

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**CR-1177 of 2015 (O&M)
Date of Decision: July 22, 2015.**

JOGINDER SINGH

.....PETITIONER.

VERSUS

KULWINDER SINGH AND ORS

.....RESPONDENTS.

CORAM:- HON'BLE MR. JUSTICE M.M.S.BEDI

Present: Mr. Kewal Singh, Advocate
for the petitioner

M.M.S.BEDI, J.(Oral)

The Rent Controller as well as the Appellate Authority, have given a concurrent finding of fact that the petitioner has been in possession of the property as sub-tenant though his brother Avtar Singh was inducted as a tenant. The ejectment order has been passed on the ground of non-payment of rent and sub letting of the demised premises to the petitioner. Heavy onus lay upon the petitioner to establish that he was under direct tenancy of the respondents. The authorities below have rejected the claim of the petitioner on appreciation of evidence that he was ever inducted as a tenant by respondents to run the business of Janta Kheti Bari Centre after Avtar Singh delivered possession of the shop to Joginder Singh. The courts below have given a firm finding that respondent No.4 Avtar Singh had delivered possession of the shop in dispute to the petitioner. Neither any rent agreement nor any receipt regarding acceptance of relationship of

tenant and landlord between petitioner and respondents stands established nor payment of any rent by the petitioner could be established.

In view of said circumstances, I do not find any ground to interfere in the orders passed by the Courts below passing an ejectment order against Avtar Singh who has opted not to file any first appeal or to pay the provisional rent determined by the Rent Controller.

It is settled principle of law that without written consent of landlord, the tenant can not sublet or part with the possession to anyone. The relationship of landlord and tenant between the respondents and brother of petitioner stands established, petitioner having failed to prove by cogent evidence his direct tenancy.

Counsel for the petitioner in support of his contention relies upon **Ram Niwas Vs. Ram Parkash etc.**, 2015(1) RCR (Civil)833 to contend that while pleading subletting the landlord is required to prove not only parting of possession but even consideration for said parting of possession is to be proved.

I have considered the ratio of said judgment and I am of the opinion that the peculiar circumstances of the said judgment are not applicable to the facts of the present case as the real brother of the petitioner who was inducted as tenant by the respondents did not contest the petition and the petitioner has been held to be in exclusive possession of the premises. In such circumstances, the consideration in terms of money is not to be established as the initial onus of tenant having parted with possession has been discharged by landlord shifting the onus on the tenant and sub-tenant as to in what capacity a person other than tenant was in possession of

the demised premises.

This revision petition is dismissed. The petitioner, however, is granted six months time to vacate the premises subject to the condition that he will furnish an undertaking before the Rent Controller that he will hand over vacant possession of the shop in dispute to the respondents landlord and will not damage any portion of the premises in dispute and will pay the water and electricity charges due, besides paying a sum of ₹400/- P.M. as rent for use and occupation of the shop in dispute which will be in the shape of mesne profits w.e.f. the date of ejectment order i.e. 04.11.2011 within period of two months. In case of non-payment of the said amount, it will be open to respondent-landlord to execute the decree after two months.

July 22, 2015.
TSG

(M.M.S.BEDI)
JUDGE