(1990) 08 P&H CK 0015

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2355 of 1998

Umrao		APPELLANT
	Vs	
Smt. Minu and Others		RESPONDENT

Date of Decision: Aug. 3, 1990

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 22 Rule 2, 115
- Delhi Rent Control Act, 1958 - Section 14(4)
- East Punjab Urban Rent Restriction Act, 1949 - 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.