

(1982) 12 DEL CK 0023

In the Delhi High Court

Case No : Second Appeal No. 66 of 1980

Jagdish Kumar Aggarwal

APPELLANT

Vs

Agra Aerial Taxi Service and Others

RESPONDENT

Date of Decision : 21-12-1982

Acts Referred:

Citation : (1983) 23 DLT 251 : (1983) 4 DRJ 324 : (1983) RLR 197

Hon'ble Judges : Sultan Singh, J

Bench : Single Bench

Advocate : L.R. Gupta, P.K. Agarwal and N.S. Sistani, for the Appellant;

Judgement

Sultan Singh, J.

(1) In this second appeal u/s 39 of the Delhi Rent Control Act, 1958 (for short "the Act"), the appellant-landlord challenges the judgment and order dated 19th September, 1979 of the Rent Control Tribunal dismissing his application for eviction of the respondents under clauses (b), (c) (j) & (k) of the proviso to Section 14(1) of the Act.

(2) The Additional Controller by judgment dated 6th September; 1976 has passed an order for eviction u/s 14(1)(b) of the Act. He had negated the grounds under clauses (c) & (j). The appellant had not pressed the ground under clause (k). The appellant now claims eviction only under clause (b) (c) of the proviso to Section 14(1) of the Act. 1. Briefly the case of the appellant under clauses (b) & (c) of the proviso to Section 14(1) of the Act is that he filed the eviction application on 6th April, 1968 alleging that Agra Aerial Taxi Service (respondent No. 1) and Harcharan Singh Subedar, (respondent No. 2) Proprietor/ Partner of Agra Aerial Taxi Service took on rent from him a newly built garage, two rooms with verandah, bath and W.C. at the back of Bungalow No. 16, Hailey Road, New Delhi as shown in the plan on a monthly rent of Rs. 225.00 excluding electricity and water charges with effect from 1st February, 1955 in terms of an agreement executed by them. that the premises were let for residential

purposes, that the respondents I and 2 sublets assigned, or otherwise parted with the possession of the said premises unauthorisedly to Jai Singh respondent No. 3 and also to a mechanic and that they have been using the same for office and commercial purposes.

(3) Para 16 and 18 (a) (2) of the eviction application relating to the ground under clause (b) read as under :-

"16.The respondents No. 1 and 2 have unauthorisedly sublet, assigned or otherwise parted with session to Shri Jai Singh, the respondent No. 3, and also to a mechanic. Even if it be assumed though not admitted that Shri Jai Singh is a partner of the respondent No. 1 or that he is also a co-tenant even in that case the premises have been unauthorisedly sublet, assigned or otherwise parted with possession to a mechanic and the respondent No.3 Shri Jai Singh has been imp leaded for the effectual determination of the question in controversy between the parties". "18. (a) (2) : That the respondent No. 1 and/or No. 2 have illegally, unauthorisedly and without the written consent of the petitioner/ landlord, sublet, assigned or otherwise parted with possession of a part of the aforesaid demised premises to the respondent No. 3 or in any case to a Motor mechanic without the written consent of the petitioner."

(4) The respondents in the written statement denied that any part of the premises had been sublet assigned or otherwise parted with the possession or had been misused within the meaning of clauses (b) or (c).

(5) Paras 16 and 18 (a) (ii) of the written statement in reply to said paras 16 and 18 (a) (2) of the eviction petition are as follows :-

16.The allegations that the respondent Nos. 1 and 2 have unauthorisedly sublet assigned or otherwise parted with the possession to Shri Jai Singh, the respondent No. 3 and also to a mechanic ,are absolutely false and without any substance whatsoever. It is submitted that the respondent No. 2 and 3 are the partners of the respondent No. I and are in possession from the inception of the tenancy. The allegations that the premises are sublet to any mechanic as alleged are totally false. 18 (a) (ii) The allegations that the respondents have in any manner sublet, assigned or parted with the possession to respondent No. 3 or to a motor mechanic as stated by the petitioner is absolutely false. As already stated the respondent No. 3 is the partner of respondent No. 1 along with respondent No. 2 who signed the alleged rent note dated 1st of February, 1955. All these allegations are without any substance."

(6) The Additional Controller held that Jai Singh, respondent No. 3 Was a partner of the firm respondent No. I, that he had executed the rent note dated 1st February, 1955 and he being a partner of respondent No. 1 was tenant along with respondent No. 2 and not a sub-tenant. He further held that the mechanic referred to in the application to whom the premises were sublet, assigned or otherwise parted with the possession of the premises, could be Darshan Singh and that he had been in possession of a part of the garage. He has also held that

the garage had been partitioned in to two portions and Darshan Singh has been in exclusive possession of a portion of the garage carrying on repair work in the name of Riyat Sons, Automobile Engineers, and it amounted to parting with the possession, and it has not been proved that Darshan Singh was an employee of the respondents. As regards the ground of eviction covered by clause (c) it has been held that the portion of the garage has been used as an office and workshop but the appellant was not entitled to an order for eviction as misuse of a part of the premises is not a ground for eviction under clause (c).

(7) On appeal the Tribunal reversed the judgment of the Additional Controller and dismissing the eviction application has held that the pleadings of the appellant were vague, regarding the ground of eviction covered by clause (b), that he did not give the name of the mechanic, and he did not specify the portion which had been sub-let to the so-called mechanic although he knew that in 1966 Darshan Singh had been inducted as a sub-tenant, that the landlord has failed to prove that Darshan Singh was in possession of any portion of the demised premises, that no cross objections were filed by the landlord against the order of the Additional Controller negating the grounds of eviction under clauses (c) and (j) of the proviso to Section 14(1) of the Act and Therefore the appellant was not entitled to support the eviction order on those grounds. The evidence on record was not discussed but the finding that Darshan Singh was not an employee of the respondents was upheld.

(8) Learned counsel for the appellant submits that the judgment of the Rent Control Tribunal is perverse, that there was no ground to reverse the findings of the Additional Controller, that under Order 41 rule 22 of the CPC (hereinafter referred to as "the Code"), the appellant was entitled to support the order for eviction on the ground covered by clause (c) which was negated by the Additional Controller, that if any part of the premises has been misused, the appellant, was entitled to an order for eviction under clause (c).

(9) The learned counsel further submits that the Additional Controller had fully discussed the entire evidence on record, in support of the finding that the respondents had parted with the possession of a part of garage unauthorisedly to Darshan Singh mechanic and that the Tribunal ought not to have reversed the said finding and the order for eviction without discussing the evidence and giving reasons for the same. He says that the pleadings of the landlord were sufficient and that the parties fully knew about the possession of Darshan Singh mechanic in a portion of the garage during trial and had led evidence accordingly and as such there was no prejudice to the respondents. who led evidence knowing the points in controversy (See : Bhagwati Prasad Vs. Shri Chandramaul,).

(10) The appellant claimed eviction also under clause (c) of the proviso to Section 14(1) of the Act. The Additional Controller had negated that ground of eviction but had passed the order for eviction under clause (b). The tenants filed an appeal. Under Order 41 rule 22 of the Code the landlord before the Tribunal had a right to support the order for eviction on any of the grounds negated by

the Additional Controller. As order for eviction was passed in favor of the landlord he had a right to support the order for eviction on any other ground Order 41 rule 22 of the Code. In *Ramanbhai Ashabhai Patel v. Dabhi Ajit Kumar Fulsinji and others*, Air 1955 S.C. 660 it has been held that Order 41 rule 22 of the code permits a party to support the decree appealed against upon a ground which has been found against him by the trial court. Similar observations were made in *Management of Northern Railway Co-operative Society Ltd. Vs. Industrial Tribunal, Rajasthan, Jaipur and Another*, . Thus it must be held that the landlord was entitled to claim an order for eviction before the Rent Control Tribunal on the ground covered by clause (c) of the proviso to Section 14(1) of the Act.

(11) I have heard the appellant on merits on the ground under clause (c). The Additional Controller has found that garage was being used as office and workshop which is a part of the premises under the tenancy of the respondents. Under clause (c) a landlord would be entitled to an order for eviction against the tenant if he uses the entire premises for a purpose other than the purpose for which they were let to him. If a part of the premises has been misused the ground of eviction under clause (c) would not be available to the landlord .In *Amrik Chand Vs. Harbans Singh*, it has been held that the expression "the premises") in clause (c) means, the entire premises which were let out to the tenant, and this clause would apply only if the tenant uses the entire premises, let out to him, for a purpose other than the purpose for which they were let to him. I am, Therefore, of the opinion that the Additional Controller was right in negating the ground of eviction under clause (c) of the proviso to Section 14(1) of the Act.

(12) As regards eviction on the ground covered by clause (b) of the proviso to Section 14(1) of the Act, learned counsel submits that the finding of the Additional Controller largely depending on oral testimony, ought not to have been lightly interfered with by the Tribunal. A persual of the judgment of the Additional Controller shows that he discussed the entire oral and documentary evidence in support of the ground under clause (b) and held that the respondents parted with the possession of part of the garage in question unauthorisedly. The Tribunal has not discussed any evidence in support of the said finding but has reversed the finding on account of alleged vagueness in the pleadings of the landlord. Without discussing oral evidence, the Tribunal was not justified in reversing the said finding. The finding of the Rent Controller that the respondents had parted with the possession of one portion of the garage to Darshan Singh mechanic unauthorisedly is based on evidence and ought not to have been reversed. In *Sarju Pershad Vs. Raja Jwaleshwari Pratap Narain Singh and Others*, the following rule has been laid down :

" THE rule is and it is nothing more than a rule of practice that when there is conflict of oral- evidence of the parties on any matter in issue and the decision hinges upon the credibility of the witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial

judge's notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate court should not interfere with the finding of the trial Judge on a question of fact The duty of the appellate court in such cases is to see whether the evidence taken as a whole can reasonably justify the conclusion which the trial court arrived at or whether there is an element of improbability arising from proved circumstances which in the opinion of the court outweighs such finding.

(13) Similar observations were made in Radha Prasad Singh Vs. Gajadhar Singh and Others, .

(14) Learned counsel for the parties have referred to the evidence on record relating to the ground of eviction covered by clause (b), and I am of the opinion that the Additional Controller was correct in holding that the respondents parted with the possession of a part of garage unauthorisedly within the meaning of clause (b) of the proviso to Section 14(1) of the Act to Darshan Singh, Mechanic and that Jai Singh respondent No. 3 as partner of respondent No. 1 was a tenant and not sub-tenant.

(15) The rent note dated 1st February ,1955 is executed by respondents 2 and 3 as partners of respondent No. 1. The landlord has also been accepting rent from them since then. He now cannot say that respondent No. 3 was not inducted as a tenant. There is Therefore no infirmity in the judgment of the Additional Controller that Jai Singh, respondent No. 3 is a partner of respondent No. 1 and tenant under the appellant. Admittedly respondent No. 3 is in possession of the suit premises and no order for eviction on the ground that the respondents have parted with possession of any portion of the premises to Jai Singh, respondent No. 3 can be passed.

(16) The Tribunal however has unnecessarily stressed that there were no proper pleadings and these were vague. The landlord in his notice through counsel dated 25th November, 1966 (Ex. A.W, 11/12) made a grievance that the respondents had illegally and unauthorisedly sublet assigned or otherwise parted with the possession of a part of the demised premises to a motor mechanic without the written consent. In para 16 of the eviction application the allegations were made that the premises have been sublet, assigned or otherwise parted with the possession to Shri Jai Singh respondent No. 3 and also to a mechanic, In para 18 (a)(2) as reproduced above, the allegation is that the respondents without the written consent, sublet, assigned or otherwise parted with possession of a part of the demised premises to respondent No. 3 or in any case to a motor mechanic. Giving the name of the motor mechanic in this case was not essential. Failure to give the name of the mechanic does not mean that the landlord is not entitled to an order of eviction if it is proved that the respondents have violated clause (b) by parting with the possession to the mechanic. The mere reading of the appellants, pleading as reproduced already does not show any vagueness. After going through the evidence on record it is clear that only one mechanic was in possession and as such the respondents ought to have pleaded what was the

status of the mechanic in possession of the premises. They alleged that they had not sublet to the mechanic. The respondents merely denied the ground of eviction covered by clause (b). They did not say whether there was any mechanic in the premises, if so, what was his name ; what was his status ; was he an employed or a licensees. During the course of evidence the respondents Realizing the force in appellant's case put the plea that the mechanic Darshan Singh was their employee, which plea they had not taken in the written statement. This would mean that Darshan Singh was in possession of the premises in suit as their employee. The plea that he was an employee has been negated both by the Additional Controller and the Rent Control Tribunal. Nothing has been brought to my notice by the learned counsel for the respondents to reverse that finding. The mechanic referred to by the landlord in his eviction application is none else but Darshan Singh. It is in evidence that he has been in possession of a portion of the garage and has been carrying on repair work of motor car under the name and style of Riyat Sons, Automobile Engineers. A.W. 6/1 is one of the bills issued by him with respect to Cheverlot Car Dlt 8298 repaired by Darshan Singh in the premises. Munna Lal A.W. 6 has deposed that he got the said car repaired by Darshan Singh and he had found Darshan Singh working in his workshop in the said garage. Darshan Singh as R.W. 7 has deposed that he had been employed by the respondents since 3rd November, 1967, that there was no other mechanic that he had only one assistant, namely, Fazal, that A.W. 6/1 is the bill signed by him, that repair work had been carried on at the premises in question as well as in the compound of the landlord, that there is a partition in the garage, that he recognises in the photograph Ex. Public Witness . 10/1, the Chain pully and other instruments used by him in the workshop, he recognised the cars standing in the premises shown in the Photographs He has also deposed that the bill Ex. A.W. 6/1 was issued by him at the premises in question and that the repair work under the name and style of Riyat Sons was his personal work and respondents had no connection with the said work. Darshan Singh has also admitted the removing of the Engine of the car with the help of chain pully and other tools in the premises. The facts regarding the ground of eviction covered by clause (b) were deposed by the landlord Jagdish Kumar Aggarwal as A.W. 11. He has deposed that Darshan Singh is in exclusive possession of one garage that he opens and locks the garage himself, that tools for carrying the repair work have been lying in the garage. There has been no crossexamination of the landlord on these points. It is not the case of the respondents that the tools and other implements lying in the garage belonged to them. Dr. R.N. Kataria, Senior Surgeon as AW. 1 has deposed that he got his car Dodge, repaired by Darshan Singh, that the portion marked "A" in the plan "x" (Ex A.W. 11/10) has been used as office while the other portion was used as workshop by Darshan Singh, that the car was not repaired by Subedar Singn and Jai Singh respondents but by Darshan Singh mechanic, that Darshan Singh had been present whenever he visited the workshop. Various photographs with regarded to the car repairs at the premises were proved by the photographer S.P. Rathore, A.W. 10. The respondents admit partition of garage into two portions : one portion is used as

an office and in the other portion mechanic Darshan Singh carries on his workshop for repairing the motor car. Various witnesses namely, R.W. 7, R.W. 8, B.R.W. 13 and R.W. 14 regarding repairs of motor car in the premises were examined by the respondents but they contradicted themselves and were rightly disbelieved by the Additional Controller.

(17) The respondents in the written statement never pleaded that Darshan Singh was their employee but during the course of evidence they developed the case that he was their employee meaning thereby that his possession of the premises was as their employee. In other words, it is admitted by the respondents that Darshan Singh mechanic is in possession of a part of the suit premises but only as their employee. As a matter of fact they ought to have pleaded what was the post of Darshan Singh. They had knowledge of his status and his working in the premises. Whether he was an employee or a licensee they ought to have disclosed in the written statement. The landlord pleaded that premises have been sublet, assigned or otherwise parted with possession to a mechanic. It is admitted in evidence that there was only one mechanic in the premises and that is Darshan Singh. If the plea of the landlord was vague regarding the mechanic in possession of a portion of the premises the respondents ought to have taken steps under order 6 rule 5 of the Code for better particulars. They ought to have asked the appellant landlord the name of the mechanic. The conduct of the respondents shows that they were aware that Darshan Singh was the only mechanic but they merely denied the ground of eviction covered by clause (b). I am, Therefore, of the opinion that the Additional Controller rightly held that Darshan Singh was in exclusive possession of a portion of the garage and was working in the name of Riyat Sons, Automobile Engineers. If a person other than the tenant is found in exclusive possession of the tenancy premises, the presumption is that the third person is either a sub-tenant or an assignee and the onus is on the tenant to prove that he had not parted legal possession but has retained such possession with him. Since the respondents failed to prove that Darshan Singh was in possession of the premises as their employee the natural inference would be that he was in possession in his own right. The respondents ought to have pleaded and proved the right, if any, of Darshan Singh mechanic to remain in possession of the premises if they had not parted with the possession. They ought to have pleaded that they retained legal possession with them and Darshan Singh had not ousted them.

(18) In *Associated Hotels of India Ltd. Vs. R.N. Kapoor*, it has been held that if a party gets exclusive possession of the property, prima facie he is considered to be a tenant ; but circumstances may be established which negative the intention to create a lease. In *Associated Hotels of India Ltd., Delhi Vs. S.B. Sardar Ranjit Singh*, it has been observed that on the question whether the occupier of a separate apartment in a premises is a licensee or a tenant, the test is- has the landlord retained control over the apartment ? It has been further observed that in a suit by the landlord for eviction of the tenant on the ground of subletting the landlord discharged the onus by leading evidence showing that occupants were in

exclusive possession of apartments for valuable consideration. It was for the tenant to rebut that prima facie evidence. Similar observations were made by the Supreme Court in *Lokhi Ram Dass v. M/s. Vidyat Cable and Rubber Industry Bombay*, 1970 R.C.J. 40. In *G.D. Chaudhary v. Shri Anand Samp*, 1966 D.L.T. 28 it has been observed. "The landlord did establish that Anand Sarup was in exclusive possession of a part of the premises. In view of the presumption arising there from it was for the tenant to establish that notwithstanding the grant of exclusive possession the legal possession continued with the tenant..... Once a presumption arises in favor of the landlord from the grant of exclusive possession it would be for the tenant to rebut the same. If the evidence of the tenant is disbelieved there would be nothing left to rebut that presumption." In *Abdul Aziz v. Mohd. Yakub*, 1971 R.C.J. 492 it has been observed by this court that once it was admitted that persons other than the tenant had been in the house, the onus of explaining their presence was that on the tenant.

(19) Learned counsel for the respondents submits that they have not parted with legal possession of the premises to Darshan Singh and Therefore the appellant is not entitled to order for eviction under clause (b). There is no dispute that parting with possession in clause (b) means giving possession to persons other than those to whom the possession has been given by the lease and that mere user by other person is not parting with possession so long as the tenant retains the legal possession himself. But as already observed, the respondents have not discharged the onus that they continued to be in legal possession of the entire premises. On the other hand, they concealed the fact about the possession of Darshan Singh mechanic and merely denied the ground covered by clause (b). Exclusive possession of Darshan Singh, mechanic in a portion of the garage has been established. The respondents have neither pleaded nor proved by any evidence that they have retained legal possession of that portion of garage with themselves.

(20) The Tribunal has also observed that the appellant moved an application under Order 26 rule 9 of the Code for appointment of a Local Commissioner to go to the spot to see if the demised premises particularly the garage was being used as an office by the tenant, but no prayer was made for the local commissioner to see whether any sub-tenant of the name Darshan Singh was there in other portion of the garage. It is incorrect to say so. Further it has been said by the Tribunal that objections were filed by the landlord to the report of the Local Commissioner in which the landlord referred to both the portions of the garage being used as office and workshop by the tenants and the Local Commissioner did not make any reference to the presence of any Darshan Singh. These observations do not appear to be correct and are contrary to the context, The landlord in his application dated 24th May, 1965 under Order 26 rule 9 and Section 151 of the Code had prayed, "that a Local Commissioner be appointed to make a local investigation with regard to the possession of the respective portions of the premises in question by the respondents respectively". Notice of

this application was served upon the respondents. The Additional Controller however had appointed the local commissioner to visit the premises in question and report only as to what was lying in the premises in question. He was not authorised to . report as to who was in possession of the premises. The landlord had also claimed eviction of the respondents on grounds covered by clauses (C) & (K) of the proviso to Section 14(1) of the Act. The Local Commissioner gave his report about user of the premises and the landlord filed his objections wherein he stated that the premises were being misused as office and workshop was being carried on in the premises, a purpose contrary to the purpose of letting and the purposes for which the lease of the premises was granted by the Government to him. The landlord Therefore was justified in saying in his objections that the two portions of the garage were being used as office and workshop by the tenants. By tenants he meant the respondents and their assignee because under clause (K.) it is the misuse of the premises whether by the tenant or his assignee, which gives a cause of action to the landlord to claim eviction. The office was being carried on by the respondents and the workshop by Darshan Singh, mechanic who is assignee of the respondents. The respondents never admitted in their written statement that they ever carried on workshop or office in the suit premises. On the contrary they alleged that there was no change in user of the premises and "the premises were being used for the purpose for which they were let. The premises admittedly were let for residence. They had pleaded that the garage was meant to be used as an ordinary room. Thus no presumption can be drawn against the landlord if the Controller had not authorised the Local Commissioner to make investigation with regard to possession of various portions by respondents and others. The said observations of the Tribunal are Therefore wrong and do not help the respondents.

(21) The Tribunal has further observed that Darshan Singh Mechanic was carrying on his work of repairing motor car in the compound. As discussed above, Darshan Singh, Mechanic has been using one portion of the garage as his workshop and he has also been using the compound of the landlord which is unauthorised. The user of the compound by Darshan Singh Mechanic would not mean that he has not been carrying on workshop for repairing motor car in a portion of the garage. The plea of the respondents that Darshan Singh, Mechanic was their employee means that the possession of the premises by Darshan Singh was as their employee. It has been held that Darshan Singh was not their employee.

(22) I am, Therefore, of the opinion that the Tribunal was not justified in reversing the finding of the Additional Controller to the effect that the respondents parted with the possession of one portion of the garage to Darshan Singh. Mechanic unauthorisedly and that they were liable to be evicted under clause (b) of the proviso to Section 14(1) of the Act, The judgment of the Tribunal is perverse and not in accordance with law. The Tribunal ought not to have reversed the finding of the Additional Controller without discussing the

evidence. There is sufficient evidence on record to support the finding reached by the Additional Controller. The appeal is, Therefore, accepted, setting aside the judgment and order of the Rent Control Tribunal dated 19th September, 1979 and restoring the judgment and order of the Additional Rent Controller dated 6th September, 1976 passing an order of eviction against the respondents under clause (b) of the proviso to Section 14(1) of the Act. The appellant shall also be entitled to costs Counsel fee Rs. 300.00 . The respondents are granted a period of one month to vacate and deliver possession to the appellant.