

Chandra Bai Vs. Tukaram

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Court : Karnataka

Decided On : Feb-21-1977

Reported in : AIR1977Kant170; ILR1977KAR556; 1977(1)KarLJ270

Judge : M.S. Nesargi, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 21(1)

Appellant : Chandra Bai

Respondent : Tukaram

Advocate for Def. : Balakrishna Sastry, Adv.

Advocate for Pet/Ap. : K.S. Savanur, Adv.

Judgement :

ORDER

1. This petition is directed against the judgment dated 30-6-1973 passed by the II Additional District Judge, Dharwar, in H. R. C. Appeal No. 71 of 1971 setting aside the order passed in H. R. C. No. 50 of 1968 by the Additional Munsiff, Hubli and dismissing the application filed by the petitioner under Ss. 21(1)(a) and 21(1)(f) of the Karnataka Rent Control Act (hereinafter referred to as 'the Act').

2. The undisputed facts are that the petitioner is the owner of open site bearing C. T. S. No. 1858 in Ward No. V of Hubli and also bearing municipal H. D. M. C. No.

19. She has leased out the site to respondent 1 Tukaram, since dead. His legal representative, namely, the wife has been brought on record. Tukaram had constructed a structure worth about Rs. 400/- by 18-5-1964. On 18-5-1964, the petitioner and Tukaram entered into a contract of lease as per Ext. P-1.

3. The petitioner filed an application under S. 21 (1) (a) and (f) of the Act contending that as per Ext. P-1 Tukaram had to erect a construction worth about Rs. 600/- but had failed to erect such a construction and that Tukaram had not paid rental from 18-5-1964 and hence had become a defaulter within the meaning of S. 21 (1) (a) of the Act and lastly that Tukaram had sub-let certain rooms in the building constructed by him on the land to respondents 2 and 3 as such was liable to be evicted under S. 21 (1) (f) of the Act.

4. Sri. Tukaram contended that he had leased out two rooms to respondents 2 and 3 and that lease did not amount to sub-letting within the meaning of S. 21 (1) (f) of the Act and that he had not at all committed default in payment of rent. The learned Munsiff without going into the question whether the rooms admittedly leased by Tukaram to respondents 2 and 3 also included the demised premises under the lease agreement, Ext. P-1 held that Tukaram had sub-let the two rooms to respondents 2 and 3. The case of the petitioner under S. 21(1) (f) of the Act was not pressed. A decree for eviction was passed on the ground available to the petitioner under S. 21 (1) (f) of the Act.

5. In appeal, the learned II Addl. District Judge, held that the construction erected by Tukaram was not the property leased out by the petitioner to Tukaram and hence letting out of the two rooms by Tukaram to respondents 2 and 3 did not amount to sub-letting within the meaning of S. 21 (1) (f) of the Act and allowed the appeal.

6. The relevant terms in Ext. P-1 may be summarised as follows:

(1) I have agreed to pay you Rs. 120/- year as rental for the said open land. I will pay the rental by 18th of every month.

(2) I have already constructed on the said land a construction by spending Rs. 400/- and I will construct another construction by spending Rs. 600/-. I will myself make use of the said construction.

(3) I will myself pay the municipal tax and keep the property in repair at my cost.

(4) The lease period is 15 years from 18-5-1964. On 17-5-1979 I will hand over vacant possession of the building without taking any money from you and without spoiling the building in any manner.

(5) I have no right either to mortgage or to sell the building and I will not alienate the building.

(6) In case I die before the expiry of the said 15 years and my wife is alive, she will enjoy the property for the balance of 15 years and in case she also dies, you have a right to take possession of the land as well as the building.

7. I have already pointed out that the learned Additional Munsiff has not gone into the question whether by this contract the landlady leased out the building worth Rs. 400/- already constructed by Tukaram on the land and the building worth Rs. 600/- to be constructed by him. The learned II Additional District Judge has held that the leased premises consisted only of the open site and not of the building that was worth Rs. 400/- and the building worth Rs. 600/- to be constructed.

8. Sri. K. S. Savanur, learned, counsel appearing on behalf of the petitioner, argued that the petitioner-landlady leased out the land to respondent Tukaram on which a building was erected, worth Rs. 400/- by him and a building worth Rs. 600/- was to be erected by him. In support of this contention he pointed out that the term that Tukaram had not reserved any right either to mortgage or to sell or to alienate in any manner the buildings worth Rs. 400/- plus Rs. 600/- had agreed to hand over vacant possession of the buildings also without claiming any kind of compensation from the landlady after the expiry of the fifteen years are inconsistent with the proprietary right of Tukaram in the buildings and consistent with the proprietary right of the petitioner-landlady in the buildings. He further argued that no sooner than respondent Tukaram constructed the building worth

Rs. 600/- i.e. after Exhibit P-1, the ownership in that building vested with the petitioner-landlady and the only right that Tukaram got under Ext. P-1 was to be in possession for 15 years and the petitioner's right of possession was deferred by 15 years only.

9. Sri. Balakrishna Shastry, learned counsel appearing on behalf of respondent 1 (a) argued that the facts and circumstances of this case call for the application of the decision of the Supreme Court in *Dr. K. A. Dhairyawan v. J. R. Thakur*, : [1959]1SCR799 and when that is applied it would be clear that the demised premises under Ext. P-1 was only the open site and as such lease of the two rooms to respondents 2 and 3 by respondent - Tukaram did not amount to sub letting of the premises within the meaning of S. 21 (1) (f) of the Act.

10. In *Vinayak Gopal Limaye v. Kashinath Athavale*, : AIR1957 Bom94 it is laid down as follows:

'It was suggested during the course of the hearing of these revisional applications that, if a building lease attracts the provisions of the Rent Act, the occupants of the building would have to be regarded as sub-tenants within the meaning of S. 15 and their sub-tenancies would fall within the mischief of S. 15 of the Act. We are not impressed by this argument. Section 15 no doubt enjoins upon the tenant not to sub-let or transfer his rights. But the prohibition is in respect of the whole or any part of the premises let to the tenant; and when a builder lets out a building to his tenants, technically he is not leasing out the open plot which has been let to him by his lessor, but he is letting out the structure built by him. If it is permissible to draw a distinction between the open plot which is the subject-matter of the first lease and the building which is the subject-matter of the second lease, then S. 15 may not affect the rights of the actual occupants let in by the builder of the building. No doubt, this distinction may appear to be technical and notional but, as I have already indicated, some of the unusual features which building leases of this kind disclose are the inevitable result of the doctrine of dual ownership recognised under the Indian Law.'

This decision is approved in the decision in *Mrs. Dossibai N. B, Jeejeebhoy v. Khemchand Gurumal*, : [1962]3SCR928 . The Supreme Court has observed as

follows in para. 11 of its Judgment:

'It is unnecessary for us to decide whether if there is no contract to the contrary, S. 15 will really stand in the way of a lessee of the land letting out buildings constructed by him on such land. We may say however that there is in our opinion much force in the argument which found favour with the Bombay High Court in *Vinayak Gopal v. Laxman Kashinath*, : AIR1957 Bom94 , where the very question which is now before us arose for decision, that the bar of S. 15 will operate only in the way of letting out the land of which lease has been taken, but will not stand in the way of letting the building constructed on the land.'

11. Exhibit P-1 itself draws distinction between the open land which is the subject-matter of Ext. P-1 and the building which is worth Rs. 400/- already existing and the building worth Rs. 600/- to be constructed by the respondent Tukaram. Hence the principle laid down in *Vinayak Gopal's case*, : AIR1957 Bom94 will apply.

12. The facts in *Dr. K. A. Dhairyawan's case*, : [1959]1SCR799 were as follows:

'The trustees of the Mankeshwar Temple trust executed a registered lease on May 23, 1927 in favour of Moreshwar Kashinath and Radhabai, wife of Ramakrishna Bhai Thakore in regard to a parcel of land. The period of lease was for 21 years. The rent reserved was Rs. 50/- month. Under the terms of the lease, the lessee had to construct within six months from the date of the lease a double storied building consisting of shops on the ground-floor and residential rooms on the upper-floor. The construction had to be to the satisfaction of the lessors engineers. The building had to be insured in the joint names of the lessors and lessee with the insurance firm approved by the lessors. On the termination of 21 years or earlier, the lessee was to surrender and yield up the demised premises including building without any compensation for the same. On May 14, 1948, shortly the lease was to be expired, the lessors gave notice to the lessee to deliver possession session of the demised premises and the building on the expiry of the lease i.e. on May 22, 1948.'

The Supreme Court held that on the expiry of the period, the lessors were bound to vacate the premises unless they were protected by the Bombay Rents, Hotel

and Lodging House Rates Control Act (Bombay Act 57 of 1947) and although the period of lease had expired the lessee having continued to remain in possession without the assent of the lessors, he would be a tenant of the land within the meaning of that expression as defined in Act 57 of 1947 and so far as the demised land was concerned the lessee could not be evicted so long as he complied with the provisions of Act 57 of 1947 and further although under S. 108 of the T. P. Act the lessee had the right to remove the building, by the contract he had agreed to hand over the same to the lessors without the right to receive compensation at the end of the lease and that was a matter of contract between the parties. Because of such a contract the ownership in the building was not transferred to the lessors so long as the lease subsisted. It was argued before the Supreme Court that the case, of the lessors was governed by the decision of the Supreme Court in M/s. Bhatia Co-operative Housing Society Limited v. B. C. Patel, : [1953]4SCR185 . Sri. K. S. Savanur also urged that the case on hand attracts the decision in M/s. Bhatia Co-operative Housing Society's Case.

13. Many of the terms of the lease in the case cited were similar to the terms found in the lease in the present case. However, Clause 18 of the lease in the case referred to states that immediately after the completion within the time limited by condition 7, the lessor of the land would grant the lease of the land with the building thereon for a term of 999 years from the date of the auction at the yearly rent calculated in accordance with the accepted bid for the plot. There could be no question in the matter of interpretation in the case cited that a lease would be granted not only on the land but also of the building thereon for the term of 999 years from the date of auction. There is no such clause in the lease Ext. P-1 in the present case. Hence I hold that the principle laid down by the Supreme Court in Dr. Dhairyawan's case, : [1959]1SCR799 applies to the case on hand. It may be noted that in Dr. Dhairyawan's case many more terms, which can be argued to be inconsistent with the concept of ownership were in the contract of lease. These terms were that a building of a specific nature was to be constructed by the lessee within a stipulated period and such construction was to be to the satisfaction of the engineers of the lessors and that the constructed building was to be insured jointly in the names of the lessors and the lessee with the insurance company approved by the lessors. The only term relied upon by Sri. Savanur is that the lessee had no

right either to mortgage or to sell or to alienate in any manner the buildings constructed by him. The Supreme Court held to the contrary even when there were much more rigorous terms in the contract of lease involved in Dr. Dhairyawan's case. Hence, I am unable to agree with the contention of Sri Savanur that on the construction of document Ext. P-1 has to be held that what was leased to Tukaram by the petitioner-landlady was not only the land but the building worth Rs. 400/- already constructed by Tukaram and the building worth Rs. 600/- to be constructed by Tukaram. When that is so, leasing of a portion of the building, namely two rooms constructed by Tukaram to respondents 2 and 3 cannot be termed as a sub-lease within the meaning of S. 21 (1) (f) of the Act. Hence the contention of the petitioner has to fail. In the result, this petition fails and is dismissed.

14. No order as to costs under the circumstances of the case.

15. Revision dismissed.

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