REVISIONAL CIVIL

Before Prem Chand Pandit, J.

RAM CHANDER,—*Petitioner.*

versus

CHANDERWATI,—*Respondent.*

Civil Revision No. 479-D of 57:

1961

Sept. 5th

Delhi and Ajmer Rent Control Act (XXXVIII of 1952)—Section 13(3)—"Residing in commensality—meaning of.

Held, that the dictionary meaning of the word 'commensality' is 'eating at, or pertaining to, the same table'. For the purpose of sub-section (3) of section 13 of the Delhi and Ajmer Rent Control Act, 1952, a person will be said to be 'residing in commensality' with the tenant if he is living jointly with him, having a common mess, without paying for his food, and without paying any rent to him.

Application for revision under section 35 of Act 38, of 1952, Delhi and Ajmer Rent Control Act of the order of Shri Radha Kishan Baweja, Senior Sub-Judge, Delhi, dated the 27th August, 1957, affirming with costs that of Shri P. R. Aggarwala, Sub-Judge, 1st Class, Delhi, dated the 9th July, 1956, granting the plaintiff a decree for ejectment and Rs. 64-8-0 with costs of the suit against the defendant.

D. K. KAPUR, ADVOCATE, for the Petitioner.

BHAGWAT DAYAL AND SUKHBIR PARSHAD, ADVOCATES, for the Respondent.

ORDER

Pandit, J.

PANDIT, J.—This revision petition arises out of a suit for ejectment brought in October, 1955, by Shrimati Chander Wati, against her tenant, Ram Chander, from a flat in the third storey of a building situate in Katra Moti Ram, Nai Sarak, Delhi, and for recovery of Rs. 64-8-0 as arrears of rent and water charges.

The eviction of the tenant was sought on a number of grounds, but, in the present appeal, we are concerned only with two of them, namely, (1) the premises in dispute were required *bona fide* by the land-lady for her own occupation and (2) there had been subletting on the part of the tenant without her consent.

The trial Court found both the grounds in favour of the land-lady and decreed her suit for ejectment and recovery of Rs. 64-8-0.

When the matter went in appeal before the learned Senior Subordinate Judge, he reversed the finding of the trial Court on ground No. 1(1), holding that the premises were not *bona fide* required by the land-lady for her personal necessity but affirmed the finding on ground No. 2 and held that there had been subletting by the tenant without her consent. As a result, the tenant's appeal was dismissed. Against this order the present revision has been filed by him.

Learned counsel for the petitioner submitted that the finding of the learned Senior Subordinate Judge on the question of subletting was erroneous in law, because he had not correctly raised the presumption under sub-section (3), of section 13, of the Act. He contended that it had not been proved by the land-lady that Prithvi Narain, D. W. 3, husband of the elder sister of the tenant's wife, with his family, had been living otherwise, than in commensality with the tenant for the last 2/3 years. According to him, in order to raise this presumption the landlady had to prove that Prithvi Narain and his family were not eating at the same table with the tenant. Even if Prithvi Narain and his family were paying for their food but if they were eating at the same table with the tenant, a presumption in favour of subletting could not be raised under this sub-section. The oral evidence produced by the landlady having been found to be unconvincing and unreliable by the learned Senior Subordinate Judge, no finding could be given that she had proved all the facts, which she was required to prove, before a presumption could be raised in her favour under this sub-section. He also submitted that the learned Senior Subordinate Judge

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was wrong in observing that the trial Court had arrived at the conclusion that the tenant and Prithvi Narain were not living in commensality, because no such finding was given by it.

The relevant portion of section 13 of the Delhi and Amjer Rent Control Act, 1952, for the purpose of the present case, is in the following terms:—

> "S. 13. (1) Notwithstanding anything to the contrary contained in any other law or any contract, no decree or order for the recovery of possession of any premises shall be passed by any Court in favour of the landlord against any tenant (including a tenant whose tenancy is terminated); Provided that nothing in this sub-section shall apply to any suit or other proceeding for such recovery of possession, if the Court is satisfied.
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> (b) that the tenant without obtaining the consent of the landlord in writing has, after commencement of this Act,—
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> (i) sublet, assigned or otherwise parted with the possession of the whole or any part of the premises; or
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> (3) For the purposes of clause (b) of clause (c) of the proviso to sub-section (1), a Court may presume that the premises let for use as a residence were or are sublet by a tenant in whole or in part to another person, if it is satisfied that such person not being a servant of the tenant or a member of the family of such servant was or has been residing in the premises or any part thereof for a period exceeding

one month otherwise than in commensality with the tenant.

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In my opinion, in order to raise a presumption under sub-section (3), mentioned above, the following facts have to be established by a landlord—

(1) that the premises were let for use as a residence to a person, who was not a servant of the tenant or a member of the family of such servant;

(2) that such person was or has been residing in the premises or any part thereof for a period exceeding one month; and

(3) that such person was or has been residing for a period exceeding one month not in commensality with the tenant.

In the present case, it is common ground that Prithvi Narain, along with his wife and children, had been living for the last 2/3 years in a part of the suit premises. It is undisputed that Prithvi Narain is neither a servant of the tenant nor a member of the family of such servant. The only point, therefore, that remains for decision is as to whether the landlady had proved that Prithvi Narain, with his family, had not been living in commensality with the tenant during this period. The word 'commensality' has not been defined in the Act. The ordinary dictionary meaning of this word as given in the 'Oxford Dictionary' is 'eating at, or pertaining to, the same table'. For the purpose of sub-section (3), in my view, a person is said to be 'residing in commensality' with the tenant if he is living jointly with him, having a common mess, without paying for his food, and without paying any rent to him. In the present case, the tenant produced evidence to show that Prithvi Narain did not pay any rent to him and Prithvi Narain and his family had a common mess with him. On the other hand, the landlady led evidence to prove that the tenant and Prithvi Narain had got separate kitchens and were living separately.

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The learned Senior Subordinate Judge, had remarked that the oral evidence adduced by both the parties was entirely unconvincing and not reliable. He, however, gave a finding on this point in favour of the landlady, relying on circumstantial evidence. He held that Prithvi Narain had a wife, two sons, an unmarried daughter, and two married daughters. He also found that Prithvi Narain was employed and was getting a salary of Rs. 225 per mensem, whereas, the tenant was doing business. He came to the conclusion that it was highly improbable that the tenant had been supporting Prithvi Narain and his family for the last so many years and, therefore, Prithvi Narain was not living in commensality with the tenant. Under these circumstances, the learned Senior Subordinate Judge held that a presumption could, therefore, be safely drawn that there had been subletting by the tenant and the tenant had failed to rebut that presumption in the present case. This finding as already mentioned above, has been based on circumstantial evidence and, in my opinion, there is no reason to interfere with this finding of fact, when it has not been shown to be vitiated by any error of law. It is not possible to believe that Prithvi Narain, with his large family, was living jointly with the tenant, having a common mess and without payment of any rent, for all these years, especially when it has not been proved that he was an impecunious person. In this view of the matter, the sub-letting by the tenant has been established in this case.

I may mention that the learned counsel for the respondent argued that the finding of the learned Senior Subordinate Judge, that the premises were not *bona fide* required by the land-lady for her personal use, was wrong in law. But in view of my finding on the question of sub-letting, I need not go into this matter.

In view of what I have said above, I would dismiss this petition. But in the circumstances of this case, however, I would leave the parties to bear their own costs throughout.

B. R. T.