

Kala and Another

Vs

Madho Parshad Vaidya

Civil Appeal No. 997 of 1997

(Dr. A. S. Anand, D. P. Wadhwa JJ)

27.08.1998

ORDER

1. This is a tenant's appeal by special leave. The respondent-landlord filed an eviction petition against the appellants under Section 14 of the a Himachal Pradesh Urban Rent Control Act, 1987 (hereinafter "the Act") seeking eviction of the tenant from a shop situate in Moti Bazar, Muhalla Suhra, Mandi Town, H.P. According to the allegations made in the eviction petition, the demised premises had been let out to Shri Hira Lal Sehgal, husband of Appellant 1. Shri Hira Lal Sehgal died on 23-2-1983 and Appellant 1 became the statutory tenant of the premises on his death. It was alleged that Appellant 1 thereafter sub-let the premises to Appellant 2, Ravinder Kapur and that in the demised premises, business was being run by Appellant 2 though for "the advantage of both the appellants". The appellants filed a joint reply to the eviction petition and denied sub-letting. It was maintained that Appellant 2 who is the son of the sister of late Hira Lal Sehgal had been brought up by late Hira Lal Sehgal and that Appellant 2 was helping late Hira Lal Sehgal in running his business at the demised shop till his death in 1983 and that after his death, Appellant 2 was helping Appellant 1 and managing her business "for and on her behalf". The trial court after framing issues and recording evidence of the parties vide judgment and order dated 20-3-1986 dismissed the eviction petition and held that the landlord had failed to prove that Appellant 1 had at any stage parted with the possession of the disputed premises after the death of her husband or that she had sub-let the same to Appellant 2. It was found, as a fact, that Appellant 2 was working in his capacity as a Manager for rendering assistance to run the business to Appellant 1. Aggrieved by the order of the trial court, the landlord-respondent filed an appeal before the appellate authority under the Act.

2. On 18-1-1989, the appeal was accepted and the order of the Rent Controller was set aside. Ejectment of the appellants was ordered. The order of the appellate authority was challenged by the appellants through a civil revision petition in the High Court of Himachal Pradesh. A learned Single Judge of the High Court on 19-9-1996, dismissed the revision petition thereby confirming the order of the appellate authority. Hence this appeal by special leave.

3. We have heard learned counsel for the parties and perused the record.

4. For what follows, the appellate authority committed an error not only in the appreciation of evidence but also by misreading the evidence and assuming the existence of certain facts which were neither alleged nor proved. The High Court also fell into a similar error.

5. Section 14(2)(ii) of the Act provides that a landlord may evict his tenant by applying to the Controller, where the tenant has, after the commencement of the Act, without the written consent of the landlord transferred his rights under the lease or sub-let the entire building or rented land or any

portion thereof.

6. In the petition filed under Section 14 of the Act by the respondent-landlord it was, inter alia, stated in para 16 that :

"The whole of the premises have been sub-letted to Respondent 2 without the written consent of the petitioner, who is now running the a business to the advantage of both the respondents after 23-2-1983."

In para 17 it was stated :

"As Respondent 1 who is a tenant in the premises, has sub-let the entire building to Respondent 2 after the death of her husband on 23-2-1983, therefore both are liable to be ejected from the premises. Notice was also issued to Respondent 1 on 18-11-1983, but she kept mum after its receipt which clearly indicates that the claim of the petitioner is bona fide and based upon true allegation."

7. The appellants in their written statement replied para 16 thus :

"Para 16 is denied. The father of Respondent 2 died when he was 2 years of age. Respondent 2 is the son of the sister of late Hira Lal Sehgal, who has been maintained and brought up by late Hira Lal Sehgal and had been assisting earlier Shri Hira Lal Sehgal and after his (death), Respondent 1, who being a widow is not able to handle the business and as such is helped and assisted by Respondent 2 in her exclusive business which she has inherited from her husband. It is absolutely wrong and denied that the premises have been sub-letted as alleged, the legal possession remains with Respondent 1. Respondent 2 is managing the business for and on behalf of Respondent 1 who is the proprietor of the business and is admittedly the tenant of the premises."

8. The contents of para 17 were also denied in view of what was stated in response to para 16.

9. The landlord-respondent appeared as his own witness as PW 2. In the examination-in-chief, he remained completely silent about his allegation of Appellant 1 having sub-let the premises to Appellant 2 or having parted with the possession of the premises or any portion thereof in favour of Appellant 2. The only reference made in the examination-in-chief in that regard is to the effect that :

"On 23rd February, 1983, Shri Hira Lal died. After that, his wife had without my consent made Ravinder Kapur sit in the said shop."

In his cross-examination, the landlord-respondent admitted :

"It do not know whether the possession of the shop is with Kala and Respondent 2 is working as a helper."

10. He further admitted that he had not found out as to for whose benefit the business was. The landlord-respondent also examined Shri B. C. Gupta, the Shop Inspector as PW 4. The Shop Inspector produced the summoned record and on the basis thereof deposed that Ravinder Kapur (Appellant 2) was the Manager of the shop and that his name appeared in their records only as the Manager of the shop. Thus, neither the landlord nor PW 4 supported the case of sub-letting in the

evidence. PW 4 had categorically deposed, appearing as a witness of the landlord, that Appellant 2 was working as a Manager at the shop and even the landlord did not say anything to the contrary during his deposition.

11. Smt. Kala Devi, Appellant 1 appeared as her own witness. In her examination-in-chief she stated :

"Ravinder is working in this shop for the last 20-22 years. First he a was helping his maternal uncle who is my husband. After his death he is helping me. I am the tenant of the shop. The keys of the shop are kept by me, the same are handed over by me in the morning for opening the shop. The business of this shop is mine. My shop, house and orchard work is being looked after by Ravinder Kumar.

12. The above statement was not at all questioned in the cross-examination. It has remained unrebutted. During the cross-examination, Appellant 1 stated that monthly payments towards expenses were made to Ravinder by her by way of salary. She reiterated during the cross-examination, "I am not looking after the business. I am a tenant of the shop."

13. Appellant 2 appeared as RW 2 before the trial court. In his examination-in-chief he, inter alia, asserted that Appellant 1 is the tenant and that the business is also hers and that he was not paying any rent to her and was only assisting her in her business. During the cross-examination, he replied :

"In the disputed shop, I have no ownership nor have any type of tenancy rights nor have any rights of any type. It is correct that when Hira Lal Sehgal was alive, he was having the agency for the sale of cigarettes and bidis. I was helping him and he was paying the expenses to me It is incorrect that after the death of Hira Lal, his wife is giving the profit of the shop but is only paying expenses etc. It is incorrect that I am receiving share as per the profit of the shop. It is incorrect that I am her partner."

14. From the aforesaid resume of evidence, it is clearly established that Appellant 2, who had been assisting his maternal uncle earlier was assisting Appellant 1 after the death of his maternal uncle in 1983. The positive evidence of Appellant 1 and Appellant 2 to the effect that Appellant 1 has continued to be the tenant of the shop; that she had not parted with the possession of the shop at all and that Respondent 2 was only assisting her to manage her business, not only of the shop but also her house and orchard has remained unrebutted and unchallenged. That apart, the evidence of Smt. Kala Devi, Appellant 1 to the effect that the keys of the shop were kept by her and the same used to be handed over by her to Appellant 2 in the morning for opening the shop further clinches the issue and establishes that Appellant 2 was only working in the shop as a Manager and that the property had not been sub-let to him nor had he acquired exclusive possession of the shop.

15. The evidence led by the respondent-landlord is not only vague, inconclusive but is also unsatisfactory. The respondent-landlord did not even allege in his evidence that Appellant 1 had sub-let the premises in favour of Appellant 2. The learned Rent Controller had thus rightly come to the conclusion that Appellant 1 had not parted with the possession of the demised premises after the death of her husband and that she had not sub-let the same to Appellant 2. The findings recorded by the learned Rent Controller were based on a proper and correct appreciation of evidence and a other material on the record.

16. The findings recorded by the appellate authority to the effect that because of the change of the

nature of business from selling of cigarettes and bidis during the lifetime of Shri Hira Lal Sehgal to the selling of sanitary ware in the demised premises, it demonstrated that Appellant 1 had parted with the possession of the shop in favour of Appellant 2 is wholly conjectural and irrational. A grave error was, therefore, committed by the appellate authority in coming to the conclusion of sub-letting in total disregard of the evidence on the record. The appellate authority as well as the High Court drew up a rather rash inference from the change of business, which was wholly uncalled for. The onus to prove sub-letting is on the I landlord and if he establishes parting of with the possession in favour of a third party, the onus would shift to the tenant to explain. In the instant case, however, the landlord did not discharge the initial onus and although it was not required, yet, the tenant explained how Appellant 2 had the permissive possession of the shop as its Manager. On the established facts and circumstances of the case, the plea of sub-letting was not established.

17. The appellate authority committed an error and what the High Court did was to perpetuate the same without proper application of mind. It goes without saying that to perpetuate an error is no virtue but to rectify it is the call of judicial conscience. The High Court failed to correct the obvious error committed by the appellate authority.

18. The orders of the High Court and the appellate authority, not being based on correct appreciation of evidence on the record, cannot be sustained. We, therefore, set aside the orders of the High Court and the appellate authority and restore that of the learned Rent Controller. The appeal is consequently allowed with costs.