
(8) Therefore, it is futile to contend that in every case where the defendant admits the claim of the plaintiff, a decree on the basis of admission or consent should follow.

(9) In the instant case, the claim of the appellants though admitted or consented by the defendant violates and contrary to the provisions of Indian Stamp Act, Indian Registration Act and Transfer of Property Act. As already stated, the Courts will not entertain any claim, through admitted, which makes a dent on the public exchequer or when it is forbidden by law or defeat any provisions of law and immoral or opposed to Public Policy.

(10) In this view of the matter, I do not find any grounds warranting interference with the decrees and judgments of the Courts below.

(11) The appeal, therefore, fails and is, accordingly, dismissed.

S.C.K.

Before V. S. Aggarwal, J.

RAVI PARKASH & OTHERS,—*Petitioners*

versus

DEWAN CHAND,—*Respondents*

C.R. No. 2306 of 1998

15th December, 1998

East Punjab Urban Rent Restriction Act, 1949—S. 13—Ejectment on the grounds of non-payment of rent & subletting ordered—Property let out to individual tenant—Tendering of rent on the first date of hearing on behalf of joint Hindu family will wash away ground of non-payment—Tender of rent does not depend on jural relationship of landlord and tenant—Orders of eviction upheld on the ground of subletting—On facts son of tenant found to be doing independent business in demised premises and was setting up his own title in the property—This amounts to unlawful subletting—Ground of subletting is to be determined on the date of filing of the eviction petition and subsequent death of tenant will not efface the ground of eviction.

Held that once the ground of eviction becomes available to the landlord then any subsequent act like death of the tenant, unless the statute says otherwise, will not efface the ground of eviction. It is a statutory right to seek eviction if established under the Act. It would only come to end in accordance with the provisions of the Act. If the property had been sublet during the life time of Sada Lal and the ground of eviction becomes available, indeed, it cannot be defeated even if Sada Lal tenant had died.

(Para 14)

Further held, that the tenant had entered into a partnership with his sons and ultimately retired from partnership handing over premises and business to his sons. There was no proof that lease was taken for benefit of family. It was held that it would amount to unlawful subletting. Identical is the position herein. Therefore, the finding of fact arrived at by the learned Rent Controller and the Appellate Authority requires no disturbance. In the peculiar facts, since the landlord is a stranger to any arrangement between the tenant and the third person, adverse inference could easily be drawn. The alleged petitioner Parikshat Kumar was setting up his title in the sense that he is a member of the Hindu Undivided Family who was the tenant. It is incorrect. He is running his own business therein independently and there is thus no escape but to approve the finding of the learned Appellate Authority.

(Para 18)

M.L. Sarin, Senior Advocate, with Sweena Punnu, Advocate,
for the Petitioner.

J.R. Mittal, Senior Advocate, with B. D. Sharma, Advocate,
and K.K. Garg, Advocate, *for the Respondents.*

JUDGMENT

V.S. Aggarwal, J.

(1) The present revision petition has been filed by Ravi Parkash and others, hereinafter described as "the petitioners" directed against the order passed by the learned Rent Controller, Gidderbaha, dated 16th December, 1989 and that of the learned Appellate Authority, Mukatsar, dated 4th April, 1998. By virtue of the impugned order passed by the learned Rent Controller, order of eviction had been passed against the petitioners. Appeal filed by the petitioners had been dismissed by the learned Appellate

Authority. Petitioners assail both the orders, namely, order of learned Rent Controller and judgment of the learned Appellate Authority.

(2) The relevant facts are that Dewan Chand had filed a petition for eviction alleging that he was the owner/landlord of the shop in dispute. It had been let to Sada Lal on 24th May, 1953. The said tenant was stated to have not paid the arrears of rent. Further it was contended that earlier he was doing the work of selling vegetables in the disputed shop but since 1987 he was doing the work of Karyana goods in that shop and has changed the user without the consent of the landlord. The suit premises were stated to have been further sublet to Parikshat Kumar petitioner without the written consent of the landlord. The last ground of eviction urged was that the petitioner had installed a Bhatti which has materially impaired the value and utility of the premises.

(3) The petitioner for eviction had been contested. It was pointed out that the property in dispute had been taken on rent by Sada Lal being the Karta of the Hindu Undivided Family. It is the HUF which is running its business in the shop. It was denied that there was any change of user of the premises. The plea offered was that first of all business of wholesale selling of vegetables was conducted. After the change of vegetable market, there was little business and, therefore, Karyana goods were sold along with vegetables in the suit premises. It was denied that the property had been sublet to Parikshat Kumar (for short "the petitioner"). Parikshat Kumar was stated to be the son of Sada Lal and looking after the business because of old age of Sada Lal. He is only helping him. He denied that any Bhatti has been installed in the suit premises.

(4) Learned Rent Controller framed the issues. It was held that the tenant or the petitioner are not liable to be evicted on the ground of change of user or that any such acts have been committed which are likely to impair the value and utility of the building in dispute. However, the learned Rent Controller held that there was no valid tender of rent which was jointly tendered by Sada Lal and the petitioner and further that the property had been sublet to the petitioner by Sada Lal. It was concluded that the property in question had not been let to the Joint Hindu Family. An appeal was preferred. The Appellate Authority agreed with the findings of the learned Rent Controller and dismissed the same. Hence, the present revision petition.

(5) Learned counsel for the petitioners at the outset vehemently urged that the petitioner Parikshat Kumar and Sada Lal had filed an application for permission to lead additional evidence and that the same had not been decided. Therefore, the order of the Appellate Authority as such in no event can be sustained. In support of his contention he referred to the decision of this Court in the case of *Jagir Kaur and another v. Nirmal Singh and another* (1). Herein, an application was filed for additional evidence. The matter was adjourned for arguments. The application for additional evidence escaped the notice of the Court. In the second appeal that was filed, this Court remanded the case to the first Appellate Court for decision.

(6) To the same effect is the decision rendered by this Court in the case of *Shadi Lal and others v. Municipal Committee, Rewari* (2), and in the case of *Rajbir Singh v. Virender Singh and others* (3).

(7) There is no controversy that when an application for additional evidence is filed, it should be decided along with the appeal and specific opinion should be expressed. But this is not the position herein. The Appellate Authority, indeed, has gone into the said controversy and had, in fact, expressed its opinion. In paragraph 9 of the judgment, the Appellate Authority recorded as under :—

“Learned counsel for the appellants has also moved an application for leading additional evidence regarding certificate of municipal committee, rent receipts from municipal committee and licence of market committee, ration card, voters list and rent receipts issued by Dewan Chand in the account books of M/s Sada Lal and Sons. This application was opposed by the landlord on the ground that tenants were well aware of the documents at the time of leading thier evidence and they cannot be permitted to manufacture and produce the record later on in order to retract from the admission made by their witnesses. The counsel for the respondents urged that both the appellants have not appeared as witnesses in the court of Rent Controller, therefore, they cannot be permitted to lead additional evidence to fill in the lacuna. He also urged that the proposed evidence was neither necessary nor was free

(1) 1993 (2) P.L.R. 374

(2) 1994 (1) P.L.R. 633

(3) 1996 (1) P.L.R. 703

from doubt as it has been prepared after the decision against the appellants. Therefore, the present application be dismissed.”

(8) This clearly shows that the Appellate Authority has gone into the said controversy and rejected the application. The learned counsel, therefore, is not right in pressing into service the above said precedents to contend that application for additional evidence had not been decided.

(9) On merits of the said application, there is no over emphasising the fact that if with due diligence a party could lead evidence then additional evidence should not be permitted unless the Court requires for the purpose of pronouncement of judgment. The ingredients of Order 41 Rule 27 of the Code of Civil Procedure were not at all satisfied. The petitioners could not fill up the lacuna in the evidence. Consequently, there is no ground to interfere in the discretion that has been exercised by the Appellate Authority.

(10) Of the grounds of eviction only two grounds survive which were subject matter of controversy in this Court, namely, if the ground of eviction on non payment of rent is available or whether the property has been sublet to petitioner Parikshat Kumar.

(11) So far as the ground pertaining to non payment of rent is concerned, on the first date of hearing it was pointed out by the petitioner and Sada Lal that the property had been let to the joint Hindu family business. Sada Lal was simply the Karta. The rent was tendered on behalf of the joint Hindu family. Both the learned Rent Controller and the Appellate Authority, as mentioned above, had concluded that this was not a valid tender and consequently when there was no valid tender on the first date of hearing the eviction order was liable to be passed. It becomes unnecessary to ponder further in this regard. The matter is clinched by the decision of the Supreme Court in the case of *Smt. Pushpa Devi & Ors. v. Milkhi Ram* (4). Almost identical question had arisen therein. The Supreme Court discussed the purpose of proviso of the Act and concluded as under :—

“The apparent purpose of the proviso was to relieve the defaulting tenant from extreme penalty of eviction. There cannot be any doubt on this purpose. The provision seems to be analogous to Section 114 of the Transfer of Property

Act, 1892 which confers discretion to the Court to grant relief against forfeiture for non-payment of rent. But the proviso goes a step further and leaves no such discretion to the controller or court even if the tenant is a constant defaulter. If the arrears and other amounts specified are paid or tendered on the first date of hearing, the default as a ground for eviction disappears and the Controller is precluded from passing a decree for eviction. The governing principle of the proviso is that the tenant could pay and stay in an action for eviction on default. At the same time, the landlord is ensured payment of arrears, interest and costs that he has incurred without the necessity of going to civil court to recover it. This seems to be the will and intention of the legislature in the shape and scope of the proviso.”

(12) The final conclusion in this regard was drawn and it was held that once the rent had been paid or tendered on the first date of hearing and the ground of eviction is not payment of rent, the benefit could be availed of by the tenant and also by those who claim to be tenant. In paragraph 26 of the judgment, Supreme Court returned the findings as under :—

“It is time for us to be explicit. Taking into account of the intention of the legislature and the purposes for which the proviso was enacted, we are of the opinion that the obligation to tender the rent under the proviso on the first hearing date does not depend upon the existence of admitted jural relationship of landlord and tenant. When an action for eviction is brought by the landlord on the ground of default, the proviso stands attracted. The benefit of the proviso could be availed of by the tenant and also by those who claim to be the tenant. The view to the contrary expressed by the High Court of Punjab and Haryana in *Ram Gopal and Onkar Mal* cases is likely to be of greater mischief to the tenants than a protection for them and is therefore overruled.”

(13) This clearly answers the said argument that has been advanced. This decision of the Supreme Court had been relied upon by this Court in the case of *Parkash Chand and another v. Bhan Chand and another* (5). Herein also, there was tender of rent on

behalf of the tenant and sub-tenant. It was held that if that is the position, the ground of eviction on account of non payment of rent will not be available keeping in view the decision of the Supreme Court in *Smt. Pushpa Devi's case* (supra). There is no escape from the conclusion that the findings of the Rent Controller and the Appellate Authority cannot be sustained.

(14) As regards the grounds of sub-letting of the property, on behalf of the petitioners it was urged that during the pendency of the proceedings, tenant Sada Lal had died. On his death, petitioners would inherit the rights of tenancy and, therefore, the ground of eviction that the property had been sublet to the petitioner, will not be available. The said contention on the face of it being without merit has to be rejected. Once the ground of eviction becomes available to the landlord then any subsequent act like death of the tenant, unless the statute says otherwise, will not efface the ground of eviction. It is a statutory right to seek eviction if established under the Act. It would only come to end in accordance with the provisions of the Act. If the property had been sublet during the life time of Sada Lal and the ground of eviction becomes available, indeed, it cannot be defeated even if Sada Lal tenant had died.

(15) The first and the foremost question that requires consideration is as to if it was the Hindu Undivided Family which was the tenant or Sada Lal was the tenant in the property. During the course of trial, neither Sada Lal nor the petitioner appeared as a witness to establish that, in fact, it was the Hindu Undivided Family which was the tenant in the property. Both the Rent Controller and the Appellate Authority have returned a finding that it was Sada Lal who was the tenant in the property. The findings is of fact. It is not absurd. The evidence has been considered and consequently it must follow that only Sada Lal was the tenant therein.

(16) It transpires in evidence that Sada Lal had taken another shop and started business therein. It was the petitioner who was carrying on business in the property. Learned counsel for the petitioner states that since petitioner is the son of the tenant Sada Lal, he is not liable to be evicted because possession would still be of Sada Lal. Reliance in this regard was placed on the decision of the Supreme Court in the case of *Jagan Nath (deceased) through his Legal Representatives v. Chander Bhan and others* (6). Herein the

tenant had retired from business and his son was carrying on said business. Supreme Court held that it would not be parting with possession. In paragraph 6 of the judgment, Supreme Court held as under :—

“So long as the tenant retains the right to possession there is no parting with possession in terms of clause (b) of section 14 (1) of the Act. Even though the father had retired from the business and the sons had been looking after the business, in the facts of this case, it cannot be said that the father had divested himself of the legal right to be in possession. If the father has a right to displace the possession of the occupants, i.e., his sons, it cannot be said that the tenant had parted with possession. This Court in *Mt. Krishnawati v. Shri Hans Raj*, 1974 Rent Control Reporter 163 (1974 1 SCC 289) had occasion to discuss the same aspect of the matter. There two persons lived in a house as husband and wife and one of them who rented the premises, allowed the other to carry on business in a part of it, question was whether it amounted to subletting and attracted the provisions of sub-section (4) of Section 14 of the Delhi Rent Control Act. This court held that if two persons live together in a house as husband and wife and one of them who owns the house allows the other to carry on business in a part of it, it will be in the absence of any other evidence, a rash inference to draw that the owner has let out that part of the premises. In this case if the father was carrying on the business with his sons and the family was a joint Hindu family, it is difficult to presume that the father had parted with possession legally to attract the mischief of section 14 (1) (b) of the Act.”

(17) This decision, indeed, will not come to the rescue of the petitioners because herein it was specifically held that the legal possessions remained with the tenant. He had a right to dispossess the tenant. As noticed hereinafter, this is not the position in this case. This Court in the case of *Jagan Nath v. Vasdev* (7), was considering a case where the mother was stated to have sublet the property. The ground of eviction was held to have not been established and it was rejected with the findings which reads as under :—

“ . . . It will be seen from the evidence that has been discussed above that there is no evidence to show that the petitioner had parted with the possession in favour of any body else and as such the mere fact that the business of Deepak Radios was being run in the demised premises would not dislodge the case of the petitioner. Banta Singh's case (supra) relied upon by the learned counsel to the respondent is not applicable to the facts of the present case. In that case, the stand of the tenant was that the joint Hindu family business was being carried on in the demised premises and on the failure to prove this fact, a presumption was raised against him. The facts of the case in hand are totally different. The stand of the petitioner-tenant from the very beginning was that he was in exclusive possession of the demised premises and was running the business through his servants and after receiving finances from his mother-Smt. Bimal Rani. Even assuming for a moment that there was some evidence to show that Bimla Rani had come into exclusive possession of the premises in dispute, there is no evidence to show that it was for valuable consideration. It is to be noted that onus to prove a case of subletting lies on the landlord as has been held by this court in *Dev Dutt Verma v. Ajit Singh and others*, 1965 Current Law Journal, 341. This onus has not been even remotely discharged.”

(18) What is the position herein. As already referred to above, firstly the plea was offered that it was Hindu Undivided Family which was the tenant. It was found to be incorrect or in other words petitioner Parikshat Kumar son of Sada Lal was setting up his own title as a tenant in the property. When the matter came up for evidence, both Sada Lal and petitioner Parikshat Kumar felt shy of appearing in the witness-box to rebut the contention. Sada Lal took another shop on rent. His son petitioner Parikshat Kumar started running his business in the property in his own right and took loan for the said business. In these circumstances, it is difficult to assume that there would be no subletting or parting with possession. The facts of the present case are totally different from the above said precedents referred to by the learned counsel for the petitioners. Very close to the facts of the present case is the decision of the Supreme Court in the case of *Mohammedkasam Haji Gulambai v. Bakerali Fatehali (D)* by L.R.'s (8). Herein a petitioner was filed on

the ground of sub letting. The tenant had entered into a partnership with his sons and ultimately retired from partnership handing over premises and business to his sons. There was no proof that lease was taken for benefit of family. It was held that it would amount to unlawful sub-letting. Identical is the position herein. Therefore, the finding of fact arrived at by the learned Rent Controller and the Appellate Authority requires no disturbance. In the peculiar facts, since the landlord is a stranger to any arrangement between the tenant and the third person, adverse inference could easily be drawn. The alleged petitioner Parikshat Kumar was setting up his title in the sense that he is a member of the Hindu Undivided Family who was the tenant. It is incorrect. He is running his own business therein independently and there is thus no escape but to approve the finding of the learned Appellate Authority.

(19) For these reasons, the revision petition must fail and is accordingly dismissed. The petitioners are granted one month's time to vacate the demised premises.

R.N.R.

Before G.S. Singhvi & Iqbal Singh, JJ.

DAYA NAND DALAL,—*Petitioner.*

versus

STATE OF HARYANA & OTHERS,—*Respondents.*

C.W.P. No. 13952 of 1998

19th January, 1999

Constitution of India, 1950—Art. 226—Punjab Civil Services Rules, Volume II—Rl. 5.32A (c)—Punjab Civil Services Rules, Volume I—Rl. 3.26 (d)—Compulsory retirement—Exercise of power—Principles re-stated—Petitioner not disclosing in petition orders of punishment imposed on him—Petitioner not entitled to any relief—Petitioner liable to be dismissed.

Held that (a) the employer is not required to comply with the principles of natural justice before an order of premature retirement of an employee is passed because such an order is not punitive and it does not cast any stigma on the employee. However, where the