

M/S. K. GANESH SHET

A

v.

SRI A.K. JAYARAMA SHEKA AND ORS.

AUGUST 27, 2004

B

[R.C. LAHOTI, CJ., G.P. MATHUR AND C.K. THAKKER, JJ.]

Karnataka Rent Control Act, 1961 :

S. 21(1)(f)—*Eviction of tenant on ground of illegal sub-letting—* C
Allowed by District Judge—High Court though upholding the finding of illegal subletting, declined relief to landlord observing that original tenant having died, sub-tenants holding under his legal representatives deserved protection—On appeal, Held, landlord having successfully made out a ground for eviction, tenant must be evicted alongwith sub-tenants— D
Karnataka Rent Control Act, 1999—S. 70.

The High Court, in a revision against the order of eviction of tenant and sub-tenants in the proceedings under s. 21(1)(f) of the Karnataka Rent Control Act, 1961, although upheld the finding of illegal subletting recorded by the District Judge, yet declined relief of eviction to the landlord holding that since the original tenant had died, the sub-tenants, who were holding under his legal representatives, deserved to be shown mercy. The High Court drew support from the decision in *A.S. Sulochana's case***. F

Allowing the appeals of the landlord, the Court

HELD : 1. In view of the decision in *M/s. Mahendra Saree Emporium**, these appeals shall not abate and shall be decided as if the G Karnataka Rent Control Act, 1999 was not passed. [951-C-D]

**M/s. Mahendra Saree Emporium v. G.V. Srinivasa Murthy, (Civil Appeal No. 6296 of 1998 decided by Supreme Court on August 27, 2004, relied on.* H

A 2. The finding that the sub-tenancy was created without the consent of the landlord has been recorded by the District Judge on appreciation of evidence within his jurisdiction and has been upheld by the High Court. The legal consequence must, therefore, follow. The tenant must be evicted along with the sub-tenants. [951-G-H]

B ***A.S. Sulochana v. C. Dharmalingam*, [1987] 1 SCC 180, held overruled in *Parvinder Singh v. Renu Gautam and Ors.*, [2004] 4 SCC 794.

C CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1440-1441 of 2004.

D From the Judgment and Order dated 15.2.2001 of the Karnataka High Court in H.R.R.P No. 1484 of 1996.

R.S. Hegde, Ms. Savitri Pandey, Chandra Prakash and P.P. Singh for the Appellants.

E G.V. Chandrashekhar and T.N. Rao for the Respondent.

The Judgment of the Court was delivered by

F **R.C. LAHOTI, CJ.** : Proceedings for eviction of tenant on the ground available under Section 21(1)(f) of the Karnataka Rent Control Act, 1961 (hereinafter, the Act for short) were initiated. The Trial Court dismissed the claim for eviction. The landlord preferred revision before the Court of District Judge which was allowed and the tenant and the sub-tenants were directed to be evicted. The two sub-tenants preferred revisions in the High Court. The High Court has upheld the finding of fact recorded by the District Judge that the premises were sub-let without the consent of the landlord. However, still the High Court has granted relief to the sub-tenants and denied relief of eviction to the landlord. The High Court has formed an opinion that in spite of the sub-tenants having been illegally inducted into the premises, the original tenant had died and the sub-tenants

were holding under the legal representatives of the original tenant and the A sub-tenants deserved to be shown mercy. The High Court directed the rent which was being paid by the sub-tenants at the rate of Rs. 600 per month to be enhanced to Rs. 1000 per month and that too directly to the landlord by passing the tenant and having done so directed the claim for eviction to be dismissed. Consequently, these two appeals by special leave have B been filed by the landlord.

Having heard the learned counsel for the parties we are satisfied that the judgment of the High Court cannot be sustained.

During the pendency of these appeals, the Act of 1961 has been repealed and replaced by the Karnataka Rent Control Act, 1999 with effect from 31.12.1999. Dealing with Section 70 of the New Act we have today held in *M/s Mahendra Saree Emporium v. G.V. Srinivasa Murthy*, (Civil Appeal No.6296 of 1998 decided on August 27, 2004) that these appeals D shall not abate and shall be heard and decided as if the 1999 Act was not passed.

The sole question which arises for decision in these appeals is whether the High Court was justified in refusing to evict the tenant and E the sub-tenants simply because the original tenant had died and the sub-tenants deserved to be treated with mercy. The High Court drew support from the decision of this Court in *A.S. Sulochana v. C. Dharmalingam*, [1987] 1 SCC 180 according to which if the sub-tenancy was created by a tenant and the tenant had died then the legal heirs of the tenant and the F sub-tenants could not be evicted "for the sin committed by the deceased tenant". The view of the law so taken in *A.S. Sulochana*'s case, stands overruled. (See *Parvinder Singh v. Renu Gautam and Ors.*, [2004] 4 SCC 794. The sub-tenancy was created in 1978 without the consent of the landlord. The finding as to creation of sub-tenancy has been recorded by G the learned District Judge on appreciation of evidence within his jurisdiction and has been upheld by the High Court. We find no reason to interfere with that finding of fact. The legal consequences must therefore follow. The landlord has successfully made out a ground for eviction and the tenant must be evicted along with the sub-tenants.

H

A The appeals are allowed. The judgment of the High Court is set aside and instead that of the District Judge is restored. However, the decree for eviction shall remain suspended for a period of four months from today subject to the tenant and the sub- tenants filing the usual undertaking within a period of four weeks from today in the Executing Court. The appellant
B shall be entitled to costs throughout from the respondent-tenant and sub-tenants.

R.P.

Appeal allowed.