

ORIGINAL CIVIL.

*Before Mr. Justice Pratt.*MADHAVJI VIRJI, PLAINTIFF v. LAKSHMIDAS MULJI & Co., DEFENDANT^s.

1923.

August 9.

Bombay Rent (War Restrictions) Act (Bom. Act II of 1918, as amended by Bom. Act III of 1923), section 9 (3)†—Statutory tenancy—Sub-letting.

The first part of section 9 (3) of the Bombay Rent (War Restrictions) Act, 1918, refers to the act of a tenant whose lease has terminated, and therefore the sub-letting must have occurred after the expiry of the lease. In the second part of the sub-section the term of the lease must be fixed before the sub-letting.

The object of sub-section (3) is to prevent a statutory tenancy being used as a source of profit by a tenant who does not require the premises for his own occupation. The first part refers to a tenant who holds over under section 9 (1), and the second part to a tenant who sub-lets beyond his term expectation of a statutory tenancy.

SUIT in ejectment.

The plaintiff owned house in Kazi Syed Street in Bombay. He let two godowns on the ground floor to Lakshmidas Mulji & Co. (defendant No. 1) on a monthly tenancy at Rs. 73-2-2. On February 16, 1923, defendant No. 1 sub-let one godown to defendant No. 2

^cO. C. J. Suit No. 2404 of 1923.

†The section runs as under :—

“ 9 (1) No order for the recovery of possession of any premises shall be made so long as the tenant pays or is ready and willing to pay rent to the full extent allowable by this Act and performs the conditions of the tenancy.

(3) The fact that a tenant the term of whose lease has expired has after the 21st day of August 1922, without the written permission of his landlord, sub-let the premises or that a tenant has, after the said date and without the said permission, sub-let the premises for a period extending beyond the term of his lease, shall, in the former case at once and in the latter case after the expiry of the said lease, be deemed to be a satisfactory cause within the meaning of sub-section (2) but otherwise the fact that the period of the lease has expired, or that the interest of the landlord in the premises has terminated, shall not of itself be deemed to be a satisfactory cause within the meaning of the said sub-section.

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at a monthly rent of Rs. 100 and the other godown to defendant No. 3 at a monthly rent of Rs. 165.

On May 3, 1923, the plaintiff gave notice to defendant No. 1 to quit the premises and deliver up peaceful possession on June 14, 1923.

On June 22, 1923, the plaintiff filed the present suit to eject defendant No. 1.

Munshi, for the plaintiff.

Khergamvala, for the defendant.

PRATT, J. :—The 1st defendant is a tenant of the plaintiff from month to month of two go-downs on the ground floor of a house in Kazi Sayed Street.

The plaintiff by notice on the 3rd May 1923 terminated the tenancy as from 14th June 1923.

The 1st defendant pleads the Rent Act.

The plaintiff says that there is satisfactory cause because defendant No. 1 on the 16th February 1923 sub-let the go-downs to the 2nd and 3rd defendants. In support of this contention Mr. Munshi relies on section 9 (3) added to the Act by the amending Act (Bombay III of 1923) and contends that as the lease has been determined by notice, the case falls under both clauses of that sub-section, under the first because the sub-letting is after 21st August 1922 and the term of the lease has expired by virtue of notice to quit; under the second, because the sub-letting is from month to month, and therefore extends beyond the period of the lease which has been determined by notice.

I feel clear, however, that the sub-section does not support the construction that Mr. Munshi puts upon it. In the first part of the sub-section the words "the term of whose lease has expired" are an adjectival clause qualifying the noun tenant. The first part of the

section, therefore, refers to the act of a tenant whose lease has terminated, and therefore the subletting must have occurred after the expiry of the lease. So also in the second part of the sub-section the term of the lease must be fixed before the subletting. Otherwise it cannot be said that a tenant has sublet for a period extending beyond the term of his lease. In the present case the term had not expired, nor had it been determined by notice to quit before the subletting, and therefore the sub-section has no application.

The object of the sub-section is, I think, to prevent a statutory tenancy being used as a source of profit by a tenant who does not require the premises for his own occupation. The first part refers to a tenant who holds over under section 9 (1), and the second part to a tenant who sublets beyond his term in expectation of a statutory tenancy. Neither part, therefore, applies to the present case.

[His Lordship then dealt with the second issue as to waiver and concluded.]

I dismiss this suit with costs.

Solicitors for the plaintiff: Messrs. *Madhavji & Co.*

Solicitors for the defendant: Messrs. *Surveyor & Co.*

Suit dismissed.

V. G. R.

ORIGINAL CIVIL.

Before Mr. Justice Fawcett and Mr. Justice Gogajee.

KARSONDAS KALIDAS GHIA, APPELLANT *v.* CHHOTALAL MOTICHAND, RESPONDENT².

Specific Relief Act (I of 1877), section 22—Specific performance—Discretion of Court—Abandonment of claim for specific performance—Claim for alternative reliefs—Return of the deposit and damages—When to be allowed—Civil Procedure Code (Act V of 1908), Order VII, Rule 7, Order XXIII, Rule 1—When time is not of the essence of the contract—Performance within reasonable time—Indian Contract Act (IX of 1872), section 46.

² O. C. J. Appeal No. 13 of 1923 : Suit No. 3152 of 1920.

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