

BOMBAY HIGH COURT

P.D. Aswani

Vs

Kavashah Dinshah

(Chagla, J.)

18.12.1953

JUDGMENT

Chagla, C.J.

1. Opponents Nos. 4, 5 and 6 who were defendants Nos. 1 to 3 in the suit obtained a lease from opponents Nos. 1, 2 and 3 who are the plaintiffs to the suit, on 27-3-1942. The lease was to commence from 1-4-1942, and its duration was up to 31-8-1943, with an option to the lessees to renew it for eight months. The lessees exercised the option and thereafter the lease was renewed from time to time & it was finally renewed on 1-11-1948, and its duration was up to 31-10-1949. On 1-9-1949, defendants Nos. 1 to 3 sublet the premises to the petitioner, who is defendant No. 4 in the suit. On 29-9-1949, defendants Nos. 1 to 3 informed the plaintiffs that they were going to surrender the premises on 31-10-1949, and that defendant No. 4 would give them possession. As defendant No. 4 refused to surrender possession on 31-10-1949, the plaintiff's filed a suit for ejectment on 16-1-1950. The trial Court dismissed the suit, but in appeal the learned Assistant Judge has reversed the decision of the trial Court and passed a decree in favour of the plaintiffs. It is against that decision that this revision application is preferred.

2. Now, it is sufficient to uphold the decision of the learned Assistant Judge below on the ground that the sub-lease created in favour of the petitioner was prohibited by law under Section 15 and therefore he is not entitled to the protection of the Rent Act. Under the lease the lessee had a right to sublet, but that right was subject to certain conditions and one of the conditions was that the lessees had to inform the landlords of the person to whom they were going to sublet two days before the subletting, and the case of the plaintiffs was that in this particular case the subletting was done without carrying out this condition.

3. Mr. Desai's contention is that Section 15 does not prohibit a sub-tenancy which is permitted under a contract between the landlord and the tenant, and even if the sub-tenancy is created by the tenant under such a contract contrary to the conditions laid down in the contract, the sub-tenancy is not void, whatever rights the landlord may have for breach of the covenant by the

tenant. Mr. Desai says that Section 15 only prohibits the creation of a sub-tenancy contemplated by Section 108, Transfer of Property Act. In other words, according to Mr. Desai if there is no contract which permits the tenant to sublet, then in view of Section 15 the tenant cannot rely upon his right to sublet under Section 108, Transfer of Property Act. In other words, all that Section 15 does is to take away the statutory right of the tenant to sublet under Section 108, Transfer of Property Act, but Section 15 does not affect the contractual right of the tenant to sublet if that right flows from a contract between himself and his landlord. In my opinion that contention is entirely untenable, looking to the clear language used by the Legislature in enacting Section 15. Section 15 provides: "Notwithstanding anything contained in any law, it shall not be lawful after the coming into operation of this Act for any tenant to sublet the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein." Therefore, there is a prohibition by law against subletting or assigning or transferring the interest of the tenant. It is clear that parties by a contract between themselves cannot agree to do something which the law prohibits. If there was a contract in existence prior to the coming into force of this Act, then if the contract provided for subletting, that provision in the contract would become void by reason of Section 15, and after the coming into force of the Act no contract could be entered into which would permit a tenant to sublet or assign or transfer his interest in the premises. Mr. Desai concedes that if Section 15 did not contain the expression "notwithstanding anything contained in any law", then the prohibition would be clear and absolute, but according to Mr. Desai the expression "notwithstanding anything contained in any law" limits the prohibition contained in the subsequent part of Section 15. The argument of Mr. Desai is that the Legislature has only referred to law and not to contract and therefore the sanctity of contract has not been invaded and the Legislature had only in mind Section 103, Transfer of Property Act, and not any contract that may be entered into between the parties.

In my opinion that view is not a possible view. The expression "notwithstanding anything contained in any law" only reinforces the prohibition contained in Section 15. Far from limiting that prohibition it strengthens that prohibition. The Legislature has used this expression for greater caution lest it should be suggested that some other law permitted subletting and therefore a subletting in certain circumstances was a valid subletting.

Therefore, in my opinion on the plain construction of Section 15 there can be no doubt that subletting has been prohibited by law after Act 57 of 1947 came into force and it is not open to any person to put forward a contract in order to make something permissible which the law says is prohibited. It would be giving a right to the parties to contract themselves out of a prohibition contained in a piece of legislation, and if Section 15 contains an absolute prohibition, no contract can circumvent that prohibition or override that prohibition.

4. What is relied upon by Mr. Desai is a judgment of this Court in -- *'Cooper v. Shivasji Cam-*

*bata*¹, In that case we were considering the old Act of 1944, Act 7 of 1944, and we were called upon to construe Section 10 and Section 10 of that Act was in the following terms : "Notwithstanding anything to the contrary in any law for the time being in force, a tenant may sub-let any portion of his premises to a subtenant : provided he forthwith intimates in writing to his landlord the fact of his having so sublet the premises and also the rent at which they have been sub-let." We construed Section 10 to mean that it only had reference to Section 108, Transfer of Property Act and it did not interfere with the contract between the parties which contract prohibited subletting, and for that purpose we made a reference to Section 9 which made it incumbent upon the tenant to perform the conditions of his tenancy. Mr. Desai says that we construed the very words used in Section 15 as having reference only to Section 108 and having no reference to a contract between the parties and therefore we must give the same interpretation to these words as we did when construing Section 10. Now, Section 10 and Section 15 are not in 'pari materia'. Section 10 was a permissive section. It permitted a tenant to sublet and we said that that permission cannot be interpreted to mean that it overrode a contract by which a tenant had agreed not to sublet, and it was in that context that we said that when the Legislature used the expression "notwithstanding anything to the contrary in any law for the time being in force" it advisedly did not refer to contract between the parties, because contracts between the parties were saved and the Legislature was only thinking of Section 108, Transfer of Property Act. But whereas Section 10 was permissive and it enabled a tenant to sublet, Section 15 contains a prohibition and prohibits the tenant from subletting. Once we find that there is a legal prohibition against the doing of an act, it is impossible to urge that because the Legislature has not referred expressly to contracts it is open to parties by their contract to get over the prohibition contained in the law.

5. Therefore, in my opinion, the learned Assistant Judge below was right in taking the view that the assignment in favour of defendant No. 4 was prohibited by law, that no valid assignment was created, and therefore he was not entitled to the protection of the Rent Act.

6. The result is that the revision application fails. Rule discharged with costs.

7. In civil revision application No. 1753 of 1952. rule discharged with costs.

8. Rules discharged.

Cases Referred.

1AIR 1949 Bom 131 (A)

