A

NAND KISHORE

v.

RAM KISHAN & ANR.

B

August 25, 1966

[K. SUBBA RAO, C.J. AND J. M. SHELAT, J.]

Delhi Rent Control Act (59 *of* 1958), *ss.* 17(3), 18(2) *and* 50, *and Delhi and Ajmer Rent Control Act* (38 *of* 1952), *s.* 20—*Tenancy determined before commencement of the Act of* 1958—*Suit by sub-tenant claiming to be statutory tenant—If maintainable.*

C

The landlord of the premises in dispute, obtained a decree for ejectment against his tenant before the commencement of the Delhi Rent Control Act, 1958. The sub-tenant was not a party to that suit and the sub-tenancy was not determined by that decree. In 1962, the sub-tenant filed a suit against the landlord claiming to have become a statutory tenant of the premises. The landlord contended that under s. 50 of the Act, no civil court shall entertain any suit in respect of a matter D which the Controller is empowered by or under the Act to decide, and that as s. 17(3) of the Act empowered the Controller to decide a dispute in regard to the question whether a person was a sub-tenant or not, the suit was not maintainable.

HELD: Section 50 was not a bar to the suit.

E

The provision of the Act applicable to a case where the interest of a tenant had been determined before the commencement of the Act, but the interest of the sub-tenant was allowed to subsist is s. 18(2). Under this sub-section the sub-tenant shall, with effect from the date of the commencement of the Act, be deemed to have become, by a statutory fiction, a tenant under the landlord. There is no provision in the Act under which a dispute in respect of such a sub-tenancy could be decided by the Controller. Any dispute raised by such a sub-tenant does not fall F under s. 17(3), for, s. 17(3) applies only to a case where a dispute arises during the subsistence of the main tenancy after the Act came into force, and where the dispute was raised within two months of the issue of the notice of sub-letting, by the tenant or sub-tenant. [171 A-C]

Mohd. Mamood v. *Tikam Das*, [1966] 1 S.C.R. 128, explained.

Moreover, under s. 20 of the Delhi and Ajmer Rent Control Act, G 1952, on the eviction of the tenant, the sub-tenant would be deemed to have become a tenant of the landlord. There is no provision in the Delhi Rent Control Act, 1958, which took away that vested right or empowered the Controller to decide a dispute raised in regard to it. Section 50, therefore could not have any bearing on the maintainability of the suit. [171 E-G]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 467 of 1966.

H

Appeal by special leave from the judgment and decree dated March 4, 1965 of the Punjab High Court (Circuit Bench) at Delhi in Civil Regular Second Appeal No. 125-D of 1964.

A. K. Sen, E. C. Agarwal and *P. C. Agarwala*, for the appellant. A

Gauri Dayal for the respondents.

The Judgment of the Court was delivered by

Subba Rao, C. J. This appeal by special leave raises the question of the construction of some of the provisions of the Delhi Rent Control Act, 1958 (Act 59 of 1958), hereinafter called the Act. B

Appellant—1st defendant is the owner of premises No. 6022, Gali Mandir Wali, Arya Samaj, Delhi. Ram Saran Das, respondent No. 2 herein, was the tenant of the appellant in respect of the said premises and Ram Kishan Das, respondent No. 1 herein, was a sub-tenant. On January 30, 1959 the appellant obtained a decree for ejectment against the 2nd respondent from the court of the Subordinate Judge, Delhi. To that suit the 1st respondent, the sub-tenant, was not made a party. When that decree was sought to be executed against the 2nd respondent, the 1st respondent obstructed delivery of possession of the premises on the ground that he, as a sub-tenant, had become a tenant under the provisions of the Act. The executing court rejected his claim. Thereafter, on May 22, 1962, the 1st respondent filed a suit in the Court of the Senior Subordinate Judge, Delhi, against the appellant and respondent 2 praying for a decree for a permanent injunction against the appellant and the 2nd respondent restraining the appellant from taking possession of the said premises. The appellant *inter alia* contended that s. 50 of the Act was a bar to the maintainability of the suit in a civil court. It is not necessary to state the other defences, as nothing turns on them in this appeal. The said plea was rejected in the first instance by the learned Subordinate Judge, on appeal by the learned Senior Subordinate Judge and on Second Appeal by the High Court. Hence the appeal. C D E F

The only question that arises in this appeal is, whether s. 50 of the Act is a bar to the maintainability of the suit filed by the 1st respondent against the appellant.

The learned counsel for the appellant contended that s. 50 of the Act was a bar to the maintainability of the suit, as s. 17 of the Act empowered the Rent Controller to decide a dispute in regard to the question whether a person was a sub-tenant or not. G

The learned counsel for the 1st respondent contended that s. 17(3) of the Act applied only to a case where a dispute arose during the subsistence of tenancy, that in the instant case the tenancy had come to an end before the Act came into force, that the 1st respondent became a tenant under sub-s. (2) of s. 18, that a dispute H

A in regard to the question whether he had become a statutory tenant thereunder was not a dispute triable by the Rent Controller and that, therefore s. 50 of the Act was not a bar to the maintainability of the suit.

Alternatively, the learned counsel for the 1st respondent contended that the 1st respondent had become a tenant under B s. 20 of the Delhi and Ajmer Rent Control Act, 1952, that there was no provision in the Act conferring exclusive jurisdiction on the Rent Controller in respect of the said right vested in him before the Act and that, therefore, the suit for a declaration of the said pre-existing right was maintainable in the civil court.

C The solution to the rival contentions depends on the true construction of the relevant provisions of the Act. Under s. 50 of the Act, no civil court shall entertain any suit in respect of a matter which the Controller is empowered by or under the Act to decide. If the Controller, in exercise of the power conferred on him under the Act, can decide the dispute in respect of the claim of the 1st respondent to a statutory tenancy, there cannot by any D doubt that his suit is not maintainable in a civil court. S. 17(3) of the Act on which reliance is placed for invoking the aid of s. 50 reads:

> "Where in any case mentioned in sub-section (2), the landlord contests that the premises were not lawfully sub-let, and an application is made to the Collector in this E behalf, either by the landlord or by the sub-tenant, within two months of the date of the receipt of the notice of sub-letting by the landlord or the issue of the notice by the tenant or the sub-tenant, as the case may be, the Controller shall decide the dispute."

F Under this sub-section, the Controller is empowered to decide a dispute between the landlord and his sub-tenant in respect of any case mentioned in sub-s. (2) of s. 17. Sub-section (2) of s. 17 of the Act says :

> "Where, before the commencement of this Act, any premises have been lawfully sub-let either in whole or in part G by the tenant, the tenant or the sub-tenant to whom the premises have been sub-let may, in the prescribed manner, give notice to the landlord of the creation of the sub-tenancy within six months of the commencement of this Act, and notify the termination of such sub-tenancy within one month of such termination."

H To invoke this sub-section three conditions shall be complied with, namely, (i) the premises shall have been lawfully sub-let by the tenant, (ii) the sub-letting shall have been before the commence-

ment of the Act, and (iii) such tenant or sub-tenant shall have given a notice to the landlord of the creation of the sub-tenancy within six months of the commencement of the Act and notified the termination of such sub-tenancy within one month of such termination. The dispute referred to in sub. s. (3) of s. 17 is in regard to such sub-tenancy. It is manifest from the provisions of sub-s. (2) that the said provision applies only during the period of subsistence of the tenancy created before the commencement of the Act. But, if the tenancy itself ceased to exist before the commencement of the Act, the said sub-section has no application. If the tripartite relationship of landlord, tenant and sub-tenant had ceased to exist before the commencement of the Act, no question of giving notice prescribed thereunder would arise. If sub-s. (2) does not apply to such a case, a dispute raised between them cannot be raised before the Controller under sub-s. (3) of s. 17 of of the Act. If that be the construction of sub-s. (2) and (3) of s. 17 of the Act, s. 18(1) thereof would not equally help the appellant. Under sub-s. (1) of s. 18 where an order for eviction in respect of any premises is made under s. 14 against a tenant but not against a sub-tenant referred to in s. 17 and a notice of the sub-tenancy has been given to the landlord, the sub-tenant shall, with effect from the date of the order, be deemed to become a tenant holding directly under the landlord in respect of the premises in his occupation on the same terms and conditions on which the tenant would have held from the landlord, if the tenancy had continued. This section also applies to a case of subsisting tenancy after the Act came into force. The reference to s. 14 presupposes that an eviction order has been made against the tenant after the Act came into force. The sub-tenant mentioned therein is the sub-tenant referred to in s. 17 and in respect of whose sub-tenancy a notice has been given to the landlord, that is to say, a sub-tenant of a tenant during the subsistence of his tenancy. In such a case the sub-tenant becomes a statutory tenant. This section cannot have any application to a case where the tenancy ceased to exist before the commencement of the Act. Sub-section (2) of s. 18 reads:

> "Where, before the commencement of this Act, the interest of a tenant in respect of any premises has been determined without determining the interest of any sub-tenant to whom the premises either in whole or in part had been lawfully sub-let, the sub-tenant shall, with effect from the date of the commencement of this Act, be deemed to have become a tenant holding directly under the landlord on the same terms and conditions on which the tenant would have held from the landlord, if the tenancy had continued."

A This sub-section applies to a case where the interest of a tenant had been determined before the commencement of the Act, but the interest of the sub-tenant was allowed to subsist. In such a case, the sub-tenant shall with effect from the date of the commencement of the Act be deemed to have become, by a statutory fiction, a tenant under the landlord. This situation could arise B before the commencement of the Act either because of a statute, contract or a decree. Any dispute raised by such a sub-tenant does not fall under sub-s. (3) of s. 17 of the Act, for, as we have said, the said sub-section applies only to a case where a dispute arises during the subsistence of the main tenancy after the Act came into force. If so, as there is no other provision in the Act under C which a dispute in respect of such a sub-tenancy could be decided by the Controller, s. 50 cannot have a bearing on the maintainability of a suit filed in respect of such a sub-tenancy.

If that be the construction of the relevant provisions of the Act, the 1st respondent is not hit by the provisions of s. 50 of the Act. The landlord by obtaining a decree for eviction against D the 2nd respondent put an end to the tenancy before the commencement of the Act. The sub-tenancy of the 1st respondent was not determined by the decree, as he was neither a party to the suit nor his rights were put in issue therein. He can, therefore, claim to be a tenant under s. 18(2) of the Act. As s. 50 does not apply to him, he can file a suit in a civil court for a declaration of his right thereunder. E

The same result will flow if we look at the matter from a different aspect. Under s. 20 of the Delhi and Ajmer Rent Control Act, 1962, on the eviction of the tenant, the sub-tenant would be deemed to have become a tenant of the landlord. The appellant obtained a decree for eviction against the 2nd respondent on January 30, 1959. The Act came into force subsequently. He had therefore F acquired a vested right under the Act of 1952. No provision of the Act has been pointed out to us which took away that right. There was also no provision under the Act empowering the Controller to decide a dispute raised in regard to the said right vested in the 1st respondent. If so, it follows that s. 50 of the Act cannot be a bar to the suit filed by the 1st respondent for a declaration of G his said right.

The view expressed by us finds support in the unreported judgment of Mehar Singh, J. of the Punjab High Court, Circuit Bench at Delhi in *Smt. Viran Wanti Devi and another v. Jaswant Rai and another*(1). There, the learned Judge, after considering the provisions of sub-ss. (2) and (3) of s. 17 of the Act, observed :

H "It appears to me obvious on a plain reading of those two sub-sections of section 17 that the procedure provided

(1) Civil Revision No. 558-D of 1961 (Decided on 15-2-1962).

by those sub-sections is available to a tenant and his sub-tenant, during the subsistence of the tenancy and the sub-tenancy, but where the tenancy has ceased to exist or the sub-tenancy has ceased to exist those sub-sections are apparently not attracted and resort cannot be had to their provisions."

The learned counsel for the appellant relied upon a decision of this Court in *Mohd. Mahmood* v. *Tikam Das*(1) in support of his contention. That case arose under the provisions of the Madhya Pradesh Accommodation Control Act, 1961. The provisions of that Act, though not in *pari materia* with the provisions of the Act now in question, are similar to those of the Act in many respects. There, the landlord terminated the tenancy before the said Act came into force, filed a suit for ejectment and obtained a decree for eviction on June 23, 1962, after the said Act came into force. The said Act came into force on December 40, 1961. On June 25 and 26, 1962, the appellants served notices on the landlord under s. 15(2) of the said Act claiming that as the tenant had sub-let the premises to them before the Act had come into force with the consent of the landlord, they had become his direct tenants under s. 16(2) of the said Act and on June 28, 1962, the appellants filed a suit against both the landlord and the tenant in a civil court praying for a declaration that they had, in the circumstances, become direct tenants of the premises under the landlord. On June 30, 1962, the landlord sent a reply to the notices sent by the appellants in which he denied that the sub-letting by the tenant had been with his consent or was lawful. Here it may be mentioned that s. 15(2) of that Act corresponds to s. 17(2) of the Act and sub-s. (3) of s. 15 of that Act corresponds to sub-s. (3) of s. 17 of the Act. Section 45(1) of that Act, which bars a suit in a civil court is analogous to s. 50(1) of the Act. If the dispute was one that could be decided by the Rent Controlling Authority under s. 15(3) of that Act, the suit in respect of the dispute would not be maintainable by reason of s. 45(1) of the said Act. Under sub-s. (3) of s. 15 of that Act, a sub-tenant could make an application to the Rent Controlling Authority for deciding a dispute within two months of the date of issue of notice by him. Instead of filing such an application, the tenants filed a suit in the civil court within the said time prescribed. On those facts, this Court held by reason of s. 45(1) of that Act, the suit was not maintainable. But in so holding this Court left open the question whether such a suit could be filed in a civil court after the period of limitation prescribed under s. 15(3) of that Act had expired. This Court observed:

"Another question mooted was that the two months mentioned in sub-s. (3) only provided a special period of

(1) [1966] 1 S.C.R. 128, 131.

A limitation for the application mentioned in it and the provision of the period did not mean that a Rent Controlling Authority had power to decide the matter only if an application had been made within that period, so that if no such application had been made, after the expiry of the period a civil court B would have jurisdiction to decide a dispute as to whether a sub-letting was lawful. The point is that the real effect of s. 15(3) was to deprive the civil court of the jurisdiction to decide that dispute for all time. We do not feel called upon to decide these questions. They do not arise in the present case and it was not said that these questions affect the question of the competence of the civil court to try the C present suit. The suit was filed within the period of two months during which admittedly the Rent Controlling Authorities had jurisdiction to decide the dispute on which it was based. Whatever may be the jurisdiction of a civil court on other facts, in the present case it clearly had no jurisdiction to entertain the appellants' suit."

D The decision of this Court, therefore, has a limited scope. It has only held that during the prescribed period under s. 15(3) of the said Act, no suit would lie in a civil court. In the present case, the suit was filed in the civil court beyond the period prescribed.

In the result, the appeal fails and is dismissed with costs.

E *V.P.S.* *Appeal dismissed.*