

Supreme Court of India

United Bank Of India vs Cooks And Kelvey Properties ... on 12 May, 1994

Equivalent citations: 1995 AIR 380, 1994 SCC (5) 9

Author: K Ramaswamy

Bench: Ramaswamy, K.

PETITIONER:

UNITED BANK OF INDIA

Vs.

RESPONDENT:

COOKS AND KELVEY PROPERTIES (P)LTD.

DATE OF JUDGMENT 12/05/1994

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

VENKATACHALA N. (J)

CITATION:

1995 AIR 380

1994 SCC (5) 9

1994 SCALE (3) 86

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. The respondent filed a suit, OS No. 840 of 1979 on the original side of Calcutta High Court for ejectment of the appellant from 4th floor of Premises No. 20, Old Court House Street, Calcutta on diverse grounds under the West Bengal Premises Tenancy Act, 1956, for short 'the Tenancy Act'. That suit was dismissed by a learned Single Judge but on appeal, Appeal No. 309 of 1984 filed by the respondent before the Division Bench, was allowed, judgment and decree of learned Single Judge set aside, and the suit was decreed on the ground of subletting under Section 13(1)(a) of the Tenancy Act. Thus, this appeal by special leave from appellate judgment and decree dated 4-10-1991.

2. The respondent's case is that the appellant after taking demised premises on rent of Rs 2250 per mensem, has inducted the United Bank of India Employees' Association Central Committee, a registered trade union into the demised premises and allowed it to have its exclusive possession and

use of the same for its trade union activities without its (landlord's) written consent and that thereby it has contravened Section 13(i)(a) of the Tenancy Act. The Division Bench upheld that case finding that the landlord had succeeded in proving that the bank had parted with the possession of the demised premises in favour of the union which was in complete and exclusive possession of the 4th floor of Premises No. 20, Old Court House Street, Calcutta, and hence there was subletting and/or transfer of tenancy interest in favour of the third person without the consent of the landlord and as such the tenant was not entitled to any protection under the Tenancy Act. The contention of the appellant is that though the trade union was in possession of the demised premises, it is a part of the appellant's trading activity and the appellant had control over the trade union. The trade union is bound to vacate the demised premises when appellant needs and it is the appellant which has been taking care of the maintenance of the premises at its own expenses. It has been paying the municipal taxes, in charge of management and also has reserved its right to ask the trade union at any time to deliver possession back to it. It has not been collecting any rent from the trade union. Under those circumstances, the legal position remained with the bank and thereby it had not sublet the premises to the trade union in terms of Section 13(1)(a) of the Act.

3. On the other hand, the contention of the respondent was that in view of the admitted fact that the working hours between the bank and the trade union activities are different and the trade union is having been in exclusive possession of the premises for its trade union activities which has no connection with the bank's activities of the appellant, the only inference that could be drawn is that the appellant had parted with the possession of the demised premises in favour of the trade union and for consideration. The subletting, was therefore, established by the respondent. Accordingly, the Division Bench had considered the problem, and granted the decree. Hence, there is no illegality in the decree granted by the Division Bench.

4. The crucial question that requires our consideration is, whether the appellant had sublet the premises within the meaning of Section 13(1)(a) of the Tenancy Act, which postulates that notwithstanding anything to the contrary in any other law, no order or decree for the recovery of possession of any premises shall be made by any court in favour of the landlord against a tenant except on one or more of the following grounds namely:

"(a) Where the tenant or any person residing in the premises let to the tenant without the previous consent in writing of the landlord transfers, assigns or sublets in whole or in part the premises held by him:"

The contention that the above provision has no application to the nonresidential building, although appears to be plausible ex facie on a closer scrutiny, it becomes clear that the provision makes no difference between residential and non-residential, in its application. It would appear that the provision is intended to apply to any premises defined under the Tenancy Act and enable a landlord to get back possession of the premises from the tenant on the ground envisaged thereunder. That ground says, that if the tenant, without the previous consent in writing of the landlord, transfers, assigns or sublets in whole or in part the premises held by him, would give a cause of action to the landlord to seek eviction of the tenant from the demised premises. The position becomes clear when we read clauses

(b), (c), (d), (e) and other related provisions vis-a-vis Section 14 of the Tenancy Act. Thus, it is clear that the provision applies to the residential as well as non- residential premises governed by the provisions of the Tenancy Act.

5. The next question is whether subletting has been established. This Court on a consideration of the entire case law on the topic of proof of passing of the consideration held in *Rajbir Kaur v. S. Chokesiri and Co.*¹ thus: (SCC p. 43, para 59) "If exclusive possession is established, and the version of the respondent as to the particulars and the incidents of the transaction is 1 (1989)¹ scc 19 found acceptable in the particular facts and circumstances of the case, it may not be impermissible for the court to draw an inference that the transaction was entered into with monetary consideration in mind. It is open to the respondent to rebut this. Such transactions of subletting in the guise of licences are in their very nature, clandestine arrangements between the tenant and the subtenant and there cannot be direct evidence got. It is not, unoften, a matter for legitimate inference. The burden of making good a case of subletting is, of course, on the appellants. The burden of establishing facts and contentions which support the party's case is on the party who takes the risk of non-persuasion. If at the conclusion of the trial, a party has failed to establish these to the appropriate standard, he will lose. Though the burden of proof as a matter of law remains constant throughout a trial, the evidential burden which rests initially upon a party bearing the legal burden, shifts according as the weight of the evidence adduced by the party during the trial. In the circumstance of the case, we think, that, appellants having been forced by the courts below to have established exclusive possession of the ice-cream vendor of a part of the demised premises and the explanation of the transaction offered by the respondent having been found by the courts below to be unsatisfactory and unacceptable, it was not impermissible for the courts to draw an inference, having regard to the ordinary course of human conduct, that the transaction must have been entered into for monetary considerations. There is no explanation forthcoming from the respondent appropriate to the situation as found." In *Dipak Banerjee v. Lilabati Chakraborty*², (SCC p. 165 : SCR p. 684), this Court held that the question whether the alleged subtenant was in exclusive possession of the part of the premises ... the essential ingredient necessary for a finding, is that the subtenancy must be in exclusive possession and for consideration.

6. This was reiterated in *Jagan Nath v. Chander Bhan*³.

7. In *Gopal Saran v. Satyanarayana*⁴, this Court held that: (SCR p. 789 SCC p. 72, para 21) "... having regard to the quality, nature and degree of the occupation of the transferee and the facts found, it cannot be said that either there was any assignment or subletting or parting with possession to such a degree by permitting the boarding that the tenant had lost interest. He was using this premises for his benefit. Unless the tenant has infringed the prohibition of the Act, he is not liable to be evicted. The case rests on the express provision of the Act and there is no scope to explore the latent purpose of the Act."

8. Considering all these cases in *Delhi Stationers and Printers v. Rajendra Kumar*⁵, this Court reiterated that:

(SCC p. 333, para 5)

2 (1987) 4 SCC 161 : (1987) 3 SCR 680

3 (1988) 3 SCC 57 : 1988 Supp (1) SCR 325
4 (1989) 3 SCC 56 : (1989) 1 SCR 767
5 (1990) 2 SCC 331

"Parting of the legal possession means possession with the right to include and also a right to exclude others. Mere occupation is not sufficient to infer either subtenancy or parting with possession."

9. In Bhairab Chandra Nandan v. Ranadhir Chandra Dutta⁶ (SCC p. 387) relied upon by Dr Shankar Ghosh, the question was, whether one brother who had taken the premises on lease but admittedly residing in another premises, parted with possession in favour of his other brother Mandahir who was in occupation of the premises, was a subtenant or not. This Court on consideration of the said facts, held that the lease and licence pleaded by the tenant was not right. It was a case of subletting without the consent of the landlord and that, therefore, the decree of eviction was upheld. The question, as stated earlier, is whether the appellant had sublet the premises? It is seen that under Section 105 of the Transfer of Property Act, the lease has been defined as the transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. Section 13(1)(a) does not define the word 'transfer'. Section 14 of the Tenancy Act provides for penalty for subletting. The meaning of transfer of a right to enjoy the property for consideration envisaged under Section 105 of the Transfer of Property Act, postulates that a tenant who transfers or assigns his right in the tenancy or any part thereof in whole or in part held by him is (sic creates) a subtenancy without the previous consent in writing. When the subtenancy was created, the subtenant is liable for prosecution under Section 14 read with Section 13(3) of the Tenancy Act. When it is a penalty as provided under Section 14 for transfer or assignment of the right in the tenancy in whole or in part of the premises held by the tenant in favour of the subtenant, the sublease envisaged under Section 105 of the Transfer of Property Act would equally apply.

10. From the evidence, it is clear that though the appellant had inducted the trade union into the premises for carrying on the trade union activities, the bank has not received any monetary consideration from the trade union, which was permitted to use and enjoy it for its trade union activities. It is elicited in the cross-examination of the President of the trade union that the bank had retained its power to call upon the union to vacate the premises at any time and they had undertaken to vacate the premises. It is also elicited in the cross-examination that the bank has been maintaining the premises at its own expenses and also paying the electricity charges consumed by the trade union for using the demised premises. Under these circumstances, the inference that could be drawn is that the appellant had retained its legal control of the possession and let the trade union to occupy the premises for its trade union activities. Therefore, the only conclusion that could be reached is that though exclusive possession of the demised premises was given to the trade union, the possession must be deemed to be constructive 6 (1988) 1 SCC 383 possession held by it on behalf of the bank for using the premises for trade union activities so long as the union used the premises for trade union activities. The bank retains its control over the trade union whose

membership is only confined to the employees of the bank. Under these circumstances, the inevitable conclusion is, that there is no transfer of right to enjoy the premises by the trade union exclusively, for consideration. Thereby, the existence of consideration an ingredient of the subletting has not been present to hold that the respondent had sublet as would make it liable for eviction under Section 13(i)(a) of the Tenancy Act. The appeal is accordingly allowed. The judgment and decree of the appellate court is set aside, trial court judgment is confirmed, but in the circumstance, the parties are directed to bear their own costs throughout.