

Supreme Court of India

M/S. Delhi Stationers And ... vs Rajendra Kumar on 27 February, 1990

Equivalent citations: AIR 1990 SC 1208, (1990) 92 BOMLR 322, JT 1990 (1) SC 372, 1990 (1) SCALE 319, (1990) 2 SCC 331, 1990 (1) UJ 367 SC, 1990 (1) WLN 49

Author: S Agrawal

Bench: K J Shetty, S Agrawal

ORDER S.C. Agrawal, J.

1. Special leave granted.

2. The appellant is the tenant of premises consisting of three rooms, a kitchen and a toilet, situated at Jaipur. The respondent (landlord) filed a suit for the eviction of the appellant on the ground of reasonable and bonafide personal necessity and sub-letting of the premises without his consent. The said suit was decreed by the trial Court on both the grounds. On appeal the suit was dismissed by the Additional District Judge. The High Court, in second appeal, reversed the judgment and decree of the Additional District Judge, and has passed a decree for eviction against the appellant on the ground that the appellant has sub-let or otherwise parted with the possession of the premises without the consent of the landlord.

3. In the sit plan (Ex. A-1) the premises which have been let to the appellant are marked as 'K'. The adjacent room marked as 'J' has been let out by the respondent to Shri Mahendra Singh, the brother-in-law of the appellant. The case of the respondent is that the appellant has sub-let a part of the premises to Mahendra Singh and that he is residing therein. The Additional District Judge has found that Mahendra Singh is employed by the appellant and is residing in the room marked 'J', as a tenant under the respondent. It has been found that he has been using the latrine and kitchen which form part of the premises let out to the appellant. Mahendra Singh being the brother-in-law of the appellant and in the service of the appellant could not be taken to be a sub-tenant merely by the use of the kitchen and latrine and that for sub tenancy it is essential that the possession of Mahendra Singh upon the premises must be exclusive. It was also found that the exclusive possession was not proved by the evidence of the respondent and much less any proof of rent paid to the appellant. The High Court, in second appeal has reversed the said findings of the Additional District Judge relying upon the evidence of Mahendra Singh (DW2) who has admitted that the premises marked K-1 to K-4 are utilised by him and Vishnu Dev (DW-3) who has stated in cross-examination that the appellant is not in occupation of the premises and portion marked K-1 to K-4 has been in occupation of Mahendra Singh. The High Court has held that the appellant has sub-let or otherwise parted with the premises without the permission of the landlord and that being so, the appellant is liable for eviction.

4. Shri Sachar, learned counsel for the appellant, has assailed the said finding recorded by the High Court that the appellant has sub-let or parted with the possession of the premises, and has submitted that mere user of kitchen and latrine by Mahendra Singh, who is the brother-in-law as well as an employee of the appellant, cannot mean that the appellant has sub-let or parted with the possession of the premises. In support of the submission, Shri Saehar has placed reliance on the decision of this Court in Jagan Nath v. Chander Bhan , and Gopal Saran v. Satya Narayana . Shri

Chitale, counsel for the respondent, on the other hand, has supported the decision of the High Court and has urged that in the facts and circumstances of the case the High Court was right in holding that the appellant has sub-let or parted with the possession of the premises and he has placed reliance on the decision of this Court in *Roop Chand v. Gopi Chand Thelia* .

5. Under Section 13(1)(e) of the Rajasthan Premises (Control of Rent and Eviction) Act 1950, (hereinafter referred to as 'the Act'), the tenant is liable to be evicted, if he has assigned, sub-let or otherwise parted with the possession of the whole or any part of the premises without the permission of the landlord. Sub-letting means transfer of an exclusive right to enjoy the property in favour of the third party and the said right must be in lieu of payment of some compensation or rent. Parting of the legal possession means possession with the right to include and also a right to exclude others. Mere occupation is not sufficient to infer either sub tenancy or parting with possession (see: *Gopal Saran v. Satya Narayana* (supra)).

6. If the instant case is considered in the light of the aforesaid principles laid down by this Court it cannot be said that the appellant has either sub-let or parted with the possession of a part of the premises in favour of Mahendra Singh who is brother-in-law of the appellant and is also employed with the appellant. Mahendra Singh is a tenant under the respondent in respect of room marked 'J' in the site plan (Ex. A-1). The mere user of the kitchen and latrine by Mahendra Singh while residing in the portion let out to him by the respondent cannot mean that the appellant has transferred the exclusive right to enjoy the kitchen and latrine and has parted with the legal possession of the said part of the premises in favour of Mahendra Singh.

7. In *Roop Chand v. Hopis Chand Thelia* (supra), on which reliance has been placed by Shri Chitale, the tenant had allowed the premises to be used by a social club, which was registered as a limited company under the Indian Companies Act, 1956, and for the purpose of the Companies Act, the registered office of the club was situated in the leased premises. This Court found that there was no evidence to show that the tenant had at any time exercised the right to exclusive possession and kept the premises locked and denied the members of the club entry to the premises. This Court also observed that in view of the fact that the registered office of the club is situated in the leased premises, the tenant could not prevent the club from performing its statutory duties so long as the club had its registered office in the leased premises. Taking into consideration the aforesaid circumstances this Court held that the tenant had parted with the possession of the premises as envisaged in Section 13(1)(e) of the Act. This decision, in our opinion, does not lend any assistance to the respondent and that in the facts and circumstances of the present case, as mentioned above, it cannot be said that the appellant had parted with the possession of a part of the leased premises.

8. Shri Chitale has sought to support the decree of eviction on the ground that the premises are required reasonably and bonafide by the respondent for his personal use. We find that after considering the evidence the first appellate Court has decided this issue against the respondent and the second appeal of the respondent was admitted only on the ground of sub-letting and no question of law was framed with regard to eviction on the ground of reasonable and bonafide personal necessity. We cannot, therefore, examine the finding recorded by the first appellate Court on the question of need of the landlord.

9. In the result, the appeal is allowed, the judgment and decree of the High Court are set aside and the judgment and decree of the Additional District Judge, Jaipur, dismissing the suit of the respondent are restored. There will be no order as to costs.