

Sree Balaji Krishna Hardware Stores

Vs

Srinivasaiah

(S.Saghir Ahmad, M. Jagannadha Rao JJ.)

06.02.1998

JUDGMENT

M.JAGANNADHA RAO, J.

1. Leave granted.

2. This appeal has been preferred by the tenant against the Judgment of the Madras High Court dated 30.8.1997 in C.R.P.No.1857 of 1992 confirming the order of eviction passed by the Rent Controller in R.C.O.P.No.2564 of 1986 dated 25.1.1990 as affirmed by the appellate authority in RCA No. 229 of 1990.

3. The eviction petition was filed by the respondent- landlord under the Tamil Nadu Building (Lease & Rent Control) Act, 1960 on the ground that the non-residential premises is required for the landlord's occupation namely, for the partnership business of both of his sons Sekhar and Madangopal who were doing business in a rented premises under the name and style of Sri Renuka Enterprises. During the pendency of the proceedings, Sekhar retired from the partnership. The business was continued by Madangopal. The appellant before us is the tenant who is sought to be evicted. He pleaded, inter alia that the requirement of the landlord was not bonafide and that in any event, several other tenanted portions occupied by other tenants for business purposes fell vacant during the pendency of the proceedings and the landlord was not acting bonafide in now using the same for the business of his son Madangopal.

4. Learned Single Judge of the High Court observed that the lower courts dealt with a question of res-judicata and did not squarely deal with the question of bonafide requirement. He then proceeded to deal with the question of bonafide requirement and held that inasmuch as these two sons were carrying on business in a rented premises, their father was entitled to sue for possession. The learned Judge then dealt with the objection raised by the tenant that certain other shops of the landlord fell vacant as admitted by PWs 1 and 2 and observed that the said witnesses had explained away this difficulty by saying that those portions which fell vacant had been given and were occupied by the daughters-in-law and other sons, because of the non-suitability of the premises for the son's business. He also observed that it was not the case of the tenant that those shops which so fell vacant were let out. Hence, according to the High Court as well as the lower Courts, it was to be assumed that the portions which fell vacant were not suitable for the purposes of Madangopal's business in glass and plywood.

5. It is contended in this appeal by the learned counsel for the tenant that looking at the plan of the building, it has a ground floor, first floor and a second floor. On the ground floor, the appellant-

tenant is occupying the shop which is on the right-hand side facing the road. There is another tenant in the shop on the left-hand side doing business under the name and style, Srinivas Glass Agencies. Both the shops face the road. Behind the shop occupied by the appellant on the right hand side was one of the shops which had fallen vacant during the pendency of the proceedings and which was said to have been given by the landlord to his daughter-in-law and other sons. There is a passage running behind the shop on the right occupied by the appellant-tenant and the shop in Srinivas Glass Agencies, running from the front side, upto the back side into the Godown.

6. The question is, assuming the landlord's requirement was bonafide, whether the landlord was justified in not giving the above shop to his son Madangopal and given it to his daughters-in-law and other sons. It is not stated that the daughters-in-law are having business and require a shop or that their need was greater than that of Madangopal. It has not been explained as to why the shop immediately behind the appellant's shop which could be reached from the front side through the passage between the appellant's shop on the right and Srinivas Glass Agencies on the left, was not suitable. In the absence of any explanation as to why this shop behind the appellant's shop was not found suitable, we are constrained to hold that the conclusion of Courts below that it was not suitable for the landlord's son business was not tenable. Learned counsel for the respondent-landlord said that the shop was not abutting the road but was behind the front shop occupied by the appellant and could be reached only through the passage between the 2 shops on the front side. We are unable to see why the said shop could be said to unsuitable for business in glass and plywood. In our view, the Courts below ought, on these facts to have come to the conclusion that the action of the landlord in not using the said shop behind the appellant's shop which so fell vacant, for his son's business and in allowing his daughters-in-law and other sons to use the same, was not bonafide. We accordingly allow the appeal, set aside the judgments of the High Court, the appellate authority & the Rent Controller and dismiss the eviction petition. The appeal is allowed accordingly.