1962

December, 11.

POORAN CHAND

v.

MOTILAL & OTHERS

(S. J. IMAM, J. L. KAPUR, K. SUBBA RAO and J. R. MUDHOLKAR, JJ.)

Rent Control—Revision—High Court, powers of—Illegal subletting—If confined to first sub-letting—Delhi and Ajmer Rent Control Act, 1952 (38 of 1952), ss. 13 (1) (b), 35.

The landlords executed a lease of a residential premises in favour of the tenant for one year. More than a year afterwards, the landlords gave the tenant a notice to quit and filed a suit for his eviction *inter alia* on the ground that he had sublet the premises without their consent. The tenant resisted the suit on the grounds that the notice to quit was illegal and that there was no illegal sub-letting as contemplated by s. 13 (1) (b) of the Delhi and Ajmer Rent Control Act, 1952, as he had merely inducted a new sub-tenant in place of an old one. The trial Court decreed the suit but on appeal the Civil Judge dismissed it on the ground that the notice to quit was invalid. The landlords filed a second appeal before the High Court and the High Court allowed the same holding that after the expiry of the lease by efflux of time the tenant was a statutory tenant and no notice to quite was necessary. The tenant contended that no second appeal lay to the High Court and it could not have interfered with the decree of the Civil Judge in its powers of revision under s. 35 of the Act and that there was no illegal sub-letting.

Held, that even if a second appeal did not lie, the High Court would have been justified in reversing the decree of the Civil Judge in exercise of its powers of revision under s. 35 of the Act. The power of the High Court under s. 35 was wider than that under s. 115, Code of Civil Procedure, though it could not be equated to that of its jurisdiction in an appeal. It was neither possible nor advisable to define with precision the scope and ambit of s. 35 but it should be left to the High Court to consider in each case whether the impugned judgment was according to law or not. In the present case, since the tenancy had expired by efflux of time, a notice to quit under s. 106, Transfer of Property Act was not necessary but the Civil Judge refused to pass a decree for eviction on a wrong legal

basis that such notice was necessary. The decree of the Civil Judge was not "according to law" and the High Court was justified in setting aside.

Hari Shankar v. *Rao Girdhari Lal Chowdhury*, [1962] Supp. 1 S. C. R. 933 and *Bell & Co. Ltd.* v. *Waman Hemraj*, (1938) 40 Bom. L. R. 125, referred to.

Held, further, that the tenant had sub-let the premises within the meaning of s. 13 (1) (b) (i) of the Act. This section provides for eviction if a tenant has sub-let, assigned or otherwise parted with possession of the whole or any part of the premises without the consent of the landlord in writing. It was not confined to the first sub-letting and it covered the case where there was already a sub-tenant and a new sub-tenant was inducted when the previous one left.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 624/1962.

Appeal by special leave from the judgment and decree dated July 18, 1961, of the Rajasthan High Court in Civil Regular Second Appeal No. 90 of 1960.

G. C. Mathur, for the appellant.

B. D. Sharma, for the respondents.

1962. December 11. The Judgment of the Court was delivered by

Subba Rao, J.

SUBBA RAO, J.—This appeal by special leave is directed against the judgment and decree of the High Court of Judicature for Rajasthan at Jodhpur setting aside those of the Senior Civil Judge, Ajmer, and restoring those of the Subordinate Judge, First Class, Ajmer, decreeing the suit for eviction from the suit premises filed by the respondents against the appellant.

The facts may be briefly stated. The building situate at No. 41 Purani Mandi, Ajmer, consists of a large number of rooms, and the respondents are its owners. On October 13, 1935, the said building

1962

Pooran Chand v. Motilal

Subba Rao, J.

was taken on lease by the appellant's father for a period of one year on a rent of Rs. 50/- per month. On July 10, 1950, the respondents gave a lease of the said building in favour of the appellant for a period of one year on a rent of Rs. 65/- per month. On August 8, 1952, a fresh lease was executed in favour of the appellant on an enhanced rent of Rs. 70/- per month. Under the said lease the tenacy was to commence from August 1, 1952. On June 27, 1954, the respondents issued a notice to the appellant, through their Advocates, calling upon him to vacate the premises by midnight of July 31, 1954/August 1, 1954. In that notice it was alleged that the appellant was in arrears of rent and that he had also sublet the property. In the reply notice the appellant promised to pay the arrears of rent as early as possible, but stated that he had all along been subletting portions of the premises to others, except the portion under his occupation. As the appellant did not comply with the terms of the notice, the respondents filed on August 2, 1954, Civil Suit No. 762 of 1954 in the Court of the Subordinate Judge, First Class, Ajmer, against the appellant for eviction, for recovery of arrears of rent and for other reliefs. The plaint was later on amended. The appellant contested the suit on various grounds and particularly on the ground that it was not maintainable. It may be mentioned that in the written-statement the fact that the premises were sublet to tenants was not denied. The learned Subordinate Judge decreed the suit, holding that the notice was valid and that the appellant was liable to be evicted under s. 13 (1) (b) of the Delhi and Ajmer Rent Control Act, 1952 (XXXVIII of 1952), hereinafter called the Act, as he had sublet portions of the premises without the consent in writing of the landlord. On appeal the Senior Civil Judge, Ajmer, allowed the appeal. He held that the notice issued to the appellant was short by 24 hours and that he had no right to sublet the premises without the written consent of the landlord,

though there where sub-tenants in the premises when the appellant took the lease. On second appeal, the High Court allowed the appeal and restored the decree of the trial court. The High Court held that the notice complied with the provisions of s. 106 of the Transfer of Property Act, 1882, and that, in any event, as the tenancy expired by mere efflux of time, no notice was necessary. Hence the present appeal.

Learned counsel for the appellant raised before us the following four points: (1) No second appeal lay to the High Court against the decree and judgment of the Civil Judge; (2) if no second appeal lay against the decree and judgment of the Civil Judge, the High Court's power of interference with that judgment was confined only to s. 35 (1) of the Act and that under that section it had no jurisdiction to set aside the judgment on merits, whether of law or of fact; (3) the High Court wrongly held that the notice complied with the provisions of s. 106 of the Transfer of Property Act, 1882; and (4) the High Court made out a totally new case in holding that the tenancy had expired by efflux of time.

It is not necessary in this case to express our opinion on the first question, as we are satisfied that even if no second appeal lay to the High Court against the judgment and decree of the Civil Judge, the High Court had ample jurisdiction to interfere in the circumstances of the case under s. 35 (1) of the Act, which reads :

> "(1) The High Court may, at any time, call for the record of any case under this Act for the purpose of satisfying itself that a decision made therein is according to law and may pass such order in relation thereto as it thinks fit."

Reliance is placed by the learned counsel on a decision of this Court in *Hari Shankar* v. *Rao Girdhari Lal Chowdhury* (1) in support of the contention that

(1) [1962] Supp. 1 S.C.R. 933.

1962

Pooran Chand v. *Motilal*

Subba Rao, J.

the jurisdiction of the High Court under s. 35 of the Act is very limited and does not warrant the High Court's interference in the circumtances of this case. The main question in that decision was whether the plaintiff consented to the subletting of parts of the demised premises and if so, when and to what effect ? The trial Judge found that there was no evidence that the landlord was ever consulted. On appeal, the District Judge confirmed that finding. In revision, the High Court considered the evidence over again and came to a contrary conclusion. In that context this Court considered the scope of s. 35 of the Act. Hidayatullah, J., expressing the majority view, observed:

> "The phrase "according to law" refers to the decision as a whole, and is not to be equated to errors of law or of fact *simpliciter*. It refers to the overall decision, which must be according to law which it would not be, if there is a miscarriage of justice due to a mistake of law. The section is thus framed to confer larger powers than the power to correct error of jurisdiction to which s. 115 (of the Code of Civil Procedure) is limited."

Then the learned Judge quoted in extenso the observations of Beaumont, C.J. (as he then was) in *Bell & Co. Ltd.* v. *Waman Hemraj* (1) and recorded his full concurrence with those observations. By those observations the learned Chief Justice gave certain illustrations and made it clear that they were not exhaustive and concluded thus :

> "But, in my opinion, the Court ought not to interfere merely because it thinks that possibly the Judge who heard the case may have arrived at a conclusion which the High Court would not have arrived at."

(1) (1938) 40 Bom. L.R. 125.

It is clear from the observations of Hidyatullah, J., and those of Beaumont, C. J., which the former has fully extracted, that the power of the High Court under s. 35 of the Act is wider than that under s. 115 of the Code of Civil Procedure, though it cannot be equated to that of its jurisdiction in an appeal. It is neither possible not advisable to define with precision the scope and ambit of s. 35 of the Act, but it should be left to the High Court to consider in each case whether the impugned judgment is according to law or not, as explained by this Court in the said decision.

Bearing the view expressed by this Court in mind we shall proceed to consider whether the High Court had acted within its jurisdiction. The main question turns upon the construction of s. 13(1) of the Act. The material part of the section reads :

> "Notwithstanding anything to the contrary contained in any other law or any contract, no decree or order for the recovery of possession of any premises shall be passed by any Court in favour of the landlord against any tenant (including a tenant whose tenancy is terminated) :
>
> Provided that nothing in this sub-section shall apply to any suit or other proceeding for such recovery of possession if the Court is satisfied—
>
> (a) that the tenant has neither paid nor tendered the whole of the arrears of rent due within one month of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the manner provided in section 106 of the Transfer of Property Act, 1882 (IV of 1882); or

1962

Pooran Chand
v.
Motilal

Subba Rao, J

(b) that the tenant without obtaining the consent of the landlord in writing has, after the commencement of this Act,—

(i) sub-let, assigned or otherwise parted with the possession of, the whole or any part of the premises."....

Learned counsel for the appellant contends that the provisions of the said section are an additional protection to a tenant and that they do not enable the landlord to dispense with a statutory notice before filing a suit for eviction, and in the present case the notice given did not comply with the provisions of s. 106 of the Transfer of Property Act, 1882. It is not necessary in this appeal to express our opinion on the validity of this contention, for we are satisfied that the term of the tenancy had expired by efflux of time; and, therefore, no question of statutory notice would arise. But the learned counsel contends that this point was not raised either in the plaint or in the lower courts, but was raised for the first time before the High Court and that as the question is a mixed question of fact and law, the High Court went wrong in allowing it to be raised for the first time before it. We cannot say that this point was not raised in the plaint. The suit was filed for eviction, and the ground for eviction was two-fold, viz., the rent was not paid and that the appellant had sublet the premises. In the plaint it was not stated that the tanancy was a monthly tenancy; on the other hand, the respondents alleged in the plaint that the appellant was their tanant under the lease deed dated August 8, 1952, and they filed, along with the plaint, the said lease deed, the terms whereof clearly show that the term of the lease was for one year. The appellant admitted those facts. It is, therefore, manifest that the appellant never denied that the term of the lease was not for one year. The High

Court was, therefore, justified in considering the point, because the validity of the notice depended upon the term of the tenancy and also because the question of the term of the tenancy depended solely on the construction of the lease deed. On the basis of the lease deed the High Court held that the term of the lease is only for one year and it had expired by efflux of time. The document says that the house had been taken on rent for one year by the first party and ends thus, "if the rent falls into arrears then the second party shall be jointly and severally entitled to eject me namely the first party before the expiry of the term of tenancy and realise the rent due." It is, therefore, manifest that the lease was for a period of one year and that it was not a monthly tenancy. As the term fixed under the deed had expired, the appellant was not entitled to any statutory notice under s. 106 of the Transfer of Property Act, 1882.

Even so, it is contended that the appellant had not sublet the premises within the meaning of s.13(1)(b)(i) of the Act. It is said that the sub-section applies only to a case of sub-tenancy created for the first time after the lease was taken and does not cover a case where there was already a sub-tenant and a new sub-tenant was inducted when the previous sub-tenant vacated it. This conclusion is sought to be drawn from the words "sublet, assigned, or otherwise parted with the *possession*" and it is argued if *possession* had already been parted with by way of sub-lease and what was done was only to substitute another in the place of the earlier sub-tenant, this sub-clause is not attracted. There are no merits in this contention. Section 13(1)(b)(i) clearly says that if a tenant, without obtaining the consent of the landlord in writing has, after the commencement of this Act, sub-let, assigned or otherwise parted with the possession of the whole or any part of the premises, he is liable to be evicted. Here, admittedly after the lease deed of 1952 the appellant has sublet some

1962

Pooran Chand v. Motilal

Subba Rao, J.

of the rooms of the building to others without obtaining the written consent of the landlord. The fact that there were sub-tenants in the said portions could not conceivably be of any help to the appellant, because the new sub-tenants were not holding under the earlier sub-tenants, but were inducted by the appellant, after the earlier sub-tenancies were terminated. The appellant, having sub-let part of the premises without the consent of the landlord in writing, cannot invoke the protection given to him under s. 13 of the Act.

In this view, the High Court was certainly right in setting aside the decree of the Civil Judge, for the Civil Judge refused to pass an order of eviction on a wrong legal basis that the appellant was a monthly tenant, ignoring the express term in the lease deed itself. As the decree was not "according to law", the High Court, in exercise of its jurisdiction under s. 35 of the Act, was certainly within its rights to set aside the said decree.

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

Appeal dismissed.