

Smt. Krishnawati

Vs

Shri Hans Raj

Civil Appeal No. 1475 of 1970

(D. G. Palekar, V. R. Krishna Iyer, R. S. Sarkaria JJ)

29.11.1973

JUDGMENT

PALEKAR, J. –

1. This is an appeal by special leave from an order passed by the Single Judge of the High Court of Delhi in second appeal under Section 39 of the Delhi Rent Control Act, No. 59 of 1958.
2. On or about September 10, 1959 the respondent landlord let out the premises in suit to the appellant on a rent of rs. 125 per month. The premises considered of a shop. On September 1, 1962 the respondent applied under Section 14 of the above Act to the Rent Controller, Delhi for evicting the appellant on the ground that she had sub-let the entire premises to one Sohan Singh who, according to the respondent, was running a business under the name of royal Dispensing Chemists and Druggists in the shop. It was further alleged that the appellant was charging a fabulous amount as rent from her sub-tenant Sohan Singh. The appellant in her written statement admitted the tenancy but denied sub-letting. She alleged that Sohan Singh was her husband and from the time of the lease the business of a Chemist was being run there in the premises by her husband and she also occasionally helped him in the running of the business.
3. The Rent Control was of the view that the appellant was the legally wedded wife of Sohan Singh. In any event, he held, Sohan Singh and the appellant were living together as husband and wife and, therefore, there was no question of any sub-letting by the appellant of the premises. That finding was confirmed in appeal by the Rent Control Tribunal, Delhi. Aggrieved by the decision, the respondent went in second appeal to the High Court under Section 39(1) of the Act. It was contended before the High Court by the respondent that two substantial questions of law and fact were involved in the appeal-one relating to the status of the appellant as wife and the other whether on the facts found the ground of subletting had been established. The learned single Judge, agreed that the appeal involved substantial questions of law as submitted, and came to the conclusion that there was sub-letting in favour of Sohan Singh. Accordingly he gave an order for evicting the appellant. So this appeal by special leave.
4. It is contended on behalf of the appellant that the learned Single Judge has interfered with a pure finding of fact. Under Section 39(2) of the Act the High Court could interfere in second appeal only if there was a substantial question of law. In the present case, he submitted there was no question of law, much less substantial question of law and, therefore the High Court was in error in interfering with the concurrent finding of the Rent control authorities. There is great force in this contention.
5. The High Court has dealt with the case as if this is a matrimonial proceeding which the status of

the application as the wife of Sohan Singh was under direct challenge. The simple question which had to be determined in the case was whether having regard to the fact that the appellant and Sohan Singh were living as husband and wife, it was open to draw, in the absence of evidence to the contrary, the factual letting like letting is a particular type of demise of immovable property and is distinct from permissive user like that of a licensee. If two persons live together in a house as husband and wife and one of them who owns the house allows the other to carry on business in a part of it, it will be in the absence of any other evidence, a rash inference to draw that the learned Single Judge has done in the present case. He was of the view that even if it is assumed that the appellant was the wife of Sohan Singh, she, who was entitled to possession of the shop premises as a tenant must be presumed to have sublet the same to Sohan Singh to carry on his business. In support of this conclusion he relied on clause (b) of the provision to sub-section (1) of Section 14 of the Act read with sub-section 4 of that Section. The provisions are as follows :

"14. (1) 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).....##

(b) that the tenant has, on or after the 9th day of June, 1952 sub-let 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."

Sub-section (4) of Section 14 is as follows :

" (4) for the purposes of clause (b) of the proviso to sub-section (1) any premises which have been let for being used for the purposes of business or profession shall be deemed to have been sub-let by the tenant if the Controller is satisfied that the tenant without obtaining the consent in writing of the landlord has, after the 16th day of August, 1958 allowed any person to occupy the whole or any part of the premises ostensibly on the ground that such person is a partner of the tenant in the business or profession but really for the purpose of the sub-letting such premises to that person."

Under sub-section (4) referred to above the premises could be deemed to have been sub-let by the tenant only when the Controller is satisfied that some person is let into possession ostensibly as a partner in business but really for the purposes of sub-letting. These provisions evidently have no application to the facts of the present case. It is not the case of anybody that the appellant was the owner of the business carried on the premises and she had let in Sohan Singh into possession ostensibly as a partner in their business. The learned Judge was, therefore in error in relying on the provision of the Act for presuming that the appellant must have sub-let the premises.

6. The case of the respondent in his application under Section 14 of the Act was that the appellant had sub-let the whole premises to Sohan Singh who was running the business under the name of Royal Dispensing Chemists and Druggists and that the entire premises have been sub-let by the appellant and the appellant had completely parted with possession without the written consent of the respondent. It was also alleged that the appellant was charging fabulous amount of rent from the sub-tenant Sohan Singh. Sub-letting was, therefore, the principal ground on which eviction was sought. When eviction is sought on the ground it is now settled law that the onus to prove sub-letting is on the landlord. If the landlord prima facie shows that the occupant who was in in

exclusive possession of the premises let out for valuable consideration, it would then be of the tenant to rebut the evidence See : Associated Hotels of India Ltd., Delhi V. S. B. Sardar Ranjit Singh. In the present case the respondent produced on evidence to show such sub-letting in spite of the appellant's denial in the written statement of any sub-letting. It was averred by her therein that Sohan Singh was her husband and that right from the taking of the shop premises on rent. Sohan Singh was carrying on business of a Chemist therein and appellant also helped him occasionally as his wife. The averment that she was the wife of Sohan Singh provided the necessary ammunition for a formidable battle in which the respondent took upon himself to show that she was not the legally married wife of Sohan Singh. He called Sohan Singh's first wife as his first witness in this case but all that the lady was able to say was that she had no knowledge if the appellant if the appellant was married to Sohan Singh but she knew that he lived with the appellant was married since about six years before her deposition, recorded in 1963. The respondent himself in his testimony admitted that he had never himself made any enquiry as to whether Sohan Singh and the appellant since about six years before her deposition recorded in 1963. The respondent himself in his testimony admitted that he had never himself made any enquiry as to whether Sohan Singh and the appellant are husband and wife or not. Nor could he deny that they were living together. His reasons for saying that Sohan Singh was a sub-tenant were in his own words : "As Sohan Singh is the tenant I can therefore say that the capital invested in the shop might be that of Sohan Singh. Neither any talks regarding sub-letting took place in my presence, nor the rent was paid in my presence". In undertaking to prove that the appellant was not in my presence". In undertaking to prove that the appellant was not Sohan Singh's wife the respondent completely lost sight of his own weak position. The appellant had passed that in that rent note the respondent had in his own handwriting written that the appellant was the wife of Sohan Singh. The appellant summoned him to produce his rent note but the respondent did not produce it. So in his cross-examination he was shown a typed copy of it and this he accepted as a true copy. The true copy disclosed that the appellant was accepted as the wife of Sohan Singh. Besides, when the appellant and Sohan Singh gave evidence of the fact that they were living as husband and wife and looking after the business in the shop there was hardly any cross-examination on the point. The respondent relied principally on some previous self-serving statements made by Sohan Singh in other proceedings which could not be used as substantive evidence in the present case. The evidence was clear namely, that to the knowledge of the respondent the appellant and Sohan Singh were living as husband and wife and from the day the rent note was passed by the appellant in 1959 a Chemist shop was opened in the premises which was run principally is whether that evidence gives rise to the factual inference that the appellant had sub-let the premises to Sohan Singh. The First two held that the High Court in second appeal should not have interfered with that findings especially when section 39(2) of the Act provides that no appeal shall lie to the High Court unless the appeal involved some substantial question of law.

7. The learned Single Judge thought that two substantial questions of law were involved—one relating to the status of the appellant as the alleged wife of Sohan Singh and the second whether on the facts found, sub-letting was established. Both these questions involved, according to the learned Judge, substantial questions of mixed fact and law.

8. As to the first question whether the appellant was legally married that was a question on which no finding was necessary in an eviction suit. It was sufficient for the Rent Court to proceed on the finding that the appellant and Sohan Singh were living as husband and wife, whether they were legally married or not. This was specifically pointed out by the Additional Rent Controller in his judgment. As regards the second question, one does not see how it is a mixed question of law and fact. In the determination of a question of fact no application of any principle of law is required in finding either the basic facts or arriving at the ultimate conclusion, in a mixed question of law and

fact the ultimate conclusion; has to be drawn by applying principles of law to basic findings. See : Meenakshi Mills Madurai v. The commissioner of Income-tax, Madras. The basic facts in the present case were (1) the appellant and Sohan Singh were living as husband and wife to the knowledge of the respondent; (2) the appellant took the lease of the shop premises from the respondent in 1959; (3) from the time of the letting a Chemist's business was carried on in the shop by Sohan Singh with the occasional help of the appellant. The question to be determined was whether in the above circumstances it was likely that the appellant had sub-let the premises to Sohan Singh. The negative answer given to it by the Rent Courts is merely the factual common sense, inference which did not call for the application of any principle of law. In our view no question of law-much less a substantial question of law-was involved in the second appeal and the learned judge was in error in disturbing the concurrent finding of fact of the rent control authorities.

9. The appeal is, therefore, allowed the order passed by the High Court is set aside and that of the Rent Control Authorities is restored with costs throughout.

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