

(1971) 01 DEL CK 0022

In the Delhi High Court

Case No : Second Appeal No. 299-D of 1965, from order of C.G. Suri, Rent Control Tribunal, Delhi, D/- 13-9-1965

Delhi Vanaspati Syndicate, Delhi

APPELLANT

Vs

Bhagwan Dass Fadir Chand

RESPONDENT

Date of Decision : 21-01-1971

Acts Referred:

Citation : AIR 1972 Delhi 17 : (1971) ILR Delhi 84

Hon'ble Judges : H.R. Khanna, C.J.;V.D. Misra, J

Bench : Division Bench

Advocate : L.R. Gupta, S.N. Chopra and S.K. Tewari, for the Appellant; B.N. Kirbal, for the Respondent

Judgement

V.D. Misra, J.—This is landlord's Second appeal u/s 39 of the Delhi Rent Control Act, 1958 against the order of the Rent Control Tribunal upholding the order of the Additional Rent Controller dismissing the application for eviction of the tenant.

2. One Kalsum Bi was the owner of the premises bearing Municipal Nos. 1817 to 1821. M/s. Bhagwan Dass Faqir Chand (hereinafter called the "Tenant") became a tenant under Mst. Kalsum Bi about 25/30 years ago. Portions of the property were sublet from time to time to various persons. A part of the property was sublet to M/s. Delhi Vanaspati Syndicate (hereinafter called the "land lord"). The entire building was purchased by the landlord in 1958 from Mst. Kalsum Rehman. Thereafter an application for eviction of the tenant under Clauses (b) and (g) of the proviso to sub - section (1) of Section 14 of the Delhi Rent Control Act 1958 (hereinafter referred to as Act of 1958) was made on the grounds that the tenant has sublet the premises without obtaining the consent of the land lord in writing and that the landlord required the building bona fide for the purpose of re-construction. It was alleged that shop No. 1818 was sublet in 1955, and that Balakhana, bearing Municipal No. 1817, was sublet by the tenant to the landlord somewhere in 1956. The tenant resisted the claim of the landlord for eviction on the ground that he was authorised to sub-let and had obtained the consent in

writing from Mst. Kalsum Bi. He denied that land lord required the building for reconstruction.

3. Mst. Kalsum Bi had served a notice of ejectment on the tenant in 1956 (Exh. R-1) on the ground that he had sublet, assigned or otherwise parted with possession of the part of the tenancy premises without the consent of the landlord (Mst. Kalsum Bi) and substantial damage had been caused to the premises. By a writing, Exh. R-2, dated 29.6.1956 on the back of notice Exh. R-1 Habib Ul Rehman Mukhtiar of Mst. Kalsum Bi, cancelled and withdraw the notice in consideration of the tenant having agreed to pay rent at an enhanced rate of Rs. 185/- per month instead of Rupees 137/8/- per month. Simultaneously two rent receipts Exhs. R/26 and R/27 were issued by Habib Ul Rehman in favor of the tenant. Exh. R/26 was in respect of the rent from December, 1955 to April, 1956 at the rate of Rupees 137/8/- per month whereas Exh. R-27 was in respect of rent for the month of May at the rate of Rupees 185/- per month. The tenant continued to pay rent at this rate till the building was sold to the landlord (Exhs. R/27 to R/41). It was thus pleaded that writing Exh. R/2 and the rent receipts amounted to consent in writing for the acts of subletting.

4. The learned Additional Rent Controller came to the conclusion that two sub-tenancies had been created prior to the coming into force of the Delhi and Ajmer Rent Control Act, 1952 (hereinafter referred to as Act of 1952) while the remaining sub-tenancies were created subsequently. He also found that Mst. Kalsum Bi had given her consent in writing to sub-letting through Habib Ul Rehman. He did not accept the contention of the landlord that he bona fide required the premises for reconstruction. The application of the landlord was, Therefore dismissed.

5. The landlord preferred an appeal to the Rent Control Tribunal against the order of the Additional Rent Controller. The Tribunal found that the writing Exh. R-2 was genuine : that it was not necessary to obtain the consent in writing in terms of Section 14(1)(b) of the Act of 1958 before creating the subtenancies: and that the consent given by Mst. Kalsum Bi through her attorney Habib Ul Rehman was not illegal. The Tribunal also up-held the finding of the Additional Rent Controller that the landlord did not require the premises bonafide for reconstruction and dismissed the appeal.

6. When this matter came up before I.D. Dua, C.J. (now Hon'ble Judge of the Supreme Court) he decided to place the appeal before a Division Bench so that the scope and effect of the decision of the Supreme Court in *Karam Singh Sobti v. Pratap Chand*, (1964) 66 Pun Lr 210 AIR 1964 Sc 1304 may be determined. It is in these circumstances that the matter has come up before us.

7. Under Sub-section (2) of Section 39 of the Act of 1958 an appeal lies to this court only on a substantial question of law. This court. Therefore cannot reassess the evidence afresh and enter into merits of the case. And is bound by the decision of Tribunal on questions of fact.

8. Mr. L.R. Gupta . learned counsel for the landlord appellant. Contends that the writing. Exh. R/2 is not genuine and is forged : and that Exh. R/2 read with rent receipts Exhs. R/26 and R/27 do not amount to consent in writing. The Tribunal after detailed consideration of the evidence on record . including the statements of Om Prakash R.W. 2 and Jagdish Pershad R.W. 3 who were present at the time Exh. R/2 was written came to the conclusion that this writing was genuine and was not forged. This is a finding of fact and cannot be interfered with in the appeal.

9. The landlord had not challenged before the Tribunal that the writing Exh. R/2 read with rent receipts Exhs. R-26 and R-27 does of not amount to consent in writing. The interpretation of a document. Unless it is a document of title is a question of fact and cannot be raised for the first time in appeal u/s 39 of Act of 1958.

10. It is then contended by Mr. Gupta that the consent in writing required u/s 14(1)(b) of the Act of 1958 should be obtained previous to the sub-letting and the consent obtained after sub-letting will not save the tenant from eviction. Section 16 of this Act is relied upon. Section 14(1)(b) of Act of 1958 is in the following terms :

"14. (1) (b) that the tenant has on or after the 9th day of June. 1952 sublet assigned or otherwise parted with the possession of the whole obtaining the con-Relevant portion of Section 16 is as under

16. (1) Where at any time before the 9th day of June 1952 a tenant has sub-let the whole or any part of the premises and the sub-tenant is, at the commencement of this Act, in occupation of such premises, then notwithstanding that the consent of the landlord was not obtained for such subletting, the premises shall be deemed to have been lawfully sub-let.

(2) No premises which have been sub-let either in whole or in part on or after the 9th of June. 1952, without obtaining the consent in writing of the landlord shall be deemed to have been lawfully sub-let.

(3) After the commencement of this Act, no tenant shall, without the previous consent in writing of the landlord.

(A) sub-let the whole or any part of the premises held by him as a tenant : or

(b) transfer or assign his rights in the tenancy or in any part thereof.

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At this stage Section 13(1)(b) of Act of 1952 may also be re-produced which was as under :

"13 (1) (b) that the tenant without obtaining the consent of the landlord in writing has, after the commencement of this Act. -

(I) sub-let, assigned or otherwise parted with the possession of the whole or any

part of the premises ; or

X X X X X X X X X X"

11. Section 16 of the Act of 1958 holds the key to the interpretation of provisions of Clause (b) of sub-Section (1) of Section 14 of this Act as well as of Clause (b) of sub-section (1) of S. 13 of the Act of 1952. It deals with restrictions on sub-letting, Sub-section (1) of s. 16 makes sub-letting lawful, though it was without the consent of the landlord. Provided that the sub-letting has taken place before 9th of June. 1952 and the sub-tenant is in occupation of the premises at the time when the Act of 1958 came into force. Sub-section (2) of S. 16 reiterates the provisions of Clause (b) of Sub-section (1) of Section 13 of the Act of 1952 and lays down that the sub-letting after 9th day of June, 1952 without obtaining the consent in writing of the landlord shall not be deemed to be lawful. It does not say that the requisite consent should be obtained before sub-letting the premises and the consent obtained after sub-letting will not ensure for the benefit of the tenant.

However, sub-section (3) of S. 16 prohibits sub-letting of the premises after commencement of Act of 1958 without the "previous" consent in writing of the landlord. The use of word "previous" in this sub-section shows that where it was the intention of the legislature that the consent in writing should be obtained before sub-letting it said so specifically. The absence of the word "previous" in sub-section (2) shows that it was not the intention of the legislature that consent in writing should be obtained before sub-letting. Before the Act of 1952 a tenant could successfully show acquiescence of the landlord in sub-letting to escape for feature of tenancy Since the absence of consent in writing by a landlord for sub letting gave rise to unnecessary litigation between a landlord and a tenant, the Act of 1952 required the consent of the landlord in writing after its commencement. The purpose seemed to be that the consent of the landlord evidenced by a writing would cut out litigation on this ground. After all a landlord could always agree to sub-letting either before or after sub-letting of the premises. For that reason no condition was laid down that such consent should be obtained before sub-letting the premises.

12. Mr. Gupta relies on Karam Singh Sobti and Another Vs. Shri Pratap Chand and Another, , where a passing observation was made by their Lordships of the Supreme Court that a sub-letting after June, 1952 without the previous consent in writing of the landlord was treated as un-lawful for the purpose of the Act of 1958. We have gone through this judgment and we find that their Lord-ships were not concerned with either Section 14(1)(b) or Section 16 of the Act of 1958 of Section 13(1)(b) of Act of 1952, when those observations were made. After making a reference to Sections 16, 17 and 18 of the Act of 1958 it was observed by their Lordships that they were not concerned with the details of those provisions except to point out that the Act of 1958 made radical changes in the matter of eviction of tenants on the ground of sub-letting and that a distinction was made between sub-letting before June. 1952 and sub-letting after that date.

It was in that connection that those observations were made. This judgment did not lay down that consent in writing of the landlord for sub-letting has to be obtained by a tenant before actually creating the subtenancy after June. 1952.

13. Mr. Gupta contends that the consent given by Mst. Kalsum Bi was illegal since it was given in consideration of the enhanced rent which the tenant agreed to pay and the agreement to pay the enhanced rent was in breach of the public policy. In this connection he refers to Sections 5 and 16(4) of the Act of 1958 which are in the following terms :-

"5. (1) Subject to the provisions of this Act, no person shall claim or receive any rent in excess of the standard rent, notwithstanding any agreement to the contrary.

(2) No person shall in consideration of the grant renewal or continuance of a tenancy or sub-tenancy of any premises :-

(a) claim or receive the payment or any sum as premium or pugree or claim or receive any consideration whatsoever in cash or in kind, in addition to the rent; or

(b) except with the previous permission or the Controller, claim or receive the payment of any sum exceeding one month's rent of such premises as rent in advance."

Section 16(4) :- "No landlord shall claim or receive the payment of any sum as premium or pugree or claim or receive any consideration whatsoever in cash or in kind for giving his consent to the sub-letting of the whole or any part of the premises held by the tenant."

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14. It is contended that since Mst. Kalsum Bi allowed the tenant to have the sub-tenants on the conditions of the latter's agreeing to pay enhanced rent in breach of these provisions the consent became illegal. The prohibition is against the person claiming or receiving in excess of the standard rent. There is nothing on record to show as to what was the standard rent of the premises and so it cannot be assumed that the increase in rent results in any excess of the standard rent. Notices exchanged between the parties have been referred to by the learned counsel. Whereas the notice sent on behalf of the landlord alleges that the standard rent of the premises is not less than Rs.200/- per month the reply of the tenant to this notice is that it cannot be more than Rs.185/-/-. But these do not in any manner show as to what the standard rent was. Receiving payment of any amount as premium or pugree or any other consideration whatsoever, in cash or in kind in addition to the rent in consideration of the grant, renewal or continuance of a sub-tenancy is also prohibited. It is not the case of appellant that any premium or pugree was received for giving the consent. As already discussed the increase in rent, as long as it was not in excess of the standard rent, being not prohibited, could be charged from the tenant and so could not be termed illegal.

Mr. Gupta has referred to *Waman Shrinivas Kini Vs. Ratilal Bhagwandas and Co.*, where the Supreme Court while dealing with Bombay Rents Hotel and Lodging House Rates Control Act found that sub-letting was absolutely prohibited and so an agreement entered into after that Act had come into force contrary to the provision prohibiting sub-letting would be un-enforceable as being in contravention of the express provision of the Act which prohibited it. The appellant cannot derive any benefit from it. Delhi Rent Control Acts did not absolutely prohibit sub-letting. In our opinion Tribunal was right in holding that the consent was not illegal since the enhanced rent did not go beyond the standard rent of the premises.

15. The last contention of Mr. Gupta is that the initial act of sub-letting by the tenant, without prior consent in writing of landlord, being illegal subsequent consent of Mst. Kalsum Bi will not amount to a waiver of this ground of eviction. In this connection he refers to Sections 86 and 92 of CPC and relies upon *Mohan Chand Vs. Manindra Nath*, ; *Khanji Kashari Khanji Vs. Gulam Rasul Chandbhai*, and *Gaekwar Baroda State Rlv. v. Hafiz Habib Ul Haq*. Air 1938 Pc 165 where consent given during pendency of suit was held illegal Mr. Kirpal has referred to Air 1947 Pc 197 (*Vellayan Chettiar v. Govt, of Province of Madras*) where while dealing with Section 80. C. P.C. it was held that though the provisions of that section were mandatory and must be enforced by the court they could be waived by the authority for whose benefit they were provided. While dealing with Sections 86 and 87 of the CPC it was held that the condition could not be waived by the sovereign princes since the consent was to be given by a third party who was not a party to the suit.

16. In view of our decision that tenant could after sub-letting obtain the consent in writing of the landlord under the Act of 1952. We need not decide this question.

17. The result is that the appeal is dismissed but in the circumstances of the case the parties are left to bear their own costs.

18. Appeal dismissed