

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 3521 of 2002 (O&M)

Date of decision: 18.03.2015

M/s Rajiv Motor Store

... Petitioner

versus

Rup Lal and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. M.J. S. Sethi, Senior Advocate with
Mr. Amit Sethi, Advocate for the petitioner.
Mr. R.P.S.Ahluwalia, Advocate for the respondents.

K.Kannan, J.

The petition for eviction was considered favourably in favour of the landlord on the grounds pleaded by him, namely of subletting and change of user. The subletting, alleged, was that the letting by the father was in favour of the Nanak Chand, he had sublet the premises to M/s Rajiv Motors carried on through his sons Pawan Kumar. In the appeal filed by the tenant, he contended that there was already a decision rendered at the same ground of subletting filed at the instance of his father and the case was concluded upto High Court where the judgment of the Court below was confirmed in CR No. 381 of 1975 that there was no subletting and that the tenant was Karta of joint family consisting of himself, Pawan Kumar and Rajiv Kumar as proprietors of Rajiv Motors and that the case of subletting made had not been established. The contention was that the decision had become final between the parties and the petitioners as purchasers from the original landlord are bound by the same. A fresh petition on the same ground was not maintainable. The Appellate Court reversed the finding

as regards the change of user pleaded by the landlord and held that there was no change of user. However, he confirmed the finding regarding the subletting, rejecting the argument made on behalf of the tenants that the petition was barred by law.

Learned counsel appearing on behalf of the tenants would contend that the present landlord's predecessor Ram pal had filed the petition for eviction on the very same ground of subletting which had been rejected by the authorities under the Act. The petition is barred under Section 14 of The Haryana Urban (Control of Rent and Eviction) Act, 1973. The Section reads thus:

14. The Controller shall summarily reject any application under sub-section '(2) or (3) of section 13 which raises substantially the issues as have been finally decided in any former proceedings under this Act.

Before much of the arguments got under way, I asked the counsel appearing on behalf of the respondent to state how the petition was maintainable in view of Section 14 and I also asked him further whether he would challenge the finding regarding the change of user. The counsel for the respondents says that he will seek for no modification of the order on finding as regards the change of user and restricted his argument to support the finding regarding the subletting.

Learned counsel for the respondents would state that there is an averment in the petition that the respondent has sublet the premises to the 2nd respondent and that ground must be taken as ground still available since in the present case the contention is that the property is in the possession of the 2nd respondent Rajiv Motors as member of the Hindu Undivided Family while in the previous case, the contention was that Nanak Chand himself was in possession and since the defence is different now, the petition is not barred. I reject the explanation given as frivolous and untenable. Before one can actually call upon the tenant even to make a defence, the petition must state

clearly as to how he could maintain the petition on the same ground of subletting. The pleading must make a specific mention of the fact that there was any subsequent event after purchase by the present landlords which has given rise to a new cause of action. A mere statement that the original tenant Nanak Chand had sublet the premises to Rajiv Motors without the landlord's concurrence, is not slating a new cause of action. It is an admitted fact that the landlord's predecessor Ram pal filed the case for eviction on the very same ground. Originally the petition had been filed only against his tenant Nanak Chand and Rajiv Motors through proprietors Rajiv Kumar and Pawan Kumar had both been impleaded as parties on their own application. When the petition for eviction was disposed of, both before the courts below and when the matter was brought before this Court, Rajiv Motors was a party. There was a plea by the tenant that he had not transferred the property to Rajiv Motors which is an essential feature of subletting. He was contending that he and his sons were members of joint Hindu family and there was no transfer of possession by him, however to any other legal entity. If the Court was rejecting the contention of the landlords and held that Nanak Chand was carrying on the business in the name of M/s Rajiv Motors, it was accepting the contention of the tenant who had stated and it is reproduced in the order of the High Court that infact "He, Nanak Chand was the Karta of the Joint family consisting of himself between Pawan Kumar and Rajiv Kumar, alleged proprietors of M/s Rajiv Motors". The present petition by the predecessors taking all the same plea of subletting was, therefore, clearly barred. The argument that in the previous case, the tenant claimed himself to be in possession and now it is an admitted fact that the possession is in the hands of M/s Rajiv Motors is meaningless. The possession of the father as a Manager is the expression of a status which is a presumption in Hindu Law that the family is joint. If Nanak Chand as a father was claiming that he was in possession in the capacity of Hindu Manager, the same ought to be available to the

benefits of the sons as well.

The understanding of law has come through several decisions. The possession of the husband and consequently even an alleged an alleged surrender of property by the tenant cannot operate against wife if the surrender has not been joint by the wife as well. The decision of Hon'ble the Supreme Court in B.P. Achal Anand Vs. S. Appi Reddy and another, 2005 (5) SCC 313, was a law to the possession that a deserted wife may not be placed in a worse of situation than a sub tenant, when a tenant decides not to contest and leave the deserted wife to fend for herself. Whatever right that existed for the tenant would devolve on the deserted wife as well. It is another way of saying that the status of members can never be wished away by a landlord who could secure an eviction by a willing tenant to surrender the property without reference to the family members. The situation is stronger as regards possession for members of a joint family. If the father takes a property on the lease, his possession will be taken as belonging to the benefit of his sons unless there is a case of division of the family. The same way the son's possession along with the father shall not be taken as a transfer made by the father to his sons to make a inference of subletting. In K. Achuta Bhat Vs. Veeramanini Manga Devi, AIR 1989 SCC 1993, the tenancy had been to Hindu joint family which was confirmed. The father retired from partnership and the sons continued. The Court said that even if there is an exclusive possession of the property by the sons, it cannot amount to subletting. This is again an extended principle of what we are trying to bring out now that if the tenancy is to the father, the fact of the sons being associated with the father as members of the family can never be constituted as subletting. All this is merely an academic exercise for a case does not require even any of these these legal forensics, for, it must be seen to be deserving a threshold knock out, even at the time of institution of the petition. The landlords had no legs to stand without pleading for a fresh cause of action after the decision rendered by this

Court in CR No. 381 of 1975 against the very same parties who are arrayed as tenants in this case. The petition was incompetent, to require a fresh adjudication by the Court on the same ground of what was lost.

It will be wrong proposition to advance that in the previous round of litigation, the argument was not properly made or the evidence was not properly tendered. The ineffective pleading or inept handling of the case is no ground to bring the case anew by better or clever pleadings. The subsequent case must suffer by what the landlord or its predecessors failed to prove at the previous round, for whatever reasons.

The Courts below had misled themselves in to examining what the tenant was contending for. They found the difference that in the earlier round the father was contending himself to be in possession on behalf of the family. First of all, such a judicial approach was erroneous, when the Court must have look to the existence of any fresh cause of action to sustain the petition. If there was no such cause, the petition required no adjudication. Even on the reasoning adopted, the ultimate conclusion could not have been that the petition was maintainable. If the sons had admitted themselves to be in possession, it must have been noticed the sons as members of the family with the father were also to be seen as in possession along with the father and the father had not parted with possession to the sons. In law, members of the family do not part possession from one to another so long as they remained joint. The reasoning adopted by both the courts below was fundamentally flawed on an appreciation of law.

The counsel appearing on behalf of the respondents makes a faint plea that the issue of *res judicata* was not framed by the Courts below. The argument, I would find to be not correct at all. There is a specific objection taken regarding the maintainability of the petition and the Court has framed a generic issue is whether the petition was maintainable or not. The parties knew what the respective contentions were and paragraph Nos. 9 to 11 of the trial Court judgment deal only

with the issue of the fact of the letting had been done to a member of the joint family and the effect of the claim by other members of the family along with the *Karta*. It is, therefore, futile to contend that the parties did not know what the defence was. Even the Appellate Court has dealt at reasonable length on the contentions raised that the possession of the tenant was as a member of the joint family and it was to the benefit of the whole family and substantial laboured discussion was attempted by the appellate Court which I have discarded in my judgment as poor legal reasoning. Undoubtedly, Section 14 does not even use the expression *res judicata*. Section indicates a principle of *res judicata* and if there are specific contentions regarding their maintainability with reference to the manner of letting and there has been also consideration on that issue, I would take it that the plea was surely available for the tenants to take and which had been dealt with by both the Courts below. I, therefore, reject the contention that the plea under Section 14 could not be urged without specific pleading.

The orders passed by the Courts below directed eviction are set aside and the civil revision petition is allowed with costs of ₹ 10,000/- against the landlord respondents.

(K.KANNAN)
JUDGE

18.03.2015

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