

P. A. Thomas and Another

Vs

M. Mohammed Tajuddin and Another

Civil Appeal No. 1569 of 1987

(K. Ramaswamy, G. B. Pattanaik, Faizanuddin JJ)

19.09.1996

ORDER

1. A Bench of three Judges of this Court by judgment dated 26-5-1989 [P. A. Thomas v. M. Modh. Tajuddin, (1989) 3 SCC 240] while negating all the contentions raised by the appellant-tenant found merit in the contention raised by the counsel that if the first appellant was in effective control over the management of the business of the partnership to which he had taken two other partners, it would amount that he had not sub-let the premises and that he would be "a tenant" within the meaning of sub-clause (a) of clause (ii) of sub-section (4) of Section 2 of the Madras City Tenants' Protection Act, 1922.

2. Sub-section (4) of Section 2 defines the term 'tenant' in relation to any land. Clause (i) thereof runs as follows :

"2. (4)(i) means a person liable to pay rent in respect of such land, under a tenancy agreement express or implied."

3. Sub-clause (a) of clause (ii) of sub-section (4) of Section 2 of the said Act runs as follows :

"2. (4)(ii)(a) any such person as is referred to in sub-clause (i) who continues in possession of the land after the determination of the tenancy agreement."

4. The relevant part of sub-clause (b) of the said clause runs as follows :

"2. (4)(ii)(b) any person who was a tenant in respect of such land under a tenancy agreement to which this Act is applicable under sub-section (3) of Section 1 and who or any of his predecessors-in-interest had erected any building on such land and who continues in actual physical possession of such land and building, notwithstanding that -"

5. Since there is no evidence on this issue this Court thought that a finding was required to be given by the High Court and if required, the matter may be sent to the trial court for recording the evidence for submission thereof to the High Court. In furtherance thereof, the High Court remitted the matter to the trial court for recording further evidence afresh which was adduced.

6. After consideration of the evidence, the High Court noted that in para 8 of the plaint it is stated that the business of the first defendant was converted into a partnership in the name and style of "P. A. Thomas and Co." taking the second defendant who was looking after the business and another as

partners. The averment that the second defendant was looking after the business was not specifically denied in the written statement. Therefore, no issue was raised in that behalf. The first defendant was not continuing to have effective control over the business even after its conversion into a partnership firm. The High Court pointed out that though the partnership deed was filed in this Court in the appeal, the same was not produced either in the trial court; nor was it produced in the High Court. The first defendant did not choose to examine himself as a witness after remand. Only the second defendant who was examined as DW 1, has reiterated his evidence given on earlier occasion. The first defendant was doing business only up to 1970 in the suit property and thereafter he never turned up. On the other hand, the business was being run in the suit property exclusively by the second defendant. It was also noted by the High Court that the first defendant was doing business in Mundakkayam as pointed out in para 5 of the judgment. The High Court has recorded the finding that after remand, DW 1 admitted that his father, the first defendant, was living in Mundakkayam, Kerala State and he as his son was doing the business in the suit property at Cumbum. The evidence of DW 2 is also to the same effect and he claimed that it was he who remitted the rent by money orders to the plaintiffs and later deposited the rent in the Court. After considering the entire evidence on record and drawing an adverse inference against the first defendant for his failure to get himself examined as a witness, though opportunity was given to him, a finding was recorded by the High Court that the first defendant was not in exclusive control of the business. On the other hand, the second defendant was doing the business in the premises after converting it into partnership firm. This being the finding of fact, we do not think that there is any question of law involved.

7. In view of the definition of 'tenant' and in view of the fact that the first defendant to whom the open land was let out, had converted individual business into a partnership business and was not having any control over the property or the business, it can be said that he had sub-let the property leased out to the first defendant, to the partnership firm and thereby, contravened the conditions of the lease. Accordingly, he became liable for ejectment. The decree of ejectment granted by the trial court and affirmed by the High Court was thereby not vitiated by any error of law warranting interference.

8. The appeal is accordingly dismissed. No costs.