

(2009) 01 P&H CK 0053

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Baldev Parshad

APPELLANT

Vs

Raj Kumar and Another

RESPONDENT

Date of Decision: Jan. 13, 2009

Citation: (2009) 3 PLR 696 : (2009) 2 RCR(Rent) 103

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Final Decision: Allowed

Judgement

K. Kannan, J.

The tenant was sought to be evicted on two grounds namely default in payment of rent and subletting of premises by the first respondent. The Rent Controller found that the tenancy in favour of the second respondent had been established and dismissed the petition against the first respondent but curiously held that sub-tenancy in favour of the second respondent had been established. He again found that deposit of rent could be lawfully made only by the tenant and tender by subtenant was not valid and the first respondent having not deposited or paid the rent, the ground of eviction for non-payment of rent was also available to the landlord.

2. The threshold argument of the counsel for the tenant before this Court was that the same landlord had filed an earlier application on the same grounds against the same parties on 25.10.1985 and application was pending when he filed the present petition on 2.9.1986. The statement had been filed on 19.10.1986 and subsequent to the filing of the statement by the tenant, the landlord had the first petition dismissed for non-prosecution. The landlord had not taken any permission for prosecuting another petition on the same ground and according to the petitioner, the landlord who had allowed an earlier petition, to be dismissed is deemed to have abandoned his case and he was barred from prosecuting a subsequent petition on the same grounds. In support of his contention, the petitioner relies on a decision of

this Court in *Mehtab Singh v. Tilak Raj Arora and Anr.* (1988) 93 P.L.R. 269, which posed the question whether a second petition for ejectment of the tenant would be competent on a ground on which the earlier petition was got dismissed as withdrawn without liberty to file a second petition. A Division Bench of this Court gave a categorical pronouncement that the dismissal of the earlier petition without such liberty constituted a legal bar and a second petition for ejectment would be not maintainable. The counsel for the revision petitioner also relies on two other decisions of the Hon'ble Supreme Court in [Mst. Jamshed Jahan Begum and Others Vs. Lakhan Lal and Others](#), and [Bhanwar Lal Vs. T.K.A. Abdul Karim through N.K. Mohd. Mustafa](#), that an argument on a point of law could be canvassed for the first time even before the Hon'ble Supreme Court provided the factual foundation for the same existed on record. It was the counsel's submission that since the dismissal of the first petition was occasioned subsequent to the filing of the statement in the written statement, there was no occasion for the second respondent to plead the legal bar in specific terms although there have been a general contention raised in defence that the petition was not maintainable. However, according to him, the issue was specifically canvassed before the Rent Controller and considered by the Rent Controller but the controller held the contention to be also as not worthy of acceptance. The parties knew that the plea of bar had been canvassed even at the earliest occasion. The decisions of this Court on the maintainability of the second petition and Hon'ble Supreme Court relating to the tenability of the legal contention to be raised even without specific pleas are formidable enough to escape attention. The petition ought to have been thrown out as not maintainable and the findings to the contrary before the trial Court and the Appellate Court are clearly wrong. The revision petition deserves to be allowed on that short ground.

3. However, I take up the issue of sub-letting also for the sake of concluding the proceedings on a ground that had been canvassed before the Courts below and before me. The Rent Controller who found that there have been no form of the tenancy in favour of the first respondent and that went on to dismiss the claim against the first respondent could not have found that there was any form of subletting in favour of the second respondent. The sine qua non for a contention for subletting is that a person to whom the property was originally tenanted had subsequently created a sub-tenancy in favour of the another person. If the first tenancy itself is not accepted the plea of subtenancy just cannot stick. The counsel for the revision petitioner was, therefore, perfectly justified in assailing the approach of the Rent Controller which was found favour even by the Appellate Authority. As an elementary approach to the issue, the reasoning of the Rent Controller as well as by the Appellate Authority are untenable. Even without reference to it, it could be very easily seen that the plea of sub-tenancy itself could not be true. The admitted case of the petitioner is that the property had been rented out to the first respondent's husband, Subhash Chander. The second respondent/revision petitioner sought to explain his possession by the fact that he

had been associated in business with Subhash Chander as a partner and they were running a business in the name and style of M/s Asia Medical Store. When the plea was taken by the second respondent in his written statement that the partners were carrying on their business till the year 1979 and then afterwards the rent had been paid by him separately to the petitioner, one would have expected the landlord to deny the receipts of rent directly from the second respondent, if his contention was that he was inducted as a sub-tenant by the first respondent subsequent to the death of her husband. On the other hand, in the rejoinder filed to written statement, the petitioner has not even denied such an express statement of the payment of rent by him even from the year 1979 but merely contended that the rent has been tendered on behalf of the first respondent's husband-Subhash Chander. This reply ill-fits with a plea of subletting after the death of his original tenant Subhash Chander in the year 1984.

4. The appreciation of evidence by the trial Court and the Appellate Authority in this regards are clearly untenable and the ultimate conclusion arrived at by the respective authorities cannot stand any legal scrutiny. The learned Counsel for the revision petitioner has adverted to several decisions on the issue of the nature of proof of subletting but I am not referring to them as I am deciding the case on the elementary principles of appreciation of evidence and the legal principles that can afford proof of sub-tenancy.

The revision petition is, therefore, allowed and the orders of Rent Controller and the Appellate Authority are set aside. There shall, however, no direction as to costs.