

HABIBUNNISA BEGUM AND ORS.

A

v.

G. DORAIKANNU CHETTIAR (D) BY LRS. AND ORS.

NOVEMBER 17, 1999

[V.N. KHARE AND S.N. PHUKAN, JJ.]

B

Tamil Nadu Building (Lease and Rent Control) Act, 1960—Single Indivisible tenancy—No provision in the Act for splitting the said tenancy—Effect of—Held, tenancy cannot be split.

C

Appellant-landlord leased out under single indivisible contract of tenancy some structure on Door No. 27, to the respondent-tenant which was later assigned separate numbers and the tenant raised constructions on Door Nos. 27 and 28 in terms of the lease. The tenant claimed to be the owner of the structure, remitted rent to the landlord only in respect of land which was refused. Landlord filed a suit for ejectment of the tenant which was decreed by the Trial Court and confirmed in appeal. Revision filed by the tenant was partly allowed by the High Court by modifying the decree by setting aside the decree of ejectment to the extent of two grounds and 2182 sq. ft. at Door No. 27. Against the judgement of the High Court, Landlord has filed the present appeal and cross-objection has been filed by the tenant.

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Allowing the appeal, the Court

HELD: 1. Where there is a single indivisible contract of tenancy, it cannot be split by a court unless there is statutory provision to that effect. It is not disputed that the contract of tenancy is single indivisible contract for Door Nos. 27 and 28. It is also not disputed that there is no provision in the Tamil Nadu Building (Lease and Rent Control) Act, 1960 empowering the court to order partial ejectment of a tenant from the premises by splitting the single indivisible tenancy. For these reasons it was not open to split the tenancy and order partial ejectment of the tenant from the premises.

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[474-G, H; 475-A, B]

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S. Sanyal v. Gian Chand, [1968] 1 SCR 536, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12438 of 1996.

H

A From the Judgment and Order dated 17.11.95 of the Madras High Court in C.R.P. No. 1206 of 1992.

R.N. Keshwani for the Appellants.

T.L. Vishwanatha Iyer and Mrs. Revathy Raghavan, for the Respondents.

B

The Judgment of the Court was delivered by

V.K. KHARE, J. The appellant before us is the landlord of the premises, which originally had one municipal number but now numbered as Doors Nos. 27/28, Subedar Hussain Street in the city of Chennai. It is not disputed that the landlord leased out the premises by single lease deed along with some structure on Door No. 27. The said tenancy was single indivisible contract of tenancy. Subsequently, the tenant in terms of lease deed raised certain constructions on Door No. 27 and also on Door No. 28. It further appears that subsequently a portion of the land was acquired for construction of road with the result the premises was separated by a road and thus the premises were assigned separate numbers. It further appears from the record that the tenant claiming himself to be the owner of the structure remitted rent to the landlord in respect of the land only, which was refused by the landlord. Subsequently, the landlord filed a suit for ejectment of the tenant on the ground of willful default of payment of rent as well as on the ground of denial of title. The suit was decreed on both the grounds by the Small Causes Court at Madras. The appeal preferred against the said decree was dismissed. The revision filed by the tenant, was partly allowed by the High Court by modifying the decree while affirming the findings of Courts below that the tenant had denied the title of the landlord. Accordingly the High Court upheld the decree of ejectment up to portion of 608 sq. ft. +147 sq. ft. at Door No. 27 but set aside the decree of ejectment to the extent of two grounds and 2182 sq. ft. at Door No. 28. It is against this judgment the landlord is in appeal. The cross objection has also been filed by the tenant to the extent decree was upheld by the High Court.

G The only question that arises in this case is as to whether it was open to the High Court to split the single tenancy by ordering partial ejectment of the tenant from the premises let out to him. In *S. Sanyal v. Gian Chand*, [1968] 1 SCR 536, it was held that where a contract of tenancy was a single indivisible contract and in the absence of any statutory provision to that effect, it is not open to the Court to split the tenancy. Law, therefore, is that where there is a single indivisible contract of tenancy, it cannot be split by a Court unless

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there is statutory provision to that effect. In the present case it is not disputed that the contract of tenancy is single indivisible contract for Door Nos. 27 and 28. It is also not disputed that there is no provision in the Tamil Nadu Building (Lease and Rent Control) Act, 1960 empowering the Court to order partial ejection of a tenant from the premises by splitting the single indivisible tenancy. For these reasons it was not open to the High Court to split the tenancy and ordered for partial ejection of the tenant from the premises.

In view of the aforesaid legal position of law this appeal succeeds and is allowed. The judgment of the High Court to the extent it allowed the revision of the tenant is set aside and the decree of the trial court is affirmed. There shall be no order as to costs.

I.A. Nos. 2 and 3.

There is an inordinate delay in filing the cross objection for which there is neither any satisfactory explanation nor any affidavit in support thereof has been filed. We are, therefore, not inclined to condone the delay in filing the cross objection. The application for condonation of delay is rejected. Consequently, the cross objection is rejected.

After the judgment was dictated, learned counsel appearing for the tenant stated that in case the tenant is required to vacate the premises immediately, he shall be put to a great hardship and for that reason he may be allowed some time to vacate the premises. Learned counsel appearing for the appellant has no objection to the said prayer. We, accordingly, direct that the respondent-tenant shall not be evicted from the premises in dispute till 30th June, 2000 provided he files a usual undertaking within six weeks and also continues to pay the rent/damages for the period he continues in possession by virtue of our order.

A.K.T.

Appeal allowed.

HARIDAS PARSEDIA ETC.