

**(2012) 08 RAJ CK 0007**  
**In the Rajasthan High Court**  
**Case No : Civil Second Appeal No. 170 of 1996**

Banshi Lal Suthar

APPELLANT

Vs

L.R. of Udai Lal and Others

RESPONDENT

**Date of Decision :** 24-08-2012

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 100

**Citation :** (2013) 2 RCR(Rent) 389 : (2013) 2 RLW 1300

**Hon'ble Judges :** Vineet Kothari, J

**Bench :** Single Bench

**Advocate :** J.K. Bhaiya, for the Appellant; Mridul Jain with K.C. Sharma, for the Respondent

**Final Decision :** Dismissed

## Judgement

Vineet Kothari, J.—The appellant-defendant-tenant-Banshi Lal Suthar S/o. Shanker Lal Suthar being aggrieved by the judgments & decrees dated 18.7.1996 & 22.11.2007 passed by the learned District & Sessions Judge, Doongarpur in Civil Appeal No. 28/92 (Banshi Lal vs. Udai Lal & others) & Civil Appeal No. 2/2002 (Banshi Lal vs. Udai Lal & Ors.) respectively, filed the present two second appeals u/s 100 CPC. Upon death of Udai Lal in January, 2008, the Manager of Jain Shwetambar Bisha Porwal Dhramshala, Ruplal was taken on record vide order dated 29.6.2011. The facts giving rise to these two second appeals filed by the defendant-tenant Banshi Lal are like this.

2. In respect of suit shop measuring 15" x 20" situated at Shastri Marg, Near Bus Stand, Doongarpur, the plaintiff-respondent-Udai Lal S/o. Meerachand Mehta and Gehri Lal S/o. Kashi Lal representing Jain Shwetambar Bisha Porwal Dhramshala filed the suit for eviction no. 12/83 in the court of Civil Judge-cum-Chief Judicial Magistrate, Doongarpur against defendant Panna Lal S/o. Dadam Chand Ji Dholiya (present respondent No. 2 in Second Appeal No. 48/2008) and Banshi Lal S/o. Shanker Lal for eviction and recovery of arrears of rent of Rs. 908/-, which was decreed by the learned trial court on 25.8.1992 to the extent

of arrears of rent upto 5.7.1983 and for payment of monthly rent of Rs. 454/- for the period 8.5.1983 to 5.7.1983 with interest @ 6% p.a. However, eviction decree was refused by the learned trial court holding that the defendant No. 2-Banshi Lal was not a sub-tenant of defendant No. 1-Panna Lal as the ground of subletting was not established by the plaintiff landlord u/s 13(1)(e) of the Rajasthan Rent Control Act, 1950.

3. The defendant-Banshi Lal filed first appeal before the learned Addl. District Judge, Doongarpur, in which the cross objections No. 9/93 were filed by the plaintiffs landlord and both, the appeal & cross objections were decided by the first appellate court on 18.7.96. The learned appellate court decreed the suit of eviction also and while dismissing the appeal of defendant-Banshi Lal, allowed the cross objections of landlord.

4. Against the said judgment and decree dated 18.7.1996 of learned first appellate court, the second appeal No. 170/96 was filed by defendant No. 2-Banshi Lal in this Court on 21.8.96 in which the coordinate bench of this Court framed the following two substantial questions of law while admitting the said second appeal in 15.2.2000:-

(i) Whether the present suit could be maintained against the appellant, seeking to evict him as a tenant, in view of the plaintiffs categoric case being that of the appellant, having entered into the premises as trespasser by breaking open the lock of the alleged tenant.

(ii) Whether the findings recorded by the learned lower court about the appellant, being sub-tenant is based on wholly irrelevant consideration.

(iii) Whether the findings recorded by the learned lower court about the appellant, being sub-tenant is based on wholly irrelevant consideration.

5. Another second appeal No. 48/2008 filed by the plaintiff Banshi Lal arises out of the judgment and decree of the learned trial court of learned District Judge, Doongarpur dismissing the plaintiffs Banshi Lal appeal against the judgment and decree of learned trial court of Civil Judge (Jr. Div.) Doongarpur dismissing his civil suit No. 93/83 (Banshi Lal vs. Udai Lal & anr.) seeking declaration of tenancy in respect of aforesaid suit shop in his favour and injunction against the landlord that he may not be evicted from the suit shop. The said suit came to be dismissed by the learned trial Court as barred by principles of res judicata on 21.11.2001 and appeal against that, namely appeal No. 2/2002 (Banshi Lal vs. Udai Lal & Panna Lal) came to be dismissed by the first appellate court of learned District Judge, Doongarpur on 22.11.2007 and being aggrieved by the same, the plaintiff-appellant-Banshi Lal preferred Second Appeal No. 48/2008 in this Court on 1.2.2008, which is still pending for admission and no substantial question of law has been framed in the said appeal.

6. At the request of both the learned counsels, both these appeals were finally heard and are being disposed of by this common order.

7. The genesis of this long drawn legal battle arises in the backdrop of the document "Pratigya Patra" (memorandum of agreement) dated 25.1.1982 executed by Jain Shwetamber Bisha Porwal Dharamshala acting through its Manager Shri Udai Lal Ji Mehta with present appellant Banshi Lal Suthar, who was 25 years of age at that time, to the effect that the first party had permitted the second party to carry on the business of carpenter by putting a cabin on the plot of land in question measuring 15" x 20" on a monthly rent of Rs. 45/- for making furniture and since the first party was planning to reconstruct some shops on such open land, it was agreed between the parties that the construction of Shops is likely to be completed within six months and one of such shops will be given on rent to the second party-Banshi Lal upon appropriate market rate of rent to be determined between the parties. After construction of said shops, the first party Udai Lal also served a notice Ex. 1 dated 3.5.1983 on the appellant Banshi Lal that he may come and execute the rent agreement with the first party for the shop in question for a monthly rent of Rs. 450/- with further stipulation regarding increase in rent by 5% after one year, so that possession of the shop in question could be handed over to him. This notice was never replied by the appellant Banshi Lal, though the same was served upon him, nor the appellant Banshi Lal entered into any formal tenancy agreement with the first party.

8. However, the appellant-Banshi Lal at that time approached the S.D.M., Doongarpur purportedly u/s 17 of the Rent Control Act, 1950, which permits a person to take tenancy of vacant or empty premises of a landlord & unless the landlord shows adequate reasons otherwise, the landlord may be bound down to give on rent the premises to the applicant u/s 17 of the Act on the terms and conditions to be determined by the learned Magistrate. Said application u/s 17 of the Act filed by the appellant Banshi Lal on 9.5.1983 was never decided in favour of the appellant-Banshi Lal the fate of those proceedings are not available on record. Since the appellant Banshi Lal failed to respond to the notice dated 3.5.1983, the first party accordingly let out the suit shop to another persons, namely the defendant No. 1 Panna Lal and a Rent Note Ex. 1/A dated 8.5.1983 was executed between Jain Shwetambar Bisha Dharamshala and Panna Lal and the suit shop in question, namely the-shop No, 2 from the southern side out of the six shops constructed by the first party was let out to said defendant No. 1-Panna Lal on a monthly rent of Rs. 454- with further condition of increase in rent by 5% every year and possession of the suit shop was handed over to the defendant Panna Lal on 8.5.1983 itself. The plaintiff Udailal also filed reply to the application u/s 17 of the Act before the learned SDM, Doongarpur (Ex. A/2) that since the appellant Banshi Lal had failed to turn up in pursuance of notice (Ex. 1) dated 3.5.1983, the suit shop in question was let out on 8.5.1983 to Panna Lal and, therefore, the proceedings u/s 17 deserve to be dropped. The said reply was filed by Udai Lal, on 8.6.1983.

9. In the written statement filed by defendant No. I Panna Lal in the present Eviction Suit No. 12/1983, the said defendant-Banshi Lal stated that he was not given possession of the suit shop in pursuance of rent note dated 8.5.1983 and

the defendant No. 2 - present appellant, Banshi Lal submitted that in the notice dated 3.5.1983 (Ex. 1) he was given only three days time to contact the plaintiff-landlord and enter into an agreement of tenancy and the said notice was though replied by him on 7.5.1983, the plaintiff in the meantime executed the rent note in favour of defendant No. 1 Panna Lal on 8.5.1983, whereas, no such possession of the suit shop was given to defendant No. 1 Panna Lal. The defendant No. 2 - Banshi Lal in para 12 of the written statement denied that he was tenant of the plaintiff. He also submitted that he has filed a declaratory suit on 8.7.1983, which has given rise to connected second appeal No. 48/2008, as stated above.

10. With these pleadings of the parties, after recording evidence, the learned trial court decreed the suit on 25.8.1992 and decided issue No. 1 in favour of plaintiffs Udai Lal & Gehri Lal that the suit shop in question was given on rent on 8.5.1983 to defendant No. 1- Panna Lal and possession was also handed over to time, which was only formal because vide SDM, Doongarpur proceedings (Ex. 5), the shop in question was inspected on 4.7.1983 and the same was found locked, however, lock was not broken open but from the look into the shop through ventilators, it was found that no goods are lying in the shop. Issue No. 2 was decided against the defendant No. 2-Banshi Lal, the present appellant and the trial court held that the plaintiff did not hand over the possession of the suit shop to defendant No. 2 - Banshi Lal on 5.7.1983. While deciding issue No. 3 regarding sub-tenancy, the learned trial court, however, held that the defendant No. 1- Panna Lal did not sublet the suit shop to defendant No. 2 - Banshi Lal, but it appeared to be more probable that defendant No. 2- Banshi Lal took possession on 5.7.1983 and, therefore, defendant No. 1- Panna Lal would be liable to pay rent upto 5.7.1983 only @ 454/- p.m. The issue No. 8 was decided against the defendant No. 2-Banshi Lal that he was not entitled to get any rent note executed by plaintiff in his favour and thus, the learned trial court concluded that the plaintiff was only entitled to rent from defendant No. 1- Panna Lal from 8.5.1983 to 5.7.1983 @ 454/- p.m. & the request for eviction was rejected by the learned trial court.

11. The appellate court, however, dismissed the appeal No. 28/1992 of defendant No. 2-Banshi Lal and allowed the cross objections No. 9/93 of plaintiff-landlord Udai Lal and Gehri Lal vide impugned judgment and decree dt. 18.7.1996. The appellate court of District & Sessions Judge, Doongarpur found in para 32 of the judgment dated 18.7.1996 that from the proceedings pending before the learned SDM, Doongarpur, it could not be said that on the date of inspection i.e. 4.7.1983 the suit shop was not in possession of the defendant No. 1-Panna Lal. The said defendant Panna Lal in his reply. Ex. 3, filed in July, 1983 had admitted his possession over the suit shop and there was no mention in the order-sheet dt. 4.7.1983 of the learned SDM, Doongarpur that there was no possession of Panna Lal over the suit shop. Adversely commenting upon the order drawn by the learned SDM that after finding that the suit shop is in possession and tenancy of Panna Lal under rent note dt. 8.5.1983 and without breaking open the lock and verifying the possession physically, the learned SDM, Doongarpur could not

have reported after observing through the ventilators that there were no goods lying in the suit shop, therefore, the learned trial court has wrongly observed that the possession given on 8.5.1983 to defendant No. 1, Panna Lal was only a "formal possession" and thus, the appeal of the defendant No. 1- Banshi Lal was dismissed and cross objections filed by plaintiff-landlord were allowed and the judgment of learned trial court dt. 25.8.1992 was set aside by the learned appellate court and suit for eviction and recovery of arrears of rent both were decreed by the learned appellate court vide judgment and decree dt. 18.7.1996.

12. Learned counsel for the appellant-Banshi Lal, Mr. J.K. Bhaiya urged that since the subletting was not proved by plaintiff in favour of defendant No. 2 - Banshi Lal, the learned appellate court has erred in decreeing the eviction suit on the ground of subletting u/s 13(1)(e) of the Rajasthan Rent Control Act, 1950. He submitted that even though there was no order u/s 17 of the Act by learned Sub-Divisional Magistrate, Doongarpur nor any rent note was executed in favour of appellant Banshi Lal by plaintiff but in view of "Pratigya Patra" (memorandum of agreement) dated 25.1.1982, the appellant should be deemed to be in possession of the suit shop as an independent tenant and in the alternative if he is not held to be a tenant then treating him as a trespasser, in view of the suit for declaration and possession filed by Banshi Lal, the present eviction decree is not enforceable against him and substantial questions of law framed above deserve to be answered in favour of appellant defendant-Banshi Lal. For his claim of tenancy under the aforesaid "Pratigya Patra" (memorandum of agreement) dated 25.1.1982, he submitted that his connected second appeal No. 48/2008 against concurrent dismissal of his suit by two courts below also deserves to be admitted & allowed.

13. On the other hand, Mr. Mridul Jain and Mr. K.C. Sharma, learned counsels appearing for the respondent-plaintiff landlord urged that both the aforesaid second appeals of tenant-Banshi Lal deserve to be dismissed with exemplary costs on the appellant Banshi Lal, who forcibly entered into the possession of the suit shop, though tenancy was created only in favour of defendant No. 1- Panna Lal under Rent Note Ex. 1 dated 8.5.1983 and the possession of the suit shop was also handed over to defendant No. 1 Panna Lal only. Since the appellant defendant No. 1 - Banshi Lal failed to turn up in pursuance of notice Ex. 3.5.1983, the courts below were justified in drawing inference & giving the finding that the defendant No. 1 - Panna Lal has parted with the possession, which was handed over to him under the rent note Ex. 1 dated 8.5.1983 without the consent of plaintiffs-landlord in favour of Banshi Lal, therefore, the decree on the ground of subletting has been rightly given by the learned appellate court besides decreeing the suit for recovery of arrears of rent and substantial questions of law framed above deserve to be answered in favour of respondent plaintiffs-landlord.

14. Learned counsels for the plaintiff landlord also submitted that the connected second appeal No. 48/2008 also deserves to be dismissed, as there was no

question of declaration of tenancy in favour of plaintiff-Banshi Lal as no such independent tenancy was ever created in his favour by respondents landlord-Udai Lal and Gehri Lal.

15. I have heard the learned counsels for the parties at length and perused the record and gone through the judgments under appeal. No case laws were cited by either of the parties in support of their contentions.

16. Having heard the learned counsels and in view of the evidence on record discussed above, this Court is satisfied that there is no force in the present both the appeals filed by the appellant-Banshi Lal and the learned appellate court was justified in decreeing the eviction suit against the defendants on 18.7.1996 inter alia on the ground of subletting. The rent note Ex. 1 dated 8.5.1983 in the back drop of "Pratigya Patra" (memorandum of agreement) date 25.1.1982 is a validly written document and execution of said document is not denied by the defendant No. 1 Panna Lal. The said document also contains stipulation that the possession of the suit shop was handed over to defendant No. 1- Panna Lal on 8.5.1983 and the learned trial court has also held that the defendant Panna Lal was liable to pay the rent for the period 8.5.1983 to 5.7.1983 @ Rs. 454/- p.m. as per the rent agreement, whereas, the appellate court has held both the defendants liable to pay the said rent in its judgment and decree dated 18.7.1996. Who else other than defendant No. 1-Panna Lal could put defendant No. 2- Banshi Lal-present appellant in possession of the suit shop and the only possible inference that could be drawn in these circumstances is that the defendant No. 1 Panna Lal has parted with the possession in favour of defendant No. 2- Banshi Lal without the consent of plaintiff landlord. The defendant No. 2 Banshi Lal himself miserably failed to establish any legal authority of his possession over the suit shop. The proceedings u/s 17 of the Act initiated by defendant-Banshi Lal for claiming tenancy and the connected civil suit filed by him, namely; civil suit No. 92/1983 was also concurrently dismissed by both the courts below for which the connected second appeal No. 48/2008 has been filed by him. This clearly establishes that efforts to secure tenancy rights for himself have throughout failed not only before learned Sub Divisional Magistrate, Doongarpur in proceedings u/s 17 of the Act but in the subsequent civil suit for declaration No. 93/83 also filed by him.

17. On the contrary, evidence on record speaks volumes that tenancy of the suit shop was created in favour of defendant No. 1 - defendant No. 2-Banshi Lal, the appellant herein. This itself was sufficient to grant eviction decree against both the defendants on the ground of subletting and parting with the possession u/s 13 (1)(e) of the Rajasthan Rent Control Act, 1950. The mutually contradictory pleas taken by the appellant Banshi Lal that he was neither sub-tenant of Panna Lal while claiming his tenancy before the learned SDM, Doongarpur and civil court and on the other hand the submission that if he held to be a trespasser, the suit for possession ought to have been filed by the plaintiff, shows the conduct of the appellant herein. Having failed in legal recourse and having failed to secure

any independent tenancy in his favour, his forcible possession of the suit shop can only be explained through sub-tenancy created by defendant No. 1 Panna Lal, without the consent of landlord, in his favour & therefore, the learned appellate court was justified in decreeing the eviction suit and substantial questions of law framed in Civil Second Appeal No. 170/1996 deserve to be answered against the appellant defendant-Banshi Lal and in favour of plaintiff-respondent-landlord. They are so answered.

18. At the same time, in the second appeal No. 48/2008 filed by plaintiff-Banshi Lal in a suit for declaration filed by him, no substantial question of law is found to be arising, since the courts below were justified in rejecting the said suit being bound by the judgments passed against the plaintiff Banshi Lal by the courts below, which are under challenge in Second Appeal No. 170/1996, which is being dismissed by this Court.

19. Consequently, both the second appeals of Banshi Lal are liable to be dismissed with exemplary cost and same are accordingly dismissed with cost of Rs. 5000/- for each appeal. The appellant-defendant-tenant, Banshi Lal Suthar, shall hand over the peaceful and vacant possession of the suit property to the respondent-plaintiffs (landlord) within a period of six months from today and shall pay mesne profit @ Rs. 750/- per month from date of judgment of first appellate court dated 18.7.1996 and will further continue to pay the mesne profit each month by 15th day of the next succeeding month or in advance to the respondent-plaintiffs till the vacant possession is handed over to the plaintiff. The arrears of mesne profits after adjustment of rent/mesne profit already paid/deposited may be paid by the appellant within three months from today, otherwise such amount will carry interest at the rate of 9% p.a. and in case there is any default in payment of mesne profit, the period of six months for eviction shall stand reduced and the decree of eviction would become executable forthwith. The defendant-tenant shall also not sub-let, assign or part with the possession of the suit premises or any part thereof in favour of any one else and would not create any third party interest in the same and the same would be treated as void. The appellant-defendant shall furnish a written undertaking incorporating the aforesaid conditions in the trial court within one month and one copy thereof along with affidavit, in this Court. It is made clear that if the peaceful and vacant possession of the suit shop is not handed over or mesne profits are not paid to the respondent-plaintiffs/landlord, as directed above, besides expeditious execution of the decree in normal course, the respondent-plaintiffs shall also be entitled to invoke the contempt jurisdiction of this Court. A copy of this judgment be sent to both the parties and learned courts below forthwith.