

A

UNION BANK OF INDIA

v.

CHANDRAKANT GORDHANDAS SHAH

SEPTEMBER 14, 1994

B

[S. MOHAN AND M.K. MUKHERJEE, JJ.]

*Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 :
Section 15-A.*

C

*Suit—Eviction—Unauthorised sub-letting—Claim for protection as a
Protected Licensee—Concurrent findings of fact as to unauthorised sub-let-
ting—Terms of agreement suggesting that agreement was of lease and not
licence—Section 15-A held inapplicable.*

D

*Rent Control—Agreement—Lease or licence—Determination of—Inten-
tion of parties—Exclusive possession—Significance and relevance of.*

Constitution of India, 1950 : Article 226.

E

*Writ Jurisdiction—High Court—Power to interfere with concurrent find-
ings of fact.*

F

The appellant filed a suit for eviction of its tenant on the grounds of default in payment of rent and unlawful sub-letting to the respondent. The respondent, who was impleaded as a party to the suit, contested the case claiming that he was a lawful sub-tenant before May 21, 1959. Alternatively on the basis of a lease and licence agreement entered into with the tenant, he contended that he was a protected licensee under section 15-A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The trial court held that the claim of the respondent that he had come to occupy the premises before May 21, 1959 was baseless. On appraisal of evidence, examination of the terms of the agreement and in the light of the surrounding circumstances and also in view of the judgment in *Sohan Lal Naraindas v. Laxmidas Raghunath Gadit*, [1971] 1 S.C.C. 276, the trial court held that the agreement was one of lease and not of licence and consequently the respondent was not entitled to protection under section 15-A. Holding that there was unauthorised sub-letting in favour of the

H

respondent, the trial court decreed the appellant-landlord's suit.

The appellate court concurred with the findings of the trial court and dismissed the appeal while affirming the findings of the trial court. The respondent filed a writ petition in the High Court which discussed the evidence afresh and set aside the concurrent finding of the facts of the courts below and held that the respondent was merely a licensee and not a tenant. Accordingly, it dismissed the landlord's suit.

In appeal to this court, it was contended on behalf of the appellant-landlord that the High Court erred in reversing the concurrent findings of facts in its writ jurisdiction; read in the context of surrounding circumstances, the agreement was one of lease and not of licence.

Allowing the appeal and setting aside the judgment of the High Court, this Court

HELD : 1. It is trite that if the trial court and the appellate Court, who are entrusted with the duty of investigating into questions of fact record concurrent findings thereon on a proper discussion and appreciation of the materials placed before them, the High Court should not interfere with or disturb those findings while sitting in judgement over the same in its writ jurisdiction. [547-D]

Rajbir Kaur v. Chokesiri & Co., [1989] 1 S.C.C. 19, relied on.

2. Though some of the clauses of the agreement in *Khalil Ahmed's* case are similar to those of the instant case, yet the most important distinguishing feature is that while in that case the court found that there was restriction put upon the use of the premises by the appellant therein which negated the case for lease, in the case in hand both the Courts of fact found that exclusive possession was given to the respondent. Further in both his written statements the respondent admitted that he was in exclusive use and occupation of the premises. [547-H, 548-A]

Sohan Lal Naraindas v. Laxmidas Raghunath Gadit, [1971] 1 S.C.C. 276, referred to.

Khalil Ahmed Bashir Ahmed v. Tafelhussein Samasbhai Barangpurwala, A.I.R. (1988) SC 184, distinguished.

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 86 of 1986.

From the Judgment and Order dated 21.2.85 of the Bombay High Court in W.P. No. 2188 of 1979.

B Soli J. Sorabjee, D.A. Dave, U.A. Rana and Rajiv Tyagi for Gagrat & Co. for the Appellant.

P.K. Dey for Ms. Rani Jethmalani for the Respondent.

The Judgment of the Court was delivered by

C M.K. MUKHERJEE, J. The only question which falls for determination in this appeal is whether the respondent is a deemed tenant of the landlord under section 15-A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ('Act' for short) which confers such status upon a person, who was on February 1, 1973 in occupation of any premises or any part thereof, which is not less than a room, as a licensee. Both the trial court and the appellate court answered the question in the negative recording concurrent findings that there was an unauthorised subletting in favour of the respondent and decreed the suit filed by the appellant-landlord for his eviction, whereas the High Court, in its writ jurisdiction
D
E revered those findings and dismissed the suit.

The appellant filed the suit in 1966 for eviction of M/s H.D. Commercial Corporation (hereinafter referred to as the 'Corporation'), who was its monthly tenant in respect of one room in its building in Bombay on the grounds of default in payment of rent and unlawful subletting of a partitioned portion of the room, (marked as BCDE' in the plan which was exhibited during trial as Ext.B and hereinafter referred to as the 'premises') to the respondent. Besides the Corporation and the respondent, the appellant impleaded some others as defendants as according to it they were also in occupation of the premises under them.
F
G

Except the respondent no other defendant contested the suit, though the Corporation filed a written statement. In the first written statement filed on March 30, 1967 the respondent contended that he was a lawful sub-tenant of the Corporation in respect of the premises since before May
H 21, 1959, the day when the Bombay Act 49 of 1959 came into force giving

protection to the existing sub-tenants and that, therefore, he was not liable to be evicted. A

Subsequently in 1975 the respondent filed an additional written statement reiterating his earlier stand as a lawful sub-tenant and pleading an alternative case as a 'protected licensee' under section 15-A of the Act brought in the Statute Book in 1973. B

During trial the respondent, while examining himself, asserted his claim as a lawful subtenant since before May 21, 1959 and, alternatively, as a protected licensee since before February 1, 1973 on the basis of a lease and licence agreement (hereinafter referred to as the 'agreement') which he entered into with the Corporation on March 12, 1964. C

On consideration of the evidence adduced before it the trial court first held that the claim of the respondent that he had come to occupy the premises before May 21, 1959 was baseless and on examination of the terms of the agreement in the light of the surrounding circumstances the Court held that the respondent was a lessee and not a licensee entitled to protection of Section 15-A of the Act. Accordingly, it decreed the suit for unlawful subletting. In the appeal preferred against the judgment and decree of the trial court the respondent however rested its case as a licensee under the agreement and not as a lawful subtenant since before 1959. The appellate court concurred with all the findings of the trial court and dismissed the appeal. Thereafter the respondent moved the High Court by filing a writ petition which was allowed with a finding that he was protected licensee (deemed tenant) of the premises. D E

It was submitted on behalf of the appellant that the High Court was not at all justified in disturbing the concurrent findings of fact, recorded by the trial court and the appellate court, in its writ jurisdiction. It was further submitted that, in any event, if the agreement was read in the context of the surrounding circumstances, there was no escape from the conclusion that it was one of lease, though intituled as one of licence. F G

The respondent, on the other hand, contended that the High Court correctly interpreted the law and held that what was material was the intention of the parties in executing the agreement. To ascertain the intention the High Court examined the agreement minutely, and correctly H

A came to the conclusion that the respondent was merely a licensee and not a tenant. The respondent further submitted that in *Khalil Ahmed Bashir Ahmed v. Tafelhussein Samasbhai Barangpurwala*, AIR (1988) SC 184 this Court interpreted a document with similar terms and conditions as one of licence.

B On perusal of the judgment of the trial court we find that, to ascertain whether the agreement was one of lease or licence the Court first quoted the following passage from the judgment of this Court in *Sohanlal Naraindas v. Laxmidas Raghunath Gadit*, [1971] 1 SCC 276 wherein the tests for such ascertainment were laid down :

C "Intention of the parties to an instrument must be gathered from the terms of the agreement examined in the light of the surrounding circumstances. The description given by the parties may be evidence of the intention but is not decisive. More use of the words appropriate to the creation of a lease will not preclude the agreement operating as a licence. A recital that the agreement does not create a tenancy is also not decisive. The crucial test in each case is whether the instrument is intended to create or not to create an interest in the property the subject matter of the agreement. If it is in fact intended to create an interest in the property it is a lease. If it does not it is a licence. In determining whether the agreement creates a lease or a licence the test of exclusive possession though not decisive, is of significance,"

F and on a threadbare discussion and proper appraisal of the evidence adduced before it in the light of the above principle concluded that the agreement was one of lease and not of licence. The reasons which weighed with the trial court in drawing the above conclusion were that (i) the premises were given in exclusive possession of the respondent with a separate door to the same, (ii) the respondent was to pay compensation of Rs. 300 per month for use and occupation of the premises, (iii) the transaction was one of business between strangers and not one for obliging or accommodating somebody on account of any relationship, friendship, sympathy or the like, (iv) though the agreement was initially for a period of eleven months with an option for renewal there was no evidence of exercise of such option and the respondent continued in occupation under same terms and conditions, (v) though the agreement was executed on

March 12, 1964, in his first written statement, which was filed later on March 30, 1967, the respondent based his claim as a lawful sub-tenant and reiterated such claim in his additional written statement filed on March 21, 1975 while raising the alternative plea of licensee, and (vi) except occasional visit of its owner, the Corporation lost interest in the premises since about 1963-64. The appellate court, also in its turn reconsidered and reappraised the evidence in the light of *Sohanlal's* case (supra) while affirming the findings of the trial court.

Coming now to the impugned judgment of the High Court, we find that it also referred to the principles laid down by this Court in *Sohanlal's* case (supra) and proceeded to ascertain the intention of the parties from the terms of the agreement in the light of the surrounding circumstances. In so doing the High Court discussed the evidence afresh and set aside the concurrent findings of fact for reasons of its own.

It is trite that if the trial Court and the appellate Court, who are entrusted with the duty of investigating into questions of fact record concurrent findings thereon on a proper discussion and appreciation of the materials placed before them, the High Court should not interfere with or disturb those findings while sitting in judgment over the same in its writ jurisdiction. Having carefully gone through the impugned judgment in the light of the materials on record we feel tempted to quote the following observations made by Venkatachaliah J. (as His Lordship then was) in *Rajbir Kaur v. S. Chokesiri & Co.*, [1989] 1 SCC 19 as they are also pertinent here :

"With respect to the High Court, we think, that, what the High Court did was what perhaps even an appellate court, with full fledged appellate jurisdiction, would, in the circumstances of the present case, have felt compelled to abstain from and reluctant to do."

Coming now to the case of *Khalil Ahmed Bashir Ahmed* (supra) on which much reliance has been placed by the respondent we find that though some of the clauses of the agreement are similar to those of the instant case, the most important distinguishing feature is that while in that case the court found that there was restriction put upon the use of the premises by the appellant therein which negatived the case for lease, in the case in hand both the Courts of fact found that exclusive possession was

- A given to the respondent. While on this point it is interesting to note that in both his written statements the respondent admitted that he was in exclusive use and occupation of the premises.

- B For the foregoing discussion, we allow this appeal, set aside the impugned judgment of the High Court so far as it set aside the decree of eviction against the respondent and restore that of the trial court, as affirmed by the appellate court. However, in the circumstances of the case, there will be no order as to costs.

T.N.A.

Appeal allowed.