

24. The reason being that this is not a suit between the appellants (plaintiffs) and respondent No.1 where their *inter se* rights relating to the suit premises can be gone into but rather is an ejectment suit filed by the appellants against respondent Nos. 2 to 5 for their eviction from the suit premises.

25. Therefore, the *Lis* in the suit is between the appellants on the one hand and respondent Nos. 2 to 5 on the other hand and the decision in the suit would depend upon the question as to whether there exists any relationship of landlord and tenant between the appellants and respondent Nos. 2 to 5 in relation to the suit premises and, if so, whether the grounds pleaded in the plaint for claiming eviction of respondent Nos. 2 to 5 are established or not. For deciding these two main questions, the presence of respondent No. 1 is not necessary.

26. For these reasons, we are of the considered opinion that respondent No. 1 is neither a necessary and nor a proper party in the suit.

27. We, however, make it clear that any finding whether directly or indirectly, if recorded by the Trial Court touching the question of title over the suit property, would not be binding on respondent No.1 regardless of the outcome of the suit and respondent No. 1 would be free to file an independent civil suit against the appellants for a declaration of his right, title and interest in the suit premises and in any other properties, if so, and claim partition and separate possession of his share by metes and bounds in all such properties.

28. In view of the foregoing discussion, the appeal succeeds and is allowed. The impugned order is set aside and the order of the Trial Court is restored.

29. As a consequence, the application filed by respondent No. 1 under Order 1 Rule 10(2) of the Code in the aforementioned ejectment suit is dismissed.

30. The Trial Court is directed to decide the ejectment suit on merits in accordance with law expeditiously.

Appeal allowed.

SUPREME COURT OF INDIA

Before: R.K. Agrawal & Abhay Manohar Sapre, JJ.

Civil Appeal No.4189 of 2007

Decided on : 25.01.2018

Flora Elias Nahoum & Ors.

Appellants

Versus

Idrish Ali Laskar

Respondent

A. Eviction of tenant -- It is not necessary for the landlord to make out all the grounds which he has taken in the plaint for claiming eviction of the tenant under the Rent Act -- If one ground of eviction is held made out against the tenant, that ground is sufficient to evict the tenant from the suit premises.

(Para 16,17)

B. Eviction of tenant -- Sub-letting -- Respondent (tenant), since inception, was taking inconsistent stand on the question of sub-letting – He denied having sub-let the suit shop to anyone in his written statement -- Respondent was unable to prove, in categorical terms, as to which capacity, J.M. was sitting in the suit shop - whether as an "employee" or a "business partner" or in any "other capacity" -- Since the respondent had admitted the presence of J.M. in the suit shop, the burden was on him to prove its nature and the capacity in which he used to sit in the suit shop -- As far as the appellants are concerned, they appear to have discharged their initial burden by pleading the necessary facts and then by proving it by evidence that firstly, they let out the suit shop to the respondent and secondly, the respondent has sub-let the suit shop to J.M., who was in its exclusive possession without their consent – Sub-letting against the respondent proved.

(Para 34-43)

C. Eviction of tenant -- Sub-letting -- If the tenant is able to prove that he continues to retain the exclusive possession over the tenanted premises notwithstanding any third party's induction in the tenanted premises, no case of sub-letting is made out against such tenant.

(Para 44)

D. Eviction of tenant -- Sub-letting -- *Sin qua non* for proving the case of the sub-letting is that the tenant has either whole or in part transferred or/and parted with the possession of the tenanted premises in favour of any third person without landlord's consent.

(Para 45)

Cases referred:

1. Bharat Sales Ltd. vs. Life Insurance Corporation of India (1998) 3 SCC 1.

JUDGMENT

ABHAY MANOHAR SAPRE, J. –

1. This appeal arises from the final judgment and final order/decreed dated 07.07.2005 passed by the High Court of Calcutta in F.A. No.416 of 1984 whereby the Division Bench of the High Court dismissed the eviction suit filed by the appellants against the respondent and set aside the decree for eviction passed by the Trial Court in their favour and against the respondent.

2. In order to appreciate the issues involved in this appeal, it is necessary to set out the facts in detail herein-below.

3. The appellants are the plaintiffs (landlords) whereas the respondent is the defendant (tenant) in the eviction suit out of which this appeal arises.

4. The appellants (plaintiffs) are the owners/landlords of one shop (room) bearing premises No.1, Hartford Lane, Calcutta (hereinafter referred to as "the suit shop"), which was originally owned by Late Nahoum Elias and Miss Resmah Nahoum. The present appellants are the successors-in-interest of the suit shop. They had let out the suit shop to one - Alfajuddin Laskar on a monthly rent of Rs.40/-. In the suit shop, Alfajuddin Laskar used to do the

business of sale of eggs under the name "24, Parganas Egg Stores".

5. Alfajuddin Laskar expired in 1976. The respondent being his son became the tenant of the appellants on same terms and conditions. The respondent, however, closed his father's business of selling of eggs and started his tailoring business under the name "New India Tailors" in the suit shop.

6. In 1978, the appellants filed an Eviction Suit against the respondent under the provisions of the West Bengal Premises Tenancy Act, 1956 (hereinafter referred to as "the Act"). The eviction was claimed on four grounds, viz., default in payment of monthly rent, *bona fide* need, sub-letting and lastly, making of unauthorized construction in the suit shop by the respondent.

7. The respondent filed the written statement and denied all the four grounds. Parties adduced their evidence. The Trial Court, by order dated 30.01.1984, partly decreed the suit. It was held that so far as the grounds relating to default of rent and *bona fide* need are concerned, both are not made out whereas the other two grounds, namely, sub-letting and making of unauthorized construction in the suit shop, both stood made out against the respondent.

8. In this view of matter, the appellants' suit was decreed in part against the respondent and the decree for eviction on the ground of sub-letting and unauthorized construction made by the respondent in the suit shop was passed. The respondent was granted six months' time to vacate the suit shop and handover its vacant possession to the appellants.

9. Being aggrieved by the said order, the respondent filed appeal before the High Court at Calcutta. The appellants, however, did not file any cross appeal or cross-objection against that part of the order by which two grounds, viz., default in payment of rent and *bona fide* need were held not made out. The judgment of the Trial Court thus became final to that extent.

10. Therefore, the only question before the High Court was whether the Trial Court was justified in decreeing appellants' suit on the grounds of sub-letting and making of unauthorized construction in the suit shop.

11. In other words, the question was whether the Trial Court was right in holding that the ground of sub-letting and making of unauthorized construction in the suit shop was made out.

12. The High Court, by impugned judgment, allowed the respondent's appeal and dismissed the appellants' eviction suit. The High Court held that no ground of either sub-letting or an unauthorized construction was made out, hence, the suit was liable to be dismissed in its entirety. It was accordingly, dismissed.

13. Against this judgment, the landlords felt aggrieved and filed this appeal by way of special leave in this Court.

14. Heard Ms. Daisy Hannah, learned counsel for the appellants and Mr. Zakiullah Khan, learned senior counsel for the respondent.

15. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal and while setting aside of the impugned judgment, we restore that of the Trial Court and, in consequence, decree the appellants' suit in part, as indicated below.

16. There can be no dispute to the legal proposition that even if the landlord is able to make out only one ground out of several grounds of the eviction, he is entitled to seek the eviction of his tenant from the suit premises on the basis of that sole ground which he has made out under the Rent Act.

17. In other words, it is not necessary for the landlord to make out all the grounds which he has taken in the plaint for claiming eviction of the tenant under the Rent Act. If one ground of eviction is held made out against the tenant, that ground is sufficient to evict the tenant from the suit premises.

18. As mentioned above, the Trial Court held that the appellants were able to make out two grounds for respondent's eviction, namely, sub-letting and unauthorized construction made by him in the suit shop. The High Court, accordingly, reversed the findings on these two grounds and dismissed the suit.

19. We consider it proper to examine first, the ground of sub-letting with a view to find out as to whether the plaintiffs (appellants) were able to make out this ground against the respondent. In other words, let us first examine as to whether the Trial Court was right or the High Court was right on this issue.

20. In order to examine, whether the ground of sub-letting is made out or not, it is necessary to see as to how this ground was pleaded and sought to be proved by the parties.

21. The appellants, in Para 4 of the plaint, pleaded the case of sub-letting as under:

"4. The defendant after acquiring right of tenancy in respect of the said shop room after his father's death, wrongfully transferred possession of the said shop room to one Joynal Mallick evidently for creating a sub-tenant in his favour in respect of the suit shop room without obtaining the permission and consent of the plaintiffs."

22. The respondent, in reply to Para 4 of the plaint, gave the following reply in Para 9 of his written statement as under:

"9. The defendant denies the allegations made in paragraph 4 of the plaint and in particular denies the allegations that he has transferred possession of the shop under his tenancy to one Joynal Mullick or anybody as falsely alleged."

23. It is clear from the perusal of the pleadings that the case of the appellants was that the respondent has sub-let and parted with possession of the suit shop to one Joynal Mullick without appellants' consent.

24. So far as the respondent is concerned, he simply denied the appellants' case in para 9 saying that he has not sub-let the suit shop to anyone, much less to Joynal Mullick, as claimed by the appellants.

25. The respondent examined himself as witness No.1 and examined Joynal Mullick as witness No.2.

26. In examination-in-chief, the respondent changed his stand and said that he has not sub-let the suit shop to Joynal Mullick but he is in his employment. This is what he said:

"It is not a fact that I sublet the shop room in suit to one Jainal Mullick. Jainal Mullick is in my employment."

27. The respondent further in his cross-examination again changed his stand and in answer to a specific question put to him as to whether he has employed any person in his tailoring business said "no". This was his reply:-

"No. In the tailoring business I have no employee but the work is done on contract basis."

28. The respondent then in answer to another question put to him as to how many persons work for you on contract basis in his tailoring business, his reply was- four persons and out of four, Joynal Mullick and Jahangir Mullick were his employees. This is what he said:-

"Najrul Islam and Sayed, Volunteers – Besides these persons there are two other persons who look after the business in my absence. They are Jainal Mullick and Zahangir Mullick volunteers. These two persons are my employee."

29. The respondent then was asked another question, viz., Did he disclose the name of any of his employee while submitting the declaration form under the Shops and Establishment Act, his reply was "no". This is what he said:-

"I am the owner of the tailoring shop. Volunteers – fresh declaration has been submitted about 10/12 days back. In that declaration I have not declared that these two persons Jainal and Zahangir are my employees."

30. The respondent was then asked last pointed question - whether Joynal Mullick is doing business in the suit shop. To this, his reply was that Joynal Mullick is his business partner. This is what he said:-

"I obtained the trade license from the Corporation of Calcutta for the business carried in the shop showing Jainal Mullick and Zahangir Mullick as my partners in the business. It is not a fact that Jainal and Zahangir are not my employees."

31. Joynal Mullick then in his evidence said that he is an employee of the respondent for the last 7/8 years and whatever the respondent (his owner) tells him to do, he does it while sitting in the suit shop. He stated that, in his presence, the respondent had constructed "Macha" in the suit shop. He said that he joined the business under the name "New India Tailor".

32. Keeping in view the statements of the respondent and Joynal Mullick, the question arises as to whether a case of sub-letting and parting of possession of the suit shop in favour of Joynal Mullick, whether whole or in part, is made out.

33. Section 13(1)(a) of the Act deals with the ground of sub-letting and provides that where the tenant or any person residing in the premises let to the tenant without the previous consent in writing of the landlord transfers, assigns or sublets in whole or in part the premises held by him, then it is a ground for the tenant's eviction from the tenanted premises.

34. In our considered opinion, keeping in view the pleadings and the nature of the evidence adduced by the parties, the ground of sub-letting, as contemplated under Section 13(a) *ibid*, is made out. This we say for the following reasons.

35. In the first place, we find that the respondent (tenant), since inception, was taking inconsistent stand on the question of sub-letting.

36. To begin with, he denied having sub-let the suit shop to anyone in his written statement. Then, contrary to what he alleged in the written statement, he said in his examination-in-chief that Joynal Mullick was his employee. Then, again contrary to this statement, he said, in next breath, that Joynal Mullick is his partner in tailoring business.

37. So far as Joynal Mullick is concerned, he admitted that he has been sitting in the suit shop for the last 7/8 years but he has been sitting in a capacity as an "employee" of the respondent.

38. In our opinion, the contradictory stand of the respondent and that too without any evidence clearly leads to an inference that the respondent was unable to prove, in categorical terms, as to which capacity, Joynal Mullick was sitting in the suit shop - whether as an "employee" or a "business partner" or in any "other capacity".

39. It seems that the respondent was not sure as to what stand he should take to meet the plea of sub-letting. He, therefore, went on changing his stand one after the other and could not prove either.

40. In our view, since the respondent had admitted the presence of Joynal Mullick in the suit shop, the burden was on him to prove its nature and the capacity in which he used to sit in the suit shop.

41. In other words, if Joynal Mullick was the respondent's employee then, in our view, he should have proved it by filling a declaration form, which he had submitted under the Shops and Establishment Act to the authorities. But it was not done. Rather he admitted that he did not disclose the name of Joynal Mullick in the declaration form. That apart, the respondent could have proved this fact by filing payment voucher, or any other relevant evidence to show that Joynal Mullick was his employee and that he used to sit in the suit shop in that capacity only. It was, however, not done.

42. Second, if Joynal Mullick was a partner of the respondent in the tailoring business then the respondent could have proved this fact by filing a copy of the partnership deed. However, he again failed to produce the copy of partnership deed. In this way, he failed to prove even this fact.

43. Now so far as the appellants are concerned, they appear to have discharged their initial burden by pleading the necessary facts in Para 4 and then by proving it by evidence that firstly, they let out the suit shop to the respondent and secondly, the respondent has sub-let the suit shop to Joynal Mullick, who was in its exclusive possession without their consent.

44. In a case of sub-letting, if the tenant is able to prove that he continues to retain the exclusive possession over the tenanted premises notwithstanding any third party's induction in the tenanted premises, no case of sub-letting is made out against such tenant.

45. In other words, the *sin qua non* for proving the case of the sub-letting is that the tenant has either whole or in part transferred or/and parted with the possession of the tenanted premises in favour of any third person without landlord's consent.

46. This Court in **Bharat Sales Ltd. vs. Life Insurance Corporation of**

India (1998) 3 SCC 1, while dealing with the case of sub-letting succinctly explained the concept of sub-letting and what are its attributes.

47. Justice Sagir Ahmad, speaking for the Two Judge Bench, held as under:

“4. Sub-tenancy or sub-letting comes into existence when the tenant gives up possession of the tenanted accommodation, wholly or in part, and puts another person in exclusive possession thereof. This arrangement comes about obviously under a mutual agreement or understanding between the tenant and the person to whom the possession is so delivered. In this process, the landlord is kept out of the scene. Rather, the scene is enacted behind the back of the landlord, concealing the overt acts and transferring possession clandestinely to a person who is an utter stranger to the landlord, in the sense that the landlord had not let out the premises to that person nor had he allowed or consented to his entering into possession over the demised property. It is the actual, physical and exclusive possession of that person, instead of the tenant, which ultimately reveals to the landlord that the tenant to whom the property was let out has put some other person into possession of that property. In such a situation, it would be difficult for the landlord to prove, by direct evidence, the contract or agreement or understanding between the tenant and the sub-tenant. It would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property had been sub-let had paid monetary consideration to the tenant. Payment of rent, undoubtedly, is an essential element of lease or sub-lease. It may be paid in cash or in kind or may have been paid or promised to be paid. It may have been paid in lump sum in advance covering the period for which the premises is let out or sub-let or it may have been paid or promised to be paid periodically. Since payment of rent or monetary consideration may have been made secretly, the law does not require such payment to be proved by affirmative evidence and the court is permitted to draw its own inference upon the facts of the case proved at the trial, including the delivery of exclusive possession to infer that the premises were sub-let.”

48. In our considered opinion, the aforesaid principle of law fully applies to the case at hand against the respondent due to his contradicting stand and by admitting Joyanal Mullick's presence in the suit shop but not being able to properly prove the nature and the capacity in which he was sitting in the suit shop.

49. In view of the foregoing discussion, we have formed an opinion that the appellants were able to prove the case of sub-letting against the respondent.

50. We cannot thus concur with the reasoning and the conclusion arrived at by the High Court and instead prefer to agree with the conclusion of the Trial Court insofar as it relates to the ground of sub-letting. In view of this, it is not necessary to examine the other ground relating to making of unauthorized construction by the respondent in the suit shop.

51. In the result, the appeal succeeds and is allowed. The impugned judgment is set aside and that of the Trial Court is restored.

52. The respondent is, however, granted three months' time to vacate the suit shop, subject to the respondent filing in this Court a usual undertaking that he will deposit the entire arrears of rent up to the date as per the agreed rate within one month and will also deposit the mesne profits for a period of three months up to the date of vacation in advance at the agreed rate and would vacate the suit shop on or before 30.04.2018.

Appeal allowed.

SUPREME COURT OF INDIA

Before: R.K. Agrawal & Abhay Manohar Sapre, JJ.

Civil Appeal No. 883 of 2018

Decided on : 25.01.2018

(Arising out of S.L.P.(c) No. 14306 of 2015)

Jayaprakash & Anr.

Appellants

Versus

T.S. David & Ors.

Respondents

Code of Civil Procedure, 1908 (V of 1908), Order 9 Rule 13 – Ex-parte decree – Setting aside of – Notice to other defendants – Requirement of -- Suit was restored at the instance of defendant Nos. 3 and 4, the Trial Court committed error inasmuch as it did not issue fresh notice of the suit to defendant Nos. 1 and 2 -- In other words, defendant Nos. 1 and 2 were entitled for a fresh notice of the suit once restored despite their non-appearance in the first round of trial in the suit and in Order 9 Rule 13 proceedings.

(Para 18)

JUDGMENT

ABHAY MANOHAR SAPRE, J. –

1. Leave granted.

2. This appeal is filed by the plaintiffs against the final judgment and order dated 05.11.2014 passed by the High Court of Kerala at Ernakulam in R.F.A. No.541 of 2007 whereby the High Court allowed the appeal filed by defendant Nos. 3 & 4 (respondent Nos.1 & 2 herein) and set aside the judgment and decree dated 20.02.2007 passed by the sub-Court, Kottayam in O.S. No.337 of 2001.

3. In order to appreciate the short controversy involved in the appeal, few relevant facts need mention hereinbelow.

4. The appellants are the plaintiffs whereas the respondents are the defendants in the civil suit out of which this appeal arises.

5. The appellants filed a civil suit being O.S. No. 337/2001 against the respondents (defendants) in the Court of Principal Sub-Judge, Kottayam for specific performance of the agreement (Ex-A-1) for sale of suit properties to