IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2021

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THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.Nos.1203 & 2909 of 2014

CRP.NPD.No.1203 of 2014

1.Abdullah
2.Mohamed Ibrahim ..Petitioners

Vs.

1.I.Augustin
2.David TOPSING ..Respondents

PRAYER:

The Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings Lease and Rent Control Act, 1960 against the judgment and decree dated 25.09.2013 in RCA.No.504 of 2006 on the file of the VII Small Causes Court, Chennai and confirming the judgment and decree dated 24.03.2006 in RCOP.No.668 of 2005 on the file of XIV Judge, Small Cause Court at Chennai.

For Petitioners : Mr.M.Ganesan,
for Nikitha R.Vora

For Respondents : Mr.K.Sridar

CRP.NPD.No.2909 of 2014

1.I.Augustine
2.David Topsingh

3.Saroja ..Petitioners

Vs.

1.N.Abdullah
2.M.S.Mohammed Ibrahim ..Respondents

PRAYER:

The Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings Lease and Rent Control Act, 1960 against the order and decreetal order of the VIII Judge, Small Causes Court/Rent Control Appellate Authority, Chennai dated 01.04.2013 made in RCA.No.825 of 2007 confirming the order and decreetal order of the XVI Judge, Small Causes Court/Rent Controller, Chennai dated 26.03.2007 made in RCOP.No.2423 of 2005.

For Petitioners : Mr.K.Sridar
for Mr.K.Sridhar Asso.

For Respondents : Mr.M.Ganesan,
for Nikitha R.Vora

**COMMON ORDER**

The civil revision petitions are filed against the judgment and decree dated 25.09.2013 in RCA.No.504 of 2006 on the file of the VII Small Causes Court, Chennai and confirming the judgment and decree dated 24.03.2006 in RCOP.No.668 of 2005 on the file of XIV Judge, Small Cause Court at Chennai; and against the order and decreetal order of the VIII Judge, Small Causes Court/Rent Control

Appellate Authority, Chennai dated 01.04.2013 made in RCA.No.825 of 2007 confirming the order and decreetal order of the XVI Judge, Small Causes Court/Rent Controller, Chennai dated 26.03.2007 made in RCOP.No.2423 of 2005.

2. The petitioners in CRP.No.1203 of 2014 (hereinafter called as landlords) filed petition for eviction on the ground of subletting the petition premises against the respondents (hereinafter called as tenants). The learned Rent Controller dismissed the petition and the same was also confirmed by the learned Rent Control Appellate Authority. Aggrieved by the same, the landlords have preferred the Civil Revision Petition in CRP.NPD.No.1203 of 2014. The landlords also filed petition for fixation of fair rent for the petition premises as against the tenants. The learned Rent Controller fixed fair rent for the petition premises at Rs.12,879/- per month payable by the tenants. Aggrieved by the same, the tenants filed appeal and the learned Rent Control Appellate Authority confirmed the same. Aggrieved by the same, the tenants has filed the civil revision petition in CRP.NPD.No.2909 of 2014.

3. The learned counsel for the landlords submitted that the

petition premises admeasuring 600 sq.ft. situated in the first floor of the Door No.33/2, New No.73, Purasawalkam High Road, Chennai-7. The tenants are paying monthly rent at Rs.1,750/-. Thereafter the first tenant subleased the petition premises to the second tenant without the knowledge and consent of the landlords under secret arrangement. Initially, the petition premises owned by one Narayana Rao and subsequently it was purchased by the landlords by registered sale deed dated 31.05.2004 vide document No.2204 of 2004. Immediately after purchase of the petition premises on 31.05.2004 itself, the erstwhile owner issued letter to the first tenant thereby call upon the first tenant to attorn the tenancy in favour of the landlords from 01.06.2004. In fact, the landlords also issued letter to attorn his tenancy in favour of the landlords. Thereby the first tenant was directed to pay rents. Till the year 2005 rent was paid and issued receipts in the name of the first tenant namely I.Augustin, Proprietor of Sagayam Traders. He further submitted that in fact the first tenant also filed suit in OS.No.4055 of 2002 for declaration for his entitlement to put up their name board as Sagayam Traders in the petition premises and also injunction from evicting them unlawfully except due process of law. The said suit was also filed by him in the capacity of the proprietor of Sagayam Traders. Whereas, he introduced new plea in the eviction petition on the ground of sub lease that the Sagayam Traders is a partnership firm and he also produced registration certificates of the partnership firm. The Sagayam Traders is a partnership firm running by its partners namely first and second tenants and also their sisters. All along the tenancy stands in the name of the first tenant who is the proprietor of Sagayam Traders and issued receipts in the name of first tenant and also he filed suit in the capacity of proprietor of Sagayam Traders as against the erstwhile landlord. Without considering the same, the learned Rent Controller dismissed the eviction petition on the ground of sublease and the same was also confirmed by the learned Rent Control Appellate Authority.

3.1 He also submitted that insofar as fixing the fair rent is concerned, in respect of petition premises, the petition premises is type 1 construction and aged about 81 years. According to the engineer's report, the plinth area of the premises is 570 sq.ft, balcony is measuring 22.6 sq.ft. and exclusive balcony area in the first floor is 102 sq.ft. As far as basic amenities, fixed at 10% for the petition premises. The land value fixed at Rs.86,86,080/-. Accordingly, the petition premises valued at Rs.70 lakhs per ground. Thereby calculated fair rent at Rs.12,879/- and as such there is absolutely no infirmity in the order passed by the learned Rent controller and the same was confirmed by the learned Rent Control Appellate Authority.

4. Per contra, the learned counsel for the tenants would submit that the petition premises was rented out to Sagayam Traders which is run by both the tenants as partners. The Sagayam Traders is consisting of three partners. All the partners are in joint possession of the petition premises and running the business in the name and style of Sagayam Traders. It is their family business and accordingly Sagayam Traders has been registered before all the tax authorities. Due to inadvertence in the suit, stated as proprietary concern represented by first tenant and filed for declaration and injunction in respect of petition premises. He further submitted that even assuming that after inducted as tenant, the proprietorship is converted as partnership firm. It is among the family members and the partners are none other than own brothers and sister. In fact the first tenant is continuing as partner jointly doing the business in the name and style of Sagayam Traders. In support of his contention, he also relied upon the following judgments:

(i) Parvinder Singh Vs. Renu Gautam
reported in 2004 (4) SCC 794

(ii) Krishnawati Vs. Hans Raj reported in 1974(1) SCC 289

(iii) Senniappan and others Vs. Kannammal and others reported in 1988 (1) CTC 537

(iv) Gundapalli Rangamannar Chetty Vs. Desu Rangiah reported in AIR 1954 Madras 182

(v) Helper Girdharbhai Vs. Saiyed Mohamad Mirasaheb Kadri reported in AIR 1987 SC 1782

(vi) Mahendra Saree Emporium Vs. G.V.Srinivasa Murthy reported in AIR 2004 SC 4289

4.1 He further submitted that insofar as fixation of fair rent is concerned, even according to the landlords' engineer's report, balcony is common one and as such 50% of the area only has to be calculated for total area of the petition premises. In the first floor there are tenants and both had access to the said balcony and both are using the same. Therefore it has to be divided by half and only half extent can be included in the petition premises. Therefore, fixation of fair rent at Rs.12,879/- is higher than the value of the petition premises.



5. Heard Mr.K.Sridar, the learned counsel appearing for the petitioners in CRP.NPD.No.2909 of 2014 and respondents in

CRP.NPD.No.1203 of 2014; Mr.M.Ganesan, the learned counsel appearing for the respondents in CRP.NPD.No.2909 of 2014 and petitioners in CRP.NPD.No.1203 of 2014.

6. The petition premises was rented out to the tenants for commercial purpose to run the business under the name and style of Sagayam Traders. On perusal of the petition for eviction on the ground of sublease revealed that the first tenant subleased the petition premises to the second tenant. The exhibits produced by the tenants revealed that Sagayam Traders is a partnership firm consisting of three partners. The partnership firm is consisting the first and second tenants along with the sister. Admittedly the first tenant is continuing as partner and running business with the other partners under the name and style of Sagayam Traders. To prove the sub tenancy the first ingredient has to establish is that the sub tenant is in exclusive possession or part of the premises in lieu of payment of compensation or rent. The second ingredient to prove the sub tenant is that the right to occupy premises must be in lieu of payment of some compensation or rent. Therefore, mere occupation is not sufficient inference either on sub tenancy or part with the possession. In the case on hand, the Sagayam Traders is a partnership firm and both the tenants are

partners and also along with the other partners running business in the name and style of Sagayam Traders. In support of the contention, the learned counsel for the tenants cited the judgment in the case of ***Gundapalli Rangamannar Chetty Vs. Desu Rangiah*** reported in ***AIR 1954 Madras 182***, wherein it is held as follows:

> *"The mere act of letting other persons into possession by the tenant, and permitting them to use the premises for their own purposes, is not, so long as he retains the legal possession himself, a breach of the covenant."*
>
> *6. It is clear from the aforesaid decisions that there cannot be a sub-letting, unless the lessee parted with legal possession. The mere fact that another is allowed to use the premises while the lessee retains the legal possession is not enough to create a sub-lease. Section 105 of the Transfer of Property Act defines a lease of immovable property as to transfer of right to enjoy such property. Therefore to create a lease or sub-lease a right, to exclusive possession and enjoyment of the property should be conferred on another. In the present case the exclusive possession of the premises was not given to the second respondent. The first respondent continued to be the lessee, though in regard to the business carried on in the premises he had taken in other partners. The, partners are not given any exclusive possession of the premises or a part thereof. The first respondent continues to be in possession, subject to the liability to pay rent to his landlord. The partnership deed also, as I have already stated, does not confer any such right in the premises on*

*the other partners. If therefore hold that in the circumstances of the case the first respondent did not sublet the premises to the second respondent, and therefore he is not liable to be evicted under the provisions of Act No. 23 of 1949.*

7. He also relied upon the judgment in the case of ***Helper Girdharbhai Vs. Saiyed Mohamad Mirasaheb Kadri*** reported in ***AIR 1987 SC 1782***, wherein it is held as follows:

*5.The main question in issue in this appeal as well as before the High Court in revision was whether there was a genuine partnership at the appellant was a partner. It is true that since after 4th of October, 1960 the partnership firm was carrying on business in the premises in question. It is well settled that if there was such a partnership firm of which the appellant was a partner as a tenant the same would not amount to subletting leading to the forfeiture of the tenan- cy. For this proposition see the decision of the Gujarat High Court in the case of Mehta Jagjivan Vanechand v. Doshi Vanechand Harakhchand and others, A.I.R. 1972 Gujarat 6. Thakkar, J. of the Gujarat High Court, as the learned Judge then was, held that the mere fact that a tenant entered into a partnership and allowed the premises being used for the benefit of partnership does not constitute assign-*

*ment or subletting in favour of the partnership firm enti- tling a landlord to recover possession. This view is now concluded by the* *decision of this Court in Madras Bangalore Transport Co. (West) v. Inder Singh and others, [1986] 3 S.C.C. 62.*

*8.Whether there was a partnership or not may in certain cases be a mixed question of law and fact, in the sense that whether the ingredients of partnership as embodied in the law of partnership were there in.a particular case or not must be judged in the light of the principles applicable to partnership. The first question, therefore, is what is a partnership? That has to be found in section 4 of the Indian Partnership Act, 1932, it says "Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all" (Emphasis supplied). Section 6 of the said Act reiterates that in determining whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the par- ties, as shown by all relevant facts taken together. The following important elements must be there in order to establish partnership, (1) there must be an agreement en- tered into by all parties concerned, (2) the agreement must be to share profits of business; and (3) the business must be carried on by all or any of the persons concerned acting for all. The partnership deeds were there entitling the petitioner to share in the partnership. It is true that in the partnership deeds the bank accounts were not to be operated by the appellant, and further that irrespective of the profit the clause of the partnership deed provided that there should be a fixed percentage of profit to be given to the partner-appellant No. 1. The appellant was not to share the losses. But there is nothing illegal about it. The appellant was to bring his* *asset being the tenancy of the premises in question for the user of the partnership. All these tests were borne in mind by the Court of Small Causes, Bombay in the appeal from the decision of the learned trial Judge. The Appellate Court had considered the partnership deeds. One point was emphasised by Mr. Mehta, learned coun- sel appearing for the respondents, that the original first partnership deed did not mention the appellant or his father as a partner. It was in the second partnership deed that the appellant and his father joined the firm. The firm started as emphasised by Mr. Mehta on 4th of October, 1960 and it was only on the 24th of October, 1960 the second partnership deed was -executed. Therefore, it was emphasised that there was a gap of time when there was user by the partnership firm of the premises in question when the appellant was not a member of the firm. It was emphasised that this aspect was not considered by the Court of Small Causes and the High Court, therefore, was justified in interfering with the findings of the Court of Small Causes. We are unable to agree. These deeds were there, the partners were cross- examined, there was no specific evidence as to from what date the firm started functioning from the particular prem- ises in question. Secondly, it was emphasised by Mr. Mehta that the partnership deed was a camouflage. It is evident from the sales- tax registration and other registration certificates and licences under the Shops and Establishments Act that the partnership was registered in the name of the appellant and the appellant was also indicated as a partner. It was so in the Income Tax returns and assessments. There- fore, it was submitted that the Court of Small Causes com- mitted an error of law resulting in miscarriage of* *justice. It was submitted by Mr. Mehta that once it was accepted that the partnership deed was a mere camouflage the other subse- quent acts and conducts were merely ancillary and were put in a formal way. But the question is from the three deeds itself which were examined in detail by the Court of Small Causes and which were re-examined by the High Court could it be said unequivocally that there was no partner- ship. The deeds gave the appellant the right to share the profits and made him agent for certain limited purposes of the firm and there was evidence that the partnership deeds were acted upon. There was evidence of suit of dissolution of the partnership where none of the partners took the plea that it was a false or a fictitious document. Though the decree in the dissolution suit was not binding in these proceedings, inter se between the parties as partners it is a piece of evidence which cannot be wholly ignored. All these factors were present before the Court of Small Causes. These were reappraised by the High Court. One point was emphasised by Mr. Mehta that in the partnership deed which is not necessary to recite the terms, the petitioner was completely excluded in operating the bank accounts etc. There is nothing inherently illegal or improbable making a provision of such a type. In the eye of law, such a clause is really non-sequitur or neutral proving neither the exist- ence nor non-existence of a genuine firm.*



8. He also relied upon the judgment in the case of **Mahendra Saree Emporium Vs. G.V.Srinivasa Murthy** reported in ***AIR 2004 SC 4289***, wherein it is held as follows:

*16. The term 'sub-let' is not defined in the Act __ new or old. However, the definition of 'lease' can be adopted mutatis mutandis for defining 'sub-lease'. What is 'lease' between the owner of the property and his tenant becomes a sub-lease when entered into between the tenant and tenant of the tenant, the latter being sub-tenant qua the owner-landlord. A lease of immovable property as defined in Section 105 of the Transfer of Property Act, 1882 is a transfer of a right to enjoy such property made for a certain time for consideration of a price paid or promised. A transfer of a right to enjoy such property to the exclusion of all others during the term of the lease is sine qua non of a lease. A sub-lease would imply parting with by the tenant of a right to enjoy such property in favour of his sub- tenant. Different types of phraseology are employed by different State Legislatures making provision for eviction on the ground of sub-letting. Under Section 21(1)(f) of the Old Act, the phraseology employed is quite wide. It embraces within its scope sub-letting of the whole or part of the premises as also assignment or transfer in any other manner of the lessee's interest in the tenancy premises. The exact nature of transaction entered into or arrangement or understanding arrived at between the tenant and alleged sub-tenant may not be in the knowledge of the landlord and such a transaction being unlawful would obviously be entered into in secrecy depriving the owner-landlord of the means of ascertaining the facts about the same. However still, the Rent Control Legislation being protective for the tenant and eviction being not permissible except on the availability of ground therefor having been made out to the satisfaction of the Court or the Controller* *the burden of proving the availability of the ground is cast on the landlord, i.e. the one who seeks eviction. In Krishnawati Vs. Hans Raj, (1974) 2 SCR 524, reiterating the view taken in Associated Hotels of India Ltd. Delhi Vs. S.B. Sardar Ranjit Singh, (1968) 2 SCR 548, this Court so noted the settled law ___ "the onus of proving sub-letting is on the landlord. If the landlord prima facie shows that the occupant, who was in exclusive possession of the premises, let out for valuable consideration, it would then be for the tenant to rebut the evidence". Thus, in the case of sub-letting, the onus lying on the landlord would stand discharged by adducing prima facie proof of the fact that the alleged sub-tenant was in exclusive possession of the premises or, to borrow the language of Section 105 of the Transfer of Property Act, was holding right to enjoy such property. A presumption of sub-letting may then be raised and would amount to proof unless rebutted. In the context of the premises having been sub-let or parted with possession by the tenant by adopting the device of entering into partnership, it would suffice for us to notice three decisions of this Court. Murlidhar versus Chuni Lal and others (1970 A.I.R.C.J. 922) is a case where a shop was let out to a firm of the name of Chuni Lal Gherulal. The firm consisted of three partners, namely, Chuni Lal, Gherulal and Meghraj. This partnership closed and a new firm by the name of Meghraj Bansidhar commenced its business with partners Meghraj and Bansidhar. The tenant firm was sought to be evicted on the ground that the old firm and the new firm being two different legal entities, the occupation of the shop by the new firm amounted to subletting. This court discarded the contention as 'entirely without substance' and held that a partnership firm is* *not a legal entity; the firm name is only a compendious way of describing the partners of the firm. Therefore, occupation by a firm is only occupation by its partners. The two firms, old and new, had a common partner namely Meghraj, who continued to be in possession and it was fallacious to contend that earlier he was in possession in the capacity of partner of the old firm and later as a partner of the new firm. The landlord, in order to succeed, has to prove it as a fact that there was a subletting by his tenant to another firm. As the premises continued to be in possession of one of the original tenants, Meghraj, then by a mere change in the constitution of the firm of which Meghraj continued to be a partner, an inference as to subletting could not be drawn in the absence of further evidence having been adduced to establish subletting. In Helper Girdharbhai Vs. Saiyed Mohmad Mirasaheb Kadri & Ors. (1987) 3 SCR 289, the tenant had entered into a partnership and the firm was carrying on business in the tenancy premises. This Court held that if there was a partnership firm of which the appellant was a partner as a tenant, the same would not amount to sub-letting leading to forfeiture of the tenancy; for there cannot be a sub-letting unless the lessee parted with the legal possession. The mere fact that another person is allowed to use the premises while the lessee retains the legal possession is not enough to create a sub-lease. Thus, the thrust is, as laid down by this Court, on finding out who is in legal possession of the premises. So long as the legal possession remains with the tenant the mere factum of the tenant having entered into partnership for the purpose of carrying on the business in the tenancy premises would not amount to sub- letting. In Parvinder Singh Vs. Renu*

*Gautam & Ors., (2004) 4 SCC 794, a three-Judges Bench of this Court devised the test in these terms ___ "if the tenant is actively associated with the partnership business and retains the use and control over the tenancy premises with him, maybe along with the partners, the tenant may not be said to have parted with possession. However, if the user and control of the tenancy premises has been parted with and deed of partnership has been drawn up as an indirect method of collecting the consideration for creation of sub-tenancy or for providing a cloak or cover to conceal a transaction not permitted by law, the court is not estopped from tearing the veil of partnership and finding out the real nature of transaction entered into between the tenant and the alleged sub-tenant."*

9. In the above judgments, the Hon'ble Supreme Court of India as well as this Court held that if there was such partnership firm of which the party was a partner as a tenant it would not mean to subletting leading to the forfeiture of the tenancy. In the case on hand, admittedly, the tenants are partners along with other partner and they are running business in the name and style of Sagayam Traders. Insofar as fair rent is concerned, the only point raised by the learned counsel for the tenants is that the balcony used by the two tenants of the petition premises and half of the area only has to be calculated for the extent of the petition premises. According to the engineer's report, it revealed the plinth area of the petition premises as mentioned supra

and fixed fair rent. Therefore, this Court finds no infirmity or illegality in the orders passed by the court below.

10. In view of the above discussion, both the civil revision petitions are dismissed. No order as to costs.

29.01.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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To

1. The VII Small Causes Court,
   Chennai
2. The XIV Judge,
   Small Cause Court at Chennai.
3. The VIII Judge,
   Small Causes Court/Rent Control Appellate Authority,
   Chennai
4. The XVI Judge,
   Small Causes Court/Rent Controller,
   Chennai

**G.K.ILANTHIRAIYAN,J.**

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