**(1997) 03 AHC CK 0197**

**Allahabad High Court**

**Case No:** C.M.W.P. No. 541 of 1997

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| Revti Raman and Others | | APPELLANT |
| | Vs | |
| District Judge and Others | | RESPONDENT |

**Date of Decision:** March 20, 1997

**Acts Referred:**

- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 12, 12(1), 12(2), 3

**Hon'ble Judges:** S.K. Phaujdar, J

**Bench:** Single Bench

**Advocate:** Janardan Sahal, for the Appellant;

**Final Decision:** Dismissed

**Judgement**

S.K. Phaujdar, J.
Respondent, Madan Mohan Sharma filed Suit No. 69 of 1986 against the present Petitioners for recovery of rent as also for possession of a tenanted premises. The suit was initially dismissed. The Plaintiff preferred Civil Revision No. 62 of 1990 and the S.C.C. revision was allowed by the District Judge on 22.11.1996.

2. By the revisional order the decree for dismissal was set aside and eviction of the Defendants from the suit premises was directed. This order is under challenge in the present writ petition.

3. The suit was filed by the Plaintiff on amongst other the ground of subletting. It was stated that the original tenants in the suit premises were running a business under the name and style of Adarsh Vastra Bhandar in the suit premises. This business was a partnership one and they have introduced a person as a partner (present Respondent No. 4) who was not a member of their family. Accordingly, it was violative of the provisions of the rent law and this action amounted to sub-letting and the Defendants were liable for eviction on this score also.

4. It was the defence case that the person described as one from outside the family was a partner in the business long prior to the framing of Act. No. 13 of 1972 and the rigors of the law would not be applicable to him and that person may not be deemed to be a sub-lessee and the Defendants would not, therefore, be liable to eviction.

5. Certain undisputed facts are to be mentioned before taking up analysis of the law and the arguments of the parties on the above question. The suit was filed by the present Respondent No. 3 who will be described as the Plaintiff or in short ''B''. The Defendants named therein were Rewati Raman (Defendant No. 1- Petitioner No. 1, in short ''Dl'') Defendant Radharaman as D2 Krishna Bansal (Defendant No. 3-Respondent No. 4, in short, D3) and Mahesh Chand (Defendant No. 4-Petitioner No. 3, in short ''D4''). Admittedly, the first ever partnership was constituted through a partnership deed in 1968 wherein Dl and D3 only were the partners. In 1973 another partnership deed was made wherein D4 was also added as one of the partners. There was a third partnership deed in which Dl was dropped as a partner, D2 was introduced as a partner together with D3 and D4. The suit as aforesaid was filed in 1986.

6. Section 12 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (in short, Act No. 13 of 1972) indicates the cases in which a acation would be deemed to have been caused in respect of a building. Sub-section (1)(b) states that a landlord or a tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if he has allowed it to be occupied by any person who is not a member of his family. Sub-section (2) states that in case of non-residential building, where a tenant carrying on business in the building admits a person who is not a member of his family as a partner or a new partner, as the case may be, the tenant shall be deemed to have ceased to occupy the building.

7. As to what is a family under the meaning of Act No. 13 of 1972 has also been defined in Section 3(g). A family in relation to a landlord or a tenant of the building means his or her spouse, male lineal descendants, parents, grandparents and unmarried widowed or divorced daughter or daughter of a male lineal descendant, and also in relation to a landlord any female having a legal right of residence in that building. It is not in dispute, however, that D3 is not a member of the family of Dl, D2 and D4.

8. It was the submission of the learned counsel for the Petitioner that Section 12(2) could not have retrospective effect and if anybody was inducted as a partner in a business upon a premises held by a tenant prior to 1972, there having been no bar under the extent law as to his being a partner, may not be a reason, after the introduction of Act No. 13 of 1972 for applying the deeming clause of Section 12. It was stated that any provision of a legislation must be taken to be prospective unless a retrospective effect was given specifically or by necessary implication. He laid stress on the clause in Section 12(2) "as a partner or a new partner" to say that a

person introduced as a partner before 1972 may not be deemed to be a new partner after 1972. The learned counsel for the other side submitted that all these arguments are not at all necessary as by their own act the Defendants had cancelled the partnership deed executed prior to 1972 and had chosen to constitute a new partnership on two occasions after the introduction of the Act and even accepting that the law is only prospective the tenants must be deemed to have ceased to occupy the building. In view of the facts pleaded, I feel that this court may not go into the question if the provisions of Section 12(2) are prospective or retrospective. Admittedly, in 1968 only Dl and D3 were the partners in the business. The defence story as narrated in the judgments indicates that it was a Joint family business and Dl was the karta of the family. Evidently, introduction of D3 in the partnership had taken away the status of Joint family business. In 1973, D4 was also introduced as a partner together with Dl and D3. It was argued that as it was a Joint family business, D4 had every right to be introduced in the family business and his introduction did not violate the conditions of Section 12(1)(b) read with Section 12(2) of the Act No. 13 of 1972. This argument is difficult to accept as the business ceased to be a Joint family business, there being an outsider already introduced as a partner. However, in 1981, the partnership suffers a complete change, one could say in lock, stock and barrel as Dl, the karta of the joint Hindu family, dissociates himself from the business and D2 Is introduced as a partner. From the trend of events, it cannot be presumed that with the exit of Dl and with the introduction of D2, it still remained the same partnership business, and more so, when the shares were also redistributed. Once the court comes to the conclusion that the 1981 partnership was not a continuation of the same old partnership when D4 becomes a partner in the business run in the tenanted premises being an outsider to the family of the tenant, immediately the situation, attracts Section 12(1)(b) and Section 12(2) of Act 13 of 1972. It may be looked from another angle. The tenancy was under the name of Dl alone. By the partnership deed of 1981 he removes himself from the partnership, leaving the business in the premises in the hands of two persons of his family and another from outside the family. If a tenant totally removes himself from the business, there could not be a better case for application of Sections 12(1)(b) and 12(2) of the Act.

9. A point was further raised that there was no proper notice, and the suit was bad on that ground also. The trial court was of the view that Radha Raman (D2) and Mahesh (D4) were also the tenants and in the absence of notice to them, the Plaintiff could not have proceeded with the suit on the basis of notice on Rewati Raman alone. The revisional court met this point in its judgment. The court was of the view that in the rent receipts only Rewati Raman was shown as the tenant and as such notice to him was sufficient to terminate the tenancy. It was further found that the tenancy was in favour of Rewati Raman in his individual capacity and not as karta of the joint Hindu family. The objection that weighed upon the trial court was overruled by the revisional court. On the question of notice, my attention was drawn

to the defence made out at the trial stage. It was indicated clearly that the Tau of Radha Raman and Rewati Raman had arranged to induct Rewati Raman only as the tenant. It is not a tenancy inherited by Rewati Raman or Radha Raman or Mahesh Chand from their predecessor. It was out and out a tenancy created at the instance of the Tau In favour of Rewati Raman alone. It is another thing if Rewati Raman was conducting a family business there or even a partnership business although the tenancy stood in his name. So far the tenancy is concerned, only Rewati Raman was the tenant as evinced from the defence and as proved by the rent receipts. The mere fact that he was the karta of a joint Hindu family and a family business was being run, may not term the tenancy to be one for the joint family. It is not necessary, therefore, to go into the question if Rewati Raman, Radha Raman and Mahesh Chand were the Joint tenants or tenants-in-common in respect of the suit premises as undisputedly the facts lead to the only conclusion that Rewati Raman had been the sole tenant. The defence may not escape from this situation as this was the case pleaded at the earlier stage.

10. Both the points on the question of sub-tenancy and on the question of notice failing, the writ petition stands dismissed.