

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.6391 OF 2002

M. Meeramytheen and Ors.

...Appellant(s)

Versus

K. Parameswaran Pillai and Ors.

...Respondent(s)

With Civil Appeal No.7749 of 2002

O R D E R

Heard learned counsel for the parties.

A petition was filed before the learned Munsif, Quilon, who was exercising powers of the Rent Controller under the provisions of the Kerala Buildings (Lease and Rent Control) Act, 1965, by K. Parameswaran Pillai and B. Geethadevi for eviction of the two tenants and one sub-tenant from two shop rooms which were let out in the year 1967 on a monthly rental of Rs.250/-. In 1971, the tenants undeniably created a sub-tenancy in relation to one of the two rooms in favour of S. Abdul Jabbar. Later on, a partition was effected on 12th October, 1981, in which one of the two rooms in question was allotted in the share of Premachandran and the other in favour of his sister, B. Geethadevi, Plaintiff No.2. Premachandran transferred the room, allotted in his share, under a registered sale deed executed in favour of Plaintiff No.1,

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who is nobody else than his own brother. The present suit has been filed by the transferee from Premachandran, who acquired right, title and interest in one of the rooms, which was allotted in favour of Premachandran and Plaintiff No.2, who is the sister of Premachandran, Plaintiff No.1, and in whose share the other room was allotted. As the cause of action for filing the eviction petition had arisen in 1971 prior to the partition, which was effected in 1981, the suit for eviction was filed by the transferee from Premachandran in whose favour one room was allotted and Plaintiff No.2, who owned another room by virtue of the partition.

The defendants filed written statement contesting the suit for eviction. They neither denied title of the plaintiffs nor relationship of landlord and tenant. They, however, denied that they had created any sub-tenancy as alleged by the plaintiffs.

Before the Rent Controller, after framing of issues, parties adduced evidence in support of their respective cases. The Trial Court, on a consideration of evidence brought on record, dismissed the suit recording a finding that the plaintiffs failed to prove the case of sub-tenancy.

Against the judgement of the Rent Controller, an appeal was preferred. The appellate court took the view that though initially there was a single tenancy in respect of both the rooms, as a result of the partition one each of the two shop rooms were allotted in the shares of two different co-sharers. Hence, the plaintiffs were not entitled to seek eviction in relation to both the shop rooms and they could seek eviction only in relation to

that shop room in respect of which sub-tenancy was actually created. On the basis of that finding, the appellate court allowed the appeal in-part and granted decree for eviction in relation to the room which was the subject-matter of sub-tenancy.

Against the said judgement of the appellate court, separate revision applications were filed both by the landlords and the tenants. The High Court concurred with the reasoning of the appellate court for granting a decree for eviction only in relation to the room in respect of which sub-tenancy was created. It, however, confirmed the finding recorded by the appellate court that the plaintiffs had succeeded in proving the case of sub-tenancy. Against the said judgement, Civil Appeal No.6391 of 2002 and Civil Appeal No.7749 of 2002 have been filed by the tenants and the landlords respectively by way of special leave.

We have heard learned counsel appearing on behalf of the parties in these appeals.

So far as the finding in relation to creation of sub-tenancy is concerned, learned counsel appearing on behalf of the tenants could not point out any infirmity therein. He could not show that the finding of fact recorded by the appellate court on the question of creation of sub-tenancy was perverse and, therefore, liable to be interfered with by the High Court in revision. We are, therefore, of the view that no ground is made out for any interference with the finding on the question of creation of sub-tenancy.

Now, the question arises as to whether the appellate court and the High Court were justified in granting decree for eviction only in relation to one of

the two rooms, which was actually sub-let. Undisputedly, at the time of letting of in the year 1967, one single tenancy was created in relation to both the shop rooms and the sub-tenancy was created in respect of one of the two rooms in the year 1971. Thus, the cause of action to file suit for eviction accrued in the year 1971. Ten years later, partition was effected by virtue of which these two shop rooms were allotted in the shares of two different co-sharers, who joined together in the present suit seeking eviction of the tenants and the sub-lessee. Thus, it cannot be said that on account of partition, the original tenancy was divided and, therefore, eviction could be ordered only in respect of one of the rooms that was actually sub-let, more so, when the cause of action had accrued prior to the partition. This being the position, we are of the view that the appellate court as well as the High Court were not justified in granting decree for eviction in relation to only one of the shop rooms in respect of which sub-tenancy was created.

Accordingly, Civil Appeal No.7749 of 2002 is allowed, judgement and decree passed by the appellate court as well as the High Court are modified and suit for eviction is decreed in its entirety. The tenants are, however, granted time till 30th June, 2010, to vacate the premises in question upon filing the usual undertaking in this Court within four weeks from today.

It is directed that in case the tenants fail to vacate the premises in question within the aforesaid time, it would be open to the decree holder to file an execution petition for delivery of possession and in case such a petition has been already filed, an application shall be

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filed therein to the effect that the tenants have not vacated the premises in question within the time granted by this Court. In either eventuality, the Executing Court is not required to issue any notice to the tenants. The Executing Court will see that delivery of possession is effected within a period of fifteen days from the date of filing of the execution petition or the application aforementioned. In case for delivery of possession any armed force is necessary, the same shall be deputed by the Superintendent of Police within forty eight hours from the date requisition is received therefor. It is also directed that in case anybody else, other than the tenants, is found in possession, he shall also be dispossessed from the premises in question.

Civil Appeal No.6391 of 2002 is dismissed as being devoid of any substance.

No costs.

.....J.
[B.N. AGRAWAL]

.....J.
[AFTAB ALAM]

New Delhi,
September 17, 2009.