

(2011) 09 DEL CK 0152

In the Delhi High Court

Case No : CM (M) No. 1378 of 2010

Mrs. Shakuntala Lall and Others

APPELLANT

Vs

Mrs. Suraj Kala Jain and Others

RESPONDENT

Date of Decision : 20-09-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 227
Delhi Rent Control Act, 1958 — Section 14(1), 14(4), 39
Evidence Act, 1872 — Section 78, 79

Citation : (2011) 126 DRJ 549

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Jayant Bhushan and Mr. Gautam Talukdar, for the Appellant; Sudhir Nandrajog and Mr. Sidharth Bambha, Advocate for Respondent No. 1 (C) and Mr. Sanjeev Sachdeva and Mr. K. Krishan, Advocate for Respondent No. 1 (A) and Respondent No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This petition has impugned the order dated 21.08.2010 passed by the learned Rent Control Tribunal (RCT) which has endorsed the findings of the Additional Rent Controller (ARC) dated 15.07.2009 whereby the eviction petition filed by the landlady Shakuntala Lall u/s 14(1)(b) of the Delhi Rent Control Act (DRCA) had been decreed.

2. Record shows that the present eviction petition has been filed u/s 14(1)(b) of the DRCA; the landlady is Shakuntala Lall; the original tenant was Surji Ram Jain, thereafter after the death of Surji Ram Jain, Smt. Suraj Kala Jain became the tenant being the wife of deceased Surji Ram Jain; contention is that Smt. Suraj Kala Jain has sub-let these premises to Ram Krishan Aggarwal and Subhash Jain; premises are bearing No. 65-B, Khan Market, New Delhi. The ground of eviction as contained in para 18 (b) of the eviction petition is the ground of sub-letting.

3. A common written statement had been filed by the Respondents. Submission of sub-letting was vehemently denied; contention was that the shop in dispute had been let out to "Jain Provision Store", a partnership concern; his partnership comprises of two partners namely Suraj Kala Jain and Ram Krishan Aggarwal; Shyam Lal Kapoor was receiving the rent and rent receipts had also been issued; the shop is in exclusive use and possession of "Jain Provision Store"; there is no sub-letting.

4. Oral and documentary evidence was led.

5. The Additional Rent Controller vide order dated 05.08.2004 had decreed the petition of the landlady; he had noted that the partnership deeds executed between Suraj Kala Jain and Ram Krishan Gupta were sham documents; they were in fact a cloak to camouflage the rigors of Section 14(1)(b) of the DRCA.

6. This order of the ARC dated 05.08.2004 was the subject matter of an appeal before the RCT. The RCT vide order dated 02.03.2006 had set aside the eviction order; the Court was of the view that since Smt. Suraj Kala Jain had died before the conclusion of hearing before the ARC, eviction petition had been decreed against a dead person; matter had been remanded back to the ARC to enable the landlady to move an appropriate application to bring on record the legal representatives of deceased Suraj Kala Jain.

7. The ARC vide order dated 15.07.2009 thereafter dismissed the petition of the landlady. Oral and documentary evidence examined had been adverted to. The ARC was of the view that the defence of the Defendant that there was a partnership under the name and style of "Jain Provision Store" between Suraj Kala Jain and Ram Krishan Gupta which dated back to 17.06.1970 was a genuine document; there was in fact three partnership deeds i.e. dated 17.06.1970 (mark "Z"), dated 09.02.1983 (Ex. RW-1/6) and third partnership deed dated 01.04.1992, the Court had noted that not a single suggestion has been given by counsel for the Respondent that these documents were either sham or that they had been ante-dated to conceal the real nature of the dealings between the parties; Clause 13 and Clause 15 of the partnership deed (mark "Z") had noted that the premises continued to be retained by Suraj Kala Jain and Ram Krishan Gupta had no interest in the same. The Petitioner/landlady having failed to make out a case u/s 14(1)(b) of the DRCA, the petition was rejected.

8. This order of the ARC dated 15.07.2009 was affirmed by the RCT on 21.08.2010.

9. This order is the subject matter of the present petition.

10. On behalf of the Petitioner, vehement arguments had been addressed by Learned Counsel for the Petitioner. It is contended that the rent control legislations have been engrafted to afford a protection to the tenant and at the same time to provide a ground for eviction; this protection can be afforded to the tenant only as long as he uses the premises for himself but not with the object of

an illegitimate profiteering or rack-renting. Reliance has been placed upon a judgment of the Apex Court reported in Parvinder Singh Vs. Renu Gautam and Others, to support this submission; it is pointed out that where the court is of the prima-facie view that a device has been adopted by the tenant by bringing into existence a deed of partnership which gives the relationship of tenant and the sub-tenant an outward appearance of partnership while in effect what has come into existence is a sub-tenancy or parting with a possession which has been camouflaged under the cloak of partnership, the Court is not estopped from tearing the veil of the partnership to find out the real nature of the transaction entered into between the tenant and the alleged sub-tenant. For the same proposition, reliance has also been placed upon a judgment of the Apex Court reported in Ms. Celina Coelho Pereira and Others Vs. Ulhas Mahabaleshwar Kholkar and Others, . The provisions of Section 14(1)(b) coupled with the provisions of Section 14(4) of the DRCA have been highlighted. It is submitted that a Bench of this Court in Shri Amar Singh Trilochan Singh Vs. Smt. Jasoti, had in fact examined the partnership deed of such a kind where such a defence has been set up u/s 14(1)(b) by the tenant and finding it to be bogus and sham had rejected it.

11. Arguments have been refuted. It is submitted that the two concurrent findings of fact cannot be called in question; only if there is a patent illegality or manifest error, discretion is to be exercised in the findings of fact recorded by the two Courts below. Reliance has been placed upon 133 (2006) DLT 55 Lalita Gupta v. Modern Trading Company and Ors. to support his submission that a co-existence of both the "animus domini" and "corpus possession" have to be made out in a case of sub-letting as contained in Section 14(1)(b) of the DRCA and neither of these has been established. Reliance has been placed upon Jagan Nath (Deceased) through Lrs. Vs. Chander Bhan and Others, to support that same proposition. In the alternate, another line of argument has been propounded by Learned Counsel for the Respondents. It is submitted that after the death of the tenant namely (Suraj Kala Jain) an application for impleadment of her legal representatives had been filed; since one of her legal representative namely Anita could not be served, the counsel for the landlady had in fact given up her claim against Anita; this was vide order dated 16.01.2010; this had also been brought to the notice of the Court by the tenant by an application preferred before the RCT u/s 151 of the CPC (hereinafter referred to as the "Code"). The RCT while disposing of the main petition on 21.08.2010 had noted that since the appeal has been dismissed on merits, there was no need to pass any separate order on this application u/s 151 of the Code regarding the maintainability of appeal qua the absence of Anita. Contention before this Court is that the order of the ARC dated 15.07.2009 has thus become final against Anita and even presuming a situation that the impugned order is set aside and the decree of eviction is passed in favour of the landlady, there would a conflict of judgment as the order of the ARC having attained a finality against Anita; it is clear that she would not be able to be evicted from the suit premises but in conflict the other

tenants i.e. legal heirs of Suraj Kala Jain would suffer a decree. Contention being that that appeal had in fact abated in toto but no finding having been given by the RCT in this regard, this petition under Article 227 of the Constitution is not maintainable on this ground as well.

12. This argument has been refuted in rejoinder. It is submitted that the Court has to take a practical and reasonable view; it has always been the case of the tenant that "Jain Provision Store" is the tenant and Anita was never in occupation of the suit premises; her absence in all practicability would not affect the case of the tenant either. Reliance has also been placed upon 2008 VIII AD (Delhi) 328 Inder Pal Khanna v. Commander Bhupinder Singh Rekhi (Rtd.) to substantiate a submission that non-joining of Anita even otherwise does not affect the case of the Petitioner as on the death of the original tenant, the tenancy would devolve upon all the legal heirs as a joint tenancy and even if one is not impleaded, it would not affect the case of the landlady.

13. Arguments have been heard of Learned Counsel for the parties and the record has been perused.

14. The second submission of Learned Counsel for the Respondents which is on the maintainability of the petition shall be answered first. It is a well settled law that on the death of the tenant, the tenancy would devolve upon the legal heirs as a joint tenancy; legal heirs are joint tenants and not tenants in common. In Inder Pal Khanna (Supra) a Bench of this Court had noted that in such a situation notice to any one of the joint tenants is sufficient and suit cannot be held to be bad for non-joinder of the joint tenants who are arrayed as parties only in their capacity as legal heirs of the deceased tenant; the Apex Court in Kanji Manji Vs. The Trustees of The Port of Bombay, had noted this position; it has noted that notice to one of the joint tenants is sufficient and suit against one of the joint tenant not impleading the others was good and the suit could not be dismissed on this ground alone. In 1990 (3) Delhi Lawyer 163 Mohd. Usman v. Surayya Begum, a Bench of this Court had noted with approval the ratio of the case of Kanji Manji (Supra) and observed as follows:

In the light of the above observations of the Supreme Court there can be no doubt that even if one of the legal heirs is not a party to proceedings for eviction filed by the landlord against the legal heirs of the original tenant, that heir who has been left out cannot later on come forward and agitate his or her right in the tenancy.

15. This answers the first objection raised by Learned Counsel for the Respondents; this is answered in favour of the Petitioner and against the Respondents.

16. On merits it is not in dispute that there are two concurrent findings of the two courts below holding that a case of sub-letting has not been proved by the landlady; both the courts below had held that the partnership deeds filed by the tenants were bonafide and genuine documents; they were not created or were

not ante-dated to camouflage or veil the real nature of the tenancy; petition u/s 14(1)(b) of the DRCA had been dismissed.

17. This Court is also conscious of the fact that the right of second appeal u/s 39 of the DRCA has since been abrogated; the powers of this Court under Article 227 of the Constitution of India are not substitute of an appellate forum; they are powers of superintendence; only if there is a jurisdictional error which has caused a grave injustice to one party qua the other or there is a manifest error or illegality apparent on the face of the record, interference under the powers of this Court under Article 227 of the Constitution are called for.

18. In this back ground, the respective contentions of the parties have to be appreciated.

19. It is not in dispute that the premises were originally owned by Shyam Lal Kapoor, the father of Shakuntala Lall and others; after his death the property had devolved upon the Petitioners; this position is in fact admitted by the tenant. The contention of the tenant in fact is that the rent used to be collected by Shyam Lal Kapoor and he was issuing rent receipts for the said purpose; Ex. PW-1/RW-1 & Ex. PW-1/RW-2 (rent receipts) which depicted the payment of rent for the months of September and December, 1969 had been adduced in evidence to substantiate this submission. Ex. PW-1/R3 was a letter written by Shyam Lal Kapoor to "M/s Jain Provision Store"; this document had not been assailed in the cross-examination; it is dated 17.09.1965 written by Shyam Lal Kapoor in the name of "Jain Provision Store" asking for a money order of Rs. 300/- as rent; these documents were relied upon by the court below to return a finding that "Jain Provision Store" was in existence in these premises from the very inception of the tenancy which was from the year 1957. The Court had also noted that although the landlady PW-1 had testified that the Respondents Surji Ram Jain had attorned as a tenant and attornment letter had been issued yet this letter had not been produced on record for which an adverse inference had been drawn against the landlady and rightly so. The partnership deed Ex. RW-1/1 is a document dated 17.06.1970 executed between Suraj Kala Jain (widow of Surji Ram Jain) and Ram Krishan Gupta; business was under the name and style of "Jain Provision Store", 65-B, Khan Market. Para 5 of this deed has categorized the profits of the partnership; the first party (Suraj Kala Jain) would be entitled to 75% of the profits and the second party (Ram Krishan Gupta) would get 25% of the remaining profits; Clause 13 had stipulated that the goodwill of the firm and the tenancy rights in the above premises would always remain with the first party and the second party would not acquire or claim any right in the same. There were three partnership deeds which had been brought on record by the Respondents first of which dated 17.06.1970 and was to take effect from 01.04.1970. This document clearly satisfied the role of Ram Krishan Aggarwal as a Manager. In the eviction petition, the landlady had specifically averred the name of the sub-tenant i.e. Ram Krishan Gupta but no details could be furnished by the landlady as to when this sub-tenancy was created. Admittedly the

landlady is a non-resident Indian and was not living in India; it is also an admitted fact that the present eviction petition has been filed in the year 1997. The tenancy had been created in favour of the husband of the Respondent from the year 1957. Surji Ram Jain had died in 1964 and after his death his legal representatives who comprised his widow, three daughters and two sons had inherited the tenancy; it had not devolved upon any single person. The law on this point is also very clear; commercial tenancy as also a residential tenancy would devolve upon all the legal representatives of the deceased as has been held by the Apex Court in the case of Gian Devi Anand Vs. Jeevan Kumar and Others, .

20. The case of the Respondent from the very inception was that Suraj Kala Jain had entered into a partnership deed with Ram Krishan Gupta and they were carrying on business of "Jain Provision Store" from the aforementioned premises i.e. 65-B, Khan Market. The Respondents had relied upon the partnership deed first of which had dated back to 17.06.1970; in the entire deposition of PW-1 i.e. the landlady has not assailed the partnership deeds; there is no deposition to the effect that these documents were sham and were not acted upon. In fact as already noted supra she being a non-resident was out of the country and had come back to India only in 1997 when on occasion she visited the shop; in these circumstances, her contention that she has knowledge that the premises had been let out by Suraj Kala Jain to Ram Krishan Gupta and Subhash Jain was clearly contrary to her own version as she herself admitted that she had returned to India only in 1997; in the preceding years, she was out of country.

21. There are clear fact findings by two courts below that w.e.f. 01.04.1970, in terms of the partnership deed dated 17.06.1970, Ram Krishan Aggarwal was working as a partner along with Suraj Kala Jain in the business of the firm "M/s Jain Provision Store" which was running its business from the disputed premises; this is based on cogent evidence. It is also an admitted fact that this eviction petition had been filed in the year 1997 when admittedly the Respondents are carrying on their partnership business under the name of "Jain Provision Store" since 1970; notice Ex. PW-1/3 terminating the tenancy of the Respondent u/s 14(1)(b) is also silent as to since when this sub-letting has been effected by Suraj Kala Jain. The RCT had also correctly noted that the sub-tenant (namely Ram Krishan Aggarwal) not an aggrieved person; he could not be and this was the reason why he was not contesting the proceedings and had it been a case of actual sub-letting, he would have been the most aggrieved person.

22. Besides that the assessment order Ex. RW-1/2 for the year 1977-78 show that the Sales Tax Department had assessed "M/s Jain Provision Store" for the purpose of sale tax; Ex. RW-1/3 was the certificate of registration under the Delhi Sales Tax Act showing the name of Ram Krishan Gupta and Suraj Kala Jain as the partner of "Jain Provision Store"; this document is dated 27.01.1987. Ex. RW-1/4 was the authorization issued from the office of Sale Tax Officer, Ward No. 18, New Delhi where again names of the partners had been mentioned as Ram

Krishan Gupta and Suraj Kala Jain; so also are the documents Ex. RW-1/5 which is certification of registration under the Central Sales Tax Act and Ex. RW-1/7 which is the assessment order qua "Jain Provision Store" for the year 1985-1986 certifying that Subhash Jain had appeared before the Assessing Authority. All these documents had remained unassailed; they were official documents and presumption about their genuineness is also created under Sections 78 and 79 of the Indian Evidence Act. The partnership deeds relied upon by the Respondents in these circumstances were rightly noted to be genuine and not either sham or forged.

23. The ingredients necessarily to be established by the landlord to make out a ground of sub-letting have been reiterated time and again. Section 14(1)(b) is relevant; it reads as under:

14. Protection of tenant against eviction.

(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:

(a) XXXXXXXXXXXXXXXX

(b) That the tenant has, on or after the 9th day of June, 1952, sub-let, assigned or otherwise parted with the possession of the whole or any part of the premises without obtaining the consent in writing of the landlord;

Section 14(4) is also relevant; it reads as under:

Section 14(4): For the purpose of Clause (b) of the proviso to Sub-section (1), any premises which have been let for being used for the purposes of business or profession shall be deemed to have been sub-let by the tenant, if the Controller is satisfied that the tenant without obtaining the consent in writing of the landlord has, after the 16th day of August, 1958, allowed any person to occupy the whole or any part of the premises ostensibly on the ground that such person is a partner of the tenant in the business or profession but really for the purpose of sub-letting such premises to that person.

24. The moot question which has to be answered is to whether the tenant had sublet, assigned or otherwise parted with the possession of the whole or part of the premises. u/s 14(1)(b) of the partnership alleged by the Defendant is a genuine transaction between Surji Lal Jain and Subhash Chand or a camouflage to cover the real aspect of sub-letting. There is no dispute that in the instant case, there is no written consent of the landlady. It is well settled that to make out a case for sub-letting or parting with possession, it means giving of possession to persons other than those to whom the possession had been given

by the original lessor and that parted with possession must have been made by the tenant; as long as the tenant retains the legal possession himself, there is no parting with possession in terms of Section 14(1)(b) of the Act. The word "sub-letting" necessarily means transfer of an exclusive right to enjoy the property in favour of the third party. In *Shalimar Tar Products Ltd. Vs. H.C. Sharma and Others*, , the Apex Court had noted that to constitute a sub-letting, there must be a parting of legal possession i.e. possession with the right to include and also right to exclude other and whether in a particular case, there was sub-letting or not was a question of fact.

25. A conjoint reading of Section 14(1)(e) read with Section 14(4) of the DRCA shows that if the tenant inducts a partner in his business or profession and if this partnership is genuine, he may be permitted to do so; however if the purpose of such a partnership is only ostensibly to carry on a business or profession in partnership but the real purpose is of sub-letting of the premises to such other person who is inducted ostensibly as a partner then the same shall be deemed to be an act of sub-letting attracting the applicability of Section 14(1)(b) of the DRCA. This test had been laid down by the Apex Court in *G.K. Bhatnagar (D) by Lrs. Vs. Abdul Alim*, . The Apex Court in *Parvinder Singh (Supra)* had also noted that a device in any time adopted by tenant to create partnership which is actually a camouflage to circumvent the provisions of Rent Control Act; the rent control legislation being beneficial for the benefit of the tenant and not a means to subvert the true intent of the statute.

26. Applying the said test to the facts of the instant case, it can safely be said that both the Courts below had returned correct findings in view of the evidence adduced before them; that a case of the sub-letting was not made out. The partnership deed set up by the Respondents (first of which dated back to 17.06.1970) had not been assailed by the landlady; the rent receipts and the documents noted supra had in fact been issued by the erstwhile landlord in the name of "Jain Provision Store"; assessment order noted supra and the documents before the Sale Tax Authority also evidenced that the partnership business was being run under the name of "Jain Provision Store" which comprised of two partners namely Suraj Kala Jain and Ram Krishan Gupta. These were official documents and presumption of their genuineness is created in favour of the tenant and especially so in view of the fact that they were even otherwise not assailed in the cross-examination of the witness of the Respondent who had proved these documents in his testimony.

27. Eviction petition had been filed in 1997; neither the legal notice and nor did the eviction petition dated 26.03.1997 spelt out since when premises had been sub-let by Suraj Kala Jain in favour of Ram Krishan Gupta and Subhash Jain; this is especially relevant in view of the fact that the defence of the tenant was that he had a partnership business being run under the name of "Jain Provision Store". This business of "Jain Provision Store" was a partnership between Suraj Kala Jain and Ram Krishan Gupta; these submissions of the Respondents had

stood amply substantiated by the evidence both oral and documentary produced by him.

28. The partnership deed was correctly returned as a genuine document; it was not a fraud which has been played upon the landlady; it was not a camouflage or a curtain which purported to cover the actual transaction between the tenant and the alleged sub-tenant. The clauses of the partnership deed are also clear; Clause 13 specifically postulates that the tenancy rights and the proprietorship right of the partnership will always be retained by the first party namely Suraj Kala Jain. A Bench of this Court in case of Lalita Gupta (Supra) had noted that unless and until both the ingredients i.e. the existence of the animus domini and corpus possession, are established a the case of sub-letting is not made out.

29. The order of the Tribunal cannot be faulted with; it in fact calls for no interference. No merit in this petition.

30. Dismissed.