Chhotey Lal and others
v.
Parbati Devi and others

Dulat, J.

under the Small Cause Courts Act, and it is admitted that for revision petitions under the Small Cause Courts Act the court-fee leviable is only Rs. 2.65 nP. Under these circumstances, it appears to me that the decision of Dua J. in Civil Revision 175-D of 1956 did not decide the question that is being raised in the present cases, and that, so far as the present petitions are concerned, they do not have to bear *ad valorem* court-fee on the value of the subject-matter of the suits. The proper court-fee payable on such petitions would be the same as payable on other petitions to this Court mentioned in Schedule II, Article 1, Court-fees Act and they need bear only a court-fee of Rs. 2.65 nP.

Bedi, J.

J. S. BEDI, J.—I agree.

B.R.T.

REVISIONAL CIVIL

Before Tek Chand, J.

GUGAN MAL AND OTHERS,—*Petitioners.*

versus

M/S MOTI LAL-CHAND MAL AND OTHERS,—*Respondents.*

Civil Revision No. 513-D of 1958.

1961

December, 29th.

Delhi and Ajmer Rent Control Act (XXXVIII of 1952)—Section 13 (1)(b)(i)—Assignee of a lessor—Whether can sue for ejectment of tenant on the basis of breaches committed before the assignment—Plea of licence not taken in the written statement—Whether can be allowed to be taken at the trial—Lease and licence—Difference between, stated.

Held, that the rights of an assignee from a lessor like his liabilities commence from the date of the assignment. He cannot sue for ejectment of a tenant on the basis of breaches committed before the assignment. The words "the landlord" in sub-section (1) of section 13 of the Delhi and Ajmer Rent Control Act, 1952, refer clearly to the

plaintiff who desires to obtain a decree or order for the recovery of possession. Such a person can obtain this relief on showing sub-letting, assigning, etc., of a part of the premises by the tenant without his, that is, landlord's consent in writing. This excludes past breaches committed while the landlord was the predecessor of the present transferee.

Held, that the provisions of section 13 of the Act require that for obtaining eviction of a tenant, it has to be proved that the tenant has sub-let, assigned or otherwise parted with the possession of the whole or any part of the premises without obtaining the consent of the landlord in writing after the commencement of the Act. It is for the plaintiff to prove that the tenant has committed a particular statutory breach. After sufficient material is placed by the plaintiff on the record, the Court has to satisfy itself that for the alleged breach the defendant-tenant is liable to eviction. In other words, it is not for the defendant to plead whether the premises were being used under a "licence" by other persons but for the plaintiff to allege and establish sub-letting, assigning, or parting with possession. The Courts are justified in drawing an inference from the evidence on the record as to whether the occupation of the premises by the other persons was in the nature of a "lease" or "assignment" or whether it was a mere *"licence"*.

Held, that the essential feature of "lease" as distinguished from "licence" is that it confers a right of possession of real property with an interest even against the landlord whereas "licence" conveys no estate in the property and is generally recoverable at will and without notice. The mere permission to occupy the land of another is a "licence" and not a "lease" or "assignment". A mere permission to use land, dominion over which remains in the owner not creating interest in or giving exclusive possession thereof, to the tenant, is a "licence", and not a "lease". A "licence" is merely a right to do certain things upon the property of another, whereas, "lease" confers exclusive possession to the lessee in exchange for payment of rent. The main test to determine whether agreement for use of immovable property is "lease" or "licence" is, whether the contract gives exclusive use of the premises as against all the world and, if so, it is "lease". "Licence" creates no interest in the land, but is simply the authority or power to use it in some specific way. "Licence" is in the nature of mere leave or liberty to be enjoyed as a matter of indulgence at the will

of the party giving the "licence". It is a "licence" when a mere privilege is conferred to occupy the premises under the owner. It is said that "Licence" is an authority to do some act or series of acts on the land of another without passing an estate in the land and it amounts to nothing more than an excuse for the act which would otherwise be a trespass. "Licence" moreover is a personal privilege and can be enjoyed only by the licencee.

Application for revision, under section 35 of Act XXXVIII of 1952, the Delhi and Ajmer Rent Control Act of 1952 of the order of Shri P. P. R. Sawhney, Additional District Judge, Delhi, dated the 2nd June, 1958, affirming with costs that of Shri Pritpal Singh, Sub-Judge, 1st Class. Delhi, dated the 29th November, 1957, dismissing the plaintiff's suit with costs.

GURBACHAN SINGH AND KESHAV DAYAL, ADVOCATES, for the Petitioner.

HARNAM DAS AND D. K. KAPUR, ADVOCATES, for the Respondent.

JUDGMENT

Tek Chand, J. TEK CHAND, J.—This is a civil revision under section 35 of the Delhi and Ajmer Rent Control Act (38 of 1952) made by the landlord whose suit for ejectment of the defendant from the premises in dispute was dismissed by the Sub-Judge and his appeal was also decided against him by the Additional District Judge.

The defendant-tenant has been in occupation of a building described as two-and-a-half storeyed in Delhi. The ground floor is used as a shop and godown and the remaining part of the house is being used for residential purposes. The rent of the premises is Rs. 125 besides house-tax which is payable by the tenant. The landlord sought eviction of the defendant on several grounds, but in this revision the only allegation on which the petitioner has rested his claim is under section 13(1)(b)(i). The contention which has been canvassed before me by the petitioner's counsel is

that the respondent-tenant had sublet, assigned or otherwise parted with possession of a part of the premises without obtaining the landlord's consent in writing.

In the written statement the defendant-respondent had denied this plea and had maintained that he had neither sublet nor assigned or otherwise parted with the possession of the premises to others. He had pleaded that he was in actual physical possession and occupation of the whole of the suit premises. The following issues were framed—

(1) Is the defendant liable to ejectment on the grounds alleged in the plaint ?

(2) Relief.

A number of witnesses were examined by the parties and the trial Court held that on the evidence the defendant had made out a case for a licence and the breach of the provisions of section 13(1)(b)(i) had not been substantiated. The suit was dismissed. On appeal, the Additional District Judge affirmed the findings of the trial Court.

Learned counsel for the petitioner has taken me through the evidence and has, in the first instance, submitted that the evidence has been disregarded and it is sufficient to justify the conclusion that the defendant has committed breach and is liable to eviction as he had sublet or otherwise parted with possession of a part of the premises. The plaintiff-petitioner's evidence as to the effect that the ground floor used to be rented by the defendant-respondent for stocking the goods of other persons for which they paid rent. These goods used to be placed either on a roofed portion of the building or in the open courtyard and for the use of this space the defendant used to charge rent. Much reliance has been placed upon the statement of P.W. 1, Jai Parkash, who is a clerk in the Allahabad Bank, who said that

Gugan Mal and others
v.
M/s Moti Lal-Chand Mal and others

Tek Chand, J.

goods belonging to Ram Lal-Kishan Lal remained in pledge with the Allahabad Bank from 8th February, 1956 to 23rd May, 1956, in the defendant's premises and the key was with the Bank. In cross-examination he stated that he himself did not go to the spot. The persons, whose goods according to P.W. 1 were on the premises of the defendant, were not summoned to show whether any godown where the goods were placed was in exclusive possession of the Bank. Reliance has been placed merely on that part of the statement wherein it is stated that the key was with the Allahabad Bank. Neither of the Courts below has been impressed by this fact and has not considered that the above statement amounts to creation of a sub-lease or assignment or even parting with the possession by the defendant. I agree with this conclusion. P.W. 2 stated that he used to keep his goods in an open space in the premises of the defendant and used to pay rent, but he denied having possession of any part of the building. P.W. 3 is the local commissioner appointed by the Court and he submitted a report, Exhibit P.W. 3/1. He made enquiries from four persons and recorded their statements without oath. These statements were to the effect that the defendant used to charge rent for the use of space for keeping their goods. P.W. 5 does not at all help the plaintiff-landlord. He said that there were no doors to the godown and the possession was of the defendant and they never put any lock. P.W. 4 was a sub-tenant of the defendant in 1953 which is three years before the sale of the premises to the plaintiff-petitioner from the previous owner. He stated that he had paid rent to the defendant up to 9th July, 1953, and retained possession of the premises for another month and he gave up possession after that. Exhibit P.W. 4/1 is the original notice which was served by the defendant on his sub-tenant requiring him to pay a sum of Rs. 65 as the rent of the godown for one month within one week otherwise legal proceedings would be taken against him. The argument which has been rested on the statement of P.W. 4 and the notice Exhibit

P.W. 4/1 is that in the past, in 1953, before the purchase of the premises by the plaintiff, a breach of the statutory conditions had been committed in so far as the premises had been sublet in contravention of section 13(1)(b)(i) and on the basis of the past breach the transferee from the former lessor could obtain an order for the defendant's eviction. It has already been noticed that the sub-tenant had vacated the premises some time in 1953. Reliance has been placed upon a decision of the Bombay High Court in *Vishveshwar Vighneshwarshastri* v. *Mahableshwar Subba Bhatta* (1). In that case the lessee had committed a breach of the condition by sale of his rights under the lease in 1908. In 1911 the plaintiff had purchased the landlord's rights from the lessor, who had not given the lessee notice of his intention to enforce the forfeiture before the transfer. The plaintiff had instituted a suit to recover possession of the property on breach of the condition and the contention of the defendant was that the plaintiff could not take advantage of the breach of condition incurred before the assignment in his favour. This contention was repelled and the plaintiff was entitled to recover possession of the property from the defendant. Beaman, J., observed—

> "Put in the simplest and fewest words it is this: does the transfer of the reversion carry with it the right to enforce forfeiture for breach of condition prior to the transfer? The law in England was well settled, and seemingly unquestioned that it did not [*Hunt* v. *Bishop* (2), *Cohen* v. *Tannar* (3)], till by the Act 1 and 2 Geo. V, C. 37, statutory validity was given to the view taken by the learned Judge below.

I am not aware of any corresponding amendment of the transfer of Property Act,

(1) I.L.R. (1918) 43 Bom. 28
(2) (1853) 8 Exch. 675
(3) (1900) 69 L.J.Q.B. 904

Gugan Mal and others
v.
M/s Moti Lal-Chand Mal and others

Tek Chand, J.

altering the law in India. Speaking generally, it is safe to say that with few exceptions the Transfer of Property Act is a codified expression of the English law. Presumably, then, it meant to give effect to what was the settled law of England on this point, up to 1911.

In the absence of statutory provision, and on general principle, I own I should find it hard to come to any other conclusion than that which was so often stated and affirmed in the English Courts".

Later on, the learned Judge said,—

"But since the law of England has been altered, and the Statute of 1911 provides in terms for such a case as this, I see no reason why we should not in such matters make the administration of the law as a whole as systematic as possible. It would be difficult to say that the Transfer of Property Act, as it stands, in express words, prohibits the plaintiff from suing here, and although as I have shown a reference to general principles and the spirit of the Act bring out that conclusion, I do not object to accepting the statutory modification of those general principles which has taken place in England. It is only upon that ground that I could bring myself to confirm the decree of the lower Court."

Heaton, J., did not adopt the reasoning of Beaman, J., but confirmed the decree on other grounds. The reasoning of Beaman, J., does not commend itself to me. The rights of an assignee from a lessor like his liabilities commence from the date of the assignment. He cannot sue on the basis of breaches committed before the assignment. The adaptation by Beaman, J., of the provisions of the Transfer of Property Act to the subsequent statutory law of England as contained in Act 1 and 2

Geo. V, C. 37, is indefensible. I cannot, either in law or in logic, persuade myself to order eviction of the defendant for a breach committed during 1953, nearly three years before the purchase of the property by the petitioner from the defendant's former landlord.

As I read section 13, the words "the landlord" in the first paragraph of sub-section (1) and the same words occurring in paragraph (b) of sub-section (1) must be given the same meaning. Sub-section (1) of section 13 provides—

[His Lordship read Section 13(1) and continued:]

The words "the landlord" in the first paragraph refer clearly to the plaintiff who desires to obtain a decree or order for the recovery of possession. Such a person can obtain this relief on showing subletting, assigning, etc., of a part of the premises by the tenant without his, that is, landlord's consent in writing. This, to my mind, excludes past breaches committed while the landlord was the predecessor of the present transferee. I will not, therefore, treat the past breach as a ground for eviction of the tenant in a suit instituted by the plaintiff.

The next point urged is that the lower Courts ought not to have permitted the defendant to take up the plea of "licence" as it was not taken in the written statement. The provisions of section 13 of the Act require that for obtaining eviction of a tenant, it has to be proved that the tenant has sub-let, assigned or otherwise parted with the possession of the whole or any part of the premises without obtaining the consent of the landlord in writing after the commencement of the Act. It is for the plaintiff to prove that the tenant has committed a particular statutory breach. After sufficient material is placed by the plaintiff on the record, the Court has to satisfy itself that for the alleged breach the defendant-tenant is liable to

Gugan Mal and others
v.
M/s Moti Lal Chand Mal and others

Tek Chand, J.

eviction. In other words, it is not for the defendant to plead whether the premises were being used under a "licence" by other persons but for the plaintiff to allege and establish subletting, assigning or parting with possession. The Courts below, to my mind, were justified in drawing an inference from the evidence on the record as to whether the occupation of the premises by the other persons was in the nature of a "lease" or "assignment" or whether it was a mere "licence".

There is a sharp distinction in law between a "licence" and a "lease", though some time, on the facts, it may be difficult to place a particular occupation or use under one or the other category.

The essential feature of "lease" as distinguished from "licence" is that it confers a right of possession of real property with an interest even against the landlord whereas "licence" conveys no estate in the property and is generally revocable at will and without notice. The mere permission to occupy the land of another is a "licence" and not a "lease" or "assignment". A mere permission to use land, dominion over which remains in the owner not creating interest in or giving exclusive possession thereof, to the tenant, is a "licence", and not a "lease". A "licence" is merely a right to do certain things upon the property of another, whereas, "lease" confers exclusive possession to the lessee in exchange for payment of rent. The main test to determine whether agreement for use of immovable property is "lease" or "licence" is, whether the contract gives exclusive use of the premises as against all the world and, if so, it is a "lease". "Licence" creates no interest in the land, but is simply the authority or power to use it in some specific way. "Licence" is in the nature of mere leave or liberty to be enjoyed as a matter of indulgence at the will of the party giving the "licence". It is a "licence" when a mere privilege is conferred to occupy the premises under the owner. It is said that "Licence" is an authority to do some act or series of acts on the

land of another without passing an estate in the land and it amounts to nothing more than an excuse for the act which would otherwise be a trespass. "Licence" moreover is a personal privilege and can be enjoyed only by the licensee.

In a recent decision, the Supreme Court in *Associated Hotels of India Ltd.*, v. *R. N. Kapoor* (4), said that the following propositions should be taken as well-established—

> "(1) To ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form;
>
> (2) The real test is the intention of the parties—whether they intended to create a lease or a licence;
>
> (3) If the document creates an interest in the property, it is a lease, but, if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence; and
>
> (4) If under the document a party gets exclusive possession of the property, *prima facie*, he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease."

Applying the above tests to the facts of this case, it is a case of a "licence" granted by the defendant and certainly not of a "lease" or "sub-lease". The possession remained throughout with the tenant and he never parted with it either over the whole or any part of the building which he had taken on lease. For these reasons, I am satisfied that the Courts below came to a correct decision. The plaintiff has failed to establish, to the satisfaction of the Court, that the tenant had committed the alleged statutory breach whereby he might have incurred the liability of eviction. The petition fails and is dismissed with costs.

B.R.T.

(4) A.I.R. 1959 S.C. 1962 (1269)