

Chira Kumar Basu Vs. Property Development Trust Ltd. and ors.

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Court : Kolkata

Decided On : Dec-01-1988

Reported in : AIR1989Cal176,93CWN725

Judge : A.M. Bhattacharjee and ;Ajit Kumar Nayak, JJ.

Acts : [West Bengal Premises Tenancy Act, 1956](#) - Sections 13(1) and 14

Appeal No. : A.F.A.D. No. 925 of 1983

Appellant : Chira Kumar Basu

Respondent : Property Development Trust Ltd. and ors.

Advocate for Pet/Ap. : Amiya Nath Bose, ;Kalyanmoy Ganguly, ;Rabindra Nath Dutta, ;Tarun Chatterjee and ;Bijan Majumdar, Advs.

Disposition : Appeal allowed

Judgement :

A.M. Bhattacharjee, J.

1. The weight of authorities is clearly in favour of the view that if a tenant, without parting with the possession of the premises, forms a Partnership or a Company along with others retaining controlling interest therein and permits the Firm or the Company to operate from and use the tenanted premises, the tenant does not

'transfer, assign or sub-let' the premises to incur the mischief of the relevant provisions of the Rent Control Laws providing for eviction on such ground. The first Appellate Court has referred to a single-judge Delhi decision *Viswa Nath v. Chaman Lal*, 0043/1975 : AIR1975 Delhi117 and also to a single-judge Gujarat decision *Jekisondas v. Abdul Rehman* -- : AIR1975 Guj205 as authorities for this view. The first Appellate Court, with a little more endeavour, could have found out a number of authorities of this Court also on this point. But now that a later decision of the Supreme Court in *Madras Bangalore Transport Co. v. Inder Singh*, : AIR 1986 SC1564 has rather clinched this question almost as a sealer on the point, we may not refer to any other decision and take the law therefrom.

2. In that Supreme Court decision in *Madras Bangalore Transport Co*, (supra), the partners of a Firm, which was in possession as a tenant, formed a Limited Company to carry on the same business as the partners could not any longer carry on that business as a Partnership Firm because of the ban imposed under the arrangement whereunder this Firm was constituted after a splitting up of a larger Partnership Firm into two. It was found that the Limited Company so constituted was an 'alter ego' and a mere 'corporate reflection' of the Partnership Firm with the partners of the Firm as its Directors and that the Firm and the Company 'were two only in name but one for all practical purposes'. There was nothing to show that there was any creation of landlord-tenant relation between the Firm and the Company and the Supreme Court accordingly ruled that there was no subletting to attract the mischief of Section 14(1)(b) of the Delhi Rent Control Act. The single-Judge decision of the Delhi High Court in *Viswa Nath v. Chaman Lal*, 0043/1975 : AIR1975 Delhi117 (supra), relied on by the First Appellate Court, appears to have been referred to by the Supreme Court with approval. We must, therefore, take the law to be that a tenant or the tenants by subsequently forming a Company and permitting that Company to use and to operate from the same premises, may not be held to have transferred or sublet the premises, particularly where the tenant or the tenants, without parting with the possession of the premises is or are exercising substantial control over the Company. But where, as here, the original tenant in its original capacity has also expressly entered into a jural relation of landlord and tenant with the new Company, which is obviously a distinct and separate legal personality, by realising

rents from the Company and/or otherwise, can it, in law, still be urged that the original tenant has not sublet to the Company solely because it is also in substantial control of the Company ?

3. The plaintiff-appellant's clear and categorical case is that the premises were let out to the defendant 1, Property Development Trust Ltd., and the latter had sub-let the same to the defendant 2, American Refrigerator Co. Ltd. Both the Courts below have found several rent receipts in Exhibit 13 series showing payment of monthly rents by the defendant 2, American Refrigerator Co. Ltd., to the defendant 1, Property Development Trust Ltd. Our attention has also been drawn to the certified copies of the Memorandum and Article of Association of the American Refrigerator Co. Ltd., exhibited at the trial, which would go to show the same to be a Limited Company registered under the Companies Act, 1956. Section 34 of the Companies Act apart, providing that a Company on incorporation 'shall be a body corporate... having perpetual succession and common seal', it has been the settled law since about a century in the celebrated decision of the House of Lords in *Salomon v. Salomon & Co. Ltd.* (1897) AC 22 that such a Company is a distinct legal entity having a juridical personality independent of and separate from its members. About the status of the defendant 1, Property Development Trust Ltd., we are also inclined to think that Exht. 5(j), the letter of tenancy in its favour, having been signed on its behalf by one describing him as the 'Director', and the word 'Limited' being the last word of its name, the same is also a Limited Company registered under the Companies Act. Under Section 13 of the Companies Act, a Limited Company must use the word 'Limited' or 'Private Limited' as the last word or words of its name and Section 631 makes user of those words a criminal offence except in case of a duly incorporated Company. If a Limited Company, being the tenant of a premises, openly, avowedly and expressly enters into a jural relationship of landlord-tenant with another Limited Company and grants rent receipts demonstrating receipt and payment of rents, the former is to be held to have sublet the premises to the latter and in that case they cannot be allowed to turn round and urge before the Court to lift their corporate veils and to find that they are substantially the same. If they have, for reasons good or bad, represented themselves to the world at large to possess distinct and separate legal personalities to suit their purposes, white or black, they cannot be allowed to put

on and put off the corporate veils at their pleasure and to urge that even though there has been clear payment of rents by one and receipt of rents by the other indicating a jural relationship of landlord and tenant, these were all sham and myth, unless they can satisfactorily explain as to why they had to indulge into such false or fictitious transactions. Neither in the Supreme Court decision in *Madras Bangalore Transport Co. : AIR 1986 SC1564* (supra) nor in any of the decisions referred to with approval therein, there was any evidence of any such payment and receipt of rent between the tenants and the alleged sub-tenants. As already noted, acceptable reasons were put forward in that Supreme Court decision as to why the tenant Firm had to form a Company only as its alter ego to enable it to circumvent the ban imposed on it by agreement to carry on the earlier business. Absence of any such explanation in the case at hand and clear payment and receipt of rents are, in our view, are very weighty considerations to hold the principle enunciated in the Supreme Court decision not to be applicable in this case.

4. It is true that, as pointed out by the Supreme Court in a recent decision in *State of Uttar Pradesh v. Renusagar Power Co. : AIR 1988 SC1737* , in the expanding horizon of modern jurisprudence, lifting of the corporate veils is permissible and that doctrine has of late expanded so much that the earlier doctrine in *Salomon v. Salomon & Co. Ltd. (1897 AC 22)* (supra) ailing an independent and distinct personality in every Limited Company might be taken to have been molified or modified to a considerable extent. Dr. P. B. Mukharji, an eminent Jurist and a former Chief Justice of this Court, in his celebrated Tagore Law Lectures entitled *New Jurisprudence* (1970 p. 183) has succinctly demonstrated how and when the corporate veils have been and can be lifted and. even if not lifted, pierced or rented, how these veils have become more and more transparent in Company Jurisprudence so that the Courts may see through them. But where, as here, two Companies have not only acquired the obviously distinct and independent personalities, but have also openly and avowedly entered into such jural dealings inter se which can not be entered into by one person with himself or itself, but can_only_be entered into with some other different persons, then they, by their own acts and deeds, have made their veils opaque and impenetrable. No one can pay rent to him or become his own landlord or tenant and we have no doubt that

by such payments and receipts of rents by and between the defendant 1 and the defendant 2, as noted hereinbefore, they, who in law are distinct and separate persons, have clearly and deliberately clothed themselves with dark and impenetrable corporate veils and cannot now be allowed to urge that the Courts should rend or wrench their veils and see them as one by ignoring all their mutual jural transactions inter se, which can only take place between two different and distinct persons. The court, may if necessary, pierce the corporate veils to undo fraud and illegality or to do justice. But, as already indicated, the corporate authorities cannot be allowed to put on and put off their; veils of corporate personality at their pleasure to suit their purpose, and surely not to evade, the operation of social welfare legislations like the [West Bengal Premises Tenancy Act, 1956](#), which condemns and penalises unauthorised subletting in mandatory terms.

5. By and large, the question as to whether there has been subletting may be a question of fact and, as pointed out by the Supreme Court in *Bhagwan v. Rajdev* : AIR 1970 SC986 , if the two Courts below on appreciation of the facts and evidence on record come to a finding that there was no subletting, no question of law, and far less a substantial question of law, can arise. But as already indicated, the Courts below committed error of law by holding that even if a registered Company lets out its premises to another registered Company on rent, such letting cannot amount to subletting if the same person or set of persons is or are in substantial control of the two Companies. We do not think that there is anything in the Supreme Court decision in *Madras Bangalore Transport Co.* : AIR 1986 SC1564 (supra) which has gone to that length. This, as a proposition of law, is erroneous, particularly in the context of the Rent Control Laws like the West Bengal Premises Tenancy Act, which has unmistakably demonstrated its abhorrence against subletting without the prior consent of the landlord, not only by making it a ground of ejectment under Section 13(1)(a), but by solemnly countermanding such transactions under Section 14 of the Act.

6. It appears from the judgment of the first Appellate Court that it was urged on behalf of the respondents that it was the defendant 3, one Mr. Dua, who was the prime mover of the defendant 1 as well as the defendant 2 and that all these were

benami concerns of that Mr. Dua. For far too long, Benami transactions, far from being condemned, enjoyed unjustified patronage from our Courts of law till the Legislature could intervene by inserting in 1972 Section 281A in the Income-tax Act, 1961. But it is heartening to note that under the Benami Transactions (Prohibition) Act, 1988 which has replaced the Benami Transactions (Prohibition of the Right to Recover Property) Ordinance, promulgated in May, 1988 our Legislature has decided to outlaw all Benami Transactions and all rights relating thereto and our forensic approach since the promulgation of that Ordinance must also change accordingly.

7. We accordingly allow the second appeal, set aside the judgments and decrees of the Courts below dismissing the suit filed by the appellant against the respondents-defendants for eviction and mesne profits. We decree the Title Suit No. 12 of 1969 giving rise to this appeal and grant decree for ejectment against the defendants from the suit premises and direct them to quit and vacate the same within 31st Jan 1989, failing which the appellant-plaintiff shall be entitled to recover possession in execution of the decree. We also grant a decree for mesne profits as prayed for and also for costs in the suit and in the Court of First Appeal and direct the trial court to proceed with the enquiry for mesne profits under Order 20, Rule 12 of the Civil P.C, and to take all other necessary steps in accordance with law. None of the respondents having contested the appeal before us, we make no order as to costs in this appeal. Records, with a copy of our judgment, to go down to the trial court at once.

Ajit Kumar Nayak, J.

8. I agree.

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