

Shah Phoolchand Lalchand vs Parvathi Bai on 2 February, 1989

Equivalent citations: 1989 AIR 865, 1989 SCR (1) 417, AIR 1989 SUPREME COURT 865, 1989 (1) SCC 556, (1989) 1 JT 224 (SC), 1989 SCFBRC 181, 1989 MPRCJ 119, (1989) 2 MAD LJ 28, 1989 (1) JT 224, (1989) 1 RENCER 483

Author: M.H. Kania

Bench: M.H. Kania, L.M. Sharma

PETITIONER:

SHAH PHOOLCHAND LALCHAND

Vs.

RESPONDENT:

PARVATHI BAI

DATE OF JUDGMENT 02/02/1989

BENCH:

KANIA, M.H.

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KANIA, M.H.

SHARMA, L.M. (J)

CITATION:

1989 AIR 865

1989 SCR (1) 417

1989 SCC (1) 556

JT 1989 (1) 224

1989 SCALE (1) 243

ACT:

Constitution of India, 1950: Article 136--Contention that partners of a firm not made parties by landlord in eviction proceeding--Such a contention--Whether could be raised at special leave stage.

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960: Section 10(2)(ii)(a)--Unlawful sub-letting--Eviction on that ground--Whether partners of the firm are to be made parties to such eviction petition.

HEADNOTE:

The appellants are tenants of the premises belonging to the Respondent, and have been carrying on business as a partnership firm in the said premises. The respondent filed an eviction petition against the appellant firm and another firm, on the ground that the appellant had unlawfully and

without the consent of the Respondent sub-let the premises to the other firm. The Trial Court passed a decree for eviction, against which the appellants preferred an appeal to the Appellate Authority. The Appellate Authority dismissed the appeal and upheld the finding of unlawful subletting by the appellants. The appellants preferred a Civil Revision petition before the High Court, which was also dismissed. The present appeal by special leave is against the High Court's decision.

On behalf of the appellants, it was contended that since the eviction petition had been filed without joining the partners of the other firm (the sub-tenant) the eviction petition was not maintainable at all.

Dismissing the appeal,

HELD: 1. The objection that the eviction petition was filed against the appellants-firm and the other firm, was not maintainable as it had been filed without joining any of the partners of the said other firm as respondents or serving them as partners, had not been raised at all till the stage of special leave and it is not open to the appellants to raise such an objection at a very late stage and thereby delay matters for a number of years. [419F; 420C]

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Chhotelal Pyarelal, the partnership firm and others v. Shikharchand, [1985] 1 S.C.R. 268, distinguished.

2. There is evidence to show that the other firm was carrying on business at the said premises and that the said firm carried on business in the said premises even for some time during which the appellants-firm had ceased to carry on the business there. Moreover, although a notice was given by the respondent to the appellants and the other firm to produce their income-tax returns, assessment orders as well as account books and ledgers for the relevant period, these were not produced. It was open to the Trial Court, from these circumstances, to come to the conclusion that had the account books and ledgers been produced, they would have shown that rent was received by the appellants from the other firm which would justify the finding of subletting. [420D-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1347 of From the judgment and Order dated 24.1. 1981 of the Madras High Court in C.R.P. No. 44 of 1981.

B.N. Nayar, T.V.S.N. Chaff, K. Srinivasan, C.H. Badri Nath, R.K. Gupta and Ms. Sudha Srivastava for the Appel- lants.

U.R. Lalit and Ambrish Kumar for the Respondent. The Judgment of the Court was delivered by

KANIA, J. This is an appeal filed by Special Leave under Article 136 of the Constitution by the appellants who are the tenants against the respondent-landlady. The appellants are a partnership firm and are the tenants of premises situated at No. 6 Kasi Chetty Street, G.T. Madras. They carry on business there. The respondent filed an eviction petition being H.R.C. No. 641 of 1975 in the Court of Small Causes, Madras against the appellants and one other partnership firm, carrying on business in the name and style of M/s. Adeshwar Glass Mart on the ground that the appellants had unlawfully and without the consent of the respondent sublet the said shop let out to the said M/s. Adeshwar Glass Mart and were liable to be evicted for unlawful subletting under the provision of Section 10(2)(ii)(a) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as "the said Rent Act"). M/s. Adeshwar Glass Mart were also joined by the respondent herein as respondents in the eviction petition on the ground that they were unlawful sub-tenants. The Trial Court held this ground established and passed a decree for eviction as sought by the respondent. The appellants preferred an appeal against this decision to the Appellate Authority under Section 23 of the said Rent Act, being the Court of Small Causes at Madras. The said appeal was numbered as H.R.A. 156 of 1979. The Appellate Authority dismissed the said appeal upholding the finding of unlawful subletting by the appellants. The appellants then preferred a Civil Revision Petition being C.R.P. No. 44 of 1981 in the High Court of Judicature at Madras against the aforesaid decision. This Revision Petition was dismissed by the then learned Chief Justice of the Madras High Court. It is against the decision the present appeal is directed. Mr. Nayar, learned counsel for the appellants has urged before us that the impugned judgment must be set aside as the eviction petition was filed against the appellants firm and one other partnership firm, M/s. Adeshwar Glass Mart without joining any of the partners of the said firms as respondents or serving them as partners and hence, the eviction petition was not maintainable at all. He placed strong reliance on the decision of this Court in *Chhotelal Pyarelal, the partnership firm and others v. Shikharchand*, [1985] 1 S.C.R. 268. In that case an eviction petition was filed by the respondent-landlord against the appellant a partnership firm-under clause 13(3)(iv) and (vii) of the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949. The appellant raised a preliminary objection that the application against the partnership firm was not maintainable without joining its partners as respondents. It was held by this Court that it is only by virtue of the provisions of order 30 of the Code of Civil Procedure, 1908, that a firm can sue and be sued in its own name without the partners being impleaded. It was pointed out by Mr. Nayar that the Code of Civil Procedure was not applicable to the proceedings under the said Rent Act either and hence, the ratio laid down in the aforesaid decision was directly applicable to the case before us. In our view, it is not open to Mr. Nayar to raise this contention at this stage at all. This contention is not one which would have been fatal to the eviction petition. Had this contention been raised in the Trial Court or even in the first Appellate Court, it would have been open to the respondent to amend the eviction petition and join the partners as respondents. In the aforesaid decision in *Chhotelal Pyarelal's* case, relied upon by Mr. Nayar the objection to the maintainability of the petition was raised at the earliest stage and was wrongly negated by the Trial Court. In fact, this Court observed as follows:

"But we agree with the Division Bench of the High Court that this cannot by itself result in the dismissal of the application. It would be merely a case of misdescription of the respondents to the application and this misdescription can be corrected at any stage of the proceedings. There can be no doubt that the partners of the firm are

before the Court though in a wrong name."

In the case before us, no such objection has been raised at all till the stage of Special Leave and it is surely not open to the appellants to raise such an objection at a very late stage and thereby delay matters for a number of years. This contention must, therefore, be negatived. It was next submitted by Mr. Nayar that there was no evidence in the case to come to the conclusion that the appellants had sublet the shop to M/s. Adeshwar Glass Mart. In our view, there is no substance in this contention. There is evidence to show that M/s. Adeshwar Glass Mart was carry- ing on business at the said premises and that firm was carried on business in the said premises even for some time during which the appellants-firm had ceased to carry on the business there. Moreover, although a notice was given by the respondent to the appellants and M/s. Adeshwar Glass Mart to produce their income-tax returns, assessment orders as well as account books and ledgers for the relevant period, these were not produced. It was surely open to the Trial Court from these circumstances to come to the conclusion that had the account books and ledgers been produced, they would have shown that rent was received by the appellants from M/s. Adeshwar Glass Mart which would justify the finding of subletting. In these circumstances, this contention of Mr. Nayar must fail.

Although Mr. Nayar wanted us to undertake detailed scrutiny of the evidence and to reappraise the same, we fail to see how we are called upon to do so in an appeal under Article 136 of the Constitution.

In the result, the appeal fails and is dismissed with costs.

G.N.
missed.

Appeal dis-