
(1968) 11 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 365 of 1967

Dr. Ram Sarup

APPELLANT

Vs

Shrimati Savitri Devi and another

RESPONDENT

Date of Decision : 19-11-1968

Acts Referred:

Citation : (1969) RCR(Rent) 38

Hon'ble Judges : D.K. Mahajan, J

Bench : Single Bench

Advocate : Rajinder Sachar, for the Appellant; D.C. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Mahajan, J.—This petition for revision is directed against the order of the Appellate Authority reversing on appeal the decision of the Rent Controller rejecting the application of the landlady for the eviction of the tenant.

2. The landlady filed the present petition for eviction on the 1st of March, 1965 on the allegation that respondent No. 1, Dr. Ram Sarup took the shop in dispute consisting of three rooms, shown read in the plan attached to the application, on a rent of Rs. 24/- P. M. with effect from 1st of May, 1957 and executed a rent note in favour of the petitioner the same day. The eviction was claimed on two grounds, (1) that respondent No. 1 (the tenant) had neither paid nor rendered any account to the petitioner since 1st of October, 1964: and (2) that respondent No. 1 had joined some service at Leicester Shire in England for the last 6-7 months, that he had transferred his rights, under the lease in favour of respondent No. 2 (Shri Salag Ram Watch Maker) without the written consent of the petitioner and that respondent No. 1 was no longer in possession of the shop in dispute for the last 6-7 months and that respondent No. 2 was in possession of the said shop and carrying on his business of repairing watches etc. for the last 6-7 months. An application was made by the landlady for appointment of a Local Commissioner. The Local Commissioner was appointed who went to the

spot and submitted his report. The Local Commissioner was also examined in Court as a witness and made a statement as to the correctness of the report made by him. In his report, the Local Commissioner has stated that the shop is in possession of respondent No. 2 Salag Ram and some Almirahs and some empty bottles were lying in the shop and that there was dust on the bottles and it appeared that nobody had dealt in the buying and selling of medicines. Respondent No. 1 could not be served in the ordinary course and he was served by substituted service. After service he filed a written statement through counsel and in the written statement it was stated that rent from 1st of October, 1964 to 30th of November, 1965 was tendered in Court along with interest and costs and the same was accepted by the petitioner's counsel. This ground was given up and accordingly this ground no longer exists. It was also denied that the shop had been sublet. It was, however, admitted that respondent No. 1 had gone to England for a short time, but it was denied that he had gone there for service. The presence of Takhatposh in front of the shop of respondent No. 2 was admitted but it was stated that Tehbazari for the Takhatposh was being paid by the answering respondent i. e. Dr. Ram Sarup. It was also admitted that respondent No. 2 carried on watch repairing on the Takhatposh. Regarding the opening of the shop it was stated that it was being looked after by the family of respondent No. 1. It was emphatically denied that respondent No. 2 was doing any watch repairing business in the shop in dispute. It would, therefore, appear from the pleadings that the only ground that survived for trial was whether there had been parting with possession of the shop by respondent No. 1 to respondent No. 2. The case of the petitioner was that there was a parting with possession, whereas the case of respondent No. 1 was that the shop was in his possession because it was opened and closed by his family members. Evidence was led on this matter and the Rent Controller after going through the evidence came to the conclusion that parting with possession of the shop was not proved. In other words, there was no subletting of the shop, with the result that the petition was rejected. Against this decision, an appeal was taken to the Appellate Authority.

3. The Appellate Authority has reversed the decision of the Rent Controller. The Appellate Authority has held that the possession of the shop is with respondent No. 2 because the keys of the shop were with respondent No. 2. He opens and closes the shop. Respondent No. 2 in the witness-box denied this. According to him, "the shop was opened by someone from amongst the family members of respondent No. 1 i. e. his son and was closed by him. When he came to the shop it was open and he left the shop open and thereafter somebody came and closed it." On the other hand, a neighbouring shopkeeper, namely, Bhagwan Dass A. W. 3, deposed that, ""Salag Ram was in possession of the shop, that no medicines were sold and that the sons of respondent No. 1 did not come to open the shop." To the similar effect was the statement of the husband of landlady, A. W. 4. In rebuttal, only Silag Ram appeared and he denied that "he opened or closed the shop. He categorically stated that respondent No. 1 had two sons living in the town-one aged 12 years and the other aged 8 years; and that the sons of

respondent No. 1 opened the shop and closed it." Curiously enough, the son of respondent No. 1 was not produced in the witness-box to support the allegation made in the written statement. It is in this state of affairs that the Appellate Authority came to the conclusion that respondent No. 1 had parted with the possession of the shop in favour of respondent No. 2. The result was that the appeal was allowed and an order for eviction of the tenant respondent No. 1 was passed. Against this decision the present petition for revision has been preferred.

4. The short question that requires determination is whether there has been parting with possession of the shop in dispute. It is not the case of either party that the parting with possession has been with the consent of the landlady. The case of the petitioner is that there has been no parting with possession of the shop. The contention of Mr. Sachar, learned counsel for the petitioner, is that the decision of the learned Appellate Authority is based on no evidence. The onus to prove parting with possession was on the petitioner and the learned counsel maintains that the onus has not been discharged. It is fundamental that this Court does not interfere with a finding of fact in revision. But it is also axiomatic that the finding of fact must be based on evidence. The short question is, is the finding of fact based on evidence? This leaves me to determine whether what has been found by the learned Appellate Authority to have been proved in this case is on basis of evidence. According to the learned Appellate Authority the shop is not opened or closed by the sons of respondent No. 1. The keys of the shop are with respondent No. 2. He opens and closes the shop. There is evidence of Bhagwan Dass A.W. 3 which supports this conclusion and it is not possible to say that this conclusion is without evidence. There was a categorical stand taken by respondent No. 1 in the written statement that his family members open and close the shop and that respondent No. 2 was merely looking after it. If it was a fact, there is no reason why respondent No. 1 would not have put his son in the witness-box to corroborate the allegations made by him in the written statement particularly when the evidence of Bhagwan Dass A. W. 3 had been recorded that the shop was being opened and closed by respondent No. 2. It is also interesting that the Tehbazari for the Takhatposh is being paid by Respondent No. 1. This is so stated in his written statement. If respondent No. 2 had put the Takhatposh with the consent of respondent No. 1, respondent No. 1 would not pay the Tehbazari and in any case would state that he receives the Tehbazari from respondent No. 2 and then pays it to the Municipal Committee. As observed by the learned Appellate Authority in order to get over the question of subletting this device may have been adopted. But the question still remains whether the finding of the learned Appellate Authority that there is parting with possession is supported by evidence. As I have already said there is evidence which supports that finding, namely, the evidence of Bhagwan Dass A.W. 3, which has been considered and believed.

5. Mr. Sachar then drew my attention to some reported cases of this Court, namely, *Dev Datt Verma v. Ajit Singh* 1965 Cri. L.J. 341, *Nandu Mal and Others Vs. Ramji Lal and Another*, and *Amur Nath v. Smt. Savatri Devi* (1955) 57 P.L.R.

276. None of these case really clinches the matter. There is no quarrel with the proposition that mere use of the premises by a person alleged to be a sub-tenant would not by itself prove subletting. But none of these cases lays down that if the control of the shop is completely passed on to the person, who is alleged to be a sub-tenant, there would be no subletting. As I read these authorities, I find that the crux of the subletting lies in this as to who is in actual control of the premises. If the sub-tenant is in actual possession of the premises, there would be subletting unless an arrangement is proved whereby the sub-tenant is merely a care-taker on behalf of the tenant during the period of the absence of the tenant. That was the case that was set up. But no evidence was led to prove it. Whenever a landlord proves that there has been complete parting with possession then it is for the tenant to establish that that, parting with possession has been under some arrangement negating the passing of complete control of the premises to the so called sub-tenant. If such an arrangement is alleged and is not proved the finding must be returned in favour of the landlord. In whatever perspective this case is examined, there is no escape from the conclusion that the learned Appellate Authority was right that there had been parting with the possession of the premises by respondent No. 1 to respondent No. 2.

6. For the reasons recorded above, there is no force in this petition. The same fails and is dismissed. The tenant is granted three month's time to vacate the premises provided he deposits in Court the arrears of rent right up to date and also for the period granted to him to vacate the premises within one month from today. If he does not do so, the landlady will be entitled to evict him after the expiry of one month from today.