



OSA.No.223/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 05.09.2024

Delivered on 04.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

OSA.No.223/2023 & CMP.No.26165/2023

1.K.Abdul Samad
2.K.M.Saleem
3.K.Nizmaudeen
4.K.Razia Veerankutty
5.K.Zareena
6.K.Fathima
7.K.Mumtaz
8.K.Zainudeen

... Appellants

Vs.

1.St.Peters Church, Royapuram
rep.by its Board of Trustees
1.T.Gokulachandran
2.L.James
3.K.S.Barnabas
4.K.M.Irudhayaraj
5.B.Peter Vijayan
Having office at No.19, West Mada
Church Street, Royapuram, Chennai 600 013.
2.K.Muneerudeen

... Respondents



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****Cause Title accepted vide order dated
17.10.2023 in CMP.No.18005/2023 in
OSA.SR.No.6929/2023**

Prayer : Original Side Appeal filed under Order 36 Rule 1 of Original Side Rules read with Clause 15 of Letters Patent Act to set aside the judgment and decree dated 04.11.2022 in CS.No.121/2003 passed by this Court.

For Appellants	: Mr.M.K.Kabir, Senior counsel for M/s.Surana and Surana
For R1	: Mr.B.Ullasavelan

JUDGMENT

S.S.SUNDAR, J.,

The above appeal is directed against the judgment and decree of the learned Single Judge dated 04.11.2022 decreeing the suit in CS.No.121/2003.

2.The defendants in the suit in CS.No.121/2003 are the appellants in the above Original Side Appeal preferred as against the judgment and decree dated 04.11.2022 in CS.No.121/2003, directing the appellants/defendants to vacate the suit premises and hand over vacant



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possession of the premises to the plaintiffs after removing all the constructions put up therein within three months and to pay past damages to the tune of Rs.1,75,000/- for occupation of the property from 01.07.2002 to 31.01.2003 and to pay future damages at the rate of Rs.25,000/- per month from 01.02.2003 till the date of handing over the vacant possession of the suit property.

3.The 1st respondent as plaintiff, filed the suit in CS.No.121/2003 against the appellants herein, who are the legal heirs of late Mr.K.N.Kutty representing the Estate of Mr.K.Muhammed Kutty. The 1st respondent / plaintiff in CS.No.121/2003, prayed for a judgment and decree directing the defendants to quit and deliver the vacant possession of the land after removing the superstructure put up by the defendants within the time to be fixed by the Court and to direct the defendants to pay the plaintiff Trust a sum of Rs.3,26,064/- being past damages for wrongful use of property from 01.07.2002 to 31.01.2003 and to direct the defendants to pay the plaintiff Trust future damages at Rs.50,000/- per month for the wrongful use and occupation of the property from 01.02.2003 till the date of delivery of



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vacant possession.

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4.The suit property is a vacant land measuring an extent of 24,310 sq.ft within the compound of St.Peters Church, Royapuram, bearing Door Nos.13 and 14, South Mada Street, Royapuram comprised in RS.No.287/1, Block No.9. In the suit, the 1st defendant, M/s.Samad and Co., was shown as the Estate of K.Muhammed Kutty constituting the legal heirs of Late Sri.K.N.Kutty represented by one of the legal heirs of Mr.K.Muhammed Kutty. It is not necessary to elaborate the other particulars about other defendants who are all the other legal heirs of late Sri.K.Muhammed Kutty as no other issue relating to the relationship arise for consideration.

5.The case of the 1st respondent is that the 1st respondent as plaintiff, is a public charitable and religious Trust governed by the Scheme framed by the High Court of Madras in CS.No.10/1949 dated 12.03.1953. Though the Scheme decree was confirmed in OSA.No.63/1953, it is admitted that the Scheme was subsequently modified in CS.No.134/1973 as per the order dated 26.04.1988 passed in OSA.No.94/79.



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6.It is stated in the plaint that the 1st defendant became a tenant under the plaintiff Trust in respect of the suit property in S.No.287/1 under a registered Lease Deed dated 06.09.1996 for a period of five years. However, there is no dispute with regard to the ownership and the Lease Deed dated 06.09.1996 even though it is stated that the original Lease Deed was from an earlier date. It is admitted by the defendants even in the written statement that the 1st defendant became tenant under the plaintiff Trust from 1948 and continued to be a tenant for about six decades.

7.As per the latest Lease Deed under which the lease was extended for a period of five years from 06.09.1996, it is stated by the plaintiff that the Lease Deed expired on 31.08.2001 by efflux of time. As per Clause 4[1] of Lease Deed dated 06.09.1996, there is a provision for renewal of lease. It is the case of the plaintiff that the rent payable has to be mutually agreed upon by the plaintiff Trust and the 1st defendant for extension of lease. In the plaint, it is stated that the plaintiff by letter dated 22.08.2001, gave an offer to renew the lease by increasing the rent to 90 paise per sq.ft for the



first thirty months and at Rs.1/- per sq.ft., for the next thirty months for renewal of lease. Since the 1st defendant is not agreeable for increase of rent as expected by the plaintiff Trust and the defendant wanted only a marginal increase, it is stated by the plaintiff Trust that the plaintiff had no other option but to terminate the lease by the end of June 2002 , i.e., 30.06.2002, as per the Legal Notice dated 29.05.2002. After the termination of the lease, it is contended by the plaintiff that the defendants have no legal right to continue in possession from 01.07.2002. Therefore, the suit was laid for ejectment/eviction of defendants and for directing the defendants to pay the rental arrears and for damages for use and occupation.

8.In the written statement, the defendant, though admitted the tenancy, disputed the averments in the plaint and put the plaintiff to strict proof of allegations that are stated therein. The defendant questioned the plaintiffs' right to unilaterally fix the rent as the defendant had made huge investments by putting up constructions and letting out the property to several tenants for reasonable rent. In the written statement, the defendant has expressed his disappointment, as the suit has now been instituted by the



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plaintiff for eviction of tenant by claiming unreasonable rent, affecting the status and image of the plaintiff which is a Charitable Religious Institution.

9.The points in defence raised by the appellants/defendants in the written statement are as follows :

- (a) When the plaintiff has obtained assignment from the Government free of cost and leased out a portion of huge extent of 100 Grounds, the plaintiff is not justified in terminating the lease for non-payment of huge rent demanded by the plaintiff.
- (b) The property was taken by the defendant as a vacant land at the time when nobody came forward to pay rent for such land. Therefore, the defendant, who has invested huge amount and had paid enormous rent for the vacant land over a period of time, believing that the land would be in the enjoyment of the defendant on a reasonable rent, cannot be evicted by the plaintiff by filing a suit for eviction, merely on the ground that the defendant had not agreed for enhancement of rent.
- (c) The plaintiff executed a lease deed originally in the year 1948 and the



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building was constructed by the defendant even in 1948. It was the defendant who helped the plaintiff to save the land from being grabbed by encroachers and therefore, the plaintiff is bound to be reasonable in the matter of fixing quantum of rent.

- (d) Since the plaintiff Trust sought enhancement by 300% of the rent earlier and now demanded rent at 700%, the suit is unreasonable and unfair, as the defendant is in possession for six long decades by paying good amount of rent all these years for a vacant land.
- (e) The plaintiff has suppressed the fact that the defendant has been in possession from 1948 as lessee and the suit is liable to be dismissed for such suppression.
- (f) The plaintiff's demand for enhancement of rent from Rs.7,138/- to Rs.21,414/- per month for a vacant land is unreasonable and the sudden exorbitant increase by 300% is unconstitutional and illegal and the eviction for non-payment of such huge amount is arbitrary.
- (g) The land is not at all required for any legitimate use of the plaintiff Trust and therefore, the plaintiff cannot dictate unreasonable and unjustifiable terms, forgetting the fact that the defendant is in



possession as lessee in respect of the vacant land for six long decades.

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(h) It was only the defendant who put up construction by spending huge cost and gave protection to the land which was obtained by the plaintiff from the Government free of cost.

(i) In all fairness, the plaintiff may agree for a reasonable increase of 8 to 10% on the present rent of Rs.7,138/-.

(j) The defendant is likely to incur heavy loss due to hike in rent and the Income Tax Returns filed by the legal heirs of the defendant would show that the defendant cannot afford to pay the enhanced rent claimed by the plaintiff.

(k) The plaintiff, under the pretext of hike in rent, cannot force the defendant to demolish the building constructed about six decades ago at huge cost.

(l) The present Trustees of the plaintiff Trust are not empowered to institute the suit in the present form and the present Trustees cannot tarnish the image of the plaintiff.

(m) The beneficiaries of legal heirs of Late K.M.Kutty Arel should be made as parties to the suit and the suit against M/s.Samad and Co.



which is not a separate legal entity is not maintainable. The Resolution dated 09.10.2002 relied upon by the plaintiff to file a suit is invalid and inoperative.

- (n) The suit is liable to be dismissed on the ground of non-payment of Court fee as per the Tamil Nadu Court Fees and Suit Valuation Act.
- (o) The suit is a vexatious and speculative suit and hence, the suit is liable to be dismissed.

10. The learned Single Judge of this Court, who heard the suit on the Original Side, framed the following issues :

- i. *Whether the suit is maintainable ?*
- ii. *Whether the plaintiff is entitled to a decree for delivery of vacant possession of the land, after removing the superstructure put up by the defendant ?*
- iii. *Whether the suit is liable to be dismissed for non-joinder of necessary parties ?*
- iv. *Whether the suit is liable to be dismissed for non-payment of proper Court fee as per Tamil Nadu Court Fees and Suit Valuation Act ?*
- v. *Whether the defendant is liable to pay the plaintiff Trust, a sum of Rs.3,26,064/- (Rupees Three Lakhs Twenty Six Thousand*



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and Sixty Four only) being the past damages for wrongful use and occupation of the property from 01.07.2002 to 31.01.2003 ?

- vi. Whether the defendant is liable to pay the plaintiff Trust further damages at Rs.50,000/- per month for wrongful use and occupation of the suit property from 01.12.2003 till the date of delivery of vacant possession ?*
- vii. To what other reliefs, the parties are entitled to ?*

11. On behalf of the plaintiffs, one of the Trustees by name T.Gokulachandran was examined as P.W.1 and through him, Exs.P1 to P18 were marked. The 1st defendant was examined as D.W.1 and Exs.D1 to D14 were marked on the side of the defendants.

12. Since all the persons who are interested in the 1st defendant were already brought on record, the 3rd issue, regarding non-joinder of necessary parties, was held unnecessary by Trial Court.

13. On the 1st issue, the learned Single Judge held that the suit is maintainable. Since the original lease deed under Ex.P5 dated 06.09.1996 is



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only for a period of five years and the lease had been terminated by efflux of

time as well by issuing a notice for termination by plaintiff, the learned Single Judge held that the suit is maintainable.

14. One of the contentions raised by the defendant was by claiming right under the City Tenants Protection Act. Since the plaintiff is a religious Trust, the learned Judge held that properties belonging to temples, mosques, churches and public Trust are exempted from the operational purview of the City Tenants Protection Act.

15. Regarding Court fee, the learned Single Judge found that the Court fee has been correctly paid. The learned Single Judge also held that the defendants are also liable to pay damages for their continued occupation of the building. Considering the narrow scope of the litigation, on the admitted facts, the learned Single Judge did not find any legal ground raised in the written statement. The suit for ejectment, was therefore, decreed. Though the plaintiff filed documents to show that the rent for other portion



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of same premises subsequently is Rs.2/- or Rs.3/- per square feet, the learned Judge fixed the quantum of damages at Rs.25,000/- per month from 01.02.2003.

16. Aggrieved by the same, the defendants have preferred the above Appeal.

17. Mr. M. K. Kabir, learned Senior Counsel appearing for the appellants, has made the following submissions :

- (a) The notice under Ex.P13 dated 29.05.2002 terminating the tenancy is illegal and invalid.
- (b) The defendant is not a legal entity and the suit laid against the 1st defendant is not sustainable.
- (c) The legal heirs of Mr. K. Muhammed Kutty were impleaded as parties to the suit only on 08.01.2015 and hence, no notice of termination of lease as contemplated under Section 106 of the Transfer of Property Act had been served on the legal heirs who are tenants.
- (d) The plaintiff being a public Charitable and Religious Trust covered



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by the Scheme framed by Hon'ble High Court in C.S.No.10 of 1949, any modification regarding terms of lease including rate of rent should be determined only by the High Court.

- (e) Since the plaintiff has secured the land by way of Government grant, the increase of rent demanded by the plaintiff is unreasonable, as the same is against the Doctrine of *res extra commerciam*.
- (f) Since the plaintiff has come forward with a false case on the basis of lease deed which was executed in 1996, ignoring the fact that the defendant was inducted as tenant even in the year 1948, the suit is liable to be dismissed on the ground of suppression of material facts.
- (g) The unreasonable demand for enhancement of rent cannot be accepted as a ground for termination of lease and the suit, therefore, cannot be maintained on the basis of an invalid termination of lease.
- (h) The plaintiffs have not impleaded all the sub-tenants who are also in possession and enjoyment of the lands as sub-tenants for a long time. Since the sub-tenants are also likely to be affected by a judgment against the tenant, the plaintiff ought to have impleaded the sub-tenants also. Therefore, the suit is liable to be dismissed for non-



joinder of those sub-tenants.

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(i) The learned Senior Counsel also relied upon few judgments of the Hon'ble Supreme Court and this Court, in his attempt to substantiate some of his submissions.

18. In response to the submissions made by the learned Senior Counsel appearing for the appellants, the learned counsel for the 1st respondent highlighted the following facts on merits and submitted that none of the grounds raised by the appellants and the submissions made by the learned Senior Counsel for the appellants can be sustained on the admitted facts :

- (a) St. Peter's Church, Royapuram, is a public Charitable and Religious Trust governed by a Scheme framed by this Court in C.S.No.10 of 1949 dated 12.03.1953.
- (b) Though the Scheme was subsequently modified, the modification did not affect the right of plaintiff in respect of the extent of about 100 Grounds within the compound of St. Peter's Church at Tondiarpet.
- (c) The plaintiff Church runs a Secondary School and other Charitable



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Institutions by getting Government aid and has various Charities without making any profit.

- (d) Though the learned counsel appearing for the respondent admits that the lease agreement was originally executed in 1948 for 15 years and there were subsequent renewals, it is submitted by him that the final agreement executed by the plaintiff was on 01.09.1996 for a period of 5 years under Ex.P5 and the lease agreement expired on 31.08.2001.
- (e) It is also pointed out by the learned counsel that lease was also terminated by a written notice dated 29.05.2002 marked as Ex.P13.
- (f) After termination of lease, the suit in C.S.No.121 of 2003 was filed on 01.02.2003. There is no suppression of facts in the plaint, as the plaintiff has himself filed the lease agreement dated 06.09.1996 which refers to the previous lease. Since Ex.P5 is only a renewal of lease agreement, there is no suppression by plaintiff in not disclosing the commencement of lease in 1948. The fact that the defendant was a tenant for about six decades is not a ground which can be considered in defence in a suit for ejectment, especially when the defendant was just paying only the minimum rent of 30 paise per



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sq.ft. for a few decades.

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(g) The defendant is the tenant under the plaintiff. There is no privity of contract between the sub-tenants and the plaintiff. The defendant cannot create sub-tenancy beyond the period of tenancy as per the Lease Deed which is binding on the tenant. Since the sub-tenants, who are claiming tenancy under the defendant, are also bound by the decree of ejectment, albeit not being made as a party to the suit, the contention that the suit is bad for non-joinder of sub-tenants, cannot be sustained.

(h) The defendant, who is enjoying a valuable property measuring an extent of about 24,000 sq.ft. within the compound of the plaintiff Church at Royapuram, was paying a very meagre amount at the rate of 30 paise per sq.ft. The defendant was paying the same rent for a long period and therefore, the plaintiff requested the defendant to pay enhanced rent, which is also far below the present day market rent. The defendant has no valid reason to refuse to pay a reasonable rent. Intentionally, he has dragged the suit for more than 20 years.



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19.The learned counsel for the respondent stated that the appellant has not handed over vacant possession, nor paid damages as awarded. It is to be noted that the damages at the rate of Rs.25,000/- per month from 01.02.2003 till date comes to Rs.65,00,000/-. When Execution Petition was filed in E.P.No.64 of 2023, the Execution Petition was also allowed by the Master and warrant of eviction was issued on 09.08.2023. Since the sub-tenants who are residing obstructed the bailiff from executing the warrant, under the instigation of the appellant herein, the bailiff returned the warrant earlier as he could not evict 35 sub-tenants of the appellant. Thereafter, an application was filed for Police aid in A.No.6066 of 2023 and to break open in A.No.6067 of 2023. It is stated by the landlord that the appellant is collecting more than Rs.5 Lakhs per month from sub-tenants, but refused to pay a small amount towards rent even on the enhanced rent.

20.Having regard to the submissions made by the learned Senior Counsel appearing for the appellants/defendants and the learned counsel for the respondent/plaintiff, this Court is required to frame the following points



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for determination :

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- i. Whether the termination of lease on the ground that the defendant did not agree for enhancement of rent, is just and valid ?
- ii. Whether the lease has been properly terminated ?
- iii. Whether the suit for eviction without impleading the sub-tenants is valid ?
- iv. Whether the defendants can be permitted to raise an issue on maintainability of suit on the ground that the suit is bad for non-joinder of necessary parties, even though the same was not raised before the learned Single Judge ?
- v. Whether the suit for ejectment filed by the plaintiff against the defendant, the chief tenant, is vitiated and liable to be dismissed for suppression of material facts ?

Issue Nos.(i) , (ii) and (v) :

21.The lease though was renewed under Ex.P5 for a period of five years from 06.09.1996, was not subsequently renewed and the notice of termination was also issued subsequently. After the termination of lease,



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though the learned counsel for the appellants, in the course of arguments, submitted that the appellants are tenants holding over, this Court is unable to countenance such an argument on the admitted fact that it was never the case of the defendant before the trial Court that he was continuing in possession by paying the contractual rent as per the original lease. Therefore, the status of the defendant as on date is an encroacher or a tenant at sufferance.

22.Learned Senior Counsel appearing for the appellant did not question the manner in which the lease was determined. In this case, on the admitted facts, that there was no subsequent renewal or extension of lease. Therefore, the lease has come to an end by efflux of time. Despite the lease had come to an end by efflux of time, cautiously, the plaintiff issued a notice of termination, terminating the lease. This Court, on the admitted facts, hold that the lease has come to an end by efflux of time and it is validly terminated by issuance of notice.

23.This Court is unable to countenance the submissions of the learned



Senior Counsel appearing for the appellants regarding enhancement of rent, for multiple reasons. The appellant took the property on lease long back and the lease amount was not enhanced for a long period. The enhancement sought for is reasonable. This Court can take judicial notice of the market value of the suit property having regard to its location and commercial utility. Such a vast extent of land is taken on lease for a paltry sum in the year 1948. Comparing to the value of the property in 2002, the enhancement of rent at the rate of 90 paise per sq.ft. is nothing but pittance. The complaint by the appellant that the termination of lease on the ground of enhancement of rent, cannot be considered as arbitrary or inequitable. Even otherwise, though the tenant cannot be unilaterally asked to pay more rent, it is the legal right of a landlord to terminate the lease, if there is no consensus reached between the landlord and the tenant as regards the rent. From the written statement, this Court is able to see that the defendant has been so unfair and every contention he has raised in the written statement would show that the plaintiff, who got assignment of the entire land free of cost, is not entitled to get market rent or any rent which is reasonable. As stated by the respondent/plaintiff, the defendant appears to be collecting a



huge amount as rent by granting licence to so many persons. We are not surprised, for such huge area, the appellant must be collecting huge amounts as rent or premium or licence fee for using a portion of the premises. It is admitted that more than 35 persons are inducted as sub-tenants and granted licence allowing them to use portions of premises for a limited period. After dragging the matter for more than 20 years, this Court finds no equity in favour of the appellant to show any indulgence. As pointed out earlier, the landlord is not seeking any discretionary or equitable relief while asking the tenant to hand over possession after expiry of lease or after termination of lease.

24. In a suit for ejectment, the plaintiff landlord is entitled to recovery of possession after valid termination of lease. The landlord is not seeking a relief in equity. It is the right under the common law for the landlord to eject the tenant by following due process. When the suit is filed after the expiry of lease or after the termination of lease, the same cannot be dismissed merely because the defendant tenant is put to inconvenience. The Court has no discretion to refuse relief. The contention that the plaintiff



filed 1st suit suppressing the commencement of lease from 1948 has no merit. First of all, the plaintiff has pleaded what is necessary for relief. The fact that the lease had commenced long earlier has no relevance when suit is filed after termination of lease.

Issue Nos.(iii) and (iv) :

25.The case of the appellant that the suit is bad for non-inclusion of sub-tenants as defendants, has no legal basis on the admitted facts. It is the admitted position in law that the appellants cannot create a right more than what they had under the original lease agreement. After the expiry of lease and termination of lease agreement, the defendant has no right to extend the period of tenancy in favour of others. It is well settled that a judgment against chief tenant is binding on the sub-tenant, even though he is not made as party to the suit. It is to be seen that there is no privity of contract between the plaintiff and the sub-tenants or sub-lessees. It is to be seen that the defendant appears to have put up a huge storage yard and given licence to many people to use the premises as warehouse for their goods on payment of charges. When the defendant has never raised the ground in the



written statement, after 23 years, the appellant cannot be permitted to raise a new plea without disclosing the facts. The appellants cannot create a lease or grant permission to 3rd parties beyond the period of lease. Since several persons are permitted for temporary period, the plaintiff may not even know who are all the licensees or sub-tenants. Any license or subtenancy created after expiry of lease, is not binding on plaintiff.

26. First of all, it is seen that, in the written statement, the defendant has not given the details of sub-tenants. Having regard to the nature of enjoyment of property by the defendant, this Court is of the view that the persons, who are given sub-lease, are not given any specific building on lease, but permitted to have temporary occupation. Having regard to the well settled legal principles, the plaintiff cannot be non-suited on a plea which was never raised by the defendant before the trial Court. Even this cannot be taken as a legal submission, as the sub-tenants are not necessary parties in a suit for ejectment against the chief tenant, which arises under the contract of tenancy between the landlord and tenant. Therefore, this Court is unable to appreciate the arguments of the learned Senior Counsel



appearing for the appellants.

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27.The learned Senior Counsel appearing for the appellants relied upon the judgment of the Hon'ble Supreme Court in the case of ***Tirath Ram Gupta v. Gurubachan Singh and others*** reported in ***1987 1 SCC 712***. The principles stated in the said judgment should be considered with reference to the facts of the case. In a suit filed under Section 13 of the East Punjab Urban Rent Restriction Act, 1949, against the tenant and the sub-tenant, who are respondents 1 and 2 before the Supreme Court in respect of two different premises, there was a compromise between the landlord and the tenant and in terms thereof, the Rent Controller decreed eviction of the sub-tenant from the premises subleased to him. Even though the trial Court ordered eviction, on a revision petition filed by the sub-tenant, the High Court allowed the revision holding that no order of eviction can be passed under Section 13(2) of the Act, as the sub-tenancy had been created before the Act came into force in the Union Territory of Chandigarh. Even though an argument was advanced that a sub-tenant does not have rights independent of the tenant, and as such, when 2nd respondent has suffered an



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order of eviction, the 1st respondent was equally bound by the order, from the facts, it is also learnt that the Hon'ble Supreme Court considered the right of sub-tenant as transferee from lessee. On the basis of the lease, the tenant is entitled to convey such right in favour of anyone. A sub-tenant who steps into the shoes of tenant has a right to protect his possession in terms of the main tenancy in favour of the lessee. Section 115 of the Transfer of Property Act provides that a surrender of lease cannot prejudice an under-lease of the property. Taking note of the fact that the right of a person under sub-lease is protected under Section 115 of the Transfer of Property Act, the Hon'ble Supreme Court held that the lessee, who parted with a part of interest in favour of the sub-lessee, cannot surrender that part of the property which is in the possession of the sub-lessee, as he cannot restore possession of the same to the lessor. Therefore, the case before the Hon'ble Supreme Court was a case where the lessee, during the subsistence of lease, after creating a lease in favour of a sub-lessee, surrendered possession which was found to be as a result of collusion. Therefore, the said judgment has no application to the facts. It is to be noted that the Hon'ble Supreme Court, even in the same case, has accepted the view



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expressed in several judgments that the eviction as against the tenant is valid as against the sub-tenant also.

28.The learned Senior Counsel appearing for the appellants also relied upon the judgment of the Hon'ble Supreme Court in the case of ***Shyam Babu v. District Judge, Moradabad and others*** reported in ***1984 (1) SCC 411***. In the said case, the Hon'ble Supreme Court considered the eviction proceedings under the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. It is well settled that the statutory protection available to tenants is available to sub-tenants and a person who is in possession of a building irrespective of the fact whether he is a tenant or sub-tenant is entitled to protection under Rent Control legislation. Therefore, the eviction proceedings cannot be initiated without impleading the sub-tenant. The position is not different even under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. Question before the Hon'ble Supreme Court itself is whether the sub-tenant is entitled to the protection under 4th proviso to Section 21 of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. After taking note of



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Section 3(j) of the said Act, which defines the term “tenant” as a person in relation to a building, denotes a person by whom a rent is payable, the Hon'ble Supreme Court held that a sub-tenant who pays rent to the tenant-in-chief would also be the tenant under the Act. However, the landlord who has not entered into any agreement, can get an order of eviction as against the chief tenant and an order of eviction is binding on the sub-tenant who has no independent right than the right of a tenant. In this case, the tenant is the contesting defendant who has questioned only the authority of the landlord to terminate the tenancy on a trivial ground of enhancement of rent.

29. Order I Rule 13 of Code of Civil Procedure reads as follows :

“13. Objections as to non-joinder or misjoinder.

All objections on the ground of non-joinder or misjoinder of parties shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.”

30. The objection related to non-joinder of necessary parties is always



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considered as a technical objection under Order I Rule 13 of CPC. Such an objection regarding non-joinder should be raised at the earliest stage of the proceedings, as the plaintiff, in such situation should have a fair opportunity to cure the defect. In the absence of a plea at the earliest stage, the defendant cannot be allowed to raise the same at a later stage just to defeat the rights of the plaintiff. Therefore, this Court is unable to entertain the plea. The plea of non joinder was raised by defendant only on the ground that legal heirs of lessees were not impleaded. After impleading all the legal heirs, that plea does not survive.

31. In the course of arguments, the learned Senior Counsel appearing for the appellants relied upon the Doctrine of *res extra commerciam*. The Doctrine relied upon by the learned Senior Counsel cannot be applied to a situation like this. The term '*res extra commerciam*' is a latin phrase to mean “outside commerce”. The termination of lease after expiry of lease cannot be treated as something which can be termed as “outside commerce”. May be, the Hon'ble Supreme Court had applied this expression while dealing with trade of alcohol which is always considered to be a commodity



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to be banned in tune with the directive principles of State policy. Similarly, the Doctrine can also be applied in relation to tobacco products to curb tobacco consumption. This Court, therefore, rejects the argument of the learned Senior Counsel appearing for the appellants using the Doctrine of *res extra commerciam*.

32.For all the reasons stated above, this Court finds no merit in this appeal. Accordingly, this Original Side Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [K.R.S., J.]
04.10.2024

AP/mkn
Internet : Yes
Neutral Citation: Yes



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and
K.RAJASEKAR, J.,

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Judgment in
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