

**Sumitra Singh Vs. Nahar Singh**

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**Court :** Kolkata

**Decided On :** Feb-03-1984

**Reported in :** AIR1984Cal145

**Judge :** Amitabha Dutta, J.

**Acts :** [West Bengal Premises Tenancy Act, 1956](#) - Section 13(1); ;[Evidence Act, 1872](#) - Section 114

**Appeal No. :** A.F.A.D. No. 7 of 1978

**Appellant :** Sumitra Singh

**Respondent :** Nahar Singh

**Advocate for Def. :** Chandra Nath Mukherjee, ;R. Ghosh and ;Ajit Chakraborty, Advs.

**Advocate for Pet/Ap. :** S.B. Bakshi and ;N.C. Manna, Advs.

**Disposition :** Appeal dismissed

**Judgement :**

**Amitabha Dutta, J.**

1. This appeal by the plaintiff is from a judgment and decree of reversal passed by the learned Additional District Judge, Alipore, 24 Parga-nas and it arises out of a

suit for ejectment of a tenant governed by the [West Bengal Premises Tenancy Act, 1956](#).

2. The plaintiff's case was that the defendant was a monthly tenant in the suit premises comprising shop rooms Nos. 7, 8 and 9 and a garage in municipal premises No. 16A Ashutosh Mukherjee Road, P. S. Bhowanipur, Calcutta at a rent of Rs. 100/- per month payable according to the English Calendar month and that the defendant without the consent in writing of the plaintiff, sublet, and/or assigned a portion of the suit premises in or about March, 1972 to one Messrs. Bengal Automobile Industries (India) and to a person whose name was unknown to the plaintiff and who was running a book-stall. It was alleged that the tenancy of the defendant was terminated by a notice of ejectment which was a combined notice to quit and of suit under Section 13 (6) of the said Act and the defendant was asked to vacate the suit premises on the expiry of Nov. 1972.

3. The defendant contested the suit denying the allegations of the plaintiff that he in anyway sublet, transferred or assigned any portion of the suit premises. He alleged that the name Messrs. Bengal Automobile Industries (India) Limited was a fictitious one, that the defendant's son Sarwan Singh and grandson Balrinder Singh assist the defendant to carry his business under the name and style of 'Motor Hood Fitting Company' in the suit premises, that Sarwan Singh was running a hardware shop in room No. 8 for over 15 years and Balbindar Singh was running a book shop in room No. 9 for over 2 years to the knowledge of the plaintiff and that the defendant, his son and grandson all belong to the same family.

4. The court of first instance accepted the plaintiff's case on the ground that the defendant has failed to prove that the two businesses carried on in rooms Nos, 8 and 9 are joint family businesses in which the defendant gets his share of profit, as the account books and other papers were not produced by the defendant relating to the said businesses. In that view, the trial court decreed the suit. The first appellate court has held that non-production by the defendant of any document to show joint family business in the shops in rooms Nos. 8 and 9 will not by itself prove that the defendant sublet a portion of the suit premises to other persons. The learned Additional District Judge has held that there is evidence of Balbindar

Singh (D, W. 2) to the effect that all the businesses in the suit premises constitute joint family business and all the profits thereof go to the defendant and as there is nothing to show that the defendant has ceased to possess the suit premises, the defendant has controlling interest in all the businesses in the suit premises. In that view, the first appellate court relying on the decision in the case of Vishwanath v. Chamanlal : AIR1975 Delhi117 , has held that the plaintiff has failed to prove his case of subletting and is, therefore, not entitled to any decree of ejectment of the defendant. So the first appellate court has reversed the judgment and decree of the court of first instance.

5. The moot point for decision in this appeal is, whether when a tenant of the premises demised to him for the purpose of carrying on business allows his son and grandson living in the same family to carry on separate businesses of their own in portion of the demised premises, such transaction is tantamount to transfer of a part of the demised premises within the meaning of Section 13 (1) (a) of the [West Bengal Premises Tenancy Act, 1956](#), which runs as follows :

(a) Where the tenant or any person residing in the premises let out to the tenant, without the previous consent in writing of the landlord' transfers, assigns or sublets in whole or in part the premises held by him'.

In the instant case, the undisputed facts appearing from the materials on record are that Sarwan Singh (D. W. 1) and Balbindar Singh (D. W. 2) are the son and the grandson respectively of Nahar Singh who is the tenant of the suit premises and they lived in the same family during all material period. The plaintiff as it appears from the averments made in the plaint, framed the suit on the footing that the tenant sublet, transferred or assigned a portion of the suit premises to persons who were strangers to his family. The plaintiff even in his evidence before the court as P. W. 1 has denied that the two shops in question (in rooms Nos. 8 and 9) are run by the members of the defendant's family. On the other hand, the finding of fact of both the courts below is that Sarwan Singh and Balbindar Singh the son and grandson of the tenant Nahar Singh who carried on business of hardware in room No. 8 and book shop in room No. 9, were members of the family of the defendant. It has been submitted by Mr. Bakshi, learned Advocate appearing on

behalf of the appellant that on the admission of the defendant in Para 6 of the written statement and the oral evidence of D. Ws. 1 and 2. it must be held that the son and grandson of the tenant were carrying on separate business in hardware and books respectively in rooms Nos. 8 and 9 of the suit premises and that the tenant had no share in those two businesses and had no controlling interest therein. It is submitted that the first appellate court's finding that the defendant had or has controlling interest in the businesses of his son and grandson is not warranted by the evidence on record and as such it is perverse or a finding which no reasonable person trained in law can rationally arrive at on such evidence. In this connection, he has referred to paragraph 6 of the written statement containing the statement of the defendant that he is the sole proprietor of the Motor Hood Fitting Company which is carried on in room No. 7 with the assistance of his son and grandson. There is evidence that the defendant was aged 90 in or about March, 1976 when P. W. 1 deposed. P. W. 1 has stated that fact in cross-examination. Mr. Bakshi has also referred to the evidence of D. W. 1, son of the defendant to the effect that the defendant has no share in the two businesses carried on by the son and grandson of the defendant. It has also transpired from the evidence of D. W. 1 Sarwan Singh that he has been a partner with his father in the Motor Hood business since 1967. In the face of such evidence it is contended that the learned Additional District Judge was not at all justified in relying on the statement of D. W. 2 Balbindar Singh, grandson of the defendant that all the profits of the hardware businesses are joint family businesses, although D. W. 2 has admitted that on several occasions in course of his evidence that his father knows the real position. In my view, there is substance in the submission made on behalf of the appellant that the learned Judge's, finding that the defendant had or has controlling interest in the two businesses carried on by his son and grandson in rooms Nos. 8 and 9 respectively is not only erroneous but such as cannot be reasonably arrived at on the materials on record.

6. So the position is that the defendant has allowed or permitted his son and grandson to carry on separate business in rooms Nos. 8 and 9 of the suit premises or in a portion of the suit premises demised to him. The question is whether such license granted to the son and grandson of the defendant who are members of the defendant's family comes within the mischief of Section 13 (1) (a) of the Act. It has

been argued on behalf of the appellant that it is not possible for the plaintiff to prove subletting by direct evidence. It has to be inferred from the fact of parting with exclusive possession of a portion of the suit premises by the tenant to another person and that even if such parting with possession is for love and affection in favour of the son or grandson or any near relation of the tenant living with him and not for any valuable consideration, it will be tantamount to transfer of a portion of the demised premises, as there can be transfer of property by way of gift without valuable considerations and out of love and affection. He has relied on the observations made by the learned Judge P. K. Banerjee, J. in *S. K. Bhattacharjee v. S. N. Sana*, (1982) 86 Cal WN 938 at p. 940 (paragraph 7) in which the learned Judge after referring to several decisions of the Supreme Court and this Court has observed that once it has been proved by the plaintiff that there are some other persons in possession of a part of the premises, it is for the tenant to prove that there is no sub-tenant. But the said observation was made in connection with a case of a tenant keeping paying-guests in a portion of the premises demised to him for residential purpose and the paying guests were there on payment of money. So the learned Judge held that it was a case coming within the mischief of Section 13 (1) (a) of the Act. In the present case, the facts are quite different, as there is no evidence on the side of the plaintiff not even any suggestion to the witnesses examined on the side of the defendant that the son or grandson of the defendant carrying on business in premises Nos. 8 and 9 respectively do so on payment of any amount to the defendant or for any valuable consideration. It has been contended on behalf of the plaintiff that the defendant sought to have examined himself in the case as he is the best person to say on ' what arrangement his son and grandson were allowed to carry on business in the two rooms in question. No doubt, the defendant has not been examined in this case. There is no other explanation except that he was aged about 90 years in or about March, 1976 and was living in Punjab since 1968, for non-examination of the defendant. But in my view the initial onus lies on the plaintiff to show prima facie that there was subletting or assignment or transfer of a portion of the suit premises within the meaning of Section 13 (1) (a) of the Act before the defendant can be called upon to furnish rebutting evidence. So far as that aspect is concerned, it appears that the plaintiff has singularly failed to furnish such prima facie evidence

as P. W. 1, the plaintiff, has admitted that he had no knowledge of what had happened during the time of his father who died in December, 1974 and the plaintiff's case is that the alleged subletting etc. took place in March, 1972.

7. Mr. Mukherjee, learned Advocate appearing for the defendant respondent has submitted that where a tenant allow a member of his family to carry on business in a portion of the demised premises and there is no evidence that such license has been granted for valuable consideration, it cannot be said that the tenant has sublet or transferred possession of a portion of the demised premises within the meaning of Section 13 (1) (a) of the Act. In this connection, he has relied upon a decision of the Supreme Court in the case of Krishnawati v. Hans Raj reported in : [1974]2SCR524 . In that case, the basic facts were that the appellant who was the tenant and Sohan Singh were living as husband and wife to the knowledge of the respondent landlord, that the appellant took lease of the shop premises from the respondent in 1959 and that from the time of letting out, a 'Chemists' business was carried on in the shop by Sohan Singh with the occasional help of the appellant. The question to be determined was whether in the circumstances it was likely that the appellant had sublet the premises to Sohan Singh and because liable to eviction under Section 14 (1) (b) of the Delhi Rent Control Act of 1958 which runs as follows :--

'(b) that the tenant has on or after the 9th day of June, 1952 sublet, assigned or otherwise parted with the possession of the whole or any part of the premises without obtaining the consent in writing of the landlord.'

The Rent Courts answered the question in the negative but the High Court reversed the decision of the Rent Courts and once of the main grounds for such reversal was that the marriage between the tenant appellant and Sohan Singh according to law had not been proved. The Supreme Court held that on the facts found subletting was not established and that the High Court was not justified in disturbing the concurrent findings of the Rent Courts. The Supreme Court has observed that it is settled law that the onus of proof of subletting is on the landlord and if the landlord prima facie shows that the occupant who was in exclusive possession of the premises let out for valuable consideration, it would then be for

the tenant to rebut the evidence. In taking this view, the Supreme Court referred to its earlier decision in the case of *Associated Hotels of India Ltd. v. Sardar Ranjit Singh*, (AIR 1968 SC 553). The Supreme Court has further observed that subletting like letting is a particular type of demise of immovable property and it is distinct from permissive user like that of a licensee. If two persons living together in a house as husband and wife and one of them who owns the house allows the other to carry on a business in a part of it will be, in the absence of other evidence, a rash inference to draw that the owner has let out that part of the premises. The provisions of Section 14 (1) (b) of the Delhi Rent Control Act, 1958 are in pari materia with Section 13 (1) (a) of the [West Bengal Premises Tenancy Act, 1956](#). Mr. Mukherjee has also referred to the decision in the case of *Raj Kumar v. Harbans Lal* (AIR 1978 Punj & Har 186) in which a learned single Judge of the Punjab and Haryana High Court held that in a case where a portion of the demised premises has been allowed to be used exclusively by the tenant to a stranger it was open to the landlord to claim the benefit of Secs. 106 and 114 of the Evidence Act for urging that he had discharged the initial onus which lay upon him, as in the case the alleged subtenant was not shown to have any relationship with the tenant and in normal course of business a tenant does not like anybody else to occupy or use the premises without payment of any consideration. It has been submitted by Mr. Mukherjee that only where the tenant parts with exclusive possession of a portion of the demised premises by inducting a stranger to his family that the landlord can be said to have discharged the initial onus of proving prima facie that the transfer of possession was for valuable consideration in view of Sections 106 and 114 of the Evidence Act. He has contended that in the present case the son and grandson of the tenant being members of his family and there is no positive evidence that they are allowed to run their separate business in premises Nos. 8 and 9 for valuable consideration, it cannot be said that such license for love and affection is tantamount to subletting or transfer of a part of the demised premises coming within the mischief of Section 13 (1) (a) of the Act.

8. After considering the submissions made by the learned Advocates for the parties and the facts and circumstances of the case, I find that the submissions made on behalf of the defendant respondent are well founded and should prevail. In the absence of any evidence in the present case that the tenant has allowed his

son and grandson to run their separate businesses in rooms Nos. 8 and 9 of the demised premises for valuable consideration, it cannot be held that the tenant sublet or transferred a portion of the suit premises to his son and grandson and thereby become liable to be evicted on the ground under Section 13 (1) (a) of the Act. In my view, granting of license to members of the family of the tenant for love and affection does not constitute transfer of the demised premises or portion thereof as contemplated in Section 13 (1) (a) of the [West Bengal Premises Tenancy Act, 1956](#). This view is supported by the decision of the Supreme Court in the case reported in : [1974]2SCR524 (Supra) in which the facts were substantially similar to the facts of the present case. I also hold that although the defendant has failed to examine himself and on the evidence it appears that he was aged 90 in March 1976 when the witnesses were examined and was living in Punjab, this circumstance alone is not sufficient for drawing any reasonable inference that there was transfer of a portion of the demised premises to his son and grandson for valuable consideration as in a case where the tenant allows members of his family to use a portion of the tenancy for running separate businesses, no such inference can be reasonably drawn and no presumption arises under Section 114 of the Evidence Act that there was parting with possession for valuable consideration.

9. In the result, I find that this appeal must fail for reasons mentioned in this judgment. The appeal is therefore dismissed. The decree of the court of appeal below is affirmed. There will be no order as to costs.

10. The application for taking additional evidence is not pressed and is disposed of.