
(2006) 02 P&H CK 0095

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No's. 5861 and 5862 of 1999

Ram Kishan

APPELLANT

Vs

Moti Ram and Another

RESPONDENT

Date of Decision : 15-02-2006

Acts Referred:

Haryana Urban (Control of Rent and Eviction) Act, 1973 — Section 14, 15(6)

Citation : (2006) 2 CivCC 363 : (2006) 142 PLR 864 : (2006) 1 RCR(Rent) 395

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : B.R. Gupta, for the Appellant; Alok Jain, for the Respondent

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—This judgment shall dispose of two connected civil revisions -viz. C.R. Nos. 5861 and 5862 of 1999, involving common questions of law and fact. The facts as noticed below, have been taken from C.R. 5861 of 1999.

2. Ram Kishan (sub-tenant) has filed this revision petition u/s 15(6) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short "the Act") for setting aside order dated 4.10.1999, passed by the Appellate Authority, Gurgaon, whereby after reversing the order of the Rent Controller, the petitioner has been ordered to be ejected from the demised premises on the ground of sub-letting.

3. In this case, respondent-Moti Ram filed the ejectment application against the petitioner and respondent No. 2-Mangal Singh, alleging therein that the house in question was let out to Mangal Singh on the rent of Rs. 35/- per month, somewhere in the year 1971. Thereafter, 10 years before the filing for the ejectment application (which was filed on 8.3.1995), the demised premises was let out by Mangal Singh to the petitioner on a rent of Rs. 100/- per month, without the written consent of the landlord. The ejectment application was filed on the ground of non-payment of rent as well as on the ground of sub-letting.

Respondent-Mangal Singh did not appear and he was proceeded ex-parte. The petitioner contested the ejectment application on the ground that he is the direct tenant on the demised premises which was taken on rent by him from Niranjana Lal, father of Moti Ram (landlord) in the year 1980 @ Rs. 100/- per month. Subsequently, the rate of rent was increased to Rs. 125/- per month, which he was paying regularly, though no rent receipt was ever issued to the petitioner by the said Niranjana Lal.

4. The Rent Controller dismissed the ejectment application while holding that the respondent landlord had failed to prove the alleged sub-tenancy. The said conclusion was arrived at on the ground that for 10 years, the landlord did not file the ejectment application in spite of having the knowledge of sub-tenancy. The second ground of non-payment of rent was held to be not survived as the claimed rent was tendered.

5. In appeal, the Appellate Authority reversed the order of the Rent Controller and held that the sub-tenancy has been proved by the landlord and ordered the ejectment of the petitioner. The Appellate Authority, on the evidence led by the landlord, came to the conclusion that it has been proved on the record that from 1971 to 1985, respondent-Mangal Singh remained in occupation of the demised premises as tenant and from 1985 till the date of filing the ejectment application, the petitioner remained in exclusive possession of the demised premises. On the basis of the evidence, it has been held that earlier the demised premises was let out by the father of the respondent-landlord to Mangal Singh @ Rs. 35/- per month and, subsequently, when Mangal Singh constructed his house, he shifted from the demised premises and the petitioner came into the exclusive possession of the house as sub-tenant. This finding was recorded by the Appellate Authority on the basis of the statement of the landlord as well as the entries in the Municipal records, which have been discussed in [Para 13] of the Judgment. The Appellate Authority has also found that the possession of the petitioner over the demised premises stood established from the year 1985, where he had taken the stand that he was inducted as a tenant in the demised premises in the year 1980 by Niranjana Lal at the rent of Rs. 100/- per month. It has been found that no evidence has been led by the petitioner to show his possession on the demised premises prior to the year 1985. Only one ration card, Exh.R-5, was produced which allegedly pertained to the year 1981 but the said ration card has not been believed because there was a cutting on the same with regard to house number. The other oral evidence led by the petitioner i.e. RW-2 Mohinder Singh, who according to the petitioner, was present at the time of taking of the demised premises on rent, has not been believed as he had stated that Ram Kishan had taken the demised premises on monthly rent through some court order. After duly appreciating all the evidence, the appellate Authority reversed the findings of the trial Court.

6. Counsel for the petitioner could not point out any illegality or perversity in the finding of fact recorded by the Appellate Authority. Admittedly, on the issue of

sub-letting, in this case, there is no rent receipt either in favour of the tenant or sub-tenant. Both sides relied upon the entries made in the House Tax Assessment Register prepared by the Municipal Committee. The Appellate Authority has recorded the aforesaid finding of the sub-letting on the basis of entries in the Assessment Register of the Municipal Committee as well as after considering the oral and other evidence led by the parties. I do not find any illegality or perversity in the said finding of fact.

7. Faced with this finding, counsel for the petitioner submitted that even if it is taken that the premises in dispute was sub-let to the petitioner by respondent-Mangal Singh, even then the petitioner cannot be ordered to be ejected on this ground because the respondent-landlord did not file the ejectment application for 10 years inspite of having the knowledge of sub-tenancy. Thus, impliedly it will be deemed that he gave his consent and the sub-tenancy will be deemed to be consented. In support of his contention, learned Counsel relied upon the decision of the Apex Court in Smt. Bimla Devi Aggarwal v. Laxmi General Store 1989(2) R.C.R. 329 and the decision of this Court in Subhash Chander v. Surinder Singh 1994(2) R.C.R. 465.

8. On the other hand, learned Counsel for the respondent-landlord submitted that when it has been established that the sub-tenancy was created without the written consent of the landlord, then, merely on the ground that the ejectment application was filed after a long time of creation of sub-tenancy, the ejectment of the sub-tenant cannot be declined on the ground of estoppel and waiver. The counsel submitted that there cannot be a waiver or estoppel against the Statute, which provides that a tenant cannot create the sub-tenancy without the written consent of the landlord. In support of his contention. the learned Counsel relied upon the decisions for the Hon''ble Apex Court in Waman Shrinivas Kini Vs. Ratilal Bhagwandas and Co., and Ram Saran v. Pyare Lal and Anr. 1996 HRR 137 and the decisions of this Court in Smt, Niki Devi v. Saroj Bala 1997 HRR 280 and Rajbir Kaur and Anr. v. Joginder Associates Architect, Designer & Decorator and Ors. 1999 HRR 36.

9. I have considered the arguments raised by the counsel for the parties on this issue, and I do not find any substance in the arguments raised by the counsel for the petitioner. In this case, it has been established by the respondent-landlord that initially the demised premises was let out to respondent-Mangal Singh on rent @ Rs. 35/- per month somewhere in the year 1971. Subsequently, in the year 1985, the premises was let out by the said tenant to the petitioner without written consent of the respondent-landlord. In my opinion, when the sub-letting has been established, then, the sub-tenant cannot take the plea of waiver and estoppel on the ground that "inspite of the knowledge about the subtenancy, the landlord has not filed the ejectment application for a reasonably long time. In the Act, it has been provided that a landlord can seek the ejectment of the tenant if the tenant has sub-let the premises without the written consent of the landlord. The Hon''ble Apex Court in Waman Shrinivas Kini's case (supra) has held that

when the Rent Act prohibits sub-letting and makes it unlawful for a tenant to assign or to transfer his interest in the premises let to him and when the tenant makes himself liable to eviction under the Rent Act on the said ground, then, the tenant cannot be permitted to assert in a Court of justice to say that the landlord has waived his right. It was held that the plea of waiver is not available against the Statute. In Ram Saran's case (supra), in which the decision of A.S. Sulochana v. C. Dharmalingam 1987(1) R.C.C. 213 was also considered, the Hon''ble Apex Court held that the mere knowledge of the landlord about the creation of sub-tenancy which was never authorised by the landlord, cannot estop him from seeking eviction of the tenant on the ground of sub-letting. The Hon''ble Apex Court has held as under:-

35. The Rent Act is a special statute governing and regulating tenancy and sub-tenancy. Such provisions in the special statute supersede the general law of tenancy if the provisions of the special statute are incompatible with the general law of tenancy. u/s 14 of the Rent Act, mere knowledge of the landlord about occupation of the tenanted premises by the said registered society and acceptance of rent for the tenanted premises tendered by the tenant in the name of the registered society, will not create a sub-tenancy unless induction of a sub-tenant is made with the written consent of the landlord. It is nobody's case that the landlord has given any written consent for induction for sub-tenant: There is no estoppel against statute. Hence, even if the landlord has accepted payment of rent for the disputed premises from the said society, such acceptance of rent will not constitute legal and valid sub-tenancy in favour of the registered society. Consequently, landlord will not be estopped from claiming eviction of unauthorised sub-tenant along with the tenant indulging in inducing sub-tenant without lawful authority.

The judgments cited by the counsel for the petitioner are not applicable in the facts and circumstances of this case. In this case, this, sub-tenancy has been proved. It has been found that the petitioner was inducted by respondent-Mangal Singh without the written consent of the landlord. In these circumstances, mere non-filing of the ejectment application for 10 years, in view of the law laid down in the aforesaid judgments, would not debar the respondent-landlord from seeking ejectment on the ground of sub-letting.

10. In View of the above, there is no merit in these civil revisions and the same are dismissed.