

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

CR-5372-2003 (O&M)

Date of decision : 09.05.2016

Gurmail Singh

..... Petitioner

versus

Sh.G.S.Kaushal (deceased) through LRs and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Baldev Kapoor, Advocate
for the petitioner.

Mr. D.V.Sharma, Advocate with
Ms. Eshjyot Walia, Advocate
for the respondents.

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

AJAY TEWARI, J. (ORAL)

This petition has been filed by the landlord against the judgment and order of the appellate authority allowing the appeal of the respondent and thereby dismissing the petition.

The petitioner had sought the eviction of respondent No.1 on the ground that he had sublet the same to the respondents No.2 and 3. Both the Courts below found that as regards respondent No.2 subletting could not be proved because the respondent No.2 was an erstwhile partner of the business of respondent No.1. However, as regards respondent No.3 the Rent Controller found that she was a sub-tenant but the appellate authority upset that finding.

Learned counsel for the petitioner has argued that the admitted rent note contained the following terms :-

“3. That the second party G.S.Kaushal is prepared to take the said complete second floor on rental of Rs.950/- for per month and party No.1 is agreed to let out the same to him on the following conditions :-

a) That the rent of the complete second floor of the above building would be Rs.950/- (nine hundred fifty) per month.

b) That the tenant shall have to pay two months advance as security and one month rent payable on the first of every month.”

As per the learned counsel for the petitioner, a reading of this rent note gives rise only to the conclusion that the entire second floor had been let out. Thereafter he has pointed out that in the reply filed the tenant had only stated that he had not let out the premises to respondent No.3. While RW-1-(the son and attorney of respondent No.1) had admitted that respondent No.3 was in possession of one cabin on the second floor. As per him these essential facts proved that respondent No.1 had parted away with possession in favour of respondent No.3 and consequently in the absence of any explanation as to the capacity in which respondent No.3 was in possession subletting had to be inferred.

Learned counsel for the respondents has however argued that actually the case set up by the respondents was that respondent No.3 was a direct tenant of the petitioner from the year 1976 and therefore the appellate authority passed the correct order. He has relied upon a judgment passed by this Court in ***Jagan Nath Vs. Durga Dutt, 2000 (1) RCR 226***. However, in that case this Court had found that actually the petitioner in that case had

been in possession and the document purporting to show other respondents in possession was a sham and created document only to somehow or other to prove that the petitioner therein was not a direct tenant. He has further relied upon a judgment passed by this Court in ***Subhash Chander Vs. Surinder Singh, 1994 (2) RCR (Rent) 465*** and more particularly para 12 which is quoted herein below :-

*“12. Similar view was taken in unreported judgment of this Court in **Ram Kishan v. Santra Devi and Ors., C.R.No. 1407 of 1979, decided on 28.8.1986.** Supreme Court of India in **A.S. Sulochana v. C. Dharmalingam, 1987(1) RCR 213 : 1987 (1) SCC 180,** has held that where the sub-letting was not questioned for several years (18 years) by the original landlord and no action for possession was instituted notwithstanding the fact that the sub tenant was in possession of a part of the premises would give rise to an inference that it was never treated to be an unlawful sub-letting. It seems that Kartar Singh was residing in England and he had executed a rent note in favour of Shingara Singh which was a sham and bogus document, never acted upon, created in order to procure the ejectment of the alleged subtenants on the ground of sub-letting. There is no evidence to prove that Shingara Singh was ever put in possession of the shops under the alleged tenancy created in his favour. Silence of ten years after knowing the factum of sub tenancy to get back the possession would indicate that in fact there was no sub-tenancy and the alleged tenancy created by Kartar Singh in favour of Shingara Singh was a sham transaction fabricated in order to procure ejectment of the alleged sub tenants on the ground of sub-letting. The allegation of creation of sub tenancy is not accepted and the findings recorded by the courts below to the contrary are reversed”.*

In my opinion, the argument of the learned counsel for the petitioner carries more weight. It would be seen that in both the cited cases this Court had come to the specific conclusion that a sham document was created to show some person as a tenant only for the purpose of being able to prove that the actual occupant was a sub tenant. In the present case the

rent note is admitted. A perusal of the quoted portion gives rise to the solitary inference that the tenant-respondent No.1 had taken the entire second floor on rent @ Rs.950/- per month. Had any portion of the second floor not being taken on rent by respondent No.1 the rent note would definitely have been worded differently. Once that is so, it was for the tenant to explain how after one year respondent No.3 came into possession of one cabin on the second floor.

Consequently, the respondent No.1 alongwith other sub-tenant-respondent No.3 is liable to be evicted from the demised premises.

In the circumstances, the revision petition is allowed. The LRs of respondents No.1 and respondent No.3 are directed to vacate the premises in dispute.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

09.05.2016
Pooja sharma-I

(AJAY TEWARI)
JUDGE