

them. Indeed, he would not communicate with any one in the village. One of the witnesses examined by the plaintiffs is the father of the two men who are alleged to have been murdered by Mal Singh, and this man would be the last person to whom Mal Singh would reveal his whereabouts or with whom he would communicate.

State of
Punjab
v.
Bachan Singh
and others
Khosla, J.

I, therefore, find that in the circumstances of this case no presumption regarding Mal Singh's death can arise. It is section 107 which must be applied and not section 108. The plaintiffs, therefore, cannot claim Mal Singh's property as he has not been proved to have died. Their suit is liable to be dismissed and allowing the appeal of the State I would dismiss it with costs.

It was brought to our notice that Mst. Santo respondent had died and the question arose whether it was necessary to bring her legal representatives on the record. I have already indicated in the beginning of my judgment that Mst. Santo was no more than a *pro forma* defendant. She had married a second time and had, therefore, lost all rights in Mal Singh's property. Her death does not make any difference to these proceedings. There was no decree in her favour and, therefore, there can be no question of any abatement.

FALSHAW, J. I agree.

Falshaw, J.

APPELLATE CIVIL

Before Kapur, J.

MR. S. C. KAPOOR,—*Defendant-Appellant.*

versus

PT. AMAR NATH,—*Plaintiff-Respondent.*

Civil Regular Second Appeal No. 8/D of 1955.

Delhi and Ajmer Merwara Rent Control Act (XIX of 1947)—Section 9(1)(c)—Expression "has after the commencement of this Act sublet the premises" in section 9(1)(c), meaning of—Tenant sublet the premises before the

1955

Oct. 7th.

Act came into force—Premises vacated after the Act came into force and given over to another tenant—Whether amounts to sub-letting within the meaning of section 9(1)(c).

A tenancy of a building consisting of many shops commenced in 1938. After the Delhi Rent Restriction Act of 1947, came into force one of the shops fell vacant and the tenant leased it to a sub-tenant who was in occupation of another shop in the same building. The landlord sued for ejectment on the ground of sub-letting without the consent of the landlord.

Held, (1) that the Rent Restriction Acts are a piece of social legislation and should be interpreted to subserve the object of legislation but not in a manner which will produce a result which plain meaning of the words do not imply or are not intended to mean. The judge cannot fill in gaps in a statute or act in a legislative rather than judicial capacity.

Magor & St. Mellons Rural District Council v. Newport-Corporation (1), followed.

(2) that after sub-letting the estate of a tenant can be divided into two parts, namely, the right of reversion and sub-tenancy. When a sub-tenancy comes to an end there is merger of two estates as a result of which the sub-tenancy terminates. Therefore, when the tenant sublets the premises again to another person or to one of the sub-tenants of any other portion, it cannot be said that this is no creation of a new sub-tenancy, and, as it was without the consent of the landlord in the present case, the operation of section 9(1)(c) becomes effectual and the tenant becomes liable to ejectment.

Regular Second Appeal from the decree of the Court of Shri Y. L. Taneja, Additional District Judge, Delhi, dated the 29th day of December, 1954, modifying that of Shri Gyan Das Jain, Sub-Judge, 1st Class, Delhi, dated the 29th December, 1952, whereby the lower appellate Court granted the plaintiff a decree for ejectment in addition to the decree for Rs. 841-8-0 passed by the trial Court.

D. D. CHAWLA, for Appellant.

HARDAYAL HARDY, for Respondent.

JUDGMENT.

KAPUR, J.—This judgment will dispose of Regular Second Appeal No. 8-D of 1955 and Civil Revision No. 47-D of 1955 as they are directed against the same decree of the District Judge and the matter in dispute is the same.

Kapur, 1

On the 1st August, 1938, Amar Nath plaintiff gave a lease of the house in dispute along with the shops to S. C. Kapur, the defendant. The Act under which the suit was brought came into force on the 24th March 1947. After the coming into force of the Act one of the shops fell vacant and Lachhman Singh who was a sub-tenant under Kapur of another shop took that shop in December 1947 and the shop which was vacated by Lachhman Singh was taken possession of by the tenant, S. C. Kapur.

On the 11th August, 1949 the plaintiff Amar Nath brought a suit for ejection basing his claim on several grounds. The trial Court dismissed the suit for ejection but the prayer for arrears of rent was decreed. On appeal being taken, the learned District Judge has decreed ejection and the defendant has come up in appeal to this Court, and the only point in dispute in this appeal is whether the taking of the vacant shop by Lachhman Singh who was already a tenant of another shop amounts to subletting within the meaning of that word as used in section 9 (1) (c) of the Delhi Rent Control Act, 1947. Section 9(1)(c) provides—

9 (1) Notwithstanding anything contained in any contract, no Court shall pass any decree in favour of a landlord, or make any order in favour of landlord, whether in execution of a decree or otherwise, evicting any tenant, whether or not the period

Mr. S. C.
Kapoor
v.
Pt. Amar
Nath.

Kapur, J.

of the tenancy has terminated, unless it is satisfied either—

- (a) * * * *
- (b) * * * *
- (c) that the tenant without the consent of the landlord has, after the commencement of this Act, sub-let any part of the premises ; or

* * * * *

As a result of this section therefore all contracts become abrogated and no tenant can be evicted unless the case falls in one of the grounds given in section 9. In this case we have to interpret the words "has without the consent of the landlord sub-let any part of the premises." That the shop is "premises" or a part of the premises is not disputed. The controversy really centres round the meaning of the words "has after the commencement of this Act sublet". If the shop was already sublet to somebody else, does the mere fact that another person is introduced into that shop come within the purview of the Act? The Rent Restriction Acts are a piece of social legislation, and in my opinion the Courts should interpret them in such a manner that the object of legislation is promoted rather than hampered but that does not mean that the plain meanings of the words can be twisted in such a manner as to produce a result which the plain words do not imply or could not have intended to mean and the Judge cannot fill in the gaps or what he conceives to be the gaps in a statute, nor can he act "in a legislative rather than judicial capacity", *Magor & St. Mellons Rural District Council v. Newport Corporation* (1). If all contracts previous to the coming of the Act into force are abrogated, then the relationship between the landlord and tenant is regulated by the provisions of the Act and whether there was a previous subletting or not,

(1) (1951) 2 A.E.R. 839

if the premises or any portion thereof is sublet subsequently even in the manner in which it has been done in the present case, then the power of eviction becomes operative. According to law as soon as a sub-tenant vacates the premises there is a merger of the estate and the sub-lease thereby comes to an end and if subsequently the same premises are sublet, they would, in my view, fall within the purview of section 9 (1) (c).

Two cases were relied upon by counsel for the landlord. The first is a judgment of the Madras High Court in *Somasundara v. M. P. Co-operative Society*, (1), and it was held there that if a portion of the premises was being sublet prior to the commencement of the Act, the fact that there was change in the sub-tenants after the commencement of the Act, would make the sub-letting one after the commencement of the Act. This is exactly what has happened in the present case. The other case is one given in the note section of (1950) 1 M. L. J. at page 17. It says that where a prior sub-tenancy terminated and there was a reverter to the tenant and subsequently after the commencement of the Act the tenant sub-lets a portion to another person, then according to the plain language of the section, the tenant must be held to have sub-let the portion after the commencement of the Act. The full report is not before me and it is difficult to say what exactly were the facts, but it does support the plaintiff to this extent that when a sub-tenant leaves, the estate of the sub-tenant merges as a result of reverter and thus the sub-tenancy is no longer in existence. If there is sub-letting after this merger, it is within the mischief of section 9 (1) (c) of the Act.

Both on principle and on precedent the interpretation sought to be put upon the words, which are given above, by the plaintiff seems to be correct.

Mr. S. C.
Kapoor
v.
Pt. Amar
Nath.
Kapur, J.

(1) A.I.R. 1950 Mad. 711

Mr. S. C.
Kapoor
v.
Pt. Amar
Nath.

Kapur, J.

After sub-letting the estate of a tenant can be divided into two parts, namely the right of reversion and sub-tenancy. When a sub-tenancy comes to an end, there is merger of two estates as a result of which the sub-tenancy terminates. Therefore when the tenant sub-lets the premises again to another person or to one of the sub-tenants of any other portion, it cannot be said that this is no creation of a new sub-tenancy, and as it was without the consent of the landlord in the present case, the operation of section 9 (1) (c) becomes effectual and the tenant becomes liable to ejection. I would therefore dismiss the appeal, but considering the circumstances of the case leave the parties to bear their own costs throughout.

The Revision Petition was brought only to obviate any objection on the part of the respondent as to the competency of the appeal. Since the appeal has been dismissed, the Revision Petition also stands dismissed and the rule discharged, but there will be no order as to costs.

CRIMINAL WRIT.

Before Falshaw, J.

RATNA *alias* RAKHNA,—*Petitioner.*

versus

THE STATE OF DELHI AND ANOTHER,—*Respondents.*

Criminal Writ No. 142-D of 1955.

1955

Nov. 18th.

Bengal Suppression of Immoral Traffic Act (VI of 1933)—Sections 4, 8, 14 and 16—Proceedings under sections 4 and 8—Premises held not to be a brothel—Finding unchallenged—Magistrate dealing with case of a girl under section 14 cannot come to a different finding on the same evidence.