

**SUPREME COURT OF INDIA**

Vinaykishore Punamchandji Mundhada

Vs.

Bhumi Kalptru

C.A.No.6299 of 2010

(B.Sudershan Reddy and Surinder Singh Nijjar JJ.)

05.08.2010

**JUDGEMENT**

**B.Sudershan Reddy, J.**

1. Leave granted.

2. This appeal by special leave is directed against the final judgment and order dated 20th September, 2006 passed in Writ Petition No. 1206 of 1996 by the High Court of judicature at Bombay, Nagpur Bench, Nagpur whereby the High Court set aside the order dated 6.9.1995 passed by the reviewing authority granting permission under clause 13(3)(iii) of the C.P. & Berar Letting of Houses and Rent Control Order, 1949 (hereinafter referred to as 'the Rent Control Order').

3. The facts leading to filing of this appeal lie in a very narrow compass. The appellants are the landlords of the suit premises. Respondent No. 4, Madankumar Govardhandas Pasari was inducted as a tenant in the year 1974 who constituted a partnership firm under the name and style 'Bhumi Kalpataru' consisting of five partners and carried on business till 1991. The appellants filed an application under clause 13(3)(i)(iii)(iv) and (vi) of the Rent Control Order before the Rent Controller, Amravati against the original tenant Messrs Bhumi Kalpataru and its Managing Partner Madankumar Govardhandas Pasari, the respondent No.4 (since died) on the ground that Madankumar Govardhandas Pasari dissolved the firm and clandestinely sub-let the suit premises to respondent No.2 Jagdish Champalal Mundhada who deceptively gave similar name to the partnership by prefixing the word 'Shri' and it was known as 'Shri Bhumi Kalpataru' resembling the firm to whom the premises was let out in the year 1974. The present occupiers of the suit premises being the sub-tenant, namely the respondent No.1 firm 'Shri Bhumi Kalpataru', its Managing Partner, respondent No.2 and other partners, respondents 5 to 7 were duly impleaded as party respondents. The simple case set up by the appellants before the Rent Controller is that the original tenant firm 'Bhumi Kalpataru' had sub-let the suit premises without the sanction of the landlords and the sub-

tenants carried on the business under the name `Shri Bhumi Kalpataru' by prefixing commonly used `Shri' to the original tenant firm `Bhumi Kalpataru'.

4. The application was resisted by respondents No.1, 2, 5, 6 & 7 inter alia contending that they were recognized as the tenants of the suit premises by the landlords by accepting rent amount from `Shri Bhumi Kalpataru'. It was also their case that there was disruption of relationship of landlord and tenant between the appellants and the original tenant. The original tenant firm `Bhumi Kalpataru' and its Managing Partner, Madankumar Govardhandas Pasari though duly served, did not enter their appearance and chose to remain absent throughout.

5. The Rent Controller upon appreciation of the material available on record passed the necessary orders upholding the plea of sub-tenancy and granted permission under clause 13(3)(iii) of the Rent Control Order. The appellate authority, however, on the appeal filed by the respondents, reversed the findings of sub-tenancy. The appellants preferred Review Petition under clause 21(2)(a) of the Rent Control Order challenging the orders of the appellate authority and the said Review Petition was allowed restoring the order of the Rent Controller granting permission as prayed for by the appellants.

6. Shri Bhumi Kalpataru and its Managing Partner Jagdish Champalal Mundhada filed Writ Petition No. 1206 of 1995 under Article 226/227 of the Constitution of India before the High Court of judicature at Bombay, Nagpur Bench, Nagpur challenging the order of the reviewing authority.

“The other partners were impleaded as respondents. The High Court, relying on the decision in Bhairulal Sancheti<sup>1</sup> allowed the writ petition. Hence this appeal.”

7. Shri U.U. Lalit, learned senior counsel for the appellants submitted that the High Court committed an error in interfering with the just and reasonable orders passed by the reviewing authority. It was submitted that the High Court committed a serious error in refusing to take into consideration the settled principles of law that sub-letting and parting with the possession by the tenant for consideration is to be inferred from the facts and circumstances brought on record and it is not the requirement in law that it is for the landlords to prove that parting of possession by the original tenant was for actual consideration. Learned counsel for the respondent, Shri Satyajit A. Desai submitted that landlords having accepted the rents for a period of three years from the respondents without any demur, cannot be allowed to turn down and contend that the premises was sub-let by the original tenant. It was his submission that relationship of landlord and tenant came into existence ever since the landlords accepted the rents from the respondents.

8. Before advertng to the question as to whether the High Court rightly interfered with the orders of the reviewing authority, it may be just and necessary to notice the relevant provision of C.P. & Berar Letting of Houses and Rent Control Order, 1949 which runs as under:

“13. (1) No landlord shall, except with the previous written permission of the Controller--

(a) give notice to a tenant determining the lease or determine the lease If the lease is expressed to be determinable at his option; or (b) .....

(2) .....

(3) .....

(i) .....

(ii) .....

(iii) that the tenant has without the written permission of the landlord sub let the entire house (premises) or any portion thereof;

(iv) ....."

9. It may be of some importance to note that the original tenant did not join any issue with the landlords though he was impleaded as a party respondent to the proceedings.

“It is an admitted fact that none of the partners of `Bhumi Kalpataru' including respondent No.4 who constituted the firm `Bhumi Kalpataru' are the partners in the firm `Shri Bhumi Kalpataru'. It is not a case of reconstitution of the firm where the original tenant continued to be a partner of such newly reconstituted firm. It is clearly evident from the record and findings recorded by the authorities that `Shri Bhumi Kalpataru' consists of altogether different individuals and the Managing Partner thereof being Jagdish Champalal Mundhada. It is also an admitted fact that there was no further agreement as such between the appellants and the respondents recognizing `Shri Bhumi Kalpataru' and its partners as the tenants. In such view of the matter, the authorities in clear and categorical terms found that the respondents have been inducted into possession of the premises by the original tenant without the required written permission of the landlords. It is under those circumstances that the reviewing authority came to the correct conclusion that the original tenant had no right to transfer and part away with the possession of the premises to the respondents without the required written permission from the landlords. None of the respondents were the partners in the previous firm that was constituted by Madankumar Govardhandas Pasari known as `Bhumi Kalpataru'.”

10. It was absolutely an internal arrangement between an original tenant and newly inducted one about which the landlord was never put on notice. The mere acceptance of the rents from the newly constituted firm `Shri Bhumi Kalpataru' on the facts and circumstances in the present case by itself cannot lead to any inference that the landlords accepted the rents

knowing fully well as if they were accepting the rents from the sub-tenants. The "landlord and tenant" relationship in the circumstances of this case cannot be inferred as the word `Shri' was prefixed to the original tenanted firm `Bhumi Kalpataru'.

“The said firm `Bhumi Kalpataru', in a clandestine manner became `Shri Bhumi Kalpataru' by adding `Shri' in an innocuous manner to `Bhumi Kalpataru'. Once it is clearly established that none of the previous partners of the `Bhumi Kalpataru' continued to be the partners of the newly constituted firm, it becomes very clear that `Shri Bhumi Kalpataru' is altogether a different firm consisting of new partners who were inducted into possession by the previous tenant.”

11. That, clause 2(5) of the Rent Control Order defines the `tenant' as under:

“'Tenant' means any person by whom or on whose account rent is payable for a premises and includes a sub-tenant and a person continuing in possession after the term of his tenancy has expired”.

12. In our considered opinion, the expression `any person' means any one lawfully inducted as a tenant into the premises and by whom or on whose account rent is payable for the premises. It may include a sub-tenant inducted as such into possession with the previous knowledge, consent and written permission of the landlord.

“Ors.2 held:

"8. The rent control legislations which extend many a protection to the tenant, also provide for grounds of eviction. One such ground, most common in all the legislations, is sub-letting or parting with possession of the tenancy premises by the tenant. Rent control laws usually protect the tenant so long as he may himself use the 2 (2004) 4 SCC 794 premises but not his transferee inducted into possession of the premises, in breach of the contract or the law, which act is often done with the object of illegitimate profiteering or rack-renting. To defeat the provisions of law, a device is at times adopted by unscrupulous tenants and sub-tenants of bringing into existence a deed of partnership which gives the relationship of tenant and sub-tenant an outward appearance of partnership while in effect what has come into existence is a sub-tenancy or parting with possession camouflaged under the cloak of partnership. Merely because a tenant has entered into a partnership he cannot necessarily be held to have sub-let the premises or parted with possession thereof in favour of his partners. If the tenant is actively associated with the partnership business and retains the use and control over the tenancy premises with him, maybe along with the partners, the tenant may not be said to have parted with possession. However, if the user and control of the tenancy premises has been parted with and deed of partnership has been drawn up as an indirect method of collecting the consideration for creation of sub-tenancy or for providing a cloak or cover to conceal a transaction not permitted by law, the court is not estopped from tearing the veil of partnership and finding out

the real nature of transaction entered into between the tenant and the alleged sub-tenant.

9. A person having secured a lease of premises for the purpose of his business may be in need of capital or finance or someone to assist him in his business and to achieve such like purpose he may enter into partnership with strangers. Quite often partnership is entered into between the members of any family as a part of tax planning. There is no stranger brought on the premises. So long as the premises remain in occupation of the tenant or in his control, a mere entering into partnership may not provide a ground for eviction by running into conflict with prohibition against sub-letting or parting with possession. This is a general statement of law which ought to be read in the light of the lease agreement and the law governing the tenancy. There are cases wherein the tenant sub-lets the premises or parts with possession in defiance of the terms of lease or the rent control legislation and in order to save himself from the peril of eviction brings into existence, a deed of partnership between him and his sub-lessee to act as a cloak on the reality of the transaction. The existence of deed of partnership between the tenant and the alleged sub-tenant would not preclude the landlord from bringing on record material and circumstances, by adducing evidence or by means of cross-examination, making out a case of sub-letting or parting with possession or interest in tenancy premises by the tenant in favour of a third person.”

13. The rule as to exclusion of oral by documentary evidence governs the parties to the deed in writing. A stranger to the document is not bound by the terms of the document and is, therefore, not excluded from demonstrating the untrue or collusive nature of the document or the fraudulent or illegal purpose for which it was brought into being. An enquiry into reality of transaction is not excluded merely by availability of writing reciting the transaction. *Tyagaraja Mudaliyar v. Vedathanni*<sup>2</sup>, is an authority for the proposition that oral evidence in departure from the terms of a written deed is admissible to show that what is mentioned in the deed was not the real transaction between the parties but it was something different. A lease of immovable property is transfer of a right to enjoy such property.

14. Parting with possession or control over the tenancy premises by the tenant in favour of a third person would amount to the tenant having "transferred his rights under the lease" within the meaning of Section 14(2)(ii)(a) of the Act". observed that "by a unilateral action of the tenant of surrendering his right of tenancy in favour of a third party by delivering possession of the tenanted premises to the said third party, no new tenancy is created which may legally bind the landlord. By mere acceptance of rent for the tenanted premises tendered by the tenant in the name of the registered society, neither a new tenancy nor a valid sub-tenancy in favour of the said registered society has been created." It is said in clear and categorical terms that "the Rent Act is a special statute governing and regulating tenancy and sub-tenancy.

15. Such provisions in the special statute supersede the general law of tenancy if the provisions of the special statute are incompatible with the general law of tenancy". It is observed that "mere knowledge of the landlord about occupation of the tenanted premises by the said registered society and acceptance of rent for the tenanted premises tendered by the tenant in the name of the registered society, will not create a sub-tenancy unless induction of a sub-tenant is made with the written consent of the landlord. Even if the landlord has accepted payment of the rent for the disputed premises .... Such acceptance of rent will not constitute legal and valid sub-tenancy ..... Consequently, landlord will not be estopped from claiming eviction of unauthorized sub-tenant along with the tenant for indulging in inducing sub-tenant without lawful authority". (emphasis by us) 15. We are not impressed by the submission made by the learned counsel for the respondents that unless payment of consideration was established as a fact between the tenant and sub-tenant, the application under the provisions of the Rent Control order filed by the landlord cannot be allowed. Is it possible for any landlord to establish the actual agreement or understanding between the tenant and the person to whom the possession of the premises is delivered? It is well settled that sub-tenancy or sub-letting comes into existence when the tenant voluntarily surrenders possession of the tenanted premises wholly or in part and puts another person in exclusive possession thereof without the knowledge of the landlord. In all such cases, invariably the landlord is kept out of scene rather, such arrangement whereby and whereunder the possession is parted away by the tenant is always clandestine and such arrangements take place behind the back of the landlord. It is the actual physical and exclusive possession of the newly inducted person, instead of the tenant, which is material and it is that factor which reveals to the landlord that the tenant has put some other person into possession of the tenanted property. It would be impossible for the landlord to prove, by direct evidence, the arrangement between the tenant and sub-tenant. It would not be possible to establish by direct evidence as to whether the person inducted into possession by the tenant had paid monetary consideration to the tenant. Such arrangement which may have been made secretly, cannot be proved by affirmative evidence and in such circumstances, the Court is required to draw its own inference upon the facts of the case proved at the enquiry. Delivery of exclusive possession by the tenant to a stranger to the landlord and without the prior permission of the landlord is one dominant factor based on which the Court could infer as to whether the premises was sub-let.

16. What remains for our consideration is as to whether the High Court properly understood the ratio of the decision in *Bhairulal* (supra). In the said case, the High Court clearly held that on the basis of the evidence of the landlord himself, it was not possible to say that the tenant has parted with legal possession of the portion of the premises in question to the alleged sub-tenant. On the other hand, it was apparent that though the alleged sub-tenant has been working on the sewing machine located in the premises where the tenant himself has been carrying on his business in clothes in the disputed premises. The High Court in the said decision clearly held that mere use by other person is not parting with possession so long as tenant retains the legal possession himself. We fail to appreciate as to how the ratio of the said judgment is applicable to the fact situation on hand.

17. The case on hand clearly demonstrates that it is not a case of any reconstitution of the existing firm by the tenant whereby the original tenant continued to be a dominant partner of such newly constituted firm and retained legal possession of the premises. That would be a different situation where the original tenant retains the legal possession of the premises as the tenant without parting away the possession of the premises or any part thereof to a stranger. On the other hand, this is a clear case where the original tenant parted away with legal possession by inducting altogether a new firm into possession of which the original tenant is not even a partner and such parting away with the possession was without the knowledge and consent and much less the written permission from the landlords. Thus the ratio of Bhairulal has no application to the case on hand.

18. Before parting with the case we are constrained to observe that the High Court practically substituted the findings for that of the authorities by reappreciating the evidence available on record, which is impermissible in a proceeding under Article 226/227 of the Constitution of India.

19. For the aforesaid reasons, we find it difficult to sustain the impugned judgment of the High Court. The same is accordingly set aside.

20. The appeal is allowed with costs.

<sup>1</sup>1996 (2) *Mh.L.J.* 866

<sup>2</sup>*AIR 1936 PC 70 : 63 IA 126*

<sup>3</sup>(1996) 11 *SCC* 728