

(2010) 07 SHI CK 0029
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 14 of 2001

Kesar Singh

APPELLANT

Vs

Smt. Pushap Lata and Others

RESPONDENT

Date of Decision : 16-07-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
East Punjab Urban Rent Restriction Act, 1949 — Section 13(2)
Himachal Pradesh Urban Rent Control Act, 1987 — Section 13(2), 14, 14(2)
Limitation Act, 1908 — Section 23
Limitation Act, 1963 — Article 113, 66, 67, 22

Citation : (2010) 2 ShimLC 540

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kuldeep Singh, J.—The landlord has come in revision against judgment dated 13.11.2000 passed by the learned Appellate Authority, Shimla in Civil Misc. Appeal No. 45-S/14 of 1998 reversing judgment dated 18.5.1998 passed by the learned Rent Controller, Court No. 3, Shimla in case No. 66/2 of 1996/93.

2. The Petitioner had filed ejectment petition u/s 14 of the H.P. Urban Rent Control Act, 1987 (for short "Act") against Yash Paul Sood predecessor- in-interest of Respondents No. 2(a) to 2(d) on the grounds that Yash Paul Sood had sublet the premises in favour of Devinder Singh predecessor-in-interest of Respondents No. 1 (a) to 1(c). The petition was contested by Yash Paul Sood by filing reply and he took preliminary objections that there was no relationship of landlord and tenant and Petitioner was estopped from filing the petition. On merits, he took the stand that Devinder Singh had been tenant in the premises for the last 26 years. It was also submitted that in the year 1963, he (Yash Paul Sood) took the premises on rent, he lateron surrendered the tenancy and Devinder Singh was accepted tenant by Petitioner in the premises. It was denied that premises was sublet by him to Devinder Singh.

3. The Petitioner filed an application under Order 1 Rule 10 Code of CPC for impleading Devinder Singh which was allowed and Devinder Singh was impleaded as Respondent in the petition. Devinder Singh also contested the petition and took the plea of estoppel. He pleaded that he had been inducted tenant about 26 years back in the premises. He denied subletting and took the plea of limitation. The Petitioner filed replications. It was submitted that premises was rented out to Yash Paul Sood by Smt. Gokli Devi mother of the Petitioner and after her death, the premises had fallen into the share of the Petitioner in partition between two brothers Kesar Singh and Sukhdev. The notice of partition was served on Yash Paul Sood. It was denied that Devinder Singh was inducted as tenant in the premises.

4. On the pleadings of the parties, the following issues were framed:

1. Whether the premises in question has been sub-letting by the Respondent No. 1 to Respondent No. 2 after the commencement of H.P. Urban Rent Control Act, 1987? OPA

2. Whether the Petitioner is estopped from filing the present petition? OPA

3. Whether there exist any relationship of landlord and tenant between the Petitioner and Respondent No. 1? OPP

4. Whether the Respondent No. 2 is tenant under the Petitioner? OPR-2

5. Whether the Respondent No. 1 has surrendered his tenancy in favour of the Petitioner, as alleged? OPR-1

6. Whether the petition is barred by the time of limitation, as alleged? OPR

7. Relief.

The issues No. 1 and 3 were answered in affirmative and issues No. 2, 4 to 6 in negative and petition was allowed by the learned Rent Controller on 18.5.1998. The matter was carried in appeal by Devinder Singh and Yash Paul Sood. The learned Appellate Authority allowed the appeal on 13.11.2000 by holding that the petition is barred by limitation, hence the landlord has filed the present revision.

5. I have heard Mr. T.C. Sharma, learned Counsel for the Petitioner and Mr. Ajay Kumar, learned Counsel for Respondents No. 1(a) to 1(c) and have also gone through the record. It has been submitted on behalf of the Petitioner that the learned Appellate Authority has erred in dismissing the petition on the ground of limitation. The material on record has been misconstrued by the learned Appellate Authority in returning the finding that the petition is barred by limitation. It has been submitted that the learned Appellate Authority has recorded a finding that there was sub-letting. The sub-letting is a continuous, recurring cause and therefore, the finding of learned Appellate Authority that petition is barred by limitation is wrong. The learned Counsel for Respondents 1(a) to 1(c) has supported the impugned judgment.

6. The issue left for determination in the revision is whether the revision filed on the ground of sub-letting is barred by limitation in view of finding recorded by learned Appellate Authority that premises had been sub-let by tenant Yash Paul Sood in favour of Devinder Singh, both of whom since died and now represented by their representatives in the revision. It has been contended on behalf of the Petitioner that premises was sub-let in the year 1991, but in any case sub-letting is a continuous recurring cause and therefore, petition is within limitation.

7. PW-1 Kesar Singh has stated that premises was sub-let in the year 1991. In cross-examination, he has stated that he does not know whether there is a electricity meter in the premises. PW-2 Sukh Dev has stated that no electricity meter has been installed in the premises. There is electricity meter in premises No. 1 of Devinder Singh but that Devinder Singh is a different person. PW-3 P.N. Satir has stated that when one comes from the cart road side, the set is No. 4 but while coming from the upper side, the set is No. 1. PW-4 Bhawani Dass has stated that there are four godowns in the ground floor of the building and all godowns have electricity connections. One godown is with Mohinder Singh. PW 8-A Hari Singh is a resident in one of the sets of the building in question and is co-owner. He has stated that till the year 1978 building was joint but it was orally partitioned in the year 1978. In godown No. 1 Sardar Mohinder Singh was his tenant, who has died, his son Devinder Singh is tenant in that godown. In godown No. 4, Yash Pal is tenant.

8. RW-6 Yash Pal has stated that he had taken on rent godown in question in the year 1963-64 and since 1970 that godown is in possession of Devinder Singh, who had been paying the rent. He had not sublet the godown to Devinder Singh. RW-7 Devinder Singh has stated that the godown in question is with him since 1970 which was taken by him with the help of Yash Pal. There is electricity meter in the premises since 1973. He had already paid the rent upto 1993, some time Kesar Singh used to take the rent and some time Sukhdev Singh, but they never issued the receipt. The statement of AW-1 Jaspal Singh was recorded before Appellate Authority, he has stated that he is the son of Mohinder Singh. They are three brothers namely Jaspal Singh, Narinder Singh and Gejinder Singh. Devinder Singh is not his brother. He thus contradicted PW-8 Hari Singh.

9. The documentary evidence in the form of Ex.RW-3/A, Ex.RW-3/B, Ex.PW-3/C, Ex.PW-3/D, Ex.PW-3/E, Ex.PW-3/F and Ex.PW-3/G are the electricity bills in the name of Devinder Singh, godown No. 1, Brahman Sabha Building. Ex.RW-3/B is the bill dated 18.9.1977. Ex.RW-7/A certificate of registration under Sales Tax Act indicates that there is a godown in the name of Devinder Singh in Brahman Sabha Building since 25.11.1976. Similar is the position with Ex.RW-1/A which also proves that there is a godown in the name of Devinder Singh in Brahman Sabha Building since 25.11.1976. In view of the aforesaid evidence, it is clear that Devinder Singh had been coming in possession of one godown in Brahman Sabha Building since the year 1976. In these circumstances, no fault can be found with the finding recorded by learned Appellate Authority that subletting by

tenant Yashpal in favour of Devinder Singh of the premises had been atleast since 1976.

10. The learned Counsel for the Petitioner has relied *Amrutlal Jagjivandas Shah and Anr. v. Ramniklal Jagjivandas Shah* 2005 (2) RCR 388, wherein it has been held that in case of a sub-letting, which is continuing since after its creation, would give continuous cause of action to the landlord. A tenant cannot be allowed to say that though sub-tenancy was created, but after 12 years, it would ripen into a valid sub-tenancy. The learned Counsel for the Petitioner has also relied *Sadanandan v. Pradeepan* 2001 (2) RCR 272, wherein it has been held that subletting is a recurring cause of action. But in para 8 of the report, it has been observed that aspect of course is not relevant while considering the question of limitation.

11. The Clause II, Sub-Section 2, Section 14 of the Act provides eviction of tenant on the ground of subletting without the written consent of the landlord after the commencement of the Act. Section 22 of the Limitation Act, 1963 which is similar to Section 23 of the Limitation Act, 1908 provides fresh period of limitation at every moment during which there is breach of contract. However, if from the breach of contract, consequential effect is complete then it cannot be termed as continuing breach even though its effect may persist. The continuing cause of action was considered by the Allahabad High Court in *Lala Ram Kumar Vs. Nem Chand and Others*, as follows:

In substance, the cause of action for the suit is the fact that the Plaintiffs grandfather parted with certain money in order to form a society or business which is prohibited under the Companies Act. The return of that money is sought on the ground that the money was paid for an illegal object. In this view of the case it seems to us the cause of action for return of the money must have accrued as soon as the money was paid and we cannot accede to the argument that there was a continuing cause of action in Plaintiffs favour. The limitation, in our opinion, must be taken to have run from the date on which the Plaintiffs grandfather parted with this money and as that was about twenty years before the suit was brought, the bar of limitation applies.

12. The Supreme Court in *Balkrishna Savalram Pujari and Others Vs. Shree Dnyaneshwar Maharaj Sansthan and Others*, has considered Section 23 of the of the Limitation Act, 1908 and held as follows:

As soon as the decree was passed and the Appellants were dispossessed in execution proceedings, their rights had been completely injured, and though their dispossession continued, it cannot be said that the trustees were committing wrongful acts or acts of fort from moment to moment so as to give the Appellants a cause of action *de die in diem*. We think there can be no doubt that where the wrongful act complained of amounts to ouster, the resulting injury to the right is complete at the date of the ouster and so there would be no scope for the application of Section 23 in such a case. That is the view which the High

Court has taken and we see no reason to differ from it.

13. In *Dharam Pal Vs. Durga Dass*, a Division Bench of this Court after noticing *Gurcharan Singh and Others Vs. Shri V.K. Kaushal*, has held as follows:

In *Gurcharan Singh and Others Vs. Shri V.K. Kaushal*, it has been held as follows:

In the present case, however, Section 13(2)(ii)(a) of the Act confines its scope to sub-leases effected after the commencement of the Act, that is to say, transactions of sub-letting effected after the date when the Act came into force. For that reason, a sub-letting effected before the commencement of the Act cannot be brought within the mischief of Section 13(2)(ii)(a) even though it continues to subsist on or after the commencement of the Act.

It may be mentioned that the language of Section 13(2)(ii) of the East Punjab Urban Rent Restriction Act, 1949, and Section 14(2)(ii) of the Act of 1971 is the same. Hence, in view of the judgment in *Gurcharan Singh's* case (*supra*), the Petitioner is only liable to eviction if it is proved that sub-tenancy in favour of Phambi Ram, came into existence after the commencement of the Act of 1971.

14. In titled *Kali Charan and Sons v. Kanwal Kapoor* Civil Revision No. 400 of 1998 the Hon'ble Mr. Justice C.K. Thakker, Chief Justice as he then was after noticing *Ganpat Ram Sharma and Others Vs. Gayatri Devi*, and *Smt. Shakuntala S. Tiwari Vs. Hem Chand M. Singhania*, has held as follows:

In my opinion, the point is finally concluded by the above two pronouncements of the Supreme Court. As from the record, it is clearly established that the proceedings had been initiated by the Petitioner-landlord after a period of twelve years, it would be barred by Articles 66 and 67 (and 113) of the Limitation Act, the landlord was not entitled to any relief.

15. It has already been held above that Devinder Singh was inducted as tenant by Yashpal Sood in the year, 1976. The petition was filed on 2.9.1993. The sub-letting was complete in the year 1976 and, therefore, limitation would start running from the year, 1976 for filing petition under the Act on the ground of sub-letting and not thereafter every minute, hour, day, month and year even though sub-letting continued after 1976. The petition was filed after about 17 years when the premises was sublet in the year 1976, therefore, petition was barred by limitation.

16. The learned Appellate Authority has rightly held that the petition is barred by time, the impugned judgment does not require any interference.

17. The result of the above discussion, the revision is dismissed with no other as to costs.