

K. K. Krishnan

Vs

M. K. Vijaya Ragavan

Civil Appeal No. 140 of 1979

(R. S. Pathak, O. Chinnappa Reddy JJ)

30.07.1980

JUDGMENT

CHINNAPPA REDDY, J. –

1. The respondent-landlord filed a petition for eviction of the appellant-tenant from the premises in dispute under Section 11(4)(i) of the Kerala Buildings (Lease and Rent Control) Act 2 of 1965, on the ground that the appellant has sublet the premises without the consent of the landlord. The petition had a chequered career but finally the Rent Controller ordered eviction by his Order dated July 31, 1974. The order of the Rent Controller was confirmed, successively by the Subordinate Judge, the District Judge and the High Court. The tenant has now preferred this appeal by special leave of this Court under Article 136 of the Constitution.

2. Shri Govindan Nair learned counsel for the appellant submitted that under Section 108(j) of the Transfer of Property Act, 1882, it was a term of every lease that the lessee might sublease the whole or any part of his interest in the property and, therefore, unless the lease expressly prohibited the lessee from subletting the whole or part of the premises, the landlord could not have recourse to Section 11(4)(i) of the Kerala Buildings (Lease and Rent, Control) Act.

3. In order to appreciate the submission of Shri Govindan Nair, we may set out the relevant statutory provisions. Section 108(j) of the Transfer of Property Act, 1882, is as follows :

In the absence of a contract or local usage to the contrary, the lessor and the lessee of the immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased :

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(j) the lessee may transfer absolutely or by way of mortgage or sublease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease;

4. Section 11 of the Kerala Buildings (Lease and Rent Control) Act 2 of 1965, to the extent that it is relevant is as follows :

11. (1) 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 :

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(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 sublets the entire building or any portion thereof if the lease does not confer on him any right to do so.

5. The submission of Shri Govindan Nair was that if the lease did not expressly prohibit subletting, the provision in Section 108(j) of the Transfer of Property Act which enabled a lessee to sublease the whole or any part of his interest in the property had necessarily to be read into every lease as one of its terms, and so read, it followed that the lease conferred on the tenant the right to sublet "the entire building or any portion thereof" so as to disentitle the landlord from seeking eviction of the tenant under Section 11(4)(i) of the Kerala Act. We are unable to agree with this submission.

6. Read plainly and without gloss, Section 11(4)(i), simply and clearly, means that a tenant may be evicted on the ground of subletting unless such subletting is permitted by a term of the lease itself or by subsequent consent of the landlord. What is necessary is an application of the mind and the resulting consensus between the landlord and the tenant. If the clause "if the lease does not confer on him any right to do so" was not there in Section 11(4)(i) the position would be unarguable that Section 108(j) would offer no protection. That much was also conceded by Shri Govindan Nair. In our opinion, the addition of the clause did not improve matters for the tenant. It only clarified matters to this extent that the right to sublet could be conferred on the tenant either at the time of the lease or subsequently, but it has to be conferred : it could not be claimed unilaterally by the tenant. To interpret Section 11(4)(i) in the manner suggested by Shri Govindan Nair would be to rewrite the provision as follows : "If the tenant ... without the consent of the landlord, transfers his right under the lease or sublets the entire building or any portion thereof, though prohibited by the lease from doing so". That, we are not called upon to do. A little over the reason for Section 11(4)(i) will also throw some light. Quite obviously, the legislature thought that the tenant whose tenancy was well secured and protected by the rights conferred by the Buildings (Lease and Rent Control) Act should alone be entitled to such security and protection and that the tenant should not be allowed to profit by the protection given to him by subletting the premises and extending the protection to others beside himself, unless the landlord by his act agreed to such a course. Where the landlord had himself agreed that the tenant could sublet, the question would not arise. Therefore, Section 11(4)(i) provides that subletting shall be a ground for eviction but not if it was by agreement of the landlord.

7. In *V. Dhanapal Chettiar v. Yesodai Ammal* (AIR 1979 SC 1745, 1747, 1748 : (1979) 4 SCC 214, 218, 219) a Bench of seven Judges of this Court had to consider the question whether notice under Section 106 of the Transfer of Property Act determining the lease was necessary before a landlord could move the Rent Controller or other appropriate authority for the eviction of the tenant under the various State Rent Acts. The court held that it was not necessary and Untwalia, J., speaking for the court, said : (SCC p. 218, para 5)

Section 108 deals with the rights and liabilities of lessors and lessees. Many State Rent Acts have brought about considerable changes in the rights and liabilities of a lessor and a lessee, largely in

favour of the latter, although not wholly. The topic of transfer of property other than agricultural land is covered by Entry 6 of List III in the Seventh Schedule to the Constitution. The subject being in the Concurrent List, many State Rent Acts have by necessary implication and many of them by starting certain provisions with a non obstante clause have done away with the law engrafted in Section 108 of the Transfer of Property Act except in regard to any matter which is not provided for in the State Act either expressly or by necessary implication.

Later, he said : (SCC pp. 218-219, para 6)

But when under the various State Rent Acts either in one language or the other, it has been provided that a tenant can be evicted on the grounds mentioned in certain sections of the said Acts, then how does the question of determination of a tenancy by notice arise ? If the State Rent Act requires the giving of a particular type of notice in order to get a particular kind of relief, such a notice will have to be given. Or, it may be, that a landlord will be well advised by way of abundant precaution and in order to lend additional support to his case, to give a notice to his tenant intimating that he intended to file a suit against him for his eviction on the ground mentioned in the notice. But that is not to say that such a notice is compulsory or obligatory or that it must fulfil all the technical requirements of Section 106 of the Transfer of Property Act.

8. It is clear from what has been said that not all the rights conferred on landlord and tenant by Section 108 and other provisions of the Transfer of Property Act have been left in tact by the various State Rent Acts and that if a State Rent Act makes provision for eviction on certain specified grounds, eviction cannot be resisted on the basis of rights conferred by the Transfer of Property Act. Section 108(j) of the Transfer of Property Act stands displaced by Section 11(4)(i) of the Kerala Buildings (Lease and Rent Control) Act and is not defence to an action for eviction based on Section 11(4)(i).

9. We are satisfied that the appeal is without merit and is accordingly dismissed with costs.

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