

(1963) 11 P&H CK 0048
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 588 of 1962

Pritam Singh and Jiwan Singh and Others	APPELLANT
Vs	
Raja Ram and Kalu Ram and Another	RESPONDENT

Date of Decision : 19-11-1963

Acts Referred:

Delhi and Ajmer Rent Control Act, 1952 — Section 13
Transfer of Property Act, 1882 — Section 109

Citation : (1964) 1 ILR (P&H) 793 : (1964) 66 PLR 289

Hon'ble Judges : D. Falshaw, C.J; Harbans Singh, J

Bench : Division Bench

Advocate : Y.P. Gandhi, for the Appellant; G.P. Jain, B.S. Gupta and S.S. Mahajan, for the Respondent

Judgement

D. Falshaw, C.J.—This revision petition filed by landlords against the dismissal of their petition for the ejectment of the tenants by the Rent Controller upheld by the Appellate Authority was referred by me to a larger Bench because I doubted the correctness of the view of Tek Chand, J. in *Gugan Mal v. Moti Lal Chand Mal*, 1962-64 Pun LR 372 on which the dismissal of the landlords", petition was based.

2. The relevant facts are that in 1917 a plot of land in the municipal area of Ambala City was leased by the then owner to the Respondents Kalu Ram and Mangal Singh for installing a flour mill with an oil engine and other machinery. The lease was for five years in the first instance, but it was to be treated as a permanent lease if the landlord allowed it to continue after that period, there being a specific clause in the lease deed prohibiting subletting. The original landlord died and his ultimate successors sold the property to the present landlords by a sale deed dated the 15th October 1958. They based their application for ejectment on several grounds, the only one of which now concerns us is that of subletting. When the ejectment petition was filed the premises were occupied by one Babu Ram under an agreement dated the 14th of August 1949 which has been found to be a sub-lease.

3. The East Punjab Urban Rent Restriction Act of 1949 came into force on the 25th of March 1949 i.e., before the agreement to sublease the premises to Babu Ram was entered into, and no consent of the landlord was obtained for it. Section 13(a)(ii) of the Act gives the landlord right to claim ejectment on the ground that the tenant has after the commencement of the Act without the written consent of the landlord transferred his right under the lease or sublet the entire building or rented land or any portion thereof. The view taken by the authorities below was that the present landlords could not sue for the ejectment of the tenants on the ground of a sub-lease which had taken place in the time: of their predecessor in spite of the fact that the sub-lease took place after the commencement of the Act and without the consent of the landlord. In the case to which I have referred above Tek Chand J. has held that a purchaser of the premises cannot take advantage of Section 13(i)(b)(i) of the Delhi and Ajmer Rent Control Act for a breach committed nearly three years before he purchased the property from a former landlord, and the sub-section excludes past breaches committed while the landlord was the predecessor of the present transferee. The provisions of the relevant portion of the Delhi Act are similar to those of the Punjab Act, though not identically worded, and the learned Judge has held that the words "the landlord" clearly refer to the Plaintiff who desires to obtain a decree or order for the recovery of possession: He dissented from the views expressed by Beaman, J. in Vishveshvar Vighneshvar Shastri Vs. Mahableshvar Subba Bhatta, , a case in which Beaman, J. along with Heaton, J. dismissed a letters patent appeal and held that the Plaintiff in that case was entitled to recover possession of the property. The facts were that a mulgeni lease provided that the lessee was not to alienate the property leased, but the lessee committed a breach of the condition by sale of his rights under the lease to one of the Defendants in 1908. In 1911 the Plaintiff purchased the landlord's rights from the lessor and the defence in his suit for possession of the property on account of breach of the condition of the lease was that the Plaintiff could not take advantage of the breach of condition incurred before the assignment in his favour. It may well be that Tek Chand, J. is right in his objections to the grounds on which Beaman, J. upheld the decision of the learned Single Judge, which was in a second appeal, but it is to be noted that Heaton, J. also delivered a separate judgment in which he upheld the decision on completely different grounds holding that the case was clearly covered by Section 109 of the Transfer of Property Act.

4. It may first of all be pointed out that there is one very considerable distinction of fact between the case decided by Tek Chand, J. and the present case, namely that not only the sub-lease in that case had taken place in the time of the predecessor-in-interest of the landlord who sued for ejectment, but also the sub-lease had terminated before the transfer of the landlord's rights took place, and there are decisions of this Court, including the one by myself, to the effect that a petition for ejectment on the ground of subletting can not be maintained where the sub-lease had ceased to exist before the petition was filed. It is difficult to

estimate how much this fact influenced the decision of Tek Chand, J.

5. Apart from this there is a decision of Raja mannar C.J. and Somasundararn, J. In V. Somasundara Mudaliar and Another Vs. The Madras Provincial Co-operative Marketing Society Ltd. and Another, , which is directly in point, interpreting similar provisions in the Madias Buildings (Lease and Rent Control) Act. to the effect that a landlord can claim ejectment on the ground of a subsisting sub-lease which was entered into during the time of his predecessor-in-interest as long as the sub-lease took place after the commencement of the Act and without the written consent of the landlord. The learned Chief Justice observed that there was nothing from which it could be urged with any force that the transfer or subletting must have been made not merely after the commencement of the Act but also after the date on which the petitioning landlord became a landlord.

6. With this view I am in respectful agreement. It seems to me that the opposite view would lead to an unfortunate result from the point of view of tenants in general, for whose protection this legislation mainly exists. If the view is correct that only a landlord during whose term as such a sub-lease has taken place can bring a petition for ejectment under the Act although a sublease has taken place during the time of his predecessor after the commencement of the Act, the converse will also apply. Such being the case a landlord who has given his written consent to a sub-lease after the commencement of the Act may transfer the property to somebody else who can then bring a petition for the ejectment of the tenant on the ground that his consent has not been obtained. Such a result would undoubtedly be contrary to the spirit and intention of the Act, and in my opinion there can be no doubt that the words "without the Written consent of the landlord" must mean "without the written consent of the then landlord", even where there has been a subsequent transfer of the landlord's rights to the person who brings the petition for ejectment, and the word "landlord" in this-context is not necessarily confined to the landlord who files " the petition.

7. On this view of the matter the revision petition must: succeed and I would accordingly accept it and grant the landlords an order for the ejectment of the tenants who, however, may in the circumstances be allowed three months to vacate the premises. The parties will bear their own costs.

Harbans Singh, J.

8. I agree with the order proposed. In the present case, the sub-letting continued up to the date the application was brought and the question as to what will be the effect on the maintainability of application by the landlord if the sublessee had vacated the premises before the date of the application, does not arise in the present case and I should not be taken to have expressed any opinion with regard to this matter. In fact, I have in another case coming before me sitting in Single Bench, referred this point for decision to a larger Bench.