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C.A.No. 594 OF 2000

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Item No.101 Part-heard Court No.9 Section IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 594 OF 2000.@@
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Commodore B.Y. Wad ...Appellant(s)

Vs.

M/s Rallis India Ltd.&Anr. ...Respondent(s)

[With office report]
WITH CA 595/2000

Date:24/10/2002 This matter(s) was called on for hearing today.

CORAM:
HON'BLE MR.JUSTICE S.N. VARIAVA
HON'BLE MR.JUSTICE ARUN KUMAR

For the appellant(s) : M/s Jay Savla,(Ms) Reena Bagga,
& RR in CA 595/2000 Parag,Advs.

For the respondent(s) : Mr.K. Ramamoorthi,Sr.Adv.
No.2 & for M/s Rohit Tondon,Sharan Sheti,
appellant in CA 595/00 Hari Shankar K.,Advs.

UPON hearing counsel the Court made the following
O R D E R

.SP2
.....L.....I....T.....T.....T.....T.....T.....T.....T.....J.
Mr.Jay Savla, learned counsel for the appellant
resumed his arguments in the morning and concluded at 11.00
A.M. followed by a short reply by Mr.K.Ramamoorthi,
learned senior counsel.
Civil Appeal No.594/2000 is allowed and Civil Appeal
No.595/2000 is dismissed in terms of the signed order.
There will be no order as to costs.

.SP1

[Naresh Kumar] [VP Tyagi]
Court Master Court Master

[Signed order is placed on the file.]

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.UP 10 2; Draft, smtst; -n -PA4 -dFX-NORMAL -y -e; dumbp
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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 594 OF 2000@@

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Commodore B.Y. Wad ...Appellant

Vs.

M/s Rallis India Ltd.& Anr. ...Respondents

WITH
CA No.595/2000

O R D E R

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.SP2

These two appeals are being disposed of by this common order. Both the appeals are against the judgment dated 10.3.1999. In this judgment parties will be referred to in their capacity in Civil Apeal 594/2000. Briefly stated the facts are as folows:-

The appellant is the landlord of a flat in "Oyster Apartments" Pilot Bunder Road, Coloba, Mumbai 400005. The appellant was a naval officer and as such was being posted to various places in India. Therefore, the appellant, by an agreement dated 21.2.1969 gave the said flat on leave and licence to the 1st respondent-Company. Clause 5(c) and (f) are relevant for our purpose. They read as follows:

.SP1

"5.(c) To use and occupy the said premises as residence only for their officers and employees and for no other purpose. The Licensees have however informed the Licensor that the said premises shall in the first instance be occupied by Dr.Surinder P.S.Pruthi one of the Licensees Officers.

.....
(f) Not to allow any person other than their officers or employees to use and occupy the said premises or any part thereof."

.SP2

The said Dr. Surinder PS Pruthi is the 2nd respondent in Civil Appeal No. 594/2000.

The appellant retired from naval services some time in 1970. Thereafter a fresh leave and licence agreement dated 3.1.1972 was entered into. The said agreement also contain similar clauses.

The Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the Act') was amended on 1.2.1973. Section 15A was inserted in the Act. By virtue of Section 15A all persons in occupation as licensees on 1.2.1973 became deemed tenants. By virtue of this provision the 1st respondent-Company became a deemed tenant of the appellant. In December, 1974 the 2nd respondent retired. He, therefore seized to be in service of the 1st respondent-Company. 2nd respondent sought to tender rent to the appellant. Appellant refused to accept

rent from the 2nd respondent.

On 11.4.1975 the 2nd respondent filed Suit No.214/75 seeking a declaration that he is a tenant of the appellant in the said flat. The appellant by a notice dated 19.11.1975, addressed to the 1st respondent-Company claimed arrears of rent as well as possession of the flat. The 1st respondent-Company, by its reply dated 24.12.1975 contended

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that they had already informed the appellant that 2nd respondent had ceased to be an employee of the Company by the end of 1974 and that thereafter they had no further interest in the said flat or in retaining possession of the said flat. The 1st respondent-Company claimed that they were not liable to pay any rent w.e.f. 1.1.1975.

The appellant, therefore, filed Suit No.134/76 for eviction. The said suit was under Section 12(2) of the Act, i.e. on the ground of non payment of the rent by the 1st respondent as well as under Section 13A1 of the Act, i.e. seeking recovery on the ground that the appellant was a member of the armed forces who had retired. The 1st respondent-Company filed written statements in both the suits. In the suit filed by the appellant the 1st respondent averred as follows:-

.SP1

"...The defendant no.1 states that they had paid the rent in respect of the suit premises upto 31st December, 1974. The 1st defendant state that the 2nd defendant ceased to be in the employ of the 1st defendant from 1.1.1975. In or about July 1974, the 1st defendant had informed the plaintiff that the defendant no.2 would cease to be in their employ at the end of the year 1974 and requested the plaintiff to enter into a direct agreement with this defendant in respect of the suit premises and negotiations were going on between the plaintiff and defendant no.2 in respect of the said flat. The 1st defendant states that they had made clear to the plaintiff that they would not be liable for the rent of the suit flat from 1st January 1975 and requested the plaintiff to collect the same from the 2nd

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defendant. The 1st defendant understand that the 2nd defendant had paid rent from 1st January 1975 to 30th April, 1975 to the plaintiff."

"...The plaintiff by his letter dated 27th March, 1975 wanted the 1st defendant to record that the agreement dated 3rd January 1972 dated terminated and that the 1st defendant have no claim on the suit premises and that the 2nd defendant had left their service and therefore they were unable to hand over the flat to him. The 1st defendants state that they had made it clear to the plaintiff that they were not interested in the flat or in retaining possession thereof nor were they liable to pay compensation from 1st January 1976..."

.SP2

Similar averments were made by the 1st respondent in the written statement filed by them in the 2nd respondent's suit. Thus the 1st respondent was admitting that they were no longer interested in the flat or in retaining possession of the flat.

Both the suits were tried together. The trial court held that the 2nd respondent had failed to prove any relationship of landlord and tenant between him and the appellant. In view of this finding and in view of the admission, in the written statement, by the 1st respondent-Company a decree for eviction should have been passed. Instead by a common judgment the trial court proceeded to dismiss both the suits.

The appellant and 2nd respondent filed appeals against this judgment. In this appeal the appellant sought to

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amend the plaint by taking a plea that a decree should be passed in their favour in view of the admission made by the 1st respondent in the written statement. That amendment application was rejected by order dated 19.4.1995. Thereafter, by two separate judgments dated 22.12.1995 both the appeals were dismissed. As against this dismissal both parties filed writ petitions before the High Court. The writ petition filed by the appellant challenged not only the order dated 22.12.1995 but also the order dated 19.4.1995. The High Court has, by the impugned judgment, dismissed both the writ petitions. While dismissing the writ petitions the High Court confirmed the finding of the lower courts that the 2nd respondent had failed to make out a case that he was a tenant of the appellant. The High Court still dismissed the writ petition of the appellant on the ground that the 2nd respondent was a trespasser and therefore the remedy of the appellant was to file a suit in a Civil Court. The High Court held that the Small Causes Court would not have the jurisdiction to entertain such a suit.

In our view, the law is well settled by authorities of this Court. In the case of Srinivas Ram Kumar v. Mahabir@@
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Prasad and Ors. reported in 1951 SCR 277 it has been held@@
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that even though the plaintiff may not have claimed relief on a particular ground or may have claimed relief on a

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different ground, if in the written statement a case is set up by the defendant then on the basis of such written statement a decree can be granted to the plaintiff. This principle has been affirmed by this Court in the case of JJ@@
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Lal Pvt.Ltd.& Ors. v. MR Murali & Anr. reported in@@
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(2002) 3 SCC 98 wherein it has been categorically laid down at page 111 as follows:

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"...To sum up, the gist of holding in Firm Srinivas Ram Kumar case [AIR 1951 SC 177] is: If the facts stated and pleading raised in the written statement, though by way of defence to the case of the plaintiff, are such which could have entitled the plaintiff to a relief in the alternative, the plaintiff may rely on such pleading of the defendant and claim an alternate decree based thereon subject to four

conditions being satisfied viz. (i) the statement of case by the defendant in his written statement amounts to an express admission of the facts entitling the plaintiff to an alternative relief, (ii) in granting such relief the defendant is not taken by surprise, (iii) no injustice can possibly result to the defendant, and (iv) though the plaintiff would have been entitled to the same relief in a separate suit the interests of justice demand the plaintiff not being driven to the need of filing another suit.."

.SP2

In the case of South Asia Industries Pvt. Ltd. v. S.Sarup Singh & Ors. reported in 1965(3) SCR 829, it has been held that in a suit for ejection of a tenant, a decree for ejection can be passed even against other persons who are in possession. In the case of M/s Importers & Manufacturers Ltd. v. Pheroze Framroze

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Taraporewala & Ors. reported in AIR 1953 SC 73, it has been held that a sub-tenant may not be a necessary party but that he is a proper party in a suit for ejection of a tenant. It has been held that merely because a sub-tenant has been joined the nature of the suit does not get altered. It must be mentioned that the Act prohibits sub-letting without consent of the landlord. Thus a sub-tenant would be in the same position as a trespasser. This position is reiterated in Thakker Keshavalal Mohanlal v. Parekh Amrutlal Harilal & Ors. reported in AIR 1973 SC 1099 wherein it is held that there is no substance in the contention that the rent court had no jurisdiction to entertain a suit merely because a person who was not the tenant has been made a party to the suit.

Thus the law is clear. On the basis of the admission, by the 1st respondent-Company that they were no longer interested in the said flat and were not interested in retaining possession of the said flat a decree could and should have been passed. To be remembered that all courts have held that the 2nd respondent was not a tenant of the appellant. It was held that 2nd respondent was merely a trespasser the appellant was entitled to a decree for eviction even against the 2nd respondent. Merely because the 2nd respondent was a party to the eviction suit did not alter the nature of the suit. The suit remained an

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eviction suit between a landlord, viz. the appellant and a tenant, viz. the 1st respondent. In the suit the 2nd respondent was a proper party. The courts below were therefore wrong in dismissing the appellant's suit. The High Court was wrong in not entertaining the writ petition of the appellant.

We see no substance in Civil Appeal No.595 of 2000. We agree with the concurrent finding of fact that the 2nd respondent has failed to prove that he was the tenant of the appellant.

In this view of the matter we set aside the impugned judgment to the extent that it dismisses appellant's writ petition. We allow the appellant's writ petition and decree Suit No.134/76. We clarify that the decree of ejection is against both the respondents.

Mr.Ramamoorthi, learned senior counsel for the second respondent applies for some time to vacate the premises. We give time till 30th April, 2003 to vacate the said premises on the 2nd respondent's filing the usual undertaking in this Court within four weeks from today.

Parties agree that the compensation amount deposited by the 2nd respondent in the Small Causes Court at Bombay

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be withdrawn by the appellant with the accrued interest thereon, if any. The 2nd respondent shall also continue to pay the monthly compensation at the agreed rate to the appellant till he delivers vacant possession.

In view of above Civil Appeal No.594 of 2000 will stand allowed and Civil Appeal No.595 of 2000 will stand dismissed. There will be no order as to costs.

.SP1

.....J.
[S.N. VARIAVA]

.....J.
[ARUN KUMAR]

New Delhi,
October 24, 2002.@@
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