

Thakker Keshavlal Mohanlal

Vs

Parekh Amrutlal Harilal and Others

Civil Appeal No. 191 of 1970

(J.M. Shelat, Y. V. Chandrachud JJ)

19.02.1973

JUDGMENT

CHANDRACHUD, J. -

1. On April 11, 1954 Respondent 1 to 5 granted to Respondent 8 a lease of certain premises in Morvi, Gujarat for the purposes of a soap factory. Respondent 8 entered into a partnership with the appellant for running the factory. The partnership was dissolved on June 3, 1966 and on July 27, Respondents 1 to 5 gave a notice to quit to Respondent 8 on the ground that he had sub-let the premises to the appellant and to Respondents 6 and 7, Respondents 1 to 5 thereafter brought a suit to evict the appellant and Respondents 6 to 8, in the court of the learned Civil Judge Jr. D. V. Morvi. That suit was decreed and the decision was confirmed in appeal as well as in the revision application filed by the appellant in the High Court of Gujarat. This appeal by special leave is directed against the judgment of the High Court.

2. Learned counsel appearing for the appellant contends that the sub-tenancy in favour of the appellant must receive the protection of the notification issued by the State Government under the proviso to Section 15(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and therefore the appellant is not liable to be evicted on the ground that the original tenant had sub-let the premises to him. Section 15(1) of the Act renders unlawful for a tenant to sub-let the premises let to him or to assign or transfer his interest therein. The proviso confers upon the State Government the power to permit by a notification "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". In pursuance of this power, the State Government issued a notification permitting "the transfer of assignment incidental to the sale of business as a going concern together with the stock-in-trade and the good-will thereof" In order to attract the notification, the appellant has to establish that on the dissolution of the partnership between him and the original tenant, the business of the partnership was assigned to him as a going concern together with the stock-in-trade and the good-will thereof and that the transfer of tenancy was incidental to the assignment. There is on the record of the case no evidence at all of such an assignment. In fact, the deed of dissolution of partnership by virtue of which alone the appellant claims interest in the premises is not before us. Besides, it is significant that not only was no such point taken in the High Court but the assignment of the business as a going concern does not find a place in the special leave petition either. The Judgment of the High Court shows that the sole contention advanced by the appellant in this behalf was that the tenancy rights in the premises were transferred to him. No reference was made to the assignment of the business. We must therefore reject the contention that the appellant is entitled to the protection of the notification.

3. There is also no substance in the contention that the suit in regard to the appellant was one as against a trespasser and therefore the Rent-Act Court had no jurisdiction to entertain it. In *Importers and Manufacturers Ltd. v. Pheroze Framroze Taraporewala and Others* (1953 SCR 226 : AIR 1953 SC 73) this Court, on similar facts, ruled that the joinder of a sub-tenant whose sub-tenancy was invalid cannot alter the nature of the suit and make it any the less a suit between a landlord and tenant or take it out of the scope of the Rent Act.

4. The appellant's reliance on the decision in *Hiralal Vallabhram v. Kasturbhai Lalbhai and Others* ((1967) 3 SCR 343 : AIR 1967 SC 1853) is misplaced for the distinguishing feature of that case was that the appellate court under the Rent Act passed a decree of ejection against the sub-tenant only treating him as a trespasser. The tenants-in-chief were impleaded to the suit but no order of eviction was passed against them. This circumstance lent to the suit the character of a typical proceeding between an owner and trespasser and therefore the Rent-Act Court was held to have no jurisdiction to pass the decree. It was observed that Section 28 of the Bombay Rent Act gave power to the Small Cause Court to "proceed to evict a tenant (along with whom a sub-tenant would also go) But when the appellate court held that the present appellant was a trespasser, there was no jurisdiction under the Act to pass a decree for ejection against a trespasser". That explains why the court observed that the appellate court had no jurisdiction to pass a decree for ejection against the present appellant in the manner in which it did so.

5. In the result we dismiss the appeal with costs.

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