

(2012) 09 AHC CK 0254

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12738 of 2004

Islam Hussain and Others

APPELLANT

Vs

Hajari Lal and Others

RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 12(1)(b), 20, 20(2)(e), 25

Citation : (2013) 1 ALJ 174

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Namwar Singh and Sanjiv Singh, for the Appellant; Rakesh Agrahari and Ashok Mehta, for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri Sanjiv Singh, learned counsel for the petitioners and Sri Ashok Mehta, learned counsel for the respondents. This writ petition is directed against the order dated 04.03.1998 passed by Additional Judge, Small Cause Court, Varanasi, dismissing petitioner's suit for ejectment and recovery of arrears of rent and revisional order dated 17.12.2003 of Additional District Judge, Court No. 1, Varanasi, dismissing petitioners' J.S.C.C. Revision No. 22 of 1998.

2. Learned counsel for the petitioners contended that two shops (hereinafter referred to as the "shop A" and "shop B") were let out to respondent No. 1 but he entered into a partnership with respondent No. 2, his nephew, in 1990 and also committed default in payment of rent whereupon the suit was filed for ejectment on the ground of sub-letting and default in payment of rent. The respondent No. 1 tenant admitted in the written statement about partnership with defendant-respondent No. 2 yet both the Courts below have dismissed petitioners' suit ignoring admission of tenant-respondent No. 1 about

partnership with nephew who does not come within the definition of "family" u/s 3(g) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the "Act, 1972") and, therefore, besides the fact that there was a sub-letting u/s 20(2)(e) read with Section 25 of Act, 1972, there was also a deemed vacancy u/s 12(1)(b) read with sub-section (2). Both the Courts below have erred in law in misconstruing the aforesaid provisions and ignoring admission of respondents-tenants. In support of above submissions, he placed reliance on Apex Court's decision in Harish Tandon Vs. Addl. District Magistrate, Allahabad, U.P. and others, and this Court's decision in Dr. Ramesh Chandra Agarwal and others Vs. District Judge, Hardoi and another, .

3. Sri Ashok Mehta, learned counsel appearing for respondents-tenants, on the other hand, contended that there were two shops and both were let out at different point of time with a clear intention that the shops would be run by a firm in partnership. Since beginning, the business was run in shops in partnership and was never confined to respondent-defendant No. 1. He further contended that in the very first firm, the defendant-respondent No. 1 was not even a partner and, therefore it was well within the knowledge of landlord that shop would be run by a firm which may have a partnership and tenant-respondent No. 1, Hajari Lal may not be a partner of that firm. There was a partnership deed executed on 28.03.1983 in which two brothers-in-law of Hajari Lal, namely, Chandrika Prasad and Madan Lal, resident of House No. A9/26, Mohalla Kayasth Tola, Varanasi were partners. The said firm ceased on 31.03.1989 whereafter a new firm was constituted by tenant-respondent No. 1, Hajari Lal, on 07.04.1989 which was registered with the Sales Tax Department on 14.04.1989. The partnership deed of this firm was executed on 06.06.1990 in which respondents Nos. 1 and 2, both, were partners. It is also stated that respondent No. 2 is the grandson of respondent No. 1's brother, Ram Asrey. He contended that both the Courts below have found this fact that the shop was let out so as to carry out a business in partnership(s) without naming partner(s) and that is how it was consented by landlord allowing any person to enter as partner in the business. Therefore, the question of subletting does not arise. So far as default is concerned, both the Courts below have recorded findings of fact that there is no default. Hence Sri Mehta pleaded that the judgments, impugned in this writ petition, warrants no interference.

4. Counsel for petitioners has basically relied on the two provisions of Act, 1972, namely, Section 12 sub-section (1)(b) and subsection (2) read with Explanation (b) of subsection (3) and the definition of "family" u/s 3(g) read with Section 20(2)(e) and contended that by entering into partnership with a person, not member of family, the tenant-respondent No. 1 has admittedly sublet the premises in question and this aspect has been totally misconstrued and misappreciated by Courts below, hence both the impugned judgments deserve to be set aside.

5. A careful reading of various provisions of Act, 1972 would show legislature's

intention against sub-letting of a premises in any manner except to a limited exception. Section 20, sub-section (2)(e), entitles a landlord to file a suit for eviction of tenant from a building after determination of his tenancy on one or more of the grounds provided therein. One of such grounds under Clause (e) is "sub-letting" by tenant in contravention of Section 25 of Act, 1972, in respect to whole or any part of the building. Section 25 sub-section (1) prohibits sub-letting of entire building under tenancy by a tenant but sub-section (2) is an exception and provides that, with permission in writing of landlord and of District Magistrate, part of building may be sublet. The Explanation (I) of Section 25 provides that for the purpose of Section 25, if there is a deemed tenancy by application of Section 12(1)(b) or (2), in respect to a building or any part thereof, for the purpose of Section 25, it shall be deemed to have been sublet. Meaning thereby that it would also constitute a ground for filing a suit u/s 20, sub-section (2)(e) of Act, 1972.

6. Now this Court has to see whether the aforesaid provisions are attracted in the facts of the case in hand.

7. The case of landlord was that two shops constituting a single tenancy were let out to defendant-respondent No. 1, Hajari Lal and Jagannath on monthly rent of Rs. 500/-. The defendant-respondent No. 1 commenced his business with the name of firm "M/s. Hajari Lal and Company" dealing with iron trading and subsequently, in an illegal manner, entered into partnership with defendant-respondent No. 2 to run the aforesaid business. This partnership came into existence without the knowledge and permission of petitioners-landlord. Subsequently the defendant-respondent No. 2 has occupied shop B in his exclusive possession and running business under the title "M/s. Kanpur Steel Corporation", Proprietor, Jagannath Prasad, while in "shop A", the earlier firm, "M/s. Hajari Lal and Company" is continuing its business by defendant-respondent No. 1. Further it is alleged that defendant-respondent No. 1 stopped payment of rent in January, 1990 and onwards whereupon notice was given on 03.07.1990 demanding rent, failing which the tenancy after expiry of period of notice was terminated but the defendants-respondents did not respond it, hence the suit was filed.

8. Copy of notice has been placed on record as Annexure 2 to the writ petition. A perusal thereof shows that it is addressed to both the defendants-respondents, namely, Hajari Lal and Jagannath. The defendant-respondents Nos. 1 and 2, both, were put on notice about sub-letting of shops in question to defendant-respondent No. 2 and also default in payment of rent.

9. The notice was contested and replied by respondents-tenants on 04.09.1990 (Annexure 3 to the writ petition). It was stated therein that tenancy in both the shops was separate inasmuch as one shop was let out for monthly rent of Rs. 125/per month at different point of time and another for Rs. 150/per month. The claim of tenancy of both shops being common was denied.

10. In the written statement filed by defendant-respondent No. 1, he has given his pedigree showing that Sri Jagannath, defendant-respondent No. 2 is the grandson of defendant-respondent No. 1's brother, Ram Asre. In respect to one shop (shop A), tenancy commenced in 1974 when the business of iron trading started by a firm "M/s. Agrahari Iron Supply Company". It was a partnership firm with defendant-respondent No. 1 and one Viswanath Prasad. The business of firm commenced on 24.07.1974 but failed on 31.03.1975 and was closed. Thereafter a new firm was constituted on 01.04.1975, namely, "M/s. Hajari Lal and Company" under the proprietorship of defendant-respondent No. 1, which is still continuing.

11. So far as "shop B" is concerned, it is pleaded in the written statement that tenancy thereat commenced in 1979 with a clear stipulation/understanding that defendant-respondent No. 1 shall carry on business thereat in partnership. The initial business commenced by firm "M/s. Kushal Iron Stores" in which there were three partners, namely, Sri Satya Ram Yadav, Sri Jagannath Prasad and Smt. Malti Devi wife of Hajari Lal (respondent-defendant No. 1). The business of aforesaid firm stopped on 12.07.1980 and another firm "M/s. Banaras Steel Corporation" commenced its business on 14.07.1980. The partnership deed of new firm was executed on 13.03.1981 and the said firm functioned till 31.03.1982. In this firm, there were two partners, namely, Sri Chandrika Prasad (brother-in-law of defendant-respondent No. 1) and one Sri Jadunandan Prasad. The aforesaid firm ultimately dissolved on 28.04.1982. Thereafter the petitioners-landlord pressurised respondent No. 1 to vacate half portion of shop B so that the same may be used by landlord for his own purposes which was agreed by the tenant, i.e., respondent-defendant No. 1 and this resulted in reduction of rent of Rs. 125/. Thereafter "shop B" was used by firm M/s. Kanpur Steels Corporation.

12. In the replication/rejoinder filed by petitioners-landlord, they reiterated that both the shops were let out together at the common and consolidated rent of Rs. 500/- per month and there was no consent given for running business in partnership. The knowledge of any business run by M/s. Agrahari Iron Supply and Company in any of the shops in question was also denied by landlord. The partial vacation of shop B by defendant-respondent No. 1 is also denied and it is reiterated that the shops were let out to respondent No. 1 under his individual tenancy and not for running business in partnership.

13. The Trial Court has said that various partnership deeds were placed on record to demonstrate that the business had run in partnership of relatives and outsiders by defendant-respondent No. 1 in the shops in question in the long past and no objection was raised by petitioners-landlord at any point of time except when the notice in question was given by him. The Trial Court has also disbelieved landlords' evidence that they had no knowledge of such partnership, after assessment of evidence on record which included the fact that landlord's son's shop was adjoining to the shops in dispute.

14. The defendant-respondent No. 1 is doing business for several years in the

shops in dispute and this fact has been confirmed by landlord's own witness PW 3 to whom the landlord subsequently claimed to have become hostile. In these circumstances, the Trial Court relied on this Court's decision in Smt. Brij Bala Jain Vs. Smt. Amarjeet Kaur and Others, and held, when a partnership business is being carried out in a shop for a long time and the landlord, despite knowledge never raised any objection, after a long time the landlord cannot be allowed to require the authorities to declare vacancy in the non-residential accommodation on the ground of subletting. The above findings has been confirmed by Revisional Court also.

15. This Court finds no error in the Revisional Court's decision that the Trial Court erred in taking a view that Act, 1972 has no application in the present case and findings of Trial Court to this extent have not been approved. In my view the Revisional Court was right in observing that Act, 1972 applies in the present case, but then the question which has to be considered is, whether petitioners-landlords in the present case can be allowed to eject the respondents-tenants from the shops in question on the ground of sub-tenancy after giving them a notice on 03.07.1990.

16. Both the shops were let out in 1974 and 1975 as observed by Trial Court. The Trial Court has also recorded a finding that immediately after letting out the two shops business is commenced therein in different partnerships and contention of respondents-tenants regarding different partnerships was found supported by various partnership deeds placed on record. The landlords' contention that they were not knowing this fact that business is continuing in partnership of different persons has not been found correct and a finding has been recorded against the landlords on this aspect. This is evident from following findings:

(Vernacular matter omitted.... Ed.)

As per evidence, prior to the defendant, his wife, then brother-in-law and after him his nephew have been working at B-shop on different times by forming firms. D.W. 1 has mentioned the facts related thereto in evidence and has filed copies of the papers related to the firms vide list 161 C. This goes to establish that the members of the defendant's family have been running business at the disputed building from time to time.

(English translation by the Court)

17. The landlords' contention against aforesaid finding that he did not have any knowledge about these facts has been found incorrect and a concurrent finding has been recorded by both the Courts below on this aspect.

18. Besides, the defendant-respondent No. 2, Jagannath, the nephew of defendant-respondent No. 1 has been found to be residing with defendant-respondent No. 1 since his very childhood, inasmuch as when Jagannath was just an year old, his father died and since then he is residing with defendant-

respondent No. 1 and is being taken care of and looked after by him (defendant-respondent No. 1). This fact has also been found uncontroverted and both the Courts below in these circumstances have held that defendant-respondent No. 2 to the knowledge of landlords has been sitting in the shop, looking after the business of firm and in the facts and circumstances of the case, it cannot be said that respondents-tenants are guilty of violating the conditions of tenancy, justifying their ejectment on the ground of sub-letting.

19. Besides above, the Trial Court has also held that when an ejectment is sought on the ground of sub-letting, onus lies upon the landlords to prove this fact but they failed to prove and their evidence is vague and ambiguous. The above findings are:

(Vernacular matter omitted.... Ed.)

The evidence of the plaintiff could not prove even defendant Jagarnath to be "sikmi" and his evidence is not clear. He shares the shop of the plaintiff's son in equal partnership. For so many years, the defendant's nephew Jagarnath looks after B-shop and performs chores. Saying that he does not know anything for each and everything, the plaintiff withholds his clear evidence; whereas from the evidence of his witness and from the written statement, it has come to be proved that defendant No. 2 is real nephew of defendant No. 1 forming a joint family. Even from before 1990, the plaintiff continued to receive rent from the defendant. For so many years, the nephew looks after the shop whereas the maintenance of accounts of both the firms lies with defendant No. 1. As evidenced, in that case, it cannot be said that defendant No. 1 has had nothing to do with B-shop. The plaintiff has also not proved having given notice to defendant No. 2. On the other hand, it is pointed out in the course of cross-examination of PW 1 that Jagarnath was given notice but no such notice is established.

(English translation by the Court)

20. These are concurrent findings of fact recorded by Courts below and Sri Sanjiv Singh, learned counsel for the petitioners could not place anything to show that aforesaid findings are perverse or contrary to record. He has simply said that since defendant-respondent No. 2 does not come within the definition of family u/s 3(g) of Act, 1972, therefore, it is a case of sub-letting resulting in a deemed vacancy u/s 12(1)(b) and for this purpose, relied on Apex Court's decision in Harish Tandon Vs. Addl. District Magistrate, Allahabad, U.P. and others, and this Court's decision in Dr. Ramesh Chandra Agarwal (supra).

21. So far as decision in Dr. Ramesh Chandra Agarwal (supra) is concerned, the facts are different inasmuch as there was no such case that the non-residential accommodation was used in partnership business by inserting the persons who do not come within the definition of "family" u/s 3(g) and such business had continued for a very long time without any objection from landlord. There was neither any such issue nor finding that running of partnership business for a long

time despite knowledge was never objected by landlord for a long time. In the facts like that of present case, at the instance of landlord when he has failed to prove that he has ever objected for such partnership before giving notice, the above authority would have no application to the present case.

22. Similarly, in *Harish Tandon Vs. Addl. District Magistrate, Allahabad, U.P. and others*, also the above facts as have been found proved by Courts below were not involved inasmuch as there an application for allotment was filed by one Ramesh Nath Kapur and Radhey Shyam on the ground of deemed vacancy. The order passed by Rent Control and Eviction Officer thereupon was under challenge. The Court in *Harish Tandon (supra)* has observed that Act, 1972 has been enacted to protect the interest of tenants and to prescribe conditions under which a tenant can occupy a building and if he has contravened any of conditions, shall be deemed to have ceased to occupy the building.

23. In my view the dispute involved in the matter and the findings of facts which have come to this Court to non-suit the petitioners distinguishes this case from the authorities cited by petitioners-landlord and, therefore, the same would not help them. On the contrary, the present case is more aptly covered by the decision of this Court in *Smt. Brij Bala Jain Vs. Smt. Amarjeet Kaur and Others*, where in para 9 of the judgment this Court held:

She had never raised any objection regarding admission of Subhash Chandra Jain as partner in the firm. Learned Counsel for the landlord-Respondents urged that the erstwhile landlady might not be knowing as to who were partners of the firm. It is a question of fact which could have been considered by the Rent Control and Eviction Officer. It is not disputed that the erstwhile landlady was residing in the same building where the shop in dispute is situate. In case, the landlady had consented such admission of a partner for fairly long period of 16 years without any objection and further by the landlord-Respondents three years after the purchase, it will be deemed that they have consented to admission of the partner.

24. The above observations, in my view, largely support the view taken by Courts below.

25. In any case, here the petitioners-landlords have approached this Court assailing the Trial Court's judgment by filing this writ petition under Article 226 of the Constitution. The Court finds that alleged defendant-respondent No. 2 is residing with his uncle since his very childhood when he was just an year old due to death of his father. The uncle virtually has looked after him like his father and for all practical purposes, he is like a son to him. In Indian culture and society where the concept of joint family is well recognised, having age old traditions, after death of the brother another brother has looked after his nephew from his very young age, i.e., when he was an year old, the nephew becomes a member of family and in such circumstances the nephew has taken part with the business of uncle, and it cannot be held to be a case of sub-letting and in any case, this would not justify a Court of equity in exercising its discretionary jurisdiction

against such persons and in favour of landlord taking a technical advantage of statutory provisions. In my view, the judgments of Courts below have resulted in substantial justice and, hence, even otherwise warrant no interference under Article 226 of the Constitution. In view of above discussion, I find no merit in the writ petition. Dismissed. Interim order, if any, stands vacated.