
(2009) 02 P&H CK 0128
In the Punjab And Haryana At Chandigarh

Harbans Lal

APPELLANT

Vs

Smt. Sushma Kapil alias Nikky Kapil and Others

RESPONDENT

Date of Decision : 12-02-2009

Acts Referred:

Citation : (2009) 3 CivCC 298 : (2009) 3 PLR 755 : (2009) 2 RCR(Civil) 761 : (2009) 1 RCR(Rent) 480

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan, J.—The tenants that face an order of ejectment by the order of the Appellate Authority are the revision-petitioner. The Civil Revisions are filed at the instance of second respondent-Harbans Lal in Civil Revision No. 6667 of 2001 and by the 3rd respondent-Nanak Chand in Civil Revision No. 6608 of 2001.

2. The landlord's application for ejectment was founded on alleged sub-letting of the tenant-Parshotam Dass, who was the first respondent. The building granted to landlord consisted of two portions and the portion depicted in blue colour was alleged to have been sublet by the first respondent to the second respondent and the portion of the property shown in green colour was alleged to have been sublet to the third respondent. It was also contended by him that the first respondent himself had committed default in the payment of rents. The landlord had also contended that the building had become unfit and unsafe for human habitation and that the value and utility of the building had been impaired. The last two grounds were rejected by the Rent Controller but found that the landlord had established the case of sub-tenancy and as a sequel to his findings, the petitioner ordered ejectment within two months.

3. The second respondent-Harbans Lal and the third respondent-Nanak Chand the alleged sub tenants had alone come on appeal. The second respondent set up a case of direct tenancy under the landlord filed Rent Appeal No. 18 of 1999. The third respondent Nanak Chand had preferred an appeal in Rent Appeal No. 7 of 1999. Both the appeals were dismissed affirming the findings regarding sub-

tenancy. The Appellate Authority, however, held that the payment made by the third respondent was a valid tender and the ejectment against him could not be on the ground of non-payment of rent. The Appellate Authority also set aside the finding of the Rent Controller that the third respondent-Nanak Chand had been inducted as sub-tenant subsequently by the first respondent-Parshotam Dass but that he was a sub-tenant through his father. However, affirming the finding that the sub-tenancy granted by the first respondent-Parshotam Dass to the second respondent-Harbans Lal was invalid upheld the finding by the Rent Controller and maintained the order of ejectment.

4. For a mere comprehensive understanding of the whole case, a little more dilation of facts is necessary. Ganga Parshad was the original landlord. He had rented out the property to his brother-in-law Parshotam Dass. The premises contained two portions which were used as shops. Parshotam Dass has sub-let one shop namely one portion of the building to a person by a name Gaindi. Ganga Parshad had filed an eviction petition on the ground of sub-letting in favour of Gaindi. The case culminated in proceedings before this Court and disposed of in Civil Revision No. 319 of 2004. In that case, the contention by the sub-tenant was that the sub-tenancy had been granted even on 16.10.1947 and the sub-tenancy having commenced prior to the coming into force of the East Punjab Urban Rent Restriction Act, the prohibitions of the said Act itself were not applicable and hence the ground of ejectment was not available for the landlord. This Hon''ble Court was pleased to accept the contentions of the sub-tenant and found that the sub-tenancy was protected by the inapplicability of the Act and dismissed the landlord's application for ejectment. This order had become final in respect of one portion of the premises.

5. It transpired that Parshotam Dass himself had shifted away from the premises to Delhi and the second respondent-Harbans Lal was carrying on business in the premises. Ganga Parshad had by then died and his legal representatives has sold the property to the present landlords on 27.10.1983. The specific contention raised by the landlord was that Parshotam Dass himself had made a sub-tenancy in favour of both Harbans Lal and Nanak Chand. Harbans Lal and Nanak Chand had different defences to take. The first respondent had also filed a written statement conceding that he had sublet the premises to Gaindi and thereafter, after the death of Gaindi, his son was in possession. He contended that sub-letting which had made to the second respondent-Harbans Lal was with the consent of the landlords and their predecessor in title. The second respondent had been running a cloth shop and the third respondent had been running a Halwai Shop in the portion in his possession.

6. The second respondent-Harbans Lal filed a statement contending that the landlord was estopped from filing the petition and they have always admitted him as a tenant in respect of premises. He also contended that the first respondent-Parshotam Dass himself was not a tenant but being brother-in-law of the original owner Ganga Parshad was merely in occupation of the premises with

the latter's permission. He let out the property with the consent of the owner. The original owners had accepted his possession as tenant under them directly and the plea of sub-tenancy was therefore tenable. The second respondent himself was a nephew of the first respondent-Parshotam Dass. Parshotam Dass did not have any male child and the second respondent had therefore been looking after his day-to-day needs for the last more than 40 years.

7. The third respondent admitted himself to the status of a sub-tenant contending that the sub-tenancy was not created in his favour by Parshotam Dass but he was in the possession of the property as heir to his father Gaindi. The action of ejectment against him, according to him was barred by principles of *res judicata*, having regard to the decision rendered by this Court in Civil Revision No. 389 of 1964.

8. To take up the issue of the sub-tenancy on the admitted premise and from the stand point of rendering of a judgment of this Court earlier, it could be seen that the High Court had dealt with the situation of action for eviction between Ganga Parshad, the original owner of the property against Parshotam Dass, who was admittedly a tenant. Before the High Court, the question was whether Gaindi or one of his brothers with whom he had joined, had been occupying the shop as sub-tenant since 1947 before the East Punjab Urban Rent Restriction Act had come into force and in which case the absence of written consent to the sub-tenancy by the landlord could not be ground of ejectment, especially when the shop had been divided by the tenant-Parshotam Dass in 1958 or 1959. The High Court, while dismissing the revision filed by the landlord, clearly found that the Act was not applicable. The judgment is also relevant for another fact which clearly established that the premises existed in two portions comprising of two shops. It is not too clear from the judgment and evidence as to who made the partition within the premises and converted it into two portions. But the fact was that the shop which was sublet to Gaindi was found to be protected from eviction by virtue of the sub-tenancy having been created prior to the Act.

9. If sub-tenancy was protected and the plea of the landlord that Parshotam Dass had not inducted the third respondent as a sub-tenant as subsequent to the Act but was in possession only as heir to his father, he would also to be entitled to such protection. The Lower Appellate Court had actually found the contention of the tenant to be true but still granted the order of ejectment by a reasoning that the tenancy itself could not be split up as existing in favour of two different persons and it was not permissible to protect one sub-tenant and eject another sub-tenant. This reasoning contained an inherent flaw that the subtenancy in favour of respondent Nos. 2 and 3 could be taken up only at par.

10. The tenancy involves a transfer of interest in immovable property and is heritable. If Gaindi was entitled to be protected in his possession as a sub-tenant who had come by possession prior to the Rent Control Act, a fortiori his son who is the third respondent is also entitled to the same benefit. After all, it is not a case of a sub-tenancy granted by Parshotam Dass in favour of the third

respondent after the coming into force of the Act. The learned Counsel sought to contend that while a tenancy is heritable, the sub-tenancy is not. I am afraid, there is no such proposition of law and a sub tenant is in the eyes of law a tenant vis-a-vis his own landlord who is the first tenant. It is no different from the status of a tenant from the original landlord, though there may exist no privity of contract between the original landlord and the sub-tenant but the legal incidence of heritability itself is not any different. The eviction against the 3rd respondent is therefore not tenable. The order of eviction passed against him is therefore set aside.

11. As regards the contention of the second respondent-Harbans Lal that he was a direct tenant from the landlord, the two Courts below have adverted to prevaricating stand of the third respondent. At one stage, he was contending that he was the nephew of Parshotam Dass and since the latter had no male issues, he was attending to his needs. At yet another place, he was saying that he was in possession of the property along with him and the landlord had not objected to the same. At another place, he was saying he was a direct tenant under the landlord. He also pleaded estoppel against the landlord who had known at all times that he was living with Parshotam Dass, his tenant. The plea of estoppel by the conduct of Parshotam Dass living Harbans Lal to be residing with him, without any objection from the landlord and at the same contending that he was a direct tenant from Ganga Parshad were mutually destructive. Further, Parshotam Dass himself filed a written statement admitting he had created a sub-tenancy but was contending that it was with the consent of the original owner of the landlord. Having regard to the admission by the first defendant that he had created first tenancy in favour of the second respondent and having further regard to the fact that Harbans Lal was not known to have been inducted during the earlier proceedings, which came up to the High Court in Civil Revision No. 389 of 1964, one thing becomes clear that the sub-tenancy in favour of Harbans Lal came into force only subsequent to the filing of the earlier petition. If the sub-tenancy in favour of Harbans Lal had come into force only subsequent to the East Punjab Urban Rent Restriction Act, 1949, such sub-tenancy without the written consent of the landlord was certainly actionable and the sub-tenant was liable for ejection.

12. The order of ejection issued against the second respondent by the Rent Controller and the Appellate Authority cannot therefore be faulted. The revision filed in Civil Revision No. 6667 of 2001 ought to therefore fail. The only point that has to be still seen is, by the fact that the first respondent had let out one portion of the premises to the second respondent, was he rendering the possession of the third respondent any the more vulnerable by making possible eviction when his father was found to be a tenant and protected by inapplicability of the Rent Control Act. The principle of law that the integrity of the tenancy could not be split up ought to be understood in the context that there cannot be a partial ejection of one portion of the building alone. In this case, I have already observed that there is no clear evidence whether the tenant-Parshotam

Dass made the division of the premises during his occupation as a tenant. It was just as well possible that the premises have two portions and a tenant becomes a tenant of two distinct portions. If a sub-tenant in respect of one portion of the property cannot be ejected and ejectment is inoperative by virtue of the non-applicability of the Rent Control Act to that extent, the separation of that tenancy should be taken as legally recognized. If another portion of the building held by the tenant had been sublet after the Rent Restriction Act, such a sub-tenancy could be liable for eviction without in any way affecting the rights of yet another sub-tenant whose possession is protected in the manner referred to above.

13. Reliance is placed by the counsel for the landlord on the decision of Hon''ble Supreme Court reported in the case of G. Giriappa and others Vs. Anantharai L. Parekh and others, . The case referred to a sub-tenancy inducted after coming into force of the Karnataka Rent Control Act, 1961. Under the relevant provisions of the Act, a sub-tenant who was inducted into possession before the Act was a deemed tenant under the landlord. In the action for eviction under one of the grounds of eviction (under Section 21 of the Act), Hon''ble the Supreme Court held that the sub-tenant's possession was co-terminus with the tenant and if a ground of eviction was made out against a tenant, a sub-tenant was also liable for eviction. This, the Supreme Court said, while previously holding that the sub-tenant was not a deemed tenant and he was not entitled to any independent Vora Rahimbhai Haji Hasanbhai Popat Vs. Vora Sunderlal Manilal and Another, , the Hon''ble Supreme Court held that sub-letting made before coming into force of the Act would not be actionable and that a tenant could not be ejected on the ground of sub letting. A Full Bench of this Court held in Lt. Col. Dr. P.C. Verman (Retd.) v. Mohinder Singh} 1977 (2) R.C.R. 529 held that the landlord who never acknowledged a particular person as his tenant at any time and from whom there had been no payment for rent, could not be ordered to be ejectment for non-payment of arrears of rent.

14. In Giriappa's case (supra), the sub-tenancy was created after the Act and being not a "deemed tenant" the sub-tenant was held liable to be ejected when the tenant could be lawfully evicted. Vora Rahimbhai's case dealt with the situation like this one, when the sub-tenancy had been made before the coming into force of the Rent Act and hence not liable to be ejected. Col. Dr. P.C. Verman's case dealt with the case of a tenant, whose status as such was not accepted by the landlord and there being no allegation of non-payment of rent by him, he was not found to be liable to be ejected. In this case, the landlord's contention was that the 1st respondent had sub-let the premises to the 3rd respondent. It has already been found that such a contention was false. If the 3rd respondent was entitled to protection, his possession could not be made to depend on the misconduct of the 1st respondent in sub-letting another distinct portion to the 2nd respondent.

In the circumstances, Civil Revision No. 6667 of 2001 filed by Harbans Lal is dismissed and Civil Revision No. 6608 of 2001 filed by Nanak Chand is allowed.

There shall be no order as to costs.