

CASE NO.:
Appeal (civil) 1680-1681 of 1999

PETITIONER:
Parvinder Singh

RESPONDENT:
Renu Gautam & Ors.

DATE OF JUDGMENT: 22/04/2004

BENCH:
R.C. LAHOTI, BRIJESH KUMAR & ARUN KUMAR.

JUDGMENT:
J U D G M E N T

R.C. Lahoti, J.

The suit premises consist of a shop bearing No.96/1, Lower Bazar, Shimla, governed by the H.P. Urban Rent Control Act, 1987. The appellant is the landlord-cum-owner of the shop. It was let out to late Vijay Gautam under an oral lease. On 31.12.1988, a partnership deed was signed between late Vijay Gautam and Harbhajan Singh, the respondent No.3 herein. On 26.6.1991, Vijay Gautam died. The partnership stood dissolved consequent thereupon. On 29.6.1991, another deed of partnership was signed between respondent No.1, the widow of late Vijay Gautam acting for herself and as guardian of respondent No.2, the minor son of Vijay Gautam, on the one hand and Harbhajan Singh, respondent No.3 on the other hand. On 7.7.1992, appellant initiated proceeding for eviction of the respondents from the shop alleging that the tenant Vijay Gautam had sublet the premises to Harbhajan Singh which subletting has been continued by the heirs \026 Respondent No.1 & 2, after the death of Vijay Gautam. A ground of default in payment of rent was also taken. The suit for eviction was dismissed by the Controller and the dismissal was upheld by the appellate authority as also by the High Court in civil revision. Feeling aggrieved, the landlord has filed this appeal by special leave.

A perusal of the three judgments ___ impugned herein ___ shows that the ground for eviction for default in payment of rent has been negated by all the three Courts. So far as the ground of subletting is concerned, the plea has not been gone into on merits by any of the Courts because of the law laid down by a two-Judges Bench of this Court in A.S. Sulochana Vs. C. Dharmalingam, (1987) 1 SCC 180. In A.S. Sulochana's case, the tenant was sought to be evicted on the ground of subletting within the meaning of Section 10(2)(ii)(a) of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The facts found therein were that the original landlord and tenant between whom the lease was created had both died. No evidence, direct or circumstantial, was available wherefrom it could be inferred if the lease prohibited the tenant from creating a sub-tenancy or whether the sub-tenancy was created by the tenant without the written consent of the landlord. Under the Tamil Nadu Act, the landlord could not succeed in evicting the tenant without establishing that Section 10(2)(ii)(a) was violated. Thus, the Court found that an inference as to creation of an unlawful sub-tenancy within the meaning of Section 10(2)(ii)(a) of the Tamil Nadu Act could not be drawn. However, the Court went on to observe:-

"When the statute says the tenant who is

sought to be evicted must be guilty of the contravention, the court cannot say, 'guilt of his predecessor in interest' will suffice. The flouting of the law, the sin under the Rent Act must be the sin of the tenant sought to be evicted, and not that of his father or predecessor in interest. Respondent inherited the tenancy, not the sin, if any, of his father. The law in its wisdom seeks to punish the guilty who commits the sin, and not his son who is innocent of the rent law offence. It being a penal provision in the sense that it visits the violator with the punishment of eviction, it must be strictly construed."

A.S. Sulochana's case came up for the consideration of a three-Judges Bench of this Court in Imdad Ali Vs. Keshav Chand & Ors., (2003) 4 SCC 635, though in the context of dealing with a ground for eviction under a local rent control law of Madhya Pradesh. A.S. Sulochana's case was distinguished and also adversely commented upon. The Court felt that in A.S. Sulochana's case the Division bench was influenced by the opening clause of the relevant provision in Tamil Nadu Act which begins with "a landlord who seeks to evict his tenant" so as to hold that the facts constituting the ground for eviction should be referable to the present tenant and not to his predecessor who had already died. The Court further held in Imdad Ali's case:- "It matters not whether such default is made by the original tenant or by his successor inasmuch as the successor-in-interest of the original tenant continues to be a tenant within the meaning of the provisions thereof. By reason of death of the original tenant, a new tenancy is not created. A successor-in-interest of a tenant holds his tenancy right subject to rights and obligations of his predecessor. He does not and cannot claim a higher right than his predecessor. It is now well settled that a person by reason of inheritance or assignment does not derive any better title than his predecessor, and, thus, the right which the original tenant did not possess cannot be passed on to his successor."

In Imdad Ali's case, the three-Judges Bench opined that the law laid down in A.S. Sulochana's case was not applicable for interpreting a provision in M.P. Accommodation Control Act 1961. The Bench also said ____ "We do not subscribe to the general observations made in A.S. Sulochana's case and to the said extent it cannot be held to have laid down a good law and is overruled accordingly".

The relevant provision of the H.P. Act reads as under:-

"14.(1) xxx	xxx	xxx
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(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied

XXX

XXX

XXX

(ii) that the tenant has after the commencement of this Act without the written consent of the landlord__

(a) transferred his rights under the lease or sublet the entire building or rented land or any portion thereof, or

xxx

xxx

xxx

the Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application:

xxx

xxx

xxx"

Tenancy is a heritable right unless a legal bar operating against heritability is shown to exist. Thus, the one who inherits tenancy rights also inherits the obligations incurred by the deceased tenant alongwith the rights which he had. It is difficult to accept a proposition that on death of the tenant his heirs inherit only rights and not obligations. If that be so, then the heirs would not be liable to pay any arrears of rent which were not paid by the deceased-tenant.

The judgments of the Controller, the appellate authority and the High Court which proceed on A.S. Sulochana's case cannot now be sustained and deserve to be set aside.

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 subletting 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 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 sublet 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, 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 the 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.

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 subletting 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 sublets 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 tenant in favour of a third person. 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 Vs. Vedathanni, AIR 1936 PC 70 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. Parting with possession or control over the tenancy premises by 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.

Shri Gourab Banerjee, the learned senior counsel for the appellant, submitted that all the relevant evidence and material are available on record and both the parties have adduced the necessary evidence. All that is needed to be done is its appreciation and to draw inferences. In such circumstances and keeping in view the period of time for which the proceedings have already remained pending, we deem it proper to remand the matter to the appellate authority for hearing and decision afresh.

Accordingly, the appeals are allowed. The judgments of the High Court and the Appellate Authority are set aside. The case is remanded to the Appellate Authority to hear and decide the appeal afresh after hearing the parties and to record a finding on the availability of ground for eviction under Section 14(2) of H.P. Urban Rent Control Act, 1987 and then decide the appeal finally. The costs shall abide the result.