

KRISHNAN NAIR & ANR. ETC.

v.

GHOUSE BASHA

SEPTEMBER 8, 1987

[SABYASACHI MUKHARJI AND G.L. OZA, JJ.]

Tamil Nadu Buildings (Lease & Rent Control) Act, 1960: s. 10(3) (a)(iii)—Demised premises—Requirement of by landlord for sons' business in partnership with strangers—Eviction order—Validity of.

The landlord was carrying on leather business in which his two sons used to take active part. Thereafter they went into a partnership with others to carry on the business and jointly held half the shares. The landlord needed the demised premises bona fide for the business of his sons. The High Court maintained the order of eviction passed by the courts below.

In the appeal, it was contended for the appellant that an application for eviction under s. 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 was liable to be dismissed solely on the ground that the landlord had chosen to file it to accommodate a partnership firm in which his sons and some strangers were partners, which was not in conformity with the provisions of the section.

Dismissing the appeal,

HELD: If the deed of partnership excludes the son expressly or impliedly from the management of the firm of business and makes him a sleeping partner it cannot be said that the accommodation is needed directly or substantially for his occupation by way of his business. [68A]

D.N. Sanghavi & Sons v. Ambalal Tribhuvan Das, [1974] 3 SCR 55, applied.

Shantilal Thamordas & Ors. v. Chimanlal Maganlal Telware, [1977] 1 SCR 341, distinguished.

Partnership is a compendious way of describing those who constitute the firm under s. 4 of the Partnership Act. If a person carries on a business alongwith other partners and it was the other partner who

A actually carried on the business the position perhaps would have been entirely different. If the same were only sleeping partners that would have been different. [67CD]

B In the instant case, the partnership deed was silent as to what role the sons of the landlord would perform in it. There is, however, evidence that they were in the leather business and had carried on the business previously before shifting to the premises in question. If that is the position, it cannot be said that they were sleeping partners. Having regard to the past conduct of the sons and having regard to their shares in the partnership it can be said that the sons were carrying on business actively along with other partners. As such, the sons needing the accommodation with others would be for the sons' business in terms of s. 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act. The landlord was, therefore, entitled to the benefit of eviction. [67B, 68BC, 67DE, 68C, 67E]

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D CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 689-90 of 1987.

From the Judgment and Order dated 27.11.1986 of the Madras High Court in C.R.P. No. 3306 of 1984.

A.T.M. Sampath for the Appellant.

E Sanjay Parekh and Sudershan Menon for the Respondent.

The Judgment of the Court was delivered by

F **SABYASACHI MUKHARJI, J.** This is an appeal by the tenant against the judgment and order of the High Court of Tamil Nadu. By the aforesaid judgment the High Court upheld the landlord's contention of *bona fide* requirement of the premises in question for the business of his sons and maintained the order of eviction passed by the courts below. So far as the question of *bona fide* need is concerned it has been upheld by the courts below and that finding is not assailed before us. But what was contended was that the application itself under section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, hereinafter called the Act was not maintainable as the requirement of the land was not for the landlord or members of his family as such but for two sons who were running a leather business in partnership with strangers. The deed of partnership was examined by the High Court but it is, however, not before us. It

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appears from the evidence that previously the father and the two sons used to carry on leather business from long time. The sons went into the partnership with others and two of the sons were partners. They jointly hold half the shares. From the evidence it appears that the sons used to take active part even before the partnership started in the leather business carried on by the father. Thereafter, the partnership firm with the other partners carried on the business. We must proceed on the basis that the partnership deed was silent as to what role the sons of the landlord would perform in this. The only question which was urged before us was that the application for eviction under section 10(3)(a)(iii) of the Act was liable to be dismissed solely on the ground that the landlord has chosen to file this application to accommodate a partnership firm in which his sons and some strangers are partners and it is not in conformity with the provisions of section 10(3)(a)(iii) of the said Act. Partnership, as is well settled has a compendious way of describing those who constitute the firm under section 4 of the Partnership Act. Now, if that is the position, in our opinion, if a person carries on a business alongwith other partners and it was the other partner who actually carried on the business the position perhaps would have been entirely different. If the same were only sleeping partners that would have been different. On the contrary, here having regard to the past conduct of the sons and having regard to the shares this was their only application where sons were carrying on the business along with other partner. If that is the position in our opinion under section 10(3)(a)(iii) of the Act as the sons and members of the family carrying on the business in terms of the section will be entitled to the benefit of eviction.

Our attention was drawn to a decision of this Court in *D.N. Sanghavi & Sons v. Ambalal Tribhuvan Das*, [1974] 3 SCR 55 where the meaning of the expression 'his business' under section 12(1)(f) of the Madhya Pradesh Accommodation Control Act, 1961 came up for consideration. The said section was in *pari materia* with the present section. Therefore this court held that the meaning of the expression 'his business' under section 12(1)(f) of the said Act is to be determined by the examination of the object of the Act and setting of the phrase 'his business'. There Dwivedi, J. speaking for the court found that before the partnership, it was stated that the father was to run the shop. Father died during the pendency of the suit and neither of these two passages nor anywhere else in the facts during the pendency had stated that on the terms of the partnership they were entitled to manage the partnership business or even that would also occupy the suit accommodation along with his other partners on obtaining possession

A from the appellant was not stated that the other partners have agreed to shift the business. The court observed that if the deed of partnership had excluded the son expressly or impliedly from the management of the firm's business and had made him a sleeping partner it could not be held that the accommodation was needed directly and substantially for his occupation by way of his business. The firm is carrying on the business in the premises in respect of which the eviction was asked for the said firm. But here there is no evidence that the sons were sleeping partners. On the contrary, there is evidence that they were in the leather business and had carried on the business previously before shifting to the premises in question. If that is the position, it cannot be accepted that they were sleeping partners. On the contrary, having regard to the number, they were active partners in the business and as such the sons needed the accommodation with others would be for sons' business under section 10(3)(a)(iii) of the Tamil Nadu Act. We may mention that in the subsequent decision of this Court in *Shantilal Thamordas & Ors. v. Chimanlal Maganlal Telware*, [1977] 1 SCR 341 this question did not directly arise but there this Court noted that some of the High Courts have taken the view that occupation by partner who was a member of the family would be the occupation of the landlord. This Court felt that they should not express any opinion in that regard, but doubt was expressed as to whether the requirement of the premises by the landlord for the occupation of the partnership firm in which he was a partner would tantamount to the occupation by landlord. It appears that the attention of this Court was not drawn to the earlier decision referred to hereinbefore. In any event, the court had no occasion to express any opinion where the sons are active partners in a partnership firm whether such business carried on by the sons would not come within the provisions of section 10(3)(a)(iii) of the Act.

F In the aforesaid view of the matter we uphold the order and judgment of the High Court and we are unable to accept the challenge to the order. The appeal must therefore, fail and is accordingly dismissed. In the facts and circumstances of the case there will be no order as to costs.

G P.S.S.

Appeal dismissed.