Hiralal Vallabhram

Vs

Kastorbhai Lalbhai & Ors.

Civil Appeal No. 695 of 1965

(K. N. Wanchoo, V. Bhargava, G. K.Mitter JJ)

31.03.1966

JUDGEMENT

WANCHOO, J.

1. This is an appeal by special leave against the judgment of the Gujarat High Court. Brief facts necessary for present purposes are these. A suit was brought by respondents Nos. 1 and 2 (hereinafter referred to as the respondents) against the appellant and three others in the Court of Judge Small Causes at Ahmedabad under s. 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, No. LVII OF 1947. The case of the respondents was that the three persons who were defendants Nos. 1 to 3 were the chief of the premises while the present appellant who has defendant No. 4 was their sub-tenants. The respondents had given notice to the tenants-in-chief terminating the tenancy and asked them to vacate the premises from after November 30, 1956, which was the end of the month of tenancy. The suit was filed on March 1, 1957 and was based on two grounds, namely, (1) that the rent had not been paid for six months, and (2) that there had been unlawful sub-letting by the tenants-in-chief to the appellant. The suit was resisted by the three tenants-in-chief. One of them took the defence that the premises and the suit against him was not maintainable. Defendants Nos. 2 and 3 on the other hand contended that the rent claimed (i.e., Rs. 26) was excessive and prayed that standard rent should be fixed for the premises. These defendants further said that defendant No. 1 was no longer a partner of the firm and that come partner. Thus defendants Nos. 4 (i. e., the present appellant) had become partner. Thus defendants Nos. 2 and 3 denied that there was any sub-letting, unlawful or otherwise, to the appellant. It was further stated that the rent due had been deposited on the first date of hearing and in consequence there were no areas due to denied that he was a sub-tenant but his case was that the entire interest of defendants Nos. 1 to 3 in the business with the interest in the premises had been transferred to him and he was thus the tenant of the respondents and not a sub-tenants. How further said that the arrears of rent had been paid into court and thus there were no arrears due to the respondents.

On these pleadings, the trial court framed four issues. The first issue was whether defendants Nos. 1 to 3 were in arrears and it was held that they were not in arrears. The second issue was about the standard rent of the premises and the trial court held that it was the same as the contractual rent, namely, Rs 26 per mensem. The third issue was whether defendants Nos. 1 to 3 had sub-let the premises and fourth issue was whether there was an assignment in favour of the present appellant by defendants Nos. 1 to 3 of their interest. The trial court held that defendants Nos. 1 to 3 had sub-let the premises to the present appellant and did not accept the contention of defendants Nos. 2 and 3 about partnership or of the appellant about assignment. Finally the trial court held on the basis of the amendment of the Act in 1959 that there could be no eviction. It therefore dismissed the suit against all the four defendants, namely, the three tenants-in-chief and the appellant so far as eviction was

concerned. It further ordered the tenants-in-chief to pay rent from September 1, 1956 upto date at the rate of Rs. 26 per mensem. It further said that the amount of rent had been deposited by the tenants in court and should be taken away by the respondents with the rider that in case the amount fell short the respondents would be at liberty to recover the deficiency if any from the person and property of the tenants-in-chief. Finally the suit was dismissed in toto against the present appellant.

The respondents then went in appeal against the dismissal of the suit so far as eviction was concerned. To this appeal the three tenants-in-chief and the appellant were made parties, and the main contention of the respondents in the appellate court was that the suit for eviction should have been decreed both on the ground of arrears of rent and on the ground of sub-letting. Two main question were formulated by the appellate court for decision, namely-(1) whether the tenants-in-chief were tenants in arrears and (2) whether the respondents were entitled to possession from the present appellant on the ground that he was not a sub-tenant and also on the ground that he was not protected under s. 15 (2) of the Act as amended in 1959. On the question of arrears, the appellate court held that there were no arrears. But on the other question the appellate court seems to have taken a curious view. It did not examine the correctness of the view taken by the trial court that the present appellant was a sub- tenant. It took the view that as the present appellant has in his written-statement denied that he was a sub-tenant, he could not be a sub-tenant. It then went on to hold that as the present appellant was in possession and as he was not a sub-tenant on his showing he must be held to be a trespasser because he had failed to prove assignment. So holding that the present appellant was a trespasser, it ordered his ejectment on the ground that benefit of s. 15 (2) as amended in 1959 could only be available to a sub-tenant, which the present appellant was not on his own showing. The appellate court therefore allowed the appeal, set aside the decree of the trial court and ordered that the present appellant should hand over possession of the suit premises to the respondents within six months of the order of the appellate court. We have said that the view taken by the appellate court was curious because the appeal at court does not seem to have ordered the ejectment of the tenants-in-chief. At least there is nothing in the judgment of the appellate court to show this, though it is certainly said therein that the trial court's decree was set aside.

Then followed a revision under s. 115 of the Code of Civil Procedure in the High Court by the present appellant. It seems that the tenants-in-chief took no action after the judgment of the appellate court, may be because there was nothing in that judgment which went against them. The High Court held that the appellate court was not right in setting aside the finding the present appellant was a sub-tenant of the three tenants-in-chief without going into it. The High Court seems to have held that in the circumstances the finding of sub-letting stood unchallenged and in view of that finding the present appellant was entitled to contend that he protected under s. 15 (2) of the Act. The High Court then went on to consider the question whether arrears of rent were due from the tenants-in-chief and held in spite of the concurrent finding on this question of the two courts that the tenants-in-chief were on arrears and were liable to ejectment under the Act; and if so, the appellant who was a sub-tenants would have to go with them. The High Court further rejected the contention of the present appellant that s. 14 of the Act protected him. Finally therefore the High Court upheld the order of the appellate court, though on different grounds. The High Court having refused to appeal to this Court, and that is how the matter has come before us.

The main contention of behalf of the appellant before us is that the High Court had no jurisdiction under s. 115 of the Code of Civil Procedure to set aside the concurrent finding of the courts below that nothing was due as arrears of rent, and in this connection reliance is placed on the judgment of this Court in Vora Abbas Bhai Alimahomed v. Haji Gulamnabi(1). On the other hand, learned counsel for the respondents contends, relying on the involved in the revision before the High Court,

the High Court could not interfere with the decision of the appellate court however wrong it might be.

We do not think is necessary to decide the question of jurisdiction of the High Court under s. 115 of the Code of the Civil Procedure in the circumstance of this case, for we have come to the conclusion that though the question of jurisdiction had not been urged before the High Court it stares one in the face on the judgment of the appellate court. We are satisfied that the appellate court had appellant in the manner in which it did so. We have already indicated that the appellate court took the curious view that the present appellant was a trespasser. Now this was no one's case in appellant was a sub-tenant. The respondents alleged that the he was an assignee while two of the tenants-in-chief contended that he was their partner. In the circumstances it is curious that the appellate court came to the conclusion that he was a trespasser. But assuming that finding, if correct, cannot be assailed in revision under s. 115 of the Code of Civil Procedure, a question of jurisdiction of the appellate court to pass a decree for ejectment immediately arises on the finding that present appellant was a trespasser. The suit was brought in the court of the Judge Small Causes under s. 28 of the Act. That section gives power to the Small Cause Court to proceed to evict a tenant (along with a dub-tenant would also go) provided the provisions contained either in s. 12 or s. 13 of the Act are satisfied. But when the appellate court held that the present appellant was trespasser, there was no jurisdiction under the Act to pass decree ejectment against a trespasser. Such a decree against the trespasser could only be passed by a regular civil court in a suit brought under the Code of Civil Procedure. It could not be passed by a Judge, Small Causes Court, before whom a suit for eviction as a special forum is maintainable under s. 28 of the Act. It is true that the appellate court was the court of an Extra Assistant Judge, but its jurisdiction could not be wider than that of the trail court and it would be equally circumscribed within the four corners of s. 28 of the Act. Though this point was not raised in the High Court, it is so obvious that we have permitted the appellant to raise it before us. We are of opinion that on the finding that the appellant was a trespasser, the appellate court had no jurisdiction to order his ejectment in a suit brought under s. 28 of the Act.

There is another aspect of the matter which equally affects the jurisdiction of the appellate court and which also does not seem to have been urged in the High Court. We have already indicated that there is nothing to show in the appellate court judgment that it ordered that ejectment of the tenants-in-chief. If did not do so, it could not in a suit brought by the landlord order the ejectment of the sub-tenant, which the present appellant had been held to be by the trial court. It is not disputed that a landlord cannot sue a sub-tenant alone for eviction; he has to sue the tenant, and if he succeeds against the tenant, the sub-tenant would be ejected along with the tenant-in-chief unless he can take advantages of any provision of the Act. But if the tenant-in-chief is not ordered to be ejected and there is no such order by the appellate court, it follows that the appellate court had no jurisdiction to order the ejectment merely of the sub-tenant assuming that the appellant was a sub-tenant. But it has been urged on behalf of the respondents that on the determination of the tenancy by notice on November 30, 1956, the appellant became a tenant-in-chief under s. 14 of the Act, and the reliance in this connection is placed on the decision of this Court in Anand Niwas (Pvt.) Ltd. v. Anandji Kalyanji Pedhi(1). Section 14 in these terms;

> " 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 Rents 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."

The argument is that s. 14 relates to contractual tenancy and the interest of a tenant is determined as soon as the notice determined the tenancy is given, and therefore immediately the period fixed in the notice expires, the contractual tenancy comes to an end, and if there is a sub-tenant he becomes the tenant of the landlord on the same terms and conditions as he could have held from the tenant if the tenancy had continued. It is therefore submitted that on the determination of the interest of the tenants-in-chief by notice on November 30, 1956, the appellant became a tenant by virtue of s. 14 and therefore, it was unnecessary to order ejectment of the tenants-in-chief. Reliances in this connection is placed on the decision of this Court in Anand Niwas (Pvt.) Ltd. (1) where this Court held that s. 14 contemplated sub-tenancies created by what may be called a statutory tenant who had only the right to the remain in possession under s. 12 (1) of the Act after determination of the contractual tenancy until ejected by suit on any of the grounds mentioned in s. 12 or s. 13. No further proposition is laid down in that case and it does not support the contention on behalf of the respondents that as soon as a notice is given determining a was there from before has to deemed a tenant under s. 14 from the date the notice expires. If anything the following observation in the said case at p. 917 goes against the contention of the respondents, namely :-

> "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."

Learned counsel for the respondents however contends that the words "is determined" used in s. 14 are analogous to the determination of tenancy by notice under s. 111(h) of the Transfer of Property Act, (No. of 1882) and all that s. 14 requires is that there should be determination of the tenancy under s. 111(h) of the Transfer of Property Act. We are of opinion that in the context of the Act this is not the meaning to be given to the words "is determined for any reason. " These words in the context of the Act means that where the interest of a tenant comes to an end completely, the pre-existing sub-tenant may, if the conditions of s. 14 are satisfied be deemed to be a tenant of the landlord. The interest of a tenant who for purposes of s. 14 is a contractual tenant come to an end completely only when he is not only no longer a contractual tenant but also when he has lost the right to remain in possession which s. 12 has given to him and is no longer even a statutory tenant. In other words s. 14 would come into play in favour of the sub-tenant only after the tenancy of the contractual tenant has been determined by notice and the contractual tenant has been determined by notice and the contractual tenant has been ordered to be ejected under s. 28 on any of the grounds in s. 12 or s. 13. Till that event happens or till he gives up the tenancy himself the interest if a tenant who may be a contractual tenant for purposes of s. 14 cannot be said to have determined i.e., come to an end completely in order to give rise to a tenancy between the pre-existing sub-tenant and the landlord. In the present case we have already indicated that the interest of the tenants-in-chief does not seem to have come to an end by their eviction, nor have they given up the tenancy themselves. In that view the sub-tenants, namely, the present appellant, cannot be deemed to be a tenant-in-chief have not been ejected, the appellate court had no jurisdiction to eject merely the sub-tenant. Thus the judgment of the appellate court is without jurisdiction on this ground in the alternative and is liable to be set aside.

As to the ground on which the High Court upheld the judgment of the appellate court, though it did not agree with the reasons given by the court, it is enough to say that there was a concurrent finding of the trial court as well as the appellate court that no arrears were due. In the circumstances we do not see why the High Court should have interfered with a concurrent finding of fact. It is also remarkable that there is no decree even by the High Court against the tenants-in-chief, for all that the High Court did was to dismiss the revision petition.

We therefore allow the appeal, set aside the judgment of the High Court as well as of the appellate court and restore the judgment of the trial court. In the circumstances we order parties to bear their own costs throughout.

V. P. S. Appeal allowed

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