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(2012) 09 P&H CK 0270

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 3987 of 2001 (O and M)

Subhash Chand and others		APPELLANT
	Vs	
Sham Sunder Mehta and another		RESPONDENT

Date of Decision: Sept. 11, 2012

Citation: (2012) 168 PLR 551

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Amit Jain with Mr. Jaiveer Chandail, for the Appellant; Som Nath Saini, for the Respondent

Final Decision: Allowed

Judgement

K. Kannan, J.
The tenant, who was ordered to be evicted on the ground of alleged subletting without written consent of the landlord by the authorities below, is the revision petitioner before this Court. The tenant contended that the original letting had been in favour of his father Nand Lal and the alleged tenant and arrayed as 4th respondent Daya Ram was actually an employee of his father. Since the presence of Daya Ram in the premise had been an admitted fact, the relevant issue for consideration would only be whether Daya Ram was merely an employee of the tenant and that exclusive possession of the property had not been handed over to him to constitute a sub-tenancy.

2. The contention of the tenant was that he was being paid only a salary of Rs. 800/- per month to Daya Ram. There was however a modified version in the course of evidence by the tenant that in the business which was being run, the tenant was taking 2/3rd of the profits and 1/3rd was being given to Daya Ram. The tenant, however, admitted that there were no accounts maintained in the shop. The nature of activity in the demised premise itself is necessary to examine whether absence of records was material. The premise was a Hair-Cutting Saloon. The appellate Court found that there was neither a

partnership deed nor receipts for payment of salary. The landlord gave evidence that the tenant was running some other Fancy Emporium dealing with consumer items in some other premises and that he had abandoned the tenanted premises in favour of his subtenant. The tenant tried to explain that the shop run elsewhere belonged to his widowed sister and he was merely helping her in the business by spending a few hours but he was generally working only in the barber shop. He also produced some photographs showing himself with Daya Ram in the shop. The lower Court rejected the contention of the tenant and also found that the photographs that showed the presence of both the tenant and the sub-tenant in the same premises could not be relied on to disprove subtenancy. It also observed that the tenant was contending that he was only paying Rs. 800/- per month to his employee but in the course of evidence, it transpired that portion of the profit itself was being shared with him. This, according to appellate authority, proved the case of the tenant was false. The Court found that Daya Ram as RW3 has admitted that Subhash Chand was running a shop of General Merchant along with his sister but he was also contending that he was only getting Rs. 700/- to Rs. 800/- per month from the tenant Subhash Chand as salary. It also observed that adverse inference ought to be drawn against the tenant for non-production of account books, sales tax or income tax registers relating to the fancy store business to show the nature of involvement of the tenant in the said business.

3. In my view, there has been no proper consideration of the evidence in the right perspective. The error consisted in the Court looking for production of accounts book of the Fancy Emporium. Fancy Emporium was not even being run at the demised premise, but at the Shop No. 16 at Lakkar Mandi, Rajpura. I cannot understand as to how record of Fancy Emporium has any relevance. Perhaps, the Court was looking for the same to prove that the tenant had actually vacated the premise to be associated at the Fancy Emporium conducted elsewhere leaving the said tenant to be in exclusive possession and therefore, there was a proof of subletting in his favour. It is the nature of activity run at the demised premises itself that is relevant. If the demised property itself was being run as a Hair-Cutting Saloon from the days of his father when Daya Ram was associated and after the lifetime of the father, the business had continued and the employee was being paid a share of income, one need not expect a partnership deed for such an activity. We are considering the case of a small time hair-cutting saloon in a small town and it would be too artificial to look for salary receipts or account books for the same. The income tax or sales tax returns for the Fancy Store which the sister was having in which activity the tenant was admittedly associated with, ought not to mean that such an activity could arise only by the tenant abandoning the property to yet another person for running a barber shop. The learned counsel for the tenant would contend that the activity in the barber shop did not require the tenant''s presence at all times and if his own employee was, by his experience in the avocation, engaged for longer time than himself, there was no reason to suspect that there had been a case of subletting. In my view, there had been a failure of justice by failing to understand the nature of activity of the tenant and the manner in which evidence was led about the association of the 4th respondent in the said

avocation. I cannot believe that an employee, who is a barber and who is engaged in the activity of hair-cutting in the premise which is demised from the time when the tenant''s father was himself a tenant, could give rise to a case of subletting. The appellate Court has adopted the very same reasoning of the Rent Controller which, in my view, is very artificial. The findings rendered by the Courts below are clearly erroneous and cannot be taken as a proper rendering of appreciation of facts. The orders of eviction passed by the Courts below are set aside and the civil revision is allowed.