

Dial Singh Vs. Amrish Kumar and ors.

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Court : Supreme Court of India

Decided On : Sep-30-1993

Reported in : 1994Supp(3)SCC697

Judge : K. Ramaswamy and; N.P. Singh, JJ.

Acts : East Punjab Urban Land Restrictions Act, 1949 - Section 13

Appeal No. : Civil Appeal No. 3116 of 1985

Appellant : Dial Singh

Respondent : Amrish Kumar and ors.

Advocate for Pet/Ap. : Shri. Venkataramani

Disposition : Appeal Dismissed

Judgement :

K. Ramaswamy and; N.P. Singh, JJ.

1. This appeal by special leave is directed against the order of the learned Single Judge of Punjab and Haryana High Court in Civil Revision No. 1258 of 1984 dated May 3, 1985 dismissing it in limine. The respondent-landlord filed the application for eviction of the appellant under Section 13 of the East Punjab Urban Land Restrictions Act, 1949 (for short, 'the Act'), on one of the grounds which was that the appellant had sublet the shop to Roop Lal and Gian Chand. It is the case of

the appellant that Roop Lal is his brother and Gian Chand is servant and he has been doing the business through his servant. The Rent Controller disbelieved the version of the appellant and directed eviction. On appeal, the appellate authority found that his position could be seen as under :

“Gian Chand-respondent is, admittedly, in possession of the property. It was for him to prove as to who has employed him. What is his monthly salary and who is giving him instructions as pleaded by him in the written statement and since the finding to this effect is lacking, it is to be held to be a case of sub-letting. The finding of the Rent Controller on issue No. 5 is affirmed.”

2. Shri Venkataramani, learned counsel for the appellant, strenuously contended that the wife of the appellant has general Power of Attorney pleaded in the written statement filed on behalf of the tenant Dial Singh, that the appellant has legal possession and the business is being run on behalf of the tenant and therefore it is for the landlord to establish that the tenant Dial Singh had parted with possession in favour of Gian Chand and that it is a sub-letting. The courts below have committed grievous error of law in not adverting to this material legal position. We find no force in the contention. Admittedly, Dial Singh the tenant is living in Saudi Arabia. The finding is that Gian Chand is admittedly in possession of the property. In those circumstances, it is for the tenant to prove that he retains his legal possession and has been conducting business through his agent. In this behalf no such evidence was produced. The finding recorded by the appellate court clearly shows that “who is giving instructions to the appellant to conduct the business, what is the salary he has been drawing and what is the nature of the business being conducted”, are completely lacking. Under those circumstances, the necessary inference would be that Dial Singh the tenant, had parted with possession of the demised premises in favour of Gian Chand. Thereby it amounts to sub-letting without written permission of the landlord, liable to ejection under Section 13 of the Act. Since this being the finding of fact and in the light of the legal position, we do not find any error of law warranting interference. The appeal is accordingly dismissed. No costs.