

RAJASTHAN HIGH COURT

Noratmal

Vs.

Mohanlal

Second Appeal No. 623 of 1960

(D.M. Bhandari, J.)

24.08.1965

JUDGMENT

D.M. Bhandari, J.

1. This is a Civil Second Appeal on behalf of the plaintiff in a suit for ejection and arrears of rent. The following facts may be taken to be proved for the purposes of the decision of this appeal.

2. The premises No. AMC. III/344 situate in Chhoti Chowdhar Gali, Ajmer belonged to Sethani Prabhavati Kanwer and the plaintiff-appellant purchased this property from her on 6th January 1955. One Debilal Sunar was the tenant of Sethani Prabhavati Kanwer of the said premises and before the sale he had sub-let part of the premises held by him as tenant to Monanlal defendant at the rate of Rs. 3/8/- per mensem. After the sale of the premises by Sethani Prabhavati Kanwer, Debilal Sunar served the defendant with a notice dated 23rd July 1956 asking him to pay rent directly to the plaintiff in future and to treat the plaintiff as is landlord for all purposes with effect from the date of the sale-deed. The plaintiff brought the suit for ejection of the defendant alleging that the defendant had become his tenant by operation of law. He also claimed rent at Rs. 4/7/- per mensem as according to him he had spent some money on repairing the premises about which the suit was filed. The trial Court decreed the suit for ejection and also for arrears of rent calculated at the rate of Rs. 3/8/- per mensem. On appeal by the defendant, this decree was reversed by the Senior Civil Judge, Ajmer, on the ground that there was no privity of contract between the parties and the plaintiff was not entitled to maintain the suit. Hence this Second appeal by the plaintiff.

3. The only point for decision in this Second Appeal is, whether the plaintiff in the circumstances of this case is entitled to maintain the suit for ejection and arrears of rent against the defendant. Learned counsel for the plaintiff-appellant has argued that Debilal by virtue of Section 109 of the Transfer of Property Act became the tenant of the plaintiff and after the sale of the premises by Sethani Prabhavati Kanwer, Debilal surrendered the suit property of which the defendant was a sub-lessee to the plaintiff and so far as that property is concerned, the tenancy of Debilal determined under Section 111(f) of the Transfer of Property Act, and after the determination of the tenancy of Debilal, the plaintiff was entitled to maintain the suit. Learned counsel for the defendant-respondent has, however, argued that no case of implied surrender has been made out in this case and that there can be no surrender unless actual possession of the property in dispute was delivered by Debilal to the plaintiff and further that there can be no surrender of part of the property leased to Debilal. It is also argued that there was a registered lease deed executed by Debilal in favour of Sethani Prabhavati Kanwer and there could be no surrender by Debilal of any part of the property leased except by a registered deed.

4. Before taking up the points of law involved in the case into consideration, it is proper to refer to the notice (Ex. A/2) produced by the defendant which has been served by Debilal on him. After reciting that the defendant was Debilal's sub-tenant of part of the premises which had been sold by Sethani Prabhavati Kanwer, the relevant part of the notice runs, as follows :-

***My client hereby informs you to pay rent directly to the said Sri Noratmal Kandoi Nala Bazar Ajmer, retrospectively with effect from Pos Sudi 13, S. 2011 who should be treated by you as your landlord for all purposes."

It is in the evidence of Shri Krishna Swaroop Goyal Advocate who served this notice on behalf of Debilal on the defendant that both Debilal and Noratmal had come to him for getting the notice drafted and he prepared a draft which was subsequently corrected by Shri Mukand Ram Garg, Advocate for the plaintiff, and then the corrected notice was served on the defendant. This clearly shows that serving of the notice (Ex. A/2) by Debilal on the defendant was assented to by the plaintiff.

5. The first point of law to be examined in this appeal is whether service of such a

notice by Debilal on Mohanlal operates as implied surrender. The term "surrender by operation of law" or 'implied surrender' is the expression used to describe all those cases where the law implies a surrender from unequivocal conduct of both parties which is inconsistent with the continuance of the existing tenancy. ** ** (Such surrender is the act of the law, and takes place independently of and even in spite of the intention of the parties." Woodfall on Landlord and Tenant, 25th Edition, Pages 966-67 : Para - 2074).

Such a surrender is valid under Section 111(f) of the Transfer of Property Act. Such a surrender may come into being in a number of ways. There may be surrender by acceptance of a new lease, surrender by unequivocal giving of possession, surrender by re-letting to another person by the landlord. Even acceptance by the Landlord of the sub-lessee as a tenant would amount to surrender.

". . . .There is a similar surrender if A being tenant from year to year sub-lets to B, and the original landlord, with the assent of A, accepts B as his tenant."

(Woodfall on Landlord and Tenant, 25th Edition, Para - 2086).

It is, however, contended by the learned counsel for the defendant-appellant that for an implied surrender to be operative, a simple direction by the tenant to the sub-tenant to attorn to the landlord is not sufficient because in such a case there is no change of possession. Change of possession has been insisted upon in some cases in English Law. The essence of implied surrender is not change of possession but the doing of an act which is inconsistent with the continuance of the lease or tenancy. In the footnote to Para 1414 of Halsbury's Laws of England it has been stated that "directing the occupier to attorn to the landlord is sufficient delivery of possession." Thus, in the circumstances of the case, it can be taken that Debilal had surrendered his tenancy rights in the part of the property of which he was the tenant to the plaintiff who was his landlord.

6. It is, however, contended by the learned counsel for the defendant-respondent that there can be no surrender of part of the property leased out. Here, again, the law is that there can be surrender even of part of the property leased out. Para. 2079, at Page 969 of Woodfall on Landlord and Tenant, 25th Edn. is to the following effect :->

"Implied surrender of part only. - If a lessee for years accept a new lease by indenture of part of the lands, it is a surrender for that part only, and not for the whole; and though a contract for years cannot be so divided, as to be avoided

for part of the years and to subsist for the residue, either by act of the party or act in law; yet the land itself may be divided, and the tenant may surrender one or two acres, either expressly or by act of law, and the lease for the residue will stand good and untouched."

7. The same principle is enunciated in Foa's General Law of Landlord and Tenant-8th Edn. Page 631 - Para. 991 - wherein it has been stated that "acceptance of a new lease of part only of the demised premises operates as a surrender of that part and no more." There is nothing in the Indian Law to hold that there can be no implied surrender of part of the leased property. In my opinion, the contention of the learned counsel for the defendant-appellant to the contrary is not correct.

8. Lastly, it is contended that Debilal was a tenant under a registered rent note executed by him in favour of Sethani Prabhavati Kanwer and terms of that tenancy could not be altered without any registered document. In reply to this contention, learned counsel for the plaintiff-appellant has pointed out that Debilal was a tenant for a fixed term of one year and his tenancy expired under the registered deed on 12th July 1948 long before the property was sold by Sethani Prabhavati Kanwer to the plaintiff. As there was no registered deed operative at the time when Debilal surrendered his tenancy rights to the property in dispute, no question arises that such surrender should have been only by a registered document. Thus, by virtue of surrender of his tenancy rights by Debilal, the plaintiff became entitled to maintain the suit for ejectment against the sub-tenant.

9. The Delhi and Ajmer Rent Control Act, 1952, which was in force at the time when the suit was filed, contained a statutory provision that the sub-tenant on the termination of the tenancy of the tenant becomes the tenant of the landlord. The provision is contained in Section 20 which runs, as follows :-

"Where the interest of a tenant of any premises is determined for any reason, any subtenant to whom the whole or any part of such, premises has been lawfully sub-let whether before or after the commencement of this Act shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms and conditions on which he would have held from the tenant if the tenancy had continued."

By operation of Section 20 of the said Act, Mohanlal defendant became the tenant of the plaintiff and the plaintiff became entitled to file the suit for ejection.

10. As a result of the aforesaid discussion, it must be held that the plaintiff had a right to maintain the suit for ejection and arrears of rent in spite of the fact that there was no privity of contract between him and Mohanlal defendant.

11. The appeal is, therefore, allowed and the judgment and decree dated 10-8-1960 of the Senior Civil Judge, Ajmer are set aside and the judgment and decree of the trial Court are restored. The defendant is, however, granted two months' time for delivering possession of the suit property to the plaintiff. Learned counsel for the plaintiff-appellant does not press for costs in this Court as well as in the lower Courts as the defendant is the step-brother of the plaintiff. Parties shall bear their own costs throughout.

12. Learned counsel for the defendant-respondent prays for leave to appeal to a Division Bench Leave to appeal is refused.

Appeal allowed.