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RESHAM SINGH

v

RAGHBIR SINGH AND ANOTHER

AUGUST 23, 1999

B

[V.N. KHARE AND S.N. PHUKAN, JJ.]

Rent Control & Eviction :

*East Punjab Urban Rent Restriction Act—Section 15(5)—Sub—letting—
C Respondent No. 1 tenant being involved in some criminal proceedings and
absconding for a considerable time, allowing his brother Respondent No. 2
to look after the shop—Eviction petition by landlord on ground of sub-
letting and arrears of rent—Eviction Order passed by Rent Controller, affirmed
by Appellate Authority—High Court, in revision, setting aside both the
D judgments of the Rent Controller and Appellate Authority and holding that
there was no sub-letting—On appeal—held , High Court was justified in
setting aside the orders of eviction as in the present case there is no evidence
of relationship of lessee and lessor between the two brothers or of parting
of possession of suit premises by respondent no.1 in favour of respondent
no.2—In view of the language of Section 15(5), High Court having the
E powers to satisfy itself as to whether the question of sub-letting which is a
question of law was properly decided by the Courts below.*

The appellant-landlord let out a shop to respondent no. 1 tenant who
being involved in some criminal proceeding and absconding for a considerable
period, allowed his brother, respondent No.2, to look after the shop. The
F appellant-landlord filed a petition before the Rent Controller for eviction of
respondents 1 and 2 on the ground that respondent no.1 tenant had sub-let
the premises in question to respondent no.2 and the tenant was in arrears
of rent. The Rent Controller while deciding the issue regarding the default
against the appellant landlord but ordered eviction of the respondent on the
ground of sub-letting which was affirmed by the Appellate Authority in
G appeal. Subsequently, the High Court allowing the revision petition by the
tenant, set aside both the judgments of the Rent Controller and the appellate
authority thereby holding that there was no sub-letting and the respondents
were not defaulters. Hence the present appeal.

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On behalf of the appellant, it was contended that sub-section (5) of

Section 15 of the East Punjab Urban Rent Restriction Act does not empower the High Court to set aside the finding of fact. A

Dismissing the appeal, this Court

HELD : 1.1. In the present appeal it is not disputed that both the respondents are brothers and respondent no. 1 who was the tenant was involved in some criminal proceedings and he was absconding for a considerable period. Being an absconder it does not seem possible for the tenant—respondent No. 1 to be physically present in the premises in question. It is natural to allow his brother to look after the shop and this fact would not amount to sub-letting. [671-G-H] B C

1.2. It is settled position of law that to establish sub-letting the onus is on the landlord to prove through evidence that sub-tenant was in exclusive possession of the property in question ; that between the sub-tenant and the tenant there was relationship of lessee and lessor and that possession of the premises in question was parted with exclusively by the tenant in favour of the sub-tenant. In the present case there is no evidence regarding parting of possession of the suit premises by respondent no. 1 in favour of his brother respondent no. 2 that said respondent no.2 was in exclusive possession of the suit premises. There is also no evidence of relationship of lessee and lessor between the two brothers. [671-F; 672-A-B] D E

Kala and another v. Madho Parshad Vaidya, [1998] 6 SCC 573 and *Benjamin Premananad Rawade (Dead) by Lrs. v. Anil Joseph Rawade*, [1998] 9 SCC 688, cited.

2. The question of sub-letting is a conclusion on question of law derived from the findings on materials on record as to the transfer of exclusive possession and as to the said transfer of possession being for consideration. Sub-section (5) of Section 15 of East Punjab Urban Rent Restriction Act empowers the High Court either on application or in its own motion to call for an examination of the record for the purposes of satisfying itself as to the legality and propriety of such orders or proceedings. In view of the language of sub-section (5), the High Court, while exercising powers under sub-section (5) of Section 15 of the Act. has got the powers to satisfy itself as to whether the question of sub-letting which is a question of law was properly decided by the courts below. Thus, the High Court was justified in setting aside the judgments of the courts below. [671-B; 671-D-E] F G H

A *Dev Kumar (Dead) through Lrs. v. Swaran Lata (Smt.) and others* [1996] 1 SCC 25, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6061 of 1998.

B From the Judgment and Order dated 28.5.98. of the Punjab & Haryana High Court in C.R. No. 2006 of 1983.

Munni Lal Verma, Devender Verma and Ms.Minakshi Vij for the Appellant.

Ms. Rupinder Kaur Wasu, Ms. Naresh Bakshi for the Respondent.

C The Judgment of the Court was delivered by

PHUKAN, J. This is an appeal against the judgment and order passed by learned Single Judge of the High Court of Punjab and Haryana in Civil Revision No. 2006 of 1983. By the impugned judgment the petition filed under sub-Section (5) of Section 15 of East Punjab Urban Rent Restriction Act (for short the Act) was allowed by setting aside both the judgments of the Rent Controller as well as Appellate Authority.

E The appellant Resham Singh filed a petition for eviction of two respondents namely Raghbir Singh and Kuldeep Singh in respect of disputed suit premises. According to the appellant the suit premises was let out to respondent Raghbir Singh but he sublet it to Kuldeep Singh. It was also pleaded before the Rent Controller that the respondent was in arrears of rent from 1.8.80. The Rent Controller decided the issue regarding defaulter against the appellant-landlord but ordered eviction of respondent on the ground of sub-letting. The appeal filed by the respondent was dismissed by the Appellate Authority. The High Court by the impugned judgment set aside both the judgments and allowed the revision petition holding that there was no sub-letting and the respondents were not defaulters.

G We have heard Mr. Munni Lal Verma, learned senior counsel for the appellant and Ms. Rupinder Kaur Wasu, learned counsel for the respondent.

It has been urged that sub-Section (5) of Section 15 of the Act does not empower the High Court to set aside the findings of fact. The said sub-Section is quoted below:

H “(5) - The High Court may, at any time, on the application of any

aggrieved party or in its own motion, call for and examine the records relating to any order passed or proceedings taken under this Act for the purpose of satisfying itself as to the legality or propriety of such order or proceeding and may pass such order in relation thereto as it may deem fit.”

The question of sub-letting is a conclusion on question of law derived from the findings on materials on record as to the transfer of exclusive possession and as to the said transfer of possession being for consideration. While considering the said sub-Section (5) the above view was also expressed by this Court in *Dev Kumar (Dead) Through Lrs. v. Swaran Lata (Smt.) and Ors.*, [1996] 1 SCC 25.

The sub-Section (5) empowers the High Court either on application or in its own motion to call for an examination of the record for the purposes of satisfying itself as to the legality and propriety of such orders or proceedings. In view of the above language of sub-Section (5) we find that the High Court while exercising powers under sub-Section (5) of Section 15 of the Act has got the powers to satisfy itself as to whether the question of sub-letting which is a question of law was properly decided by the courts below. From the impugned judgment of the High Court we find that the High Court did not rightly find ingredients of sub-letting. We, therefore, hold that the High Court was justified in setting aside the judgments of courts below.

It is settled position of law that to establish sub-letting the onus is on the landlord to prove through evidence that sub-tenant was in exclusive possession of the property in question; that between the sub-tenant and the tenant there was relationship of lessee and lessor and that possession of the premises in question was parted with exclusively by the tenant in favour of the sub-tenant. See *Kala and Anr. V. Madho Parshad Vaidya*, (1998) 6 573 and *Benjamin Premanand Rawade(Dead) by Lrs. v. Anil Joseph Rawade*, [1998] 9 SCC 688.

In the present appeal it is not disputed that both the respondents are brothers and respondent No. 1 Raghbir Singh who was the tenant was involved in some criminal proceedings and he was absconding for a considerable period. Being an absconder it does not possible for the tenant - respondent No.1 Raghbir Singh be physically present in the premises in question. It is natural to allow his brother - Kuldip Singh to look after the shop and this fact would not amount to sub-letting.

- A** As stated above, it is settled position of law that burden of making a case of sub-letting is on the landlord/landlady. In the present case there is no evidence regarding parting of possession of the suit premises by respondent No. 1 - Raghbir Singh in favour of his brother respondent No.2 - Kuldip Singh and that said Kuldip Singh was in an exclusive possession of the suit premises.
- B** There is also no evidence of relationship of lessee and lessor between the two brothers. For the reasons stated above we do not find any merit in the present appeal and accordingly dismissed.

No order as to costs.

M.P.

Appeal dismissed.