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*Before N.K. SUD, J*

VINOD KUMAR AND ANOTHER—*Petitioner*

*versus*

SAT PAL—*Respondent/Landlord*

C.R. NO. 2228 OF 1997

27th October, 2004

*East Punjab Urban Rent Restriction Act, 1949— S. 13 — Eviction of the tenant on the ground of subletting— Concurrent findings of fact by the Courts below that original tenant has sublet the premises— Whether High Court has jurisdiction to interfere— Held, yes, if such a finding is perverse and is not supported by any material on record— Tenant's plea of partnership with petitioner No. 1 not controverted by the landlord— Neither there is any pleading by the landlord that petitioner No. 1 was the sole proprietor of the demised shop nor is there any finding by the Courts below to that effect— In the absence of such a finding it cannot be said that the tenant has sublet the premises— Onus to prove as to whether the tenant has sublet the premises is on the landlord— No document refers to petitioner No. 1 as sole proprietor of the shop— Subletting could not be presumed merely from the presence of a person in the demised shop— Petition allowed while setting aside the orders of the Courts below.*

Held, that all that has been proved is that at the time of purchase of shop by Sat Pal on 3rd November, 1969, Sham Sunder, proprietor Sham Stationery Store was the tenant whereas thereafter Aggarwal Book Depot has been recorded as tenant in the Municipal records. There was no pleading by the landlord that Vinod Kumar was the sole proprietor of Aggarwal Book Depot nor is there any finding by the Authorities below to that effect. In the absence of such a finding, it cannot be said that Sham Sunder had sublet the premises to Vinod Kumar. Neither the sale deed nor the assessment records of the Municipal Committee refer to Vinod Kumar as proprietor of Aggarwal Book Depot. Thus, the appellate authority was not right in observing that from the assessment records and the sale deed, it could be "safely concluded that Sham Sunder had sublet the premises to Vinod Kumar".

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Subletting could not be presumed merely from the presence of Vinod Kumar in the demised shop.

(Para14)

M.L. Sarin, Senior Advocate with H. S.Giani, Advocate, *for the petitioners.*

S.C. Arora, Advocate *for the respondent.*

### JUDGMENT

**N.K. SUD, J :**

(1) This civil revision is directed against the order of the Appellate Authority, Faridkot dated 18th February, 1997, dismissing the appeal of the petitioners against the order of their eviction passed by the Rent Controller, Faridkot dated 4th June, 1996.

(2) Sat Pal being the owner of disputed shop situated at Railway Road, Jaitu filed the application for eviction of the petitioners on the grounds : (i) that the tenant was in arrears of rent from 1st January, 1980 to 31st December, 1990 and had not paid the house tax till the date of filing of the petition and (ii) that the tenant Sham Sunder had sublet the demised premises to Vinod Kumar without his consent. It was claimed that Vinod Kumar was in exclusive possession of the shop as Sham Sunder had shifted from Jaitu.

(3) The application was contested by the petitioners. It was pleaded that M/S Aggarwal Book Depot was the tenant since long and both Sham Sunder and Vinod Kumar are the partners in the said concern. In the alternative, it was pleaded that even if it were to be assumed that the shop had been let out to Sham Sunder and not to Aggarwal Book Depot, even then there was no case of subletting as Sham Sunder was also a partner in Aggarwal Book Depot alongwith Vinod Kumar and thus continues to be in possession and control of the demised premises. The rent and the house tax, as claimed by the landlord, was duly tendered in the Court which was accepted.

(4) From the pleadings of the parties, the following issues were framed :—

1. Whether Aggarwal Book Depot is tenant in respect of the shop in dispute under the applicant ? OPR

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2. Whether respondent No. 1 has sublet the demised premises to respondent No. 2. If so, its effect ? OPA
  3. Relief.

Both issue Nos. 1 and 2 were decided in favour of the landlord Sat Pal and the application for eviction was accepted.

(5) Aggrieved by the said order, petitioners filed an appeal before the Appellate Authority which has been dismissed,—*vide* the impugned order.

(6) Mr. M.L. Sarin, learned Counsel for the petitioners, contended that the findings recorded by both the Authorities below are totally perverse and against the evidence on record. He pointed out that the petitioners were inducted as tenants not by Sat Pal, but by Bodh Raj who, alongwith one Moti Ram, was the owner of the shop in dispute. The present landlord Sat Pal had purchased this shop from Moti Ram, son of Bodh Raj on 3rd November, 1969. He further pointed out that in the application for ejection, it has been stated that the shop had been let out to Sham Sunder, who had further sublet it to Vinod Kumar. This allegation was denied in the written statement and it was claimed that the shop had been let out to Aggarwal Book Depot in which both Sham Sunder and Vinod Kumar were partners. Learned Counsel contended that the landlord had not controverted the contents of the written statement as no replication to the same was filed and as such the same are deemed to have been accepted by the landlord. He also pointed out that landlord Sat Pal was examined as AW-3 and even he did not controvert the averment of the petitioner in the written statement that the shop had also been let out to Vinod Kumar. Even Amarjit Singh, examined as AW-4, did not specifically controvert this position. He further contended that even if it were to be accepted that the shop in question had been originally let out to Sham Sunder alone, even then no case for subletting is made out as Vinod Kumar and Sham Sunder are both partners in Aggarwal Book Depot. Mr. Sarin then referred to the copies of the orders Annexures A-1 and A-2 which had been allowed to be produced as additional evidence. According to him, Annexure A-1 is an order under Section 185(1)(a) of the Income Tax Act, 1961, passed by the Income Tax Officer which shows that as per instrument of partnership dated 4th July, 1970, firm Aggarwal Book Depot was constituted by Sham Sunder and Vinod Kumar.

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Similarly, he submitted that Annexure A-2 is the assessment order of the firm for the assessment year 1971-72 passed by the Income Tax Officer, Bathinda, determining the assessable income of the said firm at Rs. 1714. It also shows allocation of the income between Sham Sunder and Vinod Kumar as partners in the ratio of 10% and 90% respectively. Learned Counsel also contended that the landlord never raised any dispute about subletting for almost 20 years. This allegation had been levelled for the first time in the eviction petition filed under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short "the Act") on 2nd February, 1991. This, according to him was an indication that there was no sub-tenancy. For this purpose, he placed reliance on the judgments of this Court in **Subhash Chander versus Surinder Singh**, (1) and **Rajinder Kumar versus Bhagwant and others** (2).

(7) Mr. Sarin then contended that the landlord had failed to lead any evidence to show that the premises in dispute had been let out to Sham Sunder alone and not to both Sham Sunder and Vinod Kumar. Learned Counsel further pointed out that the claim of the landlord had been accepted mainly on the basis of recital in the sale deed dated 3rd November, 1969 (Exhibit A-1) to which the petitioner was not a party. He also contended that even this recital does not lead to the inference that the shop had been let out to Sham Sunder alone. The recital merely states that at the relevant time, the shop was on rent with Sham Sunder, proprietor of Sham Stationery Store. From this, it cannot be automatically inferred that the shop had not been let out to Vinod Kumar also especially when the claim of the petitioners in the written statement had remained uncontroverted.

(8) Mr. Sarin then contended that the reliance placed by the Appellate Authority on the municipal records, Exhibit P-4 and P-5 to uphold the charge of subletting to Vinod Kumar, is totally misplaced. He pointed out that as per assessment register for the years 1979-80 to 1984-85, Exhibit P-4, Sham Stationery Store had been recorded as a tenant whereas assessment register for the years 1985-86 to 1993-94, Exhibit P-5, shows, Aggarwal Book Depot as the tenant. In both the documents Sat Pal had been shown as landlord. He argued that

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(1) 1994(2) CLJ (C, Cr. & Rev.) 454

(2) 1994(1) RCR 733

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from these two documents, the Appellate Authority could not possibly have concluded that Sham Sunder had sublet the premises to Vinod Kumar. It had not even been pleaded much less proved that Vinod Kumar was the sole proprietor of Aggarwal Book Depot.

(9) Mr. S.C. Arora, appearing on behalf of the respondent, on the other hand, supported the findings recorded by both the Authorities below. He reiterated the contention that the recital in the sale deed and the entries in the municipal records clearly showed a change in tenancy from Sham Stationery Store to Aggarwal Book Depot and thus the charge of subletting by Sham Sunder to Vinod Kumar was clearly established. He vehemently contended that the additional evidence, Annexure A-1 and A-2, produced by the petitioner cannot be read into evidence as the same have not been proved. He pointed out that while allowing the application for production of additional evidence and proving the documents appended as Annexures A-1 and A-2, this Court had,—*vide* order dated 26th February, 2003, remitted the matter to the Rent Controller for recording the evidence. The Rent Controller recorded the statement of Mr. Janak Kumar Garg, Income Tax Inspector, Faridkot, on 11th June, 2003. He could not recognise these documents as the same were very old. He also could not say as to whether the same belonged to his office or not. In his cross-examination, he admitted that in the absence of original records, he could not tell as to whether the documents were genuine or not. The statement of Mr. N.C. Rahi, Inspector, Income-Tax, Bathinda, was also recorded on 11th June, 2003. He also could not tell as to whether the signatures on these documents were of the then Income Tax Officer — Shri H.L. Chanana or not. This witness further stated that he could not tell as to whether these documents were genuine or not without referring to the original records. Learned Counsel, therefore, contended that in the absence of original records, which were admittedly not available, Annexures A-1 and A-2 remain unproved and cannot be read into evidence. He pointed out that Vinod Kumar in his statement as RW-1 had stated that he and Sham Sunder were running the business in the name and style of Aggarwal Book depot for the last 28-29 years and were partners in the said firm having a share of 50% each. He also stated that the partnership was oral and not a written one. The Counsel further pointed out that Sham Sunder, while appearing as RW-4 had also stated that the partnership was oral and that no partnership deed had been executed between him and Vinod Kumar. He had also stated

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that they were having 50 percent share each in the firm — Aggarwal Book Depot. The learned Counsel argued that these statements clearly run contrary to Annexures A-1 and A-2 now sought to be produced as additional evidence. Annexure A-1 purports to be an order passed by the Income Tax Officer on an application filed by Aggarwal Book Depot under Section 185 (1) (a) of the Income Tax Act, 1961, on the basis of an instruments of partnership whereas both Sham Sunder and Vinod Kumar had denied executing any such deed. Further both the Annexures A-1 and A-2 show their shares to be 10% and 90% respectively against their claim of 50% share each. Thus, according to the learned Counsel, no reliance can be placed on these documents.

(10) I have heard the Counsel for the parties and perused the relevant records.

(11) Normally, a concurrent finding of fact recorded by the Authorities below about the charge of subletting is not open to interference in the revisional jurisdiction by this Court. However, this Court can interfere if such a finding is perverse and is not supported by any material on record.

(12) The first issue for determination is as to who was inducted as a tenant by the previous owners Bodh Raj and Moti Ram. According to the landlord, Sham Sunder, proprietor of Sham Stationery Store, was the tenant as was evident from the recital in the sale deed dated 3rd November, 1969. The petitioners, on the other hand, maintained that Aggarwal Book Depot was the tenant in which both Sham Sunder and Vinod Kumar were partners. Vinod Kumar while appearing as RW-1 had stated that he and Sham Sunder had taken the shop in dispute from the original owner - Bodh Raj about 28-29 years back and they were running a business in the said shop in the name and style of Aggarwal Book Depot in which both of them were partners having equal shares. On the other hand, Sham Sunder while appearing as RW-4 in his cross examination had admitted that in the beginning business was being run in the name of Sham Book Depot or Sham Stationery Store and thereafter they had started to work in the name of Aggarwal Book Depot. This clearly contradicts the stand taken in the written statement and also the stand taken by Vinod Kumar. The ignorance of Vinod Kumar about the business in the name of Sham Book Depot or Sham Stationery Store supports the inference drawn by the Authorities below from the recital in the sale deed that on the date

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of purchase by Sat Pal, shop was on rent with Sham Sunder, as proprietor of Sham Stationery Store. This inference is also supported by the Municipal records. In assessment Register for the years 1979-80 to 1984-85 Sham Stationery Store was recorded as a tenant whereas in the assessment register for the years 1985-86 to 1993-94 Aggarwal Book Depot has been shown as the tenant. However, from this fact alone, it could not be inferred that Sham Sunder had sublet the premises in dispute to Vinod Kumar as there is no material on record to prove that Vinod Kumar was the proprietor of Aggarwal Book Depot.

(13) The finding of the Authorities below that Sham Sunder had shifted to Ganga Nagar where he had purchased a house and had also got his ration card made, has not been contested before me. However, this fact by itself does not lead to the conclusion that he had sublet the demised shop to Vinod Kumar. The question for determination is as to whether Sham Sunder had parted with the legal possession of the said shop in favour of Vinod Kumar and had retained no control over the same. The question as to what constitutes subletting came up for consideration in **Dev Kumar, through L. Rs versus Smt. Swaran Lata and others**, (3) wherein at page 535 in para 6 it was held as under :—

“6. Coming to the second question the expression “subletting” has not been defined in the Act. The conclusion on the question of subletting is a conclusion on the question of law derived from the findings on the materials on record as to the transfer of exclusive possession and as to the said transfer of possession being for consideration. As to what is the true meaning of expression “sub-letting”, this Court considered the same in the case of Jagdish Prasad *versus* Angoori Devi in an eviction proceedings under U.P. Urban Buildings (Regulation of Letting Rent and Eviction) Act. The Court held that merely from the presence of the person other than the tenant in the shop, subletting cannot be presumed and as long as control over the premises is kept by the tenant and the business run in the premises is of the tenant, sub-letting flowing from the presence of the person other than the tenant in the shop cannot be

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**assumed.** It was further held that in an application for eviction of a tenant from a shop which is based on the allegation that the premises has been sublet, the allegation has to be proved. The question of subletting was considered by this Court in the case of *M/S Shalimar Tar Products Limited versus H.C. Sharma and others* and it was held in order to construe subletting there must be parting of legal possession of the lessee and parting of legal possession means "possession with the right to include and also to exclude others."

(Emphasis supplied.)

In *Dipak Banerjee versus Lilabati Chakraborty*, (4) the Supreme Court held that for proving the charge of subletting, it was necessary to prove that the sub-tenant was in exclusive possession of the part of the premises and the tenant had retained no control over that part of the premises.

(14) In the light of the law enunciated by the Supreme Court as above, the question that arises for consideration is as to whether the Authorities below were justified in returning the finding that Sham Sunder had sublet the demised shop to Vinod Kumar. In the written statement, an alternative plea had been raised to the effect that even if Sham Sunder was held to be the original tenant, he could not be said to have sublet the demised premises to Vinod Kumar as he was also a partner in Aggarwal Book Depot. This contention had not been controverted as no replication was filed. However, the plea of partnership has been rejected on the ground that Sham Sunder had not produced any record such as partnership deed etc. in support of his claim. Be that as it may, the onus of proving issue No. 2 as to whether Sham Sunder had sublet the demised premises to Vinod Kumar was on the landlord and thus it was for him to prove that Aggarwal Book Depot was the proprietary concern of Vinod Kumar and Sham Sunder had nothing to do with it. All that has been proved is that at the time of purchase of shop by Sat Pal on 3rd November, 1969, Sham Sunder proprietor Sham Stationery Store was the tenant whereas thereafter Aggarwal Book Depot has been recorded as tenant in the municipal records. There was no pleading by the landlord that Vinod Kumar was the sole proprietor of Aggarwal Book Depot nor is



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there any finding by the Authorities below to that effect. In the absence of such a finding, it cannot be said that Sham Sunder had sublet the premises to Vinod Kumar. This infirmity is evident from the finding recorded by the Appellate Authority in para 10 which reads as under :—

“The learned Counsel for the respondent has produced Ex.P.4 copy of the assessment register for the years 1979-80 to 1984-85 and the perusal thereof shows that Sham Stationery Store has been recorded as tenant whereas Sat Pal son of Sant Ram has been recorded as owner of the same. In Ex.P.5 copy of the assessment register for the years 1985-86 to 1993-94 Aggarwal Book Depot has been recorded as tenant whereas Sat Pal landlord has been recorded as owner of the same. The person can tell lie, but the documents cannot. **From the perusal of Ex. A-1 sale deed and Ex. P-4 and P-5 copies of the assessment registers, it can be safely concluded that Sham Sunder has sublet the premises to Vinod Kumar.**”

(Emphasis supplied)

As already observed neither the sale deed nor the assessment records of the Municipal Committee refer to Vinod Kumar as proprietor of Aggarwal Book Depot. Thus the Appellate Authority was not right in observing that from the assessment records and the sale deed, it could be “safely concluded that Sham Sunder had sublet the premises to **Vinod Kumar.**” As held by the Supreme Court in **Dev Kumar’s** case (*supra*) subletting could not be presumed merely from the presence of Vinod Kumar in the demised shop.

(15) I am, therefore, satisfied that the finding of the Authorities below that Sham Sunder had sublet the demised shop to Vinod Kumar, who was in its exclusive possession, is not supported by any evidence on record. Accordingly, the civil revision is allowed. Orders dated 4th June, 1996 and 18th February, 1997 passed by the Rent Controller and the Appellate Authority, respectively, are set aside and the application filed by the respondent under Section 13 of the Act is dismissed. No costs.

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R.N.R.