

APPELLATE CIVIL.

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

PERURI SURAYANARAYAN, A FIRM, TRADING BY THEIR MUNIM, DASURY HANUMANTHARAO (ORIGINAL PLAINTIFF), PETITIONER *v.* W. L. NAR-SIMHA (ORIGINAL DEFENDANT No. 2), OPPONENT*.

1925.

March 19.

~~Presidency Small Cause Courts Act (XV of 1882), Chapter VII, section 41—~~
Ejectment proceedings against tenant and sub-tenant—Sub-tenant an “occupant”
 —*Bombay Rent (War Restrictions) Act (Bombay Act II of 1918), sections 2 and 9—“Tenant”—Sub-tenant only a “tenant” with reference to his immediate landlord—No right to oppose claim of owner for possession.*

The premises in suit were let by the plaintiffs to defendant No. 1 and that defendant in turn sub-let a portion of them to defendant No. 2. The plaintiffs instituted proceedings under Chapter VII of the Presidency Small Cause Courts Act to recover possession of the premises on the ground that they required them *bona fide* and reasonably for their own use as required by section 9 of the Rent Act. The defendant No. 1 did not contest the plaintiffs' claim and had vacated the premises in his occupancy; but defendant No. 2 contested plaintiffs' right to turn him out. It was contended for defendant No. 2 that if the landlord sought to eject him, the proceedings would not come under Chapter VII of the Presidency Small Cause Courts Act

Held, that defendant No. 2 would be an “occupant” according to the meaning of the word in section 41 of the Presidency Small Cause Courts Act, and the Small Cause Court had jurisdiction to give the landlord or the owner of the premises possession against such an occupant.

Held further, that, although such a person might be an occupant as against the owner or landlord, it did not follow that he was a tenant within the meaning of that term in section 2 of the Bombay Rent Act, and therefore he had no right to resist the plaintiffs' claim for possession, although he could have resisted the claim of his own immediate landlord (defendant No. 1) to eject him, within the limits allowed under the provisions of the Rent Act.

If a tenant sub-lets premises he becomes a landlord with regard to his own tenant. But his tenant does not come in contact with the original landlord unless there has been an assignment by which the rights and liabilities of the original tenant have been transferred to his sub-tenant so that privity of contract arises between the landlord and his sub-tenant. Consequently the sub-tenant is only a tenant under the Rent Act with regard to his own immediate landlord, and when the owner of the premises seeks to evict his own

* Civil Application No. 243 of 1924 under extraordinary jurisdiction.

1925.

SURYA-
NARAYAN
v.
NARSIMHA.

tenant, he cannot be opposed by the person who has been put in possession without his consent by his tenant.

APPLICATION under extraordinary jurisdiction praying for reversal of the order passed by the Full Court of Small Causes at Bombay.

Proceedings in ejectionment.

The plaintiffs who were doing business as Commission Agents had rented a flat consisting of seven rooms, in a building in Bombay. Two of these rooms they let out to defendant No. 1. Defendant No. 1 without the knowledge and consent of the plaintiffs sub-let one of the rooms to defendant No. 2.

The plaintiffs being in need of the whole flat for the purposes of their own business, gave notice to their tenant, defendant No. 1, to vacate. The said defendant accordingly delivered possession of the room in his occupation but defendant No. 2 refused to give up the room in his possession.

The plaintiffs instituted proceedings in ejectionment against both the defendants in the Court of Small Causes at Bombay, alleging that the premises were reasonably and *bona fide* required by them for the business in accordance with the provisions of section 9 of the Bombay Rent Act.

The Small Cause Court Judge dismissed the application holding that the premises were not reasonably and *bona fide* required by the plaintiffs for their own use.

The plaintiffs appealed to the Full Court. Full Court also confirmed the order.

The plaintiffs applied to the High Court under its revisional jurisdiction.

A. G. Sathaye, for the applicant.

T. N. Walavalkar, for the opponent.

MACLEOD, C. J.:—This is a suit filed by the plaintiffs under Chapter VII of the Presidency Small Cause Courts Act to recover possession of their premises on the ground that they required them *bona fide* and reasonably for their own use. The premises were let by the plaintiffs to the 1st defendant, and the 1st defendant in his turn sub-let a portion of them to the 2nd defendant. The 1st defendant did not contest the plaintiff's claim and had vacated the premises in his occupation. The 2nd defendant contested the plaintiffs' right to turn him out. The Judge appears to have dealt with the case as if there was privity of contract between the plaintiff and the 2nd defendant, and dismissed the suit. We must consider, therefore, what is the position of a landlord when he finds himself confronted by a person in occupation holding through his own tenant.

Apart from any other question, it is contended that if the landlord sought to eject such a person, the suit would not come under Chapter VII of the Presidency Small Cause Courts Act, so that the plaintiff would have to file his suit in the High Court. But we think that such a person would be an "occupant" according to the meaning of the word in section 41 of the Act, and it would certainly seem unreasonable that a tenant might defeat his landlord's right of having recourse to the Presidency Small Cause Courts Act, section 41, by giving possession to a third party. Clearly the third party becomes an occupant, and the Small Cause Court has jurisdiction to give the landlord or owner of the premises possession against such an occupant. But although such a person may be an occupant as against the owner or the landlord, it does not follow that he is a tenant within the definition of that term in section 2 of the Bombay Rent Act. Under section 2 (*d*) the expression "tenant" means any person by whom or on

1925.

SCRYA-
NARAYAN
v.
NARSIMHA.

1925.

SURYA -
NARAYAN
v.
NARSIMHA.

whose account rent is payable for any premises and includes every person from time to time deriving title under a tenant; while the expression "landlord" means under section 2 (c) any person for the time being entitled to receive rent in respect of any premises whether on his own account or on behalf or for the benefit of any other person or as trustee, guardian or receiver for any other person; it includes a tenant who sub-lets any premises and every person from time to time deriving title under a landlord. Therefore, if a tenant sub-lets premises, he becomes a landlord with regard to his own tenant. But his tenant does not come in contact with the original landlord unless there has been an assignment by which the rights and liabilities of the original tenant have been transferred to his sub-tenant, so that privity of contract arises between the landlord and the sub-tenant. Consequently the sub-tenant is only a tenant under the Rent Act with regard to his own immediate landlord, and when the owner of the premises seeks to evict his own tenant, he cannot be opposed by the person who has been put in possession without his consent by his tenant. We think, then, that the 2nd defendant had no right to resist the plaintiff's claim for possession of the premises. He could have resisted the claim of his own immediate landlord to eject him within the limits allowed him under the provisions of the Rent Act, but as soon as the tenancy between the plaintiff and the 1st defendant came to an end by the 1st defendant surrendering possession, then the plaintiff was entitled to possession from the 2nd defendant who had been put in possession by the 1st defendant. If that were not the legal position of the parties, the result would be that a tenant could always postpone his landlord's rights if established to recover possession, by sub-letting the premises to a third party, and the landlord's right to get possession

of the premises might be indefinitely postponed by a series of sub-lettings. We think the rule must be made absolute and the suit decreed against the 2nd defendant also with costs in the trial Court and in this Court.

1925.

SURYA-
NARAYAN
v.
NARSIMHA.

Rule made absolute.

J. G. R.

APPELLATE CIVIL.

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

JIVANCHAND GAMBHIRMAL REPRESENTING THE FIRM OF SURAJMAL GAMBHIRMAL (ORIGINAL PLAINTIFF), APPELLANT v. LAXMINARAYAN GANESHRAM, MANAGER OF THE FIRM OF GANESHRAM NARAYAN (ORIGINAL DEFENDANT), RESPONDENT².

1925.

March 20.

Indian Contract Act (IX of 1872), section 30—Agreement by way of wager—Cross-contract—Validity—The Act for Avoiding Wagers (Bom. Act III of 1865), section 1.

Where a forward contract for the purchase and sale of goods is void on the ground of wagering, under section 30 of the Indian Contract Act, a subsequent cross-contract, as a result of which the differences payable under the original wagering contract are settled, would be void under section 1 of Bom. Act III of 1865.

SECOND appeal against the decision of J. Scotson, Acting District Judge, Khandesh, confirming the decree passed by V. R. Chaubal, Joint Subordinate Judge, Dhulia.

Suit to recover money.

The defendant agreed to purchase from plaintiffs, five bales of Fancy Border Dhotees of Amalner Mills, weighing 1,250 lbs. at the rate of Rs. 2-12-9 per lb. for delivery on November 18, 1918. As the market rate of goods

² Second Appeal No. 649 of 1923.