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B. M. LALL (DEAD) BY L. RS.

v.

DUNLOP RUBBER & CO. LTD. & ORS.

July 18, 1967

B

[R. S. BACHAWAT, J. M. SHELAT AND V. BHARGAVA, JJ.]

West Bengal Premises Tenancy Act (XII of 1956)—s. 13(1) (f)—Limited Company buying premises for housing officers—Whether officer's occupation that of tenant or 'licensee'—and whether Company's 'own occupation'.

C

The respondent limited companies purchased certain premises in Calcutta for the purpose of providing residential accommodation for their staff. They instituted suits against the appellants for the recovery of possession of two flats on the ground that as these flats were required for housing their officers, they were reasonably required for the occupation of the respondents within the meaning of s. 13(1) (f) of the West Bengal Premises Tenancy Act, 1956.

D

The Trial Court dismissed the suits but the High Court allowed an appeal and held that a limited company can be a landlord within the meaning of s. 13(1) (f) and can reasonably require the premises for its own occupation; and that where there are several landlords, the requirement of the premises by the landlords for the occupation of one or more of them is sufficient to bring the case within s. 13(1) (f). In the appeal before the Supreme Court the only question for determination was whether on the construction of the terms of an agreement which was normally signed between each of the respondents and any officer who was allotted a flat, the officer occupied the flat as a tenant or a licensee, and therefore whether the officer's occupation would be the company's own occupation within the meaning of clause (f).

E

Held: Dismissing the appeal: The High Court rightly held that the respondent reasonably required the flats for the second respondent company's own occupation through officers holding flats on its behalf as licensees. [29B]

F

Under the standard form of agreement, the occupation of the officer ceased on the termination of his employment, upon his death, or on his transfer and the company was at liberty to allot him any other flat or to assign the premises to any other employee or other person during his absence. In view of these and its other terms the agreement operated as a license and not as a tenancy. It created no interest in the land and gave only a personal privilege or license to the servant to occupy the premises for the greater convenience of his work. [28F-H]

G

Under s. 105 of the Transfer of Property Act, a lease is the transfer of a right to enjoy the premises whereas under s. 52 of the Indian Easements Act a license is a privilege to do something on the premises which otherwise would be unlawful. The transaction is a lease if it grants an interest in the land; it is a license if it gives a personal privilege with no interest in the land. [27E-F]

H

Errington v. Errington and Woods, [1952] 1 K. B. 290, 298: *Associated Hotels of India Ltd. v. R. N. Kapoor*, [1960] 1 S.C.R. 368, 381-5; *Addiscombe Garden Estates Ltd. and Anr. v. Crabbe and Ors.* [1958] 1 Q.B. 513, 525; referred to.

A service occupation is a particular kind of license whereby a servant is required to live in the premises for the better performance of his duties. Now it is also settled law that a servant may be a licensee though he may not be in service occupation. [27H]

Nippon Menkwa Kalmshiki v. F. Portlock, A.I.R. 1922 Bom. 70; and *Torbett v. Faulkner*, [1952] 2 T.L.R. 659, 560; referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 2253 and 2254 of 1966. B

Appeals from the judgment and decree dated July 5, 1965 of the Calcutta High Court in Appeals from Original Decrees Nos. 490 and 489 of 1960 respectively.

Sarjoo Prasad and *R. Ganapathy Iyer*, for the appellant (in C. A. No. 2253 of 1966). C

Devaprasad Chaudhury and *Sukumar Ghose*, for the appellant (In C. A. No. 2254 of 1966).

A. K. Sen, *S. K. Gambhir* and *D. N. Gupta*, for the respondents (in both the appeals).

The Judgment of the Court was delivered by D

Bachawat, J.—The respondents are limited companies having their head offices in Calcutta. On May 15, 1953, the two Companies jointly purchased the premises known as 'King's Court' at No. 46B Chowringhee Road, Calcutta, for the purpose of providing residential accommodation for their staff. They instituted a suit against one B. M. Lall, since deceased, predecessor of the appellants in C. A. No. 2253/66 for recovery of possession of flat No. 8 in the aforesaid premises in his occupation as a tenant, and another suit against the appellant in C. A. No. 2254/66 for recovery of possession of flat No. 9 in his occupation as a tenant, on the ground that they reasonably required the flats for the occupation of their staff. By Sec. 13(1) of the West Bengal Premises Tenancy Act, 1956, (West Bengal Act XII of 1956), the tenants are protected from eviction except on one or more of the grounds specified in the sub-section. The grounds mentioned in clause (f) of S. 13(1) are:— E F

"Where the premises are reasonably required by the landlord either for purposes of building or re-building or for making thereto substantial additions or alterations or for his own occupation if he is the owner or for the occupation of any person for whose benefit the premises are held;"..... G

The respondents claim that they reasonably require the flats for their own occupation. The trial court dismissed the suits. From these decrees, the respondents filed appeals in the High Court at Calcutta. The High Court set aside the decrees passed by the trial court and decreed the suits. The present appeals have been filed under certificates granted by the High Court. H

- A** The High Court held that (1) a limited company can be a landlord within the meaning of s. 13(1)(f) and can reasonably require the premises for its own occupation, and (2) where there are several landlords, the requirement of the premises by the landlords for the occupation of one or more of them is sufficient to bring the case within Sec. 13(1)(f). These findings are not challenged in this Court. Before us it is also conceded by all the appearing parties that the respondents are entitled to a decree for recovery of possession of the two flats under sec. 13(1)(f), if they establish that they reasonably require the flats for the occupation of respondent No. 2, Guest Keen and Williams Ltd. only.

- C** The two courts concurrently found that respondent No. 2 reasonably requires the flats for the occupation of its staff. The Company is under an obligation to provide free residential accommodation for its officers in properties either rented or owned by it. In view of the acute scarcity of accommodation in the city, it is not possible to find other convenient flats for officers who were transferred to the city from other stations. Suitable provision for the accommodation of officers visiting Calcutta on tour is a matter of necessity. The sole question is whether the occupation by its staff officers would be the company's own occupation. The point of dispute on which the two courts differed is whether the officer to whom the flat would be allotted would occupy it as a tenant or as a licensee. It is common case before us that if he is a licensee his occupation would be on behalf of the company and its requirement would be for its own occupation. On the other hand, if he is a tenant his occupation would be on his own account and the company's requirement would not be for its own occupation. It appears that the officers provided with accommodation by the Company are required to execute agreements in a standard form. The terms and conditions of the agreement are as follows:—

- F** 1. The Licensee whilst in the employment of the Company at Calcutta and for the sole purpose of the Licensee being more conveniently situated in such employment is hereby permitted by the Company to occupy as a Licensee during the term of his employment at Calcutta Flat No. 25, situated in the Company's property known as Kings Court, Calcutta, or such other flat as may be allotted to the Licensee at the company's discretion (hereinafter referred to as "the said premises") subject to the terms and conditions hereinafter contained.
- G**
- H** 2. In the event of the Company deciding to levy License fees and the Company reserves the right to do so without prior notice, the Licensee shall pay to the Company each month such License fees which may be varied by the Company from time to time at its discretion and the Company shall be entitled to deduct such License fees from the emoluments or to become due to the Licensee from Company.

3. The occupation of the said premises by the Licensee is a condition of his employment at Calcutta with the company and such right of occupation shall forthwith cease upon his employment being terminated by the company or on his leaving such employment or on his transfer away from Calcutta or on his death whichever is earlier. Notice given by the Company to the Licensee of termination of employment or of transfer away from Calcutta shall be deemed to be sufficient notice of revocation of the licence. A
4. The Company shall be entitled to determine forthwith the licence hereby granted if the licensee shall fail to comply with any of the terms and conditions herein contained and on his part to be observed and non-compliance with the terms and conditions herein contained may be deemed by the company to be misconduct. B
5. These presents shall not or shall not be deemed to create any relationship of landlord and tenant between the company and the licensee in respect of the said premises. C
6. The company shall pay all present and future revenue and municipal taxes payable in respect of the said premises and keep the said premises in repair during the continuance of these presents. D

Conditions to be complied with by the licensee:—

1. The Licensee shall pay the cost of electricity and gas consumed within the said premises and the company may at its discretion deduct such charges from the emoluments due or to become due to the Licensee from the company. E
2. The Licensee shall not cause or permit to be cause any disturbance or nuisance in or in the vicinity of the said premises. F
3. No structure or alteration temporary or permanent, other than common ornaments shall be erected, fixed or carried out by the Licensee in the said premises or garden without prior written permission from the company. The Licensee shall not do or permit to be done any act or thing which causes damage or is liable to cause damage to the said premises. The cost of rectification of such damage will be recoverable in accordance with condition (1). G
4. Alterations of or extensions to the installed electrical circuit are strictly prohibited. H
5. No notice advertisement or placard other than the Licensee's own name, which may be fixed to the main door of the said premises, shall be fixed or permitted to be fixed to any portion of the said premises. I

- A 6. The said premises shall be used entirely as a dwelling place and no business or trade shall be carried out on the said premises or any part thereof without prior written permission from the company.
- B 7. The Licensee will not permit any persons other than his own personal servants to occupy the servants' quarters allotted to him by the company and will not permit the garage allotted to him by the company to be used for residential purpose.
- C 8. The Licensee shall not take in any paying guest without prior written permission from the company and such permission shall be deemed to have been withdrawn when the paying guest ceases to reside.
- D 9. The Licensee shall not let or part with possession of the whole or any part of the said premises to any person, firm or company. During periods when the Licensee is absent from Calcutta the Company may assign the premises to any other employee or suitable person at its sole discretion.

The question is whether the occupier under this agreement is a tenant or a licensee. The distinction between a lease and a license is well known. Sec. 105 of the Transfer of Property Act defines a lease. Sec. 52 of the Indian Easements Act defines a license. A lease.....is the transfer of a right to enjoy the premises; whereas a license is a privilege to do something on the premises which otherwise would be unlawful. If the agreement is in writing, it is a question of construction of the agreement having regard to its terms and where its language is ambiguous, having regard to its object, and the circumstances under which it was executed whether the rights of the occupier are those of a lessee or a licensee. The transaction is a lease, if it grants an interest in the land; it is a license if it gives a personal privilege with no interest in the land. The question is not of words but of substance and the label which the parties choose to put upon the transaction, though relevant, is not decisive. The test of exclusive possession is not decisive, see *Errington v. Errington and Woods*,⁽¹⁾ *Associated Hotels of India Ltd. v. R. N. Kapoor*,⁽²⁾ though it is a very important indication in favour of tenancy. See *Addiscombe Garden Estates Ltd. and Anr. v. Crabbe and Ors.*⁽³⁾ A servant in occupation of premises belonging to his master may be a tenant or a licensee, see *Halsbury's Laws of England*, Third Edition, Vol. 23, art. 990. p. 411. A service occupation is a particular kind of license whereby a servant is required to live in the premises for the better performance of his duties. Formerly, the occupation of the servant was regarded as a tenancy unless it was a service occu-

(1) [1952] 1 K.B. 290, 298.

(2) [1958] 1 Q.B. 513, 525.

(3) [1260] S.C.R. 368, 381-5.

pation, see *Nippon Menkwa Kalmshiki v. F. Portlock*⁽¹⁾. Now it is settled law that a servant may be a licensee though he may not be in service occupation. In *Torbett v. Faulkner*⁽²⁾ Denning, L. J. said:

"A service occupation is, in truth, only one form of licence. It is a particular kind of licence whereby a servant is required to live in the house in order the better to do his work. But it is now settled that there are other kinds of licence which a servant may have. A servant may in some circumstances be a licensee even though he is not required to live in the house, but is only permitted to do so because of its convenience for his work—see *Ford v. Langford* [(1949) 65 The Times L.R. 138], per Lord Justice Asquith, and *Webb, Ltd. v. Webb* (unreported, October 24, 1951)—and even though he pays the rates, *Gorham Contractors, Ltd. v. Field* (unreported, March 26, 1952), and even though he has exclusive possession, *Cobb v. Lane* (1952 1 The Times L.R. 1037)".

The Lord Justice then continued:

"If a servant is given a personal privilege to stay in a house for the greater convenience of his work, and it is treated as part and parcel of his remuneration, then he is a licensee, even though the value of the house is quantified in money; but if he is given an interest in the land, separate and distinct from his contract of service, at a sum properly to be regarded as a rent, then he is a tenant, and none the less a tenant because he is also a servant. The distinction depends on the truth of the relationship and not on the label which the parties choose to put upon it: see *Facchini v. Bryson*—(1952 1 The Times L.R. 1386)."

The last observation covers the present case. Under the standard form of agreement of respondent No. 2, the occupation of the officer ceases not only on the termination of his employment but also on his transfer from Calcutta and on his death. The company is at liberty to allot any other flat to the officer. During the absence of the servant from Calcutta, the company is at liberty to assign the premises to any other employee or other person. The accommodation is free, but the Company reserves the right to levy license fees. All the terms of the agreement are consistent with the expressed intention that the officer is permitted to occupy the flat as a licensee and nothing in the agreement shall be deemed to create the relationship of landlord and tenant. The agreement on its true construction read in the light of the surrounding circumstances operates as a license and not as a tenancy. It creates no interest in the land. It gives only a personal privilege or license

⁽¹⁾ A.I.R. 1922 Bom. 70.

⁽²⁾ [1953] 2 T.L.R. 650,660.

- A** to the servant to occupy the premises for the greater convenience of his work.

B The High Court rightly held that the respondents reasonably require the flats for respondent No. 2's own occupation through officers holding the flats on its behalf as licensee. If so, it is conceded that it is not necessary for the respondents to establish the reasonable requirement by respondent No. 1 also for its own occupation. The High Court decided this issue also in favour of the respondents. As the decision on this issue is not necessary for the disposal of this appeal, we express no opinion on it. The High Court rightly decreed the suits.

- C** In the result, the appeals are dismissed. There will be no order as to costs.

R.K.P.S.

Appeals dismissed.