Messrs Gujrals Co. *v.* Messrs M.A. Morris

Pandit, J.

the Court. In the circumstances of this case, however, I would leave the parties to bear their own costs in this Court.

B.R.T.

REVISIONAL CIVIL

Before A. N. Grover, J.

MANGAT RAM,—*Petitioner.*

versus

OM PARKASH,—*Respondent.*

Civil Revision No. 545 of 1960.

1961

Sept. 22nd

East Punjab Urban Rent Restriction Act (III of 1949)—Section 3—Notification, under exempting buildings constructed during certain years from the provisions of the Act—Whether applies to an addition made to an already existing building in those years—Partnership Act (IX of 1932)—Section 4—Essential elements to determine whether a partnership exists stated.

Held, that the tenant of a building, on the vacant land attached to which a room is constructed in a particular year, cannot take advantage of a notification issued under section 3 of the East Punjab Urban Rent Restriction Act, 1949, exempting the buildings constructed in that year (1956, in the present case), from the provisions of the Act and plead that the newly-constructed portion will not be governed by the provisions of the Act. The landlord is entitled to an order for the tenant's eviction from the entire building if he proves that the tenant has sublet the newly-constructed portion as the unit is the entire building which had been leased out to the tenant and not merely the portion which has been newly built.

Held, that a partnership contains three essential elements : (i) it must be the result of an agreement between several persons, (ii) the agreement must be to share the profits of a business, and (iii) the business must be carried on by all or any of them acting for all and there must be

an intention to become partners. It is, however, open to a partner to say that as between himself and other partners he shall bear all the losses of the business and similarly the partners can agree that the profits may be shared in any way they like, e.g., by one partner agreeing to receive a fixed annual or monthly sum in lieu of a sum varying according to the profits actually earned.

Petition under section 15(5) of Act III of 1949, as amended by Act 29 of 1956, for revision of the order of Shri G. S. Bedi, District Judge, Gurdaspur, dated 14th May, 1960, affirming that of Shri K. S. Bhalla, Rent Controller, Batala, dated 26th October, 1959, dismissing the application for ejectment of the respondent tenant from the shop.

H. L. SARIN, ADVOCATE, for the Petitioner.

H. R. MAHAJAN, ADVOCATE, for the Respondent.

JUDGMENT

GROVER, J.—This petition arises out of a dispute between a landlord and his tenant. Grover, J.

It appears that prior to September, 1957 the respondent, Om Parkash, had taken certain premises consisting of shops, etc., and an *ahata* on rent from the petitioner. Later on a room was built on the *ahata* by the tenant, but it is clear from Exhibit P.1, which is the rent note dated 11th September, 1957, that the cost of construction of that room was adjusted towards the rent and, therefore, that room must be deemed to have become the property of the landlord. By means of the aforesaid rent deed the respondent took on rent the premises in dispute which included this room which had been built on the *ahata*. There was a clear stipulation that he was not to sublet the premises. On 9th September, 1957, however, the respondent entered into what is called an agreement of partnership with Shadi Lal in respect of the room where some machinery had been installed. It was stipulated in this agreement that whatever more capital would be required for

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being invested on the machinery, that would be invested by Shadi Lal. Om Parkash was to receive a lump sum of Rs. 47 every month by way of profits, as otherwise, he was not to receive any share in the profits. If any losses occurred, Shadi Lal took over the liability to bear those losses. Shadi Lal again was to bear the responsibility for any debts which may be contracted for running the *karkhana*. Similarly the liability for the payment of income tax and sales tax was taken over by Shadi Lal, and Om Parkash was not to have any responsibility whatsoever in that behalf. It was agreed in categorical terms that if Shadi Lal refused to make payment at the rate of Rs. 47 per mensem, then the partnership would be deemed to have come to an end and that the partnership was to continue for two years. Om Parkash retained the liability to pay the rent of the premises himself. The electricity bills were to be paid by Shadi Lal. It was stated quite clearly that Om Parkash had a separate business adjacent to the room which was being given to Shadi Lal and a wall would be constructed for the purpose of protection of Om Parkash's business at his expense.

In July, 1958, the petitioner filed an eviction application against the respondent on the ground that he had sublet the premises and was liable to eviction for that reason. The tenant denied that the premises or any part thereof had been sublet and it was claimed that he had merely entered into a partnership with Shadi Lal. It was further pleaded that since the portion, which had been given to Shadi Lal, had been newly constructed, the East Punjab Urban Rent Restriction Act did not apply to the same. The Rent Controller found that the portion in possession of Shadi Lal had been constructed in the year 1957 and as such was exempt from the provisions of the East Punjab Urban Rent Restriction Act for a period of 5 years. The plea of the tenant that a partnership existed between him and Shadi Lal was negatived and it was found that in fact it was a case of subletting by the tenant. The application for eviction was, however, dismissed on the ground that the East Punjab Urban Rent Restriction Act did not govern the present case. The landlord appealed and the learned District Judge reversed the finding of the Rent Controller with regard to the

partnership and came to the conclusion that a partnership had been entered into between Om Parkash and Shadi Lal and a sub-lease had not been created. He agreed with the view of the Rent Controller that the portion let out to Shadi Lal having been constructed during the year 1956 or 1957, the East Punjab Urban Rent Restriction Act would not apply because of a notification issued by the Punjab Government in the year 1957. The decision of the Rent Controller was consequently affirmed. The landlord has come up to this Court in revision.

The first point that has been raised by Mr. Sarin, the learned counsel for the petitioner, is that the view of the learned District Judge that a partnership had come into existence by means of the deed, Exhibit P.W. 2/1, was contrary to law and the evidence on the record. Such a matter involves mixed question of fact and law and if wrong principles have been applied, the conclusion of the learned District Judge on the point cannot be treated as sacrosanct. The terms of the partnership deed, which have been set out before, leave no doubt that no partnership was intended to be created and a subterfuge was adopted for the purpose of evading any liability for eviction under the East Punjab Urban Rent Restriction Act. The Rent Controller gave a number of reasons for coming to the aforesaid conclusion and the learned District Judge without meeting all the points that had weighed with the Rent Controller came to the conclusion that a partnership had come into existence. He was largely influenced by the fact that only one room had been given to Shadi Lal by Om Parkash and the latter had provided him with his own machinery and even the electric connection. The whole tenor of the document, Exhibit P.W. 2/1, has to be seen and to my mind the condition that if Rs. 47 are not paid every month, the partnership would automatically come to an end, appears very much like a condition in a deed of lease that if the rent s not paid regularly, the tenancy shall be determined. Apart from this, the principles for deciding whether a partnership has come into existence or not do not appear to have been properly kept in view by the learned District Judge. Section 4 of the Partnership Act shows that a partnership contains three essential elements; (i) it must be

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the result of an agreement between several persons, (ii) the agreement must be to share the profits of a business, and (iii) the business must be carried on by all or any of them acting for all and there must be an intention to become partners,—*vide Meenakshi Achi and another* v. *P. S. M. Subramanian Chettiar and others* (1). It is true, as has been contended by the learned counsel for the respondent Om Parkash, on the basis of *Raghunandan Nanu Kothare* v. *Hormasji Bezonji Bamji* (2), that it is open to a partner to say that as between himself and other partners he shall bear all the losses of the business and similarly the partners can agree that the profits may be shared in any way they like, e.g. by one partner agreeing to receive a fixed annual or a monthly sum in lieu of a sum varying according to the profits actually earned. The conditions in Exhibit P.W. 2/1 that Om Parkash was to receive the profits by a monthly payment of Rs. 47 and that Shadi Lal alone was to bear the losses, may not militate against the existence of a partnership but it is not possible to spell out from the so-called deed of partnership the basic requirement that the business must be carried on by all or any of the partners acting for all. The intention has also to be gathered from the various conditions in a particular document and I have no doubt that the provisions of Exhibit P.W. 2/1 do not justify an in ference that what was intended was to create a partnership. For these reasons, I am of the view that the Rent Controller correctly came to the conclusion that no partnership existed between Shadi Lal and Om Parkash and that actually it was a case of sub-tenancy.

The next question is whether the portion let out to Shadi Lal having been constructed during the year 1956 or 1957 the East Punjab Urban Rent Restriction Act would be applicable or whether the same would be exempt in view of certain notifications issued by the Government. Under section 3 the Government can direct that all or any of the provisions of the Act shall not apply to any particular building or rented

(1) A.I.R. 1957 Mad. 8.
(2) A.I.R. 1927 Bom. 187.

land or any class of buildings or rented lands. The notification issued is in the following terms :—

> "In exercise of the power conferred by section 3 of the East Punjab Urban Rent Restriction Act, 1949 (Punjab Act No. III of 1949) the Governor of Punjab is pleased to exempt all buildings constructed during the years 1956, 1957 and 1958 from the provisions of the said Act for a period of five years with effect from the date of completion of such buildings."

Now, in the present case it is not on the entire premises, which had been leased out to the respondent Om Parkash, that a building was constructed in the relevant years but only a room was built on the *ahata* which was included in the premises which had been let out and it was that portion which came to be occupied by Shadi Lal as a sub-tenant. The reasoning that prevailed in the Courts below and which has been commended before me by the learned counsel for the tenants is that according to the definition of a building contained in section 2(a) of the Act, it means "any building or part of a building let out for any purpose". It is thus urged that the notification granting exemption would cover the portion in occupation of Shadi Lal because even though that is a part of a building, it is covered by the definition of "building" itself. The notification has, however, to be read in the light of the language used in section 3 and to my mind it is abundantly clear that the Government can direct that all or any of the provisions of the Act would not apply to (a) any particular building and (b) any class of buildings. The notification in question did not refer to any particular building but it referred to that class of buildings which were constructed during the years 1956, 1957 and 1958. The building which had been let to Om Parkash was already in existence prior to the date of the notification. It is only on a vacant piece of land attached to it that the room in question was constructed during or subsequent to the year 1956. Om Parkash could not be regarded to be a tenant of two separate units, one of the built part and the other of the unbuilt part. The entire

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premises including the built and the unbuilt portions had been let out to him as one unit. The obvious intention of the Government in promulgating the notification is to exempt such buildings as are constructed during the aforesaid years and are let out to a tenant. In other words, if a building had been constructed on the entire premises and then let out to Om Parkash, then it would have been covered by the notification. Similarly if he had not originally been given the lease of the entire premises and for the first time he had taken on tenancy only the room which is now in the occupation of Shadi Lal, then that may have been within the protection of the notification. Actually a Bench of this Court had occasion to consider in *Sadhu Singh* v. *District Board, Gurdaspur and another* (L.P.A. 276 of 1958, decided on 9th August, 1961), the question whether the aforesaid notification would cover a building which had been reconstructed and not constructed in the year 1956. While deciding that question, it was observed that whenever any part of a building was erected afresh, it would fall within the phrase "construction" but in the notification exemption had been to a building constructed and not to a part of a building which had been constructed. The definition of "building" in the East Punjab Urban Rent Restriction Act was also examined and it was laid down that it covered a part of a building which was let out to a tenant and, therefore, the unit was the building in possession of the tenant though it is only a part of the building. The following observations made by the Bench may be referred to :—

> "This further supports the view that once a part of the building as defined in the Act is taken as a building for the purposes of the Act, any partial construction in such part would not be a construction of a building, but where the entire part is pulled down and rebuilt it would certainly be construction and would fall within the ambit of the notification."

Harbans Singh, J. in *Jiwan Dass* v. *Rama Nand* (S.A.O. No. 62 of 1959, decided on 5th August, 1961)

has relied on the aforesaid observations of the Bench while deciding a point very similar to the one that has arisen in the present case. As the landlord wants ejectment from the entire premises and not only from that portion which is in occupation of Shadi Lal and which is said to have been built in or about the years 1956-57 and as the unit would be the entire building which had been leased out to the tenant and not merely the portion in question, it is not possible to say that the tenant Om Parkash can take advantage of the notification with respect to the entire portion from which he is liable to be ejected once it is established that he had been guilty of subletting a portion of it.

In the result, this petition is allowed and the orders of the Courts below are set aside. The respondent is liable to eviction and his eviction is hereby ordered. He will have three months for vacating the premises in dispute. In view of the nature of the points involved, the parties will bear their own costs.

B.R.T.

REVISIONAL CIVIL

Before Prem Chand Pandit, J.

RAM KISHAN,—*Petitioner.*

versus

THE DEPUTY COMMISSIONER, DELHI, AND OTHERS,—*Respondents.*

Civil Revision No. 559-D of 1959.

Delhi Land Reforms Act (VIII of 1954)—Sections 104 and 105 and Schedule I item 28—Suit for a declaration that the order of the Revenue Assistant was illegal and without jurisdiction and for a permanent injunction restraining the defendant from taking possession of the land—Whether triable by a civil Court.

1961

Sept. 25th

Held, that item 28 of Schedule I of the Delhi Land Reforms Act, 1954, refers to declaratory suits under section 104 of the Act. The present suit is not a purely declaratory suit as the plaintiffs have, by way of consequential