Umrao Vs Smt. Minu and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 3, 1990

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 22 Rule 2, 115
Delhi Rent Control Act, 1958 â€" Section 14(4)
East Punjab Urban Rent Restriction Act, 1949 â€" Section 14(1), 15(5) , 15(6)

Citation: (2000) 1 ILR (P&H) 109

Hon'ble Judges: V.S. Aggarwal, J

Bench: Single Bench

Advocate: J.S. Malik, for the Appellant; Ashok Aggarwal and Vikas Behl, for Respondent 1 and 2, for the Respondent

Final Decision: Dismissed

Judgement

V.S. Aggarwal, J.
Umrao Petitioner has filed the present revision petition directed against the order passed by the learned Rent Controller,

Narnaul, dated 1lnd November, 1992 and of the learned Appellate Authority, Narnaul, dated 2nd May, 1998. The learned Rent Controller had

passed an order of eviction against the Petitioner. The appeal was dismissed by the learned Appellate Authority.

2. The relevant facts are that Petitioner is a tenant in the shop in question. The Respondents who are landlords filed an eviction petition. The ground

of eviction relevant for the disposal of the present revision petition and that found favour with the learned Rent Controller and the learned Appellate

Authority is that, as per landlords, the Petitioner who is a tenant has sublet the property to Raghbir Respondent (now dead and represented by

Respondents No. 3 to 5 in the revision petition). Raghbir was the son of the Petitioner. The eviction petition was contested. It was denied that the

property in question has been sublet or that the possession has been delivered to Raghbir, his son. Petitioner"s claim was that his son was not

carrying on any business of cycle repairng in the suit premises.

3. The learned Rent Controller had framed the issues and with respect to the said controversy concluded that it was the son of the Petitioner who

was carrying on the business in the property in question. The report of the Local Commissioner was relied upon that it was the son of the Petitioner

who was found working in the suit premises. The learned Rent Controller held that when a third person is in possession and both the Petitioner and

his son were having separate mess, it is a case of subletting. An order of eviction was passed.

4. The Petitioner preferred an appeal. The Appellate Authority relied upon the decision of the Supreme Court in the case of M/s Bharat Sales

Limited v. Life Insurance Corporation of India 1998 Haryana Rent Reporter 150 and held further that it was the son of the Petitioner who was

carrying on the business in the suit property. The Petitioner lived separately from his son. Acting on the report of the Local Commissioner, it was

concluded that the findings of the Rent Controller are correct.

5. Aggrieved by the same, present revision petition has been filed.

6. The learned Counsel for the Petitioner at the outset urged that both the Rent Controller and the Appellate Authority were in error in relying upon

the report of the Local Commissioner because, according to him, the Local Commissioner had not appeared as a witness. The Petitioner in this

process lost the right to cross-examine the Local Commissioner.

7. What is missing in the argument of the learned Counsel is that, admittedly, to the report of the Local Commissioner, Petitioner has filed

objections. Objections had been considered and were dismissed. On the strength of this fact, learned Counsel for the Respondents contended that

once objections have been dismissed, it becomes unnecessary to examine the Local Commissioner and the report could be read in evidence.

8. This Court in the case of Raja Ram v. Ram Sarup 1979 P.L.J. 12, has dealt with this controversy. It was held that the report of the Local

Commissioner appointed by the Court can be read in evidnece and if any party takes exception to it, he is at liberty to examine him as a witness. In

the case of Inder Kumar Jain v. Durga Dass and Anr. 1981 (1) R.C.J. 450, a Local Commissioner was appointed ex parte. It was held that a

Local Commissioner could be appointed and his report could be considered because it was noted that otherwise it would cause serious prejudice

to the landlord. Same view prevailed with this Court in the case of Hukam Chand v. The Financial Commissioner, Haryarna, Chandigarh and Ors.

(4). It becomes unnecessary for this Court to probe further in this regard because, as mentioned above, the Petitioner had filed objections to the

report of the Local Commissioner. The said objections had been rejected. This was not in dispute. Once the objections have been rejected as filed

by the Petitioner, in that event, the Petitioner could only lead evidence to show that what is being urged is not correct. The report of the Local

Commissioner, indeed, could be considered and examined on its merits. In broad principle, keeping in view the peculiar facts of this case,

therefore, the said plea of the Petitioner must fail.

9. Confronted with that position, it was argued that during the pendency of the appeal, Raghbir, the alleged sub-tenant, had died. No order was

passed regarding impleading the legal representatives of Raghbir and, therefore, it was a procedural flaw. Order 22 Rule 2-B of the Code of Civil

Procedure, 1908, as applicable to Haryana, reads as under:

2-B: The duty to bring on record the legal representatives of the deceased Defendant shall be of the heirs of the deceased and not of the person

who is dominus litus.

10. It is abundantly clear from the perusal of the aforesaid provision that it is the duty of the heirs of the deceased to bring the lagal representatives

on the record. It is not the duty of the person who is dominus litus to do so. To the same effect is the judgment of this Court in the case of M/s

Vinod Trading Company etc., v. Seth Tola Ram etc 1978 CLJ P&H 16. When no such application was filed by the legal representatives of the

deceased son of the Petitioner, it cannot be termed that any prejudice is caused much less to the Petitioner. He cannot, in these circumstances,

therefore, raise this argument to his benefit.

11. On behalf of the Respondent-landlords, it was contended that both the learned Rent Controller and the learned Appellate Authority have

returned a concurrent finding of fact that it is a case of subletting and, therefore, as there is correct appreciation of evidence, the said finding should

not be upset by this Court. Strong reliance in this regard was placed on the decision of this Court in the case of H.S. Sandhu (a minor) by Mrs.

Amarjit Kaur Sandhu (deceased) represented by Legal Representatives v. Satya Parkash and Ors 1989 (2) R.C.R. 197 . Reliance was further

placed on the decision of the Supreme Court in the case of Rajbir Kaur and Another Vs. S. Chokesiri and Co., . This was a decision under the

East Punjab Urban Rent Restriction Act, 1949. The provisions of Sub-section (5) to Section 15 of the said Act are not different from the

provisions of the Rent Act applicable to Haryana. The Supreme Court held as under:

The scope of the revisional jurisdiction depends on the language of the statute conferring the revisional jurisdiction. Revisional jurisdiction is only a

part of the appellate jurisdiction and cannot be equated with that of a full-fledged appeal. Though the revisional power-depending upon the

language of the provision-might be wider than revisional power u/s 151 (or 115 ?) of the Code of Civil Procedure, yet, a revisional Court is not a

second or first appeal.

When the findings of fact recorded by the Courts below are supportable on the evidence on record, the revisional Court must, indeed, be reluctant

to embark upon an independent reassessment of the evidence and to supplant a conclusion of its own, so long as the evidence on record admitted

and supported the one reached by the Court below. With respect to the High Court, we are afraid, the exercise made by it in its revisional

jurisdiction incurs the criticism that the concurrent finding of fact of the Court below could not be dealt and supplanted by a different finding arrived

at on an independent reassessment of evidence as was done in this case. We think in the circumstances, we should agree with Sri Sanghi that the

concurrent finding as to exclusive possession of M/s Kwality Ice-Cream was not amenable to reversal in revison. Contentions (a) and (b), in our

opinion, are well taken and would require to be held in Appellants'' favour.

12. Same view prevailed with the Supreme Court in the decision rendered in the case of Lachhman Doss v. Santokh Singh 1995 H.R.R. 380,

wherein the findings were as under:

In the present case Sub-section (6) of Section 15 of the Act confers revisional power on the High Court for the purpose of satisfying itself with

regard to the legality or propriety of an order or proceeding taken under the Act and empowers the High Court to pass such order in relation

thereto as it may deem fit. The High Court will be justified in interfering with the order in revision if it finds that the order of the appellate authority

suffers from a material impropriety or illegality. From the use of the expression ""Legality or propriety of such order dr proceedings"" occurring in

Sub-section (6) of Section 15 of the Act, it appears that no doubt the revisional power of the High Court under the Act is wider than the power u/s

115 of the CPC which is confined to jurisdiction, but it is also not so wide as to embrace within its fold all the attributes and characteristics of an

appeal and disturb a concurrent finding of fact properly arrived at without recording a finding that such conclusions are perverse or based on no

evidence or based on a superficial and perfunctory approach. If the High Court proceeds to interfere with such concurrent findings of fact ignoring

the aforementioned well-recognised principles, it would amount to equating the revisional powers of the High Court as powers of a regular appeal

frustrating the fine distinction between an appeal and a revision. That being so unless the High Court comes to the conclusion that the concurrent

findings recorded by the two courts below are wholly perverse and erroneous which manifestly appear to be unjust there should be no interference

13. Therefore, one would proceed with the limited scope as to see if there is misreading of evidence or the findings arrived at are absurd or not.

14. The principle of law is well settled that in case of subletting of the premises, the landlord being a stranger to any agreement between the tenant

and the sub-tenant ordinarily will not know the precise agreement between the tenant and the sub-tenant. If a third person is in possession, in that

event, the Courts would be well within their right to infer subletting of the premises unless possession of the third person is explained by the tenant.

In Smt. Rajbir Kaur''s case (supra), the Supreme Court had enunciated the said principle and concluded that in a suit for eviction on the ground of

subletting if exclusive possesion is established and the version of the tenant as to the particulars and the incident of the transaction is unacceptable,

then the Court can draw inference that the transaction was entered into with monetary consideration in mind. But the Supreme Court hasten to add

that it is open to the tenant to rebut this fact. It was further concluded that such transactions of subletting in the guise of licences are in their very

nature clandestine arrangement and the Court has to draw legitimate inferences. Similar view was expressed by the Supreme Court in the case of

M/s Bharat Sales Limited v. Life Insurance Corpration of India 1998 H.R.R. 150. The principle referred to above was restated and the Supreme

Court held as under:

Sub-tenancy or sub-letting comes into existence when the tenant gives up possession of the tenanted accommodation, wholly or in part, and puts

another person in exclusive possession thereof. This arrangement comes about obviously under a mutual agreement or understanding between the

tenant and the person to whom the possession is so delivered. In this process, the landlord is kept out of the scene. Rather, the scene is enacted

behind the back of the landlord, concealing the overtacts and transferring possession clandestinely to a person who is an utter stranger to the

landlord, in the sense that the landlord had not let out the premises to that person nor had he allowed or consented to his entering into possession

over the demised property. It is the actual, physical and exclusive possession of that person, instead of the tenant, which ultimately reveals to the

landlord that the tenant to whom the property was let out has put some other person into possession of that property. In such a situation, it would

be difficult for the landlord to prove by direct evidence, the contract or agreement or understanding between the tenant and the sub-tenant. It

would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property had been sublet had paid monetary

consideration to the tenant. Payment of rent, undoubtedly, is an essential element of lease or sub-lease.

15. That being the legal position, one can conveniently travel back to the facts of the case and see if it is a case of subletting or not? It has been

established as of fact by the learned Rent Controller and the learned Appellate Authority that the Petitioner is an old person. He is having separate

mess from his son. When the Local Commissioner visited the suit premises, it was the son who was found working in the suit premises.

16. Attention of the Court was drawn by the learned Counsel for the Respondents to the decision of this Court in the case of Banta Singh v.

Vishwa Nath Dogra and Anr. 1981 (2) R.C.R. 578. In the cited case, a petition for eviction was filed on the ground of subletting. The tenant took

the plea that it was a joint family business with the father, but the said fact was not established. Once it was not so established, this Court held that

even if the father was in possession, it can be inferred that it is a case of subletting. It is obvious, therefore, that the decision so rendered was in the

peculiar facts of the said case where a specific defence was taken that it is Joint Hindu Family business that is being carried out in the property. As

noticed above, this is not the case herein. Thus, the said decision does not come to the rescue of the Respondents.

17. In the case of Harminder Singh of Ludhiana v. Kartar Singh and Ors 1985 H.R.A. 39, eviction petition was filed on the ground of subletting.

The property had been let to the father and was found to be in possesion of his son. The son took up the plea that he was a direct tenant in the

property. He failed to establish the same. Once such was the finding, it was held that inference of subletting can easily be drawn. This Court held as

under:

... Later on, he walked out of the premises and allowed his son Harminder Singh, Respondent, to occupy the same who now claims himself to be a

direct tenant under the landlord. Under the circumstances, the plea of subletting is clearly estblished from the evidence on the record in the present

case....

Once again it is clear that it was in the circumstances of the particular case that it was held that the father could sublet the property to the son

because the son failed to establish that he was a direct tenant of the landlord. He set up his own title in the property but failed to establish the same.

The cited case is distinguishable on its facts. Similary, in the case of Hans Raj and Anr v. Naval Kishore and Ors. 1986 (2) R.C.R. 617, the

brother of the tenant was alleged to be in possession carrying on business and it was not shown that they were having a joint family. On the

contrary, they were living separately and the tenant was having a separate business. It was held that it was a case of subletting.

18. It goes without saying that a judgment would be a precedent binding if it is para materia on facts. But, as noticed above, in both these cases the

facts were different and, therefore, one can safely conclude that the said decisions cannot be taken advantage of by the Respondents.

19. Reliance in this regard was placed on the decision of the Supreme Court in the case of Dr. Gyan Parkash v. Som Nath and Ors. 1996 H.R.R.

57. This was a dicision under the Himachal Pradesh Urban Rent Control Act, 1987. There was no plea taken in the written statement by the sub-

tenant that the original tenant had surrendered the tenancy and that the landlord had accepted him as a direct tenant. It was held that mere payment

of rent will not make him a direct tenant. No such plea had been taken by the son of the Petitioner that he was direct tenant in the property. The

result would be that the decision in Dr. Gyan Parkash''s case (supra) is also distinguishable.

20. This Court in the case of Chanan Singh Chitti v. Darbara Singh and Anr. 1986 (2) All India Rent Control Journal 243, in peculiar facts,

concluded that where a tenant carried on his business as agent of the sub-tenant, it cannot be held that the property had been sublet. More close to

the facts of the present case is the decision of the Supreme Court in the case of Jagan Nath (deceased) through his Legal Representatives v.

Chander Bhan and Ors. 1988 (l) R.C.R. 629. Therein also, a petition for eviction had been filed alleging that the property has been sublet. The

tenant was running the business. He had retired and gave the same to his son. Since he had the right to dispossess his son, it was concluded that

subletting is not proved. In paragraoh 6 of the judgment, Supreme Court held as under:

... So long as the tenant retains the right to possession there is no parting with possession in terms of Clause (b) of Section 14(1) of the Act. Even

though the father had retired from the business and the sons had been looking after the business, in the facts of this case, it cannot be said that the

father had divested himself of the legal right to be in possession. If the father has a right to displace the possession of the occupants i.e. his sons, it

cannot be said that the tenant had parted with possession. This Court in Smt. Krishnawati Vs. Shri Hans Raj, had occasion to discuss the same

aspect of the matter. There two persons lived in a house as husband and wife and one of them who rented the premises, allowed the other to carry

on business in a part of it question was whether it amounted to subletting and attracted the provisions of Sub-section (4) of Section 14 of the Delhi

Rent Control Act. This Court held that if two persons live together in a house as husband and wife and one of them who owns the house allows the

other to carry on business in a part of it, will be in the absence of any other evidence, a rash inference to draw that the owner has let out that part

of the premises. In this case if the father was carrying on the business with his sons and the family was a joint Hindu family, it is difficult to presume

that the father had parted with possession legally to attract the mischief of Section 14(1) (b) of the Act.

21. Similarly, in the case of Arshad Ali v. Kailash and Ors. 1998 (2) PLR 250, one brother had taken the property on rent. It was held that merely

because the other brother had also worked with him in the property it cannot be termed that the property had been sublet.

22. It is obvious from the aforesaid that before it could be termed that the property has been sublet, a third person should be in legal possession. If

the tenant retains the legal possession or the right to possession, it cannot be termed that the property has been sublet or parted with.

23. In the present case in hand, it is in the evidence of the landlord-Respondents that the Petitioner also had been visiting the shop. Admittedly, he

has become old. Thus, he must be taken to be in legal possession. It is not the case where he has totally divested himself allowing his son to

continue the business. Once he is in legal possession as is apparent from the evidence because he continues to visit the shop and the person found

to be carrying on the business was none other than his son, it would not be permissible to draw inference of subletting. There is, thus, illegality and

impropriety in the impugned order. The same cannot be sustained.

24. For these reasons, the revision petition is allowed and the impugned orders of the learned Rent Controller and the learned Appellate Authority

are set aside. Instead, the eviction application filed by the Respondent-landlords is dismessed.