

(2010) 09 P&H CK 0372

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 2612 of 1996 (O and M)

Suraj Bhan through L.R. Ashok
Kumar

APPELLANT

Vs

Duni Chand

RESPONDENT

Date of Decision: Sept. 23, 2010

Acts Referred:

- Haryana Urban (Control of Rent and Eviction) Act, 1973 - Section 15(5), 15(6)

Hon'ble Judges: Alok Singh, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Alok Singh, J.

Landlord has invoked revisional jurisdiction of this Court u/s 15(6) of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (hereinafter referred to as the Act), challenging the Judgment dated 24.9.1993 passed by the Rent Controller, Hisar as well as the Judgment dated 8.2.1996 passed by the appellate authority/Additional District Judge, Hisar, thereby dismissing the eviction petition filed by the landlord.

2. Brief facts of the present case, inter-alia, are that landlord - revisionist has preferred eviction petition on two grounds. First ground taken is that the tenant has sub-let the demised premises in favour of OP No. 2 and OP No. 2 is in exclusive possession of the demised premises, the second ground taken by the landlord is that the tenant has shifted the shutter from inside to outside and that is why the case against the tenant falls within the definition of materially impairing the value and utility of the property.

3. I have heard learned Counsel for the parties and perused the record.

4. The Rent Controller has observed that the landlord could not prove any agreement between the tenant - sub-tenant to show that there is a relationship of landlord - tenant between the tenant - subtenant. Both the Courts below have

recorded finding that the landlord also could not prove that any consideration is taken by the tenant from the sub-tenant in lieu of possession from the tenant. Both the Courts below also recorded finding of fact that sub-tenancy is not proved.

5. The Apex Court in the matter of Resham Singh v. Raghbir Singh reported in 1999 (3) P.L.R. 527, in paragraphs 5, 6, 7 and 8 has observed as under:

5. The question of sub-letting is a conclusive on question of law derived from the findings on materials on record as to the transfer of exclusive possession and as to the said transfer of possession being for consideration. While considering the said Sub-section (5) the above view was also expressed by this Court in [Dev Kumar \(Died\) through LRs. Vs. Smt. Swaran Lata and others](#) .

6. The Sub-section (5) empowers the High Court either on application or in its own motion to call for an examination of the record for the purposes of satisfying itself as to the legality and propriety of such orders or proceedings. In view of the above language of Sub-section (5) we find that the High Court while exercising powers under Sub-section (5) of Section 15 of the Act has got the powers to satisfy itself as to whether the question of sub-letting which is a question of law was properly decided by the courts below. From the impugned judgment of the High Court we find that the Court did not rightly find ingredients of sub-letting. We, therefore, hold that the High Court was justified in setting aside the judgments of courts below.

7. It is settled position of law that to establish sub-letting the onus is on the landlord to prove through evidence that subtenant was in exclusive possession of the property in question; that between the sub-tenant and the tenant there was relationship of lessee and lessor and that possession of the premises in question was parted with exclusively by the tenant in favour of the sub-tenant. (See - Kala and Anr. v. Madhu Parshad Vaidya 1998 (6) 573 : 1998 (2) RCR 279 (SC) and [Benjamin Premanand Rawade \(Dead\) by Lrs. Vs. Anil Joseph Rawade](#) .

8. In the present appeal it is not disputed that both the respondents are brothers and respondent No. 1 Raghbir Singh who was the tenant was involved in some criminal proceedings and he was absconding for a considerable period. Being an absconder it does not possible for the tenant-respondent No. 1 Raghbir Singh be physically present in the premises in question. It is natural to allow his brother - Kuldip Singh to look after the shop and this fact would not amount to subletting.

6. From the dictum of the Apex Court, now it is settled position of law that the landlord has to prove that there is a relationship of lessor and lessee between tenant and alleged sub-tenant. Landlord has also to prove that sub-tenant is put in possession in lieu of some consideration. Admittedly, in the present case, both these points were not proved. I find no reason to differ from the two Courts below on the ground of sub-tenancy.

7. As far as second ground is concerned, the only grievance of the landlord is that the tenant has shifted the shutter of the shop in question from inside to outside. To make out the ground of material alteration, landlord has to prove that by material alteration, utility and cost of the property has diminished. By shifting the shutter few feet outside, in the opinion of this Court, would not amount to diminish the value and utility of the property.

8. No ground is made out to take different view from the view taken by both the Courts below.

9. Dismissed.