Smt. Santosh Mehra Vs Dr. M.L. Aggarwal

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 11, 1985

Citation: (1985) 2 RCR(Rent) 96

Hon'ble Judges: J.V. Gupta, J

Bench: Single Bench

Advocate: Bhagirath Dass, with Mr. Romesh Kumar, for the Appellant; H.L. Sarin , with Mr. M.L. Sarin and R.L. Sarin, for the Respondent

Final Decision: Allowed

Judgement

J.V. Gupta, J.
This is landlady''s petition in whose favour the eviction order was passed by the Rent Controller, but the same was set aside

in appeal.

2. The landlady sought the ejectment of her tenant Dr. M.L. Aggarwal from the building, in dispute, which was rented out to him vide rent note

mark A, dated May 30, 1971, at a monthly rent of Rs. 850/-. The eviction petition was filed on December 20, 1975. wherein the tenant''s eviction

was sought on the ground that he had sublet the building, he had ceased to occupy it for a period of more than four months without reasonable

cause; he was using the same for the purpose other than the one for which it was leased out to him and that the landlady required it for her own use

and occupation. The petition was contested on behalf of the tenant. The learned Rent Controller ordered ejectment of the tenant from the building,

in dispute, on the grounds of subletting and it having not been occupied by the tenant for more than four months without any reasonable cause. The

other grounds of eviction taken by the landlady were negatived. In appeal, the learned Appellate Authoriiy reversed the findings of the Rent

Controller on the above said two grounds and came to the conclusion that since there was a partnership between the tenant and his son, the

question of subletting the premises by the tenant did not arise. Before the Appellate Authoriiy, the landlady also contested the finding of the Rent

Controller as regards her bonafide requirement. However, no finding was given by the Appellate Authority thereto. Earlier, this Court vide order

dated August 6, 1982, sent for a report from the Appellate Authority in regard to the personal requirement of the landlady. The report dated

October 11, 1982, was submitted by the Appellate Authority to this Court, wherein it was found that no case of personal necessity was made out.

No objections were filed to the said report by the landlady.

3. The learned counsel for the petitioner contended that the learned Rent Controller rightly came to the conclusion that the alleged partnership

deeds between the tenant and his son, Exhibits R 1 and R-2, were not genuine documents. Besides, the tenant was no more in occupation of the

premises, in question, as he had shifted his business and residence from Amritsar to Delhi where he had got his own house which was got vacated

from the tenants in the year 1973. Thus, argued the learned counsel, the said finding of the Rent Controller has been reversed by the Appellate

Authority on surmises and conjectures. The whole approach, argued that learned counsel, of the Appellate Authority, was wrong and illegal. On

the other hand, the learned counsel for the respondent contended that the finding of the Appellate Authority in this regard was correct and that it

being a finding of fact could not be interfered with in the revisional jurisdiction. It was also contended that the partnership deeds between the tenant

and his son were genuine documents and once the partnerships are proved, then the question of subletting the demised premises, as alleged by the

landlady, did not arise. In support of the contention, the learned counsel relied upon Devki Nandan v. Om Parkash (1972) 4 P.L.R. 601, Smt

Shanti Devi v Puran Chand (1975) 77 P.L.R. 654, Ram Parkash v. Labhu Ram (1981) 83 P.L.R. 59 and two Supreme Court decisions, reported

as Murli Dhar v. Chuni Lai 1970 R.C.J. 922 and Smt. Kirshnawanti v. Hans Raj 1975 R.C.J. 164.

4. I have heard the learned counsel for the parties and have also gone through the relevant evidence on the record and the case law cited at the

bar.

5. Admittedly, the premises were let out to the tenant, Dr. M.L. Aggarwal, vide rent note, mark A. It is not disputed that at that time the tenant

was working as a Radiologist. According to him, he entered into partnership as evidenced by, Exhibit R-2, dated January 1, 1972, with effect from

June 1, 1971, and Exhibit R-1, dated January 13, 1974, with effect from April 1, 1973. Indisputably, the partnership vide, Exhibits R-2 and R-1,

was between the father and the son. The tenant himself appeared as R.W-2. During his cross-examination, he admitted that he owned a house at

Delhi which was a joint Hindu family property. On the ground floor therein, he had installed an X-Ray plant in the year 1973 The said house was

situated in Safdar Jang area. He further admitted that he had got a telephone connection in Delhi in June, 1973 or in June. 1974. He also admitted

that he was a ration card holder in Delhi since June, 1973 and that he was not a ration card holder at Amritsar. According to him he had not shifted

to Delhi, but he was there with a view to establish a branch of the business there From a reading of his statement as a whole, it is quite evident and

was rightly belived by the Rent Controller that he was no more occupying the demised premises since the year 1973, when he shifted to Delhi and

established his own "" business there. Even the Appellate Authority has observed in the judgment under revision that even if the original tenant Dr.

M. L. Aggarwal had shifted to Delhi from Amritsar, but retained the share in the part-nershio, it cannot be said that he sublet the premises to his

son Dr. Ravi Kant, the other partner of the business This approach of the Appellate Authority is wholly misconceived, wrong and illegal. Once it is

found as a fact that the tenant was nor more in occupation of the demised premises, then, simply because he had entered into partnership with the

person who was in occupation of the demised premises, it did not entitle him to retain the premises as a tenant. In that situation, it will be a clear

case of subletting unless proved otherwise for which the burden lies on the tenant. In the present case, the Rent Controller rightly observed that no

account book had been produced to show as to what was the amount of profits having been paid to the tenant Dr. M. L. Aggarwal or his son Ravi

Aggarwal during the year. Had the account books been produced, it could have been said whether the partnership was a. genuine transaction

entered into by them or it was only a camouflage. The non-production of the account books leans to infer that had they been produced, those

would have spoken otherwise, i.e., those would have shown that there was no partnership between the parties and that the radiology business at

Amritsar was the exclusive property of Dr. Ravi Aggarwal, the son of the tenant, and the said business at Delhi was the exclusive property of Dr.

M. L. Aggarwal, tenant. Surprisingly enough, Dr. Ravi Aggarwal, the alleged partner, was not produced as a witness by the tenant. The authorities

relied upon by the learned counsel for the respondent have absolutely no applicability to the facts of the present case. In none of those cases, it

was found as a fact that the tenant was not in occupation of the premises even though he had entered into partnership with other persons. The

touch-stone is: if the tenant continues inoccupation of the demised premises and also enters into partnership with the other persons, then, it may not

amount to subletting as such, but once it is found as a fact that the tenant was no more in occupation of the premises though he had entered into

partnership with some other persons and those persons are in occupation then, it cannot be held that he is deemingly occupying the same as a

tenant. It will be significant to note that in his cross-examination, the tenant, Dr. M. L. Aggarwal, as R.W -2, stated that he could not produce any

record to show that he worked at Amritsar after 1973. Thus, the finding of the Rent Controller, in this behalf, was correct and the same has been

reversed in appeal arbitrarily and on surmises and conjectures.

6. The learned counsel for the petitioner also raised contentions with regard to the personal necessity of the landlady whereas it was argued on

behalf of the tenant that the said ground was no more available to her as the building was a scheduled one and that as she had not appeared in the

witness-box herself, an adverse inference be drawn against her. However, in view of the conclusion arrived at in the earlier part of this judgement,

these contention need not be gone into.

7. As a result of the above discussion, this revision petition succeeds and is allowed. The order of the Appellate Authority is set aside and that of

the Rent Controller directing eviction of the tenant is restord with costs. However, the tenant is allowed three months time to vacate the premises:

provided all the arrears of rent, if any and the advance rent for three months, are deposited with the Rent Controller, within one month, with an

undertaking, in writing, that after the expiry of the said period of three months, he shall vacate the premises and hand over their vacant possession

to the landlady.