In view of the observations in *Khiarajmal* v. *Daim*[1] and *Raghunath Das* v. *Sundar Das Khetri*[2] with reference to *Malkarjun's case*[3] I feel no hesitation in holding in this case that the Court sale gave no valid title to the auction-purchaser and that the sale was null and void.

As regards the general aspect of the case, I agree that the facts proved in the case really indicate an attempt on the part of the decree-holder to get the property of the deceased judgment-debtor sold at an undervalue to a near relation of his in the absence of and without notice to the true legal representative by mentioning as the legal representative of the deceased judgment-debtor a person who is not shown now and who was not shown in the execution proceedings to have been the legal representative of the deceased judgment-debtor in any sense. Taramati is not shown to have intermeddled with the estate and, as I have said, she was mentioned as the heir of the deceased, in which capacity in view of the will she could not represent the deceased Narayan.

Appeal allowed.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

GURUSHANTAPPA BIN GURAPPA KHOBBANNAWAR AND OTHERS (ORIGINAL DEFENDANTS 1 TO 4), APPELLANTS *v.* MALLAVA KOM SANGAPPA CHAVADI (ORIGINAL PLAINTIFF), RESPONDENT*.

January 18.

Landlord and tenant—Covenant against sub-letting—Tenant sub-letting at higher rent—Breach of covenant—Claim for damages—Damage must be proved.

* Second Appeal No. 555 of 1920.

(1) (1904) 32 Cal. 296 ; L. R. 32 I. A. 23. (2) (1914) L. R. 41 I. A. 251.

(3) (1900) 25 Bom. 337 ; L. R. 27 I. A. 216.

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The defendants, tenants of the plaintiff, sub-let the premises, at a much higher rent, in contravention of the terms of their lease. The plaintiff, thereupon, brought a suit claiming arrears of rent and also damages for breach of the terms of the lease.

Held, that the mere fact that sub-letting resulted in a profit to the tenant would not cause damage to the landlord; and the plaintiff, not having proved that he had suffered any damage by reason of the breach of the covenant, was entitled only to nominal damages.

SECOND appeal against the decision of E. H. Waterfield, District Judge, Dharwar, amending the decree passed by V. G. Sane, Subordinate Judge at Hubli.

Suit to recover rent and damages.

On the 17th September 1860, the plaintiff's mother granted a perpetual lease of her shop to the defendant Gurushantappa's ancestor on a yearly rent of Rs. 20, on condition that the tenant was not to allow any one else to occupy the shop without the consent of the landlady.

In spite of the covenant against sub-letting, the defendant sub-let the shop on a yearly rental of Rs. 100.

The plaintiff, therefore, filed the present suit against the defendant to recover rent for three years preceding the suit at the rate of Rs. 100 a year.

The Subordinate Judge held that though, by breaking the condition in the lease and by sub-letting the shop to another, the defendant had derived profit, that sum could not be regarded as a loss to the plaintiff as the plaintiff was never by reason of the lease in a position to get more than Rs. 20 as yearly rent. He, therefore, awarded the plaintiff nominal damages of one pie, but omitted to consider the plaintiff's claim for rent.

On appeal, the District Judge amended the decree by awarding Rs. 60 for three years rent and Rs. 40 per year as damages for three years on the ground that

there was a clear breach of the covenant and as the tenant was making a profit of Rs. 80 a year, it was clear that the landlady was in equity entitled to damages.

The defendant appealed to the High Court.

Nilkanth Atmaram, for the appellants :—The view that the lower appellate Court has taken is erroneous.

No doubt the original lessee or his heirs have no right to give the property to another person under an agreement to pay rent ; and by letting it to another person my clients have broken one of the terms of the lease and for that the plaintiff is entitled to damages. But the plaintiff must prove what damages she has suffered, and that those damages are the necessary and just consequences of the breach of the covenant. Otherwise she is only entitled to nominal damages for the breach, as have been awarded to her by the trial Court.

See *Lepla* v. *Rogers*[1] ; Woodfall on Landlord and Tenant, p. 784 ; Mayne on Damages, p. 245.

G. S. Mulgaonkar, for the respondent :—The defendants have clearly broken one of the terms of the lease. They had no authority to let the premises on an agreement to pay rent. By breaking the covenant the defendants have made a clear profit of Rs. 80 a year, and the award of half of this amount to the plaintiff is a proper measure of damages.

MACLEOD, C. J. :—The plaintiff sued for rent under a rent-note, dated the 7th of September 1860, and for damages for breach of one of the terms of the rent-note, whereby the tenant was prohibited from letting the property to others under an agreement to pay rent. The defendants Nos. 1 to 4 are the representatives of the tenant and admittedly they have sub-let the premises. The trial Court considered that the plaintiff had not

[1] [1893] 1 Q. B. 31.

1921.

GURU-BHANTAPPA v. MALLAVA.

proved that he was entitled to anything more than nominal damages and awarded one pie, but omitted to consider the plaintiff's claim for rent. In appeal Rs. 60 for three years' rent were allowed and an additional sum of Rs. 40 per year was allowed as damages for three years, on the ground that there was a clear breach of the covenant, and that as the tenant was making a profit of Rs. 80 a year, it was clear that the landlord was in equity entitled to damages. That, I am afraid, is not the correct principle on which a claim for damages can be assessed. There is only one principle, viz., that the plaintiff must prove that he has suffered such damages as are necessary and just consequences of the breach of the covenant. In a lease where there is a covenant not to assign and the tenant assigns without leave, then clearly the landlord suffers damage, because he is deprived of the liability of the original lessee under the terms of the lease. Again, if there is a covenant not to sub-let and the tenant sub-lets without leave to a careless person whereby the premises are damaged, then clearly the landlord would be entitled to recover damages against the tenant for sub-letting without leave. But the mere fact that the sub-letting results in a profit to the tenant would not cause damage to the landlord. Therefore the plaintiff in this case has not proved that he has suffered any damage owing to the tenant recovering a higher rent from the sub-tenant. The trial Judge was perfectly right in awarding one pie as nominal damages.

The decree, therefore, must be amended. There will be decree for the plaintiff for Rs. 60 as rent and one pie as damages.

Costs throughout in proportion.

SHAH, J. :—I agree.

Decree amended.

J. G. R.