WARNAKULASINGHE

v.

SUBRAMANIAM

SUPREME COURT.
SHARVANANDA, C.J., COLIN-THOMÉ, J. AND ATUKORALE, J.
S.C. APPEAL No. 66/84.
C.A. (S.C.) APPEAL No. 41/84.
D.C. TRINCOMALEE CASE No. 9834.
FEBRUARY 13, 1986.

Landlord and Tenant–Subletting of portions of house without landlord's prior written consent–Sections 10(1) and 10(5) of Rent Act No. 7 of 1972–Letting of portions of premises for wedding receptions–Does it constitute subletting under the Rent Act?

The sole test for determining for the purposes of the Rent Act the question whether there is, in law, a letting or subletting of a part of the premises is to be found in subsection (1) of s. 10 of the Rent Act. Subsection (1) of s. 10 postulates two criteria for determining whether in law there is a letting or subletting of a part of premises. They are firstly, that the occupant must be in exclusive occupation of the part in consideration

of the payment of rent and, secondly, that the part must be a defined and separate part of which the landlord or tenant (as the case may be) has for the time being relinquished his right of control. If these two criteria are satisfied the law deems the existence of a letting or subletting. Where a portion of a house is given in consideration of a payment for exclusive use and occupation for a wedding reception to be held these criteria are satisfied.

Cases referred to:

(1) *Swami Sivagnananda v. The Bishop of Kandy–(1953) 55 NLR 130.*

(2) *Booker v. Palmer–[1942] 2 All ER 676.*

(3) *Errington v. Errington and Woods–[1952] IKB 290.*

(4) *Marchant v. Charters–[1977] 3 All ER 918.*

(5) *St. Aubyl v, Attorney-General–[1952] AC 53.*

APPEAL from judgment of the Court of Appeal.

H. L. de Silva, P.C. with *M. Devasagayam* for appellant.

A. Mahendrarajah, P.C. with *Siva Rajaratnam* and *S. Mahenthiran* for respondent.

April 2, 1986.

ATUKORALE, J.

The premises in suit consists of a very large house bearing assessment No. 26, George Street, Trincomalee and is governed by the provisons of the Rent Act, No. 7 of 1972. The respondent (the landlord) filed this action for the ejectment of the appellant (his tenant), now deceased, on the ground that the latter was in arrears of rent and that he had sublet parts of the premises without his prior written consent. In regard to the first ground the learned District Judge held that although the appellant was in arrears of rent for the requisite period prior to the date of the notice to quit (P4), yet he had paid all such arrears before the institution of the action and that therefore the respondent's claim for ejectment on that ground must fail. No question arises before us in respect of that finding. to establish the other ground of ejectment, namely sublettings of portions of the premises without his prior consent in writing, the respondent relied on two categories of subletting. One category comprised of 3 acts of subletting parts of the premises to 3 persons, namely Mahroof, Suppiah and Maheswaran. The learned District Judge found that there was sufficient proof to establish such acts of subletting by the appellant but ruled that as those acts of subletting had commenced at

a date prior to and continued after the coming into operation of the Rent Act the respondent was not entitled in law to an order for ejectment on the basis of those acts of subletting. This ruling of the learned District Judge has not been canvassed before us. The other category of subletting relied upon by the respondent consisted of alleged acts of subletting by the appellant of parts of the premises for the purpose of holding special functions such as wedding receptions. The learned District Judge found that the wedding receptions of Chitravelu's second son (Kankeyan), of John Britto Shanmuganathan, of Kalimuttu Selliah and of David Gnanapragasam took place on different dates after the commencement of the Rent Act in portions of the premises in consideration of the payment of specified sums of money by them to the appellant or his agent. The learned Judge held that these acts constituted acts of subletting within the meaning of s. 10(1) of the Rent Act and since the appellant had not obtained the prior consent in writing of the respondent, he entered decree for the appellant's ejectment from the premises in terms of s. 10(5). The Court of Appeal to which the appellant appealed from this order affirmed the same and he has now appealed to this court therefrom.

At the hearing before us the findings of facts of the learned District Judge were not sought to be challenged by learned counsel for the appellant. Thus the legal issue that arises for our determination in this appeal is whether the acts of the appellant by which he permitted the four persons aforementioned to hold at different times their respective wedding receptions in a part of the premises in suit on payment of specified sums of money to him or his agent by them constituted sublettings of parts of the premises within the meaning of s. 10(1) of the Rent Act. Learned counsel for the appellant submitted that the said four persons were not sub tenants but only licencees. He contended that even assuming that they had exclusive user of parts of the premises for their functions on payment of money, still their occupancy was not in consequence of a contract of tenancy or sub tenancy but was in pursuance of a licence given to them by the appellant falling short of a letting or subletting. He contended that the decisive test, under the common law, was to ascertain the true intention of the parties to the contract did they or did they not intend to create the legal relationship of landlord and tenant? He urged that the facts and circumstances of this case disclosed that what was paramount in the minds of the parties was the temporary character and duration of the occupancy of the four persons for a specific

purpose. These factors, it was submitted, tend to negative any intention on the part of the four persons and the appellant to enter into a contract of tenancy or sub tenancy. In support of this submission learned counsel for the appellant referred us to certain English decisions, some of which have been considered in the local case of *Swami Sivagnananda v. The Bishop of Kandy* (1) in which Gratian, J. in the course of his judgment stated as follows:

> "The question whether or not the parties to an agreement intend to create as between themselves the relationship of landlord and tenant must in the last resort be a question of intention – per Lord Greene, M. R. in *Booker v. Palmer* (3) Similarly Denning, L. J. said in *Errington v. Errington and Woods* (3):
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> > 'Although a person who is let into exclusive possession is prima facie to be considered to be a tenant, nevertheless he will not be held to be so if the circumstances negative any intention to create a tenancy. Words alone may not suffice. Parties cannot turn a tenancy into a licence merely by calling it one. But if the circumstances and the conduct of the parties show that all that was intended was that the occupier should be granted *a personal privilege with no interest in the land,* he will be held to be a licensee only.'"

In *Marchant v. Charters* (4) the question was whether the appellant who occupied a furnished bed-sitting room on a weekly payment was a tenant or only a licensee. A tenant of a furnished dwelling house was given security of tenure under the English Rent Act, 1974 whilst a licensee had no such security. After examining the more recent decisions of the English courts, Lord Denning, M. R. said:

> "Gathering the cases together, what does it come to? What is the test to see whether the occupier of one room in a house is a tenant or a licensee? It does not depend on whether he or she has exclusive possession or not. It does not depend on whether the room is furnished or not. It does not depend on whether the occupation is permanent or temporary. It does not depend on the label which the parties put on it. All these are factors which may influence the decision but none of them is conclusive. All the circumstances have to be worked out. Eventually the answer depends on the nature and quality of the occupancy. Was it intended that the occupier should have a stake in the room or did he have only permission for himself personally to occupy the room. Whether under a contract or not, in which case he is a licensee?"

In my view the English decisions cited by learned counsel for the appellant are not of any assistance to determine the question that we have to determine in this case. The statutory provision considered in them is different from the one that arises for our consideration in the instant case. Those decisions deal with the question whether the room or rooms in question have been let to the occupants as a separate dwelling, in which event the letting is a protected one. The relevant statutory provisions in our Rent Act, to which there is no similar provisions in the English Rent Acts, are contained in s. 10 and read as follows:

10. (1) For the purposes of this Act, any part of any premises shall be deemed to have been let or sublet to any person, if, and only if, such person is in exclusive occupation, in consideration of the payment of rent, of such part, and such part is a defined and separate part over which the landlord or the tenant, as the case may be, has for the time being relinquished his right of control; and no person shall be deemed to be the tenant or the subtenant of any part of any premises by reason solely of the fact that he is permitted to use a room or rooms in such premises.

(2) Notwithstanding anything in any other law, the tenant of any premises–

(a) .....

(b) shall not sublet any part of the premises to any other person–

(i) without the prior consent in writing of the landlord;

(ii) .....

Subsection (i) to s. 10 sets out plainly and explicitly the circumstances under which, for the purposes of the Act, a part of any premises shall be deemed to have been let or sublet to an occupant. It postulates two criteria for determining whether in law there is a letting or a subletting of a part of premises. They are firstly, that the occupant must be in exclusive occupation of the part in consideration of the

payment of rent and, secondly, that the part must be a defined and separate part over which the landlord or the tenant (as the case may be) has for the time being relinquished his right of control. If these two criteria are satisfied the law deems the existence of a letting or a subletting, as the case may be. The word 'deemed' is often used to embrace a compehensive description "that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible"—per Lord Radcliffe in *St. Aubyn v. Attorney-General* (5). But in subsection (1) the word 'deemed' read in conjunction with the expression 'if and only if' is, in my view, definitive of what, for the purposes of the act, constitutes a letting or subletting of a part of premises. In other words, the sole test for determining, for the purposes of the Rent Act, the question whether there is, in law, a letting or subletting of a part of the premises is to be found in subsection (1) itself. Thus, in my opinion, in so far as a letting or a subletting of a part of the premises is concerned, the intention of the parties is immaterial, although no doubt it would be of paramount importance in determining whether or not there has been a letting or subletting of the entirety of the premises.

Applying the above test to the facts and circumstances of this case I am of the view that the trial court and the Court of Appeal were both correct in concluding that the appellant sublet portions of the premises in suit to the aforesaid four persons for the purpose of holding their respective wedding receptions. The oral evidence led on behalf of the respondent establishes that on each of those occasions a defined and distinct part of the premises was given by the appellant to each person for his exclusive user and occupation in consideration of the payment of money for the same. There was no service provided by the appellant for the benefit of any of those persons. The appellant exercised no control over any part of the portions that were given out by him. In fact the substantial defence taken up by him at the trial was that he did not ask for or receive any rent from any of the four persons. This defence has been rejected by the learned District Judge as totally false. At no stage did the appellant maintain that he or any one on his behalf retained any form of control of the parts in which the receptions were held. The appeal is therefore dismissed with costs.

SHARVANANDA, C.J. – I agree.

COLIN-THOMÉ, J. – I agree.

Appeal dismissed.

(10)
6, 10, 14.

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