
(1967) 12 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 390 of 1967

Dwarka Das

APPELLANT

Vs

Smt. Ramlubhai

RESPONDENT

Date of Decision : 04-12-1967

Acts Referred:

Citation : (1969) RCR(Rent) 682

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

Bench : Single Bench

Advocate : R.L. Aggarwal, for the Appellant; H.L. Sarin with Mr. H.S. Awasthy, for the Respondent

Final Decision : Allowed

Judgement

D.K. Mahajan, J.—This is a petition by the tenant Dwarka Dass against the order of eviction passed by the Appellate Authority after displacing the judgment of the Rent Controller dismissing the landlady's application for eviction of the tenant.

2. Before the Rent Controller eviction of the tenant was claimed on the grounds, - (i) that the tenant was in arrears of rent (ii) that the tenant had sub-let the premises from time to time. In particular he had sub-let them to Sujana Singh who was running handlooms and to Jagdish Chand; (iii) that the tenant had damaged the premises. The Rent Controller found against all the contentions raised by the landlady and held that they were not substantiated. Regarding the sub-letting to Jagdish Chand this is how he disposed of the matter.

about the position of Jagdish there is no denying the fact that he is a job worker; that he is a watchman at night for many shopkeepers on payment basis that he cleans the shop of the respondent and assists his customers and so does he regarding the other shopkeepers. Shri Jagdish has admitted that whenever his wife comes here she stays with him in the premises in question. He has admitted that he can be shifted by the respondent from that room to any other room at any time, Now it is to be seen as to whether his position is that of a sub tenant

or as a licensee. Various authorities have been cited before me by the learned counsel for the parties but the ratio decidendi of all the cases *Ram Chander Vs. Chanderwati Radha Mohan*, *Poran Chand v. Malik Mubarak Singh* (1963) 65 P.L.R. 490 *Gugan Mal v. Messrs Moti Lal Chand Mal* (1962) 64 P.L.R. 372, *Maharaj Krishen Kesar v. Milkha Singh and others* 1966 Cur. L.J. 273, is that where exclusive possession is with the occupant, presumption is of tenancy but if the possession is not exclusive, the presumption is that of a licensee. In *Maharaj Krishan Kesar v. Milkha Singh and others* (supra) their Lordships of the Supreme Court have held that when a repairer of motor cars and other vehicles allows a company to install pump and to embed in a portion of the side storage tank etc. that does not amount to lease but only a license. In the present case admittedly Jagdish is a chowkidar for the respondent and others and he also cleans the shop of the respondent. His possession cannot be said to be exclusive because he can be shifted at any time by the respondent. Therefore, his position is not that of a sub tenant but his position is that of a licensee This issue is therefore decided against the petitioner.

The result was that the eviction application failed.

3. The landlady preferred an appeal to the Appellate Authority and the only contention pressed was that Jagdish Chand was a sub tenant, who had been inducted in the premises by the tenant without the landlady's consent. The Appellate Authority agreed with the finding of that Rent Control for that Jagdish Chand was a job worker and was a watchman at night for many shopkeepers on payment of wages and that he cleans the shop of the tenant and assists his customers. Such odd jobs he also does regarding other shopkeepers. Jagdish Chand stated that whenever his wife come to town she stayed with him in the disputed premises. There is no denying the fact that Jagdish Chand is not the exclusive servant of Dwarka Dass but his relationship with him is that of a servant and to put it more accurately a part time servant. The Appellate Authority then proceeded to hold that Jagdish Chand was not an employee of the tenant. The Appellate Authority then proceeded to discuss the relative veracity of the statements of the tenant and the sub-tenant that is Dwarka Dass and Jagdish Chand and came to the conclusion that Jagdish Chand and Dwarka Dass do not appear truthful and straight forward witnesses and thereafter it was held that "it was not possible to believe that Jagdish Chand is residing in a portion of the premises in dispute only as a licensee and not as a sub tenant. The Appellate Authority did not rest content with this finding but went on to observe that:

In the present case it is amply proved from the evidence led by the petitioner that Jagdish Chand is in exclusive possession of the first floor of the premises in dispute and this fact is proved not only from the statement of Jagdish Chand R.W. 5, but also from the photographs A.2 and A.3. Since Jagdish Chand is doing the same job with Dwarka Dass on payment of wages as he is doing for other shopkeepers, there is no reason for Dwarka Dass to keep him in the premises in dispute as a mere licensee It is alleged that Dwarka Dass is paying Rs. 15/ per

month to Jagdish Chand for service rendered by him but Dwarka Dass had not dared to produce any transliteration or copy of his account books to prove this allegation.

On the other hand, a perusal of the statement of Jagdish Chand would show that no such payment is in fact being made by Dwarka Dass. Jagdish Chand has stated that he does not receive his pay regularly but receives it sometimes after two months, and sometimes after four months, six months or eight months, whenever he needs money. He was not able to give the dates of the payments made to him by the respondent towards his pay. He was not definite as to how many times the respondent had paid him his pay.

It is on this basis that the Appellate Authority reversed the decision of the Rent Controller. Dwarka Dass, who is dissatisfied with this decision has come up in revision to this Court u/s 15(5) of the Rent Restriction Act.

4. The rule is firmly settled that this Court will not interfere with the appreciation of evidence, but if the decision of the Appellate Authority is either illegal or improper, this Court can put it right in revision.

5. It appears to me that the decision of the Appellate Authority did not come to grips with the decision of the Rent Controller. The appellate Authority also failed to approach the case in its proper perspective. The decision of the Rent Controller was well considered and it is always the duty of the appellate Court not to lightly interfere with it. The appellate Court should only interfere with the decision if there is an error committed by the Court of first instance. After going through the evidence, I find that the Rent Controller committed no error whatever. There is no evidence regarding exclusive possession by Jagdish Chand. The witnesses who deposed to such exclusive possession had no personal knowledge about the matter. There has to be legal evidence for hearing a finding of fact. At least the witness must say that he has personal knowledge about the facts about which he is giving evidence. If the witness has no personal knowledge or any means of such knowledge about the facts deposed to by him, his testimony would not be evidence under any principle of law. The Appellate Authority did not discuss the statement of the landlady's witnesses who deposed like a parrot that Jagdish Chand was in exclusive possession of the premises. As a matter of fact the Appellate Authority lost sight of the fact that on most matters the landlady's case was false and she had failed to substantiate the same. The tenant had straightaway disclosed his case and had stated that Jagdish Chand was his servant and was living in part of the premises. It appears that the Appellate Authority was not aware that even a part time servant is a servant and if he is permitted to stay in the premises his possession of the same would not be necessarily as a sub tenant but can be as a licensee. There is a world of difference between a sub-tenant and a licensee. In a sub tenancy, the sub-tenant has interest in the property but in the case of a licence the licensee has the permissive use of the property and the legal possession continues with the owner. Even where a party is in exclusive possession of property circumstances

may negative that its possession was a tenant. Even a licensee can be in exclusive possession of the premises. See in this connection the decision of the Supreme Court in *Associated Hotels of India Ltd v. R.N. Kapoor* It was held in *Sarla Devi v. Union of India and others* (1967) 69 P.L.R. 769, that even if a servant is made to pay rent for the premises in which he is housed by the master, he will not become a sub-tenant. The use of the premises by a servant is for the convenience of the master and the reason for putting him in possession is not that he is inducted as a tenant but that he is in the premises as a licensee being a servant. (sic) somewhat similar effect are the observations of My Lord, the Chief Justice in Civil Revision No. 981 of 1965, decided on the 23rd of September, 1966 (*Diwan Chand v. Firm Sohan Lal Des Raj* C.R. 981 of 1965. The real test to determine sub-letting is whether the tenant has walked out of the premises and has handed over exclusive possession and control of the same to the subtenant This fact is seemingly missing so far as the present case is concerned. A licensee will be in possession of the premises but from that fact a conclusion does not follow that he is a sub-tenant. I quite see the logic of the argument that it is very difficult to prove a sub-tenancy inasmuch as it is not possible to prove excepting in certain exceptional cases that there is a contract of sub-letting between the tenant and the sub-tenant or that the sub-tenant pays rent to the tenant, but the Courts have from tenant's parting with a part of the premises exclusively drawn an inference of subletting. Therefore, each case will depend on its own facts. There is no finding by the Appellate Authority that Jagdish Chand was in complete control of the premises and Dwarka Dass was out of control of the same. The only observation made is that the possession of Jagdish Chand was exclusive. How that is so is not indicated barring the bald statement that the respondent's witnesses have said so. I have already dealt with the evidence of the respondents witnessess. No part of their testimony so far as this part of the case is concerned, can be treated as evidence. That evidence is entirely worthless and only need to be read to be rejected.

6. The principal reason that prevailed with the Appellate Authority in holding Jagdish Chand and Dwarka Dass as not trust-worthy witnesses was the lack on the part of the Dwarka Dass to produce the transliteration of his account books to show that he has been paying Rs. 15/- per month as salary to Jagdish Chand. I fail to see the logic of this observation because Dwarka Dass appeared in the witness-box with the account-books. He stated that he was paying a sum of Rs. 15/- per month to the Cbowkidar Jagdish Cband and in support of that assertion he had produced the account books in Court. Not a word, in cross-examination, was directed by the respondent on this matter and vet the Appellate Authority went out of his way to make the observation that the transliteration of the account-books had not been produced. When the original books had been brought, where was the question of transliteration. The Appellate Authority lost sight of the fact that the evidence Act does not apply to the proceedings under the Rent Restriction Act. Moreover, the powers of the Appellate Authority are co-terminus with the powers of the Kent Controller and the Appellate Authority

could have summoned the Account-books and examined them if it had any doubt on that matter. It is travesty of justice to hold in this situation that Jagdish Chand was not a part time employee of Dwarka Dass, because transliteration of the account-books was not produced. It appears that the Appellate Authority has very little knowledge of domestic servants. Unlike Government servants, domestic servants do not regularly draw their salary. They draw their salary as and when the need for money arises. Therefore, no adverse conclusion could be drawn to qua Jagdish Chand as a liar because he correctly stated that he draws his salary as and when he requires it.

7. After giving the matter my careful consideration the only conclusion possible is that the decision of the Rent Controller was correct and the same has been displaced by the Appellate Authority without sufficient reason. As a matter of fact the Appellate Authority has totally taken an erroneous view both of law as well as of the inferences from proved facts. The least to say, the decision of the Appellate Authority is wholly unsatisfactory. It discloses the perfunctory manner in which it dealt with the well considered decision of the Rent Controller.

8. For the reasons recorded above. I allow this petition, set aside the decision of the Appellate Authority and restore that of the Rent Controller. The petitioner will have his costs in this Court.