

(1988) 04 P&amp;H CK 0006

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Civil Revision No. 20 (sic) 7 of 1985

Kulwant Singh and another

APPELLANT

Vs

Shri Kharaiti Lal

RESPONDENT

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**Date of Decision:** April 26, 1988**Citation:** (1988) 1 RCR(Rent) 695**Hon'ble Judges:** S.S. Sodhi, J**Bench:** Single Bench**Advocate:** Balraj Behl, for the Appellant; C.L. Ghai, for the Respondent**Final Decision:** Allowed

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**Judgement**

S.S. Sodhi, J.

The challenge in revision here is to the wholly unsustainable order of the appellate authority directing the ejectment of the tenant-Kulwant Singh from the demised premises on the ground that he had sub-let them to his son-Kishan Singh and further that he had materially impaired the value and utility thereof.

2. A reference to the material on record would show that the tenant-Kulwant Singh is an old man of about 70 years of age, shortsighted and hard of hearing. The case set up by the landlord was that Kulwant Singh had sub-let the shop in question to his son-Kishan Singh, who was running his chakki (flour-mill) there. Great stress was, in this behalf, laid upon the fact that both the licence for the running of the chakki and the electric connection in the shop stood in the name of the said Kishan Singh.

3. Counsel for the tenant, on the other hand, sought to contend that Kishan Singh was not in exclusive possession of the shop and that he was there to assist his father in the business being carried on there. Pointedly in this behalf the age and frailties of the tenant-Kulwant Singh were adverted to. As regards the licence for the chakki being in the name of the son Kishan Singh, stress was laid upon the fact that it was so from the very inception of the tenancy. The argument being that if it was Kishan Singh alone who was to carry on his business at the shop, the tenancy could very

well have been obtained in this name and not that of is father Kulwant Singh. As for the electric connection, it was very pertinently pointed out that it was transferred in the name of Kishan Singh by none else than Vinod Kumar son of the landlord Kharaiti Lal and what is more, a sum of Rs. 500/- had also been kept by him as security for payment of electricity bills.

4. Reference was next made to the inconsistent testimony of the landlord's witnesses with regard to possession of the shop being exclusively with Kishan Singh. It is significant to note that according to the landlord, A.W. 1-Kharaiti Lal, the tenant-Kulwant Singh was working in the shop as an employee. No such plea finds mention in the petition. This statement was no wonder, therefore sought to be construed to mean that on the landlord's own showing exclusive possession of the shop was not with Kishan Singh. The next witness, A.W. 3-Dwarka Dass, on the other hand, deposed that right from the very beginning, he had been seeing only Kishan Singh at the shop. The other witness A.W. 4-Ram Murti, however, stated that earlier he had been seeing Kulwant Singh at the shop, but since the last 2 years, he had been seeing only Kishan Singh there. The statement of this witness was recorded in March 1984 which would mean that it was from March 1982 that he had been seeing Kishan Singh at the shop and prior thereto, Kulwant Singh.

5. Further, it is of relevance to note that according to A.W. 4-Ram Murti father and son namely; Kulwant Singh and Kishan Singh lived together though in the earlier part of his deposition, he had stated that they lived jointly only until Kishan Singh got married. He could not, however, say where Kishan Singh lived after his marriage.

6. Unlike the landlord's witnesses the evidence led by the tenant is consistent on the point that both Kulwant Singh and Kishan Singh were joint in residence as also in carrying on the business in the demised premises. A specific reference was made here to the fact that they had a joint ration card.

7. The fact that the tenant Kulwant Singh was over 70 years of age and had poor eye-sight and was hard of hearing provides occasion enough for him to have some one assist in his business. The most natural person to do would clearly be the son living with him. The requisite evidence to establish sub-letting or exclusive possession of Kishan Singh to infer it, is thus clearly not available on record. The fact that the father also had dairy business cannot detract from this conclusion. Such thus being the state of the evidence on record and the circumstances of the case, there can be no escape from the conclusion that both the rent controller and the appellate authority fell in error in holding this to be a case of sub-letting.

8. As regards the other ground for ejectment, namely; that the tenant had impaired the value and utility of the demised premises, it will be seen that if it is founded upon the wholly unsustainable premises that the plea to this effect that had not been specifically controverted by the tenant and it must, therefore, be taken to have

been admitted. In dealing with this matter, it deserves to be borne in mind that the strict and technical rules of pleadings as set-forth in the CPC do not apply to these proceedings. At any rate, a reference to the reply to this part of the case, as given in the written statement, cannot, by any means, be construed as anything but a denial of the averments on which this ground for ejectment was founded. It would be pertinent to note that installation of a ginning machine in the demised premises was put-forth as the cause for the value and utility thereof being impaired. It has been found as a fact by the appellate authority that no ginning machine was ever installed there nor could counsel for the landlord advert to any other evidence on record whereby impairment of the value or the utility of demised premises could be established. This too cannot, therefore, justify any order of ejectment against the tenant.

9. The impugned order of the appellate authority is accordingly hereby set aside and this revision petition is accepted with costs throughout. Counsel fee Rs. 500/-.