

sorts of disputes tenable or otherwise in order to avoid their liability in respect of the transactions effected by them in the Association. It may be hoped that the Association will take effective steps to bring the official contract form in conformity with the by-laws in operation from time to time and the practice of the trade prevailing in the Association.

• The result therefore is that this appeal fails and must stand dismissed with costs throughout.

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Bhagwati J.

Appeal dismissed. // 8.

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v.

NANDRAM SHIVRAM AND OTHERS

(B. P. SINHA, JAFER IMAM and SUBBA RAO JJ.)

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—
March 31.

Bombay City Civil Court, Jurisdiction of—Suit to establish status as tenants and sub-tenants for protection from eviction—Whether can be entertained—Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bom. LVII of 1947), ss. 28 and 29A.

A who was a tenant of N sub-let the premises to B and C. N filed a suit for ejectment against A, B and C in the Court of Small Causes, Bombay, on the ground of illegal sub-letting. The suit was decreed. Thereafter, A, B and C filed the present suit in the Bombay City Civil Court for a declaration that A was a tenant of N and was protected from eviction by the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, and that B and C were lawful sub-tenants of A and were as such entitled to possession, use and occupation of the premises. The City Civil Court held that it had jurisdiction to entertain the suit but dismissed it on the ground that there was no lawful sub-letting. On appeal, the Bombay High Court held that the City Civil Court had no jurisdiction to entertain the suit and dismissed the appeal without going into the merits :

Held, that the High Court was right in holding that s. 28 of the Act barred the City Civil Court from entertaining the suit. Section 28 explicitly confers on courts specified therein jurisdiction to entertain a suit between a landlord and a tenant in respect of a claim which arose out of the Act or any of its provisions,

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and expressly prohibits any other court exercising jurisdiction with respect thereto. In the present suit the claim being one which arose out of the Act, and the City Civil Court not being a court specified in s. 28, it could not entertain the suit. Though s. 29A of the Act allows questions of title to be reagitated in a civil court, it applies only to titles which do not arise out of the Act or any of its provisions; and titles which could not be established outside the Act but which arose under the provisions of the Act by virtue of a claim made thereunder must be determined by a court specified in s. 28.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 84 of 1957.

Appeal from the judgment and decree dated November 7, 1955, of the Bombay High Court in Appeal No. 629 of 1955, arising out of the judgment and decree dated August 9, 1955, of the City Civil Court, Bombay, in Suit No. 2178 of 1954.

A. V. Viswanatha Sastri and *I. N. Shroff*, for the appellants.

Purshotam Tricumdas and *C. P. Lal*, for the respondents.

1958. March 31. The following Judgment of the Court was delivered by

Imam J.

IMAM J.—The sole question considered and decided by the High Court was whether the suit filed by the appellants in the City Civil Court could be entertained by that Court, having regard to the provisions of s. 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the Act). The High Court was of the opinion that the City Civil Court had no jurisdiction to entertain the suit. It did not pronounce any opinion on the merits of the appellants' case. The only question which requires consideration in this appeal is whether the High Court correctly decided that the City Civil Court had no jurisdiction to entertain the suit filed by the appellants.

The first plaintiff in the suit before the City Civil Court, was a tenant of the premises in question under the first defendant. The second and third plaintiffs were persons to whom the said premises were sublet by

the first plaintiff. The first defendant as landlord of the premises in suit gave notice to quit to the first plaintiff on December 6, 1947. Thereafter, he filed suit No. 483/4400 of 1948 in the Court of Small Causes Bombay on April 29, 1948, whereby he sought to evict the first plaintiff. To that suit the first defendant also made the second and the third plaintiffs parties alleging that they were trespassers and had no right to be on the premises. The Small Cause Court held that the second and third plaintiffs were not lawful subtenants and the subletting by the first plaintiff to them being contrary to law the latter had deprived himself of the protection of the Act. It accordingly passed a decree for eviction of all the plaintiffs of the present suit. An appeal against the decree was unsuccessful and a revisional application to the High Court of Bombay was summarily dismissed by that Court. Thereafter, the present suit No. 2178 of 1954 was filed by the appellants in the Bombay City Civil Court on September 20, 1954. In this suit the appellants prayed for a declaration that the first plaintiff was a tenant of the defendants and was entitled to protection under the Act and that the second and the third plaintiffs were lawful subtenants of the first plaintiff and were entitled to possession, use and occupation of the premises as subtenants thereof. The City Civil Court held that it had jurisdiction to entertain the suit but dismissed the suit on the ground that there had been no lawful subletting by the first plaintiff of the premises to the second and the third plaintiffs as the provisions of s. 10 of the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944 (Bombay Act No. VII of 1944) (hereinafter referred to as the Bombay Rents Act, 1944) had not been properly complied with. Against that decision the appellants appealed to the Bombay High Court which was dismissed. The High Court disagreed with the view of the Judge of the City Civil Court that he had jurisdiction to entertain the suit but did not record any decision on the merits of the appellants' case.

The preamble of the Act states that it was expedient

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to amend and consolidate the law relating to the control of rents and repairs of certain premises, of rates of hotels and lodging houses and of evictions. The entire provisions of the Act read as a whole show that the Act was passed to achieve that purpose. The Act defines "landlord" to mean "any person who is for the time being, receiving, or entitled to receive, rent in respect of any premises whether on his own account or on account, or on behalf, or for the benefit of any other person or as a trustee, guardian, or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant; and includes any person not being a tenant who from time to time derives title under a landlord; and further includes in respect of his subtenant a tenant who has sublet any premises" and "tenant" to mean "any person by whom or on whose account rent is payable for any premises and includes—(a) such subtenants and other persons as have derived title under a tenant before the coming into operation of this Act, (a) any person to whom interest in premises has been transferred under the proviso to s. 15, (b) any person remaining, after the determination of the lease, in possession, with or without the assent of the landlord, of the premises leased to such person or his predecessor who has derived title before the coming into operation of this Act, (c) any member of the tenant's family residing with him at the time of his death as may be decided in default of agreement by the Court." Section 12 gives protection to a tenant from eviction if he pays or is ready and willing to pay standard rent and permitted increases. Section 13 states the grounds upon which the landlord is entitled to recover possession of any premises. Amongst the numerous grounds one is if the tenant had since the coming into operation of the Act sublet the whole or part of the premises or assigned or transferred in any other manner his interest therein. Section 14 states: "Where the interest of a tenant of any premises is determined for any reason, any subtenant to whom the premises or any part thereof have been lawfully

sublet before the coming into operation of this Act shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms and conditions as he would have held from the tenant if the tenancy had continued." Section 28 of the Act deals with jurisdiction of courts and it states: "(1) Notwithstanding anything contained in any law and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision, be within its jurisdiction, (a) in Greater Bombay, the Court of Small Causes, Bombay, (aa) in any area for which, a Court of Small Causes is established under the Provincial Small Cause Courts Act, 1887, such Court and (b) elsewhere, the Court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge, the court of the Civil Judge (Senior Division) having ordinary jurisdiction, shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of this Part apply and to decide any application made under this Act and to deal with any claim or question arising out of this Act or any of its provisions and subject to the provisions of sub-section (2), no other court shall have jurisdiction to entertain any such suit, proceeding or application or to deal with such claim or question." Section 29 deals with appeals. It provides that there will be no further appeal from the appellate order. Section 29A, however, states that nothing contained in ss. 28 or 29 shall be deemed to bar a party to a suit, proceeding or appeal mentioned therein in which a question of title to premises arises and is determined, from suing in a competent court to establish his title to such premises.

The plaint in the suit filed by the appellants in the City Civil Court clearly asserts that the first plaintiff was entitled in law to sublet the premises in question to the second and third plaintiffs and that there had been a lawful subletting of the premises to them. It

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was not necessary for the first plaintiff to comply with the provisions of s. 10 of the Bombay Rents Act, 1944. It further alleged that the Appeal Court of Small Causes of Bombay erred in holding that the first plaintiff could sublet the premises only if he had complied with the provisions of s. 10 of the aforesaid Act. According to para. 11 of the plaint the plaintiffs asserted that they were always ready and willing to pay the rent in respect of the said premises and to observe and perform the terms and conditions of the tenancy. Paragraph 12 states the declaration which the plaintiffs prayed for in the suit, which is in the following terms: "The plaintiffs submit that they are entitled to a declaration that 1st plaintiff is a tenant of the said premises within the meaning of the Bombay Rents, Hotel and Lodging House Rates Control Act of 1947, and that the 2nd and 3rd plaintiffs are entitled to the possession, use and occupation of the said premises as the lawful subtenants of the 1st plaintiff in respect of the said premises". Clauses (a) and (b) of para. 18 of the plaint contain the relief sought by the plaintiffs. They are in substance what is stated in para. 12 though separately stated for the first plaintiff and second and third plaintiffs respectively. The prayer in cl. (c) of para. 18 is for an injunction against the defendants, their servants or agents restraining them from proceeding further with the execution of the decree of the Court of Small Causes in suit No. 483/4400 of 1948.

It is manifest from the assertion in the plaint and the nature of the relief asked for that the plaintiffs based their case on the provisions of the Act. According to them, the Act gave the first plaintiff protection and the second and third plaintiffs were entitled to remain in possession as subtenants of the first plaintiff. They accordingly sought to avoid eviction by seeking an injunction against the execution of the decree for eviction. One of the grounds upon which a landlord is permitted to evict a tenant under s. 13 of the Act is that he has since the coming into operation of the Act, sublet the premises or assigned or transferred in any other manner his interest therein. The

Act, however, saved a subletting before its commencement, provided the premises had been lawfully sublet. "Tenant" in the Bombay Rents Act, 1944, means "any person by whom or on whose account rent is payable for any premises, and includes every person from time to time deriving title under a tenant." It was never pretended here or in the High Court, as indeed it could not be, that outside the Act a subtenancy would continue to subsist and the sub-tenant would become the tenant when the principal tenancy itself had been lawfully terminated. As the definition of "tenant" in the Bombay Rents Act, 1944, included a subtenant, that Act required, under s. 10, certain conditions to be complied with for the creation of a lawful subtenancy, as a statutory status of a tenant was being conferred on a subtenant unknown to the ordinary law.* Even a lawful termination of the principal tenancy would not affect the subtenant. In suit No. 483/4400 it was finally held by the Appeal Court that the first plaintiff had not lawfully sublet the premises and as his tenancy had been terminated he and his subtenants were liable to be evicted. The plaintiffs seek for a redetermination of these very questions in the suit filed by them in the City Civil Court.

The plaintiffs rely upon s. 29A of the Act in justification of the suit filed by them in the City Civil Court. According to them, questions of title are expressly allowed to be reagitated in a competent Civil Court other than those specified in s. 28 even if such a question arose and was determined by a court exercising jurisdiction under that section. This contention of the plaintiffs makes it necessary to construe the provisions of ss. 28 and 29A of the Act.

In a suit for recovery of rent where admittedly one party is the landlord and the other the tenant, s. 28 of the Act explicitly confers on courts specified therein jurisdiction to entertain and try the suit and expressly prohibits any other court exercising jurisdiction with respect thereto. Similarly, in a suit relating to possession of premises where the relationship of landlord and tenant admittedly subsists between the parties, jurisdiction to entertain and try such a suit is in the

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courts specified in s. 28 and no other. All applications made under the Act are also to be entertained and disposed of by the courts specified in s. 28 and no other. In all such suits or proceedings the courts specified in s. 28 also have the jurisdiction to decide all claims or questions arising out of the Act or any of its provisions. The words employed in s. 28 make this quite clear. Do the provisions of s. 28 cover a case where in a suit one party alleges that he is the landlord and denies that the other is his tenant or vice versa and the relief asked for in the suit is in the nature of a claim which arises out of the Act or any of its provisions? The answer must be in the affirmative on a reasonable interpretation of s. 28. Suit No. 483/4400 of the Court of Small Causes, Bombay was admittedly by a landlord. Eviction of the tenant and those to whom he had sublet the premises was sought on the ground that the latter were trespassers and the former was not entitled to remain in possession, that is to say, that none of the defendants to that suit were protected from eviction by any of the provisions of the Act. The suit, in substance, was a denial of the right of the defendants as tenants. The claim of the defendants was that they were protected by the provisions of the Act. In such a suit the claim of the defendants was one which arose out of the Act or any of its provisions and only the courts specified in s. 28 and no other could deal with it and decide the issue.

The present suit filed in the City Civil Court raised in substance a claim to the effect that the plaintiffs were the tenants of the premises within the meaning of the Act. Such a claim was one which arose out of the Act or any of its provisions. The suit related to possession of the premises and the right of the landlord to evict any of the plaintiffs was denied on the ground that the first plaintiff was a tenant within the meaning of the Act and the premises had been lawfully sublet by him to the second and third plaintiffs. The City Civil Court was thus called upon to decide whether the first plaintiff was a tenant of the premises within the meaning of the Act and whether he had

lawfully sublet the same to the second and third plaintiffs. The City Civil Court, therefore, had to determine whether the plaintiffs had established their claim to be in possession of the premises in accordance with the provisions of the Act. As the tenancy of the first plaintiff had been terminated by the landlord, this plaintiff could resist eviction only if he established his right to continue in possession under the provisions of the Act. On the termination of the tenancy of the first plaintiff, outside the provisions of the Act, the subtenancy would come to an end and the landlord would be entitled to possession. This could be denied to him only if the second and third plaintiffs could establish that the premises had been lawfully sublet to them and under s. 14 of the Act they must be deemed to be tenants of the premises. In other words, the City Civil Court could not decree the suit of the plaintiffs unless their claim to remain in possession was established under the Act or any of its provisions. Independent of the Act the plaint in this suit disclosed no cause of action. Section 28 obviously contemplates the filing of any suit relating to possession of any premises to which any of the provisions of Part II of the Act apply between a landlord and a tenant and it authorizes the court to deal with any claim or question arising out of the Act or any of its provisions in such a suit. The suit of the plaintiffs filed in the City Civil Court certainly is one relating to possession of premises to which the provisions of Part II of the Act apply and in that suit claims and questions arising out of the Act or any of its provisions had to be dealt with. It was, however, suggested that the suit in the City Civil Court was not one between a landlord and a tenant because the defendants of this suit did not admit that the plaintiffs were the tenants of the premises in question. Section 28 applies to a suit where admittedly the relationship of landlord and tenant within the meaning of the Act subsists between the parties. The plaint in the suit in the City Civil Court admits that the defendants were landlords of the premises at various stages and the plaintiffs were their tenants. The suit, therefore, was

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essentially a suit between a landlord and a tenant. The suit did not cease to be a suit between a landlord and a tenant merely because the defendants denied the claim of the plaintiffs. Whether the plaintiffs were the tenants would be a claim or question arising out of the Act or any of its provisions which had to be dealt with by the court trying the suit. On a proper interpretation of the provisions of s. 28 the suit contemplated in that section is not only a suit between a landlord and a tenant in which that relationship is admitted but also a suit in which it is claimed that the relationship of a landlord and a tenant within the meaning of the Act subsists between the parties. The courts which have jurisdiction to entertain and try such a suit are the courts specified in s. 28 and no other.

✓ No doubt s. 29A expressly provides that nothing contained in s. 28 or s. 29 shall be deemed to bar a party to a suit, proceeding or appeal, mentioned therein, in which a question of title to premises arises and is determined, from suing in a competent court to establish his title to such premises. Even if it be assumed that a claim to a right to tenancy of premises is a question of title to the premises, is that a title which s. 29A permits a party to establish in a competent court other than that specified in s. 28? If it is possible to avoid a conflict between the provisions of s. 28 and s. 29A on a proper construction thereof, then it is the duty of a court to so construe them that they are in harmony with each other. It is possible to conceive of cases where in a suit under s. 28 a question of title to premises which does not arise out of the Act or any of its provisions may be determined incidentally. Any party to the suit aggrieved by such a determination would be free to sue in a competent court to establish his title to such premises by virtue of the provisions of s. 29A. On the other hand, in a suit where a question of title entirely arises out of the Act or any of its provisions, the jurisdiction to try such a suit was exclusively vested in the courts specified in s. 28 and no other. That is to say, a title which could not be established outside the Act but

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which arose under the provisions of the Act by virtue of a claim made thereunder must be determined by a court specified in s. 28 and a title *de hors* the Act may be determined in any other court of competent jurisdiction. The Act purported to amend and consolidate the law relating to the control of rents of certain premises and of evictions. It defined "landlord" and "tenant" to have a meaning wider in scope and concept than those words have under the ordinary law. Any one who was a landlord or a tenant, as defined in the Act, would have to conform to the provisions of the Act and all claims to such a status would have to be determined under the provisions of the Act as they would be claims arising out of it. The Act specially provided that the courts specified in s. 28 shall have the jurisdiction to deal with any claim or question arising out of the Act or any of its provisions and expressly excluded any other court from having such jurisdiction. It is difficult to accept the suggestion that the legislature intended, after setting up special courts under s. 28 to deal with such matters, that the same should be reagitated and redetermined in another suit by a court not specified in s. 28. By enacting s. 29A the legislature clearly intended that no finality should be attached to the decision of a court trying a suit under s. 28 on a question of title *de hors* the Act. The provisions of the Act, on the other hand, clearly indicate that all claims or questions arising out of the Act or any of its provisions, even though they may be in the nature of a title to the premises, were to be determined by the courts specified in s. 28 and no other.

Some reference was made to s. 49 of the Presidency Small Cause Courts Act, 1882 which provides that recovery of possession of any immovable property under Ch. VII of the Act shall be no bar to the institution of a suit in the High Court for trying the title thereto. The provisions of this section render no assistance in the matter of interpretation of ss. 28 or 29A. Chapter VII of the Presidency Small Cause Courts Act deals with the recovery of possession of

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immovable property from a person including a tenant. The provisions of s. 41 onwards prescribe a summary mode for recovery of possession which could even be stayed by the Small Cause Court if the provisions of s. 47 were complied with. Indeed, under s. 41 no claims or rights are determined. In such a situation it is clearly understandable that nothing contained in Ch. VII could be a bar to the institution of a suit in the High Court for trying the title to the immovable property. In a suit under s. 28 the court has to determine all questions relating to recovery of rent or relating to possession and all claims or questions arising out of the Act or any of its provisions. Section 29 provides for an appeal against the decision of the court. Under Ch. VII of the Presidency Small Cause Courts Act there is no provision for an appeal against an order directing recovery of possession.

In our opinion, the High Court correctly decided that the suit filed by the plaintiffs, who are the appellants in this appeal, could not be determined by the City Civil Court.

On behalf of the appellants a request was made that if the appeal should fail, they may be given some time to vacate the premises. The High Court in dismissing the appeal had directed "Decree not to be executed for a fortnight". In granting special leave this Court had granted an ex-parte stay, staying the execution of the decree in suit No. 483/4400 of 1948 of the Court of Small Causes, Bombay until the 16th day of January, 1956 and had directed that the stay application be posted for hearing on that date. On that day the application for stay was allowed on two conditions being fulfilled and on the non-compliance of which the stay order would stand vacated. On February 19, 1957, another order was passed by this Court when its attention was drawn to the non-compliance of the conditions stated in the order of January 16, 1956, on the part of the appellants. The stay order was not vacated as the appellants were ordered to do certain things and because of the undertaking given by them that they would deliver forthwith possession of the premises to the respondents in

the event of the appeal being dismissed or decided against them. Having regard to the undertaking given, as also the fact that execution of the decree in suit No. 483/4400 of the Court of Small Causes, Bombay has been delayed long enough, we are unable to accede to the request made by the appellants.

• The appeal is accordingly dismissed with costs.

• *Appeal dismissed.*

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THE STATE OF MADRAS

v.

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April 1.

(S. R. DAS C. J., VENKATARAMA AIYAR, S. K. DAS,
A. K. SARKAR and VIVIAN BOSE JJ.)

Sales Tax—Building contracts—Tax on supply of materials in construction works—State's power of taxation—"Sale of goods", Meaning of—Legislative practice—Nature of agreement in building contracts—Indian Sale of Goods Act, 1930 (III of 1930), s. 4—Madras General Sales Tax Act, 1939 (Mad. IX of 1939), as amended by Madras Act XXV of 1947, ss. 2(c)(h)(i), Explanation 1(i), r. 4(3)—Government of India Act, 1935 (26 Geo. 5, Ch. 2), s. 107, Sch. VII, List II, Entry 48.

The respondent company, doing business, inter alia, in the construction of buildings, roads and other works was assessed to sales tax by the sales tax authorities who sought to include the value of the materials used in the execution of building contracts within the taxable turnover of the respondent. The validity of the assessment was challenged by the respondent who contended that the power of the Madras Legislature to impose a tax on sales under Entry 48 in List II in Sch. VII of the Government of India Act, 1935, did not extend to imposing a tax on the value of materials used in construction works, as there was no transaction of sale in respect of those goods, and that the provisions introduced in the Madras General Sales Tax Act, 1939, by the Madras General Sales Tax (Amendment) Act, 1947, authorising the imposition of such tax were *ultra vires*. The Sales Tax Appellate Tribunal rejected the respondent's contention but, on