

**Vimala Devi Vs. Venkatesha Murthy**

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**SooperKanoon Citation :** [sooperkanoon.com/382600](http://sooperkanoon.com/382600)

**Court :** Karnataka

**Decided On :** Feb-09-1995

**Reported in :** ILR1995KAR659; 1995(3)KarLJ193

**Judge :** G.C. Bharuka, J.

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

**Appeal No. :** HRRP No. 901 of 1990

**Appellant :** Vimala Devi

**Respondent :** Venkatesha Murthy

**Advocate for Def. :** G. Vedavyasachar, Adv.

**Advocate for Pet/Ap. :** S.B. Adi, Adv.

**Judgement :**

ORDER

**G.C. Bharuka, J.**

1. This Revision Petition has been preferred by the tenants who have been directed to vacate the schedule premises on the grounds covered by Clauses (f) and (h) of the Proviso to Section 21(1) of the Karnataka Rent Control Act, 1961, ('Act' for short).

2. Some of the basic facts which are not in controversy may first be noticed. The schedule premises is a shop measuring 8ft x 8 ft which is situated on the ground floor of the building owned by respondent No. 1 (hereinafter to be referred as 'landlord'). The said premises was taken on rent by late Ramlal, the husband of petitioner No. 1 (hereinafter referred to as the 'tenant'), who had been running a watch repairing business therein till 1985. Thereafter he started his cloth business in the said shop which he continued till his death in September, 1986. The fact of carrying on the said businesses is borne out from the cross-examination of the landlord himself who has been examined as P.W.1. It is also not in dispute that the said late Ramlal has left behind him six daughters and two sons. Out of them two daughters are married and other children are still minor who are petitioners 2 to 7 to this Revision application.

3. It is also an admitted fact that the landlord-respondent No. 1 is carrying on the business of stamp vending and he is in occupation of sufficient premises needed for the said business. The eviction petition in question had been filed by landlord on two grounds viz., i) The tenant has sub-leased the premises in favour of Jabbar Singh, respondent No. 2 and ii) It is required for bonafide and reasonable requirement of the landlord. The Court below has accepted both the pleas and has granted the impugned order of eviction.

4. On the issue of sub-leasing, in substance, the Court below has proceeded on the footing that since the said Jabbar Singh had been admittedly found carrying on the said business in the premises in question, therefore it was for the tenant to conclusively prove that he was there in the premises as an employee as claimed by the tenant and not as sub-lessee and the tenant having failed to discharge that onus, it should be presumed that the premises had been sub-leased.

5. Therefore it needs to be ascertained that in cases where eviction is sought on allegations of unlawful sub-letting on whom the onus lay of proving or disproving the same and how it has to be discharged by the contesting parties.

6. The relevant statutory provision's under the Act pertaining to eviction on the ground of sub-letting are the following:-

'21. Protection of tenants against eviction:- (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or other authority in favour of the landlord against the tenant:

Provided that the court may on an application made to it, make an order for the recovery of possession of a premises on one or more of the following grounds only, namely:-

(a) to (e) xxx xxx xxx(f) that the tenant has unlawfully sub-let the whole or part of the premises or assigned or transferred in any other manner his interest therein and where the subletting, assignment or transfer has been made before the coming into operation of this part (except in respect of subletting, assignment or transfer to which the provisions of Section 61 are applicable), such sub-letting, assignment or transfer has been made contrary to any provision of law then in force; or

(g) to (p) xxx xxx xxx(2) xxx xxx xxx(3) For the purpose of Clause (f) of the proviso to Sub-section (1) the court may presume that the premises have been sublet by a tenant -

(a) in any case where such premises have been let for use as residence if the court is satisfied that any other person not being a servant or a member of the family of such servant has been residing in the premises or any part thereof for a period exceeding one month otherwise than in commensality with the tenant; or

(b) in any case where such premises have been let for non-residential purposes if the court is satisfied that the tenant without obtaining the consent in writing of the landlord has allowed any person to occupy the whole or any part of the premises ostensibly on the ground that such person is a partner of the tenant in the business or profession but really for the purpose of subletting such premises to that person.'

7. For adjudging on the allegation of subletting it is necessary to first refer to the depositions of the landlord and the tenant who have been examined as PW-1 and RW-1. PW--1 in his cross examination has clearly admitted that at the time of his

death, the original tenant late Ramlal was carrying on cloth business in the schedule premises. He has also stated that he had learnt from some person that the said Ramlal had sublet the premises to Jabbar Singh, But then he also admitted that he did not remember who had told him about the said fact. He has also admitted that Jabbar Singh used to come to the shop twice or thrice a day but he never personally enquired from him as to in what capacity he was looking after the business. When it was suggested to him that after the death of first petitioner's husband she being unable to run the business all by herself, had employed Jabbar Singh to carry on the same, he just pleaded his ignorance about the said fact. On the other hand, the tenant petitioner No. 1 in unambiguous terms has deposed that her husband had been carrying on watch repairing business and after closing the same he started carrying on readymade cloth business in the schedule premises in the name and style M/s Mysore Traders in his individual capacity. At the time of his death, Jabbar Singh was an employee in the said shop on a salary of Rs. 500/- per month and after the death of her husband she continued the business by retaining Jabbar Singh as an employee. It has also been stated by her that at the time of death, her husband had left stock-in-trade worth Rs. 30,000/-- in the shop. She has also described about the quality and type of readymade clothes sold in the shop. Curiously, though she was subjected to lengthy cross examination, but, not a single question was put to her regarding the crucial aspects as to in what capacity Jabbar Singh was working in the shop.

8. Therefore from the depositions of the contesting parties it is quite clear that whereas on the one hand the landlord had levelled allegation of sub-letting on the basis of some alleged hear say without having any material to substantiate the same, the tenant has given an acceptable explanation regarding the presence of Jabbar Singh in the shop as being an employee. As noticed above, though the tenant has been cross examined at length on various aspects, but on this crucial issue there was no cross-examination. It is an established rule of evidence that a crucial fact not challenged in cross-examination should be deemed to have been admitted unless the same is found to be intrinsically unreliable.

9. In the case of ASSOCIATED HOTELS OF INDIA LIMITED v. S.B. SARDAR RANJIT SINGH : [1968]2SCR548 the order of eviction at the instance of the

landlord-tenant was sustained inter alia by holding that :

'The onus to prove sub-letting was on the respondent. The respondent discharged the onus by leading evidence showing that the occupants were in exclusive possession of the apartments for valuable consideration. The appellant chose not to rebut this prima facie evidence by proving and exhibiting the relevant agreements.....'

10. In the case of MURLIDHAR v. CHUNI LAL 1970 RCJ 922, it has been held that:

'It seems to us that the landlord cannot succeed. He has to prove it as a fact that there was a subletting by his tenants to another person. He does not prove this merely by showing that his tenant was one firm and the premises are in the occupation of another firm, as he sought to do in the present case. Mere possession by somebody other than the tenant would not necessarily prove that the premises had been sublet by the tenant to the person in possession. IT is admitted that there is no evidence in this case to prove the fact of sub-letting.'

11. In the case of SMT. KRISHNAWATI v. SHRI HANS RAJ : [1974]2SCR524 it has been held that sub-letting was therefore a principal ground on which eviction was sought. It has been further held that

'When eviction is sought on that ground it is now settled law that the onus to prove subletting is on the landlord. If the landlord prima facie shows that the occupant who was in exclusive possession of the premises let out for valuable consideration, it would then be for the tenant to rebut the evidence.'

12. In the case of JAGADISH PRASAD v. SMT. ANGOORI DEVI : [1984]3SCR216 , the Supreme Court has held thus: (see Paragraph N6.2)

'The allegation that the premises had been sublet to Pavan Trading Company had to be proved as a fact by the landlord and merely on the basis of the photograph showing the presence of the son of the proprietor of Pavan Trading Company within the room, sub-letting could not be presumed. We must indicate that the approach of the trial Judge was totally vitiated. Merely from the presence of a

person other than the tenant in the shop subletting cannot be presumed. There may be several situations in which a person other than the tenant may be found sitting in the shop; for instance, he may be a customer waiting to be attended to; a distributor who may have come to deliver his goods at the shop for sale; a creditor coming for collection of the dues; a friend visiting for some social purpose or the like. As long as control over the premises is kept by the tenant and the business run in the premises is of the tenant, sub-letting flowing from the presence of a person other than the tenant in the shop cannot be assumed. The Act does not require the Court to assume a sub-tenancy merely from the fact of presence of an outsider.'

13. In the case of SMT. RAJBIR KAUR AND ANR. v. S. CHOKOSIRI AND COMPANY : AIR 1988 SC1845 , it has been held thus:

'The burden of making good a case of sub-letting is, of course, on the appellants. The burden of establishing facts and contentions which support the party's case is on the party who takes the risk of non-persuasion. If at the conclusion of the trial, a party has failed to establish these to the appropriate standard, he will lose. Though the burden of proof as a matter of law remains constant through out a trial, the evidential burden which rests initially upon a party bearing the legal burden, shifts according as the weight of the evidence adduced by the party during the trial. In the circumstances of the case, we think, that, appellants/ having been forced by the Courts below to have established exclusive possession of the ice-cream vendor of a part of the demised-premises and the explanation of the transaction offered by the respondent having been found by the Courts below to be unsatisfactory and unacceptable, it was not impermissible for the Courts to draw an inference, having regard to the ordinary course of human conduct, that the transaction must have been entered into for monetary considerations.'

The law laid down in the above case has been recently reiterated in the case of NIHAL CHANDRAMESHWAR DASS AND ORS. v. VINOD RASTOGI AND ORS : (1994)4SCC325 .

14. Therefore, what emerges on the review of various Supreme Court judgments noticed above regarding onus of proof in cases seeking eviction on the allegation

of subletting is that the initial onus lies on the landlord to at least prove that the tenant has parted with exclusive possession over the property in favour of a stranger. If he discharges his onus to this extent, then even though he fails to prove the parting of possession for some consideration, the onus shifts on the tenant to prove as to in what capacity the stranger has acquired exclusive possession over the premises. In case the tenant fails to discharge this part of the onus cast on him, Courts will be competent to draw a presumption of subletting.

15. In the present case, as noticed above, the allegation of subletting has been built up merely on the basis that Jabbar Singh was found carrying on business in the premises. There is no evidence to the effect that he was found in exclusive possession of the said premises. The tenant has clearly deposed that he was looking after the business as an employee. Faced with the situation, the learned Counsel for the landlord sought refuge under Sub-section (3) of Section 21 to show that if a stranger is found in occupation of a tenanted premises, then the presumption will be that of subletting unless the contrary is proved by the tenant. He has also submitted that the tenant in her evidence having admitted that books of accounts are maintained in respect of the business and the same having not been produced, an adverse inference has to be drawn against her. In support of this part of the submission, he has placed reliance on a recent Decision of the Supreme Court in the case of *SHAH PHOOLCHAND LALCHAND v. PARVATHI BAI* : [1989]1SCR417 . In my opinion, I need not detain myself for considering the effect of Sub-section (3) of Section 21 because Clause (b) thereto which relates to non-residential premises creates fiction only in respect of a situation, when the tenant justifies the presence of a stranger as his partner (see paragraph No. 5 in *Smt. Krishnawati v. Shri Hans Raj supra*). This is not the situation in the present case. Similarly the Judgment of the Supreme Court cited supra has been rendered in the peculiar facts and the evidence led in that case. It cannot be said to have laid down any general proposition of law pertaining to subletting in the context of House and Rent Control Legislations contrary to the law laid down in the catena of Decisions of Apex Court noticed as above. For the reasons aforesaid, in my opinion, the Court below has erred in holding that the landlord has proved the ground of subletting as envisaged under Clause (f) of the Proviso to Section 21(1) of the Act.

16. Next coming to the ground of bona fide and reasonable requirement of the landlord, admittedly, so far he himself is concerned, he is satisfactorily carrying on the business of stamp vending in his own premises without any difficulty. He has raised the plea of personal necessity by pleading that considering the rise in the cost of living, it is necessary to augment his income which at the material time was Rs. 800/-, and for doing that he intended to carry on an additional business of typing and xerox copying. According to him, he is already having two English typewriters and he is in a position to acquire one Kannada typewriter and a xerox machine by taking loan. He has further made out a case that since his two daughters are graduates and are qualified in typing, they will be helping him in carrying on the said business. At this stage, it may be stated here that admittedly at the time of filing of the eviction petition one of the daughters had already been married and the second one has also been married during the pendency of the proceedings. There is no evidence on record to show that the said daughters for themselves were required to earn any additional income. Nonetheless, the Court below has held that since the family of the landlord consists of him, his wife and one son who is still studying, to meet the family expenses, it is essential for him to start another business as claimed by him. According to me, the reasoning given by the Courts below is not very sound. The landlord may be desirous of starting a new business to earn more. But keeping in view the facts that he is an old stamp vendor earning sufficiently and his family now consists of only three members, in my opinion, his desire to carry on business cannot tantamount to a need so as to fall within the requirement of Clause (h) of the Proviso to Section 21 (1) of the Act which requires establishing of a reasonable and bonafide requirement.

17. On the other hand, the tenant who is a widow and has still to look after her minor children having no male member to earn, is in greater need of the premises to make both the ends meet for the family and subsistence of its members. In her deposition she has clearly averred that despite her efforts, she could not find any suitable alternative site to carry on the business. Under the facts and circumstances I am further of the opinion that the landlord is not entitled to get the tenant evicted from the premises on the ground of personal necessity, even if it is there, since the eviction will cause greater hardship to the tenant.

10. For the discussions as above in my opinion the order of the Court below cannot be sustained and accordingly the same is set aside. There will be no order as to costs.

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