

## IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Revision No. 138 of 2001

Judgment reserved on:22.11.2007

Date of Decision: November 30, 2007

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Surinder Kumar & anr.

... Petitioners

Versus

Dharam Pal

... Respondent.

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Coram:

**The Hon'ble Mr. Justice Deepak Gupta, Judge.**

***Whether approved for reporting?***

For the Petitioner : Mr. Ajay Kumar, Advocate.

For the Respondent(s) : Mr. Debinder Ghosh, Advocate.

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Deepak Gupta, J

This revision petition under Section 24(5) of the H.P.Urban Rent Control Act, 1987 is directed against the order of the Appellate Authority, Shimla passed in CMP No. 56-S/14 of 1998 decided on 22.2.2001 whereby the Appellate Authority has dismissed the appeal filed by the petitioners and allowed the eviction petition filed by the respondent-landlord on the ground that the tenant Surinder Kumar Sood has sublet the premises in question in favour of his younger brother Rajinder Kumar Sood, petitioner No.2.

The landlord and petitioner No.1 entered into a written agreement on 16.5.1985 whereby the landlord rented out the premises in question to Shri Surinder Kumar Sharma (tenant) at a

rental of Rs.300/- per month. The landlord on 5.10.1994 filed an eviction petition against the tenant on the ground that the tenant Surinder Kumar Sood had sublet the entire premises to his younger brother Rajinder Kumar Sood, petitioner No.2 without the consent of the landlord. Two other grounds were also taken with regard to impairing the value of the building and that the building had been damaged and was required by the landlord for reconstruction and bonafide use of the premises.

The petitioners filed reply to the eviction petition denying the allegations made in the petition. It was denied that petitioner No.1 had sublet the premises to petitioner No.2 herein. It is alleged that the petition is malafide and has been filed for oblique motives of the respondents to enhance the rent. The case set up by the tenants is that his younger brother who was unmarried was living with him at the time when the tenancy was created. Thereafter the brother got married and that both the brothers live in a joint family and there is no question of parting of possession by petitioner No.1 in favour of petitioner No.2. The learned trial Court ordered the eviction of the petitioner only on the ground of subletting which order has been upheld by the Appellate Authority. Hence the present appeal.

I have heard Shri Ajay Kumar learned counsel for the petitioners and Shri Debender Ghosh learned counsel for the respondent.

The main thrust of Shri Ajay Kumar is that the tenancy though created in the name of Surinder Kumar Sood was for the benefit of the entire family; that Shri Rajinider Kumar Sood used to live jointly

with his brother and after his marriage also he and his family live in a joint family; that the alleged sub-tenant Rajinder Kumar Sood has been paying the rent to the landlord on behalf of his brother Surinder Kumar Sood to the landlord and that no consideration between the tenant and sub tenant has been proved. Shri Ajay Kumar has also urged that the Appellate Authority has not taken into consideration the evidence led before it.

On the other hand, Shri Debinder Ghosh learned counsel for the respondent-landlord supported the concurrent findings of both the courts below and submits that there is no error of jurisdiction and this court should not re-appreciate the evidence.

The admitted facts are that the tenancy was created vide a rent note Ex.PW1/A by the landlord in favour of petitioner No.1. It is also not denied that the petitioner No.1 who is an employee of the Himachal Road Transport Corporation was transferred to Dehra in December, 1990 and he along with his wife and children, shifted bag and baggage to Dehra. It is further admitted that petitioner No.2 along with his wife and daughter are living in the tenant premises. It has been urged on behalf of petitioner No.1 that even now he visits Shimla off and on and resides in the premises in question.

First let us examine the question as to whether the petitioner No.1 has parted with the possession in favour of petitioner No.2. Reference may be made to statements of the petitioners themselves. Petitioner No.1 has stated that his younger brother petitioner No.2 has been residing with him from the very beginning. He further states that his mother resides in tenanted premises in

Sabzi Mandi, Shimla where there is only one room which has been with their family from 1957. He further states that he comes to Shimla frequently to meet his mother and sometimes when he comes to Shimla then his brother resides with his mother at Sabzi Mandi, Shimla. In cross-examination, he clearly admitted that he, his wife and children are living at Dehra. He also admitted the suggestion that when he comes to Shimla, his brother shifts to Sabzi Mandi since there is paucity of accommodation in the disputed premises. In cross-examination, he has admitted that he and his brother maintain their families separately and bear the expenses of their respective families. He has admitted the suggestion that his brother is liable to pay rent of the premises since he ( tenant ) does not stay in the premises.

No doubt he has denied the suggestion that he has sublet the premises in favour of his brother but the statement of petitioner No.1 is categorical to the effect that he is no longer residing in the premises. At best, he is a visitor to the premises and comes there off and on. It is obvious that he is no longer in possession of the premises and the possession is of his brother and he visits the premises as a guest. The version of the tenant that when he and his family come to Shimla, his brother shifts to Sabzi Mandi with the mother, supports the contention of the landlord that two families cannot reside together in the tenanted premises. It cannot be believed that petitioner No.2 left his mother all alone and shifted with his brother. It is obvious that till the transfer of petitioner No.1/tenant, his younger brother was residing with the mother in Subzi Mandi. Even as per the tenants version, two families cannot

reside together in the demised premises. It is only after the tenant was transferred that his brother-petitioner No.2 started residing in the demised premises.

RW2 has stated that he never paid the rent to his brother. He states that he has a joint family and that he has been sending the rent on behalf of his brother to the landlord. In cross-examination, he has admitted that he is liable to pay the rent since he is occupying and utilizing the premises. The statement of RW3 brother-in-law of the tenant cannot be believed at all. He has gone one step ahead of the tenant and his brother. This witness states that mother of the tenant resides in the demised premises whereas according to the petitioners, the mother resides in Subzi Mandi.

Before the learned Appellate Court an application was moved by the tenant to lead additional evidence which was allowed. Thereafter the petitioner examined one Shri A.S.Thakur, Assistant Manager of the Indian Bank, Shimla, to prove the fact that petitioner No.2 had paid the rent of the premises to the landlord by cheques. The witness did not produce the cheques. He only brought the ledger and from the ledger, it cannot be spelt out as to in whose accounts the amounts reflected in the cheques were credited. No doubt Rajinder Kumar Sood has stated that he had given cheques to the landlord but no evidence has been led to prove this fact. In cross-examination, the witness (AW2) states that he paid the rent as a tenant and in the same breath he states that landlord had never inducted him as a tenant. These two statements are totally contradictory. The landlord had not received any rent from petitioner No.1.

Keeping in view the evidence led by the parties, I am clearly of the view that the tenancy was created solely in favour of petitioner No.1 Surinder Kumar Sood. No doubt, the family of a tenant can reside with him, however, in this case, there is no material on record to show that the brother Rajinder Kumar Sood was residing with the tenant prior to his transfer to Dehra. In fact, the evidence as discussed above indicates that the family had only one room in Sabzi Mandi and thereafter the elder brother took on rent one room set in Jai Niwas, Bemloe, from the landlord. The younger brother who was unmarried would not have left his mother alone. The evidence discussed above leads to only one inference that after the tenant was transferred to Dehra, instead of handing the premises back to the landlord, he handed over it to his brother. The parting of possession is clear in this case since both the brothers have clearly stated that the tenant Surinder Kumar Sood is not liable to pay the rent as he is not using the premises and it is only Rajinder Kumar Sood who is liable to the rent.

By now it is well settled law that proof of monetary consideration is not a *sine qua non* to establish subletting. Reference in this behalf may be made to the judgments of the apex Court in **Kala v. Madho Parshad Vaidya** (1998) 6 SCC 573, **Joginder Singh Sodhi v. Amar Kaur** (2005) 1 SCC 31. In the latter case, the apex Court held that relationship between the tenant and sub-tenant is not material to decide the question of sub tenancy and even where the son of the tenant came into possession of the premises, he was a stranger vis-à-vis to the landlord. If the parting of possession is proved, the burden shifts on the tenant to show why

the possession was transferred. Once exclusive possession of the alleged sub tenant is established it is permissible for the court to draw an inference that the transaction was entered into with some monetary consideration in mind.

In view of the above discussion, I find that the landlord has established on record that the tenant/ petitioner No.1 had sublet the premises in favour of his brother petitioner No.2 Rajinder Kumar Sood and, therefore, the landlord/respondent is entitled to evict the tenant or sub-tenant from the premises in question on this ground.

There is no merit in this revision petition. Both the courts below have given concurrent findings of fact that the tenant has sub let the premises to his brother petitioner No.2. This concurrent finding of fact calls for no interference in this petition. The revision petition is accordingly dismissed with costs assessed at Rs. 3000/-.

November 30, 2007.

( Deepak Gupta ), ACJ.

S.