Niranjan Kumar and Others

Vs

Dhyan Singh and Another

Civil Appeal No. 880 of 1975

(Y.V. Chandrachud, A.C. Gupta JJ)

16.08.1976

JUDGMENT

CHANDRACHUD, J. -

1. On January 30, 1963 respondent 1 gave a shop on rent to respondent 2, Sat Parkash, for a period of eleven months commencing on February 1, 1963. The rent note executed by respondent 2 in favour of respondent 1 read as follows :

> I, Sat Parkash son of Amritsaria Mal Aggarwal of Samrala, am the tenant. Whereas a shop known as Karkhana Pucca bounded as follows ... and situated as Samrala is owned by Shri Dhian Singh. ... Now, therefore, I have taken the said shop for a period of 11 months from 1-2-1963 to 31-12-1963 at a rent of Rs. 500 per annum. The agreement is that rent for a year has been paid in advance against a receipt. I shall not let it out further to anybody and if I do, I shall be liable to ejectment. If the owner needs (the shop) for himself any time, I shall vacate (it) on a six months' notice without demur. Hence I have executed this rent note on the 30th of January, 1963.
>
> # Sd. Sat Parkash Tenant.##

A partnership firm called M/s. Sat Parkash Single and Brothers of which respondents 2 and three of his brothers were partners occupied the shop, evidently on the authority of the rent note, and continued its business in the shop even after the expiry of the period of the rent note. On March 31, 1968 respondent 2 retired from the firm under a deed of dissolution and two other brothers of his joined the reconstituted partnership. This firm also did its business in the same premises.

2. In 1969 respondent 1 filed an application under Section 13 of the East Punjab Urban Rent Restriction Act, III of 1949, for possession of the shop from respondent 2 and the partners of the firm who are appellants before us on the ground, in so far as relevant, that respondent 2 who, under the rent note, was the tenant of the shop in his personal capacity had unlawfully sublet the shop to the firm.

3. That application was contested by the appellants on the ground, mainly, that the shop was taken on rent by respondent 2 not in his personal capacity but in his capacity as a partner of the firm of M/s. Sat Parkash Single and Brothers and that therefore there was no subletting in favour of the firm on its partners. The Rent Controller, Samrala, accepted this contention and dismissed the application. In appeal the learned District Judge, Ludhiana, reversed the aforesaid finding and held

that the shop was let out to respondent 2 in his personal capacity and that after his retirement from the firm, the partners were in possession of the shop as his sub-tenants. Consistently with this finding, the learned District Judge allowed the application and passed an order of eviction against the appellants.

4. The appellants then filed a revision petition under Section 15(5) of the East Punjab Rent Act in the High Court of Punjab and Haryana, Chandigarh. That revision petition was dismissed by a learned Single Judge of the High Court who concurred in the finding recorded by the District Court on the question of subletting. The High Court held that the rent note was "a clincher" in favour of respondent 1, that respondent 2 was the sole tenant under that rent note, that on and after the retirement of respondent 2 from the partnership firm the shop must be deemed to have continued in the possession of the surviving partners and the others who joined the firm as sub-tenants of respondent 2 and that therefore respondent 1 was entitled to a decree for eviction of the appellants. This appeal by special leave is directed against the judgment of the High Court.

5. Both the District Court and the High Court have taken the view that in view of the clear terms of the rent note executed by respondent 2 in favour of respondent 1, appellants could not be allowed to lead evidence to prove that the real tenant was different from the ostensible tenant. So stated, the proposition is open to exception and Mr. Garg, who appears on behalf of the appellants, is right in his contention that the proposition is stated too widely.

6. Section 91 of the Evidence Act Provides, to the extent material, that when the terms of the contract or of a grant have been reduced to the form of a document, no evidence shall be given shall be given in proof of the terms of such contract or grant except the document itself or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions of the Evidence Act. By Section 92 of the Act, when the terms of any such contract or grant have been proved according to Section 91 either by the production of the document itself or by adducing secondary evidence if it be admissible, no evidence of any oral agreement shall be admitted as between the parties to the instrument or their representatives in interest for the purpose of contradicting, varying, adding to or subtracting from its terms. The High Court has not in its judgment referred to these provisions of the Evidence Act but its view that oral evidence was not admissible to prove that the real tenant was other than the ostensible tenant would appear to be based on those provisions. But, under proviso (4) to Section 92, the existence of any distinct subsequent oral agreement to modify any such contract or grant may be proved except when the contract or the grant is by law required to be in writing or has been registered according to the law in force relating to the registration of documents. In view of this provision it was open to the appellants to lead evidence to show that there was, apart from the rent note, a distinct subsequent oral agreement under which the terms of the original contract or grant were modified and that the partners of the firm, both before and after its recomposition, were the real tenants of the shop.

7. In fact, both parties led a fair amount of evidence before the Rent Controller on the point whether the real tenant was respondent 2, Sat Parkash, or whether he had acted as an agent on behalf of the firm of which he was a partner. That evidence was rightly admitted for, as observed in Woodfall's Landlord and Tenant (27th Ed., Vol. 1, p. 130, paragraph 312), the description of a person in the lease as "lessee" or "tenant" does not necessarily negative agency, and evidence may be given that the person so described was acting as an agent. This, of course, would be subject to the provisions of the Evidence Act.

8. Since all the evidence that the parties wanted to lead before the Rent Controller was permitted to

be led but as the High Court has not looked at that evidence, we invited learned Counsel for the parties to take us through the evidence. Having considered that evidence, we find it difficult to accept the appellants' case that respondent 2 had taken the premises from respondent 1 on behalf of the partnership firm and not in his personal capacity. Respondent 2, Sat Parkash, who is a party to the rent note and who negotiated with the lessor, respondent 1, was an important witness but he was not examined in the case. Sat Parkash retired from the firm on March 31, 1968 under a deed of dissolution but that document was not produced by the appellants, some of whom were existing partners of the firm and some of whom joined the partnership on the retirement of Sat Parkash. The deed of dissolution might have shown how the assets were divided and whether the tenancy rights of the shop were treated as belonging to the firm. The account books of the firm were produced but the case-book entry which was made in the firm's books in 1963 when the shop was taken on rent was not produced. Respondent 1 received a us, of Rs. 500 by way of advance rent contemporaneously with the letting out of the shop but that receipt was also not produced. Besides, there is positive evidence on the record, which we see no reason to doubt, that the shop was taken on rent by respondent 2 in his personal capacity and that he did not act as an agent of the firm in that transaction.

9. Even assuming for the purposes of argument that respondent 2 acted as an agent of the firm which was in existence in 1963 it would, in any event, be impossible to hold that the new firm which was constituted on the retirement of respondent 2 in March, 1968 also became an tenant of respondent 1. No notice of dissolution was given to respondent 1 and one cannot impose a totally new contract on him as between himself and the partnership which was formed on the retirement of respondent 2.

10. For these reasons, we confirm the judgment of the High Court and dismiss the appeal, with costs in favour of respondent 1.

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