

Raunak Ram

Vs

Pishori Singh

Civil Appeal No. 1096 of 1990

(K. Jagannatha Shetty, Kuldip Singh JJ)

07.02.1990

ORDER

1. Special leave is granted.
2. The appellant-tenant was ordered to be evicted for sub-letting the premises. Ex. A-1 is the lease deed dated April 16, 1968 by which the premises was taken on rent. The case of the landlord was that the tenancy was in favour of Mahesh Kumar as a proprietor of "M/s Jainco Motors" and he has sub-let the premises to others. The tenant contended to the contrary. He pleaded that the tenancy was in favour of the partnership firm M/s Jainco Motors of which he was one of the partners and the firm continues even though he has retired from the partnership.
3. The Rent Controller found that there was no sub-letting as the original tenancy was in favour of M/s Jainco Motors which was partnership firm of brothers. It was also held that the rent was paid by or on behalf of the firm and it was accordingly accepted by the landlord.
4. The appellate authority, however, accepted the case of sub-letting although the original tenancy was found to be in favour of the firm M/s Jainco Motors. On the recitals of Ex. A-1 the appellate authority held :

".... that Mahesh Kumar had only acted as an agent of the firm M/s Jainco Motors Ambala Cantt. The fact that he had undertaken certain personal liabilities under the rent note would not deviate from the essential nature of the tenancy which was created in favour of M/s Jainco Motors.

The conclusion drawn by me above is supported by the fact that the cheques for payment of rent were issued by the firm M/s Jainco Motors and had been signed by Mahesh Kumar as a partner of the firm. No doubt, it was urged before me by Shri Bakhat Singh, that respondent 1 Ex. A-1 described himself to be a proprietor and not a partner of the firm. He urged that a single man could not constitute a firm. I have earlier noticed that it is a bad draft and has that the rent was paid by the firm M/s Jainco Motors, and was accepted by the petitioner/appellant, clearly indicated that the intention was to create a tenancy in favour of the firm and not in favour of the individual."

5. The High Court while dismissing the revision petition of the tenant has disagreed with the above finding.

6. We gave our anxious consideration to the case. Ex. A-1 contains recitals to indicate that the tenancy created thereunder was not personally to Mahesh Kumar but in favour of the firm M/s Jainco Motors of which Mahesh Kumar was one of the partners. Subsequent conduct of parties regarding payment of rent and acceptance of the same by the landlord for a number of years would confirm this conclusion. The rent was paid on behalf of the firm. The High Court was clearly in error in holding to the contrary. In 1977 Mahesh Kumar retired from the partnership but the other partners are continuing the business. It is indeed, a family concern with father and sons and finding on sub-letting the premises appears to be wholly misconceived.

7. In the result, we allow the appeal. In reversal of the judgment of the High Court and the appellate authority, we restore the order of the trial court. In the circumstances of the case we make no order as to costs.

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