

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Revision No.5430 of 1999

Date of Decision: February 29, 2008

Sham Lal

...Petitioner

VERSUS

Yogesh Kumar & another

...Respondents

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Amit Jain, Advocate,
for the petitioner.

Mr.K.S.Sidhu, Senior Advocate with
Mr.G.S.Sidhu, Advocate,
for respondent No.1.

RANJIT SINGH, J.

Sham Lal tenant has filed this revision against the order of his eviction passed by Rent Controller and up-held by the Appellate Authority, Ambala.

Demised premises is a shop, which was allegedly let out on payment of a rent at the monthly rate of Rs.8.25P. on 11.5.1954.

Alleging that Raj Kumar has sub-let the demised premises to Sham Lal, respondent Yogesh Kumar had filed the eviction petition. Besides, he also pleaded the ground of arrears of rent since 1.4.1973, which worked out to be Rs.1848/-. The landlord also pleaded that he would require this premises for his personal use as he wants to start his own business. Allegation of material alteration having been made by the tenant is also made, wherein it is stated that the roof of the shop has been changed besides changing the wooden door and thus the value and utility of the premises has been materially impaired.

Petitioner Sham Lal appeared in response to the notice and denied the relationship of landlord and tenant. Petitioner alleges that respondent-landlord had never let out the demised premises to Raj Kumar and there is no relationship of landlord and tenant between them. He has also denied the allegation that he is a sub-tenant of Raj Kumar. The case set up by petitioner Sham Lal is that the demised premises was lying vacant and in dilapidated condition. He thus states to have broken open the lock of the shop in the year 1973 and entered the demised premises. He further claims that after getting the repairs of the shop done, he has started his business and is in possession of the shop ever since that date as owner. The petitioner has further claimed that his possession of the said premises is open, notorious and hostile to the title of the real owner and he has thus become owner of the demised premises by way of adverse possession. The petitioner accordingly pleads that he is neither to pay arrears of rent nor can be evicted from the demised premises on the ground that the same is required for personal use by

respondent Yogesh Kumar. He has also not denied the fact that he has carried out alteration but has explained it by saying that he being owner is at liberty to make any alteration which he would wish to make. Plea is that this petition has been filed in collusion with Raj Kumar. Raj Kumar has chosen not to contest the petition and was proceeded ex-parte on 8.12.1992. On the basis of pleadings, the parties went to trial on the following issues.

- 1) Whether there exists a relationship of landlord and tenants between the parties? OPP
- 2) Whether the respondents are liable to be ejected on the grounds that:-
 - a) The respondent No.1 is in arrears of rent since 1.4.73 to date.
 - (b) The petitioner requires the disputed premises for his own personal use and bonafide necessity.
 - (c) The respondent No.1 without the consent of the petitioner has sublet the shop in dispute to respondent No.2.
 - (d) The respondents have made material alterations in the disputed shop which have materially impaired the value and utility of the disputed shop.
- 3) Whether the petitioner has no locus standi to file the present suit? OPR No.2
- 4) Whether respondent No.2 is owner in possession of the disputed shop? OPR No.2
- 5) Whether this court has no jurisdiction to try and entertain the present petition? OPR.

6) Relief.

Parties led evidence in support of their respective stands. Rent controller held that relationship of landlord and tenant between Yogesh Kumar and Raj Kumar was established and accordingly held that Sham Lal was liable to be evicted being a sub-tenant and for non-payment of arrears of rent. Issues at 2(d) concerning the material alteration and 3 and 5 concerning locus and about the jurisdiction of the court to try the petition were not pressed by the counsel representing the parties and as such no finding was returned on these issues. The petitioner filed appeal against the finding returned by the Rent Controller. The Appellate Authority up-held the finding of the Rent Controller on the issues of arrears of rent and also on the ground of sub-letting and accordingly dismissed the appeal leading to the petitioner filing this revision petition.

Mr.Amit Jain, learned counsel representing the petitioner would mainly contend that respondent was unable to prove his ownership of the demised premises and as such failed to establish the relationship of landlord and tenant between him and Raj Kumar or between petitioner and respondent Yogesh Kumar.

On the other hand, Mr.K.S.Sidhu, learned Senior counsel appearing for the respondent-landlord would point out that thirty documents were placed on record to show and prove the ownership of the landlord over the demised premises and as such the argument of the learned counsel for the petitioner that landlord had failed to establish his ownership over the property is totally misconceived and misplaced.

The perusal of the record would show that landlord had examined Atma Ram as PW-2. He is an attesting witness of a rent note. PW-2 deposed that rent note, Exh.P2, bears his signatures and that the same was executed by Raj Kumar in favour of Yogesh Kumar. It is also on record that this rent note was scribed by Gopi Chand. Mr.Jain would highlight the cross-examination of this witness to say that this witness could not tell where this rent note was scribed. He further submits that the signatures of the witness were taken at his shop and the witness could not tell who had obtained the signatures. He, however, denied the suggestion given on behalf of the petitioner that he had signed on the false document on the asking of Raj Kumar. PW-2 clearly deposed that the shop is now in possession of Sham Lal. He could not say as to who was in possession of the shop in 1954, but he categorically stated, that too in response to a suggestion given by the counsel for the petitioner, that Raj Kumar was sitting as tenant on the shop.

Respondent-landlord examined himself as a witness in support of his case. He testified that rent note, Exh.P-2, was executed by Raj Kumar and that it was scribed by Gopi Chand. Atma Ram (PW-2) was the attesting witness, the other being Tara Chand, who had expired. The landlord had brought on record a fact of great significant that an application was moved by Raj Kumar respondent for fixation of a fair rent. The copy of the order passed on this application has been placed on record as Exh.P3. Exh.P4 is the letter on the basis of which the fair rent was assessed vide Exh.P3. The respondent-landlord also proved on record the entries from the house tax register, which were marked as P5 to P11 showing the

tenancy. This evidence will go a long way to establish the case set up by the respondent-landlord which is that respondent Raj Kumar was tenant in the suit property against the case pleaded by petitioner that Raj Kumar was never inducted as a tenant in the suit property. Besides, reliance was also placed on money order receipts produced on record Exhs.P12 to P30, which clearly showed that respondent Raj Kumar had been making payment of the rent to the landlord-respondent. The evidence as brought on record and pointed out above would be enough to establish the relationship of landlord and tenant between respondent Yogesh Kumar and Raj Kumar. The case of the petitioner as set up before the Rent Controller apparently would sound hollow. It cannot be expected that some premises would be found lying vacant and a person can occupy the same without being objected. Even if there be some objection to some of the documents, like money order receipts etc. but the copy of the application moved by Raj Kumar for fixing fair rent and order passed thereon, which has been placed on record, has rightly been found to be such documents which are of unimpeachable authenticity, which would go to establish the relationship of landlord and tenant between respondent Yogesh Kumar and Raj Kumar. The petitioner also could not establish if the tenancy was ever surrendered by Raj Kumar, which could justify his assertion that he had occupied the property while it was lying un-occupied.

Once the relationship of landlord and tenant is established between respondent Yogesh Kumar and Raj Kumar, it would not be much difficult to hold that petitioner was a sub-tenant and it is a case of sub-letting. Against this documentary evidence,

proof would stand in isolation in the statement of petitioner Sham Lal and his neighbour Piare Lal that the shop was lying vacant and was occupied by the petitioner. It may further need an appreciation that the rent note which was executed on 11.5.1954 would come under the category of 30 years old document and as such would carry a presumption of truth attached to it. The submissions made by Mr.Amit Jain to find fault with this document by referring to version of Atma Ram (PW-2) apparently is far-fetched. Failure on the part of this witness to name the person who was in possession of the demised premises or the place where this document was executed etc. is meaningless and would not dent the version in regard to the existence of this document. This witness is 70 years old and had attested this document as a witness about 40 years back from the date he gave his evidence. To remember these details after such long lapse of time can be easily explained by fading memory of an old person and rather would show him in a good light when he narrated those facts only which he could recollect and remember. It would rather show that he is not a tutored witness, but is a truthful one and has deposed about these facts which he could recollect and did not pad his version in support of either party.

Mr.Jain has made an attempt to take a support from legal proposition to urge that there is no evidence of parting of possession on the part of Raj Kumar in favour of the petitioner, which could prove sub-letting. In this regard, he has placed reliance on observations made in Smt.Vidya Wanti and others Vs. Banarsi Dass and another, 2004(1) PLR 311 and Vinod Kumar and another Vs. Sat Pal, 2004(2) RCR 699. He would also refer to the ratio of law laid

down in the case of Mohan Singh and Another Vs. Joginder Lal, 2004(1) HRR 302 to say that mere entry of a house tax register is not sufficient to prove relationship of landlord and tenant between the parties. He has also referred to the case of R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesarawami & V.P. Temple and others, Vol.CXXXVI (2004-1) Punjab Law Reporter 612 to urge that entry in the municipal record is no evidence of title. In my considered opinion, these cases would not in any manner come to the rescue of the petitioner. In Mohan Singh's case (supra), it is held that mere entry of house tax register is not sufficient to prove the relationship of landlord and tenant. In the present case, the relationship has not been established only on the basis of mere entry in the house tax register. There are large number of other authentic documents (thirty in number), which were pressed into service to show the relationship of landlord and tenant. Similarly, the ratio of law laid down in R.V.E. Venkatachala Gounder's case(supra) would not have any applicability to the facts of the present case. I have not been able to understand as to how the ratio of law in the cases of Smt.Vidya Wati and vinod Kumar (supra) would help the cause of the petitioner. Once it is established by respondent-landlord that he had rented this demised premises to Raj Kumar, the onus to prove that Sham Lal had not come into possession from Raj Kumar was on petitioner Sham Lal. It is admitted case that Raj Kumar is no more in occupation of this shop and obviously he has parted with the legal possession of the premises. Even otherwise, the ratio of law as would emerge from these judgments and others judgments of the Hon'ble Surpeme Court is to the effect that for proving the charge of

sub-letting, it is necessary to prove that sub-tenant is in exclusive possession of the part of the premises and the tenant had retained no control over that part of the premises (See Dipak Banerjee v. Lilabati Chakraborty, 1987(2) RCR (Rent) 311 (SC). The electricity connection in the demised premises was found to be in the name of Raj Kumar respondent and respondents are brothers. This fact would be enough to infer that the tenancy which is found to be in the name of Raj Kumar was sub-let to brother by brother. In view of the evidence, it is clear that parting of possession is clearly made out.

As a result of above discussion, I find that the Appellate Authority as well as the Rent Controller have not committed any illegality or impropriety which would call for interference in the exercise of revisional jurisdiction. The revision petition is accordingly dismissed.

February 29, 2008
ramesh

(RANJIT SINGH)
JUDGE