

Raghunathi and another

Vs

Raju Ramappa Shetty

C.A.No. 2515 (N) of 1977

(N. D. Ojha, K. N. Saikia JJ)

09.01.1991

ORDER:-

1. This Civil Appeal by Special Leave has been preferred against the judgment dated 6th September, 1976 in Special Civil Application No. 2352/72 under Article 227 of the Constitution of India of the High Court of Judicature at Bombay. The facts in brief necessary for the decision of this appeal are that the appellants filed a suit against the respondent for recovery of possession over three shops in a building situate at Dadar in Bombay inter alia on the ground that the respondent was their tenant of the said three shops and he had sublet them without the consent of the plaintiff/ appellants and consequently was liable to be evicted therefrom. The suit was contested by the respondent but was decreed by the trial Court. An appeal filed by the respondent against the said decree was also dismissed. It is these two decrees which were challenged by the respondent in a petition under Art. 227 of the Constitution of India which was allowed by the judgment appealed against.

2. It has been urged by the learned counsel for the appellants that the concurrent finding recorded by the Courts below that the respondent had sublet the shops in question without the permission of the appellants has erroneously been set aside by the High Court in a petition under Art. 227 of the Constitution of India.

3. Having heard learned counsel for the parties, we find substance in the above submission. A perusal of the judgment appealed against indicates that the aforesaid concurrent finding of the Courts below was set aside by the High Court on two grounds. Firstly, it was held by the High Court that the fact that the alleged sub-tenants had left the premises showed that the dominant intention behind the agreements between the defendant and those persons was to create a leave and licence and not a lease. The second ground for setting aside the finding of the Courts below was that the burden of proof was wrongly placed upon the respondent. Both these grounds cannot be sustained. With regard to the first ground referred to above suffice it to point out that the tenant's liability to eviction arises when the fact of unlawful subletting is proved. At the date of the notice, if it is proved that there was unlawful subletting, the tenant is liable to be evicted. The mere fact that the sub-tenants may have left the premises after that date would be of no consequence. The view which we take finds support from the decision of this Court in *Gajanan Dattatraya v. Sherbanu Hosang Patel*, (1976) 1 SCR 535: (AIR 1975 SC 2156). In so far as the second ground is concerned it is again settled law that once the parties have been permitted to produce evidence in support of their respective cases and it is not their grievance that any evidence was shut out the question of burden of proof loses significance and remains only academic. In the instant case it is not the case of the respondent that he was precluded by the trial Court to produce any evidence. In this view of the

matter, the High Court apparently committed a manifest error of law in setting aside the decrees of the Courts below on the ground of burden of proof.

4. Both the grounds on which the High Court interfered with the decrees of the Courts below having been found to be unsustainable the judgment of the High Court deserves to be set aside. In the result, this appeal succeeds and is allowed. The judgment of the High Court is set aside and the decree for eviction passed against the respondent is restored with costs which we quantify at Rs. 1,000/- (Rupees one thousand only).

5. Learned counsel for the respondent made a prayer that since the respondent is carrying on business in the shops in dispute some reasonable time may be granted to him to vacate the premises. These shops were let out to the respondent in the year 1960 and the rent payable by him, we are informed, is Rs. 311 / - per month. The respondent is granted time till 31 st January, 1993 to vacate the shops in question subject to the condition that he pays a sum of Rs. 500/- per month as rent with effect from 1st February, 1991 and furnishes an undertaking in this Court within one month containing the usual terms including the terms that he would pay rent at the rate of Rs. 500/- per month with effect from 1st February, 1991 and would vacate the premises on or before 31st January, 1993 and deliver vacant possession to the appellants. In case of failure to furnish the said undertaking, the decree for eviction shall become executable immediately after the expiry of one month from today.

Appeal allowed.

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