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**(2006) 03 P&H CK 0114**  
**In the Punjab And Haryana At Chandigarh**

Ramji Dass and Others

APPELLANT

Vs

Smt. Kamla Rani and Others

RESPONDENT

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**Date of Decision :** 03-03-2006

**Acts Referred:**

Transfer of Property Act, 1882 — Section 106

**Citation :** (2007) 4 CivCC 13 : (2007) 147 PLR 131 : (2007) 3 RCR(Civil) 739 : (2007) 2 RCR(Rent) 189

**Hon'ble Judges :** S.S. Saron, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

S.S. Saron, J.—This order will dispose of the above said two Civil Revision Petitions No. 1358 and 1359 of 1981 which relate to some what similar facts and circumstances. The tenants-petitioners in both the cases are common. The landlords-respondents are also almost common inasmuch as one petition for eviction had been filed by the landlord Shiv Shankar Lal in his own capacity and the other by the Raghunath Dass Trust, Charkhi Dadri through Shiv Shankar Lal aforesaid and his wife Smt. Kamla Rani as trustee of the said trust. Both the petitions for eviction are filed against the same tenants Mohri Ram (petitioner No. 1) son of Balak Ram and his sons Ramji Das (petitioner No. 2) and Ram Dayal (petitioner No. 3). Mohri Ram died during the pendency of the petition on 3.9.1985 and Ramji Dass, Ram Dayal, Subhash Chand, Munish Kumar, Chander Bhan sons of Mohri Ram, Bimla daughter of Mohri Ram and Bhirawan Bai widow of Mohri Ram were impleaded as his LR's and are on record. Therefore, both the petitions can be disposed of by a common order.

2. The tenants-petitioners assail the order dated 10.3.1981 passed by the Appellate Authority under the Haryana Urban (Control of Rent and Eviction) Act, 1973 ("Act" -for short) whereby the appeal of the landlords respondents against the order dated 27.8.1979 passed by the learned Rent Controller, Charkhi Dadri has been accepted and the eviction of the tenants petitioners has been ordered.

3. In the petition filed by landlord Shiv Shankar Lal in his own capacity, he sought eviction of Mohri Ram son of Balak Ram, Ramji Dass and Ram Dayal sons of Mohri Ram. In the connected petition the Raghunath Dass Trust, Charkhi Dadri through Shiv Shankar Lal and his wife Kamla Rani as trustees of the said Trust filed a petition also seeking ejectment of Mohri Ram and his sons Ramji Dass and Ram Dayal. In the case filed by Shiv Shankar Lal in his own capacity the ejectment is sought u/s 13 of the Act from one shop bearing No. 24 (single storey) as detailed in the petition and in the alternative prayer has been made for fixing fair rent of the said shop. The shop No. 24, it is alleged, was taken on rent at a monthly rent of Rs. 70/- on 1.8.1961 by Mo-hri Ram for this personal use for 11 months. Mohri Ram executed a rent note dated 17.8.1961 in favour of the landlord Shiv Shankar Lal. The grounds of eviction taken by the landlord for the eviction of his tenant Mohri Ram are that he had sublet the demised premises to his sons Ramji Dass and Ram Dayal who are running their business in a partnership in the shop in question. Mohri Ram, it was alleged, had got no concern with the firm nor did he have any control thereon. The other ground on which the eviction was sought in respect of the said shop No. 24 is that the tenants had prepared "Dachhatti and tana" which had weakened the wall. Besides, they had fixed two almirahs on the Chabura in front of the shop. These additions, it is alleged, had materially impaired the value and utility of the shop. The respondents to the petition for ejectment filed their reply in which a preliminary objection was raised that the landlord was seeking relief of eviction on the one hand and at the same time was demanding fair rent. Besides, the application had not been properly valued for the purpose of Court fee. It was also stated that the tenancy of the respondents in the petition for ejectment was contractual and on that account was required to be terminated u/s 106 of the Transfer of Property Act. Moreover, the shop was taken on rent by the firm Ram Parkash Ramji Dass through Mohri Ram who is the "Karta" of the said firm Ram Parkash Ramji Dass. It is alleged that since the said firm had not been joined as a respondent to the petition seeking ejectment, the petition seeking the ejectment was bad. On facts, it was stated that the firm had been running its business earlier to the execution of the rent note dated 17.8,1961. Ram Parkash had died about ten years earlier to the filing of the petition seeking ejectment and the firm Ram Parkash Ramji Dass was running its business in the shop as earlier. The further case of the respondents to the ejectment petition is that earlier the shop was with the firm Ram Parkash Ramji Dass at an annual rent of Rs. 800/-but later that rent was increased to Rs. 70/- per month and the firm carried on its business as earlier. The rent note was executed by Mohri Ram on 17.8.1961 on behalf of the firm. All the respondents to the ejectment petition are stated to be tenants in the shop in dispute along with the firm. As regards the alternations made, it is stated that the "Dachhatti and tand" had not been fixed by making holes in the walls but by fixing wooden planks outside the wall. The almirahs outside the Chabutra, it is stated, are not fixed but are portable. As regards the fair rent it is pleaded that the petitioner to the petition seeking ejectment i.e. Shiv Shankar Lal should have filed a separate application.

4. In the case filed by the Raghunath Dass Trust through Shiv Shankar Lal and his wife Smt. Kamla Rani as trustees of the said Trust against the respondents to ejectment petition, eviction of Mohri Ram and his sons Ramji Dass and Ram Dayal has been sought from one godown No. 59 single storey situated within the municipal limits of Charkhi Dadri as detailed in the head note of the petition and in the alternative for fixation of fair rent. The case set up by the landlord Raghunath Dass Trust is that Mohri Ram took the godown in question on rent from the landlord on 3.7.1965 on a monthly rent of Rs. 15/- for his personal use for a period of 11 months. A rent note was executed on 5.7.1965. After expiry of the period of 11 months, he (Mohri Ram) continued to be in possession as a statutory tenant. Therefore after expiry of the period of 11 months covered by the rent note Mohri Ram was a statutory tenant and no notice in terms of Section 106 of the Transfer of Property Act. was required to be given. The eviction of the respondents in the ejectment petition was sought only on the ground that Mohri Ram had sublet the said godown to his sons Ramji Dass and Ram Dayal (respondents No. 2 and 3 in the ejectment petition) and he parted with possession and control of the go-down. The respondents in the ejectment petition contested the petition of the landlord and took an objection that the relief of eviction and fixation of fair rent cannot be given in the same petition. Besides, the petition not been properly valued for the purpose of Court fee. It is also stated that the godown in question was taken on rent by the firm Ram Parkash Ramji Dass through Mohri Ram and since the firm has not been joined as a party to the petition seeking ejectment, so the petition is bad for non-joinder of necessary parties. On merits it is stated that the godown was taken on rent by the firm Ram Parkash Ramji Dass through Mohri Ram and the firm was still in its possession. Ram Parkash is stated to have died ten years earlier to the filing of the petition. It is also pleaded that the signatures and thumb impression of Mohri Ram were obtained on blank printed form of rent note and it was not filled at that time.

5. The learned Rent Controller in its two separate order passed on 27.8.1979 dismissed both the petitions for ejectment. However, as regards the claim for fair rent, the landlord was given liberty for filing a fresh petition after complying with the rules and for moving a petition for fair rent. The eviction on the ground of subletting in both the cases was held to be not made out. The eviction on the ground that there had been some material alternations in the building was not seriously contested. The landlords in both the cases filed appeals before the Appellate Authority under the Act which accepted the same. The Appellate Authority held that the plea of subletting of the shop and the go-down is to be accepted and the ejectment of the respondents in the appeals was ordered on the ground that Mohri Ram had sublet the demised premises in both the cases to his sons. The said orders of the Appellate Authority in the two cases, as already noticed, are assailed in these revision petitions u/s 15(6) of the Act. The question that requires to be considered in these petitions is, whether the petitioners are liable to be evicted from the two premises on the ground that Mohri Ram had

sublet the demised premises in both the cases.

6. Mr. M.L. Sarin, Senior Advocate appearing with Mr. H.S. Giani, Advocate for the petitioners contended that the ground of subletting seeking ejectment of the petitioners is not made out and there has been a complete misreading of the evidence on record in this regard. Besides, it is contended that the legal position arising out of the case in this regard has also not been correctly appreciated. In any case, it is strongly contended that since Mohri Ram has died during the pendency of the petition on 3.9.1985, therefore, the petitioners, who are LR's of Mohri Ram deceased, have become the direct tenants of the landlord. As such, their eviction is not liable to be ordered on the said ground of subletting as they are now in any case the direct tenants of the landlords in the two cases. In support of the said contention, the learned senior counsel placed strong reliance on the case of Ram Sarup (deceased by LR's) Vs. Lal Chand and others, and Chela Ram v. Parshotam Lal 1999 H.R.R. 693.

7. In response, Mr. Ashok Aggarwal, Senior Advocate appearing with Mr. Anil Khetarpal, Advocate, learned Counsel for the respondents has contended that the ground of ejectment on the plea whether there has been subletting is clearly made out on the basis of evidence and material on record and the said finding is not liable to be interfered with in exercise of the revisional jurisdiction of this Court u/s 15(6) of the Act. As regards the LR's becoming the direct tenants of the landlords in view of the demise of Mohri Ram on 3.9.1985, it is contended that the said plea is not tenable in view of the judgments of the Hon'ble Supreme Court in Imdad Ali Vs. Keshav Chand and Others, and Parvinder Singh Vs. Renu Gautam and Others, as also of this Court in Ravi Parkash and Others Vs. Dewan Chand, and another Division Bench judgment of this Court in Naurang Lal v. Suresh Kumar (1964) 66 P.L.R. 505.

8. I have given my thoughtful consideration to the entire matter. The initial question that arises for consideration in these petitions is whether there has been subletting on the part of Mohri Ram in respect of the two premises in favour of his sons Ramji Dass and Ram Dayal. In case the subletting is held to be proved the further question that would required to be considered is whether the LR's of Mohri Ram, in any case, have become the direct tenants of the landlord on account of demise of Mohri Ram on 3.9.1985 during the pendency of the revision petition in this Court.

9. Subletting as a ground of eviction of a tenant under the Act is provided for in terms of Section 13(2Xii)(a) of the Act. The relevant provisions of Section 13 of the Act read as under:

13. EVICTION OF TENANTS.- (1) A tenant in possession of a building or a rented land shall not be evicted therefrom except in accordance with the provisions of this section.

(2) A landlord who seeks to evict his tenant shall apply to the controller, for direction in that behalf. If the Controller, after giving the tenant a reasonable

opportunity of showing cause against the application, is satisfied -

(i) xx xxx xxxx xxx xx xx xx xx

(ii) that the tenant has after the commencement of the 1949 Act without the written consent of the landlord,

(a) transferred his right under the lease or sublet the entire building or rented land or any portion thereof, or

(b) x x x x x x x x x x x

(iii) to(v) x x x x x x x x x x x

the Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate.

10. The reference to 1949 Act in Section 13(2)(ii) of the Act is to the East Punjab Urban Rent Restriction Act, 1949 which has in terms of Section 4(4) of the Act been referred to as the 1949 thereafter in the Act. The Act has been framed after the re-organisation of the State of Punjab and formation of State of Haryana. Earlier to the Act, the 1949 Act was in force. In terms of Section 13(2)(ii)(a) of the Act ejectment of the tenant can be sought where the tenant has after the commencement of the 1949 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.

11. In order to establish a ground for seeking ejectment of a tenant on the ground of subletting it has been held in *Joginder Singh Sodhi Vs. Amar Kaur*, that the law is well settled and the ingredients required to prove the same are parting with possession of rented property by a tenant to a third party and receiving monetary consideration therefor. Besides, reiterating an earlier decision in *Kala and Another Vs. Madho Parshad Vaidya*, , it was held that burden of proof in parting with the possession in favour of third party lies on the landlord but once he discharges the initial burden, the onus would shift on the tenant to explain. Therefore, if the landlord establishes the parting of possession, the onus is on the tenant to explain as to how he came in possession of the premises in question. In *Joginder Singh Sodhi's* case (supra) the landlady sought ejectment of her tenant and his son who was the appellant before the Supreme Court on the ground of non payment of rent and subletting. The issue for determination was as to whether the tenant had sublet the premises to his son Joginder Singh Sodhi. The Rent Controller inter alia observed that from the rent note it was clear that the property was to be used by the tenant only, but since he parted with possession thereof and his son was found to be in exclusive possession a case of subletting was established. Accordingly an order of eviction was passed against the tenant and his son which was confirmed by the appellate authority. In revision, the High Court upheld the order of the Forums below. It was further observed that since the tenant had died during the pendency of the revision

petition and his name was ordered to be deleted from the array of parties without reservation of right of any of the LRs the order of eviction passed against him remained unchallenged and the LRs were bound by such order. The contention of the appellant therein before the Hon"ble Supreme Court, however, was that even if it was assumed that one of the ingredients of sub-letting was established the second ingredient, namely, parting of possession with "monetary consideration" was not established. The said contention was observed by the Supreme Court to be not appreciable. Proof of monetary consideration by the sub tenant to the tenant, it was observed, is not a sine qua non to establish sub-letting. It was held that though the burden of proof of sub-letting is on the landlord but once he establishes parting of possession by the tenant to a third party, the onus would shift on the tenant to explain his possession. If he is unable to discharge that onus, it is permissible for the Court to raise an inference that such possession was for monetary consideration. On the tenant's explanation having been found not believable it was held that the authority concerned rightly inferred that the tenant had sublet the shop to the appellant therein.

12. Therefore, in the circumstances it is to be seen whether there has been subletting of the two premises in question by Mohri Ram in favour of his sons Ramji Dass and Ram Dayal by parting of possession with monetary consideration. In respect of the shop No. 24, as already noticed, a rent note dated 17.8.1961 (Ex.AW-5/A) was executed. The same has been executed by Mohri Ram in which it is inter alia recorded that he had taken the shop on rent on 1.6.1958 at a monthly rent of Rs. 66.10 Annas and 9 paise from Shiv Shankar Lal. It is further mentioned that Shiv Shankar Lal had determined the tenancy vide notice dated 9.5.1961 on 31.5.1961 and had filed a suit for his ejectment on 26.7.1961 in the Civil Court. However, on 1.8.1961, he had entered into an oral settlement and from 1.8.1961 onwards he had again taken the shop on rent for a period of 11 months @ Rs. 70/- per month. The conditions of the lease were recorded in the form of a memorandum which inter alia include that the shop had been taken for use as Bisat Khana (General Merchandise) in the name of Ram Parkash Ramji Dass. Besides, condition No. 4 is to the effect that the executant (Mohri Ram) would not further give out the shop or any part of it in any manner and would not join anyone as a partner or permit anybody to carry on business in the demised premises. Condition No. 1 of the said rent note dated 17.8.1961 (Ex.AS-5/A), shows that the shop in question had been taken on rent by Mohri Ram for doing business of general merchandise in the name of Ram Parkash Ramji Dass and apart from this he would not do any other work. The further conditions enjoin that he would not part with possession of the same in any manner nor join anyone as a partner. It is a matter of record that the firm Ram Parkash Ramji Dass was registered as such on 11.4.1969 vide certificate issued by the Registrar of Firms, Haryana EX.AW-5/B, which is in the nature of an acknowledgement of registration of firms. The Register of Firms (Ex.AW-5/C) shows that the partners of the firm M/s Ram Parkash Ramji Dass were Ramji

Dass and Ram Dayal. The learned Appellant Authority under the Act after considering the pleadings of the parties and the documents on record observed that in the written statement filed by the respondents to the ejectment petition there are pleadings which may give indication that the firm Ram Parkash Ramji Dass may be a Hindu Undivided Family (HUF) or a partnership firm. However, during evidence it was sought to be proved that it was a partnership firm. It was observed that since the original letting out of the demised shop was not proved to be either in favour of H.U.F. firm or partnership firm, it was clear that the subletting had been made out. It was observed that the basic document in the case is the Relit Note (Ex.AW-5/A). The recitals of the same were observed to be clear and unambiguous to the effect that Mohri Ram took the premises on rent in his individual capacity. Besides, at every stage of the said Rent Note (Ex.AW-5/A) the word "Min-miker" which means, "I" (i.e. Mohri Ram himself) had been used. The contentions that Mohri Ram was Karta of Joint Hindu family was not believed as it was his own case that he never took the premises on rent as Karta. Therefore, the stand negatives the plea of the occupants of the shop that Mohri Ram was doing business as a Hindu Undivided Family. The documents regarding registration of the firm (Ex.AW-5/B) and the list of partners (Ex.AW-5/C) evidently show that the firm Ram Parkash Ramji Dass was registered as such in 1969 and that Ramji Dass and Ram Dayal are the only partners of the said firm. In fact Mohri Ram himself was not a partner in the firm. Besides, it was admitted by Ramji Dass (RW-3) that from 1.4.1968 he and his brother Ram Dayal had separate accounts. Mohri Ram had no separate Khata in the Bahis. This clearly showed an altogether new entity of the firm Ram Parkash Ramji Dass had come into existence in the year 1968 and the Mohri Ram had no concern or control in the new entity. Therefore, a clear case of parting with the possession was found to be made out. Besides, Mohri Ram, who took the premises on rent was not a partner in the firm Ram Parkash Ramji Dass. To show the participation of Mohri Ram, the respondents in the ejectment petition had not produced the business accounts of 1957-58 or even of 1961 when the rent note was executed. The accounts were produced from 1964, However, the partnership deed, assessment orders from income tax or sales tax departments had not been produced. In the circumstances, the findings reached at by the Appellate Authority as regards the proof of subletting is made out from the evidence and material on record. It is evident even from the rent note dated 17.8.1961 Ex.AW-5/A which is to the effect that the shop No. 24 had been taken only by Mohri Ram in his own capacity in the name of Ram Parkash Ramji Dass which firm itself was registered much later during the year 1969-70 as per certificate dated 11.4.1969 (Ex.AW-5/B). Besides, Form-A (Ex.AW-5/C) of the said certificate shows the partners of the said firm as Ramji Dass and Ram Dayal and their date of joining had been given as 1.4.1968 i.e. after the execution of rent dated 17.8.1961 (Ex.AW-5/A). In the circumstances, no fault can be found with regard to the fact that Mohri Ram had taken the shop in his individual capacity and thereafter it was sublet by him in favour of his sons Ramji Dass and Ram Dayal. Besides, it has been admitted by Ramji Dass that from 1.4.1968, he and his brother Ram Dayal had separate

accounts and as Mohri Ram had no separate Khata in their Bahis. It was observed that the mere fact that Mohri Ram had been helping in the business would not make the possession or control over the business of Mohri Ram as legal. As such the parting of possession by Mohri Ram in favour of his sons Ramji Dass and Ram Dayal has rightly been held to be proved. As regards the receipt of monetary or valuable consideration, it was observed by the Appellate Authority that normally direct evidence of this nature may not be possible when two parties are close relations and it has to be inferred from the circumstances. Reliance was placed on a decision of this Court in *Gurcharam Singh v. V.K. Kaushal* 1978(1) R.C.J. 381 wherein it was observed that if a landlord was able to prove parting of possession then inference of subletting can reasonably be drawn unless the tenant is able to show some other relationship between him and the sub-tenant. The fact being in the personal knowledge of the tenant it would be for him to prove the nature of relationship with him and if the tenant is not able to satisfactorily explain the nature of that relationship it would be reasonable for the Court to accept the assertion of the landlord that the exclusive possession has been parted for valuable consideration.

13. In the case in hand the parting of possession is clearly proved and from the circumstances, the fact that the sub-tenants are none other than the sons of the tenant, it is to be taken from the nature of close relationship that the same is for valuable consideration and such an inference is to be drawn as such. In fact, Mohri Ram and his sons were wanting to wriggle out of the parting of possession by setting up discrepant claim of the existence of a Hindu Undivided Family and thereafter of a partnership firm which has not been proved. Even otherwise, it is appropriate to note that in *Joginder Singh Sodhi's* case (supra), it was held by the Hon'ble Supreme Court after referring to the earlier decisions in *M/s. Bharat Sales Ltd. Vs. Life Insurance Corporation of India*, , *Rajbir Kaur and Another Vs. S. Chokesiri and Co.*, and *Kala v. Madho Parshad Vaidya* (supra) that the observations made in the said case and in their Lordships' considered opinion, proof of monetary consideration by the subtenant to the tenant was not a *sine qua non* to establish subletting. Therefore, parting of possession with monetary consideration is duly established.

14. In respect of the case relating to godown No. 59 from which eviction had been sought by the Raghunath Dass Trust, the position is not much different. The godown in question was taken on rent from the landlord Raghunath Dass Trust on 3.7.1965 by Mohri Ram on a monthly rent of Rs. 15/-. The rent note, which is recorded on printed form, is Ex.AW-1 and was executed on 5.7.1965 by Mohri Ram. The conditions inter alia include that the executant Mohri Ram would use the godown for storing general merchandise goods and apart from that he would not carry out any other business. Condition No. 3 is to the effect that the executant would not further give on rent the said premises or any part thereof in any manner and would not hand over possession of the same in any manner to anyone. Ex.AW-4/1 is the registration of the firm Ram Parkash Ramji Dass which is registered on 11.4.1969. Ex.AW-4/2 contains the names of the partners,

namely, Ramji Dass and Ram Dayal and their date of joining the firm M/s Ram Parkash Ramji Dass in recorded as 1.4.1968. The learned Appellate Authority considered the case as to whether a ground for subletting has been made out so as to entitle the landlord seek the ejectment of the petitioners. It was observed that the Rent Note Ex.AW-1 dated 5.7.1965 showed that the premises had been taken on rent by Mohri Ram in his individual capacity and the same was in possession of the firm Ram Parkash Ramji Dass. In fact, it has been the case of the petitioners that the partnership firm was carrying on business in which Mohri Ram was not a partner. This was held to prove the exclusive possession of the firm in respect of the premises. The parting of possession by Mohri Ram in favour of the partnership firm was thus held to be proved. There being close relationship between the father and his sons, it was held that an inference is liable to be drawn that the parting of possession was for valuable consideration. The reasoning as given in the case of shop No. 24 are the same in respect of the godown No. 59.

15. Therefore, in both the cases the ground of subletting has been held to be rightly proved and the said conclusion having been reached at on appreciation of evidence and material on record would not warrant any interference by this Court in exercise of its re-visional jurisdiction u/s 15(b) of the Act. In *Atma S. Berar Vs. Mukhtiar Singh*, in the context of the provisions of Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 which are para materia to the Act in hand it was held that the revisional Court is not to appreciate or re-appreciate the evidence dictated by its mere inclination to take a different view of the facts and the scope of revisional jurisdiction is confined to testing the legality or propriety of the order under appeal. Therefore, the Appellate Authority on appreciation of evidence and material on record having reached a finding that subletting was made out, no interference is called for as the conclusions reached at are not shown to be in any manner perverse or improper in the circumstances of the case.

16. The question, however, that now requires to be considered is whether on account of the death of Mohri Ram during the pendency of the revision petition, the petitioners had become the direct tenants of the landlord and, therefore, are not liable to be evicted. In this respect the learned senior counsel appearing for the petitioners, as already noticed, has referred to the case of *Ram Sarup v. Lal Chand* (supra) wherein this Court relying on the case of *Gian Devi Anand Vs. Jeevan Kumar and Others*, held that the alleged sub-tenant had become tenant in his own right during the pendency of the proceedings and, therefore, he cannot be held to be a sub-tenant. It was observed that in view of *Gian Devi's* case (supra) a tenancy was heritable and, therefore, the son of the tenant who alleged to be the sub-tenant would become a direct tenant. Otherwise the rule laid down in *Gian Devi's* case (supra), it was observed would become meaningless. This view was reiterated in *Chela Ram v. Parshotam Lal* (supra) in which the judgment in *Ram Sarup v. Lal Chand* (supra) was relied upon.

17. However, in *Ravi Parkash v. Dewan Chand* (supra) referred to by the learned senior counsel appearing for the respondents, this Court held that once a ground of eviction (subletting) becomes available to a landlord then any subsequent act like death of the tenant, unless statute proves otherwise, will not efface the ground of eviction. It is a statutory right of a landlord which would come to an end only in accordance with the provisions of the Act, which in the said case was the East Punjab Urban Rent Restriction Act. In *Naurang Lal v. Suresh Kumar* (1964) 66 P.L.R. 505 the facts were that the tenant had sublet a portion of the building to one party during June, 1957 and then again during January and February 1958 and to another party for a period of about seven months from March to September 1958. The application, for eviction of the tenant had been filed on 14.12.1959. On these facts it was contended that the liability of a tenant to be evicted, because he had sublet the building or a portion of it would arise only if the subletting was still in existence when the application for his eviction was made. Reliance was placed on the provisions of Section 13(2)(ii)(a) of the East Punjab Urban Rent Restriction Act which envisages that the tenant has after the commencement of the said 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 subletting, therefore, it was pointed out related to two periods which had ended before the eviction petition was filed and at the time of filing the petition subletting did not subsist. The matter was referred to a Division Bench of this Court in view of an earlier decision in the case of *Lekh Ram v. F. Chander Bhan Rajinder Parkash* (1962) 64 P.L.R. 197. After considering the matter it was held that a reading of Section 13 of the East Punjab Urban Rent Restriction Act seemed clear that once a tenant without the landlord's written consent sublets any portion of the building let out to him, he is in law liable to be evicted. It was observed by their Lordships that they were not saying, of course, that in such a contingency the tenant may not be able to show that the landlord had in some manner, whether by waiver or otherwise, forfeited his right to evict the tenant. However, the tenant's liability for being evicted arose once the fact of subletting was proved and that there was nothing in the said Act to support the suggestion that subletting must be in subsistence at the time the landlord applies for tenant's eviction. The provisions of the Act in the case in hand are similar to the Punjab Act referred to in *Naurang Lal's* case (supra).

18. In *Imdad Ali v. Keshav Chand and Ors.* (supra) in a case under the M.P. Accommodation Control Act, 1961 ("M.P. Act" for short), the question that was considered was whether the heirs of a tenant can be deprived of the benefits of proviso to Sub-section (3) of Section 12 of the M.P. Act. Section 12 provides for restriction on eviction of tenants and Sub-section (3) thereof envisages that no order for eviction of a tenant shall be made on the ground specified in Clause (a) of Sub-section (I), if the tenant makes payment or deposit as required by Section 13. In the terms of the proviso to Section 12(3) it is provided that no tenant shall be entitled to the benefit under this Sub-section if having obtained such benefit once in respect of any accommodation he again makes a default in

the payment of rent of that accommodation for three consecutive months. The tenant in the said case, namely, Badri Lal had made a default in the payment of arrears of rent. On an eviction petition filed against him by the landlord, he claimed the benefit of the proviso to Section 12(3) of the M.P. Act. In view of the proviso a decree could not be passed against him. Badri Lal thereafter died and his heirs became the tenant of the accommodation in question. They also committed a default in the payment of arrears of rent and the landlord therein sought their eviction. It was contended by the landlord that the benefit of the proviso to Section 12(3) of the M.P. Act conferred a one time benefit on the tenant and was not available once the tenant had already availed of the same. The Hon'ble Supreme Court held that default in payment of rent by a tenant was in respect of any accommodation. The exemption contained in Section 12(3), it was held, is not to be extended to a tenant who becomes a defaulter more than once. It did not matter whether such default is made by the original tenant or by his successor inasmuch as the successor in interest of the original tenant continues to be a tenant within the meaning of the provisions thereof. Besides, by reason of death of the original tenant a new tenancy is not created. A successor-in-interest of a tenant, it was held, holds his tenancy right subject to rights and obligation of his predecessor and he does not and cannot claim a higher right than his predecessor. It was further held that it is now well settled that a person by reason of inheritance or assignment does not derive any better title than his predecessor and thus the right which the original tenant did not possess cannot be passed on to his successor. As such, the rights and obligation which are incurred by the tenant would be inherited by his tenant and infraction that has been committed by the tenant would pass on to the successor-in-interest who cannot claim to be a direct tenant on account of the demise of the tenant and the defect and liability that has been suffered by the tenant cannot be rectified with his death. Besides the observations made in the case of *A.S. Sulochana Vs. C. Dharmalingam*, were noticed as regards the offending subletting must be by the tenant who was himself sought to be evicted and not by his predecessor (deceased father of the tenant). In *A.S. Sulochana's* case (supra) the provisions relating to subletting under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 were considered. The High Court had taken the view that a tenant sought to be evicted on the ground on unlawful subletting under the said Act must himself have been guilty of the contravention and that the alleged contravention by his father when he was a tenant can be of no avail for evicting him. The plea raised by the appellant therein that the tenancy created by the father of the respondent rendered him (tenant) liable to be evicted in the suit was repelled. The said observations of the High Court were upheld and it was held that the tenant therein had not violated the offending provisions relating to subletting the rented premises. It was also held that the respondent therein who had inherited the tenancy was not liable for eviction as the provision relating to subletting were penal provision in the sense that it visits the violator with the punishment of eviction and, therefore, it must be strictly construed. As such the sin under the Rent Act must be the sin of the tenant

sought to be evicted and not that of his father or predecessor in interest. These observations were notice in Imdad Ali's case (supra) and their Lordships observed that they did not subscribe to the general observations made in A.S. Sulochana's case (supra) and to the said extent it cannot be held to have laid down a good law and was overruled accordingly.

The judgments in A.S. Sulochana's case (supra) and Imdad Ali's case (supra) were considered by this Court in Prem Chand (Prem Parkash) Vs. Ashok Kumar and Others, . It was held that on death of a tenant who had sublet the shop the landlord was entitled to evict the legal heirs on the ground of subletting. In view of the judgment in Imdad Ali's case (supra) it was observed that by death of the original tenant a new tenancy was not created and the successor in interest of the tenant continued to hold his tenancy rights subject to the rights and obligations of his predecessors. Accordingly, the various arguments with regard to maintainability of an ejection application on the ground of subletting was observed to be no longer relevant. In Gajanan Dattatraya Vs. Sherbanu Hosang Patel and Others, , it was held that the provisions of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (as applied to Gujarat) indicated that a tenant was disentitled to any protection under the said Act if he was within the mischief of the provisions relating to subletting. The language of the said provisions, it was observed, is that if the tenant had sublet, the protection ceases and it cannot be contended that the subletting must continue on the date of the suit for passing a decree for eviction. The tenant's liability to eviction arises once the fact of unlawful subletting is proved at the date of notice. In Parvinder Singh v. Renu Gautam and Ors. (supra), eviction had been sought on the ground of subletting and the original tenant died. It was observed that the heirs of the original tenants not only inherit the tenancy but also the rights and obligations of the tenancy. Therefore, the ground of subletting having been made out against the petitioners, which entitle the landlords to possession cannot be nullified with the death of the tenant. The petitioners by reasons of death of Mohri Ram not only inherit his rights but also his obligations. In view of the said position the stand taken by the learned senior counsel for the petitioners that with the death of Mohri Ram his LRs have become direct tenants of the landlords in the two cases is not legally sustainable in view of the judgments referred to above. Besides, it may be noticed that the position has to be seen at the time of institution of the suit. In Shakuntala Bai and Others Vs. Narayan Das and Others, in a case seeking eviction on the ground of bona fide requirement of landlord it was held that crucial date for deciding the matter is the date of institution of the proceedings. It was held that by reason of the death of original landlord, the bona fide need would not come to an end. In Kedar Nath Agrawal (Dead) and Another Vs. Dhanraji Devi (Dead) by LRs. and Another, it was held that the basic rule is that the rights of the parties shall be determined on the basis of the date of institution of the suit or proceedings and the suit/action should be tried at all stages on the cause of action as it existed at the commencement of the suit/action. This, however, it was observed, does not mean that event happening

after institution of the suit/proceedings cannot be considered at all and the Court may take into account subsequent events inter alia that the relief claimed originally has by reason of subsequent change of circumstances become inappropriate or it is necessary to take notice of subsequent event to shorten the litigation or it is necessary to do so in order to do complete justice between the parties. However, the basic rule is that the position is to be seen on the date of institution of the suit. In *Sait Nagjee Purushotham and Co. Ltd. Vs. Vimalabai Prabhulal and Others*, , it was observed that it is common experience in our country that specially landlord tenant litigation prolongs for a long period. It is true that neither can the person who has started the litigation sit idle nor can the development of the events be stopped by him. Therefore, the crucial event should be taken as on the date when suit for eviction was filed unless the subsequent event materially changed the ground of relief. Therefore, at the time when the proceedings were initiated the tenant Mohri Ram had committed a default of subletting which entitled the landlord to an order of eviction of the tenants. The death of Mohri Ram in the circumstances would not disentitle the landlord to seek eviction of the petitioners and the default committed by Mohri Ram in subletting the premises cannot be said to be eclipsed so as to make it lose its significance altogether with his demise.

19. In the circumstances, there is no merit in these revision petitions and the same are accordingly dismissed.