

PETITIONER:
TIRATH RAM GUPTA

Vs.

RESPONDENT:
GURBACHAN SINGH & ANR,

DATE OF JUDGMENT 06/02/1987

BENCH:
NATRAJAN, S. (J)
BENCH:
NATRAJAN, S. (J)
MUKHARJI, SABYASACHI (J)

CITATION:
1987 AIR 770 1987 SCR (2) 190
1987 SCC (1) 712 JT 1987 (1) 365
1987 SCALE (1) 255

ACT:

East Punjab Urban Rent Restriction Act, 1949--S. 13(2)-Eviction of sub-tenant--Not permissible if sub-tenancy created before Act came into force.

Transfer of Property Act--Ss. 108(j), III(e) & 115 Lessee has right to transfer by sub lease even a part of his interest in the property--Whether surrender of part interest under a lease permissible.

HEADNOTE:

The appellant-landlord first let out a shop-cum-flat to the second respondent (tenant) and subsequently leased out the adjoining two flats to him. The second respondent sub-let the two flats to the first respondent (sub-tenant) prior to the coming into force of the East Punjab Urban Rent Restriction Act, 1949 in the area where the property is situate.

The landlord filed a suit seeking eviction of both the respondents, inter alia, on the ground of unauthorised sub-letting, who contested the petition. However, there was a compromise between the appellant and the second respondent the appellant giving up his claim for eviction of the second respondent from the shop-cum-flat in his occupation and the second respondent conceding that he has sub-let the two flats to the first respondent without the consent of the appellant-landlord. The Rent Controller passed an order of eviction of the first respondent from the two flats sub-leased to him. An appeal to the Appellate Authority having failed, the first respondent filed a revision under s. 15(5) of the Act. The High Court allowed the revision, set aside the order of eviction and held that no order of eviction can be passed under s. 13(2) as the sub-tenancy had been created before the Act came into force in the area where the property is situate.

In the appeal to this Court on behalf of the appellant it was contended; (i) that when the second respondent had admitted the factum of the unauthorised sub-lease and when the Rent Controller and the Appellate Authority had acted on his admission, the High Court was in error in interfering with the order of eviction concurrently passed by

the Courts below; (ii) that even without reference to s. 13(2) the sublease was not lawful because the lease deed entered into between the parties contained a clause interdicting any sub-lease without the written consent of the landlord; (iii) that the sub-lease was not lawful even under s. 108(J) of the Transfer of Property Act because the lease deed contained a prohibition; (iv) that even if it is taken that there was no lease deed prohibiting the creation of a sub-lease, the sub-tenancy had become unlawful from the date when the second respondent was served a notice of termination of tenancy by the appellant; (v) that a subtenant does not have rights independent of the tenant and as such when the second respondent suffered an order of eviction, the first respondent was equally bound by the order; (vi) that when there was a surrender of tenancy rights restricted to the two flats in question, the first respondent is bound by the surrender and cannot claim the sub-tenancy rights any further; (vii) and that the Act gives protection only to tenants and not to sub-tenants against unreasonable eviction and hence the first respondent cannot claim protection under the Act from eviction.

Dismissing the Appeal,

HELD: 1.1 An order of eviction cannot be passed under s. 13(2) of the East Punjab Urban Rent Restriction Act, 1949 if the sub-letting was prior to the Act coming into force in the area concerned. [194F]

Surjit Singh v. Rattan Lal, AIR 1980P & H 319, approved.
Gurcharan Singh v. V.K. Kaushal, [1981] 1 SCR 490, relied upon.

L2 In the instant case, the sub-lease had been effected before the notice of termination of tenancy was issued. The notice of termination of tenancy subsequently issued would not make the sub-lease created earlier unlawful in any manner. [195C]

2. Against a common decree of ejectment passed against a tenant and the sub-tenant, the sub-tenant alone can appeal in his own right against the decree and have the same set aside even though the tenant decides not to file an appeal. [195F]

Devaraja Bhatt v. V.S. Rala & Ors., AIR 1953 Madras 356 (Vol. 40, C.N. 122), Express Estates Ltd. v. Modern Furnishing House, AIR 1953 Madras 414 and G.L. Kapoor v. Ramesh Chander Nijhawan & Ors., All-India Rent Control Journal 1972 Page 887, referred to.

192

Karam Singh v. Pratap Chand, AIR 1964 S.C. 1305, followed.

3.1 A lease is a transfer of a right to enjoy the property. It creates an interest in the property by virtue of the contract of lease which may be either oral or written. The interest created in the property can be put an end to by terminating the contract. The contract however, cannot be terminated in part. [195H;196A]

3.2 In this case though the two items of property were given on lease at different times, the parties had treated the lease as a composite one and that was why a common notice had been issued for terminating the tenancy of both the items and furthermore a single petition had been filed under s. 13(2) to seek an order of eviction in respect of both the items of the lease property. [196A-B]

4. In this case the lease deed has not been filed in Court and marked as an Exhibit in evidence. The explanation given by the appellant that the lease deed was shown to the Rent Controller and the Appellate Authority but it was not filed as an Exhibit because proceedings under the Act are not conducted in meticulous observance of the provisions of

Civil Procedure Code cannot be accepted and the Court cannot act on the basis that a valid lease deed had been executed and it contained a contract to the contrary in so far as the tenants' right to sub-lease is concerned. [194G;195A-B]

5. The lessee has a right to transfer by sub-lease even a part of his interest in the property as provided in s. 108(J) of the Transfer of Property Act. A transferee from the lessee has a right to claim the benefit of contract to the lessee's interest, vis-a-vis the landlord. Thus a sub-lease who has obtained a part of the interest of the head tenant will be entitled to claim the benefit of the contract vis-a-vis the lessor, as the lessee cannot surrender the lease in part. Section 111(e) contemplates a surrender of the entire interest under the lease and not a part of the interest alone. Moreover, a lease can be determined only by restoring possession in respect of the entire property which was taken on lease (see.) 108(m). [196B-D]

6. Section 115 of the Transfer of Property Act provides that the surrender of a lease does not prejudice an under-lease of the property or in part thereof previously granted by the lessee. The lessee, having parted with a part of the interest in the property in favour of the sub-lessee, cannot surrender that part of the property which is in the possession of the sub-lessee for he cannot restore possession of the same

193

to the lessor apart from the fact that he can terminate the contract of lease only as a whole and not in respect of a part of it. [196D-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3182 Of 1984.

From the Judgment and Order dated 17.1. 1984 of the Punjab and Haryana High Court in Civil Revision No. 907 of 1977.

Anil Dev Singh, R.C. Misra and Dr. Meera Aggarwal for the Appellant.

Prem Malhotra for the Respondents.

The Judgment of the Court was delivered by,

NATARAJAN, J. This appeal by Special Leave is by a landlord and is directed against the judgment of the High Court of Punjab and Haryana in Civil Revision No. 907 of 1977. In an eviction suit filed under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short the 'Act') against the tenant and the sub-tenant (Respondent 2 and 1 respectively) in respect of two premises, there was a compromise between the landlord and the tenant and in terms thereof, the Rent Controller decreed the eviction of the first respondent from the premises sub-leased to him. An Appeal to the appellate Authority proved of no avail and hence the first respondent filed Civil Revision No. 907 of 1977 under Section 15(5) of the Act to the High Court. The High Court allowed the revision holding that no order of eviction can be passed under Section 13(2) of the Act as the sub-tenancy had been created before the Act came into force in the Union Territory of Chandigarh where the property is situate. The High Court's order is challenged in this appeal.

The brief facts requiring notice may now be seen. The appellant/ landlord let out in the first instance a shop-cum-flat No. 7 to the second respondent in 1963 and subsequently in 1967 he leased out the adjoining two flats

also to him. The second respondent sub-let the two flats to the first respondent. It is common ground that the sub-letting was long prior to 4.11. 1972 when the Act came into force in the Union Territory of Chandigarh.

On March 8, 1973 the appellant filed a suit and sought eviction of both the respondents on various grounds but all of them except the

194

ground of unauthorised sub-letting were given up. The petition was contested by both the respondents. However, at the stage of arguments the appellant and the second respondent entered into a compromise between themselves and in terms thereof the appellant gave up his claim for eviction of the second respondent from the shop-cumflat in his occupation. Thereafter the second respondent conceded that he had sub-let the two flats to the first respondent without the consent of the appellant and hence an order of eviction confined to the two flats sub-leased to the first respondent may follow. An appeal to the Appellate Authority having failed the first respondent filed a revision to the High Court under Section 15(5) of the Act and succeeded in having the order of eviction set aside.

Mr. Anil Dev Singh, learned counsel for the appellant sought to assail the order of the High Court on various grounds. The first ground was that when the second respondent had admitted the factum of the unauthorised sub-lease and when the Rent Controller and the Appellate Authority had acted on his admission, the High Court was in error in interfering with the order of eviction concurrently passed by the courts below. This argument is devoid of merit because the admitted position is that the Act came into force in the area concerned only on 4.11. 1972 whereas the sub-lease had been effected much earlier. In view of that position the High Court was entitled to set right the error committed by the Rent Controller and the Appellate Authority in ordering eviction under Section 13(2) of the Act. As a matter of fact the High Court was bound to set right the error in view of its own decision in *Surjit Singh v. Rattan Lal*, AIR 1980 P & H 319 and this Court's decision in *Gurcharan Singh v. V.K. Kaushal*, [1981] 1 SCR 490. In both these cases it has been laid down that an order of eviction cannot be passed under Section 13(2) of the Act if the sub-letting was prior to the Act coming into force in the area concerned.

The second ground urged was an alternative plea and it was argued that even without reference to Section 13(2) of the Act the sub-lease was not lawful because the lease deed entered into between the parties contained a clause interdicting any sub-lease without the written consent of the landlord. In other words, the argument was that the sub-lease was not lawful even under Section 108(J) of the Transfer of Property Act because the lease deed contained a prohibition. We cannot countenance this argument for more than one reason. In the first place the lease deed has not been filed in court and marked as an Exhibit in evidence. Learned counsel stated that the lease deed was shown to the Rent Controller and the Appellate Authority but it was

195

not filed as an Exhibit because proceedings under the Act are not conducted in meticulous observance of the provisions of the Civil Procedure Code. We can hardly accept the explanation given and act on the basis that a valid lease deed had been executed and it contained a contract to the contrary in so far as the tenant's right to sub-lease is concerned.

It was then argued by Mr. Anil Singh Dev that even if it is taken that there was no lease deed prohibiting the creation of a sub-lease, the sub-tenancy had become unlawful from 24.1.72 when the second respondent was served a notice of termination of tenancy issued by the appellant. This argument is also not tenable because the sub-lease had been effected before the notice of termination of tenancy was issued. Hence the notice of termination of tenancy subsequently issued would not make the sub-lease created earlier unlawful in any manner.

Another argument advanced was that a sub-tenant does not have rights independent of the tenant and as such when the second respondent has suffered an order of eviction, the first respondent was equally bound by the order. Three decisions were cited to fortify this contention viz. *Devaraja Bhatt v. V.S. Raja & Ors.*, AIR 1953 Madras 356 (Vol. 40, C.N. 122); *Express Estates Ltd. v. Modern Furnishing House*, AIR 1953 Madras 414 and *G.L. Kapoor v. Ramesh Chander Nijhawan & Ors.*, All-India Rent Control Journal 1972 Page 887.

These authorities cannot advance the case of the appellant in any manner. The sub-tenancies which were respectively imputed in the cited cases had come into existence after the Rent Control Act in the respective States had come into force and hence they are distinguishable on facts. As regards the right of a sub-tenant to file an appeal independently of the tenant this Court has ruled in *Karam Singh v. Pratap Chand*, AIR 1964 S.C. 1305 that against a common decree of ejectment passed against a tenant and the sub-tenant, the sub-tenant alone can appeal in his own right against the decree and have the same set aside even though the tenant decides not to file an appeal.

There was also a contention that when there was a surrender of tenancy rights restricted to the two flats in question, the first respondent is bound by the surrender and cannot claim sub-tenancy rights any further. The contention is unsustainable for a host of reasons. A lease is a transfer of a right to enjoy the property. It creates an interest in the property by virtue of the contract of lease which may be either oral or written. The interest created in the property can be put an end

196

to by terminating the contract. The contract, however, cannot be terminated in part. In this case though the two items of property were given on lease at different times, the parties had treated the lease as a composite one and that was why a common notice had been issued for terminating the tenancy of both the items and furthermore a single petition had been filed under Section 13(2) to seek an order of eviction, in respect of both the items of the lease property.

The lessee has a right to transfer by sub-lease even a part of his interest in the property as provided in Section 108(j) of the Transfer of Property Act. A transferee from the lessee has a right to claim the benefit of contract to the lessee's interest, vis-a-vis the landlord, (vide Section 108 second paragraph of clause (c) of the Transfer of Property Act) Thus a sub-lessee who has obtained a part of the interest of the head tenant will be entitled to claim the benefit of the contract vis-a-vis the lessor, as the lessee (head tenant) cannot surrender the lease in part. Section 111(e) contemplates a surrender of the entire interest under the lease and not a part of the interest alone. Moreover, a lease can be determined only by restoring possession in respect of the entire property which was taken on lease (see Section 108(m). Section 115 of the Transfer of

Property Act provides that the surrender of a lease does not prejudice an under-lease of the property or in part thereof previously granted by the lessee. The lessee, having parted with a part of the interest in the property in favour of the sub-lessee, cannot surrender that part of the property which is in the possession of the sub-lessee for he cannot restore possession of the same to the lessor apart from the fact the he can terminate the contract of lease only as a whole and not in respect of a part of it. Having regard to all these factors, even without going into the question of the partial surrender of lease being vitiated by collusion, it is not open to the appellant in law to contend that the second respondent is entitled to and had validly surrendered a portion of the lease-hold property and the first respondent, being the sub-tenant is bound by the surrender and should deliver possession.

The last argument of the appellant's counsel was that the Act gives protection only to tenants and not to sub-tenants against unreasonable eviction and hence the first respondent cannot claim protection under the Act from eviction. Reference was made in this connection to Section 2(ii) of the Act which excludes a sub-tenant from the definition of tenant. The argument stems from an erroneous assumption that the first respondent is seeking protection under the Act from being evicted. The true position is that the first respondent

197

has only taken the stand that the appellant is not entitled to evict him under section 13(2) of the Act since the sub-lease in his favour had been created before the Act came into force.

We are, therefore, of the view that none of the contentions of the appellant has merit or substance. Consequently, the appeal fails and is dismissed. The parties will, however, pay and bear their respective costs.

A.P.J.
missed.

Appeal dis-

198