Kailash Chander

v.

Om Prakash & Another

(Supreme Court Of India)

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

C.A.No. 6400 of 2000 | 17-07-2003

1. The unsuccessful landlord before the High Court is before us in this appeal. The appellant filed a petition seeking eviction of Respondents 1 and 2 on the ground of subletting. Respondent 1 is the father of Respondent 2. The Rent Controller, after considering the evidence placed on record in the light of the pleadings of the parties, allowed the petition and directed eviction of Respondents 1 and 2 from the premises in question. The respondents took up the matter in appeal. The Appellate Authority by a detailed and well considered order, dismissed the appeal concurring with the findings recorded by the Rent Controller. Aggrieved by and not satisfied with the order of the Appellate Authority, the respondents filed revision petition before the High Court. The High Court allowed the revision petition reversing the concurrent findings recorded by the Rent Controller as well as by the Appellate Authority. Hence this appeal by the landlord.

2. It was contended on behalf of the appellant that the High Court committed a serious error in upsetting the concurrent findings of fact recorded by the Rent Controller and the first appellate authority in exercise of its revisional jurisdiction under S.15(6) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short "the Act"). It was further contended that on the facts found and established in the case the High Court was not justified in interfering with the order of eviction made. The learned counsel for the appellant also submitted that the High Court having found that the findings of fact recorded by the Rent Controller as affirmed by the Appellate Authority were correct, but still interfered on the ground that the appellant did not establish exclusive possession of Respondent 2 on the part of the premises and there was no proof of subletting by Respondent 1 in favour of Respondent 2.

3. Per contra, learned counsel for the respondents made submissions supporting the impugned order. The learned counsel submitted that it was incumbent upon the appellant to establish that Respondent 2 was in the exclusive possession of the portion of the premises and that Respondent 1 was receiving any consideration for parting with the part of the premises. When the appellant failed to establish these essential requirements of subletting, the High Court was right and justified in interfering with the order of eviction made against the respondents.

4. The facts found are: Respondent 2 is the son of Respondent 1. In the premises in question there has been a partition by wooden frame/plank. Respondent 2 has been using the rear portion to carry on his activities as UTI agent and Respondent 1 was carrying on cloth business in the front portion of the premises. Respondent 2 has nothing to do with the cloth business in any capacity whatsoever. The respondents did not explain the nature of the possession of Respondent 2 in the premises in their written statement but denied his possession. During the trial, the possession of Respondent 2 was sought to be justified stating that Respondent 1 did not part with the possession of any portion of the premises so as to place Respondent 2 in exclusive possession and that Respondent 2 was in permissive possession of the premises in question having close relation with Respondent 1. The Rent Controller, as already noticed above, on appreciation of the evidence held that Respondent 1 had sublet the portion of the premises to Respondent 2. The Appellate Authority affirmed the same. These findings recorded are based on the evidence. It is not possible to say that these findings recorded by the Rent Controller and affirmed by the Appellate Authority, are either perverse or not based on evidence. The High Court was exercising its revisional jurisdiction under S.15(6) of the Act. As to the scope of exercise of that power it is explained in the judgment of this Court in Lachhman Dass v. Santokh Singh (1995 (4) SCC 201). In paragraph 7 of the said judgment it is stated thus:

"7. The first question that arises for our consideration is whether the learned Single Judge of the High Court was justified in reassessing the value of the evidence and substitute his own conclusions in respect of the concurrent findings of fact recorded by the two courts below, in exercise of his revisional powers vested in the High Court under S.15(6) of the Act. In the present case as discussed earlier the Rent Controller passed the order of eviction against the respondent on the ground mentioned under S.13 of the Act against which the respondent preferred an appeal under sub-s.(2) of S.15 of the Act and the Appellate Authority affirmed the order of eviction passed by the Rent Controller. Here it may be noted that the Act does not provide a second appeal against the order passed in appeal by the Appellate Authority under sub-s.(2) of S.15. The Act, however, under sub-s.(6) of S.15 makes a provision for revision to the High Court against any order passed or proceedings taken under the Act. Thus, the legislature has provided for a single appeal against the order passed by the Rent Controlling Authority and no further appeal has been provided under the Act. The legislature has, however, made a provision for discretionary remedy of revision which is indicative of the fact that the legislature has created two jurisdictions different from each other in scope and content in the form of an appeal and revision. That being so the two jurisdictions -- one under an appeal and the other under revision cannot be said to be one and the same but distinct and different in the ambit and scope. Precisely stated, an appeal is a continuation of a suit or proceedings wherein the entire proceedings are again left open for consideration by the Appellate Authority which has the power to review the entire evidence subject, of course, to the prescribed statutory limitations. But in the case of revision whatever powers the revisional authority may have, it has no power to reassess and reappreciate the mevidence unless the statute expressly confers on it that power. That limitation is implicit in the concept of revision. In this view of the matter we are supported by a decision of this Court in State of Kerala v. K.M. Charia Abdulla and Co. (AIR 1965 SC 1585)"

5. This Court proceeded to say further that unless the High Court comes to the conclusion that the concurrent findings recorded by the two courts below are wholly perverse and erroneous, which manifestly appear to be unjust, there should be no interference. In the case on hand also the two courts below have appreciated evidence placed on record and on a proper appreciation concluded that the case of subletting, as pleaded by the appellant, is proved. In our view, the High Court was not justified in interfering with such concurrent finding. It is not shown on behalf of the respondents herein that the findings recorded by the two courts below were either perverse or not based on evidence. We must also keep in mind that when the appellant established the fact that Respondent 2 was carrying on his activities as UTI agent in the part of the premises exclusively by him, it was for the respondent to establish that his possession on that premises was not as a sub tenant. Merely because Respondent 1 is the father of Respondent 2 there cannot be any justification to say that it was not a case of subletting.

6. Under these circumstances, we find justification to upset the impugned order. In this view, the appeal is entitled to succeed. Accordingly the appeal is allowed, the impugned order of the High Court is set aside and the order of the first appellate authority affirming the order of the Rent Controller is restored. No costs.

7. At this stage, the learned counsel for the respondents prayed that some reasonable time may be granted for vacating the premises in question. The learned counsel for the appellant submitted that any reasonable time may be granted. Having regard to the facts and circumstances of the case, we grant six months' time to the respondents to vacate and deliver peaceful possession to the appellant landlord, subject to the respondents filing usual undertaking within the period of four weeks from today.