

PETITIONER:
JAFFAR HUSSAIN EBRAHIM & ANR.

Vs.

RESPONDENT:
M/S. TAIYABALI DAWOODJI RANGWALA & ANR.

DATE OF JUDGMENT: 31/12/1996

BENCH:
KULDIP SINGH, S. SAGHIR AHMAD

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Kuldip Singh, J.

This is a landlord's appeal. He filed a suit for eviction of the respondent-tenant from the premises in dispute, inter alia, on the ground of sub-letting. The trial court came to the conclusion that Mohsin Rangwala-though the common partner-was not a real partner in the firm respondent 2-defendant 2 and as such respondent 1-defendant 1 had parted with the possession of the suit premises by putting respondent 2 in exclusive possession. In view of the said finding, the trial court decreed the suit. The appeal filed by the tenant was heard by a Bench of the small Cause Court. The appellate court on re-appreciation of the evidence on record, reversed the reasoning and the conclusions reached by the trial court and dismissed the suit. The High Court in its writ jurisdiction upheld the findings of the appellate court. This appeal, by the landlord, is directed against the judgment of the appellate court and that of the High Court.

We have heard learned counsel for the parties. We see no ground to interfere with the findings reached by the appellate court and upheld by the High Court. The High Court approved the findings of the appellate court on the following reasoning:-

The orders of assessment were already made in 1962, 1963 and 1964. Return forms were also filed before the filing of the suit itself. Therefore, it cannot be said that they were manipulated or the orders are based on some material which could be termed as an after thought. In my opinion these assessment orders which related to the period prior to the filing of the suit were not only relevant but were also germane for deciding the controversy involved in the suit. Further, the defendants have also produced on

record the municipal licences of 1964. Application for this licence was made before the filing of the suit itself and from the bare reading of these licences it is clear that in terms it makes a reference to the earlier decisions. Defendants No.1 firm which was dealing in paints in paints and colours had import licence and such licences numbering 39 were produced before the court. They relate to the period from 1962 to 1971. In all these import licences the address of the suit premises. The defendants have also produced the correspondence received at the address of the suit-premises for the years 1962 and onwards. The correspondence of the foreign firm for import of colour and paid was also produced. The extract from the account books of the firm were also produced. The weight or authenticity of these documents could not have been lightly brushed aside.Therefore taking a cumulative view of the whole evidence in my opinion, the appeal Bench was right in coming to the conclusion that Mohsinbhai was a common partner of both the firms. All though he continued to be in possession of the premises. From the material placed on record viz. import licences etc. coupled with the oral evidence, it is further clear that even the business of defendant No.1 firm was being carried out from the suit premises. Admittedly, tenancy of defendant No.1 was never terminated either expressly or by implication. The partnership which came into existence on 30th September 1960 was a partnership in which Mohsin was a partner. The suit premises were never treated as assets of defendant No.1 Mohsin was acting for and on behalf of defendant No.1 firm. Lalbhai who was a partner of the second defendant was managing business of the second defendant firm for and on behalf of the partners, which included Mohsinbhai. In substance therefore defendant No.1 firm which was a tenant was all through in possession of the suit premises and the plaintiff never parted with the possession more so exclusively. In this view of the matter, I have no hesitation in confirming the finding of fact recorded by the appeal Bench of the Small Cause

Count."

We see no ground to interfere with the above quoted findings reached by the High Court. We agree with the reasoning and the conclusions reached therein. The appeal is dismissed. No costs.

JUDIS