
(1988) 12 P&H CK 0077
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 2927 of 1979

Smt. Sita Bai

APPELLANT

Vs

Jagat Singh of Rohtak

RESPONDENT

Date of Decision : 20-12-1988

Acts Referred:

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

Citation : (1988) 12 P&H CK 0077

Hon'ble Judges : Jai Singh Sekhon, J

Bench : Single Bench

Advocate : B.S. Shant, for the Appellant; H.L. Sarin, for the Respondent

Final Decision : Allowed

Judgement

Jai Singh Sekhon, J.—The tenant has directed this civil revision u/s 15(6) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter called the Act), against the order of the Appellate Authority. Rohtak confirming the order of Rent Controller regarding the ejectment of the tenant on the ground of sub-letting the shop in dispute.

2. In brief, the facts are that Kishan Lal was the owner of Shop No. 2, Ward No. 6, Railway Read, Rohtak. He rented out the same to Maharaj Krishan vide rent note, Exhibit A1, dated 10th August, 1963, at the monthly rent of Rs. 35/-. Of course that Kishan Lal expired in the month of January, 1970, leaving behind his widow Basanti Devi and adopted son Jagat Singh. The original tenant Maharaj Krishan also expired in the month of June, 1974, leaving behind his widow Smt. Shivan Wati as his legal-representative. The landlord sought the ejectment of the tenant on the ground of nonpayment of rent since January, 1971, as well as on the ground of sub letting the shop to Sita Ram Respondent No. 2. The tenant resisted this application contending that the shop was taken on rent by Maharaj Krishan and his brother Sita Ram Respondent jointly as both were partners of the firm styled as Maharaj Kishan Sita Ram at a monthly rent of Rs. 25/-. They however tendered the arrear of rent etc. on the first date of hearing It was

further alleged that there was no case of sub-letting of the shop in dispute as Respondent No. 2 along with his brother Maharaj Kishan was co-tenant being partner of the firm. The learned Rent Controller after appraisal of the evidence by both the parties, held that rate of rent to be Rs. 25/- per month and the tender of rent being valid. He, however, ordered the ejectment of the tenant from the shop in dispute on the ground of sub-letting to Respondent No. 2 by holding that the shop was rented out to Maharaj Kishan only in his personal capacity and the act of his widow Smt. Shivan Wati in entering partnership with Sita Ram, Respondent No. 2 for running the business in the shop in dispute had amounted to sub-letting. On appeal by the tenant, the learned Appellate Authority, Rohtak, confirmed the findings of the Bent Controller and dismissed the appeal. Being aggrieved against the order, the tenant has come up in revision petition.

3. I have heard the learned Counsel for the parties, besides persuing the record. No doubt, ordinarily this Court is not expected to interfere with the concurrent finding of fact of the lower Tribunal, as held by the Supreme Court in *Sri. Raja Lakshmi Dyeing Works and Others Vs. Rangaswamy Chettiar*, , but all the same where the lower Tribunal or Authority had drawn a wrong presumption from certain facts, there is no option but to interfere on the revisional side in order to avoid the mis-carriage of justice Under these circumstances, there is no force in the contention of the learned Counsel for the landlord regarding the maintainability of this revision petition.

4. The perusal of rent note, Exhibit A1, executed on the 10th August, 1963 creating a tenancy with effect from the 8th August, 1963 leaves no doubt that Maharaj Kishan had taken the shop on rent in his individual capacity and not on behalf of the firm M/s. Kishan Lal Sita Ram, even though he has described himself as proprietor of M/s. Maharaj Kishan Sita Ram. In the body of the rent note hs has given an undertaking in first person not to sublet the same or transfer the tenancy to any person. Thus, there is no force in the contention of the learned Counsel for the tenant that the shop was taken on rent jointly by Maharaj Kishan and his brother Sita Ram Strange enough, no partnership deed has been brought on the file in order to establish that a partnership firm between Maharaj Kishan and his brother Sita Ram was in existence at that time. On the other hand, Sita Ram while appearing as RW4 had admitted during cross examination that no partnership deed was executed between him and Maharaj Kishan. The matter does not rest here as the receipts Ex. RW4/3 and Ex. RW4/2 regarding the payment of rant for the month of November, 1970 and for the months from August to October 1970, respectively reveal that Maharaj Krishan had paid the rent to the landlord in his individual capacity as there is no mention of the payment of the same on behalf of the partnership-firm. Thus, there is no scope of interfering with the findings of the Appellate Authority in this regard.

5. The question then arises whether the partnership deed Exhibit RW4/1 executed on 17th July, 1974 between Smt. Shivan Wati and aforesaid Sita Ram cannot be looked into being beyond the pleadings in the written statement of the

tenant, in this regard, there is no dispute about the abstract principle of law that the parties cannot be allowed to lead evidence beyond their pleadings. The decision of the Privy Council AIR 1930 57 (Privy Council) can be safely referred to in this regard, but in the present case, in para No. 3(b) of the written statement filed by the tenant, it has specifically been averted that Respondent No. 2 (Sita Ram) along with his brother Maharaj Kishan are tenants of the shop in dispute since the inception of tenancy and after death of Maharaj Krishan. Respondent No. 1 (i.e., the widow of Maharaj Krishan) had become a partner of the firm along with Respondent No. 2. Thus, it can be well said that the case of Respondent Nos. 1 and 2 having become partners of the firm after the death of Maharaj Kishan has been well pleaded in the written statement by the tenant. So the partnership deed, Exhibit PW4/1 was rightly allowed to be adduced in evidence by the Rent Controller despite the above referred objection of the landlord. The perusal of this partnership deed, Exhibit PW4/1 executed on 17th July, 1974 reveals that after the death of Maharaj Kishan on 15th January, 1970, his widow Smt. Sita Bai alias Shivan Wati in the capacity of his sole legal-heir is continuing the business as partner in the said shop since 11th June, 1974. This partnership deed further reveals that Smt. Shivan Wati and Sita Ram partners of the shop would be liable for the profits and loss of partnership business equally. Under these circumstances, the tenant had discharged the onus as to how the aforesaid Sita Ram alongwith Shivan Wati or Sita Bai are in possession of the shop in dispute. If that is so, then it cannot be said by any stretch of imagination that the tenant had Exclusively parted with the possession of the shop in dispute. The findings of the Supreme Court in Niranjana Kumar and Others Vs. Dhyani Singh and Another, , were wrongly relied upon by the Appellate Authority in favour of the landlord, but on the other hand these are helpful to the tenant in the case in hand. In the above referred case the tenant formed a partnership firm with his brother, but later on the tenant came out of the partnership leaving possession of the dispute shop with his brother Under these circumstances, the ejection of the Petitioner was upheld by the Supreme Court, but in the present case the original tenant (Sic) or only his legal heir i.e., his widow continued in possession of the shop along with Sita Ram. Thus, it cannot be said that the tenant had sublet shop in dispute to aforesaid Sita Ram, even though Maharaj Kishan had taken the shop on rent in his individual capacity and not as an agent of firm M/s. Kishan Lal Sita Ram.

6. For the foregoing reasons, the order of the Rent Controller as well as of the Appellate Authority, Rohtak, being not legally sustainable are hereby set aside by accepting this revision petition. The parties are, however, left to bear their own costs throughout in view of the peculiar circumstances of the case.