K. Achyuta Bhat

Vs

Veeramaneni Manga Devi and Another

Civil Appeal No. 2468 of 1982

(CJI R. S. Pathak, S. Natarajan JJ)

23.09.1988

JUDGMENT

NATARAJAN, J. –

1. This appeal by special leave by a tenant arises out of a common judgment rendered by the High Court of Andhra Pradesh in four civil writ petitions. Two of the revision petitions were filed by the appellant herein and the other two were filed by one Narsimha Murthy, the second respondent herein. By a common judgment the High Court dismissed all the four revision petitions While Narsimha Murthy has not preferred any appeal the appellant has filed this appeal by special leave to question the legality and propriety of the decree for eviction passed against him on the ground he had unauthorisedly subject the leased premises to the second respondent for running a hotel.

2. Originally the building bearing door Nos. 7-2-606, 607, 617 and 618 (old door No. 2540) Rashtrapati Road, Secunderabad belonged to one Bhima Rao. The appellant took the ground floor of the premises on lease in the year 1953 from the said Bhima Rao on a monthly rent of Rs. 250 for running a hotel in the name and style of Sharada Bhavan. In or about September 1967 Bhima Rao conveyed the premises by means of a Deed of Gift to his daughter Manga Devi, the first respondent herein and the appellant duly attorned his tenancy and was paying here the rent. After August 1969 the hotel came to be run by the second respondent instead of the appellant. As the first respondent had reasons to believe that the appellant had either transferred his rights under the lease or sublet the leased premises to the second respondent, she terminated the tenancy by means of a notice with effect from January 31, 1971 and called upon the appellant to surrender possession thereafter. The appellant refused to vacate and sent a reply refuting the allegations contained in the notice issued to him. This led to the first respondent filing a petition under Section 10 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short 'the Act' hereafter) to seek the eviction of the appellant and the second respondent on three grounds viz. (1) wilful default in payment of rent, (2) unauthorised subletting and (3) causing waste to the property. The Rent Controller ordered eviction on the second and third grounds, The appellant and the second respondent preferred separate appeals to the Appellate Authority and both the appeals were dismissed. Thereafter the two affected parties filed two revisions each against the dismissal of the appeals and the High Court clubbed all the four revisions and rendered a common judgment dismissing all the revision petitions. The High Court, however, affirmed take finding of the courts below only on the ground of subletting and consequently, the sole question for consideration in this appeal is whether the High Court has erred in law in upholding the order for eviction passed by the first two courts on the ground of subletting.

3. Dr. Chitale, learned counsel for the appellant took us through the terms of the agreement Ex. R-

14 entered into between the appellant and the second respondent as well as the relevant portions of the judgments of the courts below and the High Court and argued that this was a case where the appellant had only transferred the managing rights of the hotel to the second respondent and hence there was no basis nor material for the Rent Controller or the appellate court to hold that the appellant had sublet the leased premised to the second respondent and therefore the High Court too was in error in confirming the order of eviction passed against the appellant and the second respondent. The learned counsel further contended that neither the agreement nor the conduct of the parties afforded and ground for taking the view that the appellant had transferred his rights under the lease or had sublet the premises to the second respondent, and on the other hand there was adequate material to show that the appellant had retained his rights in the leased premises notwithstanding his placing the hotel business in the hands of the second respondent. To substantiate these contentions Dr. Chitale laid stress on certain clauses in the agreement which seek to emphasise that the transfer of rights pertained to the business alone and not the leasehold rights of the appellant in the leased premises. The clauses referred to are as follows. Clause a sets out that the first party (the second respondent) to manage the said Sharada Bhavan with all the furniture etc." Clause 7 interdicts the second party form permitting "the use of the premises for any purpose other than that for which it is being used viz. as a vegetarian restaurant" without the consent in writing of the first party. Clause 8 enjoins the second party to "maintain the standard and reputation which the said business has earned and acquired". Clause 9 prohibits the second party from assigning or under letting or otherwise parting with the business without the permission in writing of the first party. Clause 11 stipulates that the second party shall observe all the rules and regulations governing the licences granted to the first party by the municipality, police etc. and further sets out that if any breach is committed by the second party he should indemnify the first party. Under Clause 13 the first party has reserved a right to inspect the business at all reasonable times to satisfy himself that the second party was fulfilling the conditions set out in the agreement. Clause 15 provides that on the expiry of the agreement the second party should "peacefully and quietly surrender and hand over possession of the business to the first party together with all the furniture, fixtures, utensils etc." Clauses 16 and 17 are of significance for both parties and, therefore, they are extracted in full :

> 16. The lease of the premises wherein the said business is being run, shall continue to be enjoyed exclusively by the first party at all times, and first party shall be liable to pay the monthly rent of Rs. 250 or any other enhanced rent that may be agreed upon between the first party and the landlord and in such event the second party shall pay to the first party the difference between the present rent of Rs. 250 and the enhanced rent along with the monthly amounts payable vide clause (2) hereof, and shall observe faithfully all terms and conditions of the agreement of tenancy between the first party and the owner of the premises. It is clearly understood and agreed this agreement is only with respect to the running of the said business on a "HURAFA" basis to the second party and not subletting or under letting of the premises housing the said business.
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> 17. The essence of this agreement is that the second party shall run the said business on his own account making use of the existing property such as furniture, fixture, etc. which continue to belong to the first party without any proprietary rights or interest to the second party on any of the said property. It is distinctly understood and agreed between the parties hereto that the second party shall not be entitled to obtain any credit or accommodation from any third party on the security of the said business. The parties hereto agree that the second part shall carry on the said business on his own account and responsibility and the first party shall not be liable in any manner or

to any extent in respect of the second party's liabilities arising out of his running the said business or otherwise.

Placing reliance on these clause it was seriously canvassed on behalf of the appellant that the agreement was explicit in its terms and there was no ambiguity and as per the terms the transfer effected was only the business of running the hotel and not the appellant's interest in the leased property and no subtenancy was created in favour of the second respondent.

4. The appellant's counsel urged that in almost identical circumstances this Stance this Court has held in Md. Salim v. Md. Ali ((1987) 4 SCC 270) that the transfer effected was only the right to manage the business run by the lessee and there was no transfer of any interest of the lessee in the business premises. It was the further contention of Dr. Chitale that in all such cases the courts must look to the dominant indention of the parties while effecting the transfer to find out whether the transfer amounted to a subletting of the leased premises. A reference was made to the decision in Dwarka Prasad v. Dwarka Das Saraf ((1976) 1 SCC 128 : (1976) 1 SCR 277) in this behalf.

5. Disputing the contentions of Dr. Chitale Mr. Krishnamurthy Iyer, learned counsel appearing for the first respondent, stated that the intention of the parties and the true nature of the transaction between them was the handing over of the hotel on a permanent basis to the second respondent together with the tenancy rights of the appellant. Mr. Iyer said that for obvious reasons the parties had to camouflage the real nature of the transaction, by making it appear that the managing right of the business alone were transferred but the truth could not be suppressed and hence the lower courts had rightly held that the transfer had all the trapping of subletting and the appellant was therefore liable for eviction. It was urged that in view of the concurrent findings rendered against the appellant by the Rent Controller and the Appellate Authority, the High Court could have very well declined to go into the merits of the findings without re-appraisal of the evidence but seven so the High Court had given the appellant the indulgence of a detailed examination of the evidence for itself and has after such exercise confirmed the findings of the courts below and as such, there is no need of justification for any further examination the contentions of the appellant. The learned counsel submitted that if nevertheless the case of the appellant has to be considered once over again, then the agreement, though subtly wounded, provided adequate material to show that the transfer of the business had brought about a subletting of the premises also. The manner in which the hotel had been run by the second respondent, it was added, afforded additional material to prove the factum of subletting of the premises. Mr. Krishnamurthy Iyer drew our attention to several terms in the agreement to which we shall advert to in due course, to substantiate his contentions. The learned counsel also placed for out consideration a decision of Alagiriswamy, J., as he then was, in M. Rodgers v. M. Prakash Rao Naidu ((1969) 1 Mad LJ 332 (Mad HC)) and of this Court in Bhagwan Das v. S. Rajdev Singh ((1971) 3 SCC 852).

6.Since both the parties lay emphasis upon the terms of the agreement to support their respective contentions, it is necessary that we look into the terms of the agreement for ourselves. The preamble sets out that the terms "first party" and "second party", connoting the appellant and the second respondent, will wherever the context permits include their heirs, successors, administrators and assigns. The agreement would say that the first party, as the owner of the vegetarian restaurant "Sharada Bhavan" has agreed to allow the second party to manage the said hotel with all the furniture etc. The agreement is for a period of eleven months from September 1, 1969 and thereafter the same could be renewed or extended for any further period by mutual consent except in the event of the first party being evicted, in which event the second party would not be entitled to any compensation for any loss or damage caused to him by reason of the eviction. Clause 2 provides that

"in consideration of obtaining on hire on munafa basis of the business together with all the furniture etc. the second party should pay to the first party a a sum of Rs. 750 per month during the period of first eleven months and thereafter at the rate of Rs. 900 per month during the subsequent renewed or extended period". As per Clause 3 the second party should pay all taxes, fees, rates and other statutory outgoings in respect of the business and if any loss is caused to the first party by non-payment, the latter was entitled to recover all such charges from the second party and would also be entitled to cancel or terminate the agreement forthwith. According to Clause 4 the second party was responsible for not only payment of all expenses and charges relating to the running of the business but also for carrying out "repairs to business premises, painting, colour wash, etc. and the like". The same clause empowers the second party "to appoint, dismiss, promote or otherwise deal with all members of the staff and employees of all categories" and makes him liable "for all claims and demands relating to the period covered by the agreement". Clause 7 prohibits the second party from using the premises for and purpose other than for running a vegetarian restaurant without the consent of the first party. Clause 9 interdicts the second party form assigning or underletting or otherwise parting with the business without the written permission of the first party. Clause 13 stipulates that the second party should allow the first party to inspect the business at all reasonable times to satisfy himself that the second party was fulfilling the conditions governing the agreement. Clause 15 sets out that "the second party shall on the expiry of the agreement peacefully and quietly surrender and hand over possession of the said business to the first party with all the furniture and fixtures, utensils, etc." Clause 16 which has already been extracted states that the lease of the premises shall continue to be enjoyed exclusively by the first party at all times, and the first party shall be liable to pay the monthly rent of Rs. 250 or any other enhanced rate that may be agreed upon between the first party and the landlord and in such an event the second party shall pay to the first party the difference between the present rent of Rs. 250 and the enhanced rent along with the monthly amounts payable by him. There is an explanatory clause stating that the agreement is only with respect to the running of the business and not to any subletting or underletting of the premises. Clause 17 stipulates that the business was to be run by the second party on his own account making use of the existing property such as furniture, fixture etc. belonging to the first party without any proprietary rights or interest and that the second party was not entitled to obtain any credit or accommodation from any third party on the security of the business and that he was to run the business on his own account and responsibility. Clause 18 makes the second respondent solely responsible for any consequences arising out of non-compliance with the orders passed by the competent authorities or for contravention of any of the provisions of the laws in force. Clauses 19 and 20 provide for the second respondent furnishing a cash security of Rs. 5000 and the first respondent being entitled to reimburse himself from out of the deposit amount any loss or damages suffered by him on account of any default committed by the second party.

7. On a reading of the various provisions of the agreement we are unable to accept the contentions of the appellant that what was transferred was only the hotel business and not the appellant's interest in the leased premises as a lessee. Though the agreement is initially for a period of 11 months the renewal clause would enable the parties to go on extending the lease for any length of time and as per the preamble, such extensions of lease would be binding upon the heirs, successors, administrators and assigns of both parties. The appellant had handed over the furniture, utensils etc. to the second respondent and received a sum of Rs. 5000 as security and he was entitled to reimburse himself for any loss or damage caused to the furniture and the utensils. Though the agreement stated that the appellant will continue to be the lessee of the property it is obvious that the rent of Rs. 250 per month was really to be paid by the second respondent through the appellant. There is a specified provision in Clause 16 that in the event of the landlord enhancing the rent, the

second respondent should pay "the difference between the present rent of Rs. 250 and the enhanced rent along with the monthly amounts payable as per Clause 2". It is therefore patent that the burden of paying the rent has been passed on to the second respondent and this can occur only if the premises had been sublet to him. The agreement confers proprietary rights on the second respondent over the hotel business inasmuch as he is made the sole authority to appoint the staff as well as terminate their services and also take disciplinary action against them. He is empowered to run the business on his own account and responsibility so long as he pays the appellant a sum of Rs. 750 per month for the first eleven months and thereafter a sum of Rs. 900 per month. All the taxes, fees, rates and other statutory outgoings are to be paid by the second respondent himself. Even the cost of effecting repairs to the business premises and painting and colour washing sets are to be borne by him alone. Clauses 7 and 9 though appearing to interdict the second respondent from changing the user of the premises or from assigning or subletting the business, really permit him to do so, if he obtains the consent or permission in writing of the appellant. If what was transferred to the second respondent was only the right to manage the hotel business, it is incomprehensible that he would be called upon to effect repairs to the leased premises or to undertake painting, colour washing etc. at his own expense. Similarly the question of the second respondent changing the user of the premises or assigning or subletting or parting with the business with the written consent of the appellant will not arise if his rights under the agreement were restricted to the management of the business alone. Clause 15 is curiously worded because it speaks about the second respondent "peacefully and quietly surrendering and handling over possession of the business to the first party with all the furniture, fixtures, utensils etc." The clause would show that what was really meant was surrendering the possession of the building but in order to conceal matters, the word 'business' has been used in the place of 'building'.

8. On a conspectus of all the terms of the agreement we feel that the High Court was fully justified in taking the view that the appellant and the second respondent had used all the ingenuity at their command to camouflage the real nature of the transaction and make it appear that there was only a transfer of the business in to together with the right to occupy the leased premises. The clause on which the appellant's counsel placed reliance to project the appellant's case are only make-believe clauses which have been introduced with a design and purpose viz. to conceal the real nature of the contract so that the landlord may not seek the eviction of the appellant on the ground of subletting the premises. In spite of the introduction of a few cleverly worded clauses the other clauses are self-revealing and go to show that the parties were fully aware of the vulnerability of their action and the risk of eviction ensuing therefrom. It is on account of such awareness the appellant has carefully provided in the agreement that in the seven of his being evicted from the premises he will not be liable to pay any compensation for any loss or damage resulting to the second respondent.

9. Besides the agreement, the manner in which the second respondent had been conducting the business would also show that he was not a transferee of the managing rights alone but he was a transferee of the business together with the appellant's interest in the leased premises also. The business turnover increased from Rs. 200 to Rs. 250 per day to Rs. 700 to Rs. 800 per day. The second respondent was assessed to income tax and sales tax in his own name as the proprietor of Sharada Bhawan and not as the manager of the hotel. He was recognised as the proprietor of the hotel and admitted to membership by the Hotel Owner's Association. He exercised absolute control over the business and over the members of the staff and was the sole authority to appoint them or terminate their services or take disciplinary action against them. He was not bound to render accounts to the appellant or share with him the profits or losses of the business. He became solely responsible to bear all the expenses and to pay all the taxes, public charges etc. Thus even the conduct of the parties afford material to conclude that what was transferred to the second respondent

was much more than the right to run the hotel business for a limited period. It is therefore futile for the appellant to say he had not parted with his interests in the leased premises to the second respondent.

10. As regards the decisions cited by Dr. Chitale we do not think that either of them can advance the appellant's case in any manner. In Md. Salim v. Md. Ali ((1987) 4 SCC 270) the facts were perceptibly different. That was also a case where the right of management of a shop run by a tenant was conferred on one Md. Salim and it was agreed between the parties that from out of the amount paid by Md. Salim, the lessee was to pay the rent to the landlord. The agreement, however, expressly stated that the transferor will remain the proprietor of the business, and that the licence for the business should stand in his name and that after a period of two years the transferee will restore the business along with the articles in good condition to the transferor. The transfer agreement hand been attested by the landlord himself. It was on these facts it was decided in that case that there was no transfer of interest in the business premises and what was transferred was only the right to manage the business. In the present case the agreement provides for the second respondent being allowed to run the business for any length of time as his own proprietary concern and to have all the benefits exclusively for himself. In the other case of Dwarka Prasad ((1976) 1 SCC 128 : (1976) 1 SCR 277) the court dealt with the application of the "dominant intention" test with reference to the facts of that case. The question there was whether a cinema theatre equipped with projectors and other fittings ready to be launched as an entertainment house was "accommodation", as defined in Section 2(1)(d) of the U.P. (Temporary) Control of Rent and Eviction Act, 1947, and if so, whether the Act "barricades eviction by the landlord because the premises let constitutes an 'accommodation'". It was in that context the court observed that where the lease is composite and has a plurality of purpose the decisive test is a dominant purpose of there demise. There is no occasion in this case for the test of 'dominant intention' being applied because there was and there can be no lease of the managing rights (sic of the) hotel business as such and on the contrary what was transferred was an outright transfer of the hotel together with the furniture, equipment etc. as well as the leasehold right of the erstwhile hotelier in the leased premises. The facts of this case bear a close similarity to the facts noticed in Bhagwan Das v. S. Rajdev Singh ((1971) 3 SCC 852). That was a case where the premises let out to one Usha Sales was put under the occupation of one Bhagwan Das and when the landlord sought the eviction of the tenant on the ground of subletting the plea raised was that Bhagwan Das had been appointed as an agent by Usha Sales for displaying and selling the project of Usha Sale and Bhagwan Das was in the occupation of the premises on his own behalf for the purposes of his business as an agent. The court, after perusing the agreement entered into between Usha Sales and Bhagwan Das held that the appellant was given complete control and supervision of the premise, and that the agreement was a curious mixture of inconsistencies and was plainly a clumsy attempt to camouflage the subtenancy which was intended to be created thereby The facts of the present case, have a striking similarity to the facts noticed in that case and, therefore, the same conclusion should be reached in this case also. Besides the abovesaid decision Mr. Iyer referred us to a decision of the Madras High Court in M. Rodgers v. N. Prakash Rao Naidu ((1969) 1 Mad LJ 332 (Mad HC)) where a tenant who was running a printing press in a leased building stopped the business and the manager began running the press as the lessee of the machinery without the tenant having any share in the business. On the landlord suing the tenant for eviction on the ground of subletting, the High Court held that since the machinery cannot be run unless it is placed in the premises where it is situated, the lessee of the machinery would get the advantage of the use of the business premises also and as such the lease amount stipulated for the lease of the machinery would also include the lease amount payable for the building and hence the transaction would clearly amount to the lessee subletting the building

simultaneously with the leasing out of the machinery. The present case warrants the same view being taken especially in the light of the recitals in the agreement which stipulate that the amount payable by the second respondent would compromise (sic comprise) in it the rent payable by the appellant landlord for the leased premises.

11. At the send of the arguments it was represented at there Bar that the second respondent has since vacated the premises and handed over the business to the appellant and that the appellant himself is now running the hotel through his son. We do not think the changed circumstances can affect the rights of the first respondent in any manner to have the appellant evicted on the ground of subletting.

12. In the light of our conclusions, the appeal fails and is dismissed. However, having regard to the fact that the appellant would require some time to find an alternate place to shift his hotel, he is granted six months' time from today to vacate the premises subject to his filing an undertaking with in four weeks from today on the usual terms. There will be no order as to costs.

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