

SUPREME COURT OF INDIA

Bhairon Sahai

Vs.

Bishamber Dayal

C.A.No.9198 of 2017

(S.A.Bobde and L.Nageswara Rao,JJ.,)

18.07.2017

JUDGMENT

L. Nageswara Rao,J.,

SLP (Civil)No.24689 of 2011

1. Leave granted.

2. The petition filed under Section 14 of the Delhi Rent Control Act, 1958 by the Appellant-Landlord for eviction of the Respondents was allowed by the Rent Controller. The Tribunal set aside the Judgment of the Rent Controller in the appeal filed by the Respondents. The second appeal filed by the Appellant was dismissed by the High Court of Delhi, aggrieved by which the Appellant has filed the present appeal.

2. Respondent No.1 became the tenant of a shop measuring 138 square feet in Karol Bagh, New Delhi after a family in the year 1963 on payment of a rent of Rs.54/- per month. The Appellant purchased the premises from its previous owner in the year 1974. The Appellant issued a notice terminating the tenancy on the ground that Respondent No.1 had parted with the possession of the premises without his consent and that he had caused substantial damage to the premises. In the Eviction Petition, the Appellant stated that Respondent No.1 had sub-let a part of the premises to Respondent No.2 who was running a ration shop. In the written statement, the Respondents denied the averments made in the Eviction Petition and stated that the ration shop was being run by Respondent No.1, though the licence was in the name of Respondent No.2. It was further stated that in a portion of the premises, Respondent No.1 was having a provision store for selling pulses, rice, tea, oil, ghee, etc. and the other portion was being utilized for a fair price shop. It was also stated that the entire premises was being used as a fair price shop after 01.10.1976 and that Respondent No.2 was taken as a partner by Respondent No.1 w.e.f. 01.01.1977. The Rent Controller held that Respondent No.2 was given a Food Grain Licence in March, 1964 in his own name and that Section 4 of the Delhi Rationing Order, 1964 prohibits any person other than the licensee from running the shop. After examining the provisions of the Delhi Rationing Order, 1964 and after drawing an

adverse inference against Respondent No.1 for not producing the relevant records, the Rent Controller held that Respondent No.1 was not running the fair price shop. The Rent Controller also held that Respondent No.2 was running his business as an Authorised Ration Distributor of a fair price shop in the premises. It was further held that Respondent No.1 parted with possession of the shop in favour of Respondent No.2 without the consent of the landlord. The Rent Controller decided the Eviction Petition in favour of the Appellant and directed the Respondents to hand over vacant peaceful possession of the shop to the Appellant within a period of two months.

3. The Rent Control Tribunal, Delhi on a re-appreciation of the evidence on record reversed the findings of the Rent Controller and concluded that it was Respondent No.1 and not Respondent No.2 who was carrying on the business of a fair price shop. The High Court confirmed the judgment of the Appellate Tribunal by holding that it had not been proved that Respondent No.2 was in exclusive possession of the suit premises.

4. The point that arises for our consideration in this case is whether a landlord is entitled to seek eviction of the Respondents on the ground of parting with possession without his consent. Admittedly, Respondent No.1 is the tenant. A fair price shop is being run in a portion of the premises. Respondent No.2 is the licensee of the fair price shop since 1964. A fair price shop under the Delhi Rationing Order is not transferable. It is the case of the Respondents that a portion of the premises was being utilized for running the fair price shop for which Respondent No.2 held the licence. The remaining portion of the premises was being used by Respondent No.1 for carrying on business of a provision store. Respondent No.1 entered into a partnership with Respondent No.2 in the year 1977. Undisputedly, all this was done without the consent of the Appellant.

5. Section 14 (1) (b) of the Act provides that a tenant is liable for eviction if he sub-lets, assigns or otherwise parts with the possession of the premises without the consent of the landlord. In case the Rent Controller decides that the partnership entered into by the tenant is not genuine and there is parting of the possession, Section 14 (4) deems it to be sub-letting. The principal contention of the Appellant before us is that the tenant had parted with the possession of a part of the premises in favour of Respondent No.2 without taking his consent and that in view of Section 14 (1) (b) read with Section 14 (4) he is entitled to evict the tenants.

6. Mr. Huzefa Ahmadi, learned Senior Counsel for the Appellant in support of his submission that the Respondent No. 1 is liable for eviction as he parted with possession in favour of Respondent No. 2 without the consent of the landlord relied upon a judgment of this Court in *Munshi Lal v. Smt. Santosh and Others* (Civil Appeal No. 1327 of 2017, decided on 01.02.2017). wherein the scope and purport of Section 14 (1) (b) and Section 14 (4) was examined. This court held as follows:

"11. Section 14(1) of the Act reads as under:

(14)(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:

(a) That the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the manner provided in Section 106 of the Transfer of Property Act, 1882;

(b) That the tenant has, on or after the 9th day of June, 1952, sub-let, assigned or otherwise parted with the possession of the whole or any part of the premises without obtaining the consent in writing of the landlord. Clause (b) of the proviso to Sub-section (1) provides for the eviction of a tenant who has sub-let, assigned or otherwise parted with the possession of the premises without obtaining the consent in writing of the landlord.

Section 14(4) reads as follows:

(14)(4). For the purposes of Clause (b) of the proviso to Sub-section (1), any premises which have been let for being used for the purposes of business or profession shall be deemed to have been sub-let by the tenant, if the Controller is satisfied that the tenant without obtaining the consent in writing of the landlord has, after the 16th day of August, 1958, allowed any person to occupy the whole or any part of the premises ostensibly on the ground that such person is a partner of the tenant in the business or profession but really for the purpose of sub-letting such premises to that person.

This Sub-section provides that if a person is allowed to occupy the premises ostensibly as a partner of the tenant but really for the purpose of sub-letting it, such an arrangement would be deemed to be sub-letting. Therefore, if the tenant has allowed any person to occupy the whole or any part of the premises, actually for the purpose of sub-letting but speciously by entering into a partnership with him, such an arrangement shall be deemed to be subletting. In other words, subletting is not permitted by camouflaging it as a partnership. The combined reading of Clause (b) of the proviso to Section 14(1) read with Section 14(4) makes it clear that before a tenant can sub-let, assign or part with the possession of any part of the premises or the whole, it must be preceded by the consent in writing from the landlord. In other words, the requirement of obtaining the consent in writing of the landlord is retained as a pre-requisite even for the purposes of Sub-section (4). What is of importance is, in either case whether a person has been inducted genuinely as a partner and therefore allowed to occupy the premises or whether the partnership is a ruse, the requirement of consent in writing as in Sub-section (1) is retained. In the present case, there is no evidence that the tenant obtained the consent in writing from the landlord before allowing the son-in-law to occupy the premises in pursuance of the Partnership deed."

7. On the other hand, Respondent No. 1 submits that entering into a partnership per se does not amount to sub-letting. It is also the case of the tenant that he did not part with possession of the premises as he was running the fair price shop right from 1964 though the licence was in the name of Respondent No.2. According to the tenant, there was no need to seek consent as there was no parting with possession of even a part of the premises. Mr.S.B. Upadhyay, learned Senior Counsel appearing for the Respondents relied upon the judgment of this Court in *Parvinder Singh v. Renu Gautam and Others*¹ wherein it was held that a tenant cannot necessarily be said to have sub-let the premises or parted with the possession thereof in favour of his partners merely because he had entered into a partnership. It was further held that a tenant may not be said to have parted with possession if he is actively associated with the partnership business and retains the user and control over the tenancy premises.

8. In the present case, it is clear from the evidence on record and the judgments of the courts below that there has been parting of possession by Respondent No.1 of a portion of the premises in favour of Respondent No.2 without taking the consent of the Appellant. The Rent Controller found that from 1964 onwards, there were two shops being run in the premises. One portion of the premises was being used for a fair price shop, the licence of which was in the name of Respondent No.2. The other portion was being used as a provision store which was being run by Respondent No.1. The averments in the Eviction Petition would disclose that the Appellant alleged parting of possession by Respondent No.1 in favour of Respondent No.2 between the years 1964 and 1976. The other allegation is that Respondent No.1 entered into a partnership with Respondent No.2 in 1977. No consent was taken from the Appellant for either parting with possession of a portion of the premises or for entering into a partnership.

9. Eviction can be sought by a landlord if the tenant sublets, assigns or otherwise parts with possession without his consent. We are of the opinion that the Rent Controller was right in finding that Respondent No.2 was carrying on the business as Authorised Ration Distributor in a portion of the premises from 1964 as he was the licensee. Parting with the possession of the premises without consent of the landlord was sufficient for eviction of the tenant without getting into the question of sub-letting or assignment.

10. No consent was sought before the Respondents entered into partnership. This partnership was formed in 1977 after the business of a fair price shop was being carried on from 1964. The Rent Controller held that it is not necessary to decide about the genuineness of the partnership in the Eviction Petition. Even the Appellate Tribunal did not adjudicate on the partnership between the Respondents. The High Court refers to the partnership deed dated 01.01.1977 only for the purpose of holding that Respondent No.2 was permitted to use a portion of the premises but was not given exclusive possession.

11. The question whether by entering into a partnership deed dated 01.01.1997, the first Respondent sublet the premises to the second Respondent does not arise for consideration in this case. Hence, the judgment in Parvinder Singh's case and other judgments cited by the learned Senior Counsel for the Respondents are not relevant.

12. In view of the above, the appeal is allowed on the ground of parting of possession by the tenant/Respondent No.1 in favour of Respondent No.2 without consent of the landlord. The Respondents are directed to vacate the premises within two months from today.

13. During the pendency of present appeal in this Court, there was a direction to the tenant to enhance the rent and deposit the same in this Court. We are informed that an amount of Rs. 16,500/- is lying in the Registry. The Appellant is entitled to receive the same. I.A. No. 6 of 2016 filed by him for the said purpose is allowed.

Judgment Referred.

¹(2004) 4 SCC 0794