

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19.01.2015

Coram:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.NPD.No.4539 of 2013

and

M.P.No.1 of 2014

1. M.Nachiappan
2. M.Ramanathan
3. M.Lakshmanan

...Petitioners/Appellants/Petitioners

vs.

1. Uberoi Limited
rep. by its Managing Director
No.135, Anna Salai
Chennai 600 002.

2. J.P.Acharya ...Respondents/Respondents/Respondents

Civil Revision petition preferred against the judgment and decree dated 20.03.2013 made in RCA No.214/2005 on the file of VII Small Causes Court, Chennai confirming the judgment and decree dated 10.02.2004 made in RCOP No.1578/2002 on the file of the 15th Small Causes Court, Chennai.

For Petitioner : Mr.M.V.Venkataseshan

For Respondents : Mr.P.K.Sivasubramaniam [for R1]

ORDER

The revision petitioners are the landlords of the property bearing old Door No.22, New No.106, Anna Salai, Chennai -2. The landlords initiated eviction proceedings against the respondents under Sections 10(2)(ii)(a) and 10(2)(b) of the Tamil Nadu Buildings [Lease and Rent Control] Act, contending that the first respondent had sublet the premises to the second respondent and they have been using it for different purpose other than the purpose it was let out to the first respondent. Both the tenants contested the Eviction Petition stating that there was no sub-lease and as per the Franchisee Agreement entered into between the first respondent and the second respondent, the second respondent was looking after the business of the first respondent.

2. The parties have adduced both oral and documentary evidence to substantiate their rival contentions. The Rent Controller as well as the Appellate Authority held that there was not sub-lease and that as per the Lease Agreement, the tenant/first respondent can carry on any business. Accordingly, the Eviction Petition was rejected. Aggrieved by the said order, the present revision is filed.

3. Mr.M.V.Venkataseshan, learned counsel for the petitioners submitted that the first respondent had entered into an agreement with the landlords on 23.03.1972 and the lease period was fixed for 30 years. Initially, the rent was Rs.1,750/- and subsequently, it was increased to Rs.2,500/- and after expiry of the lease period, the landlords filed a petition of fixation of fair rent and this Court has fixed the fair rent as Rs.71,303/-. The learned counsel would further submit that Ex.R14 - the Franchisee Agreement would reveal that, the first respondent has sublet the premises to the second respondent and the first respondent has parted a portion of the premises to the second respondent. It is further submitted that as per the Franchisee Agreement the second respondent has to pay Rs.12,00,000/- per annum to the first respondent, which would reveal that it is a clear case of sub-lease. The learned counsel further submitted that the first respondent was regularly paying the fair rent till June 2014 and subsequently, the first respondent has failed to pay the rent. Hence, the landlords filed M.P.No.1 of 2014 praying for a direction to the tenant to pay the arrears of rent.

4. The learned counsel has relied upon the judgment of the Supreme Court in 2006 (4) LW 987 [J.P.Vijayakumar and another vs. S.Ranjan and another] in support of his contention.

5. Per contra, Mr.P.K.Sivasubramaniam, learned counsel for the first respondent submitted that the second respondent was carrying on the business of the first respondent and therefore, it is not a case of sub-letting; that the first respondent has not parted with the possession of the petition premises to the second respondent and as per the agreement, the first respondent can carry on any business and he need not do only the business of selling sports goods. The learned counsel further submitted that the second respondent was not paying rent to the first respondent and therefore, the Franchisee Agreement was cancelled by the first respondent and now the second respondent is in unauthorised possession of the petition premises.

6. Ex.R14-Franchisee Agreement would reveal that the second respondent has agreed to pay Rs.12 lakhs to the first respondent and normally in case of Franchisee Agreement, the Franchisor will pay the franchise amount to the Franchisee. However, in the present case, the Franchisee had agreed to pay money to the Franchisor. This Court is of the opinion that the Franchisee Agreement was entered by the 1st respondent with an oblique motive to avoid eviction of sub-letting. The first respondent now admits that the Franchisee

Agreement is cancelled and the second respondent is in unauthorised possession. The evidence of the landlords established that the first respondent has parted with possession to the second respondent and the second respondent was in exclusive possession of the petition premises.

7. This Court in 2006 (4) LW 987 [cited supra] has held as follows:

"20. Even though, it was specifically mentioned in the agreement that the 2nd respondent will not be a sub-tenant, I am of the opinion that this agreement dated 24.4.2000 is only a cloak to suppress the fact that the property was sub-let to the 2nd respondent. Even otherwise, a tenant is not supposed to enter into a franchisee agreement with another person, allowing the other person to use and utilise the entire premises for a commission as the same will amount to putting the other person in possession of the leased property giving full power of control and management over the same (leased property). Therefore as rightly pointed out by the learned counsel for the Revision Petitioners Ex.R9 is only a camouflage to suppress the fact of sub-letting the property and the appellate Authority got carried away by the wordings of the agreement without making effort to consider the underlying intention behind the agreement."

8. The Rent Controller and the Appellate Authority without properly considering the material evidence dismissed the eviction petition. The judgment reported in 2006 (4) LW 987 [cited supra] squarely applies to the facts of this case. Under Lease Agreement - Ex.R1, the petition premises was leased out to the first respondent to carry on business and it was not restricted to carry on business in sports goods alone. The Rent Controller and the Appellate Authority have rightly held that the ground of "Different User" is not established in this case. I am of the view that the landlords have proved the sub-letting of the tenanted premises by the first respondent to the second respondent.

9. Mr.M.V.Venkataseshan, learned counsel for the petitioners submitted that the first respondent failed to pay rent from July 2014 and the landlords have agreed not to claim rent from the first respondent from July 2014 to January 2015. The submission of the learned counsel for the petitioners is recorded.

In view of my findings supra, the order passed by the Rent Controller and the Appellate Authority are set aside and the landlords are entitled to have an order of eviction on the ground of

sub-letting. Accordingly, the revision petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar
Dated:23.2.15

True Copy

Sub Assistant Registrar

To

1. The VII Small Causes Court, Chennai.
2. The XVth Small Causes Court, Chennai.
- +3 cc's to Mr.M.V.Venkatesan, Advocate,SR.2368
- +1 cc to Mr.P.K.Sivasubramaniam, Advocate,SR.3082.

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