

Shantilal Rampuria and Others

Vs

M/S Vega Trading Corporation and Others

Civil Appeal No. 331 of 1978

(M. M. Dutt, L. M. Sharam JJ)

01.08.1989

JUDGMENT

SHARMA, J. –

1. This appeal by special leave arises out of a suit filed by the appellants for eviction of the respondent-tenant (hereinafter referred to as 'the Corporation') from certain premises on Lalbazar Street, Calcutta, on the ground of sub-letting. The City Civil Court, Calcutta, decreed the suit, but on appeal by the tenant-Corporation, the Calcutta High Court reversed the judgment and dismissed the suit.

2. Admittedly the defendant-Corporation was inducted as a tenant under a registered deed of lease dated April 23, 1948 for period of three years from May 1, 1948. After expiry of the period in 1951, the Corporation continued in possession, and by holding over became a month to month tenant. The premises consists of a big room, described as room No. 3, along with a small room for the use of a darwan (porter), staying there as guard. The big room was, from time to time, leased out by the tenant-Corporation in portions to different sub-tenants and in 1960 the landlord brought a suit, registered as Ejectment Suit No. 978 of 1960, for the eviction of the Corporation on several grounds including sub-letting. In the meantime West Bengal Premises Tenancy Act, 1956 had been enacted, and the provisions of Section 13(1) (a) which are in the following terms, were relied on by the parties :

13. Protection of tenant against eviction. - (1) Notwithstanding anything to the contrary in any other law, no order or decree for the recovery of possession of any premises shall be made by any court in favour of the landlord against a tenant except on one or more of the following grounds, namely :

(a) Where the tenant or any person residing in the premises let to the tenant without the previous consent in writing of the landlord transfers, assigns or sub-lets in whole or in part the premises held by him;....

3. The tenant-Corporation contended that it was permitted to create sub-leases under clause 6 of the lease document which is quoted below and it cannot, therefore, be accused of sub-letting without the consent of the landlords :

That the lessees shall use the demised premises as office in connection with their business and shall be entitled to sublet the portion which may not be used by them.

It was asserted on behalf of the tenant-Corporation that all the sub-tenants had been inducted in the premises in question in pursuance of the aforesaid permission and before the expiry of the lease period in 1951. The City Civil Court decided the issue in favour of the tenant-Corporation on the ground that all the sub-tenancies had been created within the period covered by the lease deed and before coming in force of the West Bengal Premises Tenancy Act, 1956. The suit was held to be not maintainable also on the ground that a legally valid notice terminating the tenancy had not been served on the tenant. The suit was thus dismissed on August 30, 1962 by the judgment Ex. B(2).

4. The present suit was filed in 1972 alleging that the tenant-Corporation has, without the consent of the landlords, created fresh sub-tenancies in the premises in favour of other sub-tenants after the dismissal of the earlier suit. The case is that after the original lease exhausted itself by efflux of time, and otherwise also came to an end by the landlords' notice terminating it, the general permission under clause 6 of the lease deed, mentioned above, also disappeared. Alternatively the appellants have contended that even assuming that the term in clause 6 continues to bind the parties, it does not authorise the respondent-Corporation to sub-let the entire premises. The dominant purpose of the lease was actual user by the tenant itself for the purpose of running its office and clause 6 permitted it to sub-let only such portion which was left unused as surplus. The appellants have also alleged default of payment of rent, but the plea has been rejected by the trial court and has not been pressed before us.

5. The suit was defended by the respondent-Corporation contending that as held in the earlier suit the defendant was and is entitled to grant sub-tenancies, and the plaintiffs' case is fit to be dismissed. Reliance was placed, besides the plea of res judicata, on the language of clause 6 which according to the defendant continues to bind the parties. The City Civil Court rejected the defendant's case of res judicata and agreeing with the plaintiffs on the question of sub-letting, decreed the suit. It held that a number of sub-tenants who were in possession of the premises at the time of the earlier suit have been substituted later by another set of sub-tenants after the coming into force of the Act. The learned Judge also agreed with the plaintiffs that the entire premises was let out to sub-tenants which was not consistent with the terms of the permission as mentioned in clause 6. The court, holding that the tenant had violated the provisions of the 1956 Act, passed a decree for eviction in favour of the plaintiffs. The tenant-Corporation appealed before the Calcutta High Court.

6. The High Court disagreed with the City Civil Court on the interpretation of clause 6 of the lease deed, and held that by reason of the judgment in the earlier suit, the present suit was barred by the rule of res judicata. The appeal was, accordingly, allowed and the suit dismissed.

7. Mr. B. Sen, the learned counsel appearing in support of the appeal contended that since large portion of the disputed property was sub-let to fresh sub-tenants after the institution of the earlier suit of 1960, there was no scope for applying the doctrine of res judicata to the present litigation. He inter alia argued that having regard to the change in the law brought about by the 1956 Act and specially in view of the provisions of Sections 13, 14 and 16, the appellants are entitled to a decree.

8. The factual position is that there are 16 sub-tenants as mentioned in Annexure B to the plaint who are occupying the disputed room now. Out of them 5 had been inducted before the 1960 suit and were parties thereto (as was rightly pointed out by the respondent-Corporation in its application dated December 17, 1973 for amendment of the written statement). The other 11 sub-lessees were let in after the earlier suit, when the 1956 Act was in force. The question is whether the creation of

these sub-tenancies violated the provisions of the Act. In the earlier suit all the sub-lessees were inducted during the period the lease was operative, i.e., much before the present Act was passed. The question of violation of the provisions of the present Act, therefore, did not arise there. It follows that so far this issue is concerned the earlier judgment cannot operate by way of res judicata.

9. The main question which remains to be decided is whether in the circumstances, the plaintiffs' case, based on alleged violation of the Act can be accepted. Section 14 enjoins that after the commencement of the Act no tenant shall, without the previous consent in writing of the landlord, sub-let the whole or any part of the premises held by him as a tenant; or transfer or assign his rights in the tenancy or in any part thereof. According to Mr. Tapash Ray, the learned counsel of the respondent-Corporation, clause 6 of the lease deed, which continued to bind the parties by reason of the Corporation holding over, must be treated to contain the necessary consent of the appellants. As has been seen earlier, this clause granted a general permission to the tenant to induct a sub-tenant. Can such a provision in general terms satisfy the requirements of the Act? Or, as has been suggested on behalf of the appellant, the consent contemplated by the Act has to be specific in regard to each sub-lease?

10. Section 13 protects a tenant from eviction except on the grounds enumerated therein and one of the grounds in clause (a) of sub-section (1) is in the following terms :

(a) Where the tenant or any person residing in the premises let to the tenant without the previous consent in writing of the landlord transfers, assigns or sub-lets in whole or in part the premises held by him;

The language of Sections 13 and 14 by itself does not resolve the issue. However, the provisions of Section 16 which is quoted below clearly indicate that permission to the tenant to sub-let in general terms cannot be deemed to be consent for the purposes of Sections 13 and 14 :

16. Creation and termination of sub-tenancies to be notified. - (1) Where after the commencement of this Act, any premises are sub-let either in whole or in whole or in part by the tenant with the previous consent in writing of the landlord, the tenant and every sub-tenant to whom the premises are sub-let shall give notice to the landlord in the prescribed manner of the creation of the sub-tenancy within one month from the date of such sub-letting and shall in the prescribed manner notify the termination of such sub-tenancy within one month of such termination.

(2) Where before the commencement of this Act, the tenant with or without the consent of the landlord, has sub-let any premises either in whole or in part, the tenant and every sub-tenant to whom the premises have been sub-let shall give notice to the landlord of such sub-letting in the prescribed manner (within six months) of the commencement of this Act and shall in the prescribed manner notify the termination of such sub-tenancy within one month of such termination.

(3) Where in any case mentioned in sub-section (2) there is no consent in writing of the landlord and the landlord denies that he gave oral consent, the Controller shall, on an application made to him in this behalf either by the landlord or the sub-tenant within two months of the date of the receipt of the notice of sub-letting by the landlord or the issue of the notice by the sub-tenant, as the case may be, by order declare that the tenant's interest in so much of the premises as has been sub-let shall cease and that sub-tenant shall become a tenant directly under the landlord from the

date of the order. The Controller shall also fix the rents payable by the tenant and such sub-tenant to the landlord from the date of the order. Rents so fixed shall be deemed to be fair rent for purposes of this Act.

It is plain from the above that the Act contemplates that while one sub-tenant may be evicted another may continue in the premises as a tenant directly under him, depending on the circumstances. We are, therefore, of the view that previous consent in writing of the landlord with respect to each sub-letting separately is essential and a general authority to the tenant in this regard will not be sufficient in law. Our view is supported by the observations in *M/s Shalimar Tar Products Ltd. v. H. C. Sharma* ((1988) 1 SCC 70) a case arising under the Delhi Rent Control Act. An examination of Sections 14(1)(b), 16, 17 and 18 of the Delhi Rent Control Act would show that the two Acts (West Bengal Act and the Delhi Act) are similar so far the present question is concerned. In the present case, since it is not suggested on behalf of the respondent that consent of the appellants was obtained specifically for each of the sub-tenancies, the respondent-Corporation must be held to have violated Section 14. The appellants have thus, established the ground mentioned in Section 13(1)(a) and are entitled to succeed.

11. None of the sub-tenants has been impleaded in the present suit, but as it is not the case of the tenant-Corporation that any of them had sent any notice to the plaintiffs, the suit, so far the present respondent is concerned, cannot fail on the ground of their non-impleading. However, the sub-tenants cannot be bound by the finding in this suit that they have failed to serve a notice as prescribed by the Act on the plaintiffs and will be entitled to be heard if and when the plaintiffs seek their eviction. So far the sub-tenants who had been inducted in the premises earlier and were parties to the 1960 suit may have still a better claim on the strength of the decree in their favour and may insist that they would be entitled to continue in possession as tenants directly under the plaintiffs.

12. For the reasons mentioned above, the decision of the High Court is set aside and the decree of eviction passed by the City Civil Court against the respondent-Corporation is restored. The appeal is accordingly allowed with costs throughout.

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