

competency whilst in possession, in such a case totally different considerations would arise. But here there is nothing of the kind to modify the true application of the Hindu law.

Their Lordships are of opinion that this appeal should be allowed, the decree of the High Court of Bombay should be reversed, and the suit of the plaintiff dismissed with costs in all the Courts, including the costs of this appeal.

And their Lordships will humbly advise His Majesty accordingly.

Solicitors for the appellants: Messrs. *Ranken Ford & Chester*.

Solicitors for the respondent: Messrs. *Hickson, Moir & Trakes*.

*Appeal allowed.*

J. V. W.

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ORIGINAL CIVIL.

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*Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Hayward.*

MORARJI GOKULDAS & COMPANY (APPELLANTS AND PLAINTIFFS)  
v. THE ASIAN COMMERCIAL ASSURANCE COMPANY, LIMITED  
(RESPONDENTS AND DEFENDANTS).<sup>o</sup>

*The Bombay Rent Act (Bom. Act II of 1918), sections 2 (c), 9—Suit in ejectment—'Landlord,' definition of, in the Rent Act—Landlord includes his lessee if entitled to recover rent—Rent Act not retrospective where tenancy determined before the Act came into force.*

On the 6th of February 1918, the plaintiffs took a lease of a four-storied house from its owner. By the lease the plaintiffs became entitled to the premises for twenty years, at a rent of Rs. 6,500 per annum for the first ten years and Rs. 7,000 for the second ten years with an option of renewal for another seven years at the same rent, the plaintiffs acquiring the benefit of all subsisting tenancies. The plaintiffs' object in taking the lease was to utilise the fourth floor

<sup>o</sup>O. C. J. Suit No. 1500 of 1918; Appeal No. 14 of 1918.

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as an office for their firm. At the date of the lease the said floor was held by the defendants on a monthly tenancy. On the 18th of February, the owner of the house at the instance of the plaintiffs gave the defendants notice to quit on the 31st of March as the plaintiffs' tenure was to commence on the 1st of April. The defendants failing to quit on the due date, the plaintiffs filed the suit for possession of the fourth floor on the 10th of April 1918, the day on which the Bombay Rent Act (II of 1918) came into force. The plaintiffs submitted that they were entitled to the relief claimed inasmuch as the premises were *bona fide* required by them for their own occupation and that the defendants were trespassers sometime before the Bombay Rent Act came into force. The defendants contended that under the general scheme of the Rent Act and the policy of the Legislature they could not be ejected. The Court of first instance dismissed the plaintiffs' suit as being repugnant not only to the policy of the Rent Act but to the express intention of section 9 of that Act. The plaintiffs appealed:—

*Held*, reversing the decree of the lower Court,

(1) that the plaintiffs fell within the terms of the definition of 'landlord' in the Rent Act, section 2 (c), for they were the persons entitled to recover rent for the premises;

(2) that the plaintiffs, having established that they did *bona fide* require the fourth floor for their own occupation within the meaning of section 9 of the Rent Act, were entitled to the possession of the same;

(3) that the original landlord having parted with his rights for twenty years and the defendants' tenancy having determined before the Act came into force, it was impossible to hold that the Act had any retrospective force in limiting the operation of prior transfers.

#### SUIT in ejectment.

The plaintiffs, Morarji Gokuldas & Company, were a leading commercial firm in Bombay, doing business in cotton and yarn, and as agents of several spinning and weaving mills and insurance companies. They had besides large miscellaneous business. Their office was located in Tamarind lane. In the beginning of 1918, they found the premises occupied by them small and inconvenient to carry on their considerably expanded business. Accordingly they started negotiations with Sir Mahomed Yusuf Haji Ismail, the owner of "Ismail Building" situate at the junction of Church Gate Street

and Hornby Road with a view to enter on a long lease of the said building. As a result of the negotiations, the plaintiffs, on the 6th of February 1918, took a lease of the said building from Sir Mahomed Yusaf. By the Indenture of lease the plaintiffs became entitled to the premises for twenty years at a rent of Rs. 6,500 per annum for the first ten years and Rs. 7,000 for the second ten years with an option of renewal for another seven years at the same rent, the plaintiffs acquiring *inter alia* the benefit of all subsisting tenancies.

The plaintiffs' object in leasing the said building was to utilise the fourth floor thereof as an office for their firm. At the date of the lease the said floor was held by the defendants on a monthly tenancy and the plaintiffs called upon Sir Mahomed Yusaf to give notice to quit on the 31st March to the defendants as their own tenure under the lease was to commence on the 1st of April. Accordingly Sir Mahomed Yusaf gave notice to quit to the defendants on the 18th of February. The defendants did not vacate the fourth floor of the building in their occupation and although requested by the plaintiffs both orally and in writing, they declined to do so. On the 10th of April 1918, the day on which the Bombay Rent Act (II of 1918) came into force the plaintiffs filed the present suit for possession of the fourth floor submitting that the defendants were trespassers since the first of April, and that in any event they were entitled to recover possession as the premises were *bona fide* required by them for their own occupation. The plaintiffs further sought to recover compensation for use and occupation of the premises from the 1st of April 1918 until the same were vacated at the rate of Rs. 250 per month or such other rate as the Court might deem proper.

The defendants denied in their written statement that the fourth floor was required by the plaintiffs for

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their own occupation inasmuch as their premises at Tamarind Lane had served their purpose for 30 years. The defendants further alleged that Sir Mahomed Yusaf had granted to them a lease of the portion occupied by them for a period of three years (with an option to continue for a further period of two years) expiring on 31st January 1917, that in November 1916, i.e., four months before the expiry of the said period it was agreed that Sir Mahomed Yusaf should grant to them a lease for five years commencing from 1st March 1917 at a monthly rent of Rs. 200, that in pursuance of the said agreement they paid Rs. 300 as brokerage to one Ali Mahomed for negotiating the transaction, and that in the beginning of 1917 the manager of Sir Mahomed Yusaf represented to them that it was not necessary to execute a fresh lease but that they should continue to occupy the premises on payment of Rs. 175 per month as long as they pleased. The defendants contended that the said representation of the manager which was acted upon by them for some months amounted to a promise that they would not be evicted, and that relying upon the promise they were fraudulently prevented from insisting upon the execution of the lease agreed upon. The main contention of the defendant in law was that by reason of the provisions of the Bombay Rent Act and under the general scheme of it and the policy of the Legislature in enacting it, neither Sir Mahomed Yusaf nor the plaintiffs deriving title from him were entitled to claim possession of the premises occupied by them.

The suit was heard by Beaman J. who dismissed it with costs. The following is the material portion of his Lordship's judgment :—

BEAMAN, J. :—I now come to what is by far the most important part of the case since it affects the working of the Rent Act, and if the principle contended for by

the plaintiffs is valid, it might at the same time be so extended as to render the Rent Act entirely nugatory. I should not have the slightest doubt as to what the decision should have been in this case had the plaintiffs' lease been made after the Rent Act had come into force. In point of fact it was negotiated and the agreement completed, as I have said, in December 1917, some four months before the Bombay Act II of 1918 became law. I have been at some pains to ascertain how much may fairly have been presumed to have been known by the public of the contemplated policy of Government at or about the end of 1917; and here I have been assisted by the diligence of the plaintiffs' counsel who assures me (and this has not been contradicted) that although the tenants' agitation had certainly commenced by the end of 1917 and was being vigorously carried on in the columns of one of the leading newspapers in Bombay at any rate in December 1917 and January 1918, no mention whatever is to be found of any Government move in this direction till the Ordinance of the 2nd of February 1918 was passed. Upon that there is a leading article in the *Times of India* of the 5th of February but the actual Bill does not seem to have come within the province of public discussion until after the 20th of February 1918. The lease, upon which the plaintiffs rely, was actually executed on the 6th of February 1918, and, on the 18th of February 1918, Sir Mahomed Yusuf as original landlord gave the defendant notice to quit. I am quite prepared on these facts to absolve the eminently respectable plaintiffs' firm of any deliberate design in taking this lease of evading the contemplated legislation. It is equally clear to me, however, that if I give effect to the principle upon which this claim rests, I shall open the door to innumerable evasions of the Act by private agreements between landlords and would-be tenants offering much

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higher rents than those at present in occupation. So upon a mere ground of policy I should view this claim with great disfavour. That, however, would not be sufficient in itself if it is in all respects legally good. The question, then, arises: Is it? It is contended on behalf of the defendant that section 9 of Bombay Act II of 1918 must be read subject to the definitions contained in section 2 and the generally governing words with which that section opens. For instance, we have here to determine who is 'landlord' within the contemplation and for all the purposes of this restrictive piece of legislation. Now the definition of 'landlord' in section 2 is fairly wide, although I think the plaintiffs could not possibly be brought in except under the concluding words of clause (1) (c) as deriving title under the original landlord. Now the point of importance arises in this way. Let us suppose that a landlord has let his premises to a monthly tenant at a given rent and knows perfectly well that he cannot prove as he would have to do under section 9, if he wished to evict that tenant, that he desires the premises for his own private use and occupation. In such a situation, assuming that the existing rent was Rs. 100 a month, the landlord would be obliged to retain the tenant for the duration of the Rent Act at a rent never exceeding Rs. 110 a month and similarly in the case of all longer leases expiring while the Rent Act was still in force at an increased rent of Rs. 20 per cent. Now, suppose another tenant, who really desires to occupy these premises, offers the landlord Rs. 200 a month rent. Upon the principle contended for by the plaintiffs all that need be done is for the landlord to sub-lease the entire premises to the tenant who is offering a higher rent and then allow that tenant to evict the former tenant on the ground that he *bona fide* desires to occupy the premises himself. It is objected that no landlord would be foolish enough to

do this because the incoming tenant might, under the provisions of the Rent Act, refuse to pay more than the recoverable rent and that is of course quite true ; but it is also true that private agreements of this sort might be made, and probably are being made, by landlords with tenants offering to take the premises at a higher rent so as to take the advantage of the provisions of section 9 of the Rent Act. I think that in those circumstances it is clear that a wide door would be open to the general evasion of the policy of the Act and tenants really now in occupation would be exposed to broadest eviction by this round-about method.

Here, for instance, the plaintiffs' firm no doubt declare that they *bona fide* and reasonably wish to occupy the fourth floor of this building. I cannot say that they in my judgment have made out a very strong case even on this ground. They have done very well so far in their present premises in Tamarind Lane. I do not wish to cast the slightest discredit on the gentlemen who have come forward to justify their claim, but I think it is clear from Sir Dinshaw Wachha's evidence that he himself did not think the case a very strong one. But assuming that they really did desire to occupy this fourth floor and that they are under pressing need to obtain larger premises somewhere it is obvious that, stripped of all other extraneous circumstances, this is a case of competition between tenants. The four tenants already in occupation naturally desire to remain. The plaintiff-firm wants to get in as tenants. The landlord knows perfectly well that he cannot evict any of these four tenants because of the provisions of the Rent Act. But by the device of sub-letting the entire building for a long term of years to the plaintiff-firm he puts them in a position to evict the tenants on the ground which is not available to himself. It is true that the plaintiffs have taken what may seem a great risk. They have

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agreed to pay Rs. 2,000 a month more rent for the first ten years and Rs. 2,500 a month more rent for the next ten years than the building is at present yielding; and it is clear that except for the advantages that may accrue to them from being able to occupy the fourth floor themselves, they stand to lose so long as the Rent Act remains in force. I think I began by saying that the building yielded Rs. 4,500 in all to its owner, Sir Mahomed Yusuf. If every one of the tenants were compelled to pay the highest recoverable rent, that is to say, 20 per cent. more, the plaintiff-firm would still be losing considerably on the bargain so long as the Rent Act remained in force. On the other hand, seeing how rapidly rents are rising in Bombay and calculating upon general probabilities, they may very fairly reckon upon recouping themselves many times over before the expiration of their lease for the temporary loss they will sustain during the currency of the Rent Act.

Now, the question really is, again, whether a sub-lessee is to have powers and reliefs under the Rent Act which the lessor himself certainly would not have and could not ask for. It is to be noted in this connection that the defendant has never recognized the plaintiffs as his landlords and has never attorned to them. For the plaintiffs, it is contended that looking to the terms of their lease and the assignment of the reversion, it is quite clear that under the general law they would be entitled to evict monthly tenants and would in all respects be landlords. That is very likely so. But in dealing with a special piece of legislation like the Rent Act, I have to pay very careful attention to its language, and the section while defining 'landlord' has cautionary words which prevent that definition being so extended as to defeat the intended policy of the Act. I think that there could be no more glaring instance than this of the danger provided against by the

Legislature. It is quite true that speaking generally a sub-lessee like the plaintiffs would be a landlord to all intents and purposes on the expiration of all leases current at the time the sub-lease was made. Thus they will necessarily be assignees of the reversion. But it would also be entirely repugnant, as I understand, not only to the policy of the Act but to the express intention of section 9 of that Act. For, by a sub-lease of this kind every tenant would be exposed to the eviction against which the Act is intended to protect him, by the landlord assigning all his reversion to a person who wanted to occupy the premises himself which really the landlord never did and never could have pretended that he did. It is on that ground that I think that this claim ought to be rejected.

I am not imputing any dishonest intentions whatever to the plaintiffs. That, I think, on the facts known, would be altogether unwarrantable. They are men of high position and good repute, and I certainly have no desire to throw the slightest suspicion upon the honesty of their motives in taking the lease of the 6th of February 1918. On the other hand, I cannot ignore the fact that the rent question was being hotly agitated about that time and that every one knew that some legislation was impending and that that legislation would restrict the powers of landlords. Of course this might be used as an argument in favour of the *bona fides* of the plaintiffs. Considering, however, the close proximity of the date on which the lease was made to the date on which the Bill was actually passed, it is possible to say no more than that its general scope might have been guessed by well-informed members of the public.

I would revert for one moment to a very curious point raised by the defendant touching the oral agreement at the end of 1916. It has been argued here that the

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whole of that story must be untrue because the agreement itself is so manifestly disadvantageous to Sir Mahomed Yusuf and the defendant could never have believed that Sir Mahomed Yusuf could have been a party to it even if Sangvi really made such an oral proposal. I will only observe upon that that considering that Sir Mahomed Yusuf must have known that he was bound to give a five year's lease at that time if the defendant insisted upon it, he might very well have thought, considering how rents rapidly rose in Bombay, that it would be better to persuade the defendant to stay on as a monthly tenant at a somewhat lower rent on the very general assurance that he would not be disturbed, and as far as I see he would never have been disturbed but for the desire of the plaintiffs to occupy the fourth floor of this building. There is nothing to indicate that Sir Mahomed Yusuf, if he ever made any such offer personally to the defendant, intended to resile from it. But it is quite natural upon what has been said here to suppose that being a young and very wealthy man, he might have preferred in respect of this building to be free from the worry of collecting rents, &c., and so accepted the proposal of the plaintiff-firm to take the whole building off his hands at a very large profit on a long lease. In acceding to that proposal I can well believe that Sir Mahomed Yusuf paid no particular attention to the case of individual tenants or had in mind any offer he had made, if he had made it, through his estate agent Sangvi a year or so earlier to the defendant. But that some such offer was actually made I have no doubt whether with or without the authority and knowledge of Sir Mahomed Yusuf.

Thus, I wind up the whole matter by holding that for the purposes of the Rent Act, sub-lessees, situated as the plaintiffs are, cannot use section 9 of the Act to their own advantage where the tenants' real lessor and the owner of the building could not have done so.

There is one other point to which I must advert before concluding this judgment. It is a very curious point and I own that I am not sure how far it really goes in law. It arises in this way. The lease is taken out in the name of four partners of the firm of Morarji Gokuldas & Co. But the premises are now required for the firm and not for the individual uses of those four partners, and the firm includes a fifth partner Sir Dinshaw Wachha, who is not, the landlord. On this the defendant contends that there is a clear distinction between the personal interest and the *bona fide* requirements of the true landlords if the sub-lessees are to be so considered under the Rent Act and the requirements of the firm. That cannot be denied, but how far such a distinction would go to defeat the claim of the firm as a firm because one of its partners is not the landlord, I confess, appears to me to be a very difficult question. In the view I take of the substantial defence, it is not necessary to answer it.

I think this claim ought to be dismissed with all costs and so I declare.

The plaintiffs appealed.

*Weldon* with *Desai*, for appellants.

*Strangman*, Advocate-General, with *Kanga*, for respondents.

SCOTT, C. J. :—As a result of negotiations which commenced in December 1917 the plaintiffs took a lease from Sir Mahomed Yusuf of his premises in Church Gate Street consisting of a four-storied house, on the 6th of February 1918.

By the lease the plaintiffs became entitled to the premises for twenty years, at a rent of Rs. 6,500 per annum for the first ten years and Rs. 7,000 for the second ten years with an option of renewal for another

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seven years at the same rent, and by the lease they acquired the benefit of all subsisting tenancies.

Their object in taking the house was to utilise the fourth floor as an office for their firm. At the date of the lease it was held by the defendants on a monthly tenancy and the plaintiffs arranged with Sir Mahomed Yusuf to give notice to quit on the 31st March to the defendants as the plaintiffs' tenure was to commence on the 1st of April.

Accordingly such notice to quit was given to the defendants on the 18th of February.

They did not, however, quit at the commencement of the plaintiffs' tenure. Therefore they were not in lawful occupation of the fourth floor. They were trespassers. On the 10th of April the Bombay Rent Act (II of 1918) came into force and on the same day the plaintiffs filed this suit for possession of the fourth floor. The defendants contend that under the Rent Act they cannot be ejected. They rely upon section 9 which so far as material is as follows:—

"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: Provided that nothing in this section shall apply...where the premises are reasonably and *bona fide* required by the landlord either for the erection of buildings or for his own occupation..."

The plaintiffs reply that the premises are reasonably required by them for their own occupation.

The learned Judge, after a consideration of the evidence adduced by the plaintiffs, held that it would be unwarrantable to throw the slightest suspicion upon the honesty of their motives in taking the lease of the 6th of February by which I understand him to mean that although they had not made out a very strong case of inconvenience in their former premises they did

*bona fide* require the fourth floor for their own occupation. It seems to me that on this point there can hardly be two opinions. The plaintiffs are paying to their lessor for a long term a rent much higher than that he was already receiving and this coupled with their evidence as to the inadequacy of their present office accommodation convinces me that they reasonably and *bona fide* required the fourth floor for their own occupation. It is indisputable that the plaintiffs fall within the terms of the definition of 'landlord' in the Rent Act, section 2(c), for they are the persons entitled to recover rent for the premises. The learned Judge, however, held that their lessor did not require to occupy the premises and therefore could not by assigning a reversion to the fourth floor confer the right to claim to occupy that portion of the house.

Whether that argument would be tenable if the landlord had assigned his reversion after the Act came into force is a question which does not arise in this case for the landlord had parted with his rights for twenty years and the defendants' tenancy had determined before the Act came into force and I find it impossible to hold that the Act has any retrospective force in limiting the operation of prior transfers. The plaintiffs were the 'landlords' when the Act came into force and I cannot find in section 9 or in any other part of the Act anything to prevent them from exercising the rights reserved to landlords by section 9 (2).

The defendants, besides relying on the provisions of the Rent Act, contend in their written statement that they are entitled to specific performance of a lease of the fourth floor from Sir Mahomed Yusuf for five years. Their evidence, however, negatives any such claim. It shows that they had a lease prepared and stamped to take the fourth floor from Sir Mahomed Yusuf in November 1917 for five years at Rs. 200 per month but

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owing to some conversations with Sir Mahomed Yusuf's agent they abandoned the idea of a lease and agreed to pay Rs. 175 per month on the understanding that they would not be evicted. Assuming the story of the promise or understanding that there would be no eviction is true it cannot prejudice the plaintiffs who admittedly had no notice of any such understanding. The defendants may have some right of action against Sir Mahomed Yusuf but they have no defence to the plaintiffs' claim for possession under his registered lease.

A further point was made that the plaintiffs were not entitled to sue as the firm of Morarji Gokuldas & Co., includes Sir Dinsha Wachha who is not a party-plaintiff. That gentleman has deposed that though a partner he has no interest in the financial side of the firm or in the lease in question. He is indeed a salaried partner only not interested in the assets and therefore not a necessary party to a suit such as this.

We set aside the decree of the lower Court and pass a decree for the plaintiffs for possession as prayed—Rs. 165 p.m. from 1st April 1918 till delivery of possession as compensation for use and occupation—with costs throughout on the defendant.

Solicitors for appellants : Messrs. *Payne & Co.*

Solicitors for respondents : Messrs. *Shamrao, Minocheher & Hiralal.*

*Decree set aside.*

G. G. N.