

Bachan Kaur and others Vs Manjit Singh and another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 14, 2012

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: M.L. Sarin, with Ms. Himani Sarin, for the Appellant; M.L. Saggar , with Mr. G.S. Brar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Kannan, J.

The landlord's petition for eviction had been ordered in his favour before the Rent Controller but the decision was reversed

by the appellate authority. The landlord is the revision petitioner before this Court. The petition for eviction was founded on nonpayment of rent

and that he was guilty of sub-letting of the premises without written consent of the landlord. The learned senior counsel appearing on behalf of the

petitioners advances his arguments only as regards the plea of sub-tenancy which, according to him, had been properly dealt with by the Rent

Controller, but reversed without adequate reasons by the appellate authority. The plea of subletting was on his contention that the tenant, who was

running a transport business at the demised premises, had attempted to create a sub-tenancy in favour of the 2nd respondent and he had also

received an inauguration ceremony invitation for opening of the new business of the 2nd respondent at the premises. The opening ceremony was

said to have taken place on 28.01.1985 and the petitioner's case was that the printed invitation card that had been circulated to the public

including him, had specifically named the landlord and the subtenant as persons with whose best compliments the invitation has been sent and the

RSVP noting found in the card was Surjan Singh Thekedar, a locally influential person whose evidence was sought to be let by the tenant initially

by citing him as a witness but later given up. The landlord would contend that non-examination of the said person was very material and the

appellate authority must have drawn an adverse inference.

2. The landlord also relied on two other circumstances to contend that there had been a sub-letting in favour of the 2nd respondent: one of which

was entry in the tax assessment register showing both the names of the respondents Manjit Singh and Gurbachan Singh as tenants of the premises.

The landlord would also refer to the fact that there had been a signboard of the 2nd respondent hanging outside the premises which showed that

the 2nd respondent was carrying on his own business and the 1st respondent had actually voluntarily surrendered the premises to him.

3. The learned senior counsel places reliance on the fact that the invitation card had been received by him and that he knew personally that there

was an opening ceremony on 28.01.1985 and he had actually a petition prepared on the very day i.e. on 28.01.1985 and it was filed on

31.01.1985. Thus he had acted immediately with alacrity and there was no reason for him to take such a precipitate action unless the contention

was true. If the landlord was affirming the case of sub-tenancy through an invitation card said to have been published by the said tenant for an

opening ceremony, then the proof of the card and the contention that the respondents circulated the same would really assume significance for

testing the correctness of the contentions of the landlord, but it cannot be conclusive all the time. For instance, if the tenant had been indiscreet to

offer the property or portion of it to a subtenant but before the latter actually took actual possession, the landlord prevented it by some action, say

a suit or a petition, the intention of the tenant would itself be not a cause for action for eviction. It is the actual surrender of possession by the tenant

to a subtenant pursuant to his intention that will give a ground for eviction. The crucial test shall therefore be whether the tenant had actually parted

with possession of the demised premises either in part or full to the subtenant.

4. The learned senior counsel Shri Saggat appearing on behalf of the respondents contends that when the tenant denied the card, there was no

attempt of the landlord to secure the presence of any other independent witness to say that he attended the opening ceremony. He would also

point out to the fact that there was no information of the printer through whom the card was printed. The person whose name was entered under

RSVP could not be examined in spite of his best attempts to secure his presence. The non-examination of this person, in my view, would be

material, if the card itself had been proved. If the genuineness of the card itself remains suspect or it could not be stated to have been clearly

proved, then the non-examination of such a person by the respondents cannot be a matter that can be set up against the tenant. He cannot be

responsible for securing the presence of a person, who was unwilling to come to Court. It is common knowledge that witness is cited by any

person only to support the respective contentions of parties. A person cannot cite a person who is unwilling to come to Court. In order that an

adverse inference is drawn, it must be admittedly of a person who ought to have known the truth and whose presence was required to be brought as a

witness by the particular person who is required to produce him. In a case where invitation card itself is disowned by a tenant, I cannot find that the

tenant was to take the responsibility for the production of such person as the witness.

5. The learned senior counsel for the respondents Shri Saggar also points out that if the 2nd respondent had been engaged in a transport business

from the same premises, it could not have been done without any documentation. Nobody could be transporting goods without securing way bills.

The landlord could have easily secured the production of any document through any person, who availed the services of the 2nd respondent. This,

in my view, is also material, for, the nature of business as such that there could not be any covert operation. A person, who was carrying a

transport business cannot survive for a day without giving proof of dispatch of goods to a customer. Absence of evidence of any person, who had

availed the services of the 2nd respondent, would also, in my view, be very material to discredit the contention of the landlord.

6. The location of the signboard, as shown in the photograph itself, does not lend credibility to the truth of the contentions of the landlord, as

pointed out by the learned senior counsel for the tenant. If an inauguration ceremony had been fixed for 28.01.1985, I would assume that the

signboard must have been the first visible representation of such inauguration. The landlord who had rushed to the Court with a petition prepared

on the same day and would make reference about the invitation card being circulated could not have omitted to notice a signboard hung in the

place if it really existed. The learned senior counsel points out and in my view correctly that the photograph itself had been taken 6 months later

and there was no reference to the signboard in the petition. While the reference may be merely an issue of evidence that could be brought even

without pleading, in this case, it assumes significance, for, the landlord was trying to establish a case of sub tenancy which is normally secretive. In

this case, if the tenant had allowed an element of indiscretion by publishing invitation letter along with his sub-tenant and cites his own name as a

person with whose best compliments the ceremony was being conducted, the other most visible proof of such a sub-tenancy could not have been

missed at the time of filing of the petition. The landlord would have definitely secured the photograph of the signboard also and produced it along

with petition. This fits in with the case of the tenant that the signboard was placed by the landlord at a place to which he had an access through his

stairways and it was kept only for the purpose of taking photograph with a view to create evidence. I have seen the photograph. The manner in

which the signboard is placed, could be seen to be a clumsy act. The minimal thing that a person who is setting up his signboard would do is to

place it in a prominent part of the building which would normally be at the facade .. It is, on the other hand, placed in the side portion of the

building and again not positioned appropriately in line with the ground but slanted across the wall in a crooked way as if to suggest that the whole

planting of the signboard itself was done hurriedly to take a quick photograph. This photograph itself does not evoke any confidence as a proper

evidence in support of the landlord's case.

7. In the same manner yet another piece of evidence which the landlord offers, viz., the municipal assessment register showing the names of both

the persons cannot be relied upon, for, the municipal authority could not concern itself about who gave that information so long as it provides a

basis for a higher assessment of tax. Unless evidence was brought to the effect that the municipal entry was made by information supplied by tenant

or subtenant, the entry made for years subsequent to the institution of the petition, cannot prove the case of the sub-tenancy. I do not find the

landlord had established the case of sub-tenancy. On the other hand, I find that the landlord had indulged in clever machination to secure eviction

by planting false evidence. I find no fault in the appellate Court reversing the finding of the Rent Controller and holding that the landlord had not

established his case. The order of the appellate authority is confirmed and the civil revision is dismissed.