K. Balakrishna Rao and Others

Vs

Haji Abdulla Sait and Others

Civil Appeal No. 1172 of 1979

(A.C. Gupta, E.S. Venkataramiah JJ)

10.10.1979

JUDGMENT

VENKATARAMIAH, J. –

1. The question involved in this case is whether a suit for ejectment filed in respect of any non-residential building or part thereof pending before any court on the date on which the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Act No. 18 of 1960) (hereinafter referred to as 'the principal Act') was amended by the Tamil Nadu Buildings (Lease and Rent Control) Amendment Act, 1964 (Act No. 11 of 1964) (hereinafter referred to as 'the Amending Act') could have been proceeded with after that date. It arises in the following circumstances :

> 1a. Haji Mohamed Hussain Sait, the father of the plaintiff, Haji Abdulla Sait, was the owner of a building situated in the city of Madras. He leased it out in favour of the defendant, K. Seetharama Rao under a lease deed dated July 8, 1940 for the purpose of running a restaurant known as 'Modern Cafe' in it for a period of three years with effect from July 15, 1940 on a monthly rent of Rs. 950. The agreed period of lease expired in July, 1943 but the defendant continued to be in possession of the building as a tenant holding over. On the coming into force of the Madras Non-Residential Buildings Rent Control Order in 1946, the defendant became a statutory tenant of the said building and fair rent in respect of it was fixed under that Order in the year 1946 at Rs. 1680 per month. The aforesaid Order was replaced by the Madras Buildings (Lease and Rent Control) Act, 1949 which was also applicable to the said building. On the death of the landlord Haji Mohamed Hussain Sait in 1955, under a partition amongst his heirs the plaintiff became the owner of the building. The protection which the defendant was enjoying under the Act of 1949 came to an end on the passing of the principal Act by virtue of Section 35 thereof which repealed the Act of 1949 and Section 30(iii) thereof which provided that nothing contained in the principal Act was applicable to any non-residential building, the rental value of which on the date of the commencement of the principal Act as entered in the property tax assessment book of the municipal council, district board, panchayat or panchayat union council or the Corporation of Madras exceeded Rs. 400 per mensem. The defendant, however, continued to be in possession of the building by paying the rent every month. The plaintiff issued a notice to the defendant terminating the tenancy with effect from the expiry of February 29, 1964 and as the building was not governed by the principal Act at that point of time, he instituted a suit in Civil Suit No. 730 of 1964 on the file of the City Civil Court, Madras on March 2, 1964 for eviction and for damages at the rate of Rs. 6000 per month. The

defendant filed his written statement on May 2, 1964 before the City Civil Court. On June 10, 1964, the Amending Act came into force. The relevant part of it is reproduced below :

> 2. Amendment of Section 30, Madras Act 18 of 1960. - In Section 30 of the Madras Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as the principal Act) -
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> (i) in clause (ii) the word "or" occurring at the end shall be omitted;
>
> (ii) clause (iii) shall be omitted;
>
> (iii) in the Explanation, for the words, brackets and figures "clauses (ii) and (iii)", the word, brackets and figures "clause (ii)" shall be substituted.
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> 3. Certain pending proceedings to abate. - Every proceeding in respect of any non-residential building or part thereof pending before any court or other authority or officer on the date of the publication of this Act in the Fort St. George Gazette and instituted on the ground that such building or part was exempt form the provisions of the principal Act by virtue of clause (iii) of Section 30 of the principal Act, shall abate insofar as the proceeding relates to such building or part. All rights and privileges which may have accrued before such date to any landlord in respect of any non-residential building or part thereof by virtue of clause (iii) of Section 30 of the principal Act, shall cease and determine and shall not be enforceable :
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> Provided that nothing contained in this section shall be deemed to invalidate any suit or proceeding in which the decree or order passed has been executed or satisfied in full before the date mentioned in this section.

2. The statement of objects and reasons appended to the Bill which ultimately became the Amending Act read as follows :

> The Madras Buildings (Lease and Rent Control) Act, 1960 (Madras Act 18 of 1960), relates to the regulation of the letting of residential and non-residential buildings and the control of rents of such buildings and the prevention of unreasonable eviction of tenants therefrom in the State of Madras. Under Section 30 of the said Act, certain buildings are exempted from the provisions of the said Act. Any non-residential building or part thereof occupied by any one tenant if the monthly rent paid by him in respect of that building or part exceeds four hundred rupees is one such building or part is exempted under the said Section 30. It has been brought to the notice of the Government that the landlords of such non-residential buildings, taking advantage of the exemption, referred to above, demand exorbitant rents from the tenants of such buildings, who mostly belong to the business community, and threaten to evict the tenants when the latter do not concede to the demands for such rents. In order to provide relief to such tenants and to ensure that the interests of trade and industries do not suffer by demands of landlords for unreasonable and exorbitant rents, the government consider that the exemption now available to any non-residential building or part thereof fetching a monthly rent exceeding four hundred rupees should be withdrawn. At the same time, the government consider that there is no

> need to take away the exemption available at present to any residential building or part thereof fetching a monthly rent exceeding Rs. 250.

The Bill seeks to achieve the above object.

3. The result of the amendment was that the buildings which had been exempted from the operation of the principal Act under clause (iii) of Section 30 came within the scope of the principal Act and the relationship between landlords and tenants of such buildings was to be regulated thereafter in accordance with the provisions of the principal Act. Apparently in order to give protection to tenants of such buildings against whom proceedings for eviction had been instituted in civil courts, Section 3 of the Amending Act provided that such proceedings should be treated as having abated. The proviso to Section 3 of the Amending Act however provided that nothing contained in that section should be deemed to invalidate any suit or proceeding in which the decree or order passed had been executed or satisfied in full before the date mentioned in that section, the said date being June 10, 1964. Thus by necessary implication, Section 3 of the Amending Act was applicable even to the case of a building in respect of which a decree for eviction had been passed but had not been executed or satisfied in full before June 10, 1964. In view of the above provision, the City Civil Court dismissed the suit as having abated by its order dated December 4, 1964. The plaintiff filed two applications before the City Civil Court in March, 1965 - one under Order 9, Rule 9 of the Code of Civil Procedure to set aside the order December 4, 1964 dismissing the suit as having abated and another under Section 5 of the Limitation Act for condoning delay in filing the application under Order 9, Rule 9 of the Code of Civil Procedure. He also filed an appeal in A.S. No. 266 of 1965 on the file of the High Court of Madras against the order of the City Civil Court dated December 4, 1964. Both the above applications were allowed by the City Civil Court on August 3, 1965. On August 13, 1965, the defendant filed an additional written statement before the City Civil Court raising the plea that the suit had actually abated by virtue of Section 3 of the Amending Act. He also filed two revision petitions against the order passed by the City Civil Court allowing the two applications on August 3, 1965. In the meanwhile, on an application made under Section 24 of the Code of Civil Procedure by the plaintiff, the suit was withdrawn to the file of the High Court and it was renumbered as C.S. No. 218 of 1965. It should be mentioned here that owing to the alteration of the pecuniary jurisdiction of the City Civil Court, the suit stood transferred to the file of the High Court on May 1, 1964 itself. The defendant died on January 15, 1968. He had made a will on January 7, 1968 appointing executors and administrators in respect of his assets and issuing directions regarding the manner in which his assets should be disposed of. By an order dated July 20, 1970 made by the High Court, defendants 2 to 10 who had been appointed executors and administrators were impleaded as legal representatives of the defendant (who was shown as defendant 1 thereafter). The two civil revision petitions filed by the defendant against the orders passed on August 3, 1965 by the City Civil Court and the Appeal Suit No. 266 of 1965 filed by the plaintiff against the order of the City Civil Court dated December 4, 1964 were disposed of by a Division Bench of the High Court of Madras by a common order on June 28, 1972, the relevant part of which read as follows :

> It is seen from the foregoing dates that at the time of the dismissal of the suit, the lower court had no jurisdiction to deal with the suit and in that view the counsel appearing on both sides represent that the order dismissing the suit as having abated may be set aside and the suit may be tried on the original side of this court. We accordingly allow the appeal and set aside the order of dismissal of the suit on the ground that the City Civil Court had no jurisdiction to deal with the same on the date of dismissal and direct the suit to be posted on the original side for being dealt with.

4. It may be mentioned here that as stated earlier, the suit had already been withdrawn to the file of the High Court under Section 24 of the Code of Civil Procedure and had been numbered as Civil Suit No. 218 of 1965. In July, 1973, the plaintiff sought an amendment of the plaint praying for relief against defendants 2 to 10 on the ground that after the death of the original defendant 1, they were not entitled to continue in possession of the building as 'statutory tenants' and the plaintiff was entitled to a decree against them in that very suit. The above contention was based on the definition of the expression "tenant" in Section 2(8) of the principal Act as it stood then. After the amendment of the plaint, fresh written statements were filed by defendants 2 to 10 raising several pleas including the pleas which had already been raised in the written statements filed by defendant 1 before the City Civil Court. On the basis of the pleadings, the trial Court framed the following issues :

> 1. Is the suit maintainable ?
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> 2. Has the plaintiff given proper notice of termination of the suit premises ?
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> 3. Does the suit abate by reason of Act 11 of 1964 ?
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> 4. Are not the defendants entitled to protection under the Madras Buildings (Lease and Rent Control) Act, 1960, as amended by Act 23 of 1973 ?
>
> 5. Whether the tenancy came to an end upon the death of K. Seetharama Rao ?
>
> 6. Whether the defendants have no legal interest in the premises and consequently liable to be rejected ?
>
> 7. To what reliefs are the parties entitled ?

5. At the conclusion of the trial, the learned Judge held on Issue No. 1 that the suit was maintainable, on issue No. 2 that the notice to quit had validly terminated the tenancy, on issue No. 4 that the defendants were not entitled to protection under the Madras Buildings (Lease and Rent Control) Act, 1960, on issue No. 5 that the tenancy had come to an end even on March 1, 1964 and on issue No. 6 that the defendants had no legal interest in the premises. He, however, declined to record any finding on issue No. 3 which related to the question whether the suit had abated or not on June 10, 1964 by virtue of Section 3 of the Amending Act. The learned Judge proceeded to dispose of the suit as if it was a fresh suit instituted after the death of the original defendant No. 1 on January 15, 1968 even though there was no specific issue on the question whether it could be treated as such. This appears to be so in view of the following observations made by the trial Judge in the course of the judgment :

> Under the above circumstances, if the plaintiff files a suit today against the defendants he is entitled to get an executable decree for possession (without the necessity of going to the Rent Control Court) inasmuch as defendants 2 to 10 had never become 'tenants' under the Act. Therefore even if the suit filed in the City Civil Court is held to have abated, under the peculiar circumstances of this case, I see no reason why I should not treat the suit before me to be a fresh one. It is to be seen that the application under Section 24 of the Code of Civil Procedure for transfer of the suit from City Civil Court to this Court was consented by the defendants. In A.S. No. 266 of 1965, apart from setting aside the order of abatement passed by the City Civil Court, this Court directed that the suit be tried on the original side of this Court.

> Even if the City Civil Court had no pecuniary jurisdiction to deal with the matter and record abatement, the defendants could have pressed in A.S. No. 266 of 1965 for an order by this Court that the suit had abated. It is needless to point out that the order that was under appeal was one by which the City Civil Court held that the suit had abated. No doubt that was passed without jurisdiction, inasmuch as the pecuniary jurisdiction of that court had been reduced. But it is open to this Court to have held in the said appeal itself that the suit had abated. But the order was that the suit was to be tried on the original side. The suit had been originally filed in 1964, that is, more than 12 years ago. Under such circumstances, I think it is wholly unnecessary to drive the plaintiff to a fresh suit.

6. On the basis of the findings recorded by him, the learned trial Judge passed a decree for possession and damages for use and occupation. The quantum of damages was directed to be determined under Order 20, Rule 12 of the Code of Civil Procedure. Defendants 2 to 10 were, however, allowed three years' time to deliver vacant possession of the premises. Aggrieved by the decree passed by the trial Court, the plaintiff filed O.S.A. No. 23 of 1977 and defendant 2 filed O.S.A. No. 75 of 1977 on the file of the High Court of Madras. The plaintiff in his appeal questioned the decree of the trial Court only to the extent it granted a period of three years to the defendants to deliver possession of the premises. Defendant 2 in his appeal questioned the entire decree. Both the appeals came up for hearing before a Division Bench of the High Court. In the course of its judgment, the division bench formulated the following points for its consideration :

> 1. What was the status of late Seetharama Rao after the termination of the tenancy - whether he was a trespasser of a tenant holding over or a tenant at sufferance ?
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> 2. Did the suit building come within the purview of the Act and did late Seetharama Rao become a tenant as defined in the Act, on the coming into force of the Tamil Nadu Act 11 of 1964 ?
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> 3. Whether the suit instituted by the plaintiff abated in view of Section 3 of the Tamil Nadu Act 11 of 1964 ?
>
> 4. Whether the 'tenancy' came to an end upon the death of Seetharama Rao ?
>
> 5. Whether defendants 2 to 10 are entitled to protection against eviction from the suit property by virtue of the Act as amended by the Tamil Nadu Act 23 of 1973 ?

7. The Division Bench held that the status of the defendant, Seetharama Rao from March 1, 1964 was that of a trespasser and he was liable to pay profits or damages for use and occupation to the plaintiff; that the defendant, Seetharama Rao was not entitled to the benefit of the principal Act by the coming into force of the Amending Act as the building itself was outside the scope of the principal Act and even if the building was within its scope, he was not a tenant as defined in the principal Act; that Section 3 of the Amending Act did not apply to the suit in question and hence it did not abate on June 10, 1964 and that after the death of the defendant, Seetharama Rao, defendants 2 to 10 were not entitled to the protection against eviction under the principal Act as amended by the Tamil Nadu Act No. 23 of 1973. Accordingly, it dismissed the appeal filed by defendant 2. The appeal filed by the plaintiff was also dismissed as a period of 2 1/2 years out of the period of three years' time granted by the trial Court had expired by the time the judgment in appeal was delivered. Aggrieved by the decree passed by the division bench, defendants 2 to 4 and 10 have

filed the above appeal by special leave in this Court.

8. The principal contention urged in support of the appeal before us was that the suit having abated on the coming into force of the Amending Act, it was not open to the trial Court to treat the proceedings before it as a new suit instituted after the death of the defendant, Seetharama Rao against defendants 2 to 10 and to pass a decree. In the instant case, as noticed earlier, the trial Court did not decide the question whether the suit abated on the coming into force of the Amending Act. The division bench of the High Court has held that the provisions of Section 3 of the Amending Act were not applicable to the suit and, therefore, the question of its abatement did not arise.

9. The undisputed facts in this case are : (1) Seetharama Rao held the suit property as a lessee before the institution of the suit; (2) that the lease had been terminated by the issue of a notice in accordance with Section 106 of the Transfer of Property Act; (3) that a suit for eviction of Seetharama Rao was filed on March 2, 1964 before the City Civil Court, Madras which was competent to try it on the date of its institution; (4) that by virtue of alteration of the pecuniary jurisdiction of the City Civil Court and consequential provisions made in that connection, the suit stood transferred to the file of the original side of the High Court with effect from May 1, 1964 and that the suit was, therefore, deemed to be pending in law on the file of the High Court on June 10, 1964 on which date the Amending Act was published in the official Gazette even though in fact the file was lying on that date with the City Civil Court. The other proceedings which have been referred to above in some detail are not relevant for the purpose of deciding the question whether the suit abated on the publication of the Amending Act in the official Gazette.

10. Section 2(ii) of the Amending Act repealed clause (iii) of Section 30 of the principal Act. Consequently any non-residential building, the rental value of which on the date of the commencement of the principal Act as entered in the property tax assessment book of the municipal council, district board, panchayat or panchayat union council or the Corporation of Madras, as the case may be exceeded four hundred rupees per mensem was also brought within the scope of the principal Act and the relationship between the landlord and tenant of such building came to be regulated by it with effect from June 10, 1964.

11. Section 3 of the Amending Act consists of three parts. Under the first part, it directed that every proceeding in respect of any non-residential building or part thereof pending before any court or other authority or officer on the date of the publication of the Amending Act in the Fort St. George Gazette and instituted on the ground that such building or part was exempt from the provisions of the principal Act by virtue of clause (iii) of Section 30 of the principal Act abated insofar as the proceedings related to such building or part. Under the second part, it provided that all rights and privileges which might have accrued before such date to any landlord in respect of any non-residential building or part thereof by virtue of clause (iii) of Section 30 of the principal Act would cease and determine and would not be enforceable. The proviso to Section 3 which is the third part of that section provided that nothing contained in Section 3 should be deemed to invalidate any suit or proceeding in which the decree or order passed had been executed or satisfied in full before the date mentioned in that section.

12. On behalf of the plaintiff, three contentions were urged in the appeal before the High Court in support of his case that Section 3 of the Amending Act was inapplicable to the present case. They were (i) that Section 3 of the Amending Act had no reference to a suit at all; (ii) that even if it had any reference to a suit, it did not apply to a suit of the present nature and (iii) that even if it applied to a suit of the present nature still on the pleadings of the plaintiff, the present suit was not affected

by the said provision. The division bench rejected the first contention of the plaintiff that Section 3 had no reference to a suit at all but it, however, upheld the case of the plaintiff on the basis of the other two contentions. Relying upon the language of Section 10(1) of the principal Act which provided that a tenant was not liable to be evicted whether in execution of a decree or otherwise except in accordance with the provisions of that section or Sections 14 to 16 and the decision of the Madras High Court in Theruvath Vittil Muhammadunny v. Melepurakkal Unniri ((1949) 1 MLJ 452 : AIR 1949 Mad 765) and the decision of this Court in B. V. Patankar v. C. G. Sastry ((1961) 1 SCR 5591 : AIR 1961 SC 272 : (1961) 1 SCJ 221), the division bench held that it was settled law that the principal Act itself did not prohibit the filing of a suit by a landlord for recovery of possession of the property from a tenant but only a decree passed in the said suit could not be executed except in accordance with the provisions of the principal Act and if that was the true legal position in respect of the buildings to which the principal Act applied from its commencement, there was no justification whatever for the legislature making a contrary provision in respect of nonresidential buildings to which the principal Act became applicable by virtue of the Amending Act. The division bench, therefore, held that Section 3 of the Amending Act was not applicable to the case on hand. We are of the view that the above conclusion of the division bench is erroneous. It is not for the Court to ask whether there was any justification for the legislature to make a contrary provision in respect of the suits of the present nature. It was not the contention of the plaintiff that Section 3 of the Amending Act was unconstitutional. In that situation, the High Court had no option but to apply the provision in question to the case on hand without going into the question whether there was any justification for enacting it. We are, however, of the view that in the circumstances in which the Amending Act came to be enacted, there was every justification for enacting Section 3 in order to give protection to the tenants against whom suits for eviction had been filed from buildings which were brought within the scope of the principal Act by deleting the clause (iii) of Section 30 of the principal Act.

13. The third contention of the plaintiff in support of his plea that Section 3 of the Amending Act was inapplicable was formulated thus : The provisions of the aforesaid Section 3 would apply only when the three conditions, viz., (i) that there should be a proceeding in respect of a non-residential building or part thereof; (ii) that proceeding should be pending before any court or other authority or officer on the date of the publication of the Amending Act in the Fort St. George Gazette; and (iii) that proceeding should have been instituted on the ground that such building or part thereof was exempt from the provisions of the principal Act by virtue of clause (iii) of Section 30 of the principal Act, existed. It was argued that since the present suit did not satisfy the third requirement referred to above as the plaintiff had not referred to clause (iii) of Section 30 of the principal Act in the plaint, Section 3 of the Amending Act should be held to be inapplicable to it. The division bench upheld the above contention observing that in order to attract Section 3 of the Amending Act, there should be an allegation in the plaint that the building in question was exempt from the provisions of the principal Act by virtue of clause (iii) of Section 30 of the principal Act. In order to arrive at the above conclusion, it relied upon the decision of the Madras High Court in M/s. Raval & Co. v. K. G. Ramachandran (AIR 1967 Mad 57 : (1966) 2 Mad LJ 68) and the decision of this Court in P. J. Gupta & Co. v. K. Venkatesan Merchant ((1975) 2 SCR 401 : (1975) 1 SCC 46, 49, 50). The passage in the case of M/s. Raval & Co. (AIR 1967 Mad 57 : (1966) 2 Mad LJ 68) on which the division bench relied upon was as follows :

> It has to be immediately conceded that the wording of this section can by no means be described as happy, or free from any cloud of ambiguity. It is not very clear how a proceeding could have been instituted 'on the ground that such building or part was exempt from the provisions of the principal Act by virtue of clause (iii) of Section

> 30', or what is the precise scope of the rights and privileges w__hich may accrue to the landlord, and which are to cease and determine. 14. We do not think that in the context in which Section 3 of the Amending Act was enacted, it could be said that it was not possible to identify the proceedings to which that provision referred. In the case of P. J. Gupta and Co. ((1975) 2 SCR 401 : (1975) 1 SCC 46, 49, 50), the effect of Section 3 of the Amending Act is set out as follows : (SCC p. 49, para 7) The obvious result of Section 30(iii) of the Act, as it stood before the amendment, was that, if the rental value of a non-residential building, as entered in the property tax book of the Municipality exceeded Rs. 400 per mensem, a description which applies to the premises under consideration before us, the landlord would have no right to proceed against the tenant for eviction under Section 10(2)(ii)(a) of the Act. Section 3 of the Amending Act, on the face of it, applies to two kinds of cases. Its heading is misleading insofar as it suggests that it is meant to apply only to one of these two kinds. It applies : firstly, to cases in which a proceeding has been instituted "on the ground" that a non-residential building "was exempt from the provisions of the principal Act" and is pending; and secondly, to cases where "rights and privileges, which may have accrued before such date to any ndlord in respect of non-residential building by virtue of clause (iii) of Section 30 of the principal Act" exist. In the kind of case falling in the first category, the amendment says that the pending proceedings shall abate. As regards the second kind of case, the amendment says that "the rights and privileges of the landlord shall cease and determine and shall not be enforceable".

Proceeding further, this Court observed : (SCC p. 50, para 8)

> It is not necessary, for the purposes of the case before us, to speculate about the types of cases which may actually fall within the two wings of the obviously unartistically drafted Section 3 of the Amending Act. It is enough for us to conclude, as we are bound to on the language of the provision, that the case before us falls outside it.

15. The above observations were made by this Court in a case where a proceeding had been initiated before the City Rent Controller in December, 1964 by landlord for eviction of his tenant from a non-residential building situated in the city of Madras which had been leased at Rs. 600 per month on the ground that the building had been sub-let. The City Rent Controller ordered the eviction of the tenant. In appeal, the Court of Small Causes at Madras allowed the tenant's appeal holding that the tenant had the right under the original lease of August 21, 1944 to sub-let, and also because even violation of a clause of the subsequent lease of April 3, 1953, prohibiting sub-letting, did not entail a forfeiture of tenancy rights under the provisions of the Transfer of Property Act. Its view was that, in the case of what it described as "a contractual tenancy" the provisions of the Transfer of Property Act applied to the exclusion of the remedies provided by the principal Act so that, unless the lease deed itself provided for a termination of tenancy for sub-letting in addition to a condition against sub-letting, the tenancy right itself could not be forfeited or determined by such a breach of the contract of tenancy. In exercise of its revisional jurisdiction, under Section 25 of the principal Act, the High Court of Madras reversed the judgment and order of the Small Cause Court holding that the rights of the landlord and tenant were governed on the date of the application of eviction by Section 10(2)(ii)(a) of the principal Act which contained a prohibition against sub-letting which involved parting with possession. On appeal to this Court, the decision of the Madras High Court was affirmed holding that the effect of the amendment was that the landlord acquired a new right to evict a tenant under Section 10(2)(ii)(a). This Court held that by virtue of Section 3 of the

Amending Act, all rights and privileges which might have accrued before the date of publication of the Amending Act in the official Gazette to any landlord in respect of any non-residential building or part thereof by reason of clause (iii) of Section 30 of the principal Act alone became unenforceable. But the right to seek eviction of the tenant under Section 10(2)(ii)(a) was unaffected even though the sub-letting of the building had taken place prior to the enactment of the Amending Act.

16. From a reading of the above decision, it is obvious that this Court held that the right which the landlord acquired under Section 10(2)(ii)(a) to evict the tenant was a new right and was not a pre-existing right which could possibly be affected by Section 3 of the Amending Act. It is, however, clear from the observations of this Court extracted above that a proceeding which had been instituted "on the ground" that a non-residential building "was exempt from the provisions of the principal Act" by virtue of clause (iii) of Section 30 of the principal Act and was pending on the date of publication of the amendment in the official Gazette would abate. This Court did not, however, go into the question as to what types of cases would fall within the scope of Section 3 of the Amending Act. We are of the view that the identification of such cases depends on the true construction of the said provision. In this case, we are faced with that question.

17. It is appropriate to refer at this stage to the following passage occurring in Craies on Statute Law (Sixth Edition) at page 99 :

> In Brett v. Brett ((1826) 3 Addams 210, 216), Sir John Nicholl, M.R. said as follows : "The key to the opening of every law is the reason and spirit of the law; it is the animus imponentis, the intention of the law-maker expressed in the law itself, taken as a whole. Hence, to arrive at the true meaning of any particular phrase in a statute, the particular phrase is not to be viewed detached from its context in the statute; it is to be viewed in connection with its whole context, meaning by this as well the title and preamble as the purview or enacting part of the statute".

18. We have already referred to the object with which the Amending Act was passed and that was to give relief against unreasonable evictions and demands for unconscionable rates of rents to tenants of building which had been originally exempted from the operation of the principal Act. It is clear that while doing so the legislature gave relief also to person against whom suits had been filed. We think that the words "instituted on the ground that such building or part was exempt from the provisions of the principal Act by virtue of clause (iii) of Section 30 of the principal Act" should be construed in the context in which they appear as referring to a proceeding which had been instituted in the light of Section 30(iii) of the principal Act which granted exemption in respect of the buildings referred to therein from the operation of the principal Act and any other construction would defeat the object of the Amending Act. It is seen that in the instant case, the original plaint was filed on the basis that the tenancy had been terminated with effect from the expiry of February 29, 1964. The plaintiff prayed for eviction of the original defendant and also for a decree for damages for use and occupation at the rate of Rs. 6000 per month from the date of the plaint till delivery of the vacant possession on the assumption that after the termination of the lease the original defendant 1 was not a tenant and was liable to pay damages and not the rent of Rs. 1680 per month which was the fair rent fixed in respect of the building in a former proceeding under the rent control law in force then. The suit in the above form could be filed for the relief referred to above only because of the exemption granted by clause (iii) of Section 30 of the principal Act because in the absence of such exemption, no effective decree for ejectment could be passed by the City Civil Court in view of Section 10 of the principal Act which provided that no tenant could be evicted

from a building except in accordance with the provisions of Section 10 and Sections 14 to 16 thereof. The plaintiff could not also have asked for a decree for damages at Rs. 6000 per month which he had claimed in the plaint but for such exemption. We are, therefore, of the view that Section 3 of the Amending Act was applicable to the suit in question as it was a proceeding instituted in the City Civil Court on the ground that the building in question was exempt from the provisions of the principal Act by virtue of clause (iii) of Section 30 thereof although no express allegation was made in the plaint to that effect.

19. In order to get over the inevitable consequences flowing from Section 3 of the Amending Act and the effect of an earlier decision of a division bench of the Madras High Court in Moolchand Gupta v. Madras Piece Goods Merchants Charitable Trust (88 LW 410), a novel and ingenious contention was urged on behalf of the plaintiff, the said contention being that after the termination of the lease with effect from February 29, 1964 by the issue of a notice under Section 106 of the Transfer of Property Act, the original defendant became a trespasser and the premises in question ceased to be a building as defined in Section 2(2) of the principal Act. On the above basis, it was contended that the original defendant could not claim the benefit of any of the provisions of the principal Act and Section 3 of the Amending Act. It was argued that since a contention of this nature had not been considered in the case of Moolchand Gupta (88 LW 410), it had no binding effect on the division bench which heard this case. It is appropriate at this stage to set out the passage from the judgment of the division bench of the High Court in which the binding nature of Moolchand Gupta case (88 LW 410) is considered :

> In this context, Mr. Govind Swaminathan brought to our notice a decision of a bench of this Court in Moolchand Gupta v. Madras Piece Goods Merchants Charitable Trust (88 LW 410) to which of us was a party. In our opinion, in that decision this question was not considered. That case also was concerned with a non-residential building which did not fall within the purview of the Act because of Section 30(iii) of the Act. The tenancy was terminated on October 31, 1960 and the suit in ejectment was instituted on December 19, 1960 which ended in compromise decree dated January 31, 1963. The decree provided for a direction for eviction against the quondam tenant, subject to certain terms thereafter mentioned, to wit, the landlord being entitled to take possession of the portion of the premises in occupation of one Panchand and the bullion Market Post Office immediately by executing the decree insofar as the said portion was concerned and the quondam tenant delivering possession of the rest of the portion in his occupation on or before January 31, 1964 and the quondam tenant paying mesne profits at Rs. 1340 per month for the period from November 1, 1960 to January 31, 1964 and further mesne profits at Rs. 800 per month for the period commencing from February 1, 1963 till delivery of possession. The decree also provided that if there was default in payment of the sum of Rs. 800 or the other sum per month, the landlord would be entitled to execute the decree immediately. Time for vacating was extended and before the building was actually vacated the Tamil Nadu Act 11 of 1964 intervened. The question was, whether by virtue of the intervention of the Tamil Nadu Act 11 of 1964, the decree be executed. The learned trial Judge felt that in view of the fact that there had been a surrender of a part of the holding by the quondam tenant's sub-tenant, there was a disruption of the entire holding and therefore the quondam tenant would not be a statutory tenant within the meaning of Section 2(8) of the Act. The bench disagreed with this conclusion and held that the quondam tenant would be a tenant under Section 2(8) of the Act as he continued to remain in possession of the property even after the

> termination of the tenancy in his favour. No point was urged before the Court that the termination of tenancy having taken place before Tamil Nadu Act 11 of 1964 came into force, the definition of the term 'tenant' in Section 2(8) did not apply to the quondam tenant in that case and therefore the said decision cannot be considered to be an authority for the point which is now raised before us.

20. From the facts of Moolchand Gupta case (88 LW 410) it is clear that the division bench of the Madras High Court had held that a tenant whose tenancy had been terminated with effect from October 31, 1960 and against whom a decree for eviction had been passed prior to the date on which Section 3 of the Amending Act came into force was entitled to be treated as a tenant by virtue of the said provision since he had continued to remain in possession of the property even after the termination of the tenancy. The only ground on which the division bench which heard the present case did not follow the ruling in Moolchand Gupta case (88 LW 410) is that the effect of the termination of tenancy prior to the date on which Tamil Nadu Act No. 11 of 1964 came into force had not been considered in that case. The binding effect of a decision, as observed by this Court in Smt. Somavanti v. State of Punjab ((1963) 2 SCR 774, 794 : AIR 1963 SC 151 : (1963) 33 Com Cas 745) does not depend upon whether a particular argument was considered therein or not, provided that the point with reference to which an argument was subsequently advanced was actually decided. On going through the decision in Moolchand Gupta case (88 LW 410) we are of the view that the appropriate procedure which the division bench should have followed in this case was to refer it to a full bench instead of by-passing the said decision in the manner in which it has been done in this case. The well-settled practice to be followed in such cases is succinctly put by Das Gupta, J. in Mahadeolal Kanodia v. Administrator-General of W. B. ((1960) 3 SCR 578, 589 : AIR 1960 SC 936 : (1961) 1 SCJ 15) as follows :

> Before we part with this appeal, however, it is our duty to refer to one incidental matter. We have noticed with some regret that when the earlier decision of two judges of the same High Court in Deorajin case (Deoragin Debi v. Satyadhan Ghosal, (1953) 58 CWN 64) was cited before the learned Judges who heard the present appeal they took on themselves to say that the previous decision was wrong, instead of following the usual procedure in case of difference of opinion with an earlier decision, of referring the question to a larger bench. Judicial decorum no less than legal propriety forms the basis of judicial procedure. If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if judges of co-ordinate jurisdiction in a High Court start overruling one another's decision. If one division bench of a High Court is unable to distinguish a previous decision of another division bench, and holding the view that the earlier decision is wrong, itself giver effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court.

As far as we are aware it is the uniform practice in all the High Courts in India that if one division bench differs from an earlier view on a question of law of another division bench, a reference is made to a larger bench.

21. Be that as it may, we are of the view that having regard to our finding that the suit stood abated on June 10, 1964 by virtue of the provisions of Section 3 of the Amending Act, the original defendant, Seetharama Rao became a statutory tenant of the premises in question and he could not be evicted from the premises except in accordance with the procedure specified in the principal Act. The position would not have been different even if a decree for eviction had been passed against him before June 10, 1964 and the decree had not been executed or satisfied in full on that date. The several decisions on which reliance was placed by the Division Bench for determining the character of possession of the original defendant, Seetharama Rao after the expiry of the notice given under Section 106 of the Transfer of Property Act were not relevant for the purpose of this case because in none of them there was any occasion to consider the effect of a provision similar to Section 3 of the Amending Act. We, therefore, do not agree with the finding of the division bench that the original defendant was a trespasser in possession of the premises in question after June 10, 1964.

22. We also find it difficult to agree with the finding of the division bench that the premises in question was not a 'building' as defined in Section 2(2) of the principal Act. The reason given by the division bench for holding that the building in question was not a 'building' which was either 'let' or 'to be let' separately for residential or non-residential purposes. It is necessary to extract that part of the judgment of the division bench where the above question is dealt with :

> The definition of the word 'building' in Section 2(2) states :
>
> 'building' means any building or hut or part of a building or hut, let or to be let separately for residential or non-residential purposes . . .

Consequently it is not every building that comes within the scope of the Act, but only a building let or to be let separately for either of the two purposes. Admittedly on June 10, 1964 the suit building was not let because the tenancy came to an end by February 29, 1964 and late Seetharama Rao was not occupying the building from March 1, 1964 as a tenant, as found by us. Therefore, the only other question is, whether the suit building can be said to be a building to be let separately for non-residential purposes on June 10, 1964. We have already referred to the claim of the plaintiff in his plaint that he needed the building for his own use and the contention of late Seetharama Rao in his written statement dated April 25, 1964 that the plaintiff was merely anxious to extort higher rent and for that purpose had from time to time approached him; that although he was prepared to pay a reasonable rent, he was not willing to pay anything exorbitant and that it is because of that the plaintiff had instituted the present suit on a pretense of requiring it for his own business. With reference to the notice Ex. P-2, late Seetharama Rao stated that that notice was merely in keeping with the previous notices to the same effect which were not intended to be acted upon. However before the trial Judge the claim of the plaintiff that he required the premises for his own need was not put in issue and no issue was framed with reference thereto. The learned Judge himself states in his judgment :

> On the relevant date, undoubtedly there was no letting of the building and it is nobody's case that the same was to be let.

The correctness of this statement found in the judgment of the learned Judge, namely, that it was nobody's case that the building was to be let has not been challenged either in the ground of the appeal filed before this Court or in the arguments before us. Therefore we have to proceed on the basis that it was not the case of the defendants that the plaintiff wanted to let the premises in question. This Court has construed the relevant expression, namely, 'building to be let' occurring in

Section 2(2) of the Act as meaning 'building intended to be let' in R. K. Veerappa Naidu v. N. Gopalan ((1961) 1 MLJ 223). In the present case on June 10, 1964 it was not the case of the defendants that the building was intended to be let and it was not also their case that at any stage thereafter the plaintiff intended to let the suit building. Therefore, it follows that the suit building did not come within the purview of the Act as a result of the Amending Act 11 of 1964.

23. The reason given by the division bench for holding that the building in question was not a 'building' within the meaning of Section 2(2) of the principal Act appears to be a strange one.

24. A definition clause does not necessarily in any statute apply in all possible contexts in which the word which is defined may be found therein. The opening clause of Section 2 of the principal Act itself suggests that any expression defined in that section should be given the meaning assigned to it therein unless the context otherwise requires. The two-fold reasoning of the division bench for holding that the building in question was not a 'building' is that on June 10, 1964 (i) there was no lease in force and hence it was not let, and (ii) that on that date the plaintiff had no intention to lease it and therefore it was not be let. We are of the view that the words "any building . . . let . . .", also refer to a building which was the subject-matter of a lease has been terminated by the issue of a notice under Section 106 of the Transfer of Property Act and which has continued to remain in occupation of the tenant. This view receives support from the definition of the expression 'tenant' in Section 2(8) of the principal Act which includes a person continuing in possession after the termination of the tenancy in his favour. If the view adopted by the division bench is accepted then it would not be necessary for a landlord to issue a notice of vacancy under Section 3 of the principal Act when a building becomes vacant by the termination of a tenancy or by the eviction of the tenant when he wants to occupy it himself. In law he cannot do so. He would be entitled to occupy it himself when he is permitted to do so under Section 3(3) or any of the provisions of Section 3-A of the principal Act. This also illustrates that the view of the division bench is erroneous. We, therefore, hold that the building in question was a 'building' within the meaning of that expression in Section 2(2) of the principal Act on the date on which Section 3 of the Amending Act became operative.

25. It thus becomes clear that the suit came to an end in the eye of law on June 10, 1964 and the original defendant became entitled to the protection of the principal Act. He could thereafter be evicted from the building only after an order was made by the Controller under any of the provisions of the principal Act which conferred jurisdiction on him to do so. As mentioned earlier, no formal order was passed by the High Court on its original side stating that the suit had abated on June 10, 1964 till the death of the original defendant which took place on January 15, 1968. Owing to certain proceedings which were instituted by one or the other of the parties, the case was treated as pending proceeding on the file of the High Court although in law, it was not open to the court to proceed with it after June 10, 1964.

26. The next significant step that was taken before the High Court was the application made by the appellant in the year 1973 requesting the Court to permit him to amend the plaint by the inclusion of a prayer for possession against defendants 2 to 10 on the basis that they were not 'tenants' as defined in Section 2(8) of the principal Act. That application was allowed. Defendants 2 to 10 thereafter filed their written statements and the issues framed in the suit were recast in the light of the pleadings. The learned trial Judge, as stated above, disposed of the suit as a fresh one as against defendants 2 to 10 without recording a finding on the question whether it had abated on June 10, 1964. The learned trial Judge does not state in the course of its judgment the date from which the proceeding was treated as a fresh suit. In the instant case, the suit itself was originally filed on

March 2, 1964. The original defendant died on January 15, 1968. Even if the proceeding was treated as a fresh suit against defendants 2 to 10. It could be treated as such only from a date subsequent to January 15, 1968 on which date the original defendant died sine the contention of the plaintiff which found favour with the learned single Judge and the division bench of the High Court was that defendants 2 to 10 who were legal representatives of the original defendant could not succeed to the tenancy right of the original defendant. In the instant case, since the plaintiff based his claim on the above contention in the year 1973 when he made the application for amendment of the plaint, the date of the institution of the fresh suit could not be earlier than the date on which the application for amendment was made even if it was permissible to do so. By his judgment, the learned single Judge passed a decree for possession against defendants 2 to 10 and for damages to be determined under Order 20, Rule 12 of the Code of Civil Procedure without specifying the date from which damages would be payable. In the absence of such specification, the plaintiff became entitled to claim damages under Order 20, Rule 12 of the Code of Civil Procedure without specifying the date from which damages would be payable. In the absence of such specification, the plaintiff became entitled to claim damages under Order 20, Rule 12 of the Code of Civil Procedure even from the date of the suit, i.e. March 2, 1964. The division bench by its judgment affirmed that part of the decree of the trial Court. The direction for payment of mesne profits given in the decree of the trial Court without specifying the date from which damages should be computed could not have been passed consistently with its judgment in which it had been stated that the suit was being treated as a fresh suit. This defect, however, is of a minor character. What is more fundamental in this case is that it was not permissible for the trial Court to treat the proceeding which had been instituted against the original defendant prior to June 10, 1964 as a live proceeding which could be converted into a fresh suit instituted against defendants 2 to 10 after the death of the original defendant, Seetharama Rao. An amendment of a plaint by inclusion of a new prayer or by addition of new parties can be made only where a suit is pending before a court in the eye of law. On June 10, 1964, the entire proceedings commenced with the plaint filed on March 2, 1964 stood terminated and there was no plaint in a live suit which could be amended by the addition of new parties and the inclusion of new prayer. We are of the view that the addition of new parties which took place after the death of Seetharama Rao and the amendment of the plaint in the year 1973 and the passing of the decree by the trial Judge against defendants 2 to 10 who were not parties to the suit prior to June 10, 1964 on a cause of action which accrued subsequent to January 15, 1968 were all without jurisdiction. It was, however, argued on behalf of the plaintiff before us relying upon the decision of this Court in B. Banerjee v. Anita Pan ((1975) 2 SCR 774 : (1975) 1 SCC 166) that since the parties had gone to trial with open eyes knowing fully that the plaintiff was relying upon a cause of action which accrued in his favour after the death of the original defendant and on the basis of the amendment of the plaint in the year 1973, the decree passed by the trial Court and affirmed by the division bench of the High Court should not be interfered with in the interests of justice and equity. It is no doubt true that in the decision referred to above, this Court permitted the parties to file fresh pleadings and to prosecute the proceedings after the disposal of the case by this Court having regard to the delay which had already ensued. It was possible for this Court to do so in that case because there was no legal impediment as we have in the present case. To repeat, in the present case, the suit abated by reason of an express provision in a statute on June 10, 1964, the new cause of action on which the plaintiff depended accrued on January 15, 1968, i.e. the date of the death of the original defendant, the plaint itself was amended in the year 1973 claiming relief against defendants 2 to 10 not as legal representatives who inherited the tenancy right of the original defendant but as persons who had not inherited the said right. It is thus seen that there was no proceeding in the eye of law pending after June 10, 1964, the cause of action on the basis of which relief was claimed was totally different and the persons against whom the relief was sought were also different. Parties could not either by

consent or acquiescence confer jurisdiction on court when law had taken it away.

27. In these circumstances, we feel that the only course which we can adopt is to set aside the findings of the trial Court and of the division bench on issues relating to the claim of the plaintiff to get possession of the property from defendants 2 to 10 on the ground that they were not statutory tenants, i.e. issues Nos. 4 and 6 and to leave the questions involved in them open reserving liberty to the parties to agitate them in appropriate proceedings. In view of our finding on issue No. 3, we hold that the decree passed by the trial Court and the appellate Court are unsustainable.

28. We accordingly allow the appeal, set aside the decrees passed by the trial Court and by the division bench of the High Court and dispose of the suit as having abated on June 10, 1964. The findings on issues Nos. 4 and 6 are set aside without expressing any opinion on them reserving liberty to the parties to agitate the questions in appropriate proceedings. Having regard to the peculiar circumstances of the case, we direct the parties to bear their own costs throughout.

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