THE HON'BLE SRI JUSTICE C.V.RAMULU

C.R.P.No.5622 of 2003

ORAL ORDER:

This Civil Revision Petition under Section 22 of A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 is filed being aggrieved by the order and decree passed in R.C.A.No.3 of 2000 dated 3.5.2003 on the file of the learned Senior Civil Judge, Ramachandrapuram, East Godavari district.

Petitioner is landlord, first respondent is tenant and second respondent is sub-tenant. It appears, petitioner filed R.C.C.No.9 of 1999 on the file of the Rent Controller-cum-Principal Junior Civil Judge, Ramachandrapuram on the ground of willful default, sub-letting and change of user. The said R.C.C. was allowed and the eviction of tenant was ordered on the count of change of user and sub-letting. Being aggrieved by the same, first respondent filed R.C.A.No.3 of 2000 before the learned Senior Civil Judge, Ramachandrapuram. However, the appellate authority, after going through the order passed by the Rent Controller as well as other material place before him, came to the conclusion that the findings recorded by the Rent Controller was uncalled for and the landlord utterly failed to prove sub-letting as well as change of user and allowed the appeal holding that the landlord miserably failed to establish that the first respondent has sub-let the premises to second respondent. Insofar as change of user is concerned, there was no discussion by the appellate authority. Being aggrieved by the same, the present C.R.P. is filed. Initially, the C.R.P. was disposed of by this Court by order dated 26.10.2005 holding that there was a change of user as contended by the landlord. However, questioning the said order, respondents filed Civil Appeal No.1189 of 2007 before the Supreme Court and the said appeal was disposed of by order dated 7.3.2007, which reads as under:

"It was however, urged before us that the second ground for

eviction was the ground of sub-letting. In the Revision Petition filed before the High Court such a plea was taken, but in view of the finding in favour of the landlord on the first question, the question of sub-letting was not gone into.

In this view of the matter, while setting aside the judgment and order of the High Court directing the eviction of the tenant on the ground of change of the user, we remit the matter to the High Court for consideration of the Civil Revision Petition only on the ground of sub-letting of the premises. It will be open to the parties to urge all contentions before the High Court on that issue.

This appeal is accordingly disposed of".

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That is how the matter again came up before this Court. The only point arises for consideration is as to question of sub-letting. Insofar as sub-letting is concerned, it is necessary to notice the findings recorded by the Rent Controller, which reads as under:

"The burden of proof on this point (subletting) lies on the petitioner to prove that 1st respondent sublet the schedule shop to the 2nd respondent without his consent and liable for eviction. Respondents 1 and 2 both denied the case of petitioner in respect of sublet. It is the case of the petitioner that 1st respondent shifted his medical shop from schedule shop to another shop in Brodipeta, Ramachandrapuram and sublet the schedule shop to a person for carrying repairs to Radios, TVs etc., in the name and style of Sri Devi Radio Centre and the same was also closed some time later and 1st respondent again sublet the schedule shop to the 2nd respondent for doing tobacco business. 1st respondent denied the story of sublet but admits shifting of his medical shop from schedule shop to another shop, and thereafter, running of Sri Devi Radio Centre, in the schedule shop for some period and now tobacco business in the schedule shop. It is the case of R-1 that he, himself used to run Sri Devi Radio Centre, in the schedule shop by engaging skilled and technical person and the said business is not satisfactory and changed the business into tobacco business and runs the same with the help of his family members and he do not know

the 2nd respondent and he never saw his face at all. 1st respondent did not adduce any documentary evidence to prove that he himself run Sri Devi Radio Centre and later tobacco business. If any person wants to carry any particular business within the limits of Municipality is supposed to obtain a licence from the said Municipality to carry so.. and so.. business in his name. Admittedly 1st respondent did not obtain licence in his name from Ramachandrapuram Municipality either to carry Sri Devi Radio Centre in the schedule shop or to carry tobacco business. In general, the business of getting repair Radios, Televisions etc., should be carried by technical people or persons who got knowledge in that field by themselves and also by engaging some more skilled persons besides them. But a person who is foreign to the said branch is not expected to carry business like repairing Radios, T.Vs. etc., only by engaging skilled and technical people. So, there are no probabilities to believe in the case of 1st respondent that he himself Radio, T.V.etc., repairing shop in the name of Sri Devi Radio Centre in the schedule shop by skilled and technical person. But admittedly the business of repairing Radios, T.Vs. etc. in the name of Sri Devi Radio Centre carried in the schedule shop for some period prior to filing of this R.C.C. So, it is possible except by sublet the schedule shop to killed and technical person by R-1.

Coming to discussion with regard to sublet by R-1 to R-2 to carry tobacco business, both the respondents denied the same both in pleadings and in evidence. In general, the tenant is more cautious while sublet the premises to others and so it is very difficult to petitioner-landlord to establish the subletting of schedule shop by R1 to R2. Documentary evidence may not available to petitioner-landlord to prove sublet. Therefore, Court has to scrutinize the oral evidence adduced by both parties with a little bit care and caution. In the case on hand, it is the case of the R1 and R2 that they do not know each other. R1 averred that he never saw the face of R2 so far. At the same time, R2 deposed evidence that he has no acquaintance with R1. R2 admitted during his evidence that he is doing tobacco business. 2nd respondent is examined as R.W.4 in this case. He deposed evidence on oath during his chief examination that he used to manufacture cigars for wages and he has no shop at Ramachandrapuram for manufacturing of cigars. But during his cross-examination he

deposed that his shop is on the main road at Ramachandrapuram adjacent to pan shop of Sirigineedi Subrahmanyam and he has vacated the said shop about 3 or 4 years back as owners wanted to renovate the same. He further deposed evidence that so far he has not manufacture cigars in the petition schedule shop in any capacity and he never carried tobacco business in the schedule shop. After eliciting the said evidence during cross-examination of R.W.4 the petitioner's counsel with the permission of the Court, showed a colour photograph to R.W.4 and asked him to identify the person who sit in the schedule shop and his position. Then R.W.4 identified the person in said shop is himself and the said shop is nothing but the petition schedule shop and he sat in the said shop as a person selling cigars. Ld. Counsel for R1 raised an objection to consider Ex.A26 photo which is marked during cross-examination of R.W.4 when he admitted the same, on the ground that Ex.A26 is not supported by a negative. No doubt a photo in general cannot be considered without submitting along with corresponding negative. But in the case on hand Ex.A26 photo is admitted by 2nd respondent during his cross-examination. A document which is admitted by other side need not be proved. So, the corresponding negative is not relevant for consideration of Ex.A26. If R.W.4 did not admit Ex.A26 then the case is otherwise as petitioner failed to submit its corresponding negative. In view of Ex.A26 and admissions of R.W.4 the defence of R.1 that he do not know 2nd respondent and he never saw the face of 2nd respondent is proved false. If really 2nd respondent is not running tobacco business in the schedule shop as evidenced by Ex.A26 what is the necessity to R2 to sit in the schedule shop in the cash counter. It is not the case of R1 that he used to run tobacco business with the help of R2 either for free of service or for wages. Under these circumstances, I hold R2 is carrying tobacco business in the schedule shop. Admittedly schedule shop was not given to R2 by petitioner. How he is inducted in the schedule shop to carry tobacco business except on sublet by R.1. Admittedly no consent of petitioner was obtained by R1 to sublet schedule shop to R2. In fact R1 failed to adduce acceptable evidence that he changed his business in the schedule shop with the consent of the petitioner or after passing information to the petitioner. So, I hold without any doubt that R1 sublet

> the schedule shop to R2 to carry to tobacco business, without the consent of the petitioner-landlord".

Whereas, the lower appellate Court, with regard to subletting, held as under:

> "As per the case of petitioner, the first respondent (tenant) sublet the premises to 2nd respondent and 2nd respondent is the present sublet. The P.W.1 during his evidence deposed that fact. The R.W.1 (tenant) during his evidence denied that aspect.
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> The Lower Tribunal rightly observed at the beginning of the discussion on the point that the burden of proof lies on the landlord-petitioner to prove that the tenant (appellant) sublet the schedule premises to the 2nd respondent without consent and knowledge of the landlord. Having observed so when it is came to the later part it is ordered it is all simply watered down and as contended by the counsel for the appellant the personal opinion and experience were mentioned by the learned Rent Controller resulting ordering of eviction.
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> At the outset, I would like to say absolutely there is no evidence placed by the petitioner (landlord) to show that 1st respondent (tenant) sublet the premises to 2nd respondent (sub-tenant)".

The learned counsel for revision petitioner strenuously contended that in the evidence of second respondent-R.W.4, when he was confronted with Ex.A26-colour photograph and was asked to identify the person who sit in the schedule shop, he has categorically stated Ex.A26 is his photograph and the said shop was petition schedule shop and he sat in the said shop as a person selling cigars. The learned counsel states that this itself shows that the first respondent sublet the schedule shop to second respondent. To support his contention, the learned counsel relied on the decision in **M/s BHARAT SALES LTD. v. LIFE INSURANCE CORPORATION OF INDIA**[1] and drawn the attention of the Court to paragraph 4 of the said judgment, which reads as under:

> "Sub-tenancy or subletting comes into existence when the tenant gives up possession of the tenanted accommodation, wholly or in part, and puts another person in exclusive possession thereof. This arrangement comes about obviously under a mutual agreement of understanding between the tenant and the person to whom the possession is so delivered. In this process, the landlord is kept out of the scene. Rather, the scene is enacted behind the back of the landlord, concealing the overacts and transferring possession clandestinely to a person who is an utter stranger to the landlord, in the sense that the landlord had not let out the premises to that person nor had he allowed or consented to his entering into possession over the demised property. It is the actual, physical and exclusive possession of that person, instead of the tenant, which ultimately reveals to the landlord that the tenant to whom the property was let out has put some other person into possession of that property. In such a situation, it would be difficult for the landlord to prove, by direct evidence, the contract or agreement or understanding between the tenant and the sub-tenant. It would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property had been sublet had paid monetary consideration to the tenant. Payment of rent, undoubtedly, is an essential element of lease or sub-lease. It may be paid in cash or in kind or may have been paid or promised to be paid. It may have been paid in lump-sum in advance covering the period for which the premises is let out or sublet or it may have been paid or promised to be paid periodically. Since payment of rent or monetary consideration may have been made secretly, the law does not require such payment to be proved by affirmative evidence and the court is permitted to draw its own inference upon the facts of the case proved at the trial, including the delivery of exclusive possession to infer that the premises were sublet."

The learned counsel also relied upon the decision in **SMT.RAJBIR KAUR AND ANOTHER v. M/s S.CHOKOSIRI AND CO.**[2] and drawn the attention of the Court to paragraphs 22 and 23 of the said judgment, which reads as under:

> "Dr. Chitaley than urged that there was not even a

pleading by the appellant on the point of money-consideration for the parting of possession and that no amount of evidence adduced on a point not pleaded could at all be looked into. As a general proposition the submission is unexceptionable; but in the present-case, the point, in our opinion, is not well taken. Appellants specifically pleaded "subletting". Respondent understood that pleading as to imply all the incidents of sub-letting including the element of 'Rent' and specifically traversed that plea by denying the existence of consideration. Parties went to trial with full knowledge of the ambit of the case of each other. In the circumstances the pleadings would required to be construed liberally.

In Ram Sarup Gupta v. Bishun Narain Inter College [1987]2SCR805 this Court said this of the need to construe pleadings liberally:

> ...Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law, in such a case it is the duty of the court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of pleadings, instead the Court must find out whether in substance the parties knew the case and the issues upon which they went to trial. *Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal*.
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> (Emphasis Supplied)

After all, the "parties do not have the foresight of prophets and their lawyers the draftmanship of a Chalmers". There is no substance in this contention of Dr. Chitaley either.

The High Court did not deal specifically with the question whether, in the circumstances of the case, an inference that the parting of the exclusive possession was prompted by monetary consideration could be drawn or not. The High Court, did not examine this aspect of the matter, as according to it, one of the essential ingredients, viz., of exclusive possession had not been established. If exclusive

possession is established, and the version of the respondent as to the particulars and the incidents of the transaction is found unacceptable in the particular facts and circumstances of the case, it may not be impermissible for the Court to draw an inference that the transaction was entered into with monetary consideration in mind. It is open to the Respondent to rebut this. Such transactions of sub-letting in the guise of licences are in their very nature, clandestine arrangements between the tenant and the sub-tenant and there can not be direct evidence got. It is not, unoften, a matter for legitimate inference. The burden of making good a case of sub-letting is, of course, on the appellants. The burden of establishing facts and contentions which support the party's case is on the party who takes the risk of non-persuasion. If at the conclusion of the trial, a party has failed to establish these to the appropriate standard, he will lose. Though the burden of proof as a matter of law remains constant throughout a trial, the evidential burden which rests initially upon a party bearing the legal burden, shifts according as the weight of the evidence adduced by the party during the trial. In the circumstances of the case, we think, that, appellants having been forced by the Courts-below to have established exclusive possession of the Ice-Cream Vendor of a part of the demised-premises and the explanation of the transaction offered by the respondent having been found by the Courts-below to be unsatisfactory and unacceptable, it was not impermissible for the Courts to draw an inference, having regard to the ordinary course of human conduct, that the transaction must have been entered into for monetary considerations. There is no explanation forth-coming from the respondent appropriate to the situation as found."

Whereas the learned counsel appearing for respondents, in support of his contention, relied upon the judgment in **KAKARAPARTHI KRISHNAMURTHY AND ANOTHER v. MADDULA NARAYANA RAO**[3] and submitted that absolutely there is no evidence to show that the first respondent has sublet the premises to second respondent, therefore the findings recorded by the lower appellate Court with regard to subletting calls no interference by

this Court.

The judgments relied upon by the learned counsel for petitioner supports his contention with regard to subletting and the judgment relied upon by the learned counsel for respondent has no application to the facts of the present case, therefore the same need not be delved in detail. Further, it is not out of place to mention here that though the first respondent denied subletting, he admits shifting of his medical shop from schedule shop to another shop in Brodipeta, Ramachandrapuram and thereafter running of Sri Devi Radio Centre in the schedule shop for some period and now tobacco business in the schedule shop. Absolutely, there is no evidence to show that the first respondent had run Radio repairing business in the schedule premises. The first respondent also stated that he do not know the second respondent and he never saw his face at all. Whereas in the evidence of second respondent-R.W.4, when he was confronted with Ex.A26-colour photograph and was asked to identify the person who was sitting in the schedule shop, he has categorically stated Ex.A26 is his photograph and the said shop was petition schedule shop and he was carrying on tobacco business in the said shop. Except Ex.A26, there is no other evidence to show that the first respondent has sublet the premises to second respondent. But, in a case of this nature, inference has to be necessarily drawn that the first respondent, intentionally, with all knowledge, has sublet the suit premises to second respondent. Apart from that, the landlord is 81 years old and he has to enjoy the fruits of the litigation initiated by him.

For all the above reasons, the impugned order passed by the learned Senior Civil Judge, Ramachandrapuram in R.C.A.No.3 of 2000 dated 3.5.2003 is set aside in respect of sub-letting and the findings recorded by the Rent Controller are confirmed. However, the respondent-tenant is granted three more months' time for vacating the schedule premises subject to the condition of furnishing an

undertaking before the Rent Controller that he will deliver the vacant physical possession of the premises within three months from today.

The C.R.P. is allowed to the extent indicated above. There shall be no order as to costs.

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C.V.RAMULU,
J

Date: 17.3.2010
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THE HON'BLE SRI JUSTICE C.V.RAMULU

17.3.2010

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V.RAMULU

C.R.P.No.5622 of 2003

Date: 17th March, 2010

Between:

A.Ramachandra Rao

.. Petitioner

And

Nagireddi Srinivasa Prasada Rao & another.

.. Respondents

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[1] AIR 1998 SC 1240
[2] AIR 1988 SC 1845
[3] 2002 Suppl.(2) ALD 66