

Supreme Court of India

Ghoorey Lal vs Sheo Murti Gupta on 11 January, 1994

Equivalent citations: 1994 SCC (5) 339

Author: S Mohan

Bench: Mohan, S. (J)

PETITIONER:

GHOOREY LAL

Vs.

RESPONDENT:

SHEO MURTI GUPTA

DATE OF JUDGMENT 11/01/1994

BENCH:

MOHAN, S. (J)

BENCH:

MOHAN, S. (J)

MUKHERJEE M.K. (J)

CITATION:

1994 SCC (5) 339

ACT:

HEADNOTE:

JUDGMENT:

## ORDER

1. Admittedly the appellant Janki Devi was the original lessee. The purpose of letting was "for the use of education of children (school) only for one shift'. The school was run under the name and style of "Tagore School" by a Society called Rabindra Educational Society registered under the Registration of Societies Act. The said Janki Devi is the Secretary of the said Society. Rent receipts were issued in the name of Tagore School. It was under these circumstances that the respondent-landlord sought to evict lessee on the ground of subletting in favour of the Society. All the courts below held against the tenant accepting the landlord's contention of subletting.

2. In this civil appeal before us, what is argued is that Janki Devi has effective control and has not parted with the legal possession. The finding, that it is a case of subletting, cannot be supported. In aid of this submission, three decisions are cited, namely, Madras Bangalore Transport Co. (West) v. Inder Singh<sup>1</sup>, Helper Girdharbhai v. Saiyed Mohmad Mirasaheb Kadri<sup>2</sup> and Shalimar Tar Products

Ltd. v. H. C. Sharma<sup>3</sup>.

3. We have given our careful consideration to the above arguments. We are unable to agree with the submission. This is a case in which, as we have pointed out above, Janki Devi as a person was the lessee while the school is run by Rabindra Educational Society under the name and style of Tagore School. The question would be whether she is in juridical possession of the premises. The test to determine a sublease is whether legal possession still remains with the original lessee. It has to be carefully noted in this case that Rabindra Educational Society is to be governed by a managing body consisting of seven members. Paragraph 2 of the Rules and Regulations of the Rabindra Educational Society is as below:

"2. Managing Body:

The Society shall be governed by Managing Body consisting of seven members. These members will be elected in a General Body Meeting from amongst the members during the last week of March every year. President, Secretary and Joint Secretary will be elected by the members themselves."

- 1 (1986) 3 SCC 62
- 2 (1987) 3 SCC 538
- 3 (1988) 1 SCC 70

4. Therefore, as Secretary, the appellant Janki Devi is participating in the management. In such a case, the test as laid down in the very ruling cited by learned counsel for the appellant is in Shalimar Tar Products<sup>3</sup>. "To constitute subletting there must be parting of the legal possession i.e. possession with the right to include and also right to exclude others".

5. Once she is merely the Secretary, this test is not answered. In other words, she cannot either include or exclude others in relation to possession.

6. Madras Bangalore Transport Co. case<sup>1</sup> has no application to the facts because the original lessee there was a partnership firm which later on became a company. Under those circumstances, it was held to be a company as alter ego of the original lessee. Hence that ruling is distinguishable.

7. Turning to the case-law of Helper Girdharbhai<sup>2</sup>, the tenant was a partner who entered into a partnership. It was held that there was no subletting. This is because in a partnership, nobody can predict as to what exactly is the share of a partner and each partner owns the entire partnership until dissolution. Therefore, this case is again distinguishable. Accordingly, we conclude that there are no merits in this appeal, which is dismissed but in the circumstances without costs.