

Shah Phoolchand Lalchand

Vs

Parvathi Bai

Civil Appeal No. 1347 of 1981

(L. M. Sharma, M. H. Kania JJ)

02.02.1989

JUDGMENT

KANIA, J. –

1. This is an appeal filed by special leave under Article 136 of the Constitution by the appellants who are the tenants against the respondent-landlady.
2. The appellants are a partnership firm and are the tenants of premises situate at No. 6 Kasi Chetty Street, G.T. Madras. They carry on business there. The respondent filed an eviction petition being H.R.C. No. 641 of 1975 in the Court of Small Causes, Madras against the appellants and one other partnership firm, carrying on business in the name and style of M/s. Adeshwar Glass Mart on the ground that the appellants had unlawfully and without the consent of the respondent sublet the said shop let out to the said M/s. Adeshwar Glass Mart and were liable to be evicted for unlawful sub-letting under the provision of Section 10(2)(ii)(a) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as "the said Rent Act"). M/s. Adeshwar Glass Mart were also joined by the respondent herein as respondents in the eviction petition on the ground that they were unlawful sub-tenants. The trial court held this ground established and passed a decree for eviction as sought by the respondent. The appellants preferred an appeal against this decision to the Appellate Authority under Section 23 of the said Rent Act, being the Court of Small Causes at Madras. The said appeal was numbered as H.R.A. 156 of 1979. The Appellate Authority dismissed the said appeal upholding the finding of unlawful sub-letting by the appellants. The appellants then preferred a civil revision petition being C.R.P. No. 44 of 1981 in the High Court of Judicature at Madras against the aforesaid decision. This revision petition was dismissed by the then learned Chief Justice of the Madras High Court. It is against this decision the present appeal is directed.
3. Mr. Nayar, learned counsel for the appellants has urged before us that the impugned judgment must be set aside as the eviction petition was filed against the appellant's firm and one other partnership firm, M/s. Adeshwar Glass Mart without joining any of the partners of the said firms as respondents or serving them as partners and hence, the eviction petition was not maintainable at all. He placed strong reliance on the decision of this Court in M/s. Chhotelal Pyarelal v. Shikarchand ((1984) 4 SCC 343 : (1985) 1 SCR 268 : AIR 1984 SC 1570). In that case an eviction petition was filed by the respondent-landlord against the appellant - partnership firm - under Clause 13(3)(vi) and (vii) of the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949. The appellant raised a preliminary objection that the application against the partnership firm was not maintainable without joining its partners as respondents. It was held by this Court that it is only by virtue of the provisions of Order XXX of the Code of Civil Procedure, 1908, that a firm can sue and be sued in its own name without the partners being impleaded. It was pointed out by Mr. Nayar that

the Code of Civil Procedure was not applicable to the proceedings under the said Rent Act either and hence, the ratio laid down in the aforesaid decision was directly applicable to the case before us. In our view, it is not open to Mr. Nayar to raise this contention at this stage at all. This contention is not one which would have been fatal to the eviction petition. Had this contention been raised in the trial court or even in the first appellate court, it would have been open to the respondent to amend the eviction petition and join the partners as respondents. In the aforesaid decision in Chhotelal Pyarelal case ((1984) 4 SCC 343 : (1985) 1 SCR 268 : AIR 1984 SC 1570) relied upon by Mr. Nayar, the objection to the maintainability of the petition was raised at the earliest stage and was wrongly negated by the trial court. In fact, this Court observed as follows : (SCC p. 345, para 2)

But we agree with the Division Bench of the High Court that this cannot by itself result in the dismissal of the application. It would be merely a case of misdescription of the respondents to the application and this misdescription can be corrected at any stage of the proceedings. There can be no doubt that the partners of the firm are before the court though in a wrong name.

4. In the case before us, no such objection has been raised at all till the stage of special leave and it is surely not open to the appellants to raise such an objection at a very late stage and thereby delay matters for a number of years. This contention must, therefore, be negated.

5. It was next submitted by Mr. Nayar that there was no evidence in the case to come to the conclusion that the appellants had sublet the shop to M/s. Adeshwar Glass Mart. In our view, there is no substance in this contention. There is evidence to show that M/s. Adeshwar Glass Mart was carrying on business at the said premises and that firm was carried on in the said premises even for some time during which the appellant's firm had ceased to carry on the business there. Moreover, although a notice was given by the respondent to the appellants and M/s. Adeshwar Glass Mart to produce their income tax returns, assessment orders as well as account books and ledgers for the relevant period, these were not produced. It was surely open to the trial court from these circumstances to come to the conclusion that had the account books and ledgers been produced, they would have shown that rent was received by the appellants from M/s. Adeshwar Glass Mart which would justify the finding of sub-letting. In these circumstances, this contention of Mr. Nayar must fail.

6. Although Mr. Nayar wanted us to undertake detailed scrutiny of the evidence and to reappraise the same, we fail to see how we are called upon to do so in an appeal under Article 136 of the Constitution.

7. In the result, the appeal fails and is dismissed with costs.

</html