from four shops, but ought to be ejected from the two shops.

(i) A mere increase or reduction of rent does not necessarily import the surrender of the existing lease and the grant of a new tenancy. In the present case the first two courts on a review of the entire evidence came to the conclusion that the increase of rent did not import a new demise. This finding of fact was binding on the High Court in second appeal and it erred in holding that there was one integrated tenancy of the six shops. [991 H-992 B]

(ii) In the absence of any pleading and any issue on the question of sub-letting, the first two courts were in error in holding that the two shops were sub-let with the permission of the landlord. The permission of the landlord for the sub-letting cannot be established from the mere fact that the landlord realised rent after the sub-letting in the absence of proof that the landlord had then clear knowledge of the sub-lease. [992 D]

The date of the sub-letting of the two shops is not mentioned in the plaint. In the absence of any pleading and any issue on this question the

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High Court was error in recording the finding that the two shops were sub-let towards the end of 1947 after the Jaipur

Rent Control Order 1947 came into force. It can only be said that the sub-letting was sometime after 1945. [992 E]

(iii) Section 13(1)(e) of the Act was intended to apply to sub-letting before the Act came into force. If the tenant had sub-let the premises without the permission of the landlord either before or after the coming into force of the 'Act, he was not protected from eviction under s. 13(1)(e), and it matters not that he had the right to sub-let the premises under s. 108(j) of the Transfer of Property Act. The present perfect tense, by words "has sub-let" in s. 13(1)(e) of the Act contemplates a completed event connected in some way with the present time. The words take within their sweep any sub-letting which was made in the past and has continued up to the present time. It did not matter that the subletting was either before or after the Act came into force. Further ss. 26 and 27(1) of the Act contemplated that grounds of eviction mentioned in s. 13 may have arisen before the Act came into force. [993 D-994 A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 53 of 1969.

Appeal by special leave from the judgment and decree dated November 1, 1968 of the Rajasthan High Court in Civil Regular Second Appeal No. 487 of 1962.

C. B. Agarwala, Rameshwar Nath and Mahinder Narain, for the appellant.

B. R. L. Iyengar, S. K. Mehta and K. L. Mehta, for the respondents.

The Judgment of the Court was, delivered by Bachawat, J. This appeal arises out of a suit for ejectment by a landlord against a tenant. The defendant is the tenant of six shops belonging to Thakurji Shri Shri Dwarkadheeshji installed in the temple at Chaura Raasta, Jaipur. Devendra Prasad is the adhikari or manager of the temple. He gave a notice to the defendant to quit the shop on August 1, 1957. On February 28, 1958, the deity and Devendra Prasad filed a suit against the defendant claiming recovery of possession of the six shops and Rs. 1,006/- on account of arrears of rent. The suit was governed by the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (Act No. XVII of 1950). The plaintiffs asked for ejectment of the defendant on the ground that he had sublet the six shops. The other grounds of ejectment were not established, and it is not necessary to mention them. The courts below concurrently found that Devendra Prasad as 'the adhikari of the temple was entitled to give the notice to quit and to maintain the suit.

The trial court hold that (1) all the six shops were sub-let by the defendant; (2) the sub-letting was with the permission of the landlord and (3) the notice to quit was waived by acceptance of rent subsequently accrued due. Accordingly, the trial court dismissed the suit so far as it claimed ejectment and passed a decree for Rs. 1,006 on account arrears of rent. The plaintiff filed an appeal

against the decree. The District Judge, Jaipur City, dismissed the appeal. The plaintiffs filed a second appeal against the decree. The High Court held that (1) there was an integrated tenancy of all the six shops; (2) four shops were sub-let with the permission of the landlord; (3) two shops were sub-let without the permission of the landlord towards the end of 1947; (4) the tenant having sub-let a part of the premises without the permission of the landlord the ground of eviction- under clause (e) of s. 13(1) was made out and the landlord was entitled to a decree for possession of all the six shops and (5) there was no waiver of the notice to quit. Accordingly, the High Court allowed the appeal and passed a decree for eviction of the defendant from the six shops. The present appeal has been filed by the defendant after obtaining special leave.

Counsel for the appellant conceded that there was no waiver of the notice to quit by acceptance of rent or otherwise. The points arising for determination in this appeal are :

(1) was there one integrated tenancy of all the six shops ? (2) were the two sub-let without the permission of the landlord towards the end of 1947 ? and (3) is the sub-

letting a ground of ejectment under clause (e) of s. 13 (1) of the Rent Act ?

As to the first question, we find that four shops were let to the defendant in 1944 and the other two shops on the northern side of the staircase of the temple were let to him in 1945. The rent of the four shops was Rs. 150/- per month. The rent of the other two shops was Rs. 65/- per month. In paragraph 5 of the plaint it was pleaded that in 1953 the defendant agreed to pay a consolidated rent of Rs. 251/8/- per month for all the six shops and to vacate them by July 31, 1957. In paragraph 5 of the written statement the defendant denied this contract and alleged that in 1953 there was only an enhancement of rent. The first two courts found that in 1953 there was no new contract of tenancy, that there was only an increase of rent and that the other terms and conditions of the tenancy remained unaltered. This finding was not vitiated by any error of law. A mere increase or reduction of rent does not necessarily import the surrender of the existing lease and the grant of a new tenancy. As stated in Hill and Redman's Law of Landlord and Tenant, 14th ed., art. 385, p. 493 :-

"But a surrender does not follow from a mere agreement made during the tenancy for the reduction or increase of rent, unless there is some special reason to infer a new tenancy, where for instance, the parties make the change in the rent in the belief that the old tenancy is at an end."

In the present case the first two courts on a review of the entire evidence came to the conclusion that the increase of rent did not import a new demise. This finding of fact was binding on the High Court in second appeal. The High Court was in error in holding that there was one, integrated tenancy of the six shops.

As to the second question the defendant denied that he sub-let the two shops. The courts below concurrently found that this denial was false and that he sub-let the two shops to his brother-in-law Ram Gopal. There was no pleading nor any issue that the sub-letting of the two shops was made with the permission of the landlord. It was not the case of the defendant at any stage of the trial that

he had obtained the permission of the landlord for sub-letting the two shops. In the absence of any pleading and any issue on his joint the first two courts were in error in holding that the two shops were sub-let with the permission of the landlord. The permission of the landlord for the sub-letting is not established from the mere fact that the landlord realised rent after the sub-letting in the absence of proof that the landlord had then clear knowledge of the sub-lease. The date of the sub-letting of the two shops is not mentioned in the plaint. In the absence of any pleading and any issue on his question the High Court 'was in error in recording the finding that the two shops were sub-let towards the end of 1947 after the Jaipur Rent Control Order 1947 came into force. We can only say that the sub-letting was sometime after 1945.

As to the third question : section 13(1) of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 provides :-

"Notwithstanding anything contained in any law or contract, no Court shall pass any decree, or make any order, in favour of a landlord, whether in execution of a decree or otherwise, evicting the tenant so long as he is ready and willing to pay rent therefor to the full extent allowable by this Act, unless it is satisfied-

The sub-section then sets out several grounds of ejectment under twelve main heads. Clause (e) mentions the following ground :-

" that the tenant has assigned, sub-let or otherwise parted with the possession of, the whole or any part of the promises without the permission of the landlord."

The appellant's contention is that sub-letting before the Act came into force is not within the purview of clause (e). The High Court held that the two shops were sub-let after October 15, 1947 when the Jaipur Rent Control Order, 1947 came into force, that the sub-letting was a ground of ejectment under paragraph 8 (1) (b) (ii) of that Order and that the tenant's liability for eviction on this ground continued after the promulgation of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950. With regard to this line of reasoning it is sufficient to say that the plaintiffs have not established that the sub-letting was after October 15, 1947. The case must be decided on the footing that on the date of the sub-letting, no Rent Control legislation was in force.

The question whether a subletting before the coming into force of the Act is within the purview of clause (e) of s. 13(1) depends upon the construction of that clause. The relevant words are "has sub-let". The present perfect tense contemplates a completed event connected in some way with the present time. The words take within their sweep any sub-letting which was made in the past and has continued up to the present time. It does not matter that the sub-letting was either before or after the Act came into force. All such sub-lettings are within the purview of clause (e). Sections 26 and 27(1) of the Act throw considerable light on the construction of s. 13(1). They are as follows :-

"26. No decree for the eviction of a tenant from any premises in areas to which this Act extends for the time being, passed before the date of commencement of this Act shall in so far as it relates to the eviction of such tenant be executed against him, as

long as this Act, remains in force therein, except on any of the grounds mentioned in s. 13 and under the circumstances specified in this Act. 27(1) In all suits for eviction of tenants from any premises in areas to which this Act has been extended under section 2, pending on the date specified in the notification under that section, no decree for eviction shall be passed except on one or more of the grounds mentioned in section 13 and under the circumstances specified in this Act."

Section 26 bars the execution of a decree for eviction passed before the commencement of the Act except on any of the grounds mentioned in s. 13 and under the circumstances specified in the Act. Likewise, s. 27(1) bars the passing of a decree for eviction in a pending suit except on one or more of the grounds under s. 13 and under the circumstances specified in the Act. Sections' 26 and 27(1) clearly contemplate that the grounds of eviction mentioned in s. 13 may have arisen before the Act came into force.

The argument that section 13 (1) (e) takes away vested rights and should not be given a retrospective effect is based on fallacious assumptions. Apart from the Rent Act the landlord is entitled to eject the tenant on the expiry of the period mentioned in the notice to quit. Section 13(1) protects the tenant from eviction except in certain specified cases. If one of the grounds of ejection is made out the tenant does not qualify for protection from eviction. We find no reason for presuming that s. 13 (1)

(e) is not intended to apply to sub-lettings before the Act came into force. If the "tenant has sub-let" the premises without the permission of the landlord either before or after the coming into force of the Act, he is not protected from eviction under s. 13 (1) (e), and it matters not that he had the right to sub-let the premises under s. 108(j) of the Transfer of Property Act.

The plaintiffs have thus established the ground of eviction under s. 13 (1) (e) with regard to the two shops on the northern side of the staircase of the temple. With regard to the four other shops the courts below concurrently found that they were sublet with the permission of the land-lord. In our opinion, the plaintiffs are entitled to a decree for ejection of the defendant from the two shops and the claim for eviction from the other four shops should be dismissed. In the result, the appeal is allowed in part. The decree passed by the High Court for eviction of the defendant from the four shops is set aside and the suit in so far as it claims eviction from the four shops is dismissed. The decree passed by the High Court for eviction of the defendant from the other two shops on the northern side of the staircase of the temple mentioned in paragraph 4 of the plaint is affirmed. Parties will pay and bear their own costs throughout, in this Court and in all the courts below. The defendant will have one month's time to vacate the two shops.

Y.P.

Appeal allowed in part.