

(1990) 06 P&H CK 0009

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2354 of 1983

Ramji Lal alias Ramji Dass and
Another

APPELLANT

Vs

Smt. Naurati Devi

RESPONDENT

Date of Decision: June 1, 1990

Acts Referred:

- Haryana Urban (Control of Rent and Eviction) Act, 1973 - Section 13

Citation: (1990) 98 PLR 400 : (1990) 2 RCR(Rent) 388

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

Bench: Single Bench

Advocate: K.S. Sindhu and P.S. Sullar, for the Appellant; H.L. Sarin Ashish Handa and Ashok Gupta, for the Respondent

Final Decision: Dismissed

Judgement

J.V. Gupta, Acting C.J.

This is tenant's revision petition against whom ejectment application has been dismissed by the Rent Controller, but allowed in appeal.

2. Smt. Naurati Devi filed the ejectment application against her tenant Ramji Lal to whom the shop, in dispute, was rented out in the year 1960 at the rate of Rs. 15/- per month inter alia on the ground that the tenant had sublet the same to one Anil Kumar alias Papu who was in occupation of the shop, in dispute, whereas the tenant was running his own Karyana business elsewhere. Both the persons, i.e., the tenant and the sub-tenant filed a joint written statement. The plea taken was that they had entered into a partnership to carry on the business in the said shop and, therefore, there was no sub-letting. After framing the issues and allowing the parties to lead evidence, the learned Rent Controller found that there was no Sub-letting by the tenant in favour of Anil Kumar, as alleged. Consequently, the ejectment application was dismissed. In appeal, the appellate authority reversed the said finding of the

Rent Controller and came to the conclusion,--

"In the case in hand, the landlady has certainly succeeded in discharging that initial onus placed upon her. It stands proved that Ramji Lal tenant is running his old business of karyana at a shop near Satsang Bhawan and the disputed shop is in exclusive possession of Anil Kumar who is running the business of readymade garments. The respondents did take upon themselves the responsibility to explain this change and they set up the partnership deed. This stands discarded as per discussion made in the foregoing paras."

Accordingly, the eviction order was passed. While coming to that conclusion, the learned appellate authority found that no account books had been produced by tenant; neither any balance-sheet or the profit or loss statement has been prepared so far despite the fact that the said partnership was started more than four years ago when Ramji Lal gave evidence in the Court below. Moreover, Anil Kumar, the alleged sub-tenant to whom the tenant claimed to be the partner did not appear in the witness-box to support the tenant as regards the partnership deed. Not only that, the learned Rent Controller appointed one Shri Ramesh Puri, Advocate, as a local commissioner who submitted his report. Exhibit A. 3, in which it was found that at the time of his visit Anil Kumar was present and was transacting the business of readymade garments. Moreover, the learned appellate authority also found that Ramji Lal admitted that he was living in a house near Sata Sang Bhawan and there was a shop where the karyana business was being run.

3. The learned counsel for the tenant petitioner submitted that in view of the partnership deed, Exhibit Rule 1, dated June 8, 1978, it could not be held that the present was a case of sub-letting. It was clearly recited in the partnership that in case of dissolution of partnership, Anil Kumar, partner, will not claim any right in the demised premises. In view of the stipulation in the partnership deed, it could not be held that it was not a valid partnership. In support of the contention, the learned counsel relied upon *Helper Girdharbhai v. Saiyed Mohamed* 1987(2) R. C. R. 124, *Raj Kumar Jain v. Mehnga Ram Bhandari* 1981(1) R. C. R. 715 and *Md. Salim v. Ram Ali* 1987 (2) R. C. R. 370.

4. On the other hand, the learned counsel for the landlady submitted that on the appreciation of the entire evidence, the appellate authority has given firm finding that Ramji Lal, tenant, was no more in occupation of the premises and that it was Anil Kumar who was running the business therein and that it was a case of sub-letting. According to the learned counsel, it being a finding of fact could not be interfered with in the revisional jurisdiction.

5. After hearing the learned counsel for the parties and going through the relevant evidence on the record, I do not find that the learned appellate authority has acted illegally or improperly as to be interfered with in the revisional jurisdiction. On the appreciation of the entire evidence and going through the terms of the partnership

deed, and the fact that the tenant Ramji Lal was running the kiriyana business separately, it could not be held that sub-letting was not proved by the landlady. The learned Rent Controller appointed a local commissioner to find out as to who was in occupation of the demised premises. Only Anil Kumar was found running the business therein. The most important fact is that Ramji Lal is doing separate business of kiriyana which goes to show that he is not in possession of the shop in dispute and that the partnership was only a camouflage to allow Anil Kumar to run the business therein.

6. Under the circumstances, the revision petition fails and is dismissed with costs. However, the tenant is allowed three months' time to vacate the premises; provided all the arrears of rent up to date are deposited with the Rent Controller within one month with a further undertaking, in writing, that after the expiry of the said period, vacant possession will be handed over to the landlady and the rent for this period will be paid or deposited in advance by the tenth of every month.