

PETITIONER:
OM PRAKASH & ORS.

Vs.

RESPONDENT:
R. K . LAKRA

DATE OF JUDGMENT 22/07/1988

BENCH:
KANIA, M.H.
BENCH:
KANIA, M.H.
SINGH, K.N. (J)

CITATION:
1988 AIR 1698 1988 SCR Supl. (1) 556
1988 SCC (4) 705 JT 1988 (3) 370
1988 SCALE (2) 98

ACT:

Jammu and Kashmir Houses and Shops Rent Control Act, 1966: Section 11-Wasidar in respect of land-Sub-leased-on expiry of sublease whether Wasidar entitled to evict tenant for bona fide occupation.

HEADNOTE:

The land in question was granted to one A by the Government of Kashmir and as per the practice prevailing there, he was shown as Wasidar in respect of the said land. On his death, his son inherited the leasehold rights. On the death of the son, his widow inherited the same. The appellants are the heirs and legal representatives of the widow.

A's son, during his lifetime, had granted a sub-lease of the said land to the Respondent's father. The widow of A's son instituted a suit for recovery of possession of the said land on the grounds that there was unlawful sub-letting by the sub-lessee, the land was required for occupation by her and her family, and that the period of sub-lease had expired. The Respondent contended that the sub-lease was void ab initio. The Sub-Judge held that the sub-lease was valid and the grounds of bona fide requirement of the appellants' mother as well as unlawful sub-letting by the sub-lessee had been established. On these findings the suit was decreed.

on appeal, the Additional District Judge upheld the decision. In the second appeal before the High Court, it was contended that the transfer made was of a mere interest in the lease-hold and did not amount to a transfer of the land leased, as contemplated under Rule 35 of the Wasidar Rules. Rejecting the contention, but without considering as to what would be the effect of the sub-lease being void, the High Court came to the conclusion that in view of the sub-lease being void, the suit filed by the appellant must be dismissed. This appeal, by special leave, is against the aforesaid decision.

on behalf of the appellants, the contentions urged in the Courts below, were reiterated before this Court. The Respondent relied on Section 12-A of the Jammu Kashmir Land Grants Act, 1960 as amended in 1969 and contended that the

sub-lease was admittedly

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granted without the permission of the Government and so the lease granted by the Government had come to an end: the title of the appellants to the said land had extinguished and they were not entitled to sue for recovery of possession of the said land.

Allowing the appeal,

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HELD: 1. Even assuming that the sub-lease granted was void, the result would be that the Respondent his father would be persons without any legal interest in the said land. The appellants being the lessees of the said land were suing on their own title and not relying on the sub-lease hence they were entitled to evict the Respondent who had no title or interest in the said land. If a view is taken that the sub-lease was valid, in that event, as held by both the Courts below, as grounds for eviction set out in Section 11 of the Jammu & Kashmir Houses and Shops Rent Control Act have been made out, the Respondent ceased to be entitled to the protection of the said Act and was liable to be evicted as the term of his sub-lease had expired. [559E-G]

2. It was not contended by the Respondent in any of the Courts below that the title of the Appellants and his predecessors-in-title to the said land under the lease granted by the Government had come to an end. Had the plea been taken earlier, it is possible that the Appellants might have pleaded facts to show that their lease had not come to an end or that it had been renewed after the sub-lease was granted. Hence, allowing such a plea at this stage might cause prejudice to the Appellants. [560D-E]

3. As regards the sub-letting by the Respondent and his father and the bona fide requirement of appellants' mother, these are both essentially issues of fact and have been decided in favour of the Appellants' mother and their predecessors-in-title. Those findings do not appear to have been seriously challenged before the High Court at all and hence there is no reason to go into the question as to whether those findings are correct, in this appeal. [561B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2821 of 1987

From the Judgment and order dated 4.9.1986 of the Jammu and Kashmir High Court in 15 Civil 2nd Appeal of 1975.

D.D. Thakur, E.C. Agarwal, Atul Sharma, Vijay Pandit and
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Ms. Poornima Bhatt, for the Appellants.

Anil Dev Singh, Dr. Meera Agarwal, R.C. Mishra and Mushtaq Ahmed, for the Respondent.

The Judgment of the Court was delivered by

KANIA, J. This is an appeal against the judgment of a learned Single Judge of the High Court of Jammu & Kashmir in a Second Appeal. The Appellants are the heirs and legal representatives of one Indro Devi. The Respondent is the heir and legal representative of one Raghunath Dass Lakra.

Very few facts are necessary for the disposal of the Appeal before us. The dispute relates to a piece of land measuring 4 marlas and 99 sq. ft. situated at Residency Road in Jammu. This land was granted to one Attar Chand by the Government of Kashmir on a long lease. As per the practice prevailing in the State of Jammu & Kashmir he was known as

the Wasidar in respect of the said land. On his death his son Guranditta Mal inherited the lease-hold rights of Attar Chand and on the death of Guranditta Mal his widow Indro Devi, who was the original plaintiff, inherited the lease-hold rights under the said lease on the basis of a Will executed by Guranditta Mal in her favour. Guranditta Mal, during his life time, in 1954, had granted a sub-lease of the said land to Raghunath, the father of the Respondent herein. Indro Devi instituted a suit in the Court of the learned Sub-Judge, Jammu for recovery of possession of the said land on the ground that Raghunath Dass had sub-let the house constructed by Raghunath Dass on the said land and was liable to be evicted under the provisions of the Transfer of Property Act read with Section 11 of the Jammu & Kashmir Houses and Shops Rent Control Act (hereinafter referred to as the "J & K Rent Act"). She also contended that the land was required by her bona fide for occupation by her and her family. The period of the said sub-lease had expired and it was alleged that in the aforesaid circumstances, the respondent was liable to be evicted.

These allegations were denied by the Respondent. It was inter alia contended by the Respondent that the sub-lease granted to Raghunath was void ab initio. It was held by the learned Sub-Judge that the ground of bona fide requirement of the landlord as well as unlawful sub-letting by the sub-lessee had been established. It was further held that the sub-lease granted by Guranditta Mal to

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Raghunath was valid. On these findings the suit was decreed. This decision was upheld on first appeal by the learned Additional District Judge, Jammu before whom an appeal was preferred and the findings of the learned Sub-Judge were upheld by him. On a Second Appeal preferred to the High Court, the learned Single Judge of the High Court took the view that the sub-lease granted by Guranditta Mal to Raghunath Dass was void as it violated the provisions of Rule 35 of Wasidari Rules in as much as it amounted to a transfer of immovable property and hence it amounted to a transfer of the leased land by the Government to the Wasidar under the provisions of the Wasidari Rules. As no permission of the Government was taken for granting the said sub-lease the sub-lease was void as against the provisions of the Wasidari Rules. The learned Single Judge rejected the contention urged on behalf of the Appellants herein that the transfer made by Guranditta Mal was of a mere interest in the lease-hold and did not amount to a transfer of the land leased as contemplated under Rule 35 of the said Wasidari Rules. The learned Single Judge, without considering what would be the effect of the sub-lease being void has somehow come to the conclusion that, in view of the sub-lease being void, the suit filed by the Appellants herein must be dismissed and took the view that the appeal before the learned Judge must be allowed and the suit filed by the Appellants must be dismissed. It is this decision which is challenged by the Appellants in the present Appeal preferred by Special Leave.

In our view, the Appeal can be shortly disposed of and the Appellants are entitled to succeed. Even assuming that the sub-lease granted by Guranditta Mal in favour of Raghunath, the father of the Respondent-was void, the result would be that the Respondent and his father would be persons without any legal interest in the said land. Indro Devi and the Appellants being the lessees of the said land were suing on their own title and not relying on the sub-lease and hence they were entitled to evict the Respondent who had no

title or interest in the said land. If a view is taken that the sub-lease in favour of Raghunath was valid, in that event, as held by both the Courts below, as grounds for eviction set out in Section 11 of the J & K Rent Act have been made out, the Respondent ceased to be entitled to the protection of the said Act and was liable to be evicted as the term of his sub-lease had expired.

It was strenuously sought to be contended by Mr. Anil Dev Singh, learned Counsel for the Respondent that the provisions of Section 12A of the Jammu & Kashmir Land Grants Act, 1960, as

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amended in 1969 by the Jammu & Kashmir Land Grants (Amendment) Act, 1969 provided that if any person holding land on lease granted under that Act or under any of the rules referred to in the said section effects or has ever effected before the commencement of the said Act of 1969, transfer of any right in such land without the permission of the Government or any authority empowered in that behalf, the lease of such land would be determined and would be deemed always to have been determined with effect from the date such transfer is or has been effected. It was submitted by him that the land held by the Appellants and their predecessors-in-title from the Government was under a lease granted under some of the rules referred to in Section 12A. It was contended by him that the sub-lease was admittedly granted without the permission of the Government and in view of the said sub-lease granted by Guranditta Mal, the title of Guranditta Mal and his successors in the land in question under the lease granted by the Government itself came to an end. It was urged by him that in these circumstances the title of the Appellants to the said land had itself been extinguished and they were not entitled to sue for recovery of possession of the said land. In our view, this contention is not open to the Respondent at all. It was nowhere contended by the Respondent, either before the learned Sub-Judge or before the Additional District Judge or even in the Second Appeal before the High Court, that the title of the Appellants and his predecessors-in-title to the said land under the lease granted by the Government had come to an end in the aforesaid circumstances. Had the plea been taken earlier, it is possible that the Appellants might have pleaded facts to show that their lease had not come to an end or that it had been renewed after the sub-lease was granted. Hence, allowing such a plea at this stage might cause prejudice to the Appellants. Some decisions of this Court were shown to us by Mr. Anil Dev Singh where a new plea purely based on law was allowed to be taken even at the stage of the Appeal before the Supreme Court. However, in our view, those decisions can have no application whatever in a case like one before us where allowing of such a plea might cause prejudice to the Appellants.

In our opinion, it is unfortunate that the learned Single Judge of the High Court who decided the Second Appeal did not proceed to consider at all the effect of the sub-lease granted to Raghunath being void and we find it difficult to understand how, merely on the basis of the sub-lease being void, he came to the conclusion that the suit filed by Indro Devi in the Court of learned Sub-Judge was liable to be dismissed. Had the learned Judge considered this point, he would have surely realised that the Respondent had no title in the said land in view

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Of the sub-lease being void and was liable to be evicted by a party suing on his own title.

Coming to the finding regarding the sub-letting by the respondent and his father and the bona fide requirement of Indro Devi, these are both essentially issues of fact and have been decided in favour of Indro Devi, the mother of the Appellants and their predecessors-in-title. Those findings do not appear to have been seriously challenged before the High Court at all and hence there is no reason why we should go into the question as to whether those findings are correct, in this appeal.

In the result, the appeal succeeds and is allowed. The judgment of the learned Single Judge is set aside and judgment and order passed by the learned Sub-Judge is restored. However, consider, all the facts and circumstances of the case, we are of the view that the parties must bear and pay their own costs in this Court as there will be an order accordingly.

Appeal allowed.

G.N.
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