

(2015) 04 P&H CK 0046

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. Nos. 1132 and 3492 of 1998

Raj Kumar and Others

APPELLANT

Vs

Ramesh Chand and Others

RESPONDENT

Date of Decision: April 9, 2015

Hon'ble Judges: K. Kannan, J.

Bench: Single Bench

Advocate: Chetan Mittal, Senior Advocate and Kunal Mulwani, for the Appellant; Arun Jain, Senior Advocate and Amit Jain, Advocates for the Respondent

Final Decision: Allowed

Judgement

K. Kannan, J.

Both the civil revision petitions in C.R. 1132 and 3492 of 1998 are at the instance of the landlords. The former is at the instance of two persons who claimed as owners-landlords of an undivided portion and the revision petitioner in C.R. No. 3492 of 1998 is the landlord and the successor-in-interest of another portion of the property. The petition for eviction was filed on the ground of subletting and for putting the property to use other than for the purpose for which it was let. Both the Courts held that the unauthorized user was not established but while the Rent Controller found the case of subletting as established, the Appellate Authority reversed the decision. The landlords are, therefore, revision petitioners before this Court.

2. The case of the landlord was rested on a plea that the property had been originally let out by the petitioners' predecessors Raja Rati Ram to Sh. Girdhari Lal. Girdhari Lal, who was said to be running a business under the name and style of M/s. Bhargava Metal Works and Kalpana Industries, sublet the property to one Gaja Nand arrayed as 2nd respondent. The 1st -respondent/tenant Girdhari Lal had created a sub- lease in respect of yet another portion of the property to one Hari Ram arrayed as respondent No. 3. There was a further transfer of interest of the portion of the property to respondent No. 4-Satish Kumar. Girdhari Lal had died

pending proceedings and his legal representatives, namely, his widow and adopted son named Ramesh Chand had also been impleaded. The petitioner relied on the fact that the 2nd respondent Gaja Nand had filed a suit for injunction against the tenant Girdhari Lal on a plea that he had been a tenant under the 1st respondent in respect of land and building with machineries and he was trying to disturb his possession. Girdhari Lal had filed a written statement denying that there was a lease of land and building and claimed that it was only a permission to run the machinery. The suit did not proceed further and had resulted in a compromise when the 2nd respondent was allowed to continue in possession of the property. While the landlord would contend that the recital in the plaint instituted by the 2nd respondent was itself proof of the fact of sub-lease, the tenant explained his own stand on denial of the lease of building as representing the truth and the compromise was merely to allow for continuance of possession only as regards the right to continue the business and therefore, the averment in the plaint did not prove anything. The landlord was also relying on a contention that yet another portion of the building had been used for running a restaurant called as Savera restaurant by Satish-4th respondent. What was initially contended by the respective tenants as merely a continuance in possession by the tenant with the mere authority to respondent Nos. 2 to 4 to associate themselves, after the landlord's side was closed, the 1st respondent altered his stand and had produced a document as well as a rent note which was stated to have been executed by the 1st respondent in the year 1935. The registration copy of the document dated 19.10.1935 was produced at the time of trial and exhibited as Ex.D1. The defendant sought to rely on the fact that under the rent note, he had been authorized to create a sub-lease and the possession of the other respondents, if it was taken as exclusive of various portions of the property, it was under express authority granted under initial terms of the lease and hence, there was no action of breach by the sub-tenancy.

3. The Rent Controller found that the case of sub-tenancy had been established but the Appellate Court found that there was no proof that the lease was in respect of land and building. He allowed for an interpretation of the transaction between the landlord and the tenant as being only in respect of the machineries and set aside the decision of the Rent Controller and dismissed the petition.

4. The learned Senior Counsel appearing for the petitioner made a reference to the agreement executed between Gaja Nand, the 2nd respondent and the legal representative of (1st respondent) Girdhari Lal namely with Ramesh Chand where there was a recital to the effect that Ramesh Chand had set up a factory under the name and style of Bhargava Metal Works that was engaged in rolling of brass and copper circles with 30 horse power oil engine and a rolling machine and that the 1st party namely Gaja Nand had taken on rent the engine and rolling machines along with the building, a portion of the property. The document was in Hindi and the senior counsel appearing on behalf of the respondent tenant would make an issue about the fact that the reference to rent of the engine and the rolling machine was

only in the context of their installation in the building and the agreement was not including the lease of the building. The counsel for the respondent, however, stated that this was not significant at all, for, there was an authority granted to the tenant to execute the sub-lease and the counsel would refer to the recital in Ex.D1 that read as follows:-

"4. If I, the tenant, let the above-mentioned property on rent, during the fixed period, to another person, the owners will have no objection. The owners will have the right to recover the rent from me or the tenants under me. But neither I nor any tenant under me will have the right to get the amount of rent i.e. Rs. 60/- per month reduced from the owners during the fixed period."

5. The counsel would refer to the fact that the document although would seem like a unilateral document executed by Girdhari Lal, it was registered and the endorsement at the time of registration showed that on behalf of Rai Bahadur who was the original owner of property, the General Power of Attorney Sh. Jokhi Ram had been present and the endorsement read as follows:-

"Content of the document has been read over to Girdhari Lal, above said executant. Having heard and understood the same, he has admitted it be correct. On behalf of Rai Bahadur La. Makhanlal, owner of the property, General Power of Attorney, Mr. Jokhi Ram is present and agrees with it. Parties have been identified by witnesses namely Ba. Nathan Lal, Advocate of Rewari and Kalu Ram s/o Mohar Singh caste Mahajan residents of Kasba Rewari.

Witness-I is known to me who knows the witness-II.

Date 19th Oct, 1935

sd-

(in English)

Syed Sarfaraz Hussain

Sub-Registrar

Gurdhari Lal, Executant

sd/- (in Hindi and Thumb Mark)

Witnesses

1. Ba. Nathanlal, Advocate

sd/- (in English).

2. Kalu Ram

sd/- (in Hindi and thumb Mark).

Jokhi Ram, General Power of Attorney sd/- (in Urdu and Thumb mark)."

Jokhi Ram had also signed in Urdu and thumb impression marked the same. The relevant portion is extracted as under:-

"Jokhi Ram, General Power of Attorney

sd/- (in Urdu and Thumb mark)."

6. The Senior Counsel for the respondents would, therefore, argue that since the original induction of the 1st respondent had been through a registered instrument and that was provided for a right of sub- lease, all the transactions entered on creation of lease by the 1st respondent to respondent Nos. 2 to 4 must be taken as authorized and there was no scope for an action for ejectment on the ground of unauthorized subletting.

7. It must be noticed that this document Ex.D1 does not find a place anywhere in the pleadings. The reference is merely to an alleged lease that had come about more than 40 years back. The whole of the reply proceeds on the footing that there was no lease at all and there had been merely authorization by way of licence and there is never a decision sought by the respondent that since an original lease had authorized the tenant to create a sub-lease, all the sub-leases were valid. This document was not even confronted to the landlords at the time of trial to explain the document of whether there was such an authority granted in the year 1935 and that the transactions of sub-lease were pursuant to such authority.

8. While the Senior Counsel appearing on behalf of the landlord would contend that this document Ex.D1 itself is not bilateral document where both parties have executed a mere reference to a clause allowing for sub-lease which we have extracted above, could only be construed as a self-authorization to grant a sub-lease and it ought not to be attributed to the landlord's authority to sublet. The response on behalf of the tenant was that although the preamble of the document would read like it was executed only by Girdhari Lal, an endorsement before the Sub-Registrar clearly revealed that the power of attorney for the landlord Rai Bahadur was Jokhi Ram and he had agreed to the recitals. There is a certain problem in reading this document and giving full effect only by the fact that although this document was executed, it was never referred to at the trial the landlord's side was closed. There was no occasion at all for the landlord to even argue or explain that Jokhi Ram had not been given such an authority or Jokhi Ram was really the power of attorney for his father.

9. If the document were to be taken as really constituting the bargain between the parties, the learned Senior Counsel appearing on behalf of the petitioner has a further explanation to offer that this lease was only for a period of 10 years and there was a specific undertaking by the tenant that he would vacate the property before the period of 10 years since the Mangsir Samvat, 1992. Relevant recitals of

the lease are extracted in para 3.

"Neither the owner will have any right to get the above- mentioned property vacated before the period of 10 years i.e. since the beginning of Mangsir Samvat, 1992 to Mangsir Samvat, 2002, Vikrami nor I will have the right to leave the property. If I happen to leave the property earlier on the pretext of any excuse, the owners will have the right to recover the rent of remaining period from me or any movable or immovable property."

The senior counsel would explain, therefore, that if there was an authority to sub-lease, this authority could have been used only within a period of 10 years from the date of document viz; 19.10.1935 and could not have been applied in the year 1967. The authority to sub-lease must be within the contracted period and cannot be during the period when the tenant was statutory tenant.

10. The senior counsel appearing on behalf of the respondent would, therefore, explain that continuance in possession ought not to be taken as statutory tenant, for, the lease must be construed as lease for an indefinite period. His explanation would be that even apart from para 3, there was a further clause in the document which allowed for its continuance at a higher rate of rent. He would place reliance on clauses 12 and 13 which are extracted as under:-

"12. After the fixed period i.e. Mangsir Shudi, 10 Samvat 2002, either I will vacate the building or will make new agreement with the owners for future.

13. If I go against the condition No. 12 or do not execute a new agreement with the owners for the future after the deadline has passed, I will have to pay Rs. 90/- per month, as rent, till the time the building remains in my possession. The owner will have the right to get the building vacated at any time after the deadline has passed."

Clause 12 would show that the tenant had offered to vacate by Samvat 2002 or he would make a new agreement with the owners for future. If the new agreement was not executed, Clause 13 showed that he would have to pay Rs. 90/- per month. The Senior Counsel would, therefore, state that the clauses read together would only mean that he was a contractual tenant and his liability was to pay the enhanced rent of Rs. 90/- per month and that must be taken as for an indefinite period.

11. I am prepared to go as far as to state that even in the absence of specific reference to the pleading to Ex.D1 dated 16.10.1935, I will not doubt the authenticity by the fact that it is a registered instrument. In order to understand whether the tenancy beyond the period of 10 years was a contractual tenancy or a statutory tenancy, clauses 3, 4, 12 and 13 which we have extracted above at different places must be read together. The intention of the party was to create a lease for 10 years which is expressed in clause 3. Clause 4 allowed for sub-tenancy to be created during the fixed period. This ought to be understood as an authorization to create a

sub-lease during the period of 10 years. Clauses 3 and 4 restrict, therefore, a right of sub-tenancy only to a period of 10 years. Clauses 12 and 13 deal with different situation, namely of the tenant voluntarily undertaking to vacate the premises on the completion of 10 years. If he were to continue, it had to be on a new agreement which clause 12 contemplates. Admittedly, there was no new document. Clause 13 contemplates another contingency that if a new document is not to be executed, he will have to pay Rs. 90/- per month. This amount of Rs. 90/- must be taken as merely the enhanced rent and I would hold this to be operative only so long as he continued and till he would vacate the premises. If it were to be taken as contractual tenancy then that contract allowed for right of sub-tenancy only during the period of the first 10 years. The grant of sub-lease must have been possible within the 10 years period and if such a right could still subsist, it could have been only under a new agreement which the party truly contemplated. While clause 13 provided for enhancement of rent to Rs. 90/-, it did not contain a clause like Clause 4 that allowed for subletting. I cannot read these clauses disjunctively. Clause 4, if it was limiting the right of a sub-lease to a period of 10 years, the liability to pay enhanced rent for a period in excess of 10 years, if no document were to be written, cannot be impressed with also a right to tenant to make a sub-lease in the extended period. If such right were to be exercised, it ought to have been through an express term in the contract. I find that there was no such express term authorizing sub-lease and the sub-lease which was created was not authorized through the document on which the tenant was making his reliance on.

12. The decision of the Appellate Court is, therefore not justified and the order is set aside. The revision petitions are allowed and the tenant and the sub tenants are ordered to be evicted. Time for eviction four months.