

Malwa Bus Service Pvt. Ltd.

Vs

Mohinder Kaur

Civil Appeal No. 3191 of 1985

(M. M. Punchi, S. P. Bharucha JJ)

08.04.1993

ORDER

1. This is an appeal against the judgment and order of the Punjab and Haryana High Court passed in Civil Revision No. 1965 of 1984.

2. Eighty marlas, which is half an acre, of vacant land was rented out by Mohinder Kaur-respondent to the Malwa Bus Service Private Ltd., a transport company, the appellant herein. On July 27, 1979 an eviction petition was moved by the landlord-respondent against the tenant-appellant and one Amar Singh, who is not a party herein, but was a party in the courts below, on the allegations that a portion of the rented land had been sublet by the tenant in favour of Amar Singh, described as the sub-tenant. The other ground of eviction was bona fide requirement for personal use and occupation. The Rent Controller as well as the Appellate Authority held both grounds to be unsubstantiated which led the landlord to move the High Court in revision. The High Court allowed the eviction petition on the ground of sub-letting and this is how the case is before us.

3. The High Court allowed the eviction petition on such ground after granting permission to the landlord to introduce additional evidence. It is on the basis of additional evidence alone that the eviction order was passed. The additional evidence is a certified copy of the statement of Amar Singh sub-tenant dated April 15, 1977 more than two years prior to the institution of the eviction petition) in a different suit in which the tenant-appellant herein was not a party. Being not a party, the appellant obviously had no opportunity to have that statement tested in cross-examination. In that statement the sub-tenant appears to have admitted that he had got the site in his possession from the Malwa Bus Service Pvt. Ltd., the appellant herein, Beyond that there is nothing more. Relief to the landlord on such statement of the sub-tenant (who is not a party to the instant proceedings) was granted against both the tenant as also the sub-tenant. Now here lies the error. The High Court was perfectly justified in using that statement against sub-tenant. But it is difficult to conceive that the said statement could be used against the tenant too. It is true that the sub-tenant, as also the tenant, had denied the existence of the sub-tenancy and the sub-tenant stands falsified on account of his earlier statement if his earlier statement is trustworthy. Be that as it may, the High Court in the facts and circumstances obviously was in error in ordering eviction of the appellant herein on the basis of the said statement of Amar Singh sub-tenant. We have thus no option but to allow the appeal and set aside the order of eviction. Accordingly we do so.

4. After having set aside the order it remains to be seen whether the High Court could still go into the question of sub-letting because the other ground of personal necessity, the High Court thought was not necessary to be considered for the view it was taking. On the evicting ground of personal necessity, the matter has to be remanded back to the High Court. When we are remitting the matter

back to the High Court, we do not see any reason why the ground of sub-letting be buried for there may yet be material on the record which may justify the finding of sub-letting, which material the High Court has not adverted to. The High Court shall now be free to consider the matter afresh on the plea of sub-letting also. So there is a total remand for a fresh hearing of the matter on all aspects, subject to the observations aforemade.

5. For the above reasons, this appeal is allowed, the judgment and order of the High Court is set aside and the matter is remitted back to the High Court for disposal. We request the High Court to dispose of the matter preferably within four months as this matter is very old and should reach a finale. In these circumstances, we make no order as to costs.

</html