

CASE NO.:
Appeal (civil) 1223-1224 of 2005

PETITIONER:
Amar Nath Agarwalla

RESPONDENT:
Dhillon Transport Agency

DATE OF JUDGMENT: 28/02/2007

BENCH:
B.P. Singh & H.S. Bedi

JUDGMENT:
JUDGMENT

The Judgment of the Court was delivered

1. The appellant in these appeals by special leave is the landlord who filed a suit for eviction of the respondent tenant from the premises in question. The tenancy was created in favour of the respondent firm which consisted of four partners.

2. The eviction of the respondent was sought on the ground that the defendant had sub-let, assigned and/or transferred possession of the said premises and/or part thereof to Dhillon Transport Quick Service and Dhillon Roadways Corporation and others consent in writing of the plaintiff landlord. In its written statement the tenant denied the allegation of sub tenancy and submitted that M/s Dhillon Transport Agency, a partnership firm was originally the tenant. The partnership had four partners who carried on business in the name and style of Dhillon transport Agency. Since disputes and differences arose amongst the partners, Title Suit No. 19 of 1991 was filed in the Court of the 1st Subordinate Judge at Patna and all matters were settled by compromise. Consequently, the firm was dissolved and one of the partners was given all the assets of the firm and he formed another firm with himself as one of the partners. It was averred that unless the tenancy was transferred by such partner to a third party, it would not amount to sub-letting. The defendant therefore asserted that there was no sub-letting since one of the partners, Ajit Singh continued to occupy the premises having legal possession thereof.

3. In his deposition PW-1, Ajit Singh deposed that the tenancy was originally created in favour of the firm of which he was one of the partners. The firm was running a transport agency business in the suit premises and had never inducted any sub tenant in the suit premises. In his cross examination it was elicited that the partnership firm originally consisting of four partners existed for about 35 to 40 years. He denied the suggestion that he was not looking after the affairs of the defendant and that it inducted other persons and/or firm for carrying on business in the suit premises by the name of Dhillon Quick Transport Service or Dhillon Roadways Corporation. He asserted that he looks after the affairs of the partnership firm which is carrying on business in the premises of which he is a partner.

4. It appears that along with his written submission, the plaintiff filed certain documents which were not exhibited at the trial to prove sub-letting. In our view those documents cannot be looked into since they were not put in evidence and the defendant had no opportunity of replying to those documents.

5. The trial Court decreed the suit for eviction but its judgment and order has been set aside by the High Court. The High Court after appreciating the evidence on record has found that since one of the partners of the original

tenant namely, the firm Dhillon Transport Agency, is still running his transport agency business in the same premises, it cannot be held that a sub-tenancy has been created. The High Court, therefore, held that the appellant had failed to prove sub-letting of premises by the respondent.

6. In the Special Leave Petition filed by the appellants two questions of law have been formulated which read as follows:-

(a) If it is an admitted fact that the firm (with four partners) in favour of which lease/tenancy was granted as dissolved, as a result whereof the three resigning partners devolved and/or transferred and/or assigned their interest in the tenancy/lease rights in favour of one of the partner who continued as owner of the firm, whether such an assignment/devolution/transfer of the lease rights without obtaining the consent of the landlord ipso facto amounts to sub-letting by the resigning partners?

(b) If dissolution of the partnership firm and devolution and/or transfer and/or assignment of the same by the resigning partners in favour of the surviving partner is an admitted fact, whether any further evidence is required to be submitted by the plaintiff-landlord to establish sub-letting?

7. As would be apparent from a mere reading of the submissions urged on behalf of the appellant, after dissolution of the firm all the rights of the tenant firm including tenancy rights had been transferred to one of the partners who has continued as the owner of the firm in occupation. The question is whether carrying on business by one of the partners of the firm which was originally the tenant amounts to sub-letting of the premises by the original tenant.

8. In *Murli Dhar v. Chuni Lal and Ors.*, (1969) RCR 563 this Court had repelled the contention that the old firm and the new firm being two different legal entities, the occupation of the shop by the new firm was occupation by the legal entity other than the original tenant and such occupation proved sub-letting. Repelling the contention this Court held:-

"This contention is entirely without substance. A firm, unless expressly provided for the purpose of any statute which is not the case here, is not a legal entity. The firm name is only a compendious way of describing the partners of the firm. Therefore, occupation by a firm is only occupation by its partners. Here the firms have a common partner. Hence the occupation has been by one of the original tenants."

9. In *Mohammedkasam Haji Gulambhai v. Bakerali Fatehali (Dead)* by LRS., Reported in [1998] 7 SCC 608 this Court observed:

"There is absolute prohibition on the tenant from sub-letting, assigning or transferring in any other manner his interest in the tenanted premises. There appears to be no way around this subject of course if there is any contract to the contrary between the landlord and the tenant. In a partnership where the tenant is a partner, he retains legal possession of the premises as a partnership is a compendium of the names of all the partners. In a partnership, the tenant does not divest himself of his right in the premises. On the question of sub-letting etc. the law is now very explicit. There is prohibition in absolute terms on the tenant from sub-letting, assignment or disposition of his interest in the tenanted premises."

10. The same principle was reiterated by this Court in *Mahendra Saree Emporium (II) v. G.V. Srinivasa Murthy*, reported in [2005] 1 SCC 481 wherein this Court held:

"The mere fact that another person is allowed to use the premises while the lessor retains the legal possession is not enough to

create a sub lease. Thus, the thrust is, as laid down by this Court, on finding out who is in legal possession of the premises. So long as the legal possession remains with the tenant the mere factum of the tenant having entered into partnership for the purpose of carrying on the business in the tenancy premises would not amount to sub-letting. In Parvinder Singh v. Renu Gautam a three-Judge Bench of this Court devised the test in these terms: (SCC P. 799, Para 8)

"If the tenant is actively associated with the partnership business and retains the use and control over the tenancy premises with him, may be 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."

11. Applying these principle to the instant case, it is patent that one of the partners of the firm which was the original tenant has continued in legal possession of the premises as a partner of another firm constituted after dissolution of the original firm. Thus the legal possession is retained by a partner who was one of the original tenants. In these circumstances, we find no fault with the finding of the High Court there was no sub-letting of the premises and hence the suit for eviction deserved to be dismissed.

12. There is not merit in these appeals and the same are accordingly dismissed.