of the learned Additional District Judge and restore those of the trial Court. Parties will bear their own costs in this Court and in the Courts below.

Mela Singh and another
v.
The Punjab State

Kapur, J.

REVISIONAL CIVIL

Before Bhandari, C. J.

DR. PREM NATH,—*Defendant-Petitioner.*

versus

PT. MANMOHAN NATH DAR AND OTHERS,—*Respondents.*

Civil Revision No. 4-D of 1953.

1954

July, 21st

Landlord and Tenant—Sub-tenant—Position of visa-a-vis *the landlord—Ejectment Proceedings by landlord against the tenant to which sub-tenant also a party—Order of ejectment passed and not appealed against by the tenant—Appeal by sub-tenant whether competent—Creation of sub-tenancy consented to by the landlord—Whether the sub-tenant becomes a tenant of the landlord—Notice to quit, when necessary.*

Held, that in the absence of a contract or statutory prohibition, a tenant is at liberty to sublet the demised premises in whole or in part. As the subletting creates a new estate dependent upon or carved out of the original tenancy, the tenant cannot confer a greater right on the sub-tenant than he himself possesses. It follows as a consequence that the sub-tenant can acquire no greater rights in the use and enjoyment of the demised premises than the original tenant. He cannot use the premises in a manner inconsistent with the terms of the original lease between the landlord and the tenant, for stipulations forbidding the use of premises for a specified purpose run with the land. If the tenant fails to pay the rent the landlord has the same rights to dispossess the sub-tenant as he would have to dispossess the tenant. If the original tenancy is determined by efflux of time or by forfeiture or by operation of law the sub-tenancy also ceases to exist.

Held further, that the sub-tenant being a party to the suit for ejectment was at liberty to prefer an appeal from the order which was passed by the trial court and to attack the judgment directly and collaterally. This attack could be of little avail in the present case as the original tenant had not thought fit to lodge an appeal and the order of ejectment passed against him had thereby become final and conclusive. Broadly speaking when a landlord brings a suit for ejectment against his tenant and impleads the sub-tenant as a defendant, the sub-tenant has a right, in his capacity as a party to the litigation, to prefer an appeal from the judgment which has been rendered in the case. If, however, the judgment has become final and conclusive against the tenant, the right of appeal conferred upon the sub-tenant becomes illusory as he is bound by the decree passed against the landlord.

Held also, that by giving his consent to the creation of the sub-tenancy the landlord did not enter into any contractual relationship with the sub-tenant. His action in giving his consent amounted merely to a declaration that he would not eject his tenant on the ground that he had sublet the premises.

Held also, that notice to quit is only served in cases in which the landlord wishes to terminate periodic tenancies or tenancies at will. Notice to quit is not necessary to terminate a tenancy at sufferance or a sub-tenancy created by a tenant. When a notice to quit is served on a tenant the law presumes that a notice to quit has been impliedly served on all members of his family, on all his servants and employees and on all his sub-tenants

Petition under Rule 6 framed under the provisions of the Delhi and Ajmer-Merwara Rent Control Act, 1947, for revision of the order of Shri *Gurdev Singh, 1st Additional District Judge, Delhi, dated the 31st October, 1952, affirming that of* Shri *Madan Mohan Singh, Sub-Judge, 1st Class, Delhi, dated the 17th March, 1952, ordering for ejectment of the defendants from the shop in suit in favour of the plaintiff against the defendants Nos. (1) to (5) and a decree for Rs. 599/11/6 with costs in favour of the plaintiff against defendant No. (1).*

M. L. SACHDEV, for Petitioner.

RADHE MOHAN LAL, for Respondents.

JUDGMENT

BHANDARI, C. J. Two questions arise for decision in the present case, namely (1) whether it is within the competence of a sub-tenant to prefer an appeal from an order of eviction passed against the tenant and himself even though the tenant has preferred no appeal therefrom, and (2) whether a landlord can evict a sub-tenant from the premises without serving a notice to quit on the sub-tenant. Bhandari, C. J.

The facts of the case are fairly simple and not seriously in dispute. Pandit Manmohan Nath Dar, who is the owner of two shops situated in the Connaught Circus at Delhi, leased out the premises to Dr. Kidar Nath, defendant No. (1), who sublet them to Dr. Prem Nath, defendant No. (3), and so the other three defendants in the case. On the 12th December 1950, the landlord brought a suit for ejectment and for recovery of arrears of rent against his tenant Dr. Kidar Nath on the ground that the latter had without the consent of the landlord and in contravention of the terms of the tenancy sublet various portions of the premises to Dr. Prem Nath and the other defendants. The trial Court came to the conclusion that Dr. Kidar Nath had sublet a portion of the premises to Dr. Prem Nath with the consent of the landlord and another portion of the premises to the Super Battery Service, defendant No. (5) without the consent of the landlord. In view of these findings the trial Court granted a decree for ejectment and for the recovery of a sum of Rs. 599-11-6 against Dr. Kidar Nath. Dr. Kidar Nath did not choose to appeal from the order passed against him and the decree thereby became final and conclusive as far as he was concerned. The appeal preferred by Dr. Prem Nath was dismissed by the learned District Judge on the ground that as Dr. Kidar Nath, the tenant, had not disputed the

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findings of the trial Court and as the decree passed against him had become final and conclusive, Dr. Prem Nath who was a sub-tenant of and who had derived his title from Dr. Kidar Nath had no *locus standi* to prefer the appeal. Dr. Prem Nath is dissatisfied with the order and has come to this Court in revision.

Before I proceed to deal with the specific questions which have been argued before me it would be desirable to set out as briefly as possible the legal consequences which flow from the relationship of landlord and tenant. It is a settled principle of law that, in the absence of a contract or statutory prohibition, a tenant is at liberty to sublet the demised premises in whole or in part. As the subletting creates a new estate dependent upon or carved out of the original tenancy, the tenant cannot confer a greater right on the sub-tenant than he himself possesses. It follows as a consequence that the sub-tenant can acquire no greater rights in the use and enjoyment of the demised premises than the original tenant. He cannot use the premises in a manner inconsistent with the terms of the original lease between the landlord and the tenant, for stipulations forbidding the use of premises for a specified purpose run with the land. If the tenant fails to pay the rent the landlord has the same rights to dispossess the sub-tenant as he would have to dispossess the tenant. If the original tenancy is determined by efflux of time or by forfeiture or by operation of law the sub-tenancy also ceases to exist. To put in a slightly different language, if the rights of the tenant in the demised premises come to an end the rights of the sub-tenants who claim under him also disappear, and, if the original tenancy is determined for any reason whatsoever, the landlord is entitled to obtain possession of the premises not only from the tenant

but also from the sub-tenant. Indeed, some authorities have gone to the length of holding that the sub-tenant need not be made a party to the suit for ejectment as the decree against the original tenant is equally binding upon him, *vide Ramkissendas and another* v. *Binjraj Chowdhury and another* (1), *Sheikh Yusaf* v. *Jyotish Chandra Banerjee and others* (2). Indeed a judgment of eviction against the tenant has been held to be operative against a sub-tenant in possession. In section 475 of Freeman on Executions, the following observations appear :—

> "The defendant and all the members of his family, together with his servants, employees, and his tenants-at-will or at sufferance, may be removed from the premises in executing a writ of possession."

As it is undesirable that the interests of the sub-tenant should be tied up completely with the interests of the tenant, the British Parliament found it necessary to make a special provision for the protection of the sub-tenant on the determination of the superior tenancy. Subsection (3) of section 15 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, is in the following terms :—

> "(3) Where the interest of a tenant of a dwelling-house to which this Act applies is determined, either as the result of an order or judgment for possession or ejectment, or for any other reason, any sub-tenant to whom the premises or any part thereof have been lawfully sublet shall, subject to the provisions of this

(1) I.L.R. 50 Cal. 419
(2) 137 I.C. 139. A.I.R. 1932 Cal. 241.

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Act, be deemed to become the tenant of the landlord on the same terms as he would have held from the tenant if the tenancy had continued."

Subsection (5) of section 5 of the said Act declares—

"(5) An order or judgment against a tenant for the recovery of possession of any dwelling-house or ejectment therefrom under this section shall not affect the right of any sub-tenant to whom the premises or any part thereof have been lawfully sublet before proceedings for recovery of possession or ejectment were commenced, to retain possession under this section, or be in any way operative against any such sub-tenant."

The fact that the British Parliament found it necessary to insert these special provisions in the Act of 1920 leads one irresistibly to the conclusion that but for them the general provisions of law would not protect the sub-tenant (*vide Dudley and District Benefit Building Society* v. *Emerson* (1). As the Delhi and Ajmer-Merwara Rent Control Act does not contain any provisions similar to the provisions contained in sections 5 and 15 of the English Act, it is obvious that a sub-tenant in Delhi or Ajmer is not entitled to have his rights ascertained independently of his immediate landlord.

The first question which has been propounded at the commencement of this judgment, namely whether it is within the competence of a sub-tenant to prefer an appeal from an order of ejectment passed against the tenant, must be answered in the affirmative. Dr. Prem Nath was a party to the

(1) 1949 Ch. 707 C.A. pp. 718, 719 & 722

suit for ejectment brought by the landlord and was at liberty to prefer an appeal from the order which was passed by the trial Court and to attack the judgment directly and collaterally. This attack, however, could be of little avail in a case like the present where Dr. Kidar Nath, the original tenant, had not thought fit to lodge an appeal and the order of ejectment passed against him had thereby become final and conclusive. Dr. Prem Nath was a sub-tenant under Dr. Kidar Nath, derived his rights and interests from Dr. Kidar Nath and had no independent status of his own. He is bound by the judgment of the trial court in the same way as Dr. Kidar Nath himself, for, as stated above, his rights and interests have been derived solely from Dr. Kidar Nath. It may be stated as a general proposition that when a landlord brings a suit for ejectment against his tenant and impleads the sub-tenant as a defendant, the sub-tenant has a right, in his capacity as a party to the litigation, to prefer an appeal from the judgment which has been rendered in the case. If, however, the judgment has become final and conclusive against the tenant, the right of appeal conferred upon the sub-tenant becomes illusory as he is bound by the decree passed against the landlord in view of the principles enunciated in the second part of the Transfer of Property Act (compare *Shankarrao Govindrao Naik* v. *Kishanlal Nagarmal* (1)). In such circumstances the appeal is not incompetent but infructuous.

Again, it is contended on behalf of Dr. Prem Nath that as he became a sub-tenant of Dr. Kidar Nath with the consent of the landlord, he must be deemed to be a tenant under his landlord and not a sub-tenant merely under Dr. Kidar Nath. I regret I find myself unable to concur in this contention.

(1) A.I.R. (37) 1950 M.B. 19

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There was no privity of contract between the landlord and Dr. Prem Nath and it cannot be stated, therefore, that the relationship of landlord and tenant came to be established between these two parties. By giving his consent to the creation of a sub-tenancy in favour of Dr. Prem Nath the landlord did not enter into any contractual relationship with Dr. Prem Nath. His action in giving his consent amounted merely to a declaration that he would not eject his tenant Kidar Nath on the ground that he had sublet the premises to Dr. Prem Nath. In other words he merely waived his right to eject Dr. Kidar Nath for subletting the premises to Dr. Prem Nath, a right which he could, in the absence of this waiver, have exercised under clause (c) of section 9(1) of the Delhi and Ajmer-Merwara Rent Control Act.

Nor is there any substance in the contention that Dr. Prem Nath cannot be evicted from the premises as no notice to quit was served on him. The law requires a notice of this kind to be served only in cases in which the landlord wishes to terminate periodic tenancies or tenancies at will. Notice to quit is not necessary to terminate a tenancy at sufferance or a sub-tenancy created by a tenant. When a notice to quit is served on a tenant the law presumes that a notice to quit has been impliedly served on all members of his family, on all his servants and employees and on all his sub-tenants.

For these reasons I am of the opinion that the Courts below have come to a correct determination in point of law and that the petition filed by Dr. Prem Nath must be dismissed with costs. I would order accordingly.