MOHD. MAHMOOD AND ANOTHER

v.

TIKAM DAS AND ANOTHER

May 4, 1965

[A. K. SARKAR, M. HIDAYATULLAH AND V. RAMASWAMI, JJ.]

Madhya Pradesh Accommodation Control Act, 1951, *ss.* 15(3), 16(2), 45(1) *and* 45(2)—*Sub-tenant claiming direct tenancy under s.* 16(2)—*Question as to lawfulness of sub-tenancy—Civil Court whether has jurisdiction to decide.*

Respondent No. 1 who was the landlord of the accommodation in dispute obtained a decree of ejectment against respondent No. 2, his tenant. The appellants who were sub-tenants under respondent No. 2 gave a notice to the landlord under s. 15(2) of the Madhya Pradesh Accommodation Control Order, 1961, and thereafter filed a suit against him claiming a declaration that being lawful sub-tenants they had become direct tenants of the landlord under s. 16(2) of the Act. The High Court held that the suit was barred by s. 45(1) of the Act according to which no civil court could entertain any suit or proceeding in so far as it related to any matter which the Rent Controlling Authority under the Act was empowered to decide. In appeal to the Supreme Court.

HELD: (1) For s. 16(2) to come into operation the sub-tenancy has to be lawful. The question of lawfulness of a sub-tenancy was one which under s. 15(3), the Rent Controlling Authority was empowered to decide. Under s. 45(1) of the Act no civil court could entertain a suit or proceeding which the Rent Controlling Authority was empowered to decide. The High Court was therefore right in holding that the suit had been filed in a court incompetent to try it and in dismissing it. [130H—131B]

(ii) There is nothing in s. 15(3) of the Act to indicate that it does not apply to a case where a landlord has already obtained a decree against a tenant. If in spite of the decree the appellants had a right under the Act to a direct tenancy under the landlord, they had a right to move the Rent Controlling Authority within the prescribed period for a decision of the question that the subletting to them was lawful. If the Rent Controlling Authority had the power to decide that question, a civil court would not be competent to decide the dispute in a suit brought within that period. The suit by the appellants had been filed within that period. [131G—132B]

(iii) The fact that the landlord had not applied under s. 15(3) did not affect the issue as it was for the appellants as sub-tenants to prove that the sub-letting to them was lawful. [132C]

(iv) Section 45(2) also did not help the appellants. That provision was clearly intended only to protect a right to resort to a civil court for the decision of a question as to an interest in property existing apart from the Act concerning which an adjudication may have been incidentally made by a Rent Controlling Authority in deciding a question which it had been empowered by the Act to decide. It does not authorise a civil court to decide a dispute as to the lawfulness of sub-letting for the purpose of s. 16(2). [133 C-E]

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 356 of 1965.

Appeal by special leave from the judgment and decree dated October 27, 1964, of the Madhya Pradesh High Court in Second Appeal No. 240 of 1964.

B *B. Sen* and *M. S. Gupta,* for the appellants.

S. T. Desai and *A. G. Ratnaparkhi,* for the respondents.

The Judgment of the Court was delivered by

Sarkar, J. The first respondent Tikam Das had let out a C house in the city of Jabalpur to the second respondent Surya Kant Naidoo. Sometime in 1961 Tikam Das, herein referred to as the landlord, served a notice on Surya Kant, herein referred to as the tenant, terminating the tenancy and later in the same year filed a suit in a civil court against the latter for ejectment. On June 23, 1962, by consent of parties, a decree for ejectment was D passed in that suit in favour of the landlord against the tenant. The appellants who were occupying the premises as sub-tenants under the tenant had not been made parties to the suit.

On June 25 and 26, 1962, the appellants served notices on the landlord under s. 15(2) of the Madhya Pradesh Accommo- E dation Control Act, 1961 which had come into force on December 30, 1961, claiming that as the tenant had sub-let the premises to them before the Act had come into force with the consent of the landlord, they had become his direct tenants under s. 16(2) of the Act and on June 28, 1962, the appellants filed a suit against both the landlord and the tenant in a civil F court claiming a declaration that they had in the circumstances become direct tenants of the premises under the landlord. On June 30, 1962, the landlord sent a reply to the notices sent by the appellants in which he denied that the sub-letting by the tenant had been with his consent or was lawful. It does not appear that the landlord had put his decree in execution for G evicting the appellants.

One of the points canvassed in the High Court was whether in view of s. 45(1) of the Act a civil court was competent to entertain the appellants' suit and it held that it was not and in that view of the matter dismissed the suit. The question is H whether the High Court was right.

The Act established certain authorities called Rent Controlling Authorities and gave them power to decide various matters. Sub-

section (1) of s. 45 states that "no civil court shall entertain any suit or proceeding in so far as it relates.....to any..... matter which the Rent Controlling Authority is empowered by or under this Act to decide". If, therefore, the suit related to a matter which a Rent Controlling Authority had jurisdiction to decide, the civil court would have no jurisdiction to entertain it.

Now the appellant's suit was for a declaration that they had become direct tenants under the landlord by virtue of s. 16(2) of the Act. That provision is in these terms :

S. 16. (1) . . . . . .

(2) Where, before the commencement of this Act, the interest of a tenant in respect of any accommodation has been determined without determining the interest of any sub-tenant to whom the accommodation either in whole or in part had been lawfully sub-let, the sub-tenant shall, with effect from the date of the commencement of this Act be deemed to have become a tenant holding directly under the landlord on the same terms and conditions on which the tenant would have held from the landlord, if the tenancy had continued.

Clearly the appellants would not be entitled to the benefit of this provision unless the sub-letting to them was lawful. This is where their difficulty arises. Sub-section (2) of s. 15 deals with the case of a sub-letting before the Act and provides for a notice of the sub-letting being given to the landlord by the tenant and the sub-tenant. There is no dispute that the sub-letting to the appellants was before the Act and they had given the notice. The sub-letting, therefore, comes within sub-s. (2) of s. 15. Then we come to sub-s. (3) of s. 15 which provides, "Where in any case mentioned in sub-section (2), the landlord contests that the accommodation was not lawfully sub-let and an application is made to the Rent Controlling Authority in this behalf, either by the landlord or by the sub-tenant, within two months of the date of the receipt of the notice of sub-letting by the landlord or the issue of the notice by the tenant or the sub-tenant, as the case may be, the Rent Controlling Authority shall decide the dispute." This sub-section empowers a Rent Controlling Authority to decide whether a sub-letting was lawful where the landlord disputes that the sub-letting was lawful, on an application made to it by either party within the period mentioned. When the Rent Controlling Authorities have the power to decide the lawfulness of the sub-letting, a civil court is plainly debarred from deciding that question by s. 45(1). In the present case the landlord did contend

A that the sub-letting was not lawful. The appellants's suit was filed within the period mentioned in sub-s. (3) of s. 15. So the Rent Controlling Authorities had the power to decide the question on which the appellants' suit depended. It follows that the suit related to a matter which the Rent Controlling Authorities had power to decide and no civil court was, therefore, compe-
B tent to entertain it. Hence we think that the High Court was right in deciding that the suit had been filed in a court incompetent to entertain it, and in dismissing it.

It was said that a Rent Controlling Authority would have no power to decide a dispute as to whether a sub-letting was lawful
C where the notice mentioned in s. 15(2) had not been served, or after the period mentioned in sub-s. (3) of that section had expired if it had not been moved earlier. Another question mooted was that the two months mentioned in sub-s. (3) only provided a special period of limitation for the application mentioned in it and the provision of the period did not mean that a Rent Con-
D trolling Authority had power to decide the matter only if an application had been made within that period, so that if no such application had been made, after the expiry of the period a civil court would have jurisdiction to decide a dispute as to whether a sub-letting was lawful. The point is that the real effect of s. 15(3) was to deprive the civil court of the jurisdiction to
E decide that dispute for all time. We do not feel called upon to decide these questions. They do not arise in the present case and it was not said that these questions affect the question of the competence of the civil court to try the present suit. They clearly do not. The suit was filed within the period of two months during which admittedly the Rent Controlling Authorities had
F jurisdiction to decide the dispute on which it was based. Whatever may be the jurisdiction of a civil court on other facts, in the present case it clearly had no jurisdiction to entertain the appellants' suit.

It was said on behalf of the appellants that s. 15(3) had no
G application to the present case as the landlord had before the appellants' suit was filed, obtained a decree against the tenant for eviction. We are unable to accept this contention. There is nothing in sub-s. (3) of s. 15 to indicate that it does not apply to a case where a landlord has obtained such a decree. If in spite of the decree the appellants had a right under the Act to
H a direct tenancy under the landlord, they had a right to move the Rent Controlling Authority within the period mentioned (now expired) for a decision of the question that the sub-letting to them

was lawful. If the Rent Controlling Authority had the power to decide that question, a civil court would not be competent to decide the dispute in a suit brought within that period. So the decree does not make a civil court, a court competent to entertain the suit.

It was also said that as the landlord had not applied under sub-s. (3) of s. 15—and this is not disputed by the landlord—that provision is put out of the way and it must now be held that the appellants had become direct tenants under him. The words of the sub-section lend no support to this contention. The appellants can claim the direct tenancy only when they establish that the sub-letting to them was lawful. As they claim that right, they must establish it and they do not do so by the failure of the landlord to move for a decision that the sub-letting was not lawful. This contention of the appellants seems to us to be untenable. In any case it is difficult to appreciate how the failure of the landlord to apply under s. 15(3) would affect the question of the competence of a civil court to entertain the appellants' suit which had been filed before the time limited by the sub-section for the landlord to apply to a Rent Controlling Authority had expired.

We now come to sub-s. (2) of s. 45 of the Act which is in these terms :

> S. 45. (1) . . . . .
>
> (2) Nothing in sub-section (1) shall be construed as preventing a civil court from entertaining any suit or proceeding for the decision of any question of title to any accommodation to which this Act applies or any question as to the person or persons who are entitled to receive the rent of such accommodation.

It is said by the appellants that their suit raises a question of title to the tenanted premises within the meaning of that word as used in the sub-section. This contention does not seem to us to be well founded. "Accommodation" has been defined in the Act as a building, garden, ground, out-house, or garage appurtenant to it, its fixtures and furniture supplied for use there and also land not used for agricultural purpose. The word, therefore, refers to property of certain varieties and in our opinion the words "title to any accommodation" in the sub-section mean a right to or interest in property existing otherwise than under the Act and not those created by it. It does not include a sub-tenant's right created by the Act to be treated under certain cir-

A cumstances as the direct tenant of the landlord. This seems to us to be clear from the whole scheme of the Act, which is to create certain rights and to leave them in certain cases to be decided by the Rent Controlling Authority established under it, quickly, inexpensively and summarily and with restricted rights of appeal from their decision. The object of the Act as disclosed B by its scheme would be defeated if civil courts were to adjudicate upon the rights which it was intended the Rent Controlling Authorities would decide, with all the consequent delay, expense and series of appeals. Again if the civil courts had the power to decide such rights, s. 15(3) would be meaningless, for the decision of the dispute as to whether sub-letting was lawful was necessary C only for establishing a sub-tenant's right to a direct tenancy under the landlord under s. 16(2). Sub-section (2) of s. 45 was clearly intended only to protect a right to resort to a civil court for the decision of a question as to an interest in property existing apart from the Act concerning which an adjudication may have been incidentally made by a Rent Controlling Authority in deciding a D question which it had been expressly empowered by the Act to decide. We, therefore, think that sub-s. (2) of s. 45 does not authorise a civil court to decide the dispute as to the lawfulness of the sub-letting and does not therefore make it competent to entertain the appellants' suit.

E For these reasons, in our view, no civil court had jurisdiction to try the appellants' suit and it was rightly dismissed as having been filed in an incompetent tribunal. The result is that the appeal fails and is dismissed with costs.

Appeal dismissed.