

CASE NO.:
Appeal (civil) 3536 of 2004

PETITIONER:
GURUBACHAN SINGH AND ANR.

RESPONDENT:
RAM NIWAS

DATE OF JUDGMENT: 24/05/2006

BENCH:
DR. AR. LAKSHMANAN & LOKESHWAR SINGH PANTA

JUDGMENT:
JUDGMENT

DR. AR. LAKSHMANAN, J. :

The unsuccessful tenants are the Appellants before us in this appeal. The Respondent is the landlord. The premises in question is situated at Station Road, Ajmer, Rajasthan on a monthly rent of Rs. 300.

The Respondent/Plaintiff filed a suit for eviction of the tenants on the grounds of default in payment of rent and for change of user and subletting. It was alleged that the tenants committed default in payment of rent for more than six months. It has further been averred that the tenants have sublet the premises to Rajasthan Tourism Development Corporation (in short "RTDC") for running a Beer shop at a rent of Rs. 2100/- per month without taking prior permission of the landlord.

The Appellants filed written statement denying the allegations made in the plaint. The Appellants contended that they had not committed any default in payment of rent and the same has been deposited in the Court. It was stated that the Respondent-Landlord refused to accept the rent. The same was sent by money order which was also not accepted. Being left with no other choice, the tenants deposited the said rent in Court under Section 19A of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (in short "the Act"). It has also been specifically stated that the premises in question was given to RTDC only for a period of 20 days as the RTDC'S shop was under construction and renovation.

During the pendency of the Suit rent came to be determined under the provisions of Section 13(3) of the Act. The counsel for the Respondent-Landlord admitted the deposit of rent from 1.4.1991 to 31.12.1994. i.e. for a period of 32 months at the rate of Rs. 300 per month under Section 19A of the Act. Therefore, it is submitted that there is no dispute regarding deposit of the rent in the Court.

The Trial Court decreed the suit in favour of the landlord on the ground of default in payment of rent and subletting. The landlord did not press the ground of change of user. The tenants aggrieved by the above order of the Trial Court, filed an Appeal before the Additional District Judge in Civil Appeal No. 115/1997. The Appellate Court dismissed the Appeal and observed that the deposit made under Section 19A of the Act was not a valid deposit. The Appellate Court also affirmed the finding of the Trial Court on the ground of subletting.

Being aggrieved by the order of the First Appellate Court, the tenants filed a Second Appeal before the High Court being S.B. Civil Second Appeal No. 234/1998. The High Court admitted the Appeal and framed the necessary substantial questions of law. The High Court by its Judgment dated 26.8.2003 dismissed the Second Appeal filed by the tenants. Being aggrieved, the tenants have filed the above Appeal before this Court by way

of Special Leave. Notice was ordered on the Special Leave Petition on 21.11.2003 and interim stay of the operation of the High Court's order was also granted on the same date. The interim order was also continued on 26.4.2004 pending further orders subject to the condition that the arrears of rent shall be deposited to the credit of the proceedings before the trial Court within six weeks from that date. On 6.7.2004, leave was granted and the stay was ordered to continue. At the request of both the parties, this Court passed an order on 20th March, 2006 and posted the Appeal for hearing finally during the summer vacation.

We have heard Mr. Sushil Kumar Jain, the learned counsel for the Appellants-tenants and Mr. K.S. Bhati, the learned counsel for the Respondent-Landlord. Mr. Jain took us through the entire pleadings and the orders passed by all the three courts. So far as the eviction on the ground of deposit of rent in the Court is concerned, Mr. Jain submitted that when the tenants had deposited the rent by resorting to the provisions of Section 19A of the Act after permission of the Court, there is presumption of compliance of the provisions of Section 19A of the Act and, therefore, the Courts below were not justified in holding that the deposit under Section 19A of the Act was not legal as the tenants did not follow the proceedings of money order. According to Mr. Jain once the rent has been deposited in Court after due permission of the Court, there is presumption of compliance under Section 114E of the Evidence Act. He further contends that the present case is not a case of rent default and that the deposit of rent in the Court under Section 19A of the Act and the admission of the Landlord for determination of the rent under Section 13(3) of the Act that the amount of rent had already been deposited in the Court from 1.4.1991 to 31.12.1994 at the rate of Rs. 300 per month, the Appellants are entitled for the benefit of Section 13 sub-clauses (3), (4) and (6) of the Act. He further submitted that under the provisions of Section 13 of the Act, a decree for eviction cannot be passed against the tenants when they were always ready and willing to pay rent and have deposited the rent in the Court prior to the filing of the suit.

Insofar as the eviction on the ground of subletting is concerned, Mr. Jain submitted that the tenants had sublet the premises to the RTDC when the premises had been given only for a period of 20 days to accommodate them as their shop was under reconstruction and renovation and, therefore, when the tenants had not sublet the premises to the RTDC and permitted them to have exclusive possession of the shop, there cannot be any subletting. Mr. K.S. Bhati, the learned counsel appearing for the landlord submitted that the contentions put forward by Mr. Jain have absolutely no merit and that all the three courts have concurrently found that the tenants have willfully defaulted in the payment of rent and also sublet the premises, though temporarily, for a period of four months and collected a sum of Rs. 2100/- per month. Mr. Bhati also invited our attention to the categorical findings rendered by the High Court.

The provisions of clause (e) of sub-section (1) of Section 13 of the Act read as under :

13. Eviction of tenants, - (1) Notwithstanding anything contained in any law or contract, no Court shall pass any decree or make any order, in favour of a landlord, whether in execution of a decree or otherwise, evicting the tenant so long as he is ready and willing to pay rent therefor to the full extent allowable by this Act, unless it is satisfied.

(a) that the tenant has assigned, sub-let or otherwise parted with the possession of, the whole or any part of the premises without the permission of the landlord; or"

The High Court on a consideration of the evidence tendered by the parties herein came to the conclusion that the tenant had clearly sublet the three shops to RTDC for a period of four months and received Rs. 2100 as rent from RTDC. The Court also held that there are concurrent findings that the

possession of the suit shop was with RTDC to carry on the business of Beer shop and during that period tenants had no control whatsoever over the suit shop. It was also further held that there is no evidence to show that the tenants were continuing in possession of the suit shop during that period. Therefore, the High Court has concluded that the use of the said shop for a period of four months by RTDC on payment of Rs. 2100/- as rent, certainly amounts to subletting within the meaning of clause (e) of sub-section (1) of Section 13 of the Act.

Section 13 sub-clause (1), (e) deals with subletting, The said Section says that if the tenant has assigned, sub-let or otherwise parted with the possession of, the wholly or any part of the premises without the permission of the landlord, the tenant is liable to be evicted from the premises. In the instant case it has been clearly established by the evidence of the Senior Officer Assistant in RTDC from 1982. It is his evidence that RTDC had taken the disputed shop on rent from 11.4.1991 on temporary basis because in the shop in front of KEM, the repair work was going on. He further stated that RTDC remained in possession for four months on payment of rent.

He further deposed that RTDC had given the rent of Rs. 2100/- per month of the disputed shop from 11.4.1991 to 15.8.1991 and the rent was paid to Gurbachan Singh, the tenant. In the cross-examination nothing has been elicited to discredit his testimony and to disprove their case with regard to subletting and the receipt of the rent.

The learned counsel for the tenants has cited Delhi Stationers and Printers v. Rajendra Kumar, [1990] 2 SCC 331. This is also a case of subletting. In this case, this Court had held that mere user of the tenant-appellant's kitchen and latrine by the co-tenant who was residing in the portion let out to him by the respondent-landlord cannot mean that the appellant had transferred the exclusive right to enjoy the kitchen and latrine and had parted with the legal possession of the said part of the premises in favour of the co-tenant. This judgment, in our opinion, has no application to the case on hand. In the above case, the tenant has permitted to use the kitchen and latrine on a temporary basis. He has not transferred the exclusive right to enjoy the kitchen and latrine. He had also not parted with the legal possession of the part of the premises in his possession and collected any amount by way of rent. This case, therefore, is distinguishable on facts and law.

Mr. Jain has also cited the case of Dev Kumar v. Swaran Lata, [1996] 1 SCC 25 at Page 30 (Paragraph 9), which reads thus :

"9. Coming to the second question the expression 'sub-letting' has not been defined in the Act. The conclusion on the question of sub-letting is a conclusion on a question of law derived from the findings on the materials on record as to the transfer of exclusive possession and as to the said transfer of possession being for consideration. As to what is the true meaning of the expression "sub-letting", this Court considered the same in the case of Jagdish Prasad v. Angoori Devi, [1984] SCC 590 in an eviction proceeding under U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act. The Court held that merely from the presence of the person other than the tenant in the shop, sub-letting cannot be presumed and as long as control over the premises is kept by the tenant and the business run in the premises is of the tenant, sub-letting flowing from the presence of the person other than the tenant in the shop cannot be assumed. It was further held that in an application for eviction of a tenant from a shop which is based on the allegations that the premises has been sub-let, the allegation has to be proved. The question of sub-letting was considered by this Court in the case of Shalimar Tar Products Ltd. v. H.C. Sharma, [1988] 1 SCC 70 and it was held that in order to construe sub-letting there must be parting of legal possession of

the lessee and parting of legal possession means "possession with the right to include and also right to exclude others".

It is seen from the above paragraph that subletting cannot be presumed as long as control over the premises is kept by the tenant and the business run in the premises is of the tenant. This Judgment also says that in an application for eviction of a tenant from a shop which is based on the allegations that the premises has been sublet, the allegation has to be proved. As already noted in the instant case, the allegation of subletting has been clearly established by the evidence of the employee of the RTDC and also by payment of rent. This Judgment is also of no assistance to the Appellants.

Reliance has also been placed on the case of Gappulal v. Shriji Dwarkadheeshji, AIR (1969) SC 1291. This case also deals with the Rajasthan Premises (Control of Rent and Eviction) Act (17 of 1950). Section 13(1)(e) was also considered by this Court in the said Judgment. This Judgment held that in the event of subletting without permission of landlord, eviction is the only proper remedy and that the subletting of the premises whether before or after the commencement of the Act, is immaterial. If the tenant has sublet the premises without the permission of the landlord either before or after the coming into the force of the Act, he is not protected from eviction under Section 13(1)(e) of the Act and it matters not that he had right to sublet the premises under Section 108(j) of the Transfer of Property Act. In this case also, the Landlord has established the ground of eviction under Section 13(1)(e) with regard to the two shops on the northern side of the staircase of the temple. This Court on a consideration of the Section 13(1)(e) of the Act and of the evidence came to the conclusion that the landlord is entitled to a decree for ejectment of the tenant from the two shops. This Court also held that the concurrent findings of fact cannot be interfered with in a Second Appeal.

In the case of Jagdish Prasad v. Angoori Devi, [1984] 2 SCC 590, this Court has held as under :

"(1) It is only when a person other than the tenant sits in the shop in exercise of his own right that the presumption of subletting can arise. As long as control over the premises is kept by the tenant and the business run in the premises is of the tenant, subletting flowing from the presence of a person other than the tenant in the shop cannot be assumed. The Act does not require the Court to assume a subtenancy merely from the fact of presence of an outsider. The allegation that the premises has been sublet to a person has to be proved as a fact by the landlord and merely on the basis of a photograph showing presence of that person or his son within the premises, subletting cannot be presumed."

Reliance has also been placed on the case of Shalimar Tar Products Ltd. v. H.C. Sharma, [1988] 1 SCC 70. This is also a case of subletting. In this case, this Court has dealt with the provisions of Section 14(1) proviso (b) and 16(2) and (3) of the Delhi Rent Control Act. The question posed before this Court for consideration was whether there was a subletting and whether for that written consent of landlord has been obtained. This Court held that concurrent findings of fact on those questions of Tribunal and High Court would normally be accepted by Supreme Court in Appeal under Article 136 of the Constitution of India. This Court also held that the tenant has no right to sublet a portion of the premises without written consent of the landlord in contravention of the lease deed. Since the premises was let out without the written permission of the landlord, this court held that the landlord is entitled to eviction decree.

Reliance has also been placed on the case of Dipak Banerjee v. Lilabati Chakraborty, [1987] 4 SCC 161. This is yet another instance of subletting under the provisions of the West Bengal Premises Tenancy Act, 1956 and Section 13(1)(a) of the said Act. This Court has categorically held that person alleged to be a subtenant must be shown to be in exclusive

possession of the premises over which the main tenant has no control. This Court also held that the ingredient to prove the tenancy or subtenancy is that the right to occupy the premises must be in lieu of payment of some compensation or rent. In the present case, there was clear evidence as to the subletting and also the receipt of the rent by the tenant from the sub-lessee.

For the foregoing reasons, we are of the opinion that there is absolutely no warrant to interfere with the concurrent findings of the three courts. However, we leave open the first question argued by Mr. Jain on the interpretation of Section 13(3), (4) and (6) to be decided in an appropriate case and Section 19A of the Act.

Mr. Jain in the alternative prayed for some reasonable time to vacate the premises and handover peaceful vacant possession to the landlord. It is not in dispute that the tenants are in occupation of the shop in question from the year 1970. The tenants have also deposited the rent in the Court as ordered by this Court. Considering the long occupation of the premises in question, we are of the view that a reasonable time should be given to the tenants so that they will be in a position to collect all the dues due to them by third parties. Time is also to be given to enable them to find out a suitable accommodation. We, therefore, grant nine months' time to the tenants to vacate the premises and handover peaceful vacant possession by the end of February, 2007. The tenants shall now pay a sum of Rs. 1500/- not by way of rent but by way of compensation for use and occupation without any default from 1.6.2006 to end of February, 2007 on or before 15th of every succeeding month. The tenants shall file and undertaking in this Court within a period of three weeks from today. We also make it clear that the tenants shall not sublet the premises to any other third party during this period and shall handover peaceful possession to the landlord on or before 1st March, 2007.

The Civil appeal is disposed of accordingly. No costs.

The landlord is at liberty to withdraw the rent already deposited as per the orders of this Court without furnishing any security and if there is any arrear of rent, the Appellants shall pay the same within four weeks from today.