

PETITIONER:
SMT. LAXMI & ANANDI & OTHERS.

Vs.

RESPONDENT:
SHRI C. SETHARAMA NAGARKAR & ORS.

DATE OF JUDGMENT 18/09/1995

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
AHMAD SAGHIR S. (J)

CITATION:
1995 SCC (6) 576 JT 1995 (7) 400
1995 SCALE (5) 481

ACT:

HEADNOTE:

JUDGMENT:

W I T H
CIVIL APPEAL NO. 8471 OF 1995
(Arising out of S.L.P.(C) No.21968 of 1995 (CC 2547/95))
C. Seetharama Nagarkar

Versus
Smt. Lakshmi Devi & Anandi & Ors.
J U D G M E N T

BHARUCHA, J:
Delay condoned.
Leave granted.

These are cross appeals against the judgment and order of the High Court of Karnataka dismissing the revision petitions filed by the landlord and the tenants who were parties to an eviction proceeding.

The proceeding was lodged on the ground that the tenants were in default of payment of rent and were, therefore, liable to be evicted under the provisions of Section 21(1) (a) of the Karnataka Rent Control Act; that the landlord bona fide and reasonably required the rent premises; and that the tenants had sub-leased the same. The trial court upheld the landlord's case on all three grounds and passed an order of eviction. The learned District Judge reversed the finding of the trial court on the first two grounds and upheld it on the ground of sub-letting. The High Court rejected the landlord's revision petition on the ground of bona fide need. It also rejected the tenants' revision petition and upheld the findings of the trial court and the District Judge that the original tenant, Shankar Narayana Shet, the late husband of the 1st respondent and father of the 2nd and 3rd respondents, had sub-let part of the suit premises to the 4th respondent. The landlord is in appeal on the ground of bona fide need and the tenants in their appeal question the concurrent findings of sub-letting.

It is convenient to dispose of the landlord's appeal on

the ground of bona fide need first. The original plea of the landlord was that he required the suit premises for his mother's residence. The mother expired during the pendency of the proceedings. The landlord had then taken the plea that he wanted the suit premises for his own occupation. The District Judge and the High Court upheld the tenants' contention that this subsequent plea required investigation on facts and could not be entertained in a revision petition. We are in no doubt that the High Court was right in the view that it took. The facts necessary to make out a case relating to the need of the landlord himself to occupy the suit premises are altogether different from those relating to the need of the landlord's mother to occupy the suit premises. The facts to establish that the landlord bona fide required the suit premises for his own occupation could not have been ascertained at the stage of the revision petition.

This brings us to the appeal in regard to the findings of the High Court, affirming that of the courts below, that the original tenant Shankarnarayana had sub-let a part of the suit premises. The premises in their entirety may first be described. Abutting a public road is the main building; attached to it is a garage; in the compound, to one side of the main building and behind it, are a well, toilets and an outhouse. The first lease to the original tenant upon the record is dated 16th May, 1968 and it relates to the main building bearing P.B.775/II (which is now numbered Door No.495, as the evidence of the landlord, to which reference shall be made, shows). Another lease was executed on 1st March, 1972 which was for the "tile roofed storey building having No.P.B.775/II". On 21st May, 1973 yet another lease was executed which also was of "a tile roofed storey building having No.P.B.775/II". It was upon this document of 21st May, 1973 that the eviction petition was filed. The averment therein in regard to sub-letting read thus:

"That the opponents 1 to 3 has sub-leased the outhouse bearing Door No.497 to the 4th opponent for rent, without the consent and approval of the applicant and also against the terms of the badige agreement."

In support of his case the landlord gave evidence and stated in the examination-in-chief that the residential building was situated by the side of the road; there was a small building, close to the cowpen, bearing Door No.497 and the landlord had been using the same as his storehouse and the original tenant had sub-leased "the said building bearing Door No.497" to the 4th opponent on a monthly rental of Rs.15/- without obtaining the landlord's consent. (There is no dispute that Door No.497 is the outhouse.) In cross-examination, the landlord stated: thus:

"It is true that there are 4 buildings included with 3 residential quarters and a garage with a cow-pen and latrine on the suit properties. The present Door No.495 was bearing Door No.775 of II ward previously in which respondents 1 to 3 are residing.....This Door No.775 continued till 1973.....Only Door No.775 was leased to late Shankarnarayana Shet. The premises in which R.4 was residing and another building in which there was a garage and the 3rd building were never leased in favour of Shankarnarayana Shet. But late

Shankarnarayana Shet was requested to take care of them, their possession were never given to him".

In relation to this evidence the District Judge observed:

"No doubt, at one stage in cross-examination it has come to the evidence of P.W.1 that the premises in which 4th respondent was residing and the motor garage and the 3rd building were never leased in favour of Shankarnarayana Shet. It was, therefore, argued on behalf of the revision petitioners that P.W.1 himself admits that the building in the occupation of 4th respondent was not leased to Shankarnarayana Shet. In my view the answer of P.W.1 has not been recorded properly. It must be a mistake." (Emphasis supplied.)

The High Court, in this connection, said this:

"It may be quite possible that persuaded by various reasons, some witnesses may spell out something which is not true but that by itself may not be a ground for brushing aside the other part of the deposition or other relevant and acceptable evidence."

We fail to appreciate the view taken by the learned District Judge and by the High Court. This was the evidence of the landlord himself in support of the plea in his application for eviction of the tenants that the tenants had "sub-leased the outhouse bearing Door No.497 to the 4th opponent". In his evidence the landlord said that Door No.495 had prior to 1973 borne Door No.775 of II ward and that only Door No.775 of IInd ward was leased to the original tenant. He said that the premises in which the 4th respondent was residing were never leased to the original tenant. There was no re-examination of the landlord in this regard. The onus of proving the sub-tenancy as alleged was on the landlord. The landlord's evidence does not establish such sub-tenancy. In fact, it rules out any possibility of it. The statements in the landlord's evidence cannot be explained away by observing that the landlord's answer had not been recorded properly or "must be a mistake" or spelt out something that was not true.

It must also be noted that there has been no finding as to when the sub-tenancy in favour of the 4th respondent was created, and this was very necessary in the facts of this case. Also very relevant is the fact that, though the eviction petition averred that the sub-tenancy had been created by "opponents 1 to 3" the landlord's evidence in examination-in-chief and the findings were that it had been created by the original tenant, Shankarnarayana.

We find the conclusion of the High Court upon the issue of sub-letting unreasonable, having regard to the record, and must set it aside.

In the result, the appeal of the landlord (arising out of S.L.P.(C) No 21968 of 1995 (CC No.2547/95)) is dismissed. The appeal No.8470/95 of the tenants, (arising out of S.L.P.(C) 7933 of 1995) is allowed and the order of eviction passed against them is set aside. There shall be no order as to costs.

JUDIS