

Supreme Court of India

Nihal Chand Rameshwar Dass vs Vinod Rastogi on 13 May, 1994

Equivalent citations: 1994 SCC (4) 325, JT 1994 (4) 113

Author: M M.K.

Bench: Mukherjee M.K. (J)

PETITIONER:

NIHAL CHAND RAMESHWAR DASS

Vs.

RESPONDENT:

VINOD RASTOGI

DATE OF JUDGMENT 13/05/1994

BENCH:

MUKHERJEE M.K. (J)

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MUKHERJEE M.K. (J)

MOHAN, S. (J)

CITATION:

1994 SCC (4) 325 JT 1994 (4) 113

1994 SCALE (2) 967

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by M.K. MUKHERJEE, J.- The tenants in a suit for eviction are the appellants before us. Though the landlord-respondent sought eviction of the tenants on various grounds the only ground which survives for our consideration in this appeal is of illegal subletting. According to the landlord the tenants had without his consent sublet the verandah of the tenanted premises to certain individuals, namely, Zinda Hasan, Abdul Rashid and Dhunna, who were doing business there. The defence of the tenants, so far as this ground was concerned, was one of denial.

2.The trial court answered all the issues regarding the grounds of eviction against the landlord and dismissed the suit. In appeal the first appellate court, however, on an exhaustive analysis of the evidence adduced during trial, reached a conclusion to the contrary so far as the issue of subletting was concerned and decreed the suit. The High Court dismissed the second appeal preferred by the tenant affirming the factual findings recorded by the first appellate court. Hence this appeal by

special leave.

3.The learned counsel appearing for the appellants first submitted that both the appellate courts failed to consider that in order to constitute subletting there must be parting with legal possession, that is, possession with the right to include and also the right to exclude others and that the evidence on record did not justify such a conclusion. In support of this contention he relied upon the judgments of this Court in *Shalimar Tar Products Ltd. v. H. C. Sharma I* and *Gopal Saran v. Satyanarayana*<sup>2</sup>.

4.As we find that both the appellate courts have considered the evidence in the light of the above proposition of law we are unable to accept the contention of the learned counsel for the appellants. The first appellate court dealt with and discussed the entire evidence adduced during trial, including the evidence of the Rent Control Inspector who had visited the suit premises in connection with a proceeding earlier initiated between the parties before the Rent Controller, and concluded that one of the three alleged subtenants viz. Zinda Hasan was in possession of the verandah of the demised premises and was carrying on his business. It further found that the said subtenant was 1 (1988) 1 SCC 70 2 (1989) 3 SCC 56 in possession with the consent and approval of the tenants but without the consent of the landlord. In the second appeal the High Court also considered the evidence and agreed with the finding of the first appellate court that Zinda Hasan was in exclusive possession of the premises in question. The above concurrent finding of fact, based on proper appreciation of evidence, cannot be disturbed in this appeal.

5.The other contention raised on behalf of the appellants was that even if it was assumed that there was parting with possession still it could not be said that the appellants had sublet the premises as there was not an iota of evidence to prove that rent was a consideration for the grant. On this aspect of the matter, while the first appellate court recorded the following finding :

"From the facts discussed above, it is proved that the subtenant was not sitting in the verandah with the consent of landlord. It is rather proved that he had been occupying with the consent of the tenant-defendant. It can be presumed in the circumstances of the case that he has been occupying as subtenant." The High Court stated as under:

I am clearly of the view that in the absence of any plea or reliable evidence suggesting any other kind of legal relationship existing between the defendant and those persons and on the finding that Zinda Hasan and others were in exclusive possession of the premises in question the lower appellate court was fully justified in concluding that the appellants had sublet the premises."

6.The findings so recorded are in conformity with the following observations made by this Court in the case of *Rajbir Kaur v. S. Chokesiri and Co.*<sup>3</sup> (SCC p. 43, para 59) "If exclusive possession is established, and the version of the respondent as to the particulars and the incidents of the transaction is found acceptable in the particular facts and circumstances of the case, it may not be impermissible for the court to draw an inference that the transaction was entered into with monetary consideration in mind. It is open to the respondent to rebut this. Such transactions of

subletting in the guise of licences are in their very nature, clandestine arrangements between the tenant and the subtenant and there cannot be direct evidence got. It is not, unoften, a matter for legitimate inference. The burden of making good a case of subletting is, of course, on the appellants. The burden of establishing facts and contentions which support the party's case is on the party who takes the risk of non-persuasion. If at the conclusion of the trial, a party has failed to establish these to the appropriate standard, he will lose. Though the burden of proof as a matter of law remains constant throughout a trial, the evidential burden which rests initially upon a party bearing the legal burden, shifts according as the weight of the evidence adduced by the party during the trial. In the circumstances of the case, we think, that, appellants have been forced by the Courts below to have established exclusive possession of the ice-cream vendor of a part of the demised premises and the explanation of the transaction offered by the respondent having been found by the courts below to be unsatisfactory and unacceptable, it was not impermissible for the courts to draw an inference, having regard to the ordinary course of human conduct, that the transaction must have been entered into for monetary considerations. There is no explanation forthcoming from the respondent appropriate to the situation as found."

and have got to be accepted, as in this case also the appellants did not explain for what consideration they had allowed Zinda Hasan to occupy part of the tenanted premises; and, on the contrary, denied to have parted with possession. This contention of the appellants therefore also falls.

7.As no other point was urged in support of the appeal it falls and is dismissed. There shall, however, be no order as to costs.