JAGAN NATH (DECEASED) THROUGH L.Rs.

v.

CHANDER BHAN AND OTHERS

MAY 11, 1988

[SABYASACHI MUKHARJI AND S. NATARAJAN, JJ.]

Delhi Rent Control Act, 1958—Sections 14(1)(a), (b), (2) and 15—Tenant—Eviction of—On ground of subletting/Parting with possession—User of Premises by another person is not parting with possession.

The respondent—landlord had filed a petition against the appellant—tenant under section 14(1)(a) and 14(1)(b) of the Delhi Rent Control Act, 1958 for eviction from a residential-cum-commercial premises, *inter alia*, on the ground that the appellant had sublet, assigned or otherwise parted with possession of the premises to his sons who were running their partnership business in the name of Bindra Tent House with which the tenant had no concern. The tenant contested the petition on the ground that he was in exclusive possession of the premises and was carrying on his business therein with the help of his sons who were members of his Joint Hindu Family.

In support of his plea that the tenant had parted with possession, the landlord had produced documentary evidence which included copy of a statement made by the tenant before the Income Tax Officer, which indicated that the tenant had sold his proprietary business to his sons.

The Additional Rent Controller held that there was no subletting by the tenant, but he had unlawfully parted with the possession of the premises in favour of his sons and as such was liable to be evicted.

During the pendency of the appeal the tenant sought permission under Order 6 Rule 17 of the Code of Civil Procedure to amend his written statement to state that the property was taken on rent by M/s Bindra Tent House. The Tribunal did not permit this belated amendment as this would have introduced an entirely new case. On merits, the Tribunal dismissed the appeal of the tenant. The High Court did not find any substantial question of law in the tenant's second appeal and dismissed the same.

Allowing the appeal, it was,

A **HELD: (1) The only ground perhaps upon which the landlord was seeking eviction was parting with possession. It is well-settled that parting with possession meant giving possession to persons other than those to whom possession had been given by the lease and the parting with possession must have been by the tenant. User by other person is not parting with possession so long as the tenant retains the legal possession himself, or in other words, there must be vesting of possession by the tenant in another person by divesting himself not only of physical possession but also of the right of possession. So long as the tenant retains the right to possession there is no parting with possession in terms of clause (b) of section 14(1) of the Act. [329G-H; 330A]**

C **(2) Even though the father had retired from business and the sons had been looking after the business in the facts of this case, it cannot be said that the father had divested himself of the legal right to be in possession. [330B]**

D **(3) In the instant case, if the father was carrying on the business with his sons and the family was a joint family, it is difficult to presume that the father had parted with possession legally to attract the mischief of section 14(1)(b) of the Act. [330D-E]**

E **(4) In these days of acute shortage of accommodation both for living and for vocation, one has to take the reality with a pinch of salt and the manner in which the original tenant has conducted himself in shifting his defence would not disentitle him to the benefit of the law. [330G]**

F *Subashini Mojumdar* **v.** *Krishna Prasad Mahatoo,* **A.I.R. 1956 Assam 79;** *M/s Modi Spinning and Weaving Mills Co. Ltd.* **v.** *M/s Ladha Ram and Co.,* **[1977] 1 SCR 728 and** *Smt. Krishnawati* **v.** *Shri Hans Raj,* **[1974] 1 SCC 289, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1127 of 1985.

G From the Judgment and Order dated 29.8.84 of the Delhi High Court in S.A.O. No. 40 of 1984.

Rajinder Sachhar and Mrs. Rani Chhabra for the Appellants.

A.K. Ganguli and E.M.S. Anam for the Respondents.

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The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. This appeal by special leave is directed against the judgment and order of the High Court of Delhi dated 29th August, 1984. One Jagan Nath, since deceased, was the original tenant of the premises in question. He died during the pendency of this appeal here. His sons have been substituted. The tenancy in question started on 1st January, 1962. It appears that on 7th November, 1967 notice was addressed to Shri Baldev Raj, describing him as sole proprietor of M/s Bindra Tent House, New Delhi, for eviction. There was an increase in rent in July, 1970. The respondent herein filed the petition against the appellant herein Jagan Nath under section 14(1)(a) and 14(1)(b) of the Delhi Rent Control Act, 1958 (hereinafter called the Act) for eviction of the appellant from the premises consisting of one room forming part of premises No. N-80, Kirti Nagar, New Delhi, as the appellant herein had not paid rent with effect from 1st May, 1975 till 30th April, 1977 at the rate of Rs.75 per month despite service of the demand notice dated 8th January, 1976. It was the further case of the respondent herein that the appellant had after 9th June, 1962 sublet, assigned or otherwise parted with possession of the premises to Shri Baldev Raj Bindra and Sat Pal Bindra without the consent in writing of the respondent-landlord. The suit was filed before the Additional Rent Controller and the same was contested on various grounds. It was contended that the petition was not maintainable because of non-joinder of Shri Baldev Raj Bindra and Sat Pal Bindra. The premises in question is residential-cum-commercial. It was stated that Shri Baldev Raj Bindra and Sat Pal Bindra are the sons of the original appellant, since deceased. The said tenant was in exclusive possession of the premises and was carrying on his business therein with which, it was stated, Baldev Raj and Sat Pal had no concern. They are the sons of the tenant, since deceased, and had constituted a Hindu Undivided Family. No demand notice was ever served upon the tenant. The tenant tendered the rent to the landlord by money order for an amount of Rs.450 which he refused to accept. The Additional Rent Controller so far as the ground of non-payment of rent was concerned held that there was a compliance with the order passed under section 15(1) of the Act. The Additional Rent Controller gave the tenant the benefit under section 14(2) of the Act. The petition of the landlord on the ground of non-payment of rent was, therefore, dismissed.

The other ground was the ground of eviction claimed by the landlord for subletting, assignment or parting with the possession of the premises in question by the tenant in favour of his sons Baldev Raj and Sat Pal Bindra. The landlord in his deposition had stated that since

A 1st July, 1971 Baldev Raj and Satpal were running their business in the name of M/s. Bindra Tent House in partnership and they were in possession of the premises in question. The tenant had no concern with the business carried on in the demised premises and the tenant had retired. The tenant in his cross-examination had stated that he had sent partnership document and Form II to the Income-tax Department. B The landlord had denied the suggestion that the said Jagan Nath was in possession of the premises and his sons had been helping him from the very beginning. The landlord had produced on the record one statement made by the appellant herein, Jagan Nath before the Income Tax Officer, photostat copy of which is Exhibit A.W. 3/1 on the record which indicated that Jagan Nath who was the proprietor of the Bindra Tent House sold the same for Rs. 18,000 on 1.1.1970 to his sons Baldev C Raj and Sat Pal and he got cash of Rs.8,000 and he gifted the other amount into two equal shares to his sons Baldev Raj and Sat Pal. In his statement, Jagan Nath had stated that Sat Pal and Baldev Raj had entered into a partnership in the same name M/s. Bindra Tent House in the same premises. This document was heavily relied upon before us D by Shri Sachhar in aid of his submissions that the tenant had parted with possession.

There is another document Exhibit A.W-2/1. According to this document which is a photostat copy of the stamp vendor register, non-judicial papers for Rs.13, Rs.2 and Rs.20 were purchased by E Baldev Raj for partnership purposes in the name of M/s. Bindra Tent House. Our attention was also drawn to the fact that an application for electricity connection was made by Sat Pal Bindra in the name of M/s. Bindra Tent House on 25th July, 1975 as the sole proprietor of the same. From these and other documents, it was contended that there was parting of possession and as such the tenant was liable to be F evicted. The Additional Rent Controller ordered the eviction under section 14(1)(b) of the Act. He held that there was no subletting by the tenant, Jagan Nath since deceased but he had unlawfully parted with the possession of the demised premises in favour of his sons Sat Pal and Baldev Raj without the consent in writing of the landlord.

G During the pendency of the appeal the tenant preferred an application under Order 6 Rule 17 of the Code of Civil Procedure seeking permission to amend his written statement. The appellant contended that the landlord filed eviction petition in respect of the said premises against the appellant and his two sons which was assigned to Shri A.P. Chaudhary, Additional Rent Controller. Another objection raised H was that the property was taken on rent by M/s. Bindra Tent House

and, therefore, the petition for eviction was not maintainable. The application had been contested in which it had been admitted that the earlier petition for eviction was filed but according to the respondent it was not properly instituted and the same was withdrawn. It was denied that the application was not maintainable. The Tribunal on an analysis of the matter came to the conclusion that belated amendment could not be permitted. It was emphasised that the tenant had admitted in the written statement that he was a tenant in the property in question. He could not subsequently be allowed to wriggle out of this situation and withdraw the admission. If the amendment was allowed, they would take valuable right of the other side and altogether a new plea would be taken, it was held. This cannot be permitted. In this connection, the Rent Tribunal relied upon the observations of the Assam High Court in *Subashini Majumdar and another* v. *Krishna Prasad Mahatoo and Ors.*, A.I.R. 1956 Assam 79. The same view was reiterated by this Court in *M/s. Modi Spinning and Weaving Mills Co. Ltd. and another* v. *M/s. Ladha Ram and Co.*, [1977] 1 SCR 728 where the proposed amendment introduced an entirely new case seeking to displace the other side completely from the admission made then. It was held that such an amendment could not be allowed. We are of the opinion that the Rent Tribunal was therefore right in refusing the amendment on the basis of the aforesaid principle. The Tribunal on an analysis of evidence and facts came to the conclusion that there was no merit in the appeal and dismissed the appeal and affirmed the eviction order.

A B C D E

The High Court on an analysis of the evidence and relevant authorities came to the conclusion that there was no substantial question of law and dismissed the second appeal. Hence this appeal.

The question for consideration is whether the mischief contemplated under section 14(1)(b) of the Act has been committed as the tenant had sublet, assigned, or otherwise parted with the possession of the whole or part of the premises without obtaining the consent in writing of the landlord. There is no dispute that there was no consent in writing of the landlord in this case. There is also no evidence that there has been any subletting or assignment. The only ground perhaps upon which the landlord was seeking eviction was parting with possession. It is well-settled that parting with possession meant giving possession to persons other than those to whom possession had been given by the lease and the parting with possession must have been by the tenant; user by other person is not parting with possession so long as the tenant retains the legal possession himself, or in other words there

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must be vesting of possession by the tenant in another person by divesting himself not only of physical possession but also of the right to possession. So long as the tenant retains the right to possession there is no parting with possession in terms of clause (b) of section 14(1) of the Act. Even though the father had retired from the business and the sons had been looking after the business, in the facts of this case, it cannot be said that the father had divested himself of the legal right to be in possession. It the father has a right to displace the possession of the occupants, i.e., his sons, it cannot be said that the tenant had parted with possession. This Court in *Smt. Krishnawati* v. *Shri Hans Raj,* [1974] 1 SCC 289 had occasion to discuss the same aspect of the matter. There two persons lived in a house as husband and wife and one of them who rented the premises, allowed the other to carry on business in a part of it. The question was whether it amounted to sub-letting and attracted the provisions of sub-section (4) of section 14 of the Delhi Rent Control Act. This Court held that if two persons live together in a house as husband and wife and one of them who owns the house allows the other to carry on business in a part of it, it will be in the absence of any other evidence, a rash inference to draw that the owner has let out that part of the premises. In this case if the father was carrying on the business with his sons and the family was a joint Hindu family, it is difficult to presume that the father had parted with possession legally to attract the mischief of section 14(1)(b) of the Act.

Shri Ganguly appearing for the landlord contended that the conduct of the tenant, Jagan Nath had been as sitting on the fence and avoiding the issue. It is true that Shri Ganguly rightly pointed out that Jagan Nath, the erstwhile tenant had not been fair and frank. But this is no ground to disentitle him to the benefit of the law if the facts have been proved that he had not parted with possession. After all, it has to be borne in mind that this is a residential-cum-commercial premises. Jagan Nath was carrying on business in part of the building with his two sons. Jagan Nath had died, therefore, it will be just and proper to presume that they were carrying on business, though perhaps the stand of the Jagan Nath was not always fair. In these days of acute shortage of accommodation both for living and for vocation, one has to take the reality with a pinch of salt and the manner in which Shri Jagan Nath has conducted himself would not disentitle him the benefit of the law in the present climate.

In the view we have taken, this appeal must be allowed and the judgment and order of the High Court of Delhi and the Courts below are set aside. The eviction order is accordingly set aside.

It has, however, to be borne in mind that rent in these areas has increased enormously. So while exercising our jurisdiction under Article 136 of the Constitution, we will enhance the rent to four times. We are told that the mesne profit at present payable was Rs.75 per month. We direct that mesne profit/rent should be Rs.300 per month. We further direct that this will not prejudice the rights of the respondent herein to file any proceedings for eviction on the ground of *bona fide* need, if there is such a need or on any other ground available to the respondent for eviction under the Act. We give this direction in view of the facts alleged in the affidavit of Shri Chander Bhan Mehta affirmed on 26th April, 1988. About the correctness or validity of the statements made therein, we had no occasion to examine in this appeal. We have also taken into consideration the affidavit of Shri Baldev Raj Bindra affirmed on the 2nd May, 1988 about the veracity of which also we express no opinion.

In the facts of this case, the appellants will pay to the respondent the costs of the appeal.

R.S.S. Appeal allowed.