

Anand Nivas (Private) Ltd.

Vs

Anandji Kalyanji Pedhi & Ors

Civil Appeal No. 168 of 1963

(A. K. Sarkar, M. Hidayatullah, J. C. Shah JJ)

05.09.1963

### JUDGEMENT

#### SARKAR J.

In my opinion this appeal should succeed. The respondent landlords demised certain premises to Maneklal Mafatlal for a term of five years from March 5, 1950. The tenant continued in possession after the expiry of the term under the protection from eviction given by the Bombay Rents and Lodging House Rates (Control) Act, 1947 which came into force on February 2, 1948. On April 27, 1956, the landlords filed a suit against him for eviction for non-payment of rent and obtained a decree on June 22, 1960. While this suit was pending the tenant sub-let a part of the demised premises to the appellant. In execution of the decree the landlords got possession of a small part of the premises which was in the actual occupation of the tenant. As to the rest, the sub-tenants in possession including the appellant resisted eviction. The appellant in fact filed a suit against the landlords claiming that under s. 14 of the Act it had upon the determination of the interest of the tenant in the premises by the decree against him become their direct tenant of the portion sub-let to it and asking for a permanent injunction restraining the landlords from evicting it. In that suit the appellant made an application for an interim injunction but the application was rejected by the trial Court and an appeal therefrom, by the appellate Court. The appellant then moved the High Court of Gujarat in revision and the High Court confirmed the orders of the Courts below holding that after the expiry of the term, the tenant had no power of sub-letting and the appellant, therefore, was not a sub-tenant and it was not entitled to any injunction. The correctness of this judgment of the High Court is challenged in this appeal.

The protection under which the tenant in this case stayed on after the expiry of his lease was given by sub-s. (1) of s. 12 of the Act which provides that a landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays rent and observes and performs the conditions of the tenancy as provided in the section. The tenant contemplated in sub-s. (1) of s. 12 is plainly a tenant whose had come to an end. The Act at various places uses the word "tenant" as including such a person and also defines the word "tenant" in s. 5(11)(b) as including "any person remaining, after the determination of the lease, in possession, with or without the assent of the landlord, of the premises leased to such person ...." Such a person has been called a statutory tenant and I shall also use that description for economy of expression.

The landlords contend that through by virtue of s. 12(1) of the Act the tenant could not be evicted after the expiry of his lease, yet he had then lost all interest in the demised premises and could not, therefore, sub-let the same. Now it may be that under the general law of landlord and tenant, a tenant has no right to sub-let after the expiry of the lease but we have here a statute which has

altered that law in many ways. The power of tenant to sub-let cannot therefore be decided by reference to the general law of landlord and tenant but the Act must be examined to see how it affect that power. In my opinion such a power in a statutory tenant is contemplated by the Act and in particular by cl. (e) of sub-s. (1) of s. 13. That section lays down the circumstances in which a landlord notwithstanding the bar in s. 12(1), can get a decree in ejectment against the tenant and the part of it to which I wish to refer is in these terms :

S. 13. (1) "Notwithstanding anything contained in this Act but subject to the provisions of section 15, a landlord shall be entitled to recover possession of any premises if the Court is satisfied -

#.....##

(e) that the tenant has, since the coming into operation of this Act, unlawfully sub-let the whole or part of the premises or assigned or transferred in any other manner his interest therein;"

This clause plainly contemplates a tenant sub-letting and this is not in dispute. But it is said that the tenant here referred to is one whose lease has not expired -whom I will for short call a contractual tenant - as to whose power to sub-let there is no question. The reason given in support of this view is that a statutory tenant having no interest in the premises cannot certainly assign or transfer his interest in the demised premises, and therefore, the word "tenant" in cl. (e) of s. 13(1) must in relation to assignment and transfer by a tenant be understood as a contractual tenant. That being so, and as it is unlikely that the word had been used in different meanings in the same clause, it must mean only a contractual tenant in relation to sub-letting also.

I am unable to accept this contention. The word "tenant" has been given various meanings by the definition clause in the Act. All those meanings must be given to that word wherever it occurs in the Act unless the context otherwise requires. If a statutory tenant cannot transfer or assign his interest as to which I express no opinion - cl. (e) of s. 13(1) cannot, of course, be contemplating him as doing so. That, however, would not show that definition of "tenant" as a statutory tenant would not be available for deciding what kind of tenants were contemplated by cl. (e) when it said that a tenant unlawfully sub-letting would be liable to eviction. In all other clauses in s. 13(1) the word "tenant" clearly includes both a statutory and a contractual tenant and, therefore, the section contemplates the word "tenant" being used in more than one sense. The fact that the clause talks of a contractual tenant alone assigning does not provide a context preventing the word "tenant" when it talks of the tenant sub-letting, as being understood in the sense of a statutory tenant.

Another contention advanced draws its force from the word "sub-let". It proceeds on the basis that the word "sub-let" can only mean transfer of an estate. It is said that cl. (e) by using the word "sub-let" indicated that it did not contemplate a statutory tenant as he could not sub-let for he had no interest in the demised premises. No authority has been brought to our attention in support of the contention that letting or sub-letting necessarily means transfer of estate or property and I do not think that it is well founded. Decisions of Courts in England to which I will later refer, have held that a statutory tenant who has no estate or property in the demised premises, can sub-let. When the clause talks of a statutory tenant sub-letting, it may not be contemplating transfer of property. The Act undoubtedly creates rights in the tenant in respect of the property. He can maintain an action for trespass against any one including the landlord, illegally depriving him of the possession of property. He has at least this interest in the property that he can require possession of it to be

delivered to him. It is not as if his right is one only of a personal action in damages. The sub-letting contemplated in cl. (e) of s. 13 (1) may be of this statutory right in the property. It would be no answer to this to say that right is personal, for the right would not be personal in the strict sense if it can be sub-let. In *Baker v. Turner* ([1950] A.C. 401, 416.) Lord Porter approved of the observation of Scrutton L.J. in *Keeves v. Dean*<sup>9</sup> ([1924] I.K.B 655, 644.) about a statutory tenant that "Parliament has certainly called him a tenant, and he appears to me to have something more than a personal right against his landlord".

Then it was said that under the clause unlawful subletting as also unlawful assignment and transfer were grounds for eviction and if the clause implied a power in the statutory tenant to lawfully sub-let it also must equally imply in him a power to lawfully assign or transfer his interest in the tenancy. It was contended that since it was impossible for a statutory tenant to assign or transfer any interest in the premises as he had none, it would follow that he could not lawfully sub-let either. In the first place, I do not think that the word "unlawfully" in the clause applies to "assigned or transferred"; I think as the clause stands it applies only to sub-letting. The Act furthermore nowhere states what is an unlawful assignment or transfer of a tenant's interest. It would undoubtedly have done so if it contemplated unlawful assignment or transfer. It is significant that it specifically talks of lawful and unlawful sub-letting in ss. 14 and 15. Nor can it be said that the unlawful assignment or transfer contemplated by cl. (e) is one which is against the terms of the contract of tenancy, for it would be unnecessary to provide that an unlawful assignment or transfer by a contractual tenant, that is, an assignment or transfer which is contrary to the terms of the contract of tenancy, would justify an order for possession as in such a case the protection against eviction under s. 12 (1) would have been lost by non-observance of a condition of the tenancy. Therefore, it seems to me that the present contention of the landlords wholly lacks foundation.

But assume I am wrong; that cl. (e) contemplates unlawful assignment or transfer of a tenant's interest in the demised premises. A statute can well authorise a statutory tenant to assign or transfer his interest in the demised premises. Indeed s. 17 of the English Rent Act of 1957 provides for the transfer of a statutory tenancy. It can not be said that assignments or transfer of statutory tenancies are inconceivable. It has to be remembered that there is no authority for the proposition that a statutory tenant has no interest in the demised premises and this is at the basis of the theory, which I think is misconceived, that a statutory tenant cannot transfer his tenancy. It is true that he has no estate or property in the demised premises, but that is a different matter. He has none the less an interest, a right in the premises occupied by him, which he may be empowered to transfer. Lastly, I am unable to agree that because a statutory tenant cannot transfer, assuming that to be so, that would show that the word "tenant" in cl. (e) must be understood as referring to a contractual tenant only. I think the word must have the meanings given in the definition including the meaning of a statutory tenant unless the context otherwise indicates. No such indication can be said to be present merely because the word in one part of the clause refers to a contractual tenant only.

In *Roe v. Russel*, ([1928] 2 K.B. 117) the Court of appeal in England held that s. 4(1)(h) of the Rent and Mortgage Interest (Restrictions) Act, 1923 which provided that no order for ejection of a tenant from a dwelling house shall be made unless (h) the tenant without the consent of the landlord has .....assigned or sub-let the whole of the dwelling-house or sub-let part of the dwelling-house, the remainder being already sub-let", indicated that a statutory tenant had the power to sub-let a part of the premises. In this case it had been held that the statutory tenant had no estate or property as a tenant at all but had a purely personal right to possess, but that did not create any difficulty in the way of the Court holding that he had power to sub-let. All subsequent cases in England have accepted that *Roe v. Russel* ([1928] 2 K.B. 117) has laid down the law correctly. I entirely agree

with that view. In *Campbell v. Lill*, ((1926) 135 L.T. 26), which is an earlier case and which took the same view as *Roe v. Russel*, ([1928] 2 K.B. 117) the argument that s. 4(1)(h) of the English Act of 1923 dealt only with contractual tenants was expressly rejected on the ground that the word meant both contractual and statutory tenants throughout the section and it would be contrary to all canons of interpretation to give it a restricted meaning only in cl. (h). I wish also to observe that the English provision made an assignment by a tenant a ground for eviction but none the less the word "tenant" was mentioned as referring to a statutory tenant. It was not said that since the tenant contemplated was one who could assign, it must have been that a contractual tenant only was contemplated. These arguments, it will be remembered, were also advanced in this case.

Now the similarity between s. 13(1)(e) of the Bombay Act and s. 4(1)(h) of the English Act is obvious. If the English provision implied that a statutory tenant could sub-let part of the premises, there would be no reason for saying that s. 13(1)(e) of the Bombay Act did not imply a power in a statutory tenant to sub-let lawfully for what was penalised was only an unlawful sub-letting. There is, therefore, some support for the view that I have taken. The learned Judge in the High Court did not question the correctness of the decision in *Roe v. Russel* ([1928] 2 K.B. 117.) but sought to distinguish it from the present case on grounds which I have earlier discussed. I find that case indistinguishable for the purpose of interpreting s. 13(1)(e) of the Bombay Act.

Indeed if cl. (e) of s. 13(1) did not contemplate sub-letting by a statutory tenants as the landlords contend, the result would be most anomalous. Therefore, in my view, the Act provides a context which indicates that the word "tenant" in that clause had been used as including a statutory tenant. Suppose a statutory tenant does actually sub-let and he and his sub-tenant are content to carry out their bargain, as happened in the present case, then the landlord would not be able to take advantage of s. 13(1)(e) and evict the tenant if the contention of the landlords in this case is correct, for, ex hypothesi, the sub-letting by the tenant was ineffective and, therefore, as good as not made at all. The result would be that a contractual tenant sub-letting would forfeit the protection under s. 12(1) while a statutory tenant in fact doing so would still be entitled to the protection of the Act. This would put a statutory tenant in a better position than the contractual tenant. An interpretation of the Act which leads to such a result would be most unnatural and it is one that I am unable to accept.

It is not contended that such an anomalous result was intended but it is said that even if, the word "tenant" in cl. (e) of s. 13(1) is understood as referring to a contractual tenant only, there is no anomaly, for the statutory tenant would by sub-letting render himself liable to eviction under other provisions of the Act though not under s. 13(1)(e). It was contended that a statutory tenant is entitled to protection only so long as he remains in possession and by sub-letting the statutory tenant would be forfeiting his right to protection under s. 12(i) of the Act. Therefore it was said that a statutory tenant subletting would not be in a better position than a contractual tenant doing so.

I am unable to accede to the proposition that a statutory tenant sub-letting a part of the premises has so parted with the possession thereof as to forfeit his claim to protection under s. 12 (1). It has to be remembered that in the present case the tenant had not parted with the entirety of the premises by sub-letting. In *Roe v. Russel* ([1928] 2 K.B. 117.) it was said at p. 134, "when an individual is placed, as the statutory tenant undoubtedly was, in the position of having an exclusive personal possession of his premises, he is necessarily in a position in which he can place a third person in actual possession of a part of the premises, while retaining possession of the remainder, and that totally irrespective of whether his own right to exclusive undisturbed possession is purely personal or amounts to something of the nature of an estate or interest in the premises. In *Campbell v. Lill* ([1926] 135) it was said, "The policy of the statute is to give protection only to persons in

occupation within the meaning of the statute and it aimed at persons who had parted with possession and such parting is deemed to have taken place if the tenant assigns or sub-lets the whole of the premises or sub-lets part of them, the remainder being already sub-let. In the present case the tenant sub-let a portion only and remained in possession of the remainder. In these circumstances, I think the tenant is protected."

Both these cases show that under the English Act, a statutory tenant cannot be said to have parted with possession by sub-letting part of the demised premises. It would appear that under the Bombay Act there is even less reason for saying that a statutory tenant sub-letting a part of the demised premises has gone out of possession of them, for I find nothing in that Act which justifies the view that in order to be entitled to protection the statutory tenant must himself be in possession of the entire premises. On the other hand, the English Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 by sub-s. (1) of s. 15 provided that "a tenant who by virtue of the provisions of this Act retains possession of any dwelling-house ..... shall, so long as he retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy". Notwithstanding this the view in England has been that parting with possession of a portion of the demised premises by way of sub-letting does not deprive a tenant of his protection under the Act. I do not find any such express provision in our Act regarding a statutory tenant's possession of the premises. If the Act contemplated a statutory tenant sub-letting - and that is the basis on which I am examining the effect of sub-letting under s. 12(1) it cannot by providing that by doing so, he would be so far out of possession as to cease to be entitled to the protection of the Act. Such an interpretation of the Act would result in one part of the Act contradicting another and would be wholly unacceptable. I find no justification in any case for the view that sub-letting by a statutory tenant of a part of the demised premises results in a parting with possession of the premises or that such parting deprives him of the protection of the Act. I think that s. 13(1)(e) clearly indicates that a statutory tenant has the power to sub-let.

I now set out s. 14 of the Act on which the claim of the appellant is based.

S. 14. "Where the interest of a tenant of any premises is determined for any reason, any sub-tenant to whom the premises or any part thereof have been lawfully sub-let before the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959 shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms and conditions as he would have held from the tenant if the tenancy had continued."

It is not in dispute that the sub-letting took place before the date mentioned in this section. It was contended that the word "interest" in the section showed that it contemplated only sub-letting by a contractual tenant. I am unable to agree for reasons earlier set out. As I have already said, a statutory tenant has an interest in the premises and when the section talks of the interest of a tenant being determined, it obviously means in the case of a statutory tenant, determined by a decree or by this case the interest of the tenant was determined by the decree that was passed against him. I may here state that the Ordinance mentioned in the section came into force on May 21, 1959.

I, therefore, find that the appellant became a subtenant before the date mentioned in s. 14 and the interest of the tenant who sub-let to it had been determined. The appellant has however still to prove that "the premises had been lawfully sub-let to it. The only provision in the Act which declares a sub-letting to be unlawful is s. 15. That section is in these terms :

S. 15. (1) Notwithstanding anything contained in any law, but subject to any contract to the contrary, it shall not be lawful after the coming into operation of this Act for any tenant to sub-let the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein :

Provided that the State Government may, by notification in the Official Gazette, permit in any area the transfer of interest in premises held under such leases or class of leases and to such extent as may be specified in the notification.

(2) Notwithstanding anything contained in any judgment, decree or order of a Court or any contract, the bar against sub-letting, assignment or transfer of premises contained in sub-section (1) or in any contract shall, in respect of such sub-lessees, assignees or transferees as have entered into possession despite the bar before the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959 and as continue in possession at such commencement, have no effect and be deemed never to have had any effect.

It is said that the section is confined only to contractual tenancies. The argument is that sub-s. (1) makes sub-letting by contractual tenants after the date mentioned unlawful excepting where the contract otherwise provides and that sub-s. (2) saves from this illegality certain varieties of sub-letting by the tenants. It is however not in dispute that if the section applies to sub-lettings by statutory tenants, then the present sub-letting to the appellant would be saved by sub-s. (2).

It is said that the words "but subject to any contract to the contrary" in sub-s. (1) of s. 15 show that that section was intended to refer to sub-lettings by contractual tenants only. It seems to me that even if those words are applicable only when a contractual tenant sub-lets, as to which I have some doubts, that would not lead to the conclusion that the tenant there referred to is only a contractual tenant. Those words would only be applicable where a covenant permitting sub-letting is contained in the lease. Take a case of a contractual tenant where the lease contains no covenant permitting him to sub-let. In such a case those words would have no application even though the tenant is a contractual tenant. Therefore where there is no contract about granting of sub-leases, the section may still be applicable and in such a case there would be no reason to support the view that it is concerned with a contractual tenant only. The section would have to be interpreted in such a case without reference to the words in question. It would then surely apply to a statutory tenant who, as I have said, can sub-let. It can not therefore be said that s. 15 deals only with a contractual tenant.

But what happens if s. 15 does not apply to a statutory tenant ? It was said that that would then show that a statutory tenant cannot at all sub-let. If apart from s. 15, the proper reading of the Act is, as I have earlier said, that a statutory tenant has the power to sub-let, I do not see that this section would provide a ground sufficiently strong to outweigh all the consideration which have led me to that view. The only result then, if s. 15 applies to a contractual tenant alone, would be that a sub-letting by a tenant would not have been made unlawful by the section. If that is so, then also the appellant's claim under s. 14 would become unchallengable. Whatever view is taken of s. 15, it is impossible to say that the section makes the sub-letting to the appellant in the present case unlawful. It is unnecessary to go into any question of the Act contemplating a sub-letting which was unlawful for reasons other than those mentioned in it, for it has not been contended that the sub-letting in the present case was for any such reason unlawful. The result is that the sub-letting to the appellant must be held to have been lawful.

One other matter remains to be dealt with. It was said, and this is not in dispute, that the sub-letting to the appellant took place after the landlords had filed their suit against the tenant which resulted in a decree for ejectment to which I have earlier referred. It was contended that the appellant was, therefore, bound by the decree in view of s. 52 of the Transfer of Property Act. On behalf of the appellant it was said that that section was amended so far as Bombay was concerned by Bombay Act 14 of 1939 and the amended section required certain notice to be given before the sub-letting could be affected by the principle of *lis pendens* stated in the section. I do not think it necessary to deal with this connection for in my view, even s. 52 as it stands in the Transfer of Property Act without any amendment does not affect the sub-letting in this case.

The first thing that I wish to point out is that, that section does not make any transfer of property illegal. Therefore, the section does not justify the view that the sub-letting to the appellant, assuming it was a transfer of property, as to which doubts may legitimately arise, was in any way unlawful or invalid. If any authority is needed for this proposition, reference may be made to *Veyindramuthu Pillai v. Maya Nandan* ([1920] I.L.R. 43 Madd. 696). All that s. 52 does is to provide that pending a litigation concerning property, the property cannot be transferred so as to affect the rights of any party thereto under the decree that may be passed in the suit. The only effect then of the section is that the rights of the decree-holder under the decree are not to be affected by the transfer.

Now the rights of a landlord who gets a decree for possession of property against his tenant are those mentioned in O. 21, r. 35 of the Code, namely, to obtain delivery of it "if necessary, by removing any person bound by the decree who refuses to vacate the property". It is true that a sub-tenant under the general law of landlord and tenant is a person bound by the decree obtained by the landlord against the tenant for possession, though he was not made a party to the suit. The reason for this is that the sub-tenant's right to remain in possession came to an end with the determination of the tenancy of the tenant : see *Yusuf v. Jyotish Chandra Banerji* ([1932] I.L.R.59 Cal.739). Where however a statute like the Act in the present case gives the sub-tenant a right to continue in possession even after the determination of the tenancy of the superior tenant, he would not be a person bound by the decree for his tenancy has not come to an end with the tenancy of the superior tenant. A sub-tenant to whom the premises were lawfully sub-let, would under s. 14 of the Act be such a person. That being so, a decree obtained by a landlord against his tenant does not give him a right to evict a sub-tenant who is entitled to the benefit of s. 14. Section 52 could not be resorted to by the landlords in the present case to evict the appellant.

I would for these reasons allow the appeal.

SHAH, J. ♦

A lease of the ground and the first floors of a building named 'Anand Bhavan' in the town of Ahmedabad was granted by the trustees of the trust named "Anandji Kalyanji Pedhi" to one Maneklal, for five years commencing from March 5, 1950 at a monthly rental of Rs. 2,000/-. A suit instituted by the trustees in the Court of Small Causes (which is the Court competent under s. 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act 57 of 1947 - hereinafter called 'the Act' - to entertain the suit) against Maneklal after the expiration of the period of the lease for a decree in ejectment and for arrears of rent was decreed on June 22, 1960. In execution of the decree the trustees obtained possession of the first floor but were obstructed as to the rest by a private limited company called - "Anand Nivas Private Ltd." - and two others who claimed to be sub-lessees from Maneklal and thereby to have acquired rights of tenancy of the ground floor upon the

determination of the tenancy of Maneklal.

Anand Nivas Private Ltd - which will hereinafter be called 'the Company' - filed Suit No. 2814 in the Court of Small Causes at Ahmedabad for a declaration that it was not bound to deliver possession of the premises in its occupation in execution of the decree in the suit filed by the trustees against Maneklal and for an injunction restraining the trustees from enforcing the decree. The Company's application for an injunction restraining the trustees from obtaining possession in enforcement of the decree obtained by them against the tenant was dismissed by the Court of First Instance. In appeal against that order the District Judge, Ahmedabad refused an interim injunction restraining the trustees from executing the decree pending the hearing and disposal of the appeal. The High Court of Gujarat was then moved against that order by a petition invoking its revisional jurisdiction. At the hearing, the petition was, by order of the Court, converted into an appeal from order refusing to grant an injunction. The High Court dismissed the appeal holding that a "statutory tenant" remaining in possession after determination of his contractual tenancy was in law not competent to sublet the premises in whole or in part and a person claiming to be a sub-tenant from a statutory tenant could not effectively plead the protection of s. 14 of the Act as amended by Ordinance III of 1959 or Bombay Act 49 of 1959. With special leave, the Company has appealed to this Court.

The Company sets up its claim to protect its possession on the plea that it had acquired the rights of a tenant by virtue of s. 14 of the Act. This plea is supported on two grounds :

- (i) that the contract of tenancy in favour of the tenant expressly authorised him to sublet, and the tenant having lawfully sublet the premises the Company acquired on the determination of the interest of the tenant the rights of a tenant under the landlord; and
- (ii) in any event, on the determination of the statutory tenancy of the tenant, by virtue of Ordinance III of 1959 issued by the Governor of Bombay, retrospectively amending s. 15 of the Act the Company acquired the rights of a tenant under the landlord.

In the view of the High Court clause (i) of the lease restricted "the ordinary rights of the tenant to sublet under s. 108 (j) of the Transfer of Property Act", and cannot be interpreted as conferring any right on the tenant to sublet, because it "postulates the existence of a right to sublet, and provides for restrictions on the exercise of such right". Whether the covenant in the lease authorised or recognised the power of subletting in the tenant before the period of the lease expired, need not be decided in this appeal. It is common ground that after the expiration of the period of the lease, no extension of or fresh lease was granted to the tenant, and he could set up only such rights as the Act granted or recognised.

Sub-section (1) of s. 12 of the Act provides :

"A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act."

For the protection of tenants the clause imposes a prohibition against the landlord against recovery

of possession of the premises demised to a tenant so long as he pays or is ready and willing to pay the standard rent and permitted increases and also observes and performs the other conditions of the tenancy consistent with the provisions of the Act. A person remaining in occupation of the premises let to him after the determination of or expiry of the period of the tenancy is commonly though in law not accurately, called a "statutory tenant". Such a person is not a tenant at all : he has no estate or interest in the premises occupied by him. He has merely the protection of the statute in that he cannot be turned out so long as he pays the standard rent and permitted increases, if any, and performs the other conditions of the tenancy. His right to remain in possession after the determination of the contractual tenancy is personal : it is not capable of being transferred or assigned, and devolves on his death only in the manner provided by the statute. The right of a lessee from a landlord on the other hand is an estate or interest in the premises and in the absence of a contract to the contrary is transferable and the premises may be sublet by him. But with the determination of the lease, unless the tenant acquires the right of a tenant holding over, by acceptance of rent or by assent to his continuing in possession by the landlord, the terms and conditions of the lease area extinguished, and the rights of such a person remaining in possession are governed by the statute alone. Section 12 (1) of the Act merely recognises his right to remain in possession so long as he pays or is ready and willing to pay the standard rent and permitted increases and performs the other conditions of the tenancy, but not the right to enforce the terms and conditions of the original tenancy after it is determined. On a matter of interpretation of s. 12(1) the decisions of the King's Bench Division of the High Court in England, viz. *Roe v. Russel* ([1928] 2 K.B. 117) and *Lewis v. Reeves* ([1951] 2 All. E.R. 855), on which reliance was placed by the appellant are of little assistance. Those cases were decided on the interpretation of the relevant provisions of the Increase of Rent and Mortgage Interest (Restriction) Act, 1920 (10 & 11, Geo. 5 Ch. 17), and particularly of s. 15(1).

In *Roe v. Russel* ([1951] 2 K.B. 117.) the question whether a statutory tenant of a dwelling-house holding upon terms which do not prohibit subletting, may sublet part of the dwelling-house, fell to be determined, and the Court held that a right to sublet a part of the premises provided the remainder was not already sublet could be claimed by a statutory tenant relying upon the "terms and conditions" of the original contract of tenancy. A similar view was also taken in *Lewis v. Reeves* ([1951] 2 All. E.R. 855). In that case the widow of a statutory tenant remaining in possession, sublet a part of the premises in her occupation. It was held that on the death of the widow the sub-tenant became the direct tenant of the landlord, because subletting of a part of the premises by the widow of a statutory tenant who acquired all the rights under s. 12(1)(g) of the Rent Act (10 & 11 Geo. 5 Ch. 17) was lawful.

But these cases were decided on the interpretation of s. 15 (1) of the Act of 1920, which insofar as it is relevant, provided;

"A tenant who by virtue of the provisions of this Act retains possession of any dwelling-house to which this Act applies shall, so long as he retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as the same are consistent with the provisions of this Act, and \* \* \*":

The terms of s. 15(1) of the Increase of Rent and Mortgage Interest (Restriction) Act, 1920, differ materially from sub-s. (1) of s. 12 of Bombay Act 57 of 1947. Whereas a tenant who retains possession, and is protected by virtue of the provisions of the English Rent Act is entitled, so long as he retains possession, to the benefit of all the terms and conditions of the original contract of

tenancy so far as they are consistent with the provisions of the Act, the Bombay Act merely grants conditional protection to a statutory tenant and does not invest him with the right to enforce the benefit of any of the terms and conditions of the original tenancy. This difference in the phraseology of the two enactments is vital to the matter under discussion, and we are unable to hold - assuming that the tenant was entitled to sublet the premises under the terms of the lease - that he could, relying upon s. 12(1), exercise the right to sublet granted under the lease after he became a statutory tenant. The first ground on which the claim was founded by the Company must therefore fail.

The second ground on which the Company claimed to be a lawful tenant of the trustees cannot also be sustained. In the High Court it was common ground between the parties that the tenant continued to remain in possession after March, 5, 1955 of the premises leased to him not because of any renewal or grant of a fresh tenancy, but in virtue of the protection afforded to him by the Act as a 'statutory tenant'. As a statutory tenant he had no estate or interest capable of being assigned or transferred and his statutory right to occupy could not in law be sublet, because a lawful subletting postulates a right to enjoy the property and a right to transfer the same to another. There can be no subletting when there is no right in the premises especially when the statutory tenancy ceases when the tenant parts with possession. The decision of the Calcutta High Court in *Krishna Prosad Bose v. Sm. Sarajubala Dassi* (A.I.R. 1961 Cal. 505) on which reliance was placed by the Company in support of its plea that a statutory tenant is entitled to sublet the premises in his occupation does not assist the argument. The West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, recognises the right of a statutory tenant to sublet. Section 12(1) of the West Bengal Act provides that notwithstanding anything to the contrary in any other Act or 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, including a tenant whose lease has expired. By the proviso it is enacted that nothing in the sub-section shall apply to any suit for a decree for such recovery of possession against a tenant who has sublet the whole or a major portion of the premises for more than seven consecutive months provided that if a tenant who has sublet the major portion of the premises agrees to possess as a tenant the portion of the premises not sublet on payment of rent fixed by the Court, the Court shall pass a decree for ejection from only a portion of the premises sublet and fix proportionately fair rent for the portion kept in possession of such tenant. By sub-s. (2) of s. 13 it is provided, in so far as it is material, that where any premises or any part thereof have been or has been sublet by a tenant of the first degree, if the tenancy of such tenant is lawfully determined otherwise than by virtue of a decree in a suit obtained by the landlord by reason of any of the ground specified in clause (h) of the proviso to sub-section (1) of section 12, the sub-lessee shall be deemed to be a tenant in respect of such premises or part, as the case may be, holding directly under the landlord for the tenant whose tenancy has been determined. In *Krishna Prosad Bose's case* (A.I.R. 1961 Cal. 505) *Sinha, J.*, set out certain principles governing the position of a statutory tenant of which the seventh set out below is material :

"Although a statutory tenant has no estate, and although his right is a personal right, he can sublet, provided the right of subletting can be spelt out from the Rent Act in operation, either from its express terms or by necessary implication. The Sub-tenant will get only such rights as are conferred by the statute"

and observed that the right of the statutory tenant to sublet was clearly recognized by s. 13(2), and the right of a sub-tenant to become a direct tenant under the owner in certain circumstances was expressly provided for. We are not concerned in this case to decide whether the provisions of the Act were correctly interpreted by the Court : it may be sufficient to observe in this case that the Court in *Krishna Prosad's case* (A.I.R. 1961 Cal. 505.) held that the right of the statutory tenant to

sublet was recognised by the statute which afforded him protection.

But it was urged that by Ordinance III of 1959 a right to sublet premises in the occupation of a statutory tenant was invested retrospectively since the commencement of a parent Act. It is common ground that the tenant purported to sublet a part of the premises in his occupation after the trustees instituted a suit in ejectment against him and before Ordinance III of 1959 was promulgated. The Company has claimed the right of a sub-tenant on the second ground relying upon the Ordinance, and it would be necessary to consider the material statutory provisions as amended by the Ordinance.

Section 5(11) as amended defines a "tenant" as meaning :

"any person by whom or on whose account rent is payable for any premises and includes -

(a) such sub-tenants and other persons as have derived title under a tenant before the commencement of the Bombay Rents Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959;

(aa) any person to whom interest in premises has been transferred under the provisions to sub-section (1) of section 15;

(b) any person remaining, after the determination of the lease, in possession, with or without the assent of the landlord, of the premises leased to such person or his predecessor who has derived title before the commencement of the Bombay Rents, Hotel Lodging House Rates Control (Amendment) Ordinance, 1959;

(c) any member of the tenant's family residing with him at the time of his death as may be decided in default of agreement by the Court."

The expression "tenant" in the different clauses is defined to mean a contractual tenant or a statutory tenant or both. In the principal definition the expression "tenant" means only a person who is a contractual tenant because rent is payable by a contractual tenant and not by a statutory tenant. By cl. (a) sub-tenants and other persons who have derived title under a tenant before the commencement of the Ordinance III of 1959 would be regarded as tenants. These would be sublessees, transferees or assignees of contractual tenants. Similarly by cl. (aa) persons to whom interest in premises has been transferred in virtue of a notification issued by the State Government permitting in any area the transfer of interest in premises held under such leases or class of leases and to such extent as may be specified in the notification, would be transferees of contractual tenants. Clause (b) contemplates a tenant holding over and statutory tenant alike; it takes in a person remaining in occupation with or without the assent of the landlord, when the premises were let to him or to his predecessor before the commencement of the Ordinance. Clause (c) includes in the definition the members of the family of a tenant - statutory or contractual residing with him at the time of his death, as may be decided in default by agreement by the Court. Having regard to the plurality of its meaning, the sense in which the expression is used in different sections, and even clauses, must be ascertained from the context of the scheme of the Act, the language of the provision and the object intended to be served thereby.

In sub-s. (1) of s. 12 which imposes a prohibition against a landlord, recovering possession of premises, the expression "tenant" must of necessity mean a statutory tenant and not a contractual tenant, for unless the contractual tenancy is determined, the landlord has no right to recover

possession. Section 13(1)(e), in so far as it is material provides that :

"Notwithstanding anything contained in this Act, but subject to the provisions of section 15, a landlord shall be entitled to recover possession of any premises if the Court is satisfied -

(e) that the tenant has, since the coming into operation of this Act, unlawfully sublet the whole or part of the premises or assigned or transferred in any other manner his interest therein;"

In this clause the expression "tenant" apparently means a contractual tenant, for it authorises a landlord to recover possession of premises if the tenant has unlawfully assigned, transferred his interest in the premises or has unlawfully sublet the premises. A statutory tenant has no interest in the premises occupied by him, and he has no estate to assign or transfer. To read the clause as meaning that an assignment or transfer of any premises which attracts liability to eviction would be only in respect of a contractual tenancy whereas subletting which invites that penalty may be in respect of tenancies - contractual and statutory alike, would be to attribute to the Legislature an intention to impute two different meanings to the expression "tenant" in cl (e) of s. 13(1). By cl. (e) the Legislature has recognised the right of a landlord to recover possession if the tenant has without being so authorised by contract, sublet in whole or in part the premises, or assigned or transferred in any other manner his interest therein. The adverb "unlawfully" qualifies all the three verbs - sublet, assigned and transferred. That is clear from the terms of s. 15(1) which prohibits "subject to any contract to the contrary" subletting of premises or assignment or transfer of interest therein.

Section 15(1) provides :

"Notwithstanding anything contained in any law but subject to any contract to the contrary, it shall not be lawful after the coming into operation of this Act for any tenant to sub-let the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein :

Provided that the State Government may, by notification in the Official Gazette, permit in any area the transfer of interest in premises held under such leases or class of leases and to such extent as may be specified in the notification."

By cl. (1) of s. 15 all transfers and assignments of interest in the premises, and subletting of premises, by tenants are, subject to any contract to the contrary, made unlawful. The clause however saves contracts to the contrary and to be effective can operate only in favour of contractual tenants. A statutory tenant having no interest in the property, it was plainly unnecessary to prohibit transfer of what was ineffective. Nor can there be letting of the premises by a statutory tenant, for letting postulates a transfer of the right to enjoy property made for a certain time, express or implied, in consideration of price paid or promised and a statutory tenant has merely a personal right to resist eviction. Section 15(1) therefore applies only to contractual tenants. The proviso to the clause also furnishes an indication to that effect for the exemption which the Provincial Government may grant can only be in respect of leases or a class of leases. Sub-section is in terms an exception to sub-s. It provides that :

"Notwithstanding anything contained in any judgment, decree or order of a Court or any contract, the bar against sub-letting, assignment or transfer of premises contained in sub-section (1) or in any contract shall, in respect of such sub-lessees, assignees or transferees as have entered into possession despite the bar before the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959 and as continue in possession at such commencement, have no effect and be deemed never to have had any effect."

The exception clause could manifestly not apply to statutory tenancies when the principal clause applied only to - contractual tenancies. The effect of the clause is to validate assignments, transfers and sub-tenancies granted by contractual tenants, despite the prohibition contained in sub-s. (1) or even in the contract of tenancy, and this validation is effective, notwithstanding any judgment, decree or order of a Court. The sub-section is plainly retrospective, and protects sub-tenants of contractual tenants and removes the bar against sub-letting by sub-s. (1) as well as by contract, provided that the transferee is in possession as the commencement of the Ordinance.

The argument that by restricting the operation of s. 13(1)(e) to contractual tenants subletting by statutory tenants would be protected, is without force, Sections 12 and 13(1) have to be read together. Clause (e) of s. 13(1) entitles a landlord to obtain possession, where a contractual tenant has during the subsistence of the tenancy sublet the premises or assigned or transferred his interest therein. Where a statutory tenant has purported to sublet the premises, or has purported to assign or transfer his interest therein, and in pursuance of such a transaction parted with possession, he would forthwith forfeit the protection which the statute accords to him by s. 12(1).

In light of this legal position the claim of the Company founded on s. 14 may be considered. The section enacts :

"Where the interest of a tenant of any premises is determined for any reason, any sub-tenant to whom the premises or any part thereof have been lawfully sublet before the commencement of the Bombay Rents, Hotel and Lodging Houses Rates Control (Amendment) Ordinance, 1959, shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms and conditions as he would held from the tenant if the tenancy had continued."

There is abundant indication in the section that it applies to contractual tenancies alone. In the first instance it speaks of the interest of the tenant and determination of that interest. It then invests a sub-tenant to whom the premises have been lawfully sublet before the date of the Ordinance with the rights of a tenant of the landlord on the same terms and conditions as he would have held from the tenant if the tenancy had continued. The subletting to be lawful must be permitted by contract, or validated by sub-s. (2) of s. 15. The object of s. 14 is to protect sub-tenants. By that section forfeiture of the rights of the tenant in any of the contingencies set out in s. 13 does not in all cases destroy the protection to the sub-tenants. The protection which a sub-tenant is entitled to claim against his own landlord (that is the head tenant) becomes on determination of the head tenancy available to him against the head landlord, but the condition on which such a claim may be sustained is that there is a lawful subletting. A statutory tenant is, as we have already observed, a person who on determination of his contractual right, is permitted to remain in occupation so long as he observes and performs the conditions of the tenancy and pays the standard rent and permitted increases. His personal right of occupation is incapable of being transferred or assigned, and he having no interest in the property there is no estate on which subletting may operate. If it be

assumed that a statutory tenant has the right of sub-letting, some very surprising consequences may ensue. A statutory tenant by parting with possession of the premises would forfeit all rights in the premises occupied by him, but he would still, if s. 14 is construed as suggested by the Company, be able to create an interest in the person inducted in the premises not derivatively but independently, for the statutory tenant had no interest in the premises and the protection granted by the statute is by the very act of transfer of possession extinguished. Again even though the sub-tenant of a statutory tenant may not be protected, because the bar against such subletting is not effectively removed by s. 15(2), he would still be entitled to claim the rights of a tenant under s. 14 on determination of the tenancy of the head tenant. Having regard to these considerations there can be little doubt that a sublessee from a statutory tenant under the Act acquires no right of a tenant in the premises occupied by him.

Even under the Increase of Rent and Mortgage Interest (Restriction) Act, 1920, protection was accorded to the sub-tenant of a part of the premises occupied by a statutory tenant : when the statutory tenant parted with possession of the entirety of the premises occupied by him either by one subletting or more or by subletting of part and surrendered of the rest of the premises, the persons claiming a right of occupation derivatively from the statutory tenant had no protection : *Solomon v. Orwell* ([1954] 1 All. E.R. 874). In that case a statutory tenant of a dwelling-house had sublet a part of the house, vacated the premises in her occupation by removing herself therefrom. The landlord then filed a suit against the sub-tenant who had remained in possession of a part sublet to her. The sub-tenant submitted that after the surrender of the statutory tenancy, she was entitled to the same rights against the landlord as the statutory tenant had and therefore her tenancy could not be terminated by merely giving a notice to quit. This contention was rejected by the Court holding that "a statutory tenant had no interest capable of existing in law as an estate, but merely a statutory right of occupation which could not be the subject of surrender at common law, and, therefore, when the tenant vacated the premises the sub-tenant's right of occupation automatically came to an end." We therefore hold that before the date of the institution of the suit, Manekal as a statutory tenant had no right to sublet the premises and Company acquired no right of a tenant on the determination of the tenant's right by virtue of s. 14 of the Act.

One more argument remains to be considered. It was urged - on the assumption that a statutory tenant has an interest in the property occupied by him, and that by purporting to sublet he transferred that interest - that the doctrine of 'ut lite pendente nihil innovetur' enunciated in s. 52 of the Transfer of Property Act did not operate against the Company and the Company was not bound by the decree obtained against the tenant. Reliance in support of that plea was placed upon the Transfer of Property Act and the Indian Registration (Bombay Amendment) Act, XIV of 1939. By this Act the rule of 'Lis Pendens' applies only when a notice of the pendency of the suit in which any right to immoveable property is directly and specifically in question, is registered under s. 18 of the Registration Act. The Act is somewhat clumsily worded : it applies not to proceedings in Court but to notices in respect of suits or proceedings. But the reason for the method of drafting adopted is not far to seek. Condition of registration of notice relating to the suit is only to apply where the suit is in respect of property situate in the area to which the Act is extended. A suit relating to immoveable property may, in certain circumstances, lie in a Court other than the Court within the territorial jurisdiction whereof it is situate (e.g. under cl. 12 of the Letters Patent and s. 17 Code of Civil Procedure) and it appears that the Legislature intended to make the Act applicable only to transfers of title to immoveables only in areas where the litigants were sufficiently sophisticated to understand the importance of registration. As Bombay Act XIV of 1939, it intended to apply to the situs of immoveable property and not the Court proceeding, application of the rule of 'Lis Pendens' is, in respect of proceedings relating to immoveable properties situate in certain areas, made

conditional upon the registration of the notice of the pendency of the suit.

But this Act did not apply to the suit filed by the trustees. The Act by s. 2 applies only to notices in respect of suits or proceedings which relate to immoveable property situate wholly or partly in Greater Bombay. By the proviso to s. 2 it may be extended by the Provincial Government by notification to notices relating to immoveable properties situate wholly or partly in such other areas as may be specified. The suit was filed by the trustees in the Court of Small Causes at Ahmedabad and our attention has not been invited to any notification issued by the appropriate Provincial Government extending the Act to notices relating to immoveable properties in areas outside Greater Bombay. Whereas the rule of 'Lis Pendens' under the Transfer of Property Act applies to all suits and proceedings which are not collusive in which the right to immovable property is directly and specifically in question, by virtue of the amended Act the rule applies in proceedings relating to immoveable property in the areas notified, only if a notice of suit is registered, and from the date of registration. The section in terms applies only to notices in respect of suits or proceedings which relate to immoveable property in the Greater Bombay Area - it does not apply to any suits in which property in Greater Bombay is not the subject-matter in dispute.

The Transfer of Property (Bombay Provision for Uniformity and Amendment) Act, 57 of 1959, does not also assist the Company. By that Act, amongst other things, uniformity in the provisions of the Transfer of Property Act as amended in its application to the State of Bombay as it existed after the enactment of the States Reorganisation Act, 1956, was sought to be achieved. Section 3 of the Act enacted, that the provisions of Bombay Act XIV of 1939 which amended the Transfer of Property Act in its application to the per-reorganized State of Bombay, were extended to and shall apply to that part of the State to which they did not apply immediately before the commencement of that Act. Enactment of this Act was necessitated because of s. 119 of the States Reorganization Act, 1956, which continued, notwithstanding the formation of the new States, the territorial extent of the laws previously in operation. It was founded expedient to secure uniformity of the laws in the State, and therefore it was enacted by the State Legislature that one of the conditions of the applicability of the rule of 'Lis Pendens' was that notice of a suit or proceeding which any right to immoveable property within the area notified under s. 2 of the Act, XIV of 1939, is directly and specifically in question, is registered under s. 18 of the Registration Act. The decree in the suit filed by the trustees against Maneklal was therefore enforceable against the Company.

The appeal fails and is dismissed with costs.

#### ORDER BY COURT

The appeal is dismissed with costs. On the Appellant's undertaking to vacate and deliver possession of the property within one months from today, execution of the decree obtained by the Respondent in Suit No. 707 of 1956 against Maneklal Mafatlal, is stayed for one month. September 5, 1963.

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