

H. V. Mathai

Vs

The Subordinate Judge, Kottayam and Others

Civil Appeal No. 275 (N) of 1969

(J. C. Shah, G. K. Mitter JJ)

21.04.1969

JUDGMENT

MITTER, J. -

1. This is an appeal by special leave from a judgment and decree of the Kerala High Court dismissing a petition under Section 115 of the Code of Civil Procedure from an order of the District Judge of Kottayam.

2. The facts are as follows : The appellant before us was a monthly tenant of four houses covered by a single tenancy at a rent of Rs. 250 granted in 1953. The landlord filed a petition in the Rent Control Court of Kottayam for eviction of the tenant on the ground that he required the premises for his personal use and occupation, and, secondly, that the tenant was guilty of sub-letting and as such not entitled to protection under the Kerala Buildings (Lease and Rent Control) Act, 1959. The Controller held against the landlord on both the points. On appeal being preferred therefrom, the Sub-ordinate Judge held that there was no subletting by the tenant but the landlord required the premises for his personal use and occupation. He however found that two of the building formed the subject-matter of separate and independent agreements between the parties and as such allowed eviction of the tenants from two only out of the four properties. Both parties went in revision to the District Judge, Kottayam, under Section 20 of Kerala Act 2 of 1965. It is pertinent to note here that the Kerala Act of 1959 was repealed by the Kerala Buildings (Lease and Rent Control) Act, 1965 and the new Act came into force on 1st April, 1965. The petition for eviction was filed on August 31, 1965 after the coming into force of the new Act. The District Judge held that the landlord had not proved that he bona fide required the premises let for his personal use and occupation but disagreeing with the Subordinate Judge he held that there had been in fact sub-letting and on the basis thereof ordered eviction of the tenants from all the four buildings. The tenant went up to the Kerala High Court by way of revision under Section 115 of the Code of Civil Procedure and the High Court found that no grounds had been made out for interference with the order of the District Judge and as such dismissed the petition with costs.

3. The main point urged by Mr. Daphtary, counsel for the appellant, was that assuming that there was a sub-letting by the tenant a proceeding for eviction would only lie under the provisions of the Act of 1965. Omitting the provisos, Section 11(1) of the Act provided that :

"Notwithstanding anything to the contrary contained in any other law or contract a tenant shall not be evicted, whether in execution of a decree or otherwise, except in accordance with the provisions of this Act."

Sub-section (4) of the section however allowed the landlord to apply for eviction on the ground sub-letting. The relevant portion of this sub-section runs as follows :

"(4) A landlord may apply to the Rent Control Court for an order directing the tenant to put the landlord in possession of the building, -

(i) if the tenant after the commencement of this Act, without the consent of the landlord, transfers his right under the lease or sub-lets the entire building or any portion thereof if the lease does not confer on him any right to do so; or

(ii) to (v) X X X."

Counsel urged that whatever may have been the provision under the act of 1959 the proceedings by the landlord having been started after the repeal of that Act and the commencement of the Act of 1965 the landlord could get possession of the premises only if he satisfied the tests laid down in sub-section (4) which did not make sub-letting before the commencement of the Act a ground for eviction. It is to be noted however that Section 34 of the Act of 1965 provided for savings and special provision in the following manner. Sub-section (1) thereof runs as follows :

"(1) Notwithstanding the expiry of the Kerala Buildings (Lease and Rent Control) Act, 1959 (Kerala Act 16 of 1959) hereinafter in this section referred to as the said Act), the provisions of Sections 4 and 23 of the Interpretation and General Clauses Act, 1125 (Kerala Act VII of 1125), shall apply upon the expiry of the said Act as if it had then been repealed by this Act :

Provided that any investigation, legal proceeding or remedy which could have been instituted, continued or enforced under the said Act if it had not expired, may be instituted, continued or enforced under the corresponding provisions of this Act."

Reference in this connection may also be made to Section 4 of the Kerala Interpretation and General Clauses Act, 1125 (Act 7 of 1125) :

"4. Where any Act repeals any enactment hitherto made or hereafter to be made, then unless a different intention appears, the repeal shall not -

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any

such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed."

It was argued by Mr. Daphtary that Section 4 was not applicable because a different intention appeared from Section 34(1) of the Act of 1965. We find ourselves unable to accept this contention. The proviso to Section 34(1) lays down that a legal proceeding which could have been instituted, continued or enforced under the repealed Act of 1959 may be instituted under the corresponding provisions of the new Act. Mr. Daphtary tried to meet this by urging that Section 11(4) of the Act 1959 did not contain any corresponding provision. Sub-section (1) of Section 11 of the 1959 Act laid down that :

"Notwithstanding anything to the contrary contained in any other law or contract a tenant shall not be evicted, whether in execution of a decree or otherwise except in accordance with the provisions of this Act :

Provided....."

Sub-section (4)(i) of Section 11 however gave the landlord a right to apply for eviction and for an order directing him to be put in possession of the building :

"If the tenant has without the consent of the landlord 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, or the landlord has not consented to such sub-letting;"

We find ourselves unable to accept Mr. Daphtary's argument that the above quoted provision of Section 11 of the Act of 1959 was not "a corresponding provision" within the meaning of the proviso to sub-section (1) of Section 34 of the Act of 1965. To correspond means to 'be in harmony with or be similar, analogous to'. It does not mean to "be identical with" and therefore the relevant provisions of Section 34(1) of the Act of 1965 must be held to be a provision corresponding to Section 11(4) of the Act of 1959. Our attention was drawn to the short notes of a judgment of the Kerala High Court in O.P. No. 2653 of 1967, dated 4th October, 1967, as given in Short Notes to Part 1, The Kerala Law Times, 1968. We find ourselves unable to accept the reasoning as given in the said Short Notes. Mr. Daphtary raised a further contention that under the express words of sub-section (1) of Section 11 of the Act of 1965 the operation of any other law including the Act of 1959 was excluded. We do not think that is the proper construction to be put on the words of sub-section (1) of Section 11 in view of Section 34(1) of the same Act.

4. Mr. Daphtary next argued that it was not open to the District Court to revise the order of the Subordinate Judge holding against sub-letting and thereby confirming the order of the Rent Controller on this point under Section 20 of the Act of 1965. The words of Section 20 however are much wider than those in Section 115 of the Code of Civil Procedure. Under Section 20(1) the District Court is empowered to call for and examine the records relating to any order passed or proceedings taken under the Act for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceedings, and pass such order in reference thereto as it thinks fit. On the words of this section we cannot hold that a revision is limited to a mere question of jurisdiction. In our view the District Judge was empowered to consider whether on the evidence the finding of the Subordinate Judge was proper. In any event, the same was confirmed by the High Court in revision under Section 115 of the Code of Civil Procedure and we do not feel called upon to

examine the question as to whether the revision was properly heard and disposed of by the District Court.

5. Lastly, Mr. Daphtary argued that on the facts the courts below should not have come to the conclusion that there was a sub-letting within the mischief of the Act. The buildings were let out as a lodging house and the evidence showed that one of the rooms was in the occupation of a lawyer who had been there for years and had put up his name-board outside the room. Besides the name-board of the lawyer, there were the name-boards of other persons and the lawyer paid rent on a daily basis. The lawyer had installed a telephone in his room. In our opinion, there was sufficient evidence to hold that the lawyer was in exclusive possession of the room and although the rent was paid on a daily basis it was not a case of the grant of a licence. In any event, the finding as to sub-letting does not call for interference in this case seeing that the District Court and the High Court both accepted the evidence as conclusive of sub-letting.

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

Special leave Petition No. 943/1969.

In view of our judgment in Civil Appeal No. 275 of 1969 the applications is rejected.

</html