

Current Circulating Library, by Its Proprietor Lazarus Vs. Raja Velugoti Sarvagna Kumara Krishna Yachendra Bahadur Varu, Raja of Venkatagiri and anr.

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Court : Chennai

Decided On : Nov-13-1957

Reported in : (1958)2MLJ30

Appellant : Current Circulating Library, by Its Proprietor Lazarus

Respondent : Raja Velugoti Sarvagna Kumara Krishna Yachendra Bahadur Varu, Raja of Venkatagiri and anr.

Judgement :

Ganapatia Pillai, J.

1. The petitioner in this revision petition is the tenant of a portion of premises No. 187, Mount Road, Madras, which is a building owned by the Raja of Venkatagiri, the respondent. Some time in February, 1945, the premises now in question were let out to the petitioner by Messrs. Gokuldoss Jumnadoss & Co., who were the equitable mortgagees of some items of properties including the suit premises under a mortgage granted by the Raja of Venkatagiri. The admitted facts are that, in February, 1945, the petitioner obtained a lease of these premises from the equitable mortgagees under the terms mentioned in Exhibit R-I. The equitable mortgage was redeemed in 1946 but the petitioner was not disturbed in possession. He attorned to the owner, the Raja of Venkatagiri, who continued to collect the rent from the petitioner, treating him as his tenant. Some time in 1955, the Raja of Venkatagiri filed an application before the Rent Controller, Madras, for eviction of the petitioner on the ground that he had sub let a portion of the premises without the consent of the landlord. The tenant disputed both the factum of sub-letting and the competency of the landlord to question the sub-letting.

2. The Rent Controller found that a portion of the premises was sub-let in 1954 But, since Exhibit R-I, the letter executed by the equitable mortgagees at the time when the petitioner was admitted to possession as a tenant, contained a permission to sub-let the premises, he held that the sub-letting was not in violation of the provision in Section 7(2)(ii)(a) of the Madras Buildings (Lease and Rent Control) Act,, 1949. Consequently, he dismissed the application for eviction. In support of the latter position taken up by him, he relied on a Bench decision of this Court in Somasundara Mudaliar v. Madras Provincial Co-operative Marketting Society, Ltd. (1950) 1 M.L.J. 655.

3. On appeal preferred by the landlord to the appellate authority, that authority came to the conclusion that the sub-letting was made in 1951 and that it was made without the written authority of the landlord, and therefore, it furnished a cause of action to the landlord to evict the tenant. For the latter conclusion the appellate authority also relied on the same Bench decision in Somasundara Mudaliar v. Madras Provincial Co-operative Marketting Society, Ltd (1950) 1 M.L.J. 655. Hence the tenant has come up in revision, questioning the correctness of the order of the appellate authority.

4. Though the learned Counsel for the petitioner disputed the fact of sub-letting, it is not open for a Court of

revision to go into a question of fact, especially, where both the lower Courts have concurrently found that the sub-letting was true, though they have differed about the date. The only question open for consideration in this proceeding is whether the alleged sub-letting is hit by Section 7(2)(ii)(a) of the Madras Buildings (Lease and Rent Control) Act. The appellate authority took the view that, though Exhibit R-I, dated 2nd February, 1945, was genuine and it gave a general permission to the tenant to sub-let, this would not avail to validate the subletting made in 1951, because, the Bench decision above referred to required, according to his interpretation of that decision, the written consent of the landlord at the time when the sub-letting was made. He specifically held that Exhibit R-I would not constitute such written consent, because, on the date when the sub-letting was made, Gokuldoss Jumnadoss and Go. were not the landlords. The correctness of that view was canvassed by the learned Counsel for the petitioner.

5. The facts in the case, *Somasundara Mudaliar v. Madras Provincial Co-operative Marketing Society Ltd.* (1950) 1 M.L.J. 65, were these: The property which belonged to a minor was let to a tenant by the minor's mother, acting as his guardian, some time before October, 1947. The tenant sub-let a portion of the premises in October, 1947, without the written consent of the mother of the minor who was the owner of the property. The property was subsequently sold on 17th February, 1949, to another person, to whom the tenant attorned on 1st April, 1949. Therefore, an application was filed jointly by both the vendor and the purchaser for eviction of the tenant on the ground that a part of the building had been sub-let after the commencement of the Act without the written consent of the landlord. The Rent Controller passed an order of eviction which was, however, reversed by the appellate authority. Two grounds were mentioned by the appellate authority for its conclusion. The first was that the purchaser could not take advantage of a sub-letting made at a time when he was not the landlord of the premises. The second ground was that the sub-letting was done with the consent and approval of the Accommodation Officer. The second ground was not urged before the Bench as a valid ground. On the first ground, the Bench construed the language of the provision in Section 7(2)(ii)(a) and held that there was nothing in the language of that clause to hold that the transfer or sub-letting must have been made not merely after the commencement of the Act, but also after the date on which the petitioning landlord became the landlord. They pointed out the definition of 'landlord' in the Act, which included both the vendor and the purchaser, and held that it would be unreasonable to construe Section 7(2)(ii)(a) in such a manner as to confine the rights of the landlord to those which accrued to him only after he became a landlord. They further decided that the reference in the clause to 'without the written consent of the landlord' was to the landlord who at the material time could have given his written consent, namely, the landlord at the time of the alleged transfer or sub-letting.

6. This reasoning of the Bench has led the appellate authority in this case to conclude that Exhibit R-I, though genuine, would not bind the successor-landlord and could not be relied on as a written consent of the landlord referred to in Section 7(2)(ii)(a). The lower appellate authority overlooked the further observation of the same Bench which showed that a valid consent by the landlord at the time when the subletting was made would bind his successor. The principle of this decision is therefore no authority for the view taken by the appellate authority.

7. The learned Counsel for the petitioner brought to my notice another Bench decision of this Court in *Ranganathan v. Sankarlal Davey* : (1949)2MLJ597 . The point directly decided by that Bench was that, under Section 10 of the Act, the dismissal of a prior application for eviction means a dismissal on merits and not a dismissal upon non-prosecution or withdrawal. One of the points taken before the Bench was that, though the sub-letting was made after the commencement of the Act, the tenant was not liable to be evicted on that ground, because there was an agreement between the tenant and the landlord prior to the commencement of the Act which entitled the tenant to sublet the premises at any time to anyone. This plea was not specifically taken before the Rent Controller. Yet, the Bench considered this plea on its merits, and held that, if the sub-letting was after the commencement of the Act, the tenant could be saved only if he had obtained the written consent of the landlord for such sub-letting. The Bench, however, left open the question whether such written consent of the landlord need be necessarily of a date after the commencement of the Act. In the case

of a sub-letting which was done after the commencement of the Act, though they expressed their prima facie conclusion that even a written consent given before the commencement of the Act if it was subsisting at the time of the sub-letting after the commencement of the Act, might be sufficient to enable the tenant to plead successfully to the landlord's application for eviction, however, the decision was not rested on this point, because, in that case, there was no written consent of the landlord obtained either before or after the commencement of the Act. The opinion of the Bench on this point, though obiter, is a useful guide for the decision of this case.

8. It is not disputed that the equitable mortgagees were collecting the rent and had actually let the premises in question to the tenant. The learned Counsel for the petitioner-tenant urged before me that his client had never admitted that the equitable mortgagees had the right to let tenants into possession. According to him although the equitable mortgagees would come under the definition of a 'landlord' contained in Section 2(3) of the Act, because the equitable mortgagee was entitled to collect the rent due from the premises in question, yet he would not be a landlord entitled to apply for eviction of the tenant under Section 7 of the Act by reason of the provision in Section 7(7) which provides as follows

Notwithstanding anything contained in this Section, no person who is receiving or is entitled to receive the rent of a building merely as an agent of the landlord shall, except with the previous written consent of the landlord, be entitled to apply for the eviction of a tenant.

9. It is true that if the definition of a landlord found in Section 2(3) is to be read in conjunction with this Sub-section, the category of persons who would come under the definition of 'landlord' in Section 2(3) would not be the same as the category of landlords intended or indicated in Section 7 as having a right to evict the tenant. The question in this case does not arise in the form in which it is raised by the learned Counsel for the respondent. The application for eviction is properly laid by the landlord as defined in Section 7(7). But this question has some bearing upon the validity of the power of sub-letting given by the equitable mortgagees under Exhibit R-I. I am unable to see, however, how, if the equitable mortgagee had the power to induct tenants into possession of premises in addition to collecting rent for such premises, that power did not include the power to grant permission to sub-let the premises. It will be seen that, in the petition filed by the landlord for eviction, there is no date given as to when the tenant was let into possession of the premises. There is not even the allegation that the tenant was let into possession by the present landlord, namely, the Raja of Venkatagiri. In fact, the entire proceeding before the Rent Controller has proceeded on the basis that the tenant was let into possession by the equitable mortgagees under the terms of Exhibit R-I. Therefore, if the equitable mortgagees had power to grant the lease of the premises to the tenant either by virtue of being mortgagees with possession or with an authority given by the owner under the document of equitable mortgage, it cannot be said that, after the redemption of the equitable mortgage, the mortgagor was entitled to treat the petitioner as his tenant and to disregard the terms of the tenancy created between Gokuldoss Jumna-doss & Co. and the present petitioner.

10. It is said that the Rent Controller committed an error in observing that Gokuldoss Jumnadoss & Co. were equitable mortgagees in possession. The learned Counsel for the respondent pointed out that an equitable mortgagee is not necessarily given possession of the property though he might be given the right to collect the rent from the hypotheca. The deed of equitable mortgage has not been produced. The question cannot therefore be decided in the absence of that document. However, the undoubted fact remains that the petitioner in this case was let into possession of the premises by the equitable mortgagee on 2nd February, 1945 under the terms contained in Exhibit R-I. An attempt was made by the learned Counsel for the respondent to show that, even before the Rent Controller he questioned the genuineness of Exhibit R-I. I am unable to find any reference to this in the order of the Rent Controller. In fact, R.W. 2 was called to prove Exhibit R-I and both the lower Courts have proceeded on the assumption that Exhibit R-I is a genuine document. It would not be open, therefore, for the landlord to question its genuineness at this stage.

11. Lastly, the learned Counsel for the respondent made a request that a finding might be called for from the

lower appellate authority on the two questions, namely, whether the equitable mortgagees were mortgagees with possession or had authority to let tenants into possession of properties covered by the mortgage. I do not think it necessary to call for a finding on these points, because the fact of letting into possession of the present petitioner in February, 1945, by the equitable mortgagee has not been doubted till now. It follows that if the letting into possession of the petitioner by the equitable mortgagee was an act done with authority, it must necessarily bind the mortgagor even after the mortgage is redeemed. Even supposing that the act of sub-letting was done in excess of authority, the respondent, having ratified the lease transaction by continuing to treat the petitioner as his tenant after 1946 when the mortgage was redeemed, must be deemed to have ratified the terms under which the lease was granted. No authority was cited before me for contending that, in a case of ratification by the mortgagor of a transaction of lease granted by a mortgagee he can accept the transaction in part and reject any term of that transaction as he pleased.

12. I therefore hold that the order of the lower appellate authority is wrong and the order of eviction passed by him is hereby set aside and the order of the Rent Controller is restored.

13. The petitioner will get his costs of this petition from the respondent.

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