

**IN THE HIGH COURT OF HIMACHAL PRADESH  
AT SHIMLA**

Civil Revision No. 206 of 2000  
Civil Revision No. 207 of 2000  
Civil Revision No. 210 of 2004

Reserved on : September 21, 2006

Date of Decision: September 29, 2006

---

Civil Revision No. 206 of 2000

|                                   |             |
|-----------------------------------|-------------|
| Mrs. Kushal Takkar and others     | Petitioners |
| Versus                            |             |
| Brij Bihari Lal Butail and others | Respondents |

Civil Revision No. 207 of 2000

|                                   |             |
|-----------------------------------|-------------|
| Jagjit Singh Chauhan              | Petitioner  |
| Versus                            |             |
| Brij Bihari Lal Butail and others | Respondents |

Civil Revision No. 210 of 2004

|                                   |             |
|-----------------------------------|-------------|
| Mrs. Kushal Takkar and others     | Petitioners |
| Versus                            |             |
| Brij Bihari Lal Butail and others | Respondents |

---

Civil Revision No. 206 of 2000

For the Petitioners: Mr.G.D.Verma, Sr. Advocate, with  
Mr.B.C.Verma, Advocate.

For respondent No.1: Mr.Ajay Kumar, Advocate.  
For respondent No.2: Mr.Bhupender Gupta, Senior  
Advocate, with Mr.Neeraj Gupta,  
Advocate.

Civil Revision No. 207 of 2000

For the Petitioners: Mr.Bhupender Gupta, Sr. Advocate,  
with Mr. Neerj Gupta, Advocate.

For respondent No.1: Mr.Ajay Kumar, Advocate.  
For respondent No.2: Mr.G.D.Verma, Sr. Advocate,  
with Mr.B.C.Verma, Advocate.

Civil Revision No. 210 of 2004

For the Petitioners: Mr.G.D.Verma, Sr. Advocate, with  
Mr.B.C.Verma, Advocate.

For respondent No.1: Mr.Ajay Kumar, Advocate.

---

Coram

The Hon'ble Mr. Justice V.K.Gupta, C.J.

Whether approved for reporting<sup>1</sup>?

---

V.K.Gupta, C.J.

By this common judgment all these three petitions are being disposed of together. The facts in brief leading to the filing of the three petitions may be summarized as under:-

Respondent Brij Bihari Lal Butail being the landlord of the premises in question filed an Eviction Petition under Section 14 of the H.P. Urban Rent Control Act, 1987 (1987 Act, for short) against Nikka Ram (since deceased) and respondent Wattan Singh for their eviction from the property in question on three grounds, viz., non-payment of arrears of rent, sub-letting of a part of the property by deceased tenant Nikka Ram to respondent Wattan Singh and property having undergone changes and impairment because of the alterations and additions etc. Learned counsel for the parties submit and agree that in these three petitions the only ground which survives and which should be made the subject matter of consideration by this Court relates to sub-letting.

---

<sup>1</sup>Whether the reporters of Local Papers are allowed to see the Judgment?

Deceased Nikka Ram was admittedly the tenant of the property in question, which is being run as a hotel. Whereas the landlord had pleaded that the annual rent was Rs.3000/- plus taxes, the contention of the tenant was that annual rent was Rs.3,375/- inclusive of taxes. The rate of rent, however, is not one of the contentious issues in the case. The following seven issues were framed by the learned Rent Controller for trial:-

- "1. Whether the respondent No.1 has sublet a portion of the premises to respondent No.2 without the consent of the petitioner?  
OPP.
2. Whether the respondent is in arrears of rent as alleged. If so to what effect? OPP.
3. Whether the respondent has built two latrines in the premises so as to impair materially the value and utility of the premises? OPP
4. Whether the petition is not maintainable?  
OPR
5. Whether the petitioner has suppressed material facts? OPR.
6. Whether this court has no jurisdiction to try this petition? OPR.
7. Relief."

The learned Rent Controller vide judgment dated 13<sup>th</sup> January, 1995 decided issue No.1 relating to subletting in favour of landlord and accordingly ordered the eviction of the respondents in the rent

petition from the premises in question. Whereas no appeal was filed against the aforesaid order passed by the learned Rent Controller by respondent Wattan Singh, the tenant Nikka Ram preferred the appeal under Section 24(2) before the Appellate Authority (II), Shimla, being CMA No. 10-S/14 of 1995. The learned Appellate Authority vide judgment dated 29<sup>th</sup> April, 2000, upholding the finding of the learned Rent Controller with respect to Issue No.1 dismissed the appeal.

During the pendency of the appeal before the learned Appellate Authority Nikka Ram tenant died. An application was filed on 19<sup>th</sup> February, 1998 by Jagjit Singh Chauhan in terms of Order 22 Rule 3 read with Section 151, CPC for substitution of the legal representatives of deceased appellant Nikka Ram on the ground that Nikka Ram had expired on 21<sup>st</sup> November, 1997 and was survived by the following six legal representatives:-

- "1. Jagjeet Singh Chauhan (son)  
Ambrosia Building Ram Bazar, Shimla
2. Sh.Padam Jeet Singh (son)  
R/o Village Rukhla, PO Rawla Kiar,  
Tehsil Kotkhai, District Shimla.
3. Smt. Shanti Jhinna (daughter)  
W/o Capt. P.S.Jhinna, Village Dumahar,  
PO & Tehsil Kotkhai, Distt. Shimla.
4. Mrs. Krishna Kapret (daughter)  
W/o Sh.Col.R.K.Kapret,  
R/o Village Marre, PO Pudag,  
Tehsil Kotkhai, District Shimla, H.P.

5. Mrs.Kushal Takkar  
W/o Sh.Ajaib Singh Takkar,  
R/o House No.97, Sector 10(A),  
Chandigarh.
6. Mrs. Sushil Chandla  
W/o Sh.Lalit Singh Chandla,  
Village Rukhla, PO Rawla Kiar,  
Tehsil Kotkhai, Distt.Shimla (HP)  
(daughter)."

Vide an order passed on 5<sup>th</sup> June, 1998 the learned Appellate Authority ordered the substitution of the aforesaid six persons as legal representatives in place of deceased appellant Nikka Ram. For ready reference this order is reproduced hereinbelow, which reads thus:-

"This application has been filed by the LRs of the sole appellant Sh.Nikka Ram who expired on 21.11.1997 for their substitution as his LRs. It is submitted in the application that in view of the registered will, they inherited the estate of deceased Nikka Ram. The attested copy of will dated 30.12.1998 is placed on record in compliance with the previous order. Said appellant Sh.Nikka Ram has died on 21.11.1997 as per the death certificate annexed alongwith this application. This application is filed in this Court on 19.9.1998 is thus well within the period of limitation. The petitioners being the only LRs of the deceased appellant also established from the attested copy of the will placed on record. The respondents on the (sic) have not brought anything contrary on record suggesting that the petitioners are not the LRs of the deceased

nor they inherited his estate. In such circumstances, the application is allowed. The petitioners in para 1 of the application be substituted at the place of deceased appellant in the main appeal. This application is accordingly disposed of. Be tagged with the main."

When the matter, however, again came up for consideration of the learned Appeal Court, for the hearing of the final arguments in the Appeal on 7<sup>th</sup> July, 1999, it was brought to his notice that power of attorney on behalf of the aforesaid six persons as substituted LRs of deceased Nikka Ram had not been filed in the appeal and since it was thought that there might be a technical defect in the case at a later stage, the learned Appellate Authority granted four weeks' time for these six LRs to file their powers of attorney. The order dated 7<sup>th</sup> July, 1999 reads thus:-

"This appeal is listed today for final arguments, however, the learned counsel for the appellant has stated that the power of attorney on behalf of all the legal heirs of deceased appellant Sh.Nikka Ram has not yet filed in this appeal. In order to avoid some technical difficulty at later stage, learned counsel for the appellant is granted four weeks time to file the power of attorney on behalf of all the legal heirs of

the deceased appellant, who have already brought on record as per the order dated 5.6.1998 in an application under Order 22 Rule 3, C.P.C. List this appeal for the purpose as well as final arguments on 07.09.1999."

Apparently because Mr.Varinder Tajta, Advocate, had been appearing all along, firstly for Nikka Ram, appellant and after his death for the substituted LRs, on 7<sup>th</sup> September, 1999 when the matter again came up for consideration before the learned Appellate Authority he rather than filing the powers of attorney on behalf of all the six LRs suggested that these persons be served notices since according to him they were not coming forward. The learned Court, therefore, directed that LRs except Jagjit Singh Chauhan be served by issuance of summons. Accordingly summons were sent to these LRs. In the order dated 27<sup>th</sup> September, 1999, the learned Appellate Authority noticed that LRs No.2 to 6 had been served, but despite service were absent and hence it proceeded to dispose of the appeal in their absence. The appeal ultimately as noticed at the outset, was disposed of vide judgment dated 27<sup>th</sup> April, 2000.

Civil Misc. Application No.51-S/6 of 2000 was filed on 18<sup>th</sup> June, 2000 before the learned Appellate Authority by three persons, who presently

are petitioners in CR No.210 of 2004 as well as CR No. 206 of 2000. This was an application filed by these three persons purportedly under Order 9 Rule 13 read with Section 151, CPC for setting aside the judgment dated 29<sup>th</sup> April, 2000, on the ground that interests of these three persons were not represented properly before the learned Appellate Authority. Vide Order 30<sup>th</sup> October, 2004 the learned Appellate Authority dismissed this application of these three persons.

CR No. 210 of 2004 filed by three petitioners is against the aforesaid order dated 30<sup>th</sup> October, 2004 rejecting their application filed under Order 9 Rule 13, CPC. CR No.206 of 2000 and CR No. 207 of 2000 are against the main judgment dated 29<sup>th</sup> April, 2000 passed by the learned Appellate Authority dismissing the appeals filed by the appellants therein under Section 24(2) of 1987 Act. Whereas CR No.206 of 2000 and CR No.210 of 2004 are at the instance of three petitioners, CR No.207 of 2000 is at the instance of Jagjit Singh Chauhan alone, the son of deceased Nikka Ram.

I have heard the learned counsel for the parties at length and perused the records of the case.

In so far as the judgment of the learned Rent Controller as well as impugned judgment dated



29<sup>th</sup> April, 2000 passed by the learned Appellate Authority is concerned, having gone through these judgments, I find that these two Courts have returned a concurrent finding of fact that tenant Nikka Ram indeed had sublet a portion of the property under this tenancy to Wattan Singh. PW-1 Brij Bihari Lal, PW-3 Sansar Chand, PW-4 Sandeep Sood, PW-5 Sant Ram and PW-6 Ashok Kumar were the witnesses who had appeared during the course of trial of the Eviction Petition. A very close scrutiny of their evidence leaves no one in any manner of doubt that they had proved conclusively that whereas Nikka Ram tenant was running a hotel in the property under his tenancy, one room in this building had been sublet by him to Wattan Singh and Wattan Singh, the sub-tenant was running a tailoring shop in this room (Khokha). Actually reliance was also placed on the statement of RW-1 Jagjit Singh, attorney of Nikka Ram as well as the statement of PW-5 Pardeep Kumar, attorney of respondent Wattan Singh to prove and establish the fact that Wattan Singh actually was in possession of the room independently in his capacity as a sub-tenant. Photographs showing the Sign-Board of the tailoring shop also proved that in fact respondent Wattan Singh was running a tailoring shop in the room in question which was in his exclusive possession. Some bills proved as Ex.PW-1/B to Ex.PW-1/G (after

re-construction) also revealed and proved that tenant Nikka Ram was charging Rs.100/- per month from respondent Wattan Singh as lodging charges with respect to the shop in question and Rs.30/- or Rs.15/- per month as taxes. RW-1 Jagjit Singh had admitted that the bills bore the signatures of Fateh Singh, who was the hotel manager under the employment of tenant Nikka Ram.

The aforesaid apart, respondent Wattan Singh had filed an application before the Rent Controller for deposit of rent at the rate of Rs.100/- per month against the eviction petitioner-landlord Brij Bihari Lal Butail. Copy of the application and the order dated 21<sup>st</sup> June, 1993 passed thereupon were produced and proved in the Court below.

The case put up by Nikka Ram tenant as well as respondent Wattan Singh was that even though Wattan Singh was in possession of the shop, this possession was not in his capacity as a sub-tenant but as a licensee because shop was being occupied by Wattan Singh only to do the ironing of clothes for the guests/residents of the hotel. Even though interestingly the two respondents in the Eviction Petition had set up a specific case, based on the aforesaid specific plea, they did not adduce any evidence to prove this fact even though the onus of proving this fact squarely lay upon them.

That the sub-tenancy was created without the knowledge and consent of the landlord was also proved and established, especially the fact that landlord had objected to the parting of the room at the hands of the tenant Nikka Ram in favour of respondent Wattan Singh.

Both the Courts below have properly appreciated the evidence adduced in the course of the trial and correctly came to the finding of fact that the room in question actually was sublet unauthorisedly and illegally by tenant Nikka Ram in favour of respondent Wattan Singh, thereby giving a right to the landlord to evict them from the property in question.

In the two Civil Revisions, being CRs No.206 and 207 of 2000, I, therefore, see no reason to interfere with the aforesaid concurrent findings of fact recorded by the two Courts below.

In so far as CR No.210 of 2004 is concerned, I find that in the application filed under Order 22 Rule 3, CPC even though only by Jagjit Singh Chauhan and supported by his affidavit, the other five legal heirs of deceased Nikka Ram including the three petitioners in this petition were cited as the persons who had succeeded to the estate of deceased Nikka Ram, but in so far as the property forming the subject matter of the rent petition and the appeal is

concerned Jagjit Singh Chauhan had specifically pleaded that his father Nikka Ram had executed a Will on 30<sup>th</sup> December, 1998, which was duly registered in the office of Sub-Registrar (U), Shimla, whereby the business being run by the deceased appellant in the premises in question under the name and style of "Coronation Hotel", Shimla etc. had been bequeathed in favour of Jagjit Singh and, therefore, the right to sue survived to applicant Jagjit Singh Chauhan. He had taken an alternative plea that the right to sue (alternatively) survived to all the six persons mentioned in para 1 of the application. Even though initially on 5<sup>th</sup> June, 1998 the learned Appellate Authority by allowing the aforesaid application had ordered the substitution of the legal representatives but later on realising that the powers of attorney from and on behalf of the other five persons were not forthcoming, it ordered issuance of summons to these five persons.

Jagjit Singh Chauhan claimed that he was the legal representative of Nikka Ram since he had succeeded to his estate. This claim of legal heirship was based on the execution of a Will in his favour by Nikka Ram prior to his death. Section 2(11) of the Code of Civil Procedure does suggest that the expression 'legal representative' means a person who in law represents the estate of a

deceased. The status of Jagjit Singh Chauhan as representative of deceased Nikka Ram, representing his estate after his death is based on the execution of the Will in his favour by Nikka Ram. Through the medium of the Will Nikka Ram had bequeathed his estate relating to the hotel in question, being the suit property, in favour of Jagjit Singh Chauhan.

We are not in this case concerned with any issue relating to creation of tenancy through Will. This is a case where there is a representation of the estate of deceased and this is linked with and based upon the execution of the Will which undoubtedly cannot be said to be a disputed document.

It is quite doubtful that the three petitioners actually in CR No.210 of 2004 could claim the status of being the legal heirs of deceased Nikka Ram because of the fact, firstly that the Will had been executed in favour of Jagjit Singh Chauhan, who thus can be termed as having succeeded to the estate of deceased Nikka Ram and secondly their status would not be termed as being "tenants" with respect to the suit property. The expression 'tenant' has been defined in Section 2(j) of the 1987 Act. As per this definition, 'tenant' means any person by whom or on whose account rent is payable and in the event of the death of such person such of his heirs as are mentioned in Schedule-I to the aforesaid Act and who

were ordinarily residing with him at the time of his death. A plain reading of this definition of the expression 'tenant' clearly thus establishes that for claiming the legal heirship as per this provision the *sine qua non* is that the person claiming to be the legal heir should not only be a legal heir as is mentioned in Schedule-I of the Act but should also have been ordinarily residing with him at the time of his death. Whereas in the case of Jagjit Singh Chauhan he claimed his legal heirship on the basis of the Will executed by Nikka Ram deceased in his favour which was also a registered document, in the case of other three persons, who are petitioners in CRs No.206 of 2000 and 210 of 2004, a careful perusal of the application filed by them under Order 9 Rule 13, Code of Civil Procedure reveals that they did not even aver or contend that at the time of the death of Nikka Ram they were ordinarily residing with him. Because these three persons had not even averred or contended about the aspect relating to their ordinarily residing with deceased Nikka Ram at the time of his death, they would not fall within the definition of expression 'tenant' as per the aforesaid Section 2(j) of 1987 Act.

Mr.G.D.Verma, learned Senior counsel appearing for the petitioners argued at length that the interests of these petitioners were not properly

represented before the learned Appellate Authority because they were not duly served the summons to appear in the Court. I do not agree with this contention because it cannot be said that the petitioners were not served the summons. The original file of the learned Court below has been very carefully perused by me. The perusal of the file conclusively establishes that the three petitioners in CR No. 210 of 2004, namely, Mrs. Kushal Takkar, Mrs. Susheel Chandla and Mrs. Krishna Kapret, were duly served the summons for appearance in the Court in the appeal filed by Nikka Ram after the application for substitution of legal representatives had been filed by Jagjit Singh Chauhan before the Appeal Court. As far as the petitioner Kushal Takkar is concerned, the summons at page 82 of the file of the learned Court below suggests that she had been served on 20<sup>th</sup> September, 1999. As far as the petitioner Susheel Chandla is concerned she was served the summons on 10<sup>th</sup> September, 1999 and as far as the petitioner Krishna Kapret is concerned, she was served the summons on 9<sup>th</sup> September, 1999. All these three persons were served the summons personally because the summons returned to the learned Court below after due service bear the signatures of these three persons showing alongside the signatures the date of their service.

Mr. Ajay Kumar, learned counsel appearing for the respondent Brij Bihari Lal Butail rightly contended that application under Order 9 Rule 13 of the Code of Civil Procedure filed by the petitioners actually was not even maintainable. Rule 13 of Order 9 relates to setting aside decrees passed ex parte against the defendants. It clearly states that in any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to have it set aside. Here is a case where admittedly no decree was passed ex parte against these petitioners. It was in the appeal filed by Nikka Ram, the predecessor-in-interest of the applicants, that an application was filed for substitution of the legal representatives of deceased appellant Nikka Ram and the Appeal Court proceeded to dispose of the appeal, only as per the petitioners, in the absence of these three petitioners. The petitioners' grievance was that they were not heard before the appeal was disposed of. In such a fact situation, therefore, filing an application under Order 9 Rule 13, CPC was not a permissible course of action.

On a totality of circumstances, therefore, I find that the order under challenge in CR No. 210 of 2004 does not suffer from any irregularity or illegality.



Based upon the aforesaid discussion and for the foregoing reasons all the three petitions are dismissed but without any order as to costs.

September 29, 2006  
(C)

(V.K.Gupta)  
Chief Justice