

Prem Chand Vs. Dharamshala L. Hari Ram Tota Ram and anr.

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Court : Punjab and Haryana

Decided On : Jan-05-1993

Reported in : (1993)103PLR567

Judge : V.K. Jhanji, J.

Acts : Haryana Urban (Control of Rent and Eviction) Act, 1973 - Sections 13(2), 13(3) and 15(5)

Appeal No. : Civil Revision No. 972 of 1982

Appellant : Prem Chand

Respondent : Dharamshala L. Hari Ram Tota Ram and anr.

Advocate for Def. : C.B. Goel and; Rajinder Goel, Adv.

Advocate for Pet/Ap. : Arun Jain, Adv.

Disposition : Petition allowed

Judgement :

V.K. Jhanji, J.

1. This revision petition has been directed against the order of the appellate Authority whereby the order of the Rent Controller was set aside and the tenant was ordered to be ejected on the ground of sub-letting.

2. Landlord (respondent herein) filed an ejectment petition against the tenant (petitioner herein) for his ejectment from the premises on the ground that he has sublet the same to his nephew namely Subhash Chand. The petition was contested by the tenant as well as by Subhash Chand, who in their written statement took up the plea that they are carrying on the business of Halwai-cum-Dhaba tea-shop, jointly and the premises have not been sublet to Subhash Chand. The trial Court on the appreciation of the evidence on record returned finding that the landlord has failed to prove that Subhash Chand is in exclusive possession of the premises and in view of this finding, the ejectment petition was dismissed. The order of the Rent Controller was challenged by the landlord before the appellate Authority, who allowed the appeal of the landlord and ordered ejectment of the tenant on the ground of subletting alone. This order is being challenged by the tenant in the present revision petition.

3. It is now well settled that in order to prove sub-letting, the landlord has to prove on record that the tenant has parted with the possession and the sub-tenant has come into exclusive possession of the premises. Once the landlord successfully establishes this fact, then onus is on the tenant and sub-tenant to prove that in what capacity the subtenant is holding the premises. Mr. C. B. Goel, learned counsel for the respondents has contended that the landlord has proved on record that Subhash Chand has come into exclusive possession of the premises. In support of this argument, he has referred to the finding of the appellate Authority as well as to certain documents. He has pointed out that licence for carrying on the business of Halwai was taken only by Subhash Chand and not by the tenant. He has also contended that Subhash Chand alone is a member of Halwai Union and this clearly indicates that he is in exclusive possession of the premises. I am afraid to accept this contention of the learned counsel for the respondent. Landlord examined many witnesses including A.W. 2-Daulat Ram in his statement has categorically stated that Subhash Chand as well as the tenant are carrying on the business in the premises. In view of the admission made by the witness produced by the landlord, I have no hesitation in holding that landlord has failed to prove that the tenant has parted with the possession or the sub-tenant is in exclusive possession of the premises. As far as licence and being a member of Halwai Union is concerned, this only establishes that Subhash Chand is a member of

Halwai Union and has obtained a licence for carrying on the business of Halwai, but it does not prove that he has come into exclusive possession of the premises on the tenant has parted with the possession, particularly when Subhash Chand is none else but nephew of the tenant. The tenant in his statement has explained that they both are carrying on the business of Halwai cum-Dhaba-tea-shop in the premises and are sharing profits half and half. He also stated that they have not maintained any account-books, but they, share the profits at the end of the day. Considering the type of business being carried on by the tenant, I am satisfied with the explanation of the tenant. Faced with this situation, Mr. C. B. Goel, learned counsel for the respondents has brought to my notice, the subsequent events like the building having become unfit and unsafe for human habitation. He has stated that the tenant is liable to be ejected on this ground. To my mind, these subsequent events cannot be taken into consideration while deciding the revision petition, particularly when ejectment was not sought on the ground that the building is unsafe and unfit for human habitation. No such plea was taken by the landlord in his petition nor at any stage, even before the appellate Authority, such a plea was ever raised. This is an independent ground for ejectment and can be decided only after the plea is taken and the parties are allowed to lead evidence, For the first time in revision, landlord cannot be allowed to take a fresh ground of ejectment. The landlord,, however, shall be at liberty to file an ejectment petition if any ground has become available to him for the ejectment of the tenant during the pendency of the revision petition.

4. Consequently, the revision petition is allowed and the order of the appellate Authority is set aside and that of the Rent Controller is restored with no order as to costs.