

(1982) 09 DEL CK 0002

In the Delhi High Court

Case No : Election Appeal No's. 178, 179 and 180 of 1982

Ram Gopal Sawhney

APPELLANT

Vs

Suraj Balram Sawhney and Sons and Others

RESPONDENT

Date of Decision : 06-09-1982

Acts Referred:

Citation : (1983) 23 DLT 92 : (1983) RLR 356

Hon'ble Judges : D.R. Khanna, J

Bench : Single Bench

Advocate : R.K. Makhija, D.P. Sharma, R.P. Kapur and Jagdeep Kishore, for the Appellant;

Judgement

D.R. Khaonal, J.

(1) These are three sets of objections under Order 21 Rules 36 and 96 to 101 of the CPC moved by three different objectors, who claim themselves to be tenants in separate portions of property bearing No. 5, Netaji Subhash Marg, New Delhi.

(2) The decree in the present case is based upon an award given by Shri P.N. Khanna, a retired Judge of this Court, who had acted as sole arbitrator between the family members of late Shri Suraj Balram Sawhney, for adjudicating disputes and differences inter-se them with regard to their joint properties, and effecting their partition. Suraj Balram had left behind two sons, namely, Krishan Gopal Sawhney and Ram Gopal Sawhney, and his widow Smt. Ram Piari Sawhney. The award dated 22-5-1978 was later made a rule of the Court on 14-3-1980.

(3) The present execution concerns property No. 5, Netaji Subhash Marg, New Delhi, which admittedly has fallen to the share of Krishan Gopal Sawhney. It is be an decree-holder of this property, who is seeking its possession. Initially he had sought actual possession of the second floor of this property in terms of the award which required him to pay Rs. 10,000.00 to Ram Gopal Sawhney, the judgment-debtor. The amount was paid, and delivery of possession of that floor has also been obtained. This followed the rejection of certain objections of a third

party who claimed to be a tenant therein. On the ground floor of this property, the Indian Overseas Bank is the tenant from long, and symbolic possession thereof was given to Krishan Gopal Sawhney.

(4) Now Krishan Gopal Sawhney has applied for delivery of actual possession of the basement, front mezzanine and the first and third floors of this property. According to him, the persons claiming to be in their opinion have been set up by Ram Gopal Sawhney, and they in collusion with him are falsely setting up tenancies in their favor. One of them is his wife, and the others are close friends. These persons were stated to have been inducted by Ram Gopal Sawhney in those portions when the family had already fallen out, and disputes and differences had arisen between the members, Ram Gopal Sawhney as one of the co-owners of this property, it is contended, could not have created any tenancy in this property without the approval, and to the detriment of the other co-owners. Now when this property has been allotted to Krishan Gopal Sawhney, he contends that he is entitled to obtain its actual possession and dispossess the judgment-debtor and all persons inducted by him or deriving title from him.

(5) The first set of objections is by Ramsons Industries through its sole Proprietor Mrs. Kamla Sawhney who is the wife of Ram Gopal Sawhney, the Judgment-debtor. She claims that the basement of this property was let out to her by her husband on 1-1-1970 at the rent of Rs. 500.00 per month, and she has been in possession since then and running her garments business there. This was thus stated to be long before the institution of suit No. 74 of 1976 on 21.1.1976, in which the matters were referred to arbitration, and the award followed of which execution is now being sought. It is pointed out that her this business has been assessed to Income Tax from 1971, that this was registered as a small scale industry with the Directorate of Industries, Delhi in the year 1970, a telephone was also installed in 1971, and she has been, besides, maintaining bank account with the address of that premises. The Delhi Municipal Corporation as well twice attached arrears of rent due from Ramsons Industries to the extent of Rs. 18,000.00 in 1976 towards the property tax and a photo copies of the payment of that amount by her business to the Corporation have been produced. There was a mention of this let out in the order dated 3.9.1974 which Mrs. Aruna Suresh, Sub Judge, Delhi, made on an interim injunction application in suit No. 190 of 1974, between Krishan Gopal Sawhney and Ram Gopal Sawhney and others. It was noted that the basement and mezzanine floor had already been let out in the year 1970, and, Therefore, Krishan Gopal Sawhney could not be allowed an interim injunction against Ram Gopal Sawhney from parting with possession or letting out the joint property. In suit No 74 of 1976, in which the award of which the present execution is applied for was given, a Commissioner was appointed for ascertaining the state of possessions at the spot. The Commissioner, Shri C.K. Mahajan, Advocate, biased the spot on 7.2.1976, and there also Smt. Kamla Sawhney asserted her possession.

(6) E.A. No. 180 of 1982 is by Sanjay Garments (Export Division) of which Smt.

Kamla Sawhney, wife of the judgment-debtor, and D.N. Kapur and R.N. Kapur are claimed to be the partners, Smt Kamla Sawhney has 50% share in the same while the others have 25 % each- This concern is stated to be tenant in the mezzanine and third floor of this property from 11-9-1975 under Ram Gopal Sawhney. The rate of rent has not been mentioned in the application, but from a photo copy of a rent receipt filed subsequently, it is sought to be brought out that it was at Rs. 250.00 per month. In this regard, a copy of the partnership deed executed on 11-9-1975 on a stamp paper has been produced. Copies of the letters exchanged between this concern and the Reserve Bank of India for allotment of code number as exporter of the year 1975 have also been produced. A bank account with the address of the premises was also opened in the Allahabad Bank from 11-9-1975. Copies of the letters written by the Central Excise Superintendent, addressed to this concern with the address of the property in dispute have as well been placed on record. The registration of the firm under the Partnership Act was also accordingly obtained, and the assessments under the income- tax have too followed in its name, and there was an order u/s 185 of the Income Tax Act that the firm came into existence from 11-9-1975.

(7) The objections under E. A. No. 179 of 1982 are by M/s. Anil & Company, of which Smt. Anil Kapur, wife of D.N. Kapur who is a partner in the firm Sanjay Garments (Export Division) is the sole proprietor. She claims to carry on ready-made garments business in the first floor of this property having obtained it as tenant from Ram Gopal Sawhney, the judgment-debtor, on 1-1-1976. This was thus some days before the institution of the suit on which the award was later given. No rate of rent has been mentioned in the application. However a photo copy of the lease deed produced an record in support of this tenancy, shows that the rate was Rs. 1500.00 per month. This document is of peculiar nature, inasmuch as it is purported to be executed between Krishan Gopal Sawhney through Ram Gopal Sawhney. Ram Gopal Sawhney has signed it. It is not shown that he possessed any power of attorney from Krishan Gopal Sawhney to act on his behalf for doing so, or had any other authority in that direction. This Anil & Company has its head office at 98, Netaji Subhash Marg, but the branch was claimed to have been opened on the first floor of the property in dispute on 1-1-1976, and the Allahabad Bank was accordingly informed vide certificate issued by that bank to this effect.

(8) The objectors have further asserted that in the award there was no specific direction that actual possession of the portions of property in their possession be given to Krishan Gopal Sawhney, the decree-holder. Rather the award allowed such possession with respect to the second floor only on payment of Rs. 10,000.00 to Ram Gopal Sawhney. It is pointed out that Krishan Gopal Sawhney too carried no misgivings about this as in the execution initially sought for, he prayed for actual possession of the second floor only. In other words, it is pleaded that he was conscious that symbolic possession of the rest of the building had to be given to him. The belated attempt to seek actual possession,

it is asserted, would be vocative of their rights and the provisions contained in the Rent Control Act. The proper course for Krishan Gopal Sawhney is pointed out to be to seek their ejection in due course of law. The executing court cannot go behind the decree.

(9) From the side of Krishan Gopal Sawhney, the decree-holder, however, it is asserted that reference in the award to the delivery of actual possession of the second floor was in the context of the amount of Rs. 10,000.00 which he had to pay to Ram Gopal Sawhney. The award, it is pleaded, did not specify that symbolic possession of the rest of the property only would be given, or that the persons unilaterally inducted by Ram Gopal Sawhney would not be dispossessed when the property has now in this suit for partition fallen to the share of Krishan Gopal Sawhney.

(10) The property in dispute was purchased by Krishan Gopal Sawhney and Ram Gopal Sawhney jointly in the year 1960. Disputes and differences, however, later developed between them, and a number of litigations, both of civil and criminal nature, started from 1971. Krishan Gopal Sawhney had during all this period, been seeking restraint of Ram Gopal Sawhney from letting out and parting with possession of any of the joint properties, and, even effected publication in a newspaper to that effect in 1970. From all these circumstances, it is contended that it could not be taken that Ram Gopal Sawhney was acting on behalf of and under the authority of other co- owners while inducting tenants. He was also not placed in management of the properties by the co-owners. His were thus entirely unilateral acts. During the course of the same, he has attempted to perpetuate possessions over the different portions of the property of his wife and close relations or friends and this has been entirely collusive any to defeat and thwart the rights of Krishan Gopal Sawhney to obtain possession and enjoy the fruits of the decree.

(11) As regards the third floor, it has further been pointed out by Krishan Gopal Sawhney that it was lying vacant all through, and even in a reply dated 2-1-1978, submitted before the arbitrator by Ram Gopal Sawhney, he had admitted that the second and the third floors were lying vacant. Even when Shri C.K. Mahajan, Commissioner went to the spot during the course of the suit, no assertion of any tenant or third party being in possession of the third floor was made. In a letter which Ram Gopal Sawhney addressed to the Assessor and Collector, Municipal Corporation of Delhi on 1-4-1976, the position of different possessions in the property was disclosed by him as under:

"1. Ground floor occupied by Indian Overseas Bank @ Rs. 3743.00 per month. 2. Basement occupied by M/s. Ramson Industries @ Rs. 500.00 per month. 3. Mezzanine floor occupied by M/s. Sanjay Garments (Export Division) @ Rs. 250.00 per month w.e.f. 1-12-1975. 4. 1st floor occupied by M/s. Anil & Company w.e.f. 1-1-1976 @ Rs. 1500.00 per month. 5. 2nd floor is self occupied by the partner Shri Ram Gopal Sawhney."

(12) There was no mention then at any stage that the third floor was as well in possession of Sanjay Garments (Export Division). The purported extension of this tenancy over the third floor in favor of Sanjay Garments objector, it is pleaded, is a clear pointer to how Ram Gopal Sawhney is out to harass and defeat the rights of Krishan Gopal Sawhney. The Municipal Corporation had also purported to take Criminal action against Ram Gopal Sawhney for certain unauthorised constructions on the third floor. But as it was not able to place all the material, the criminal case failed against him. Krishan Gopal Sawhney claims that he apprised the police station Darya Ganj on 30-12-1980 and other officers that Ram Gopal Sawhney was raising unauthorised constructions on the third floor. This was controverted by Ram Gopal Sawhney.

(13) The rates of rent at which the tenancies were purported to have been created, were also pointed out to be substantially low, and thus Ram Gopal Sawhney intended to favor his wife and his friends. It has also been urged that these so-called tenancies were created at low rents in order to get the property assessed at lesser annual letting value.

(14) Krishan Gopal Sawhney has further pointed out that in the year 1972, Ram Gopal Sawhney had offered to the Indian Overseas Bank the entire basement at the rent of Rs. 1.25 per square foot. Had this portion been already let out to Rarnson Industries, he could not have made this offer to the bank. Similarly, the first floor of this property was sought to be let out by Ram Gopal Sawhney to the same bank at the rent of Rs. 2.00 per square foot in 1976. When the Commissioner in this suit went to the spot on 7-2-1976 to make a report about the nature of possessions, he found the first floor lying locked, and some rags lying inside. Ram Gopal's wife though elaborated who were in possession of the basement mezzanine and the ground floor, could not say who was in occupation of the first floor. Soon thereafter, Ram Gopal Sawhney also came there, and he stated that he was in possession of the whole building, known as 5, Netaji Subhash Marg.

(15) Ram Gopal Sawhney on his part has pointed out that the plan which Krishan Gopal Sawhney had filed in the present suit itself showed that about three tin-sheds-cum-rooms existed on the third floor. The Metropolitan Magistrate before whom the Municipal Corporation had filed the criminal case against Ram Gopal Sawhney, also dismissed the same after observing that the constructions were old. A number of rooms are stated to exist there.

(16) I have given my utmost consideration to the entire circumstances. So far as the third floor of the property is concerned, I have little hesitation in holding that the induction of Sanjay Garments (Export Division) in this was long after the institution of the present suit) and this floor was at least up to 1978 in Ram Gopal Sawhney's possession. This is amply borne out from the writing dated 2-1-1978, which Ram Gopal Sawhney filed before the learned arbitrator. In this written submission, he had unequivocally stated that the second and the third floors were lying vacant since the beginning. In the letter which he wrote to the

Assessor & Collector, Municipal Corporation of Delhi on 1-4-1976 as reproduced in para 11 above, Sanjay Garments was shown in possession of mezzanine floor only at the rent of Rs. 250.00 per month. There was no mention that it was in possession of the third floor as well. When the Commissioner in the present case went to the spot on 7-2-19 76, he did not find any body in possession of the third floor. It was thus lying vacant. In case this third floor was at any time subsequently handed over to Sanjay Garments (Export Division), there would have been some increase in rent. However, in the claim which Ram Gopal Sawhney filed before the learned arbitrator on 16-12-1977) the rent from this concern from 1-12-1975 to 30-11-1977 was mentioned at the rate of Rs. 250.00 per month only. I am, Therefore, of the considered opinion that this third floor has been in possession of Ram Gopal Sawhney during the pendency of the suit and the arbitration proceedings, and the decree-holder is entitled to its actual possession.

(17) Even with respect to the first floor, I am of the opinion that though this was purported to have been let out to Anil & Company about 20 days before the institution of the present suit, there are circumstances to show that this was ante dated, and this tenancy was created after the institution of the suit. This is borne out firstly from the report of the Commissioner in the present case on 7.2.1976 when he found the first floor lying locked with some rags inside, and Ram Gopal Sawhney's wife stating that she did not know who was in its possession. Had this floor been already let out, she, who claims to be a worldly-wise woman capable of independently running good business, and was all through living with her husband, would have known it. Further, Ram Gopal Sawhney who came soon after there, asserted the entire property being in his possession. Secondly, even in the year 1976, Ram Gopal Sawhney had been negotiating with the Indian Overseas Bank for letting out the first floor of the property at the rent of Rs. 2.00 per square foot. This floor was shown to be having an area of 2000 square feet. The bank then wrote a letter dated 9.2.1976 to Krishan Gopal Sawhney informing how Ram Gopal Sawhney had discussions with it for letting out the first floor, and its willingness to pay three years rent in advance, amounting to Rs. 1,44,000.00 . He was apprised of this in order to obtain his approval. Krishan Gopal Sawhney, however, replied on 14.2.1976 that he had already filed a suit against Ram Gopal Sawhney) restraining him from letting out any portion of the property, and as such the first floor could not be let out. It is further borne from a letter dated 9.11.1979 of the Indian Overseas Bank to Krishan Gopal Sawhney in which a copy of the letter of Ram Gopal Sawhney was enclosed, that Ram Gopal Sawhney was still negotiating with the bank for letting out 1750 square feet area of the building with payment of advance rent of six years and adjustable against the charge which the bank had over the building. I, Therefore, hold that the so-called letting out to Anil & Company was after the institution of the suit, and Krishan Gopal Sawhney who not party to the same, is not bound by that. He is entitled to actual possession of this floor, dispossessing the person who has been inducted in by the judgment-debtor during the pendency of the

suit.

(18) Lastly, I advert to the basement and the front mezzanine which are said to be in possession of Ramson Industries and Sanjay Garments (Export Division) respectively. The former is claimed to be exclusively owned by Ram Gopal Sawhney's wife. There has been no rent deed or rent receipts. She has, however, been assessed to inc incometax of the business. This business is the same of ready-made garments as Ram Gopal Sawhney had himself been carrying on under the name of Sanjay Garments on the second floor of the property of which actual possession has already been delivered to Krishan Gopal Sawhney. The business of the Sanjay Garments (Export Division) is also similar. In this, Ram Gopal Sawhney's wife has 50% share. The circumstance that these portions were also within the control of Ram Gopal Sawhney, is borne out from the letters which he wrote to the Indian Overseas. Bank in the year 1972 offering to let them out at the rent of Rs. 1.25 per square foot. A draft agreement was also signed by both Krishan Gopal Sawhney and Ram Gopal Sawhney but the same did not materialise.

(19) It is note worthy to mention that Ram Gopal Sawhney has admitted in these proceedings that all these tenancies were created by him. The objectors also do not claim that Krishan Gopal Sawhney or Smt. Ram Piari who were the co-shares of this building, were consenting parties to their tenancies. Krishan Gopal Sawhney has pointed out that Sanjay is the name of the son of Ram Gopal Sawhney.

(20) Whatever be the collusive nature of these tenancies, the question arises whether one of the co-owners who has not been put into management of the property by other co-owners, can let out any portion of the property without their consent, and whether such tenancy can bind any of those co owners to whom the property has fallen after partition. This controversy arose before G.C. Jain, J. of this Court in E A. No. 69 of 1979, decided on 26-5-1982 (Nand Lal Patel v Shiv Swan Lal & Others). The learned Judge has made reference to two Full Bench decisions of the Calcutta and Patna High Courts in the cases Niranjan v. Soudamini Dasi AIR 1926 Calc 714 and Bibi Kaniz Fatma Vs. Sk. Hossainuddin Ahmad and Others, . In the former it was recognised that the general principle is that a co-sharer in joint property cannot by dealing with such property affect the interest of the other co-sharers therein. The question that arose was whether a person to whom a parcel of land had been allotted by a decree for partition took it subject to a permanent lease granted by his former co-owners without his concurrence when the land was joint inter-se them. It was answered in the negative. The Patna High Court too observed that such tenant inducted by a co-sharer could certainly not be treated as tenant of the entire body of co-sharer. The Delhi High Court as well in a Division Bench decision in Hari Kishan Rathi v. Ranjan Dupatta House & Ors., (EFA (OS) No. 3/1972, decided on October 30, 1975), took the same view. In the decision it was observed that a co-sharer has no right to put a stranger in exclusive possession of the property, and if he does

so, the other co-sharer can object to it and can seek his dispossession, G. C. Jain, J. too held that a tenancy created prior or during the pendency of the suit for partition by one of the co-sharers cannot bind others and the co-sharer to whom the property is allotted on partition, is entitled to dispossess the tenant. However, it was taken note that if there is any clement of authorisation or agency created which can show that one of the co-sharers had been put into the management of the property by the other co-sharers) the lease created prior to the institution of the suit, can be binding on them. This has not been the position in the present case inasmuch as, as already noted above, the family had fallen out in 1970-71 and Krishan Gopal Sawhney too had published a notice in a newspaper in 1970 that Ram Gopal Sawhney had no authority to induct third persons in the joint properties.

(21) The Punjab High court has also in Air 1964 Pun 525 Ram Sarup Sant Rum Aggarwal v. Chanan Singh Arjan Singh & Others) taken the view that a tenant let in by one of the co-sharers does not ipso facto become tenant of the other co-sharers, and he cannot assert that he is tenant of the whole land by virtue of the lease deed created by one co-sharer. It was further observed that it cannot be contended that a partition decree can be executed and satisfied by taking symbolic possession of the property, and that a separate suit is necessary to evict the tenant where the land is leased to him by one of the co-sharers. The partition decree binds the landlord as well as the tenant. The tenant derives his title from the landlord and his rights come to an end as soon as the rights of the landlord from whom he derives title come to an end.

(22) The emphasis from the side of the objector and the judgment- debtor that the award and the decree in the present case permitted actual possession of the second floor only to Krishan Gopal Sawhney, in my opinion, is misplaced. That was more in the context of the amount of Rs. 10,000.00 , which Krishan Gopal Sawhney was to pay to Ram Gopal Sawhney before obtaining the possession. It was not specified that symbolic possession of the other portions would only be given. Now that the property has fallen to the share of Krishan Gopal Sawhney, he is entitled to dispossess the so-called tenants inducted by Ram Gopal Sawhney, the judgment-debtor, in any portion of this property, and obtain actual possession. Let warrants of possession be accordingly issued.

(23) So far as the Indian Overseas Bank is concerned, its tenancy was with the approval of all the co-sharers, and in the circumstances, symbolic possession has been rightly given to the decree-holder of the ground floor in its possession.