

Prem Prakash vs Santosh Kumar Jain on 30 August, 2017

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 11106 OF 2017

(Arising out of Special Leave Petition (C) NO. 7149 OF 2015)

Prem Prakash Appellant(s)

Versus

Santosh Kumar Jain & Sons(HUF) and AnotherRespondent(s)

JUDGMENT

R.K. Agrawal, J.

1) Leave granted.

2) This appeal is directed against the final judgment and order dated 07.11.2014 passed by the High Court of Delhi at New Delhi in C.M. (M) No. 478 of 2014 whereby learned single Judge of the High Court allowed the eviction petition filed by the original owner-Respondent No. 1 herein while setting aside Signature Not Verified the judgments and orders dated 08.09.2011 and 24.03.2014 Digitally signed by SONALI SAUND Date: 2017.08.30 passed by the Court of Additional Rent Controller, North Delhi 16:48:29 IST Reason:

And the Rent Control Tribunal, Delhi, respectively.

3) Brief facts: (a) Shri Santosh Kumar Jain- Respondent No. 1 herein filed an application for increase of standard rent and eviction of tenant being Eviction Petition No. 956 of 2007 before the Rent Controller, Delhi under Section 14(1) (a) and (b) of the Delhi Rent Control Act, 1958 (in short 'the DRC Act') on the ground that the premises in question, i.e., Shop No. 16 (Private No.

15), Gali Kunjas, Ward No. IV, Dariba Kalan, Delhi 110 006 has been sub-let, assigned and otherwise parted with possession illegally by the original tenant-the appellant herein to his sub-tenant-Respondent No. 2 herein, who is in the unauthorized occupation of the same and is carrying on his own independent business and also that the original tenant-the appellant herein is in arrears of rent from 01.01.2002.

(b) Learned Additional Rent Controller, North Delhi, vide judgment and order dated 08.09.2011 in E.No. 02/2009 dismissed the claim of eviction while directing the appellant herein to deposit the rent as agreed for preceding 3 (three) years from the date of filing of the eviction petition.

(c) Being aggrieved by the order dated 08.09.2011, Respondent No. 1 went in appeal before the Rent Control Tribunal, Delhi. The Rent Control Tribunal, vide judgment and order dated 24.03.2014 in RCT-203/2013/2011, dismissed the appeal.

(d) The owner-Respondent No. 1 herein, aggrieved by the judgments and orders dated 08.09.2011 and 24.03.2014, filed a petition being C.M. (M) No. 478 of 2014 before the High Court. Learned single Judge of the High Court, vide judgment and order dated 07.11.2014, allowed the petition filed by the owner-Respondent No. 1 herein.

(e) Aggrieved by the judgment and order dated 07.11.2014, the appellant has preferred this appeal by way of special leave before this Court.

4) Heard Mr. Braj K. Mishra, learned counsel for the appellant-tenant and Ms. Bharati Tyagi, learned counsel for Respondent No.2 and Mr. Satish Kumar Jain – the original owner, Respondent No. 1 herein, argued in person.

Point for consideration:

5) The only point for consideration before this Court is whether in the present facts and circumstances of the case the order of eviction passed by the High Court was just and proper?

Rival Submissions:

6) Learned counsel for the appellant-the tenant contended before this Court that Respondent No. 2 herein was looking after the entire small business affairs of the appellant herein and is using and occupying the suit premises in the capacity of an employee. Learned counsel further contended that the appellant herein was paying commission by way of cash/cheque or as per the convenience and outcome of the business to Respondent No. 2 in lieu of his services. It is further contended that Respondent No. 2 herein got the business cards printed for the promotion of the business of the appellant herein. The appellant herein is the lawful tenant and has never parted with the possession or sublet the suit property either to Respondent No. 2 or to any other person and no notice of demand as alleged has been served upon him.

Learned counsel further contended that Respondent No. 2 is only a friend of the appellant herein and for this reason only he was employed and allowed to sit in the suit premises and no business was being carried out in the name of M/s R.R. Jewellers from the suit premises by Respondent No. 2 who is alleged to have changed the firm's name as "M/s Ashima Jewellery" later on. It was further contended that even if the original owner was having knowledge of sub-tenancy of the suit premises in December, 2001, no action was initiated by him to vacate the same from the sub-tenant and hence he failed to prove that Respondent No. 2 is in exclusive possession of the suit premises and the appellant herein has divested himself from the physical and legal possession of the same. Learned counsel for the appellant herein finally contended that the present petition is not maintainable and the High Court has committed a grave illegality in allowing the eviction petition.

7) Shri Santosh Kumar Jain-the original owner, Respondent No. 1 herein argued in-person and submitted that the appellant herein had sub-let, assigned and parted with the possession of the suit premises in favour of Respondent No. 2 herein, who is in illegal and unauthorized possession of the same.

Respondent No. 1 further submitted that though the appellant herein has claimed that the Respondent No. 2 was his employee and was being paid commission for the job booked by him, no document has been produced on record to show that Respondent No. 2 was being paid any salary or commission by the appellant. Respondent No. 1 further stressed upon the point that the sub-tenant has admitted to have fixed a bill board under the name and style of "M/s R.R. Jewellers" in the suit premises. Further, the sub-tenant of the appellant herein got printed visiting cards in his name with the address of the suit premises and the very same fact has been admitted in the statement given by him. Respondent No. 1 further submitted that, undoubtedly, the onus of proving the presence of other person in the suit premises is on the owner and once it is proved, it shifts to the tenant to disapprove the same. Respondent No. 1 finally submitted that High Court was right in allowing the eviction petition while setting aside the judgments and orders passed by the Court of Additional Rent Controller and Rent Control Tribunal holding that the suit premises was sub-let and the appellant herein had parted with the possession and prayed that no interference is sought for by this Court in the case.

Discussion:

8) It would be appropriate to reproduce Section 14 of the DRC Act in order to arrive at a conclusion in the case which is as under:-

"14. (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

(a) that the tenant has neither paid nor tendered the (whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the manner provided in Section 106 of the Transfer of Property Act, 1882.

(b) That the tenant has, on or after the 9th day of June, 1952, sublet, assigned or otherwise parted with the possession of the whole or any part of the premises without obtaining the consent in writing of the landlord;....."

9) Respondent No. 1 herein-the original owner, filed an eviction petition on the ground that the property in question has been sub-let by the original tenant-appellant herein to the sub-tenant i.e., Respondent No. 2. The tenant denied the assertion that the property has been assigned to the sub-tenant stating that Respondent No. 2 is his friend and is an employee who attends his customers in his absence. It was further explained that Respondent No. 2 was working on commission basis in order to send customers to the appellant herein who was having a shop in an interior location from where he does polishing and cleaning work of silver items and for that purpose only he was allowed to sit in the suit premises.

10) During examination, it has been admitted by the owner that the first and only rent was received on 26.02.2002 for the period 01.02.2001 to 31.12.2001 from the tenant. It is evident from the record that a legal notice dated 10.05.2002 was served upon the appellant herein that he is in arrears of rent from 01.01.2002. Though the appellant herein-the original tenant has admitted the relationship of landlord and tenant between the parties but has denied any sub-letting to any other person. The tenant has his small workshop nearby the suit shop where he personally does the work in addition to attending the customers in the premises in question. It is the case of the appellant that Respondent No. 2 looks after the customers of the appellant herein in his absence but the fact of being paid by way of commission or salary has not

been proved as no evidence have been brought to substantiate this claim. It is Respondent No. 2 whose duty is to open and close the shop in his absence and to hand over the keys to the appellant herein who was residing along with his family on the first floor of the aforesaid property at the relevant time.

11) Respondent No. 1-the original owner has placed on record two business cards which do not contain the name of the appellant herein at all, showing the same address as that of the property in question in order to prove that Respondent No. 2 was doing independent business of diamond jewellery, gold and stones. Out of two cards, one card is in the name of Respondent No. 2 with the printing "Ashima Jewellery, Diamond Jewellery, Gold & Stones". Respondent No. 2 has admitted by way of filing an affidavit that he was doing the business of manufacturing of diamond jewellery, silver articles and also silver fancy articles. He has also admitted the printing of the cards placed on record for the purpose of placing orders at the said address. He admitted to have doing business in the name and style of M/s Ashima Jewellery but denied the claim that earlier he was doing the business in the name and style of M/s R.R. Jewellers. It was further admitted that when he started to sit in the suit property, a bill board in the name of M/s R.R. Jewellers was fixed in the suit property in the year 1996.

12) A bare perusal of the visiting card of M/s Ashima Jewellery having the name of Respondent No. 2 clearly proves that the sub-tenant was neither an employee nor was looking after the customers of the appellant herein in his absence but he was carrying on his personal business under such name. There is no point in denying the fact that why a tenant will allow a person, who is working under him, to print visiting cards in his (sub-tenant) name for the property in question.

13) Further, the other visiting card is having the name of "M/s R.R. Jewellers". The alleged sub-tenant has denied the claim in the affidavit filed before the courts below that earlier he was doing the business in the name and style of M/s R.R. Jewellers. The respondent-owner has brought on record the list of subscribers issued by the Delhi Sanchaar Sewa (Pvt.) Ltd. wherein for R.R. Jewellers, the address mentioned is that of the suit property and the phone number is exactly the same as mentioned on the business card of M/s Aashima Jewellery" i.e., '3901361'. Respondent No. 2 has admitted the fact of doing business in the name of M/s Aashima Jewellery" which is also evident from the business card used by him having the address of the suit property and the telephone number '3901361' whereas he denied to have worked under the name and style of M/s R.R. Jewellers but the very fact is falsified by the evidence in the form of subscribers list of Delhi Sanchaar Sewa wherein the same telephone number, i.e., '3901361' has been given. Meaning thereby, Respondent No. 2 was doing business in the suit premises independently of the appellant herein.

14) Undoubtedly, the initial burden to prove that the sub-tenant is in exclusive possession of the property is on the owner, however, the onus to prove the exclusive possession of the sub tenant is that of preponderance of probability only and he has to prove the same prima facie only and if he succeeds then the burden to rebut the same lies on the tenant.

15) In this regard, it is appropriate to quote a decision of this Court in Associated Hotels of India Ltd., Delhi vs. S.B. Sardar Ranjit Singh AIR 1968 SC 933 wherein it was held that when eviction is sought on the ground of sub-letting, the onus to prove sub-letting is on the landlord. If the landlord prima-facie shows that the occupant who was in exclusive possession of the premises let out for valuable consideration, it would then be for the tenant to rebut the evidence.

16) Again, in Kala and Anr. vs. Madho Parshad Vaidya, (1998) 6 SCC 573, this Court reiterated the very same principle. It was observed that the burden of proof of sub-letting is on the landlord but once he establishes parting of possession by the tenant to 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.

17) In *Vaishakhi Ram & Ors. vs. Sanjeev Kumar Bhatiani* (2008) 14 SCC 356, it was held as under:-

“21. It is well settled that the burden of proving sub-letting is on the landlord but if the landlord proves that the sub-tenant is in exclusive possession of the suit premises, then the onus is shifted to the tenant to prove that it was not a case of sub-letting. Reliance can be placed on the decision of this Court in *Joginder Singh Sodhi v. Amar Kaur*.

Therefore, we are in full agreement with the High Court as well as the courts below that since Appellants 2 to 4 had been in exclusive possession of the suit shop and Appellant 1 could not prove that it was not a case of sub-letting, the suit shop had been sub-let by Appellant 1 in favour of Appellants 2 to 4. Therefore, no interference can be made with the findings arrived at by the High Court as well as the courts below on the question of sub-letting.”

18) Sub-tenancy or sub-letting comes into existence when the tenant gives up possession of the tenanted accommodation, wholly or in part, and puts another person in exclusive possession thereof. This arrangement comes about obviously under a mutual agreement or understanding between the tenant and the person to whom the possession is so delivered. In this process, the landlord is kept out of the scene. Rather, the scene is enacted behind the back of the landlord, concealing the overt acts and transferring possession clandestinely to a person who is an utter stranger to the landlord, in the sense that the landlord had not let out the premises to that person nor had he allowed or consented to his entering into possession of that person, instead of the tenant, which ultimately reveals to the landlord that the tenant to whom the property was let out has put some other person in possession of that property. In such a situation, it would be difficult for the landlord to prove, by direct evidence, the contract or agreement or understanding between the tenant and the sub-tenant. It would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property had been sub-let had paid monetary consideration to the tenant. Payment of rent, undoubtedly, is an essential element of lease or sub-lease. It may be paid in cash or in kind or may have been paid or promised to be paid. It may have been paid in lump sum in advance covering the period for which the premises is let out or sub-let or it may have been paid or promised to be paid periodically. Since payment of rent or monetary consideration may have been made secretly, the law does not require such payment to be proved by affirmative evidence and the court is permitted to draw its own inference upon the facts of the case.

19) In the present facts and circumstances of the case, we are of the opinion that the original owner-respondent No. 1 herein has proved beyond doubt that the property is in exclusive possession of the sub-tenant and the appellant herein has not been able to deny the claim of sub-tenancy in favour of Respondent No. 2. The absence of evidence and failure to discharge the onus lay heavy on appellant and there could be no presumption other than that the suit premises had been sublet and parted with possession by the appellant herein to the Respondent No. 2.

Conclusion:-

20) In view of the foregoing discussion, we are of the considered opinion that the High Court was right in setting aside the orders passed by the lower courts. We do not intend to interfere in the order passed by the learned single Judge of the High Court. There is no merit in this appeal and the appeal is, therefore, dismissed with no order as to costs.

.....J.(R.K. AGRAWAL)

.....J. (ASHOK BHUSHAN)

NEW DELHI; AUGUST 30, 2017.