

REVISIONAL CIVIL.

*Before Mehar Singh, C.J.*KARTAR SINGH,—*Petitioner.**versus*RAM LAL AND OTHERS,—*Respondents.***Civil Revision No. 79 of 1969.**

October, 16, 1968.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13(2) (ii) (a)—Property let to a partnership firm—Partners going out leaving complete control of the demised premises to a third person—Such person retaining the name of the firm—Act of the partners—Whether amounts to subletting.

Held, that when a firm is tenant of demised premises, then its partners alone are the tenants of the same. A partnership firm is not a legal entity. It is no more than its partners. When the premises are let to a firm, they are not let to a legal entity but are let to the partners of the firm. When partners go out and leave complete control and possession of the demised premises to a third person by same device such as retaining the name of the firm it is clear and an unambiguous case of subletting or parting with possession. Such a case squarely falls within the ground in Section 13(2) (ii) (a) of the East Punjab Urban Rent Restriction Act, 1949.

(Para 5)

Petition under Section 15 of the East Punjab Rent Restriction Act, 1949, for revision of the order of Shri Gurbachan Singh, Appellate Authority, Ludhiana, dated the 2nd December, 1966, affirming that of Shri Brij Lal Magc, Rent Controller, Ludhiana, dated the 25th January, 1966, dismissing the petition with costs.

V. P. SARDA, ADVOCATE, for the Petitioner.

RAJINDER SACHAR, ADVOCATE, for the Respondents.

JUDGMENT.

MEHAR SINGH, C.J.—The demised premises are a shop situate in Ludhiana town. It was let by Kartar Singh applicant sometime in 1953. According to Kartar Singh, applicant he let the same to Ram Lal, respondent 1, who first introduced a sub-tenant Jai Dial, respondent 2, and subsequently introduced another sub-tenant Devki Nandan, respondent 3. He sought eviction of the respondents from the shop on the ground of subletting as under section 13(2) (ii) of the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act, 3, of 1949).

(2) Of the respondents, Jai Dial, respondent 2; has taken no interest in the matter. Devki Nandan, respondent 3; is in possession of the shop and he has been supported by Ram Lal, respondent 1. Those two respondents have taken the defence that the original tenancy of the shop by Kartar Singh, applicant was in favour of a firm with the name and style of Grand Cycle Centre of which the partners were respondent 1, and 2. Probably what they mean is that this was the position when the original tenancy came into existence in 1953. Jai Dial, respondent 2, is said to have retired from partnership a couple of years after, which would come to 1955. Thereafter Devki Nandan, respondent 3, was taken as a partner with himself by Ram Lal, respondent 1. On the facts so far stated this should be sometime in 1955. However, the dissolution deed, Exhibit R. 16, of November, 23, 1964, shows that the partnership between respondents 1, and 3, started on April, 3, 1961. It is obvious that there is no explanation whether between 1955, and 1961, respondent, 3, was or was not a partner with respondent 1, in the firm Grand Cycle Centre. In any event, the defence of respondents 1, and 3, has been that after the retirement of respondent 2, from partnership with respondent 1, in the firm Grand Cycle Centre, respondent 3, became partner with respondent 1. Subsequently, the dissolution deed, Exhibit R. 16, shows that on November, 23, 1964, there was dissolution of partnership between respondents 1 and 3, Respondent 1, took an amount of Rs. 8,000 and left the shop and the business in the shop totally to respondent No. 3. Respondents 1, and 3, denied that the shop was let to respondent 1, and they averred that it was let to the firm Grand Cycle Centre. Between 1953, and 1961, there is no evidence as to who paid the rent for the shop. In any case, there is no evidence whether it was Ram Lal, respondent 1, who paid the rent on his own account or it was the firm Grand Cycle Centre, which paid the rent. The application produced four witnesses, namely, Kartar Singh, P.W. 4; Ishar Singh; P.W. 5; Sohan Lal, P.W. 6, and Ram Nath P.W. 7, the neighbouring shopkeepers, who deposed that the shop had been let by the applicant to respondent 1, but the authorities below have not accepted the evidence of those witnesses. There are receipts of payment of rent between 1961, and 1964, Exhibits R. 1, to 15, which show that rent was paid to the applicant for and on behalf of the firm Grand Cycle Centre, some of the receipts having been signed by respondent 3, as well. On this evidence the authorities below have come to the conclusion that the original tenancy of the shop by the applicant was not in favour

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of respondent 1, as an individual, but in favour of the firm Grand Cycle Centre.

(3) The authorities below have come to a concurrent finding that the tenancy has been with the firm Grand Cycle Centre, of which initially the partners were respondents 1, and 2, and, on the retirement of respondent 2, as partner, respondent 3, was taken as a partner along with himself by respondent 1. Respondent 1, dropped out on account of the dissolution of the partnership between respondents 1, and 3, by the dissolution deed, Exhibit R. 16, of November 23, 1964. So, since that date it is respondent 3, alone who has been in occupation of the shop. In these circumstances, the authorities below were of the opinion that there is no case of sub-letting, the tenancy having been given to the firm Grand Cycle Centre, it continues to be with that firm. So the eviction application by the applicant against the respondents was dismissed. This is a revision application by the applicant, the landlord, from the order of the Appellate Authority, affirming the order of the Rent Controller dismissing his eviction application against the respondents.

(4) The argument on the side of the applicant is brief and that is that assuming the tenancy to have been originally created by the applicant in favour of the firm Grand Cycle Centre, the original partners of that firm having left the shop with respondent 3, the latter is in no other position than that of a tenant to whom respondent 1, has or respondents 1, and 2, have sublet the demised shop. The reply on the side of respondents 1, and 3, is that the tenancy having been in the name of the firm, it continues to be in its name and it is immaterial who is the owner of the firm.

(5) I think the approach of the authorities below is misconceived and the argument on the side of the respondents cannot possibly prevail. A partnership firm is not a legal entity. For the purposes of facility of taking legal proceedings the name of a firm may be used under the rules for institution of proceedings or defending the same, but a partnership firm is no more than its partners. So that when the applicant let the demised shop to firm Grand Cycle Centre, he did not let it to a legal entity, but he let it to the partners of that firm, and I will assume that at the time of letting the partners were respondents 1 and 2. So the tenants then were respondents 1 and 2. When

respondent 2 dropped out, the only tenant of the demised shop who remained was respondent 1. When he took a partner with himself into a new partnership, although having the old name, he still remained tenant of the demised shop. At that stage it could not be said that he had sublet the demised shop. The reason is obvious, being the partner of the firm which was carrying on business in the demised shop, he was in the effective control and possession of the same. When on November 23, 1964, respondent 1 purported to dissolve the partnership between respondents 1 and 3 and for consideration of Rs. 8,000, he left the whole business of the firm including the possession and control of the demised shop with respondent 3, on that date he sublet or parted with possession of the demised shop to respondent 3. The position taken by the authorities below and the argument urged on the side of the respondents can only possibly have meaning if the firm Grand Cycle Centre was a legal entity and could by itself, without reference to its partners, be a tenant of the demised shop. But when a firm is a tenant of demised premises, then its partners alone are the tenants of the same. When partners go out and leave complete control and possession of the demised premises to a third person by a device of the type as employed in the present case, there is only one conclusion possible and that is that it is a clear and unambiguous case of subletting or parting with possession of the same. In fact it was a case of parting with possession and control of the shop for at least part of cash consideration of Rs. 8,000 which respondent 1, received from respondent 3, leaving the last-named in complete control and possession of the demised shop. This is a case which squarely falls within the ground in section 13(2)(ii)(a) of East Punjab Act 3 of 1949.

(6) In consequence, this revision application is allowed, the orders of the authorities below are set aside and the eviction application by Kartar Singh, applicant is accepted ordering eviction of the respondents from the demised shop. They are given one month within which to vacate the shop. The costs of the application shall be borne throughout by respondents 1 and 3, counsel's fee in this revision application being Rs. 60.

R.N.M.