

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of *Judgment*: 25.01.2012

+ **CM(M) Nos. 1771-72/2005 & CM Nos.4748/2008 & 10925/2009**

SARDAR DALIP SINGH LOYAL & SONS Petitioner
Through Mr. Mani Mishra, Adv.
versus

JAGDISH SINGH Respondent
Through Mr. Nishant Dutta, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Order impugned before this Court is the order dated 03.05.2005 passed by the Additional Rent Control Tribunal (ARCT) endorsing the finding of the Additional Rent Controller (ARC) dated 25.11.2003 whereby the eviction petition filed by the landlord namely Sardar Dalip Singh Loyal & Sons (HUF) against the tenant Jagdish Singh under Section 14 (1)(b) of the Delhi Rent Control Act (DRCA) had been dismissed.

2 Record shows that the present eviction petition has been filed by the landlord against his tenant Jagdish Singh on the ground of having sub-let the disputed premises to respondent No. 2 namely Harbir Singh. The premises in dispute comprise of one room on the second floor of property bearing No. II/40/26 Dalip Singh Building, Delhi Cantt as depicted in the red colour in the CM(M) No. 1771-72/2005

site plan where the tenant had unauthorizedly constructed a kitchen, bath-room and a latrine; rent was ₹70/- per month excluding electricity and water charges. Contention of the landlord was that the tenant has parted with possession of the disputed premises in favour of Harbir Singh in the year 1988 without a written consent in writing of the landlord; eviction petition under Section 14 (1)(b) of the DRCA had accordingly been filed.

3 A common written statement had been filed by both the respondents; contention of the tenant Jagdish Singh was that he is continuously living in the premises; sometime the family of respondent No. 2 also comes to reside with him; he denied the submission that the premises have been sub-let in favour of the sub-tenant.

4 Oral and documentary evidence had been led on behalf of the parties. Three witnesses had been examined on behalf of the landlord and one witness had been examined on behalf of the tenant. The testimony of the landlord AW-1 is relevant; he had on oath reiterated the averments made in the petition; the site plan had been proved as Ex. AW-1/1. There was no dispute to the fact that the premises had been tenanted out by the landlord in favour

of Jagdish Singh and rent receipts to substantiate this submission had been proved as Ex. AW-1/2 & Ex. AW-1/3. It is an admitted case that Harbir Singh (respondent No. 2) is the son-in-law of elder brother of Jagdish Singh (respondent No. 1); in his cross-examination this witness has denied that Jagdish Singh is still living in the premises; contention was that Jagdish Singh has in fact shifted to 218/12, Masjid Quarter, Sadar Bazar, Delhi Cantt and Harbir Singh and his family are all by themselves living in this suit property. AW-2 was a person having a fair-price shop in the locality. As per his record, AW-2/1 evidenced that Harbir Singh was a ration card holder from the disputed premises. In his cross-examination, he has admitted that the name of Jagdish Singh is also noted in the ration card. AW-3 was a neighbor. The sole witness of the respondent was RW-1. RW-1 had deposed that after 1984's riots Harbir Singh had been permitted to live with Jagdish Singh in the disputed premises; no rent was being charged; however the family of respondent No. 2 never used the said premises for the purpose of sleeping He had denied the submission that he had changed his residence from the disputed premises; he had proved ration card Ex. RW-1/1 evidencing the fact that he continued to reside in the disputed premises so also was the voter card (Ex.RW-1/2) in the name of the tenant Jagdish

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Singh to the same effect which was dated 21.01.1995. Ex. RW-1/3 was the pass-port of the tenant showing the address as that of the disputed premises; electrical connection in the name of the respondent Jagdish Singh Ex. RW-1/4 had also evidenced this address. There was nothing in his cross-examination which could destroy this credibility of the tenant.

5 This was the sum total evidence which was led before the ARC. The ARC had examined the evidence and on the balance of probabilities had noted that there is no question of sub-letting, assigning or parting with possession by the tenant Jagdish Singh in favour of Harbir Singh. This oral and documentary evidence (Ex. RW-1/1 to Ex. RW-1/4) had weighed in the mind of the trial Court to hold that the ground of sub-letting has not been proved by the landlord as all the aforementioned documents i.e. ration card, passport, license and electricity connection in the name of Jagdish Singh had evidenced his address as that of the disputed premises; question of sub-letting or parting with possession did not arise.

6 This judgment of the ARC was endorsed in appeal by the ARCT vide impugned judgment dated 03.05.2005. The ARCT had noted that the ration card of Harbir Singh showing his name as head of HUF by itself was not a ground for substantiating the

averments of the landlord that a case of sub-letting is made out as besides the fact that ration card can be easily procured for ulterior purposes, it also could not have overlooked the other documentary evidence (as discussed supra) which was in favour of the fact finding returned by the ARC that the tenant Jagdish Singh was still in possession of the disputed premises. The second fact finding Court also endorsed the conclusion of the ARC that the ground of sub-letting is not made out.

7 In M/s Mahendra Saree Emporium v. G.V. Sirinivasa Murthy JT 2004 (7) SC 20 the Supreme Court has held that the term 'sub let' has not been defined in the Act –new or old but the definition of lease can be adopted mutates mutandis for defining a sub lease. In view of section 105 of Transfer of Property Act, 1882, a sub lease would imply parting with by the tenant of a right to enjoy such property in favour of his sub tenant. Similarly in Helper Girdharibhai v. Saiyed Mirasaheb Kadri & Ors. (1987) 3 SCC 538, it was held that there cannot be a subletting unless the lessee has parted with the legal possession. The mere fact that some other person is allowed to use the premises while the lessee retains the legal possession is not enough to create a sub lease. In Hazari Lal And Ram Babu v. Shri Gian Ram 1972 RCR 74 also it was held that where legal possession is retained by a tenant, there is no

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parting with possession and mere user by another person is not such parting with possession. The expression “otherwise parted with the possession” was commented upon in Para 9 of the judgment which reads as under:

“9. Clause (b) to the proviso to Sub-section (1) of Section 14 of the Rent Act uses three expressions, namely, “sub-let”, “assigned and otherwise parted with the possession” of the whole or any part of the premises without obtaining the consent in writing of the landlord. These three expressions deal with three different concepts and apply to different circumstances. In subletting there should exist the relationship of landlord and tenant as between the tenant and his sub-tenant and all the incidents of letting or tenancy have to be found, namely, the transfer of an interest in the estate, payment of rent and the right to possession against the tenant in respect of the premises sublet. In assignment, the tenant has to divest himself of all the rights that he has as a tenant. The expression “parted with the possession” undoubtedly postulates as has been held in the cases mentioned above the parting with legal possession. As we understand it, the lease has given parting with possession means giving possession to persons other than those whom possession and “the parting with possession” must have been by the tenant. The mere user by the other persons is not parting with possession so long as the tenant retains the legal possession himself or, in other words, there must be vesting of possession by the tenant in another person by divesting himself not only of physical possession but also of the right to possession. So long as the tenant retains the right to claim possession from his guest who does not pay him any rent or other consideration, it would not be possible to say that the tenant has parted with possession even though for the duration of his stay, the guest has been given the exclusive use of the whole or a part of the tenancy premises. If the tenant has a right to disturb the possession of his guest at any time, he cannot be said to have parted with the possession of the tenancy premises. The mere fact that the tenant himself is not in physical possession of the tenancy premises for any period of time would not amount to parting with the possession so long as, during his absence, the tenant has a right to return to the premises and be in

possession thereof. A mere privilege or licence to use the whole or a part of the demised premises which privilege or licence can be terminated at the sweet Will and pleasure of the tenant at any time would not amount to "parting with possession." The divestment or abandonment of the right to possession is necessary in order to invoke the clause of parting with possession."

8 In Jagan Nath v. Chander Bhan (1988) 3 SCC 57, Supreme Court while dealing with expression "parting with possession" in the context of a tenant living with other family members, who has allowed the tenanted premise to be used by other family members, has held as under:

"6. The question for consideration is whether the mischief contemplated under Section 14(1)(b) of the Act has been committed, as the tenant had sublet, assigned, or otherwise parted with the possession of the whole or part of the premises without obtaining the consent in writing of the landlord. There is no dispute that there was no consent in writing of the landlord in this case. There is also no evidence that there has been any subletting or assignment. The only ground perhaps upon which the landlord was seeking eviction was parting with possession. It is well settled that parting with possession meant giving possession to persons other than those to whom possession had been given by the lease and the parting with possession must have been by the tenant; user by other person is not parting with possession so long as the tenant retains the legal possession himself, or in other words there must be vesting of possession by the tenant in another person by divesting himself not only of physical possession but also of the right to possession. So long as the tenant retains the right to possession there is no parting with possession in terms of clause (b) of Section 14(1) of the Act. Even though the father had retired from the business and the sons had been looking after the business, in the facts of this case, it cannot be said that the father had divested himself of the legal right to be in possession. If the father has a right to displace the possession of the occupants, i.e. his sons, it cannot be said that the tenant had parted with possession. This

Court in Smt Krishnawati v. Hans Raj AIR 1974 SC 280 had occasion to discuss the same aspect of the matter. There two persons lived in a house as husband and wife and one of them who rented the premises, allowed the other to carry on business in a part of it. The question was whether it amounted to subletting and attracted the provisions of sub-section (4) of Section 14 of the Delhi Rent Control Act. This Court held that if two persons live together in a house as husband and wife and one of them who owns the house allows the other to carry on business in a part of it, it will be in the absence of any other evidence, a rash inference to draw that the owner has let out that part of the premises. In this case if the father was carrying on the business with his sons and the family was a joint Hindu family, it is difficult to presume that the father had parted with possession legally to attract the mischief of Section 14(1)(b) of the Act."

9 This Court is sitting in its power of superintendence under Article 227 of the Constitution of India; the right of second appeal as contained in Section 39 of the DRCA has now been abrogated; this Court is not an appellate forum; unless and until there is a manifest illegality or injustice which has been suffered by one party qua the other, scope of interference is limited. The evidence adduced supra clearly show that no ground of sub-letting under Section 14 (1)(b) of the DRCA has been made out.

10 The impugned judgment calls for no interference.
Dismissed.

INDERMEET KAUR, J

JANUARY 25, 2012
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