

Miss Ruby Jacobs Vs. A. Anthoniswami Udayar

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Court : Chennai

Decided On : Aug-22-1968

Reported in : (1970)1MLJ166

Appellant : Miss Ruby Jacobs

Respondent : A. Anthoniswami Udayar

Judgement :

ORDER

M. Anantanarayanan, C.J.

1. This revision proceeding involves an issue of some interest, but, while I think that it is desirable to lay stress upon one aspect of interpretation of statute law, the case itself admits of a disposal purely on findings of fact. The revision petitioner is the landlady, who sought eviction of the tenant under Section 3 of the Madras Cultivating Tenants Protection Act, 1955 on two grounds, viz., (1) default in payment of arrears of rent and (2) an unauthorised sub-lease of a part of the : holding. The first ground failed, and it is not now being pressed before me.

2. As regards the second ground, the finding of the Court below is that the alleged sub-lease was not satisfactorily established. But the learned Counsel for the revision petitioner, when the point was put to him, did concede that an unauthorised sub-lease per se is not a ground for eviction under Section 3 (2) (b) of the Act whatever-might be the case with regard to the other parallel or

analogous enactments. This Act does not make an unauthorised sub-lease by a cultivating tenant, a ground for-eviction by the landlord. On the contrary, as is well known, Section 3 (2) (b) is confined in its operation to a cultivating tenant who has done

any act or....any negligence which is destructive of, or injurious to, the land or any crop thereon, or has altogether ceased to cultivate the land.

It is not claimed that a sub-lease per se is an act which is destructive of, or injurious to, the land. But it is argued that a sub-lease per se, even of a part of the holding; will imply that the tenant has ' altogether ceased to cultivate the land' at least to the extent of that sub-leased property, and hence is liable to eviction.

3. The matter is not res Integra, and my attention has been drawn to the decision of Srinivasan, J., in Venkatarama Iyer v. Asan Md. Rowther (1961) 2 M.L.J. 277. In that case, the finding of the learned Judge that no relief as against the sub-lessee is available to the landlord, under the Act, does not now concern us. Apparently, subsequent to this decision and other decisions to the same effect, the Act was amended by an Explanation to Section 2 (Definitions), Sub-clause (2) (to) to the effect that ' a sub-tenant shall be deemed to be a cultivating tenant of the holding under the landlord if the lessor of such sub-tenant has ceased to be the tenant of such landlord.' That does not concern us in the present context.

4. But Srinivasan, J., went further and observed, that, by virtue of such sub-lease the tenant may render himself liable to eviction 'under Section 3 (2) (b) of the Act.' There is no further discussion, and the If learned Judge does not state whether a mere demise as a sub-lease per se would imply, necessarily, that the tenant ' has altogether ceased to cultivate the land.' Apparently, he was of the view that, since a sub-lease docs imply that the tenant (lessor) parts with possession to the extent of the sub-lease in favour of the sub-tenant, this part of Section 3 (2) (b) would be attracted to a situation of that kind.

5. In Perumal Muthiriar v. Ramachandra Iyer (1963) 2 M.L.J. 205, Ramachandra Iyer, C.J., follows this decision and comes to the conclusion that ' even if a cultivating tenant grants a sub-lease of a part of what has been demised to him, he

would be liable for eviction under the provisions of Section 3 (2) (b) read with Section 4.'

6. Both these decisions do not refer into any discussion of the principle that a sublease per se is not any ground for eviction under Section 3 (2) (b) of the Act. Both are clearly based on the reasoning that a consequence of the sub-lease would be, that the tenant (lessor) parts with possession of the holding in whole or in part, and is thus a person who 'has altogether ceased to cultivate the land '. With great respect, I am of the view that, while I certainly do not intend to differ from this reasoning of the learned Judge and the learned Chief Justice in any way, the question is not a question of law, but primarily a question of fact. Certainly, a total Sub-lease, or perhaps even a partial sub-lease, may have the effect that the concerned tenant (lessor) altogether ceases to cultivate the land, either in whole or in part. But obviously, that is a question of fact, for the simple reason that the Legislature has thought it fit to make the ground for eviction depend, not on possession in the legal sense, but on actual cultivation or cessation of cultivation. It is conceivable, for instance, that a sub-lease may be drawn up or effected, between the parties. Nevertheless, it may not materialise, and the tenant (lessor) may continue in cultivation of the entire holding, or the concerned part. Again, notwithstanding the terms of a sublease, the cultivation may be jointly carried out by the two parties, and, it is for the landlord to establish clearly, on the facts, that the tenant ' has altogether ceased to cultivate the land ', either in whole or in part, by virtue of the sub-lease. There is no presumption in law that the mere fact of execution of a sub-lease justifies an inference that there is cessation of cultivation on the part of the tenant.

7. In the present case, on the facts, the case is far stronger against the landlady. Actually, the landlady was quite unable to prove the alleged sub-lease. She relied on some statement in a prior deposition, relating to a prior period, in which the tenant had admitted that there was a lease of a part. That statement was not made -with reference to the present petition for eviction, or the period to which this petition relates ; in that sense, it is not even relevant, leave alone the fact that it is not conclusive. There is another admission that a certain named individual was cultivating somewhere in this holding. But that matter was not pursued further.

That man might have been a partner of the tenant or a person who was working under the tenant's directions, and the Court cannot merely infer a sub-lease from an admission of this kind. On the merits, therefore, there is no room whatever for interference in revisional jurisdiction in this case. The revision petition is accordingly dismissed. No order as to costs.

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