IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.705 of 2002 (O&M)
Date of decision: 05.08.2015

Brij Lal .... Petitioner

versus

Pritam Singh and others .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Kanwaljit Singh, Senior Advocate,
with Mr. Avaivir Singh, Advocate,
for the petitioner.

Mr. Arun Jain, Senior Advocate,
with Mr. Amit Jain, Advocate,
and Mr. Arnav K. Sood, Advocate,
for the respondents.

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1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. *(Oral)*

1. The landlord whose petition was dismissed in his action for ejectment brought on two grounds, namely, there had been a change of user of the premises and that there had been subletting, is before this court to canvass for reversal.

2. As regards the change of user, the contention is that the property was let for hardware goods and pipes but the tenant had converted it for selling iron rods and cement goods. The courts

below examined the decisions of the Supreme Court that have gone from this court, namely, the conversion by a tenant from a liquor vend to general provision or change of other businesses will not constitute actionable ground for eviction without proof of serious prejudice. This court also had an occasion to deal with the subject elaborately in ***Smt. Jatinder Kaur Versus Mrs. S.K. Dhaliwal-Civil Revision No.3261 of 2010, dated 30.07.2015***. I would not find any reason to expand this topic and I would hold the approach of the Rent Controller as well as the appellate court was correct and was in accordance with law.

3. As regard the ground of subletting, the contention of the landlord was that he had sublet the premises to R2 and R3, the tenant having shifted himself to Jagadhri bye-pass road when the demised property is in Yamuna Nagar. The landlord would rely on the fact that a Local Commissioner was appointed who found the presence of R2 and R3 at the time of surprise visit and R1 was not present at that time. The Rent Controller and the appellate court still did not take this to be proof of sub-tenancy by the fact that R2 was the brother-in-law of the first respondent and the business itself was assessed to commercial tax and the assessment was still standing in the name of the first respondent as the bills would show. The so-called sub-tenants gave evidence that they were having independent business elsewhere in iron trade and they used to visit the demised

property now and then on account of their own relationship and it could not be said to be an act of subletting. The lower appellate court also found that the landlord himself was having a similar business in the adjoining area. It was literally a business rivalry that had triggered the action for eviction. The counsel for the landlord would argue that the observation was wrong and the two courts below failed to give due credence to the fact that the tenant was actually not at the premises and the sub-tenants, who were claiming that they were having business elsewhere, failed to produce any documentary proof of such other business which they claimed that they were running. The failure to examine the above factors would, according to him, vitiate the judgment.

4. I would find the most crucial thing of proof of possession would be the manner of how the commercial tax was assessed and the nature of relationship between parties. The second respondent was a close relative of the first respondent and to associate some person to the business that involves heavy metals and hard objects such as iron rods or the cement to associate near relatives to help/manage the business, shift the goods or transport them is not unusual. This is not to state that there cannot be a subletting amongst near relations. There have been instances where even a subletting has been established by father to son, but taking with other aspects, the nearness of relationship of the person stated

to be a sub-tenant when the tenant himself gives evidence that the person who is alleged to be sub-tenant was not a tenant, but he was only assisting him and there are other documentary proof for the continuance of business of the tenant such as the assessment to taxes and the courts below have accepted such evidence, there ought to be no ground for intervention of such a finding of fact in revision. The judgments of the courts below are well reasoned and would call for no intervention. The revision petition is dismissed.

(K.KANNAN)
JUDGE

05.08.2015
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