HELPER GIRDHARBHAI

v.

SAIYED MOHMAD MIRASAHEB KADRI AND OTHERS.

MAY 6, 1987

[SABYASACHI MUKHARJI AND S. NATARAJAN, JJ.]

Bombay Rents, Hotel & Lodging House Rates Control Act, 1947: ss. 13 and 29—Tenant—Eviction of on ground of subletting—Demised premises used for partnership business—Lessee in legal possession—Held not enough to prove subletting. High Court—Whether could reappraise evidence in revision.

Partnership Act, 1932: ss. 4 & 6—Partnership—Determination of—Whether mixed question of law and fact.

Sub-section (2) of s. 29 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, as it stood at the relevant time, barred further appeal against any decision in appeal under sub-s. (1), and instead conferred revisionary powers on the High Court in such a case.

The appellant-tenant was a partner in firm 'A' which was carrying on business of manufacturing cloth in the suit premises. That business was closed on October 4, 1960 and a new firm 'B' came into being to run the business in manufacturing and selling neon sign tubes. On October 13, 1960 a partnership deed was executed by six persons as partners of the new firm. The document was silent as to where the business was started. On or about October 24, 1960 another partnership deed was executed by these six persons and the appellant and his father with an agreement to share only profits to the extent of 3 paise in a rupee. After the death of the appellant on February 1, 1961 a new partnership deed was executed by the remaining seven partners with the same terms and conditions.

The respondent-landlord filed eviction suits against the appellant-defendant alleging that the premises which were leased to the appellant for manufacturing cloth in the name of firm 'A' had been unlawfully sublet in major part to defendants 2 to 5 who were running business in partnership for manufacturing neon signs. The appellant contended that firm 'A' was not the tenant of the suit premises, that his father was the original tenant with whom he had joined in business as a partner in firm 'A', that the suit premises were to be used for business and he

A could use it for any business, that he had joined firm 'B' in partnership, that the suit premises was with him and defendants 2 to 5 had not acquired any tenancy rights in the suit premises, and that he had filed a civil suit to dissolve the partnership, and to take account which was later decreed in his favour and affirmed in appeal.

B The trial court held that there was unlawful subletting, and decreed the suit for possession. The appellate court, Court of Small Causes, found that the appellant was only carrying on the business in partnership with defendants 2 to 5 in the name of firm 'B' in the suit premises, and held that there was no subletting, change of user, and breach of terms of tenancy. The High Court in revision on a reappraisal C of evidence took the view that the partnership was a camouflage and was never acted upon, and in fact and in reality the partnership firm was a sub-tenant of the appellant.

In the appeal by special leave it was contended for the appellant that there was a genuine partnership which was acted upon and this D finding of the appellate court could not have been reversed by the High Court in revision under s. 29(2) of the Act. For the respondents it was contended that the original first partnership deed did not mention that the appellant or his father was a partner, that it was in the second partnership deed that the appellant and his father joined the firm, that there was a gap of time when there was user by the partnership firm of E the premises in question when the appellant was not a member of the firm, which fact was not considered by the appellate court, and that the partnership deed was a camouflage.

Allowing the appeal,

F HELD: 1. The High Court exceeded its jurisdiction under s. 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 in reversing the view of the appellate court. [305BC]

2.1 The distinction between an appeal and revision is a real one. A right to appeal carries with it a right of re-hearing on law as well as G fact, unless the statute conferring the right to appeal limits the re-hearing in some way. The power to hear a revision is generally given to a superior court to ensure that the principles of law have been correctly borne in mind, that the facts have been properly appreciated and a decision arrived at taking all material and relevant facts in mind, that the decision is such which a reasonable man could have arrived at and H which does not lead to a miscarriage of justice. [301H-302A; 303EF]

2.2 The Court must guard itself against permitting in the guise of revision substitution of one view where two views are possible and the appellate court has taken a particular view. If a possible view has been taken, the High Court would be exceeding its jurisdiction to substitute its own view with that of the courts below because it considers it to be a better law. The fact that the High Court would have taken a different view is wholly irrelevant. Whether there was a partnership or not is a mixed question of law and fact, depending upon the varying circumstances in different cases. [303FG; 304E] A B

Hari Shankar v. *Rao Girdhari Lal Chowdhury,* [1962] 1 Suppl. SCR 933; *Puranchand* v. *Motilal,* [1963] Suppl. 2 SCR 906; *Krishnawati* v. *Hans Raj,* [1974] 2 SCR 524; *Phiroze Bamanji Desai* v. *Chandrakant M. Patel & Ors.,* [1974] 3 SCR 267; *Bhai Chand Ratanshi* v. *Laxmishankar Tribhavan,* [1982] 1 Rent Control Journal 242; *M/s Kasturbhai Ramchand Panchal & Brothers and Others* v. *Firm of Mohanlal Nathubhai and Others,* AIR 1969 Gujarat 110 and *Punamchandra Revashankar Joshi* v. *Ramjibhai Maganlal,* 7 Gujarat Law Reporter (1966) at page 807, referred to. C D

In the instant case, the Court of Small Causes considered the principles of law, evaluated the evidence and held that there was in fact and in law a partnership. Such a view was not an impossible one or a perverse one. Therefore, there was nothing that could be done about such a view within the ambit and scope of the revisional powers under s. 29(2) of the Act and the High Court could not have substituted its own finding for the one reached by the appellate court. [404H-305A; 304D] E

3. Whether the ingredients of partnership as embodied in the law of partnership were there or not in a particular case must be judged in the light of principles applicable to partnership, that is (1) there must be an agreement entered into by all the persons concerned, (2) the agreement must be to share the profits of a business, and (3) the business must be carried on by all or any of the persons concerned acting for all. Sharing of profits and contributing to losses are not the only elements in a partnership, existence of agency is essential. [296FG; 304G; 304E] F G

Chimanram Motilal and Another v. *Jayantilal Chhaganlal and another,* AIR 1939 Bombay 410 and *Mohammed Musa Sahib (dead) and Others* v. *N.K. Mohammed Ghouse Sahib and Another,* AIR 1959 Madras 379, referred to.

In the instant case, judged by these principles it could not be said H

A unequivocally that there was no partnership. The partnership deeds gave the appellant the right to share the profits and made him an agent for certain limited purposes of the firm and there was evidence that the partnership deeds were acted upon. It is true that the bank accounts were not to be operated by the appellant, that he was to be given a fixed percentage of profit irrespective of profit and that he was not to share B the losses. There is nothing inherently illegal or improper in making provision of such a type. In the eyes of law such a claim is really non-sequitur or neutral proving neither the existence nor non-existence of a genuine firm. The appellant was to bring in his asset being the tenancy of the premises in question for the user of the partnership. Debiting the fixed amount payable to the appellant in the expenses C account is also not inconsistent with partnership. This is also not inconsistent with treating the rent of the firm in the context of the total expenditure of the firm. There was evidence of a suit of dissolution of the partnership where none of the partners took the plea that it was a false or a fictitious document. Though the decree in the dissolution suit was not binding in these proceedings inter se between the parties as D partners, it is a piece of evidence which cannot be wholly ignored. All these factors were present before the appellate court. These were reappraised by the High Court. [304G; 298A; 297B; 298C; 297C; 301A; 298B]

4. The partnership firm was carrying on business in the premises E in question since October 4, 1961. If there was such a partnership firm of which the appellant was a partner as a tenant the same would not amount to subletting leading to forfeiture of the tenancy, for there cannot be a subletting, unless the lessee parted with the legal possession. The mere fact that another person is allowed to use the premises while the lessee retains the legal possession is not enough to create a F sublease. [294FG; 305B]

Madras Bangalore Transport Co. (West) v. *Inder Singh and others,* [1986] 3 SCC 62; *Mehta Jagjivan Vanechand* v. *Doshi Vanechand Harakhchand and others,* (AIR 1972 Gujarat 6) and *Gundalapalli Rangamannar Chetty* v. *Desu Rangiah and others,* (AIR 1954 Madras 182), referred to.

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3551 of 1979.

From the Judgment and Order dated 20/21.8.1979 of the Gujarat High Court in C.R. Appln. No. 1218 of 1977.

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Dr. Shankar Ghosh, P.H. Parekh and Ayesh Misra for the Appellant. A

T.U. Mehta, R.C. Bhatia and P.C. Kapur for the Respondents.

The Judgment of the Court was delivered by B

SABYASACHI MUKHARJI, J. Whether the appellant herein and his father had sublet the premises in question in or about 1960 in terms of section 13(1)(e) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter called the 'Rent Act') is the question involved in this appeal by special leave from the judgment and order of the High Court of Gujarat dated 21st of August, 1979. C

In order to decide this question, it is necessary to decide the scope and ambit of section 29(2) of the Rent Act. To decide this, facts must be referred to.

The appellant claimed to be the tenant in respect of the two D premises which are quite adjacent to each other, one of which is involved in this appeal. The respondent is the landlord of the two premises and these were situated at Raikhad Ward, Ahmedabad. The respondent had alleged in the two suits that the appellant was his tenant in the suit premises which were leased out to him and before him his father, for conducting the business in the name of Ahmedabad E Fine & Weaving Works and according to the terms of tenancy suit premises were leased for manufacturing cloth in the name of Ahmedabad Fine & Weaving Works. The respondent had further alleged that the appellant No. 1 had closed the business and he was not using the said premises for the purpose for which it was let to him. It was the case of the appellant that in respect of the suit premises he was F carrying on his business with respondents Nos. 2, 4 and 5 in the name of respondent No. 2, M/s. Bharat Neon Signs (hereinafter referred to as respondent No. 2).

We are concerned in this appeal with only one of the premises which was involved in Suit No. 553 of 1969. It is not in dispute and it G never was that the premises was being used by Bharat Neon Signs firm being the defendant No. 2 in the original suit. At the time of the institution of the suit the defendants Nos. 2 to 5 were admittedly the partners. The present appellant who was the original defendant No. 1 claimed to be a partner. The main controversy was whether the appellant had sublet the premises to defendant No. 2, Bharat Neon Signs or H

A whether he being a partner of the said firm had permitted the said firm to use the premises in question. It is clear from the evidence on record that the partnership firm had undergone metamorphosis from time to time and again ever since the year 1960. The firm Bharat Neon Signs first originated on 4th of October, 1960. As many as six persons were named in the partnership firm, on or about 4th of October, 1960 and B they had executed a deed of partnership on 13th of October, 1960 which is Exhibit-114 on the record. The said partnership deed records six persons who were to run the business in manufacturing and selling Bharat Neon Signs tubes. However, the document is silent as to where the business was started. On or about 24th of October, 1960 another partnership deed being Exhibit-69 came to be executed among the six C persons and the father of the appellant Girdharlal. The document is Exhibit-69 and is signed by the father of the appellant and the appellant himself also. It may be mentioned that the partnership deed Exhibit-114 was executed by six persons and at that stage the appellant or his father were not partners in the firm. But thereafter when the partnership deed Exhibit-69 was executed the appellant and his father D joined the firm with an agreement to share profits only and their share was fixed at 0.03 paise in a rupee. There is a third partnership deed Exhibit-70 which showed that the deceased tenant Girdharlal had died on 1st of February, 1961 and so by the remaining seven partners with same terms and conditions, a new partnership deed being Exhibit-70 was executed on 22nd September, 1961. At this time the share of the E appellant was fixed at 0.03 paise in a rupee to share the profits only. In 1965 some partners retired and the remaining four partners executed a fresh partnership deed Exhibit-117 on 1st April, 1965. This last partnership deed was executed by the appellant and original defendants Nos. 3, 4 and 5.

F **The main question in issue in this appeal as well as before the High Court in revision was whether there was a genuine partnership at all in which the appellant was a partner. It is true that since after 4th of October, 1960 the partnership firm was carrying on business in the premises in question. It is well settled that if there was such a partnership firm of which the appellant was a partner as a tenant the same** G **would not amount to subletting leading to the forfeiture of the tenancy. For this proposition see the decision of the Gujarat High Court in the case of *Mehta Jagjivan Vanechand* v. *Doshi Vanechand Harakhchand and others,* A.I.R. 1972 Gujarat 6. Thakkar, J. of the Gujarat High Court, as the learned Judge then was, held that the mere** H **fact that a tenant entered into a partnership and allowed the premises being used for the benefit of partnership does not constitute assign-**

ment or subletting in favour of the partnership firm entitling a landlord to recover possession. This view is now concluded by the decision of this Court in *Madras Bangalore Transport Co. (West)* v. *Inder Singh and others*, [1986] 3 S.C.C. 62.

The trial court in the instant appeal held that there was subletting. It accordingly decreed the suit for possession instituted by the landlord. The suit, *inter alia*, was filed by the landlord on the ground of subletting. There was an appeal before the Court of Small Causes, Bombay and by judgment and order delivered by the Court of Small Causes, Bombay on 18th of August, 1977, it was held that the learned Trial Judge had erred in passing a decree for possession on the ground of subletting, change of user and breach of terms of tenancy. In the premises, the appeal was allowed. It may be mentioned that the respondent No. 1 is the landlord of two premises which were quite adjacent as mentioned before. The respondent-plaintiff had alleged in both the suits that the appellant was his tenant in the suit premises which were leased to him for conducting his business in the name of Ahmedabad Fine & Weaving Works, and according to the terms of tenancy suit, the suit premises were leased for manufacturing cloth in the name of Ahmedabad Fine & Weaving Works. The landlord had alleged that the appellant had closed that business and he was not using the premises in question for the purpose for which it was let to him. It was further alleged by the landlord that the appellant had unlawfully sublet the major part of the premises in question of both the suits to defendant Nos. 2 to 5 in the original suit and these defendants were running business in partnership for manufacturing of neon signs in the name of Bharat Neon Signs. It was further alleged that the appellant had also unlawfully sublet one room of the suit premises to defendant No. 6 in Suit No. 553 of 1969 who was residing in that room. For the purpose of the Suit No. 553 of 1969 with which the appeal is concerned, it is relevant to state that the appellant had raised the contention that Ahmedabad Fine & Weaving Works was not the tenant of the suit premises but the suit premises was tenanted by the father of the appellant Girdharlal Chimanlal in 1938 and he was the original tenant of the premises and appellant subsequently joined the business of his father as a partner and the name of the partnership firm was Ahmedabad Fine Weaving Works. He has stated further that the suit premises were to be used for business and he could use it for any business and he joined in partnership with Defendants Nos. 2 to 5 somewhere in 1961 to prepare neon signs and the defendants Nos. 2 to 5 were his partners and doing business in the suit premises. He contended further that the suit premises was with him and the

A defendants Nos. 2 to 5 had not acquired any tanancy rights in the suit premises. It is further stated that he had filed a civil suit to dissolve the partnership and to take account and his suit was pending in City Civil Court. It may be mentioned that by the time the revision petition came to be decided by the High Court the suit had been decreed in his favour directing a dissolution of the said partnership and directing
B taking of the accounts. There was an appeal filed from that decree and that appeal was also dismissed and disposed of affirming the decree for the dissolution of the partnership, *inter se* between the parties being the partners of the said firm. These facts were accepted that there was a partnership. As mentioned hereinbefore the learned trial Judge consolidated both the suits and in the instant suit being No. 553 of 1969
C with which this appeal is concerned, it was held by the learned trial Judge that there was unlawful subletting. There was a decree for possession.

This was set aside in appeal. The Appellate Court so far as the
D material for the present appeal is concerned held that there was no subletting and there was only carrying on of the business in partnership with defendants Nos. 2 to 5 in the name of Bharat Neon Signs. Therefore, the first question that had to be decided by the Appellate Court being the Court of Small Causes, Bombay and if a revision lay before the High court was whether there was any genuine partnership. The
E partnership deeds were there, the appellant was not to share in the losses. The Court of Small Causes came to the conclusion on an analysis of the evidence before it and the terms of the three partnership deeds referred to hereinbefore that there was a genuine partnership in law which was acted upon. The High Court in revision reversed that finding. The first question therefore, is, whether the High Court
F could do so in the facts of this case and secondly whether the High Court was right in so doing.

Whether there was a partnership or not may in certain cases be a mixed question of law and fact, in the sense that whether the ingredients of partnership as embodied in the law of partnership were there
G in a particular case or not must be judged in the light of the principles applicable to partnership. The first question, therefore, is what is a partnership? That has to be found in section 4 of the Indian Partnership Act, 1932, it says "Partnership is the relation between persons who have agreed to share the profits of a business carried *on by all or any of them acting for all*" (Emphasis supplied). Section 6 of the
H said Act reiterates that in determining whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm,

regard shall be had to the real relation between the parties, as shown by all relevant facts taken together. The following important elements must be there in order to establish partnership, (1) there must be an agreement entered into by all parties concerned, (2) the agreement must be to share profits of business; and (3) the business must be carried on by all or any of the persons concerned acting for all. The partnership deeds were there entitling the petitioner to share in the partnership. It is true that in the partnership deeds the bank accounts were not to be operated by the appellant, and further that irrespective of the profit the clause of the partnership deed provided that there should be a fixed percentage of profit to be given to the partner-appellant No. 1. The appellant was not to share the losses. But there is nothing illegal about it. The appellant was to bring his asset being the tenancy of the premises in question for the user of the partnership. All these tests were borne in mind by the Court of Small Causes, Bombay in the appeal from the decision of the learned trial Judge. The Appellate Court had considered the partnership deeds. One point was emphasised by Mr. Mehta, learned counsel appearing for the respondents, that the original first partnership deed did not mention the appellant or his father as a partner. It was in the second partnership deed that the appellant and his father joined the firm. The firm started as emphasised by Mr. Mehta on 4th of October, 1960 and it was only on the 24th of October, 1960 the second partnership deed was executed. Therefore, it was emphasised that there was a gap of time when there was user by the partnership firm of the premises in question when the appellant was not a member of the firm. It was emphasised that this aspect was not considered by the Court of Small Causes and the High Court, therefore, was justified in interfering with the findings of the Court of Small Causes. We are unable to agree. These deeds were there, the partners were cross-examined, there was no specific evidence as to from what date the firm started functioning from the particular premises in question. Secondly, it was emphasised by Mr. Mehta that the partnership deed was a camouflage. It is evident from the sales-tax registration and other registration certificates and licences under the Shops and Establishments Act that the partnership was registered in the name of the appellant and the appellant was also indicated as a partner. It was so in the Income Tax returns and assessments. Therefore, it was submitted that the Court of Small Causes committed an error of law resulting in miscarriage of justice. It was submitted by Mr. Mehta that once it was accepted that the partnership deed was a mere camouflage the other subsequent acts and conducts were merely ancillary and were put in a formal way. But the question is from the three deeds itself which were examined in detail by the Court

A B C D E F G H

A of Small Causes and which were re-examined by the High Court could it be said unequivocally that there was no partnership. The deeds gave the appellant the right to share the profits and made him agent for certain limited purposes of the firm and there was evidence that the partnership deeds were acted upon. There was evidence of suit of dissolution of the partnership where none of the partners took the plea B that it was a false or a fictitious document. Though the decree in the dissolution suit was not binding in these proceedings, *inter se* between the parties as partners it is a piece of evidence which cannot be wholly ignored. All these factors were present before the Court of Small Causes. These were reappraised by the High Court. One point was emphasised by Mr. Mehta that in the partnership deed which is not C necessary to recite the terms, the petitioner was completely excluded in operating the bank accounts etc. There is nothing inherently illegal or improbable making a provision of such a type. In the eye of law, such a clause is really non-sequitur or neutral proving neither the existence nor non-existence of a genuine firm.

D The first partnership deed which is Exhibit-114 is dated 13th October, 1960. It recited that the partnership firm should be presently started at Ahmedabad and the same should later be started in another city. In this the appellant was not a partner. Exhibit-69 at page 136 of Volume-II of the paper-book is a partnership deed wherein Girdharlal the father of the Appellant No. 1 and the appellant No. 1 joined as E partners. It recited that the partnership started from 4th of October, 1960 at Ahmedabad. It was registered in the name of 7th and 8th partners, Girdharlal who was the appellant and his father. It was recited that the work of the partnership would be done by the parties of the fourth, fifth, sixth, seventh and eighth as per advice and instructions of the first, second and third. All the work had been done by F some of the partners of which appellants were not parties and that they had to do the said work as per instructions of the other partners. Clauses 6 and 7 of the said partnership deed recited *inter alia* as follows:

> "6. The year of accounts of our partnership shall be Aso G Vadi 30th day i.e. Diwali and the first account year is decided to be the Aso Vadi 30th day of Samvat Year 2017. While settling accounts at the close of the year, 33% amount from the sum which may remain as net profit after deducting all expenditures, viz interest, discount, rent of the shop, rent of the godown, insurance, brokerage, travel- H ling, telegrams, postage, salaries of employees, etc. shall

be carried to Reserve Fund and thereafter, in the sum that remains as net profit, the shares of us the partners have been fixed as under:-

		Rs. Np.
1.	Ratanlal Jivabhai.	0 - 16
2.	Manubhai Lalbhai.	0 - 16
3.	Keshavlal Mulchand.	0 - 05
4.	Kantilal Bhogilal.	0 - 10
5.	Virchand Keshavji.	0 - 23
6.	Satyapal Jeshal.	0 - 24
7.	Girdharlal Chimanlal.	0 - 03
8.	Helper Girdharlal.	0 - 03
		0 - 100 i.e. Re. 1/-

7. While settling accounts at the close of the year, if the sum less than Rs. 1500 falls to the 0-03 shares of the partners of the seventh and eighth parts, the amount falling short has to be debited towards the head of expenditure and Rs. 1500 (fifteen hundred only) have to be paid in full to each of them two, and in those circumstances or if there be loss, the parties of the seventh or eighth parts have not been held liable therefor; and in the year of losses, it has been decided to pay Rs. 1500 (fifteen hundred only) to each of them, after debiting the same towards the head of expenditure and in the year of losses nothing has to be carried to the 'Reserve Fund' and the loss has to be borne by us the parties first to sixth parts in the following proportion:-

1.	Ratanlal Jivabhai	0 - 17
2.	Manubhai Lalbhai	0 - 17
3.	Keshavlal Mulchand	0 - 05
4.	Kantilal Bhogilal	0 - 11
5.	Virchand Keshavji	0 - 25
6.	Satyapal Jeshal	0 - 25
		0 - 100 i.e. Re. 1/-

A Clause 8 empowered the operating of the bank accounts by partners other than the appellant and his father. We find intrinsically nothing improbable. It is embodied in the deeds the functioning of the partnership. The third partnership which is dated 22nd of September, 1961 also indicates as parties of sixth part the name of the appellant. The relevant portion of the partnership deed reads as follows:-

B

> "To wit, the parties of the first to sixth parts out of us, deceased Khristi Girdharbhai Chimanlal and Shah Virchand Keshavji had jointly started the business of manufacturing and selling Neon Signs Tubes, in partnership in Ahmedabad from 4.10.1960, in the name and style of
> C Bharat Neon Signs. However, on account of the death of Khristi Girdharbhai Chimanlal on 1.2.61 and other reasons, the said partnership was dissolved from 8.9.61. Thereafter, we the parties from the first to seventh part have, after purchasing at its cost price, all the debts and dues, goods, stock etc., together with goodwill of the dis-
> D solved partnership, started manufacturing and selling of Neon Signs Tubes in partnership from 9.9.61. We, the parties of all the seven parts execute the deed of the said partnership to-day i.e. 22.9.61. The terms and conditions thereof are as under:-
>
> E (1) The entire work of our partnership has to be carried out in the name of "Bharat Neon Signs."
>
> (2) The work to be carried out by our partnership is of manufacturing and selling Neon Signs Tubes and of obtaining orders therefor.
>
> F
>
> (3) Whatever moneys that may be required to be invested in our partnership, are to be invested by the parties of the first, second, third, fourth and seventh parts out of us and the interest at the rate of 71/2 per cent per annum has to be paid for the moneys that may be invested
> G in this partnership."

We are of the opinion that these were evidence that these terms were acted upon. There was nothing intrinsically wrong in law in constituting a partnership in the manner it was done. It was contended by Mr. Mehta that there was no agency; reading the partnership deeds
H as we have read that conclusion does not emanate from position

appearing debiting the fixed amount payable to the appellant in the expenses account which also is not inconsistent with partnership. This is also not inconsistent with treating the rent of the firm in the context of the total expenditure of the firm. A

In any event all these factors were considered by the Court of Small Causes bearing in mind the correct legal principles. The High Court on a reappraisal of these very evidence came to the conclusion that the partnerships were camouflages and were not acted upon and in fact and in reality the partnership firm was a sub-tenant of the appellant herein. B

The question is, can the High Court do so in law. The power of the High Court to revise the order is contained in section 29(2) of the Bombay Rent Act as applicable at the relevant time to Gujarat. The said provision reads as follows: C

> "29(2) no further appeal shall lie against any decision in appeal under sub-section (1) but the High Court may, for the purpose of satisfying itself that any such decision in appeal was according to law, call for the case in which such decision was taken and pass such order with respect thereto as it thinks fit." D

The ambit and power of revision generally and in particular with respect to the provisions with which we are concerned have from time to time come up for consideration by this Court. This Court in *Hari Shankar* v. *Rao Girdhari Lal Chowdhury*, [1962] 1 Suppl. SCR. 933 had to consider section 35(1) of the Delhi & Ajmer Rent Control Act, 1952. The said section reads as follows:- E

> "35(1) The High Court may, at any time, call for the record of any case under this Act for the purpose of satisfying itself that a decision made therein is according to law and may pass such order in relation thereto as it thinks fit." F

It was held in the majority judgment by Hidayatullah, J. as the learned Chief Justice then was, that though section 35 of the Delhi and Ajmer Rent Control Act was worded in general terms but it did not create a right to have the case re-heard. This Court emphasised that the distinction between an appeal and revision is a real one. A right to appeal carries with it right of re-hearing on law as well as fact, unless the statute conferring the right to appeal limits the re-hearing in some G H

A way. The power to hear a revision is generally given to a superior court so that it may satisfy itself that a particular case is decided according to law. The expression "according to law" in section 35 of the said Act referred to the decision as a whole, and was not to be equated to errors of law or of fact simpliciter. This Court was of the view that what the High Court could see is that there has been no miscarriage of justice
B and that the decision was according to law in the sense mentioned. Kapur, J. who delivered a separate judgment, however, observed that the power under section 35(1) of the said Act of interference by the High Court is not restricted to a proper trial according to law or error in regard to onus of proof or proper opportunity of being heard. It is very much wider than that, when in the opinion of the High Court the
C decision is erroneous on the question of law which affects the merits of the case or decision was manifestly unjust the High Court is entitled to interfere. The revisional authority could ensure that there was no miscarriage of justice and the principles of law have been correctly borne in mind, the facts had been properly comprehended in that light. If that was done in a particular case then the fact that the revisional
D authority or the High Court might have arrived to a different conclusion is irrelevant. This view had also been expressed in the decision of this Court in *Puranchand* v. *Motilal,* [1963] Supp. 2 S.C.R. 906. This principle was reiterated in *Krishnawati* v. *Hans Raj,* [1974] 2 S.C.R. 524 which was dealing with section 39(2) of the Delhi Rent Control Act, 1958 in second appeal. It was observed that under section 39(2) of
E the said Act, the High Court could interfere in second appeal only if there was a substantial question of law. In that case, the question whether the appellant was legally married no finding was necessary in the eviction suit. It was sufficient for the rent court to proceed on the finding that the appellant and S were living together as husband and wife, whether they were legally married or not. It was further held that
F whether there was subletting was not a mixed question of law and fact. In *Phiroze Bamanji Desai* v. *Chandrakant M. Patel & Ors.,* [1974] 3 SCR 267 the question involved was whether there was reasonable and *bona fide* requirement of premises for personal use and occupation as also the question of greater hardship under the Bombay Rent Act and the ambit and scope of the power of Section 29(3) of the said Act with
G which we are concerned came up for consideration. Bhagwati, J. as the learned Chief Justice then was, referred with approval the observations of Hidayatullah, J. referred to hereinbefore in *Hari Shankar's* case (supra). Bhagwati, J. observed that the ambit of section 35(1) of the Delhi & Ajmer Rent Control Act which fell for consideration in *Hari Shanker's* case (supra) was the same as section 29(3) of the
H Bombay Rent Act and therefore, he expressed the opinion that the

High Court could interfere only if there was miscarriage of justice due to mistake of law. A

We must take note of a decision in the case of *M/s Kasturbhai Ramchand Panchal & Brothers and Others* v. *Firm of Mohanlal Nathubhai and Others,* AIR 1969 Gujarat 110, upon which the High Court had placed great reliance in the judgment under appeal. There B the learned judge relying on section 29(2) of the said Act held that the revisional power with which the High Court was vested under section 29(2) was not merely in the nature of jurisdictional control. It extended to corrections of all errors which would make the decision contrary to law. The legislature, the learned Judge, felt, further empowered High Court in its revisional jurisdiction to pass such order C with respect thereto as it thought fit. The power according to the learned Judge was of the widest amplitude to pass such orders as the Court thought fit in order to do complete justice. He dealt with the human problem under section 13(2) of Bombay Rent Act considering the relative hardships of the landlord and the tenant and to arrive at a just solution he was of the opinion that the court should have such D wide field. The jurisdiction of High Court is to correct all errors of law going to the root of the decision which would, in such cases, include even perverse findings of facts, perverse in the sense that no reasonable person, acting judicially and properly instructed in the relevant law could arrive at such a finding on the evidence on the record. In this view in our opinion the ambit of the power was expressed in rather E wide amplitude. As we read the power, the High Court must ensure that the principles of law have been correctly borne in mind. Secondly, the facts have been properly appreciated and a decision arrived at taking all material and relevant facts in mind. It must be such a decision which no reasonable man could have arrived at. Lastly, such a decision does not lead to a miscarriage of justice. We must, however, F guard ourselves against permitting in the guise of revision substitution of one view where two views are possible and the Court of Small Causes has taken a particular view. If a possible view has been taken, the High Court would be exceeding its jurisdiction to substitute its own view with that the courts below because it considers it to be a better view. The fact that the High Court would have taken a different view is G wholly irrelevant. Judged by that standard, we are of the opinion that the High Court in this case had exceeded its jurisdiction.

In the case of *Punamchandra Revashankar Joshi* v. *Ramjibhai Maganlal,* Gujarat Law Reporter (1966) at page 807, the Gujarat High Court after dealing with the Gujarat Amendment Act (XVIII) of 1965 H

observed that the Legislature has not intended to equate the ambit of the power with the one exercised in an appeal. The authority vested in the High Court under the amendment still remained only in the domain of the jurisdiction and power of revision and no further. The amending provision, therefore, only related to procedure and not to any rights of the parties.

This Court in the case of *Bhai Chand Ratanshi* v. *Laxmishanker Tribhavan*, [1982] 1 Rent Control Journal 242 observed that where lower courts applied their minds properly in deciding a matter under section 13(2) of the Bombay Rent Act, the High Court could not substitute its own finding for the one reached by the courts below, on a reappraisal of evidence under section 29(2) of the Act as substituted by the Gujarat Act 18 of 1965. This Court reiterated that although the High Court had wider power than that which could be exercised under section 115 of C.P.C., yet its revisional power could only be exercised for a limited purpose with a view to satisfying itself that the decision was according to law. The High Court could not substitute its own finding for the one reached by the courts below on a reappraisal of evidence.

In the instant case the basic question is whether keeping in background the partnership deeds referred to hereinbefore and the facts that came to light, was there partnership or not. Sharing of profits and contributing to losses were not the only elements in a partnership, existence of agency was essential and whether there was a partnership or not is a mixed question of law and fact, depending upon the varying circumstances in different cases. This view was reiterated by Chief Justice Beaumont, in *Chimanram Motilal and another* v. *Jayantilal Chhaganlal and another*, A.I.R. 1939 Bombay 410. Ramaswami, J. in *Mohammed Musa Sahib (dead) and others* v. *N.K. Mohammed Ghouse Sahib and another*, A.I.R. 1959 Madras 379 observed that whether the relation of partnership between two or more persons does or does not exit must depend on the real intention and contract of the parties and not merely on their expressed intention. He also referred to section 4 of the Partnership Act about the principles of partnership namely, (1) there must be agreement entered into by all the persons concerned; (2) the agreement must be to share the profits of a business; and (3) the business must be carried on by all or any of the persons concerned acting for all. In the instant case judged by the aforesaid principles, it is possible to hold that there was a partnership of which the appellant was a partner. The Court of Small Causes considered these principles, evaluated the evidence and held that there was in fact and in law a partnership. Such a view was not an impossible one or a perverse one.

If that was so, there was nothing that could be done about such a view, within the ambit and scope of the power of section 29(2) of the Rent Act. We may mention that in *Gundalapalli Rangamannar Chetty* v. *Desu Rangiah and others,* A.I.R. 1954 Madras 182, Subba Rao, J. as the learned Chief Justice then was, held that there cannot be a sub-letting, unless the lessee parted with legal possession. The mere fact that another is allowed to use the premises while the lessee retains the legal possession is not enough to create a sub-lease.

In the light of the aforesaid principles and the facts that have emerged, we are of the opinion that the High Court exceeded its jurisdiction under section 29(2) of the Rent Act. We are further of the opinion that the Court of Small Causes was right in the view it took and it was a possible view to take. In the result the appeal is allowed and the judgment and order of the Gujarat High Court dated 21st of August, 1979 are set aside. The order and judgment of the Court of Small Causes Ahmedabad dated 18th of August, 1977 are restored. The suit for possession is accordingly dismissed. The appellant herein is entitled to the costs throughout.

P.S.S. Appeal allowed.