

CIVIL RULE.

Before Pearson and Graham JJ.

RADHA KANTA DAS

v.

PANKAJINI DEVI.*

1924

May 19.

Rent Controller—Standard rent—Tenancy for immoral purpose—Competency to standardise rent for premises sublet to prostitutes—Brothels.

Where a tenant applied to the Rent Controller for standardisation of rent of a house which had long been used as a brothel and was so still, there being other brothels in the neighbourhood, the house having been let out to the plaintiff for the purpose of continuing the brothel there through his sublessees who were prostitutes :—

Held, that the Rent Act did not apply as the tenancy was void, the house having been let out for immoral purpose, and the Rent Controller ought not to intervene on the application of a party for fixing standard rent in such a case.

Bani Muncharam v. Regina Stanger (1) distinguished.

CIVIL RULE (under section 115 of the Code of Civil Procedure and section 107 of the Government of India Act) obtained by Radha Kanta Das, the plaintiff.

The plaintiff was the tenant of premises No. 16, Karani Bagan East Lane, Calcutta, which he held under a registered agreement for lease of five years commencing from 1st May 1923. As Pankajini Devi, the landlady, did not carry out the additions and alterations which she had agreed to do in the said agreement for lease, the tenant (plaintiff) applied to the Rent Controller to fix

* Civil Rule No. 193 of 1924, against the order of B. Ganguli, Rent-Controller of Calcutta, dated Dec. 14, 1923.

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the standard rent of the premises in question. In her written statement filed in the Rent Controller's Court the landlady (defendant) stated that she had let out the premises to the petitioner as a monthly tenant from the month of Aswin 1329 B. S., and that the major portion of the premises had been sublet by the plaintiff to women carrying on prostitution, and that the said premises had been a brothel from before and had been continued as such, and that the premises having been let for the purposes of a brothel and being held as such, the Rent Act had no application. But before this suit for standardisation of rent was disposed of by the Rent Controller the defendant (landlady) instituted a suit for rent in the Court of Small Causes, Calcutta, against the said tenant, Radha Kanta Das. The tenant's suit for standardisation of rent in respect of the aforesaid premises was ultimately dismissed by the learned Rent Controller on the ground that the Calcutta Rent Act had no application to the case in question. Even after the dismissal of the standard rent case, the landlady withdrew the suit for rent, which she had brought in the Calcutta Small Causes Court, against the said tenant, Radha Kanta Das, with liberty to bring a suit in the High Court, and subsequently filed a suit in the Original Side of the High Court against the aforesaid tenant, Radha Kanta Das, for ejection and recovery of arrears of rent. In her plaint filed in the High Court ejection suit the landlady (present defendant) admitted that the tenant (present plaintiff) was a monthly tenant under her, that a certain sum was due from him for arrears of rent, and although the landlady stated that the said tenant had sublet a portion of the premises for the purposes of a brothel she did not allege that the original letting to him was for such a purpose. Being dissatisfied with the order of the

Rent Controller dismissing his suit for standardisation of rent, the tenant moved the High Court under section 115, Civil Procedure Code, and section 107 of the Government of India Act and obtained a Rule.

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Babu Bipin Chandra Mullick, for the petitioner. The mere fact that the premises were sublet to some women of the town does not make the original tenancy of my client invalid and does not necessarily affect the validity of the contract between the landlord and tenant.

[*Babu Mrityunjay Chatterji*, for the opposite party (the landlady). The finding is that the premises were let out for the purposes of a brothel.]

There is no evidence on record to show that the opposite party had let out the premises for any immoral purpose.

[PEARSON J. There is evidence that the premises were previously used as a brothel, and the opposite party let them out to your client for continuing the brothel.]

Besides, the landlady has instituted a suit in ejectment and for arrears of rent against my client on the Original side of this Court thereby admitting the validity of the tenancy.]

[PEARSON J. We are not concerned with that case now.]

Further, if the landlady knew that the letting was for immoral purposes she was precluded from getting out of the contract by setting up its invalidity: see *Bani Muncharam v. Regina Stanger* (1).

[*Babu Mrityunjay Chatterji*. That case has no application to proceedings under the Rent Act.]

Either the landlady did not know that the letting was for immoral purposes or she knew it. If she did

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not, subsequent subletting for such purposes would not make the contract of tenancy void: *Kali Dasi v. Kanai Lal De* (1).

[*Babu Mrityunjoy Chatterji. Kali Dasi's case* (1) lays down that the landlady is not estopped from raising the question as to the invalidity of the tenancy.]

I submit that there is no direct evidence to show that the contract was for immoral purposes; neither the landlady nor any of her people come forward and depose to that effect. The Rent Controller was clearly wrong in holding that the premises had been let out for the purposes of a brothel, which is not borne out by the record, and was wrong in thus refusing to exercise a jurisdiction vested in him by law.

Babu Mrityunjoy Chatterji and *Babu Pasupati Bose*, for the opposite party, were not called upon to reply.

PEARSON J. This is a Rule calling upon the opposite party to show cause why the order of the Rent Controller should not be set aside. The Rent Controller held that the contract of tenancy was void as the house was let out for immoral purpose and the Rent Act did not apply.

It has been argued by the learned vakil appearing for the petitioner that the mere fact that the tenanted house is occupied by prostitutes as sublessees does not necessarily affect the validity of the contract between the landlord and the tenant. With that I agree. There is a finding, however, on the part of the Rent Controller from which it appears that he is quite satisfied that it has been established that the premises have long been used as a brothel and are so still, that there are other brothels in the neighbourhood and the

premises were let out to the applicant for the purpose of continuing the brothel there, the applicant's mother being, according to the finding, herself an elderly prostitute or *bariwalli*. It is argued that there is no foundation to be discovered in the evidence upon which such a finding could be arrived at. But this, I am satisfied, is not so. On the contrary I think there is evidence on the record from which the Rent Controller could have come to the conclusion that he has.

Then it is also said that suits have been filed in the High Court and also in the Small Cause Court for rent and ejectment upon the footing of a valid tenancy existing between the parties. That to my mind has nothing to do with the present application.

It is also argued that if the agreement is void as being contrary to public morals, that is a fact which cannot be relied upon by the opposite party as an advantage to himself as was decided in the case of *Bani Muncharam v. Regina Stanger* (1). That however, was a suit for ejectment and it seems to be quite a different matter, whereas in the present case the question is whether or not the Rent Controller ought to intervene on an application of a party for fixing standard rent.

In my opinion the Rule should be discharged with costs.

GRAHAM J. I agree.

G. S.

Rule discharged.

(1) (1907) I. L. R 32 Bom. 581.

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