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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: January 13, 2010
Date of Order: February 24, 2010

+ CM(M) 353/2007

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24.02.2010

Shri Narain Singh Through Lrs. & Ors.
Through: Mr. Rahul Gupta, Advocate

...Petitioners

Versus

Shanti Devi Through Lrs & Ors.
Through: Mr. Rajiv Duggal, Advocate

...Respondents

JUSTICE SHIV NARAYAN DHINGRA

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| 1. | Whether reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether judgment should be reported in Digest? | Yes |

JUDGMENT

1. By this petition under Article 227 of the Constitution of India, the petitioner has assailed an order dated 19th January 2007 passed by learned Additional Rent Control Tribunal (ARCT) whereby an appeal of the petitioner against the order of Additional Rent Controller (ARC) was dismissed.

2. Brief facts relevant for the purpose of deciding this petition are that the landlord (respondent Smt. Shanti Devi (since deceased) filed a suit for eviction against Narain Singh (since deceased) and Kailash Chand (since deceased) who were tenants in the suit premises bearing number 3399, Desh Bandu Gupta Road, Karol Bagh, New Delhi on account of subletting of the suit premises under Section 14 (1) (b) of Delhi Rent Control Act (DRC). It was alleged that the tenancy qua these two persons was created in June, 1996, however, the tenants sublet and parted with possession of the suit premises without written consent of the landlord to one Shri Ramesh Chand and the subtenant was not in legal occupation of the suit premises for last 4/5 years. This eviction petition was filed on 2nd April, 1990. The tenant in the written statement initially took the stand that there was no subletting of tenancy and only Shri Kailash Chand and Shri Narain Singh were the tenants and the premises had not been sublet, however, the occupation of the suit premises by Shri Ramesh Chand was not denied. The written statement simply denied the averments but admitted the possession of Shri Ramesh Chand in the suit premises. No documents were filed along with the written statement either of any partnership

and no plea of partnership with Shri Ramesh Chand was taken. However, in 1992, the written statement was amended and in the amended written statement, a plea was taken that Shri Ramesh Chand, Shri Kailash Chand and Shri Narain Singh were all real brothers and the original business was being carried out in the suit premises in the name of M/s Ajanta Traders. Later on, the name of partnership firm was changed to M/s Benson Shoe Company. This firm was having bank account and had also taken loan from Corporation Bank which was not paid and a decree was passed against the said partnership firm. A dissolution deed showing dissolution of the partnership executed between Shri Ramesh Chand, Shri Narain Singh and Shri Kailash Chand was filed and a copy of new partnership deed allegedly executed between Shri Ramesh Chand and Shri Narain Singh was filed alleging therein that M/s Benson Shoe Company was a partnership firm and Shri Ramesh Chand was running the partnership business. He was not a subtenant. Both the parties led evidence. The landlord led evidence showing that Shri Ramesh Chand was in exclusive possession of the suit premises who was doing business alone and his other brother was having separate business. The partnership sought to be relied upon by the tenant was a sham document. A photocopy placed before the trial court initially did not tally with the original produced later on. The stamp papers on which the original partnership deed was allegedly drawn, did not bear the stamp of stamp vendor from whom the stamp papers were purchased. Evidence was also produced that Shri Narain Singh was having an independent and separate showroom in Goa. Marriage of his daughter had taken place in Goa. His firm was registered with Sales Tax authorities, Panaji, Goa as sole proprietorship firm and he had filed a declaration to this effect before the sales tax authorities.

3. The learned ARC considered the entire evidence produced by both the parties and considered that Shri Ramesh Chand had been shown proprietor of M/s Benson Shoe Company in the Sales Tax Department and in sales tax returns filed from the suit premises and the conduct of entire business was being done by Shri Ramesh Chand alone. No sharing of profits or loss of the partnership firm was proved. The learned ARC concluded that it was a case of sub-tenancy and not a case of partnership firm.

4. In appeal, the learned ARCT again re-appreciated the entire evidence and came to conclusion that it was not a case of partnership but was a case of sub-tenancy.

5. The learned counsel for the petitioner relied upon *Madras and Bangalore Transport Company (West) v. Inder Singh and others* 1986 3 SCC 62 and argued that there was nothing to prevent a tenant from dissolving one partnership and entering into another partnership and mere possession by the brother of the tenant would not necessarily prove that the suit premises had been sublet by the tenant to his brother. He further argued that there was no bar on getting

partnership business conducted through brother in the shop while retaining the legal possession of the shop. It was further argued by petitioner that in *Jagan Nath (deceased) through LRs v. Chander Bhan & Ors.* 1988 (3) SCC 57, user by other person was considered not as parting with possession so long as the tenant retained the legal possession himself. In order to prove subletting, there must be vesting of possession by the tenant in another person by divesting himself not only of physical possession but right of possession. He submitted that the tenants in this case being the partners were in legal possession of the premises and therefore the conclusion arrived at by the ARC and the ARCT were contrary to law.

6. There is no dispute about the fact that if a tenant retains legal possession and he merely engages someone to work for him and assist him in the business, it would not be a case of sub-tenancy. In all cases where allegations of sub-tenancy are made the facts of each case are to be considered by ARC to arrive at a conclusion whether the possession of the person alleged to be a subtenant was that of a subtenant or of a business partner and there can be no straightjacket formula. This conclusion has to be arrived at by the learned ARC by weighing the entire evidence produced by the parties. Section 14 (4) of DRC Act makes it abundantly clear that where the premises have been let out for the purpose of business or profession, it shall be deemed to have been sublet by the tenant, if the Controller is satisfied that the tenant, without obtaining consent in writing of the landlord has allowed any other person to occupy whole or a part of the premises ostensibly on the ground that such person was partner of the tenant in the business or profession but in reality he was a subtenant. Thus, the onus of proving that the man was a partner and not a sub tenant in such cases lies heavily on the tenant.

7. A partnership firm is a joint business entity. In a partnership firm or business, the partners are liable for profits and loss in definite proportion as agreed between them. It may be that one is a sleeping partner and the other is a working partner but the very essence of a partnership is division of profits and loss, if not division of work. This division of profits and loss can be there only if proper partnership accounts are maintained and at the end of year accounting is done and it is found out as to how much was the loss and profit, how it is to be apportioned. Unless and until this apportionment of loss and profits is proved by cogent evidence by the tenant in the Court for the years when the sub-tenancy is alleged, no partnership can be believed by the Court. Mere oral testimony of partnership or preparation of documents of partnership would not suffice to dispel the onus cast by Section 14(4) of DRC Act on the tenant, where it is found that another person was in occupation of the premises. In the present case, Shri Ramesh Chand was found not only in exclusive occupation of the premises by the neighbours who appeared and testified in the Court but documents filed by Shri Ramesh Chand himself, though filed by mistake, showed that he was the sole proprietor of the business being run in the

shop. In the cross examination also he admitted that he was the only person doing business in the shop. The evidence also revealed that the other brother was having separate business in Goa as sole proprietor. Under these circumstances, the learned ARC rightly came to conclusion that it was a case of sub-tenancy and not a case of partnership firm. This conclusion was re-examined by learned ARCT and the learned ARCT also arrived at the same conclusion. A grave doubt was casted by the fact that the original partnership deed produced in the Court did not bear stamp of stamp vendor and the photocopy earlier produced did not tally with the original partnership deed filed later on. That also shows that the partnership deed was a make-believe document created subsequently after seeking leave to amend the written statement.

8. It is settled law that where two courts below have given a concurrent finding of facts, this Court under Article 227 of the Constitution of India shall not disturb the finding even if there is some mistake committed in appreciation of some part of evidence. Under Article 227, the Court does not correct the mistakes of law or mistakes of facts. The intervention of this Court under Article 227 has to be only in those exceptional cases where the Courts below had either not exercised their jurisdiction or had acted beyond jurisdiction or had ignored the well-settled legal proposition and acted contrary to law.

9. I find no force in this petition. The petition is hereby dismissed with costs of Rs.1 lac.

February 24, 2010
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SHIV NARAYAN DHINGRA J.