

Date Of Reserving The Judgment vs N.Rajeswari on 20 January, 2017

Author: R.Mala

Bench: R.Mala

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.01.2017
CORAM :
THE HONOURABLE MS.JUSTICE R.MALA
C.R.P.(NPD).No.211 of 2016
and
C.M.P.No.1073 of 2016

Date of Reserving the Judgment
18.01.2017
Date of Pronouncing the Judgment
20.01.2017

M.Latha
W/o.Muthaiah

.. Petitioner/Appellant/1st Respondent/Tenant

-Vs.-

1.N.Rajeswari
W/o. Late S.S.Narasiman

2.N.Dinesh
S/o. Late S.S.Narasiman

3.N.Prasad
S/o. Late S.S.Narasiman

.. Respondents 1 to 3/Respondents 1 to 3/
Petitioners/Land Lords

4.Dr.Lakshmi Iyer
W/o.Dr.Vaidyanathan

.. 4th Respondent/4th Respondent/
2nd Respondent/Tenant

Prayer:

Civil Revision Petition is filed under Section 25 of Tamil Nadu Buildings (Lease and Ren

For Petitioner : Mr.V.Shivakumar

For Respondents : Mr.R.Bharath Kumar, for R1 to R3

R4 No Appearance

O R D E R

The present Civil Revision Petition has been filed challenging the fair and final order dated 01.08.2015 passed in R.C.A.No.23 of 2014 on the file of the Principal Subordinate Judge, Coimbatore (Appellate Authority) confirming the fair and decreetal order dated 04.09.2013 passed in R.C.O.P.No.83 of 2007 on the file of the Principal District Munsif, Co imbatore (Rent Controller).

2.The respondents 1 to 3 herein as petitioner/landlord has filed R.C.O.P.No.83 of 2007 on the file of the Principal District Munsif, Coimbatore for eviction on the ground of sub-letting. The petitioner herein who is the first respondent in the RCOP proceeding filed a detailed counter stating that there is no sub-letting. Thereafter, an Advocate Commissioner was appointed and after inspecting the property, he filed a detailed report with sketch. The learned Rent Controller after considering the oral and documentary evidence has ordered eviction stating that the landlord had proved sub-letting, as against which the tenant preferred an appeal in R.C.A.No.23 of 2014 before the learned Rent Control Appellate Authority. The learned Rent Control Appellate Authority had confirmed the order of eviction passed by the learned Rent Controller as against which the present Civil Revision Petition has been preferred.

3.The learned counsel appearing for the revision petitioner would submit that the petition for eviction on the ground of sub-letting itself is not maintainable, since there is no definition for sub-tenant under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 [hereinafter called as the 'Act']. Even the term subletting has not been defined under Section 2 of the Act. Further, the demised premises is a commercial building and the commissioner had inspected the property and filed a report. But the Advocate Commissioner has no business to enquire the inmates and give a finding that the property has been sublet to the fourth respondent. Hence, the report filed the commissioner had to be scrapped. Furthermore, the landlord had not proved the existence of rental agreement between the tenant and the sub-tenant and the particulars regarding the advance and the rent amount has not been mentioned. Hence, there is no evidence to show that there is subletting. Both the Courts below had filed to consider these factum and hence, the learned counsel for the revision petitioner prayed for setting aside the fair and decreetal order passed by both the Courts below.

4.To substantiate his argument, the learned counsel relied upon the following decisions:

1.AIR 1987 Supreme Court 2055, Dipak Banerjee v. Smt.Lilabati Chakraborty.

2.AIR 2014 Supreme Court 2189, M/s.S.F.Engineer v. Metal Box India Ltd., and Another.

5. Resisting the same, the learned counsel appearing for the respondents 1 to 3/landlord would submit that the landlord had clearly pleaded in paragraphs 5 and 6 of his petition that the property had been sublet as a patient waiting room. The Advocate Commissioner had inspected the property and filed a report along with sketch which shows that the rear portion of the demised building has been partitioned and sublet to the fourth respondent. Further, it is pertinent to note that the revision petitioner had neither filed any objection to the Commissioner report nor filed an application to scrap the Commissioner report before the Courts below. What that being so, now he is not entitled to raise such a plea. The learned counsel would further submit that once subletting has been proved, the burden would shift on the tenant to prove the contra. For the said reason, the learned counsel appearing for the respondents 1 to 3/landlord would rely on the following decision:

1.2004 (2) CTC 164, Hilulru Hameedha Begum v. Pappammal and another.

6. The learned counsel would further contend that in order to establish the sub-letting, two ingredients have to be proved. They are parting with the legal possession and acceptance of monetary consideration. For the said reason, the learned counsel relied on the following decisions:

1.1998 (2) MLJ 118 SC, Bharat Sales Limited v. Life Insurance Corporation of India.

2.(2005) 1 Supreme Court Cases 31, Joginder Singh Sodhi v. Amar Kaur.

7. The learned counsel would further contend that during the pendency of the proceeding, if the subtenant vacate the premises, the same will not absolve the liability of the tenant to vacate the premises. Hence, the learned counsel for the respondents 1 to 3/landlord prayed for dismissal of the Civil Revision Petition and to order eviction.

8. Considered the rival submissions made by both sides and perused the typed set of papers.

9. The tenancy agreement between the petitioner and the respondents 1 to 3 are not disputed. The quantum of rent is also not disputed. The only ground for eviction is subletting the premises to the fourth respondent Dr.Latha, who used the portion of the demised building as waiting room for the patients. At this juncture, it would be appropriate to consider the argument advanced by the learned counsel for the revision petitioner that there is no definition for sub-tenant under the Act. But the provision 10(2)(ii) of the Act reads that the tenant has after the 23rd October, 1945 without the written consent of the landlord (a) transferred his right under the lease or sub-let the entire building or any portion thereof if the lease does not confer on him any right to do so. Thus, it is clear stated that if the tenant has sublet the property either the entire building or any portion of the demised building, the tenant is liable to be evicted. The term sub-let has been defined in the Mega Lifco Dictionary as follows:

Sublet : let out in turn to another;

The term sub-let and subletting has been defined in the Law Lexicon, 2nd Edition 1997 as follows:

Sublet : The word, sub-let takes in the letting even to licensees or their occupation at the instance of the tenant either for some consideration like rent or premium.

Subletting : Leasing of a portion of a building constructed by lessee cannot be termed as a sub-lease within the meaning of Section 21(1)(f).

The term sub-let has been defined in the Oxford English Dictionary, 11th Edition as follows:

Sublet : A lease of a property by a tenant to a subtenant.

10. Thus, considering the definition of the term sublet along with the proviso to Section 10(2)(ii) of the Act, even though the term sublet has not been defined under the Act, it can be termed as a ground for eviction. In such circumstances, the first limb of argument put forth by the learned counsel for the revision petitioner/tenant does not merit acceptance.

11. The second limb of argument advanced by the learned counsel for the revision petitioner is that the landlord has not proved that there was subletting and he has also not provided any evidence for payment of rent. Hence, the revision petitioner cannot be evicted on the ground of subletting. For the said reason, the learned counsel relied upon the decision reported in AIR 1987 Supreme Court 2055, *Dipak Banerjee v. Smt. Lilabati Chakraborty*. It is true that the landlord has not stated as to what is the rental agreement between the tenant and the subtenant and what is the monthly rent. However, the above citation is not applicable to the facts of the present case because in the case cited supra, the property has been leased out to a tailoring shop and only one tailoring machine is found place. In that it was held that It is however not possible to accept that services in lieu of the right of occupation would amount to receipt of rent under the Rent Act to create sub-tenancy. But in the instant case, the petitioner has entered into a rental agreement with the respondents 1 to 3 under Ex.P.1. Further, the lease deed of the year 1989 has been marked as Ex.R.1 and the lease deed of the year 2004 has been marked as Ex.R.2. The lease deed dated 01.02.1996 entered between the respondents 1 to 3 and the fourth respondent's husband Dr. Vaidyanathan has been marked as Ex.P.2. Furthermore, the commissioner who inspected the property and filed a report has been examined as a witness and the report, plan and photographs has been marked as C1 to C3. Even the photographs marked as C3 shows that the backyard portion has been partitioned and it was used as a patient waiting room for the fourth respondent. In such circumstances, the above citation will not come to the rescue of the petitioner.

12. The next citation relied on by the learned counsel for the revision petitioner is reported in AIR 2014 Supreme Court 2189, *M/s. S.F. Engineer v. Metal Box India Ltd., and Another*. In the said decision it was held that that transaction of sub-letting can be proved by legitimate inference though the burden is on the person seeking eviction. The materials brought out in evidence can be gathered together for arriving at the conclusion that a plea of sub-letting is established. It is appropriate to incorporate paragraph 23 of the said decision:

3. We have referred to the aforesaid decisions only to reaffirm the proposition that the Court under certain circumstances can draw its own inference on the basis of materials brought at the trial to arrive at the conclusion that there has been parting with the legal possession and acceptance of monetary consideration either in cash or in kind or having some kind of arrangement. The aforesaid authorities make it further spectacularly clear that the transaction of subletting can be proved by legitimate inference though the burden is on the person seeking eviction. The materials brought out in evidence can be gathered together for arriving at the conclusion that a plea of subletting is established. The constructive possession of the tenant by retention of control like in *Cooks and Kelvey Properties (P) Limited* (supra) would not make it parting with possession as it has to be parting with legal possession. Sometimes emphasis has been laid on the fact that the sub-tenancy is created in a clandestine manner and there may not be direct proof on the part of a landlord to prove it but definitely it can bring materials on record from which such inference can be drawn. In the instant case, a commissioner was appointed and after inspection he had filed the report which would show that on the east of the demised building, Vaidyanathan, the Husband of fourth respondent is a tenant. As per Ex.P.2, the concerned portion has been used as patient waiting room and then his wife, Lakshmi Iyer is having her clinic. But in the demised building, there was a three feet corridor in the back side of the Muthu Meena Pharmacy. In such circumstances, the evidence of R.W.2/Muthiah, who is none other than the husband of the revision petitioner would prove that the portion has been sublet to the fourth respondent/Lakshmi Iyer. Considering the facts of the present case in the light of the above decision, I am of the view that subletting has been proved by the respondents 1 to 3/landlord.

13.It is well settled that subletting is a process between the tenant and the subtenant and the landlord may not know about the period of tenancy and the amount fixed as advance and rent. At this juncture, it would be appropriate to consider the decision relied on by the learned counsel for the respondents 1 to 3 reported in 1998 (2) MLJ 118 SC, *Bharat Sales Limited v. Life Insurance Corporation of India*, wherein it was held as follows:

Sub-tenancy of sub-letting comes into existence when the tenant gives up possession of the tenanted accommodation, wholly or in part, and puts another person in exclusive possession thereof. The arrangement comes about obviously under a mutual agreement or understanding between the tenant and the person to whom the possession is so delivered. In this process, the landlord is kept out of the scene. Rather, the scene is enacted behind the back of the landlord concealing the overt acts and transferring possession clandestinely to a person who is an utter stranger to the landlord, in the sense that the landlord had not let out the premises to that person nor had he allowed or consented to his entering into possession over the demised property.

14. In the next decision relied on by the learned counsel for the respondents 1 to 3 reported in (2005) 1 Supreme Court Cases 31, *Joginder Singh Sodhi v. Amar Kaur*, it was held in paragraphs 17, 18 & 20 as follows:

7. We are unable to appreciate the contention. As observed by this Court in *Bharat Sales Ltd. v. Life Insurance Corporation of India*. [1998] 3 SCC 1, sub-tenancy or sub-letting comes into existence when the tenant gives up possession of the tenanted accommodation, wholly or in part, and puts another person in exclusive possession thereof. This arrangement comes about obviously under a mutual agreement or understanding between the tenant and the person to whom the possession is so delivered. In this process, the landlord is kept out of the scene. Rather, the scene is enacted behind the back of the landlord, concealing the overt acts and transferring possession clandestinely to a person who is an utter stranger to the landlord, in the sense that the landlord had not let out the premises to that person nor had he allowed or consented to his entering into possession of that person, instead of the tenant, which ultimately reveals to the landlord that tenant to whom the property was let out has put some other person into possession of that property. In such a situation, it would be difficult for the landlord to prove, by direct evidence, the contract or agreement or understanding between the tenant and the subtenant. It would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property had been sub-let had paid monetary consideration to the tenant. Payment of rent, undoubtedly, is an essential element of lease or sub-lease. It may be paid in cash or in kind or may have been paid or promised to be paid. It may have been paid in lump sum in advance covering the period for which the premises is let out or sub-let or it may have been paid or promised to be paid periodically. Since payment of rent or monetary consideration may have been made secretly, the law does not require such payment to be proved by affirmative evidence and the court is permitted to draw its own inference upon the facts of the case proved at the trial, including the delivery of exclusive possession to infer that the premises were sub-let.

18. In *Smt. Rajbir Kaur and Anr. v. M/s S. Chokesiri and Co.*, [1989] 1 SCC 19, this Court, speaking through Venkatachaliah, J (as His Lordship then was) stated:

"If exclusive possession is established, and the version of the respondent as to the particulars and the incidents of the transaction is 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 sub-letting in the guise of licences are in their very nature, clandestine arrangements between the tenant and the sub-tenant and there cannot be direct evidence got. It is not, unoften, a matter for legitimate inference. The burden of making good a case of sub-letting 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 being 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."

20. We are in agreement with the observations in the above cases. In our considered opinion, proof of monetary consideration by the sub-tenant to the tenant is not a sine qua non to establish sub-letting. In the instant case, the fourth respondent is in possession of the rear portion of the demised building after partitioning and used the same as patient waiting room. But what is the monetary benefit is immaterial since it is a secret transaction between the tenant and the subtenant. Hence, as per the decision, the landlord has proved that the portion of the demised building has been sublet to the fourth respondent.

15. The learned counsel for the respondents 1 to 3 also relied upon the decision reported in 2004 (2) CTC 164, Hilulru Hameedha Begum v. Pappammal and another and submits that once the landlord had proved subletting, the burden is shifted to the tenant to prove the contra. It would be appropriate to incorporate paragraph 7 of the said decision:

.As far as the sublettings is concerned, it is the case of the landlady that the downstairs portion was altered and it was let out to a person, running an enamel unit. In fact, an Advocate Commissioner was appointed in this case and he filed a report and plan, Exs.C1 and C2, wherein, it is stated that at the time of inspection, he had noticed that one Shanmugam along with a helper was carrying on work in 'XB' place and there was a name board bearing 'Sri Rajarajeswari Diamond Cutting Enamel and Engraver and it was having a separate door. In the upstairs portion, one Murugesan was carrying on goldsmith business and there is also a name board, indicating that the Central Excise Department issued a certificate, stating that he is an approved goldsmith and the said certificate was issued on 12.4.1985. In the certificate, it is also stated that 'Murugesan's son Thavasi Achari, Uma Buildings, Tirunelveli Town'. But, however, the respondents would deny that Murugesan was not known to him. But, the Advocate Commissioner has noted in Ex.C1 that one Murugesan was carrying on business in the upstairs portion. The said report would reveal that the said portion of the premises was sublet, without the written consent of the petitioner/landlady. But, however, the appellate authority had accepted the case of the tenant that the services of the 3rd person is required for polishing the gold ornaments and for fixing the stones, for which purpose, persons were working in the shop, but it was not let out to them and thereby, the appellate court came to the conclusion that the subletting was

not proved. If the case of the tenant is true, then there is no necessity for fixing the name board in the name of Murugesan in the upstairs portion, stating that he is an authorised goldsmith by the Central Excise Department. The respondent has not given any proper and valid explanation for the same. The observation of the appellate court that the sub tenants were not made as a party and therefore, the case of the petitioner that portions were let out to a third person cannot be accepted, is not a proper reason. It is for the petitioner to implead or not to implead the sub tenants and when once, the landlord gets an order, the said Order would enure to the detriment of the sub tenants also and in the said circumstances, the finding of the appellate court is not proper. But, on the other hand, the revision petitioner has established that the tenants have sublet the buildings, without the consent of the landlord and therefore, the landlady is entitled for an Order of eviction.

16. Considering the facts of the present case in the light of the above decisions, I am of the view that the evidence of R.W.1, R.W.2 and the report of the Advocate Commissioner has proved that the petitioner herein had sublet the portion of the demised building to the fourth respondent for using as a Patient Waiting Room. That factum was rightly considered by both the Courts below. One more aspect that had to be taken into consideration is that merely because the subtenant had vacated the premises during the pendency of the proceedings, the same will not absolve the liability of the tenant to vacate the premises. On the date of filing of the eviction petition, the existence of subletting has been proved by the landlord and hence, the landlord is entitled for eviction.

17. Thus, I am of the considered view that both the Courts below had considered all the aspects in proper perspective and has come to a correct conclusion and I do not find any reason to interfere with the findings of the Courts below. Hence, the Civil Revision Petition deserves to be dismissed as devoid of merits. Three months time is granted to the petitioner to vacate the premises and handover vacant possession of the property. Connected miscellaneous petition is closed. No costs.

20.01.2017 pgp Index:Yes/No R.MALA, J.

pgp Pre-Delivery order made in Dated : 20.01.2017 <http://www.judis.nic.in>