

Gajanan Dattatraya

Vs

Sherbanu Hosang Patel and Others

Civil Appeal No. 591 of 1974

(CJI A.N. Ray, K.K. Mathew, V.V. Chandrachud JJ)

29.08.1975

JUDGMENT

RAY, C.J. -

1. This appeal is by special leave from the judgment dated February 15, 1974 of the Gujarat High Court dismissing the revision petition filed by the appellant.
2. The appellant filed a revision petition in the High Court against the judgment and decree passed by the District Judge dismissing his appeal against the decree for eviction of the appellant from the suit premises.
3. The respondent filed the suit against the appellant for possession of the premises on the ground that the appellant had sublet a portion of the premises.
4. Section 13(1)(e) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 which is the relevant section for the purpose of this appeal runs as follows :

13(1)(e). That the tenant has, since the coming into operation of this Act, unlawfully sublet, or after the date of commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973, unlawfully given on licence, the whole or part of the premises or assigned or transferred in any other manner his interest therein.
5. The appellant took on lease on January 1, 1960 the premises, namely, first floor consisting of four rooms at a rent of Rs. 50 per month.
6. The respondent alleged that the appellant sublet a portion thereof, namely two rooms, in the month of August, 1965. The respondent on April 1, 1967 gave a notice to the appellant terminating the tenancy.
7. The appellant denied that there was any unlawful subletting of two rooms to respondent No. 5 Jitendra Shankarji Desai. The appellant further alleged that the respondent No. 5 Desai vacated the suit premises on April 14, 1967.
8. At the trial the issues were whether the appellant unlawfully sublet two rooms to respondent Desai. The trial Court held that the appellant sublet the suit premises to respondent No. 5. The trial Court gave the plaintiff-respondent a decree for possession of the suit premises.
9. The appellant preferred an appeal. The appeal was dismissed.

10. The appellant, thereafter, filed a revision petition in the High Court. In the High Court the contentions were these. The expression "the tenant has sublet" in Section 13(1)(e) of the above mentioned Act means that the subletting must continue at the date of the suit for passing the decree. The notice was given on April 1, 1967. The respondent No. 5 vacated the premises in suit on April 14, 1967. When the suit was filed the subtenant was not in occupation of the premises. Therefore, the plaintiff, the plaintiff-respondent was not entitled to a decree.

11. The High Court relied on a Bench decision of that High Court in Maganlal Narandas Thakkar v. Arjan Bhanji Kanbi ((1969) 10 Guj LR 837) where it was held that the word "has sublet" in Section 13(1)(e) of the Saurashtra Rent Control Act mean that subletting has taken place and as a result of that subletting the impediment in the way of landlord to recover possession has been removed. The provisions obtained in Section 13(1)(e) of the Saurashtra Rent Control Act are similar to the provisions contained in the Bombay Act, 1947. The High Court also held that the words 'has sublet' do not include any element of the sub-tenancy being in existence at the date when the suit is filed.

12. The appellant relied on a decision of this Court in Goppulal v. Thakurji Shriji Shriji Dwarkadheeshji ((1969) 3 SCR 989 : (1969) 1 SCC 792) in support of the proposition that the words "has sublet" mean that the subletting is to subsist at the date of the suit. This Court in Goppulal's case (supra) considered Section 13(1)(e) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950. Section 13(1)(e) of the Rajasthan Act provides that no decree eviction the tenant shall passed unless the Court is satisfied

(e) that the tenant has assigned, subject or otherwise parted with the possession of the whole or part of the premises, without the permission of the landlord.

13. The High Court in Goppulal's case (supra) held that two shops were sublet after October 15, 1947 when the Jaipur Rent Control Order, 1947 came into force. Subletting was a ground for ejection under Paragraph 8(1)(b)(ii) of the Jaipur Rent Control Order, 1947. The High Court held that the tenant's liability for eviction on this ground continued after the promulgation of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950.

14. This Court said that the High Court was in error that there was one "integrated tenancy" for six shops. The facts found were that four shops were let out in 1944 and two shops were let out after 1945. This Court found that the High Court was in error in holding that two shops were sublet after October 15, 1947.

15. This Court held that the plaintiffs in Goppulal's case (supra) did not establish that the subletting was after October 15, 1947 and on the date of the subletting in 1944, no rent control legislation was in force. It is in that context that it is said that the words "has sublet contemplate a completed event connected in some way with the present time". This Court said that the words "has sublet" take within their sweep any subletting which was made in the past and has continued upto the present time. What is meant by these observations is that the vice of subletting which fell within the mischief of the Act continues to be a mischief within the Act. In Goppulal's case there was no subletting in 1947 to violate the 1947 Jaipur Rent Control Order and therefore there could not be any subletting which could continue upto the 1950 Rajasthan Act.

16. On the date of the subletting in 1944, this Court found in Goppulal's case (supra) that there was no rent control legislation in force. This Court did not consider the question as to whether subletting to be within the mischief of the relevant statute was to subsist at the date of the suit. This Court held

that Section 13(1)(e) of the Rajasthan Act would include any subletting which though made in the past would continue at the point of the time when the Act came into force.

17. The appellant repeated the same contentions which has been advanced before the High Court. The provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 indicate that a tenant is disentitled to any protection under the Act if he is within the mischief of the provisions of Section 13(1)(e), namely, that he has sublet. The language is that if the tenant has sublet, the protection ceases. To accede to the contention of the appellant would mean that a tenant would not be within the mischief of unlawful subletting if after the landlord gives a notice terminating the tenancy on the ground of unlawful subletting the subtenant vacates. The landlord will not be able to get any relief against the tenant in spite of unlawful subletting. In that way the tenant can foil the attempt of landlord to obtain possession of the premises on the ground of subletting every time by getting the subtenant to vacate the premises. The tenant, was liability to eviction arises once the fact of unlawful subletting is proved. At the date of the notice, if it is proved that there was unlawful subletting, the tenant is liable to be evicted. The High Court rightly rejected the revision petition.

18. The appeal is dismissed with costs.

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