

**CALCUTTA HIGH COURT  
IN THE CIRCUIT BENCH AT JALPAIGURI  
(Civil Appellate Jurisdiction)  
APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Krishna Rao**

**SA No. 3 of 2026**

**Rabindra Nath Ghosh & Anr.**

**Versus**

**Sanjay Sarkar**

Mr. Bikramaditya Ghosh

Mr. Hillol Saha Podder

.....For the appellants.

Ms. Suman Snehanabis

.....For the respondent.

Hearing Concluded On : 14.05.2026

Judgment On : 20.05.2026

**Krishna Rao, J.:**

1. The appellants/ defendants have filed this present second appeal against the judgment and decree passed by the Learned Additional District Judge, First Track Court, Sadar, Cooch Behar in Title Appeal No. 01 of 2020 dated 25<sup>th</sup> August, 2023 and 16<sup>th</sup> October, 2023

respectively wherein the Learned Judge set aside the judgment and decree passed by the Learned Civil Judge, (Junior Division), Additional Court, Sadar Cooch Behar passed in Title Suit No. 52(A) of 2015 dated 24<sup>th</sup> December, 2019 and 8<sup>th</sup> January, 2020.

- 2.** The respondent/plaintiff along with his mother, Manju Sarkar (since deceased) has filed suit against the appellants for eviction and recovery of possession of the tenanted premises i.e. one stall of approximate area of 180 sq.ft. with GCI sheet roof with pucca walls and kutcha floor.
- 3.** As per the case of the respondent, by way of family settlement, the respondent got the portion of the tenanted premises along with other different tenanted premises. As the tenanted premises of the appellant no. 1 came in the share of the respondent, the appellant no. 1 started paying monthly rent of Rs. 35/- to the respondent and became tenant of the respondent. The appellant had kept the shop closed for a considerable period of time and all of a sudden, the appellant no.1 in the month of August, 2014 sublet the tenanted premises illegally and without the consent of the respondent to the appellant no.2 and the appellant no. 2 has started business illegally in the tenanted premises.
- 4.** The appellant no.1 has stopped payment of monthly rent since the month of July, 1990 and the appellant no.1 become defaulter of paying monthly rent of the tenanted premises. It is the further case of

the respondent that without the consent and permission of the respondent, the appellant no.2 has altered the tenanted premises by making pucca floor and changing the condition of the surrounding wall and destroyed the major portion of the original construction. The respondent has made out a further case that the suit premises is reasonably required to the respondent for the purpose of new business of the respondent and the respondent has no sufficient premises for starting new business.

- 5.** The respondent has issued a notice to the appellant no. 1 on 17<sup>th</sup> September, 2014 by determining the tenancy and called upon the appellant no. 1 to vacate the premises by the last day of October, 2014 and to hand over the premises to the respondent on the first day of November 2014. As the appellant no. 1 failed to vacate the tenanted premises and hand over the premises to the respondent, the respondent along with his mother filed the suit.
- 6.** The appellants after receipt of summons of the suit entered appearance in the suit and have jointly filed their written statement. As per the case of the appellants that the appellant no.1 has never sublet the tenanted premises to the appellant no. 2. Due to financial crisis, the appellant no.1 has closed the tenanted premises for considerable period and after long gap the appellant no.1 started business of readymade garments in the tenanted premises along with defendant no. 2 being the partner of the defendant no.1.

7. The appellants in their written statement denied that the allegations made by the respondent and stated that the appellants have never violated the provisions of the tenancy and have not made any alteration in the tenanted premises.
8. Learned Trial Court on the basis of the pleadings of the parties, have framed the following issues:

- “1. Is the suit maintainable in its present form and in law?*
- 2. Whether the suit is barred by any law or principles of law?*
- 3. Whether the plaintiff has cause of action to institute the suit?*
- 4. Whether there exist landlord-tenant relationship between the plaintiff and the defendant?*
- 5. Whether the defendant no. 1 is a defaulter in payment of ret?*
- 6. Whether the defendant no. 1 is has sublet the suit premises to the defendant no. 2?*
- 7. Whether the plaintiff is entitled to get the decree as prayed for?*
- 8. To what other relief or reliefs, if any the plaintiff is entitled to?*

*While writing judgment this Court finds it necessary to frame the following issue in addition to the previous one for proper adjudication of the instant suit.*

- 9. Whether the suit property is reasonably required by the plaintiffs for their own use and occupation?*
- 10. Whether the defendant is guilty of changing nature and character of the tenancy?*

9. During evidence, the respondent has adduced one witness i.e. the respondent himself as P.W.1 and the appellants have examined two

witnesses i.e. the appellant nos.1 and 2 being D.W.1 and DW.2. At the time of evidence of P.W.1, three documents were exhibited i.e.:

- (i) **Exhibit -1** – Notice dated 17<sup>th</sup> September, 2014.
- (ii) **Exhibit -2**- Postal Receipts and Acknowledgement Card.
- (iii) **Exhibit-3**- Reply to the Notice dated 14<sup>th</sup> October 2014.

**10.** At the time of evidence of the appellants, the following documents were exhibited:

- (i) **Exhibit –A series**- 20 years challan of arrears of rent and rent from January, 2016 to November, 2017.(without objection)
- (ii) **Exhibit –B series**-Signature of RabindraNath Ghosh (without objection)
- (iii) **Exhibit –C series**-Signature of DibakarSaha in Partnership deed. (without objection.)
- (iv) **Exhibit D**- Signature of Swapan Chakraborty in Partnership Deed. (with objection)
- (v) **Exhibit E**- Signature of Enakshi Chakraborty. (with objection)
- (vi) **Exhibit F**- Signature of NilakshiSaha. (with objection)
- (vii) **Exhibit G** – Signature of PP Upadhaya. (with objection)
- (viii) **Exhibit H**- Partnership Deed (With objection).

**11.** Learned Trial Court has decided the issue nos. 1, 2, 3 and 4 in favour of the respondent and the other main issues decided against the respondent and dismissed the suit on 24<sup>th</sup> December, 2019.

12. The respondent being aggrieved and dissatisfied with the judgment and decree passed by the Learned Civil Judge (Junior Division) Additional Court Sadar, Cooch Behar dated 24<sup>th</sup> December, 2019, has filed an first appeal before the Learned Court of District Judge, Cooch Behar. The Learned District Judge has transferred the said appeal to the learned Court of Additional District Judge, First Track Court, Sadar, Cooch Behar.
13. Learned Additional District Judge has set aside the judgment and decree passed by the Learned Civil Judge (Junior Division), Additional Sadar Court, Cooch Behar by the judgment and decree dated 25<sup>th</sup> August, 2023, and granted decree in favour of the respondent by directing the appellants to vacate the tenanted premises and to hand over the peaceful and vacant possession to the respondent within 60 days from the date of passing the judgment.
14. The First Appellate Court granted decree by setting aside the judgment and decree passed by the Learned Trial Court only on the ground of subletting the tenanted premises by the appellant no.1 to the appellant no. 2.
15. While admitting the second appeal, the following substantial question of law is framed:

*“I. Whether the first appellate Court was justified in holding that the appellant no. 1 having entered into a partnership agreement and having permitted a partnership firm to operate from the tenanted premises has parted his possession and*

*surrendered his right to occupancy as a monthly tenant and has sublet the premises?*

**II.** *Whether the purpose behind execution of the partnership deed was ostensible and having granted permission to the firm to operate from the tenanted premises, the tenant has sublet the premises?*

16. Mr. Bikramaditya Ghosh, Learned Advocate representing the appellants submits that the Learned First Appellate Court has affirmed the issues decided by the Learned Trial Court except the issue no. 6 *“Whether the defendant no.1 has sublet the suit premises to the defendant no.2?”*.
17. Mr. Ghosh submits that the Learned First appellate Court came to the conclusion that the appellant no.1 failed to establish by convincing evidence as to whether the partnership deed has been acted upon or not. He submits that in the plaint only at paragraph 5, the respondent has made an allegation that the appellant no.1 in the month of August, 2014, illegally sublet the premises without the consent of the respondent to the appellant no. 2. He submits that in reply to the said averments, the appellants have made out a specific case that the appellant no.1 has never sublet the premises to the appellant no. 2 but only due to the financial crisis, the appellant no.1 after a long period started business of readymade garments in the tenanted premises along with the appellant no.2 being the partner of the appellant no.1.

- 18.** Mr. Ghosh submits that during evidence before the trial court, the appellant no.1 was examined as D.W.1 and during his cross-examination, he has categorically stated that the name of his business is "*A.P. Garments*". Apart from himself, Swapan Chakraborty, Nilakshi Saha, Enakshi Chakraborty and Dibakar Saha are the partners and trade license is in the name of the firm. The tax books are in the name of the firm. Partnership started on 20<sup>th</sup> June, 2014.
- 19.** Mr. Ghosh further submits that the appellant no.1 has categorically denied the suggestion of the respondent that the appellant no.1 has not sublet the tenanted premises to the appellant no. 2. He further submits that during cross-examination of P.W.1, the appellant no.1 has put the suggestion to the respondent that the appellant no.1 has not sublet the premises to the appellant no.2.
- 20.** Mr. Ghosh submits that the appellant no.2 in his evidence has categorically stated that on 20<sup>th</sup> June, 2014, one agreement was executed which was duly notarized by the notary public and all the parties have signed in the said agreement including the appellant no.1. He submits that signatures of the appellant nos.1, 2 and others parties were duly identified by the appellant no. 2. He submits that the signatures and partnership deed was duly exhibited and proved.
- 21.** Mr. Ghosh submits that in the partnership deed, the shares of all the parties have been described and as per the said deed, the appellant no.1 is having 10% share and appellant no.2 is having 25% share,

thus the appellant no.2 is running business as partner of the appellant no.1. He further submits that all the partners are working partners and are entitled to get their salaries as per the conduct of the business.

22. In support of his case, Mr. Ghosh has relied upon the judgment in the case of ***Celina Coelho Pereira (Ms) and Others Vs. Ulhas Mahabaleshwar Kholkar and Others*** reported in ***(2010) 1 SCC 217*** and submits that initial burden of proving sub-letting is on the landlord but once he is able to establish that a third party is in exclusive possession of the tenanted premises and the tenant has no legal possession of the premises, the onus shifts to the tenant to prove the nature of occupation of such third party and the tenant continues to hold legal possession of tenancy premises. He submits that in the present case, the respondent being the landlord failed to prove about the subletting.
23. Mr. Ghosh has relied upon the judgment in the case of ***Parvinder Singh Vs. Renu Gautam and Others*** reported in ***(2004) 4 SCC 794*** and submits that a person having secured a lease of premises for the purpose of his business may be in need of capital or finance or someone to assist him in his business and to achieve such like purpose he may enter into a partnership with strangers. He submits that in the present case also it is the specific case that due to financial crisis, the appellant no.1 had to close his shop for a long period and

subsequently he has entered into a partnership with the appellant no.2 which is duly proved.

24. Mr. Ghosh further relied upon the judgment in the case of ***Helper Girdharbhai Vs. Saiyed Mohamad Mirasaheb Kadri and Others*** reported in **(1987) 3 SCC 538** and submits that whether the relation of partnership between two or more persons does or does not exist must depend on the real intention and contract of parties and not merely on their expressed intention.
25. Ms. Suman Snehanabis, Learned Advocate representing the respondent/ plaintiff submits that in paragraph 5 of the plaint, the respondent has categorically made out a case that the appellant no.1 has sub-let the tenanted premises to the appellant no.2 without any consent or in writing with the respondent. She submits that in paragraph 9 of the written statement, it is the specific case of the appellants that the appellant no.1 entered into a partnership with the appellant no.2 but the appellant no.2 during his evidence has stated that the partnership was executed between five persons and has also produced the alleged deed wherein there are altogether names of five partners are appearing but the appellants have suppressed the said fact in their written statement.
26. Ms. Snehanabis submits that in the examination-in-chief, the PW.1 has categorically stated that the appellant no.1 has illegally sublet the tenanted premises to the appellant no.2. She submits that D.W.1 in

his cross-examination as stated that the name of the business is “A.P. Garments” and also having trade license but no trade license in the name of the partnership firm is produced. She further submits that in the cross-examination, the D.W.1 has admitted that he has not informed about the partnership to the respondent nor has obtained any no objection from the respondent.

27. Ms. Snehanabis submits that D.W.2 also in his cross-examination has admitted that he has not filed any trade licence, income tax return, accounts and balance sheet of the partnership firm. She submits that it is the specific case of the appellants that the appellant nos.1 and 2 are the partners and the appellant no.2 is running the business in the tenanted premises as partner of the appellant no.1 but has not filed any documents to show that actually the appellant no.2 is running the business as partner of the firm along with the appellant no. 1.
28. Ms. Snehanabis submits that in paragraph 23 of the First Appellate Court judgment, the First Appellate Court has recorded the findings that the appellants have failed to establish by adducing any cogent evidence that the partnership deed relied by the appellants have actually acted upon or not. She further submits that the first appellate Court also held that the appellants failed to establish that the partnership deed is genuine one along with appellant no. 1.
29. In support of her case Ms. Sehanabis has also relied upon the judgment in the case of ***Celina Coelho Pereira (supra)*** and submits

that in order to prove mischief of sub-letting as a ground for eviction under rent control laws, two ingredients have to be established i.e. (i) parting with the possession of the tenancy or part of it by the tenant in favour of third party with exclusive right of possession and (ii) that such parting with possession has been done without the consent of the landlord and in lieu of compensation or rent. In the present case, the respondent has proved that the appellant no. 1 has sublet the premises and handed over the same to the appellant no. 1.

- 30.** Ms. Snehanabis further relied upon the judgment in the case of ***Parvinder Singh (supra)*** and submits that to defeat the provision of law, a device is at time adopted by unscrupulous tenants and sub tenants of bringing into existence of a deed of partnership which gives the relationship of tenant and subtenant an out word appearance of partnership while in effect what has come into existence is a sub-tenancy or parting with possession camouflaged under the cloak of partnership.
- 31.** Learned Trial Court framed issue no.6 *“whether the defendant no.1 has sublet the tenanted suit premises to the defendant no.2”* and decided the same as follows:

*“In the plaint it has been categorically stated that the tenant/ Defendant no 1 ie Rabindra Nath Ghosh is guilty of sub-letting the tenanted/suit property to defendant no 2 i.e Dibakar Saha without the consent of the plaintiffs/landlord. Therefore, according to the plaintiffs, defendant no 1 has violated the provision of West Bengal Premises Tenancy Act and thus the defendants*

are liable to be evicted from the tenanted premises.

The Id counsel for the plaintiffs during his argument submitted that the defendant no 1 used the tenanted premises not for the purpose for which it was let out to him. He initially started a toy shop and latter on started a partnership business in the name and style "AP Garments".

Now let us see how far defendant no 1 has been able to prove his case.

DW 1 admitted the fact that **"Partnership firm started on 20th June, 2014.I ran a stationery business in the tenanted premises from the year 1981 to 1982 for about eight to nine months"**. And he further admitted the fact saying that **"prior forty years I used to run a toy shop in the name/and style" Ghosh Traders" in the suit premises."** One question was put-by the Id counsel on behalf the plaintiffs to defendant no 1 that**"In which year "Ghosh Traders" was changed to A.P Garment? He replied "In the year 2014"**.

DW 1 on his cross examination admitted that **"I am the sole tenant of the tenanted premises."** Further DW2 on his cross examination deposed that **"I am not related to RabindraNath Ghosh. He is not my relative. He further admitted that "I am not the direct tenant of the plaintiffs"**. Thus the statements of DW shows that he has no relation with the plaintiffs of this suit as such he may be presumed to be a trespasser.

The Id counsel for the plaintiff advanced his argument by submitting that the defendant no 1 kept the shop closed for a considerable period of time and subsequently defendant no 1 in august 2014 illegally sublet the premises to defendant no 2 without the consent of the plaintiffs.

**As per section 5 of the WBPT act 1997,**

**1. Obligations of tenant** (1) Every tenant shall pay rent to the landlord or his authorised agent within the prescribed period. (2) Every tenant

shall use the premises for the purpose for which it was let out to him. (3) Every tenant shall allow the landlord or his authorised agent to enter upon the premises and inspect the condition thereof after the service of a notice on him by the landlord or his authorised agent in this behalf. (4) No tenant shall make any addition to, or alteration in, the premises without the written consent of the landlord. (5) No tenant shall sublet the premises without consent of the landlord in writing. (6) No tenant shall, without the previous consent in writing of the landlord, transfer or assign his right in the tenancy of any part thereof. (7) Every tenant shall pay the charges relating to the maintenance and amenities of the premises at the rate of ten per cent of the fair rent or agreed rent, as the case may be. (8) Every tenant shall pay his share of municipal tax as an occupier of the premises in accordance with the provisions of the Kolkata Municipal Corporation Act, 1980 (West Bengal Act LIX of 1980) or the West Bengal Municipal Act, 1993 (West Bengal Act XXII of 1993).

**2. Protection of tenant against eviction.**-(1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any contract, no order or decree for the recovery of the possession of any premises shall be made [by the Civil Judge having jurisdiction] in favour of the landlord against the tenant, [except on a suit being instituted by such landlord] on one or more of the following grounds: (a) where the tenant has sublet, assigned or otherwise parted with the possession of whole or any part of the premises without obtaining the consent in writing of the landlord or the tenant has used the premises for a purpose other than that for which it was let out without obtaining the consent in writing of the landlord; (b) where the tenant has made default in payment of rent for three months within a period of twelve months, or for three rental periods within a period of three years where the rent is not payable monthly (c) where the premises is required by the landlord for the purpose of building or rebuilding or for making substantial addition or alteration thereto and such building or rebuilding or substantial addition or alteration cannot be carried out without the

premises being vacated; [(d) where the landlord or any person, for whose benefit the premises is held, reasonably requires the premises for his own occupation and the landlord or such person is not in possession of any suitable accommodation within the same Municipal Corporation or Municipality or in any other area within ten kilometres from such premises where this Act extends;] (e) where the tenant has given notice to quit but has failed to deliver vacant possession of the premises to the landlord in accordance with such notice; [(f) where the tenant or any person residing in the premises let out to the tenant has done any act contrary to the provisions of clause (m), clause (o) or clause (p) of section 108 of the Transfer of Property Act, 1882 (4 of 1882);] (g) where the tenant has been using the premises or any part thereof or allowing the premises or any part thereof to be used for immoral or illegal purpose; (h) where the tenant is guilty of any act of waste or of any negligence or default resulting in material deterioration of the condition of the premises; (i) where the tenant or any person residing in the premises let out to the tenant has been guilty of conduct which is a nuisance or causes annoyance to the neighbors including the landlord; (J) where the tenant has acquired or constructed or has been allotted, a house or flat provided a moratorium for one year is allowed for vacating the premises: (k) where the landlord is a member of the Armed Forces of the Union of India and requires it for occupation of his family and produces a certificate of the prescribed authority referred to in section 7 of the Indian Soldiers (Litigation) Act, 1925 (4 of 1925), that he is serving under special conditions within the meaning of section 3 of that Act or is posted in a non-family area. (1) where the tenant, or his spouse, or son, or daughter, or parent, or the widow of his predeceased son, who is dependent on him, does not reside in the premises [ten months) and keeps the premises under lock and key. (2) Where a landlord has acquired his interest in the premises by transfer, no (suit) for the recovery of possession of the premises on the ground of requirement for building or rebuilding or addition or alteration or requirement for own occupation shall be instituted by the landlord before the expiration of a period of one year from

the date of acquisition of such interest. (3) Where the landlord requires the premises on the ground of building or rebuilding or addition or alteration or for his own occupation-and [the Civil Judge] is of the opinion that such requirement may be substantially satisfied by ejecting the tenant or a subtenant from a part of the premises and allowing the tenant or the sub-tenant to continue in occupation of the rest of the premises, then, if the tenant or the sub-tenant agrees to such occupation, [the Civil Judge] shall pass a decree accordingly and fix the proportionate rent for the portion remaining in the occupation of the tenant or the subtenant. The rent so fixed shall be deemed to be the fair rent for the purposes of this Act. If the tenant does not agree, but the sub-tenant agrees, to such occupation, no decree or order for ejectment shall be passed against the sub-tenant who shall become, with effect from the date of the decree or order, a tenant directly holding under the landlord. (4) Notwithstanding anything in any other law for the time being in force, no (suit] for the recovery of possession of anypremise on any of the grounds as aforesaid, except on the ground mentioned in cause (e) of sub-section (1) shall be institutes by the landlord unless he has given to the tenant one month's notice expiring with a month of the tenancy.

(5) Notwithstanding anything contained in this Actor in any other law for the time being in force, no suit or proceeding shall be instituted by the landlord within two years from the date of commencement of this Act for recovery of possession of any premises to which the provisions of the West Bengal Premises Tenancy Act, 1956 did apply but the provisions of this Act do not apply.

**The DW I admitted that he did not inform the landlords that he has changed the nature/kind of business in the suit premises. And further stated that he did not inform the present plaintiffs about the partnership business.**

The Id counsel for the defendants in reply submitted that the defendant no 2 is the partner of defendant no 1 in his business and that the

defendant no 1 has not sublet the tenanted premises to defendant no 2. On perusing Exhibit H it appears that the deed of partnership regarding a business in the name and style "A.P Garments" was made between the defendant no 1 and Sri Swapan Kumar Chakraborty, Sri Dibakar Saha i.e. defendant no 2, Smt Nilakshi Saha, Anekshi Chakraborty and Sri Rabindra Nath Ghosh. Exhibit C series, D series, E series, F series, and G series shows the signatures of the partners in the partnership deed.

The Id counsel for the plaintiffs in his argument submitted that the defendant no 1 has admitted the partnership deed. In lieu of it can be presumed that the defendant no 2 is a trespasser. It has been admitted by defendant no 2 in his cross examination that he is not related to the defendant no 1 and he is not the direct tenant to the plaintiffs which implies that the defendant No-2 is not connected with the plaintiffs in the relationship of landlord and tenant which the defendant No-1 and the plaintiffs enjoy. Thus absence of blood relationship between the defendant No-1 and defendant No-2 does give this Court an Impression that the defendant No-2 was not related with the suit property when the defendant No-1 was originally inducted as a tenant. There appears to be no legal status of tenant conferred upon the defendant No-2 in respect of the suit property as no prior permission from the plaintiffs were sought when he and the defendant No-2 opened a joint partnership firm. But in the case in hand the right of occupancy as a monthly tenant in respect of the premises remained with the tenant and did not form part of the assets of partnership firm, there could not be said to be any subletting.

Thus, in the case of sub-letting, the onus lying on the landlord would stand discharged by adducing prima facie proof of the fact that the alleged sub-tenant was in exclusive possession of the premises or to borrow the language of Section 105 of the Transfer of Property Act, was holding right to enjoy such property. As presumption of sub-letting may then be raised and would amount to proof unless rebutted.

***In Helper Girdharbhai v. Saiyed Mohd. Mirasaheb Kadri, MANU/SC/0381/1987: (1987) 3 SCC 538, the tenant had entered into partnership and the firm was carrying on business in the tenancy premises. This Court held that if there was a partnership firm of which the appellant was a partner as a tenant, the same would not amount to subletting leading to forfeiture of the tenancy; for there cannot be a sub-letting unless the lessee parted with the legal possession. The mere fact that another person is allowed to use the premises while the lessee retains the legal possession is not enough to create a sub-lease. Thus, the thrust is, as laid down by this court, on finding out whois the legal possession of the premises. So long as legal possession remains with the tenant the mere factum of the tenant having entered into partnership for the purpose of carrying on the business in the tenancy premises would not amount to sub-letting.***

***The Vaishakhi Ram and others v. Sanjeev Kumar Bhatiani MANU/SC/7197/2008) (2008) 14 SCC 356, the apex Court. In a case of subletting under Section 14(1)(b) of Bethi Rent Control Act, held:***

*"A plain reading of this provision would show that if a tenant has sublet or assigned or otherwise parted with the possession of the whole or any part of the premises without obtaining the consent in writing of the landlord, he would be liable to be evicted from the said premises. That is to say, the following Ingredients must be satisfied before an order of eviction can be passed on the ground of subletting:-*

*(1) The tenant has sublet or assigned or parted with the possession of the whole or any part of the premises:*

*(2) Such subletting or assigning or parting with the possession has been done without obtaining the consent in writing of the landlord."*

*"It is well settled that the burden of proving sub-letting is on the landlord but if the landlord proves that the sub-tenant is in exclusive possession of the suit premises, then the onus is shifted to the tenant to prove that it was not a case of sub-letting."*

*The Id counsel for the plaintiffs has relied upon the following judgments:*

**1. Shri Harish Tandon vs The Addl. District Magistrate.**

**Equivalent citations: 1995 AIR 676, 1995 SCC (1) 537**

**2. Kartick Das vs Sri Kamal Ghosh and ors**

**Equivalent citations (2004) 1 CALLT 600 HC**  
*The facts and circumstances of these cases are not relevant to the facts and circumstances of the Instant case.*

*Thus, based on the aforesaid discussion and observation made by this court, it is held that the defendant no 1 has not sublet the suit premises to the defendant no. 2 and that the defendant no. 1 is not guilty of sub-letting the suit property illegally in favour of defendant no.2.*

*Thus, this issue is decided in negative against the plaintiffs."*

**32. The First Appellate Court decided the said issue as follows:**

**"23.** *In the present suit what appears is that the Defendant/ Respondent No-1 has filed a Partnership Deed at the time of trial and the same has been marked as Ext-H. On perusal of the said partnership deed it appears that the terms and conditions of the partnership was such that the Defendant no-1/ Respondent no-1 was required to provide the suit premises against the involvement of capital of the said business as a outlet point or show-room of the said business. This tends to show that the possession of the entire suit premises had to be parted with by the Defendant no-1 for the purpose of running such business. However the*

*Defendant no-1/ Respondent no-1 has failed to establish by adducing convincing evidence as to whether the partnership deed has been acted upon or not. The Defendant no-1 has admitted at the time of his cross-examination that the so-called Partnership Firm has not been registered with the Registrar of Firms. Moreover although both the Defendants/ Respondents at the time of their cross-examination have stated that there is trade licence in the name of the partnership firm in question, however no such trade licence was brought in evidence on behalf of the Defendants. The Defendant no-1 has also failed to produce balance sheet, books of accounts, income tax file, or any other papers or documents relating to the business from which it can be inferred that the partnership deed produced by the Defendant, has actually been acted upon. The Defendant no-1 failed to show anything from which it could be believed that he is actively associated with the business. Thus, I am of the view that the Defendant no-1/ Respondent no-1 failed to establish that the partnership deed produced by him at the time of trial of this suit is a genuine one. Therefore what remains is that the Defendant no-1/ Respondent no-1 has actually parted with the possession of the entire suit premises in respect of which he is a tenant to the respondent no. 2 and other third parties without the consent of the Appellants/ Plaintiffs and that the Respondent no-2 and others are running their business over the suit premises under the name and style of A.P Garments. Therefore it seems that the alleged partnership deed has been brought into existence only to give an outward appearance of partnership whereas in reality a sub-tenancy has been created by the Defendant no-1/ Respondent no-1 in favour of the Defendant no-2/ Respondent no-2 and others under the guise of partnership by parting with his exclusive possession over the entire suit premises. It is also clear from the deposition of the Defendant no-1 (D.W-1) that he did not take any permission from his landlord before parting with the suit premises. The Defendant no-1/ Respondent no-1 has not been able to adduce any evidence to prove the contrary that he is in actual legal possession of the suit premises.*

**24.** *In view of the above, I am of the opinion that the Respondent No-1/ Defendant no-1 has*

*violated the provision laid down U/sec-6(a) of The West Bengal Premises Tenancy Act 1997 and is liable to be evicted from the suit premises on the ground of subletting.”*

- 33.** Recently, the Hon’ble Supreme Court in the case of **Sri M.V. Ramachandrasa Since Deceased, represented by Legal Heirs Vs. Mahendra Watch Company, represented by its Partners and Others** reported in **2026 SCC OnLine SC 582** has decided the issue “Whether the burden of proving unlawful sub-letting lies upon the landlord, and if so, whether such burden has been duly discharged in the present case?” Which reads as follows:

**“13.1.** *It is a settled principle of law that the burden of proof lies upon the party asserting a fact. In eviction proceedings founded on the ground of sub-letting, the initial onus rests upon the landlord to establish that the tenant has parted with possession of the tenanted premises in favour of a third party without authority.*

**13.2.** *The jurisprudence on this issue is well crystallized. In Associated Hotels of India Ltd v. S.B. Sardar Ranjit Singh (supra), this Court held that the landlord must first prove parting with possession. However, recognizing the inherently clandestine nature of sub-letting arrangements, courts have evolved a rule of evidence that once exclusive possession of a third party is established, the burden shifts to the tenant to explain the nature of such possession.*

**13.3.** *This principle has been consistently reaffirmed in Joginder Singh Sodhi v. Amar Kaur, and further authoritatively expounded by a three Judge Bench in Mahendra Saree Emporium (II) v. G.V. Srinivasa Murthy (supra), wherein it was held that once a prima facie case of exclusive possession by a stranger is made out, a presumption of sub-letting arises, thereby shifting the onus onto the tenant.*

**13.4.** In *Ram Murti Devi v. Pushpa Devi*, after considering the earlier precedents, the Court reiterated that direct evidence of sub-letting is seldom available, and the same can be inferred from surrounding circumstances, particularly where exclusive possession of a third party is established. The relevant paragraphs are extracted below for better appreciation:

**“17..... This Court held in the above case that *transaction of sub-letting in their very nature are clandestine arrangements between tenant and sub-tenant and there cannot be any direct evidence and even it is a matter of legitimate inference. It was further held that burden of proof of establishing fact although lies on the landlord but it may shift according to the weight of evidence adduced by the party during the trial.***

**18.** In *Kala v. Madho* Parshad Vaidya, again the Court held that the onus of proof is on the landlord and if he establishes the parting of with the possession in favour of third party, the onus would shift to the tenant to explain. In para 16 following has been explained:

*“16. ... The onus to prove sub-letting is on the landlord and if he establishes parting of with the possession in favour of a third party, the onus would shift to the tenant to explain. In the instant case, however, the landlord did not discharge the initial onus and although it was not required, yet, the tenant explained how Appellant 2 had the permissive possession of the shop as its Manager.”*

**19.** This Court in *Joginder Singh Sodhi v. Amar Kaur*, had occasion to consider various aspects of sub-letting. After noticing the various earlier judgments of this Court, this Court reiterated the law in para 13 to para 17, which are to the following effect:

*“13. Regarding sub-letting, in our opinion, the law is well settled. It is observed in the*

leading case of *Associated Hotels of India Ltd. v. S.B. SardarRanjit Singh* that in a suit by the landlord for eviction of tenant on the ground of sub-letting, the landlord has to prove by leading evidence that **(i) a third party was found to be in exclusive possession of the rented property, and (ii) parting of possession thereof was for monetary consideration.**

14. The above principle was reiterated by this Court from time to time. In *Shama Prashant Raje v. Ganpatrao*, the Court stated that on sub-letting, there is no dispute with the proposition that the two ingredients, namely, parting with possession and monetary consideration therefore have to be established.

.....

16. The contention of the learned counsel for the appellant, however, is that even if it is assumed that one of the ingredients of sub-letting was established, the second ingredient, namely, parting of possession with “monetary consideration” was not established. The counsel urged that there is no evidence on record that any amount was paid either in cash or in kind by Respondent 2 to Respondent 1. In the absence of such evidence sub-tenancy cannot be said to be established and the landlady was not entitled to get an order of eviction against the tenant.

17. We are unable to appreciate the contention. As observed by this Court in *Bharat Sales Ltd. v. LIC*, sub-tenancy or sub-letting comes into existence when the tenant gives up possession of the tenanted accommodation, wholly or in part, and puts another person in exclusive possession thereof. This arrangement comes about obviously under a mutual agreement or understanding between the tenant and the person to whom the possession is so delivered. **In this process, the landlord is kept out of the scene. Rather, the scene is enacted behind the back of the landlord, concealing the overt acts and**

**transferring possession clandestinely to a person who is an utter stranger to the landlord, in the sense that the landlord had not let out the premises to that person nor had he allowed or consented to his entering into possession of that person, instead of the tenant, which ultimately reveals to the landlord that tenant to whom the property was let out has put some other person in possession of that property.** In such a situation, it would be difficult for the landlord to prove, by direct evidence, the contract or agreement or understanding between the tenant and the sub-tenant. It would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property had been sub-let had paid monetary consideration to the tenant. Payment of rent, undoubtedly, is an essential element of lease or sub-lease. It may be paid in cash or in kind or may have been paid or promised to be paid. It may have been paid in lump sum in advance covering the period for which the premises is let out or sub-let or it may have been paid or promised to be paid periodically. **Since payment of rent or monetary consideration may have been made secretly, the law does not require such payment to be proved by affirmative evidence and the court is permitted to draw its own inference upon the facts of the case proved at the trial, including the delivery of exclusive possession to infer that the premises were sub-let."**

**20.** A three-Judge Bench in Mahendra Saree Emporium (2) v. G.V. Srinivasa Murthy, had occasion to consider the question of sub-letting (sub-tenancy) and question of burden of proof. In para 16, the Court had elaborated the concept of sub-letting and laid down the following:

**"16. ....The onus to prove sub-letting is on the landlord. If the landlord prima facie shows that the occupant, who was in exclusive possession of the premises, let out for**

***valuable consideration, it would then be for the tenant to rebut the evidence.”***

*Thus, in the case of sub-letting, the onus lying on the landlord would stand discharged by adducing prima facie proof of the fact that the alleged sub-tenant was in exclusive possession of the premises or, to borrow the language of Section 105 of the Transfer of Property Act, was holding right to enjoy such property. A presumption of sub-letting may then be raised and would amount to proof unless rebutted.”*

**21.** *From the pronouncements of this Court as noticed above, following statement of law can be culled out:*

*21.1. In a suit by the landlord for eviction of the tenant on the ground of sub-letting the landlord has to prove by leading evidence that:*

- (a) A third party was found to be in exclusive possession of the whole or part of rented property.*
- (b) Parting of possession thereof was for monetary consideration.*

*21.2. The onus to prove sub-letting is on the landlord and if he has established parting of possession in favour of a third party either wholly or partly, the onus would shift to the tenant to explain.*

**21.3.** *In the event, possession of the tenant wholly or partly is proved and the particulars and the instances of the transactions are found acceptable, in particular facts and circumstances of the case, it is not impermissible for the court to draw an inference that the transaction was entered with monetary consideration. It may not be possible always to give direct evidence of monetary consideration since such transaction of sub-letting are made between the tenant and sub-tenant behind the back of the landlord.*

**22.** *In each case, the proof of sub-letting/sub-tenancy thus, has to be established on the parameters of law, as laid down in the above*

*cases. Whether, in particular facts and circumstances the landlord has successfully discharged the burden of proving sub-tenancy depends on pleading and evidence in each case.”*

**13.5.** *Thus, the legal position that emerges is that the landlord discharges the initial burden by establishing (i) exclusive possession of a third party, and (ii) absence of the original tenant from possession. Upon such proof, a presumption of sub-letting arises, and the onus shifts to the tenant to demonstrate that such possession is lawful and not in the nature of sub-tenancy.”*

- 34.** In the present case, there is no dispute that the appellant no.1 was the tenant of the respondent. It is the case of the appellant no.1 that the appellant no.1 entered into a partnership with the appellant no.2 and started running business of readymade garments under the name and style of “A.P. Garments” since the month of August, 2014 and the defendant no.1 has not sublet the tenanted premises to the defendant no.2. The appellants have relied upon partnership deed which is marked as Exhibit-H (with objection). In written statement jointly filed by appellants in paragraph 5 it is stated that *“Due to financial crisis, the defendant no.1 had to close the shop of tenanted premises for a considerable period and thereafter the defendant no.1 after a long gap started business of readymade garments in the premises along with defendant no.2 as being a partner of the defendant no.1. The defendant no.1 did not violate the provisions of Premises and Tenancy Act and as such the defendant no.1 is not liable to be evicted from the suit premises.”*

- 35.** At the time of evidence, the appellant no.1 in his examination-in-chief stated that partnership deed was executed between appellant no.1, appellant no.2 and three others, namely, Swapan Chakraborty, Nilakshi Saha and Enakshi Chakraborty. The partnership deed was marked as Exhibit-H (with objection) at the time of evidence of appellant no.2. The appellant no.1 in his cross-examination admitted that there is no agreement between the plaintiff and the defendant no.1 for running partnership business and the appellant no.1 has not obtained any No Objection from the plaintiff. He has also admitted that he did not inform about the partnership business.
- 36.** The appellant no.2 was examined as D.W.2 and during his cross-examination, he has stated that he is not a direct tenant of the plaintiff and has not informed about the execution of the deed of partnership in between the appellant nos. 1, 2 and other three persons. He has further stated that he has the business of garments under the name and style of "A.P. Garments". He has stated that there is no income tax file in the name of A. P. Garments. He has not filed any balance sheet of the said business. He also admitted that he has not filed any trade licensee of the said business.
- 37.** As per the partnership deed the name and style of the firm shall be A.P. Garments. Profit and loss of the business shall be divided amongst the partners as follows:

- |           |                                     |       |                               |            |
|-----------|-------------------------------------|-------|-------------------------------|------------|
| <b>1.</b> | <i>Sri Swapan Kumar Chakraborty</i> | ..... | <i>1<sup>st</sup> Partner</i> | <i>35%</i> |
| <b>2.</b> | <i>Dibakar Saha</i>                 | ..... | <i>2<sup>nd</sup> Partner</i> | <i>25%</i> |

|           |                                  |                               |            |
|-----------|----------------------------------|-------------------------------|------------|
| <b>3.</b> | <i>Nilakshi Saha .....</i>       | <i>3<sup>rd</sup> Partner</i> | <i>15%</i> |
| <b>4.</b> | <i>Anakshi Chakraborty .....</i> | <i>4<sup>th</sup> Partner</i> | <i>15%</i> |
| <b>5.</b> | <i>Rabindra Nath Ghosh</i>       | <i>5<sup>th</sup> Partner</i> | <i>10%</i> |

- 38.** It is also mentioned that the partners are working partner and they will be entitled to draw salary taking part in the conduct of the business of the firm at such rate and from such time as may be agreed upon by all the partners. In the partnership deed it is also provided that proper books of account of the business shall have to be maintained and the 1<sup>st</sup> partner will maintain books of accounts.
- 39.** In the written statement, the appellants have not disclosed about the other three partners. The 1<sup>st</sup> Partner namely Swapan Kumar Chakraborty is having 35% share of profit and loss and he is maintaining accounts. As per the case of the appellants they are running the business of readymade garments with trade license in the name of the firm but have not produced any trade license to prove that the license in the name of the partnership firm. The appellants have also not produced any balance sheet or statement of account or any documents to prove that the business is a partnership business. The partner who is having major share of profit and loss has not come forward to say that they are getting profit or loss from the said business. Though the partnership deed was produced but it was marked as exhibit with objection and the appellants failed to prove the same.

**40.** It is settled position of law that in eviction proceedings on the ground of subletting, the initial onus lies upon the landlord to establish that the tenant has parted with possession of the tenanted premises in favour of third party without authority. Considering the evidence led by the parties during trial, and the documents relied by the parties this Court finds that the respondent being the landlord has successfully discharged the initial burden that the appellant no.2 is in exclusive possession of the tenanted premises and running business of readymade garments and the appellant no.1 is not in possession of the tenanted premises. The appellant though have taken the plea of partnership but have failed to prove that the appellants are running the business of readymade business in the tenanted premises as partners. In view of the above, the respondent has discharge his duty by proving that the appellant no.1 has unlawfully sublet the premises to the appellant no.2.

**41.** Section 5(5) of the West Bengal Premises Tenancy Act, 1997, provides that *“No tenant shall sublet the premises without consent of the landlord in writing.”* In the case of **Celina Coelho Pereira (supra)**, the Hon’ble Supreme Court held that:

**“28.** *The legal position that emerges from the aforesaid decisions can be summarised thus:*

*(i) In order to prove mischief of sub-letting as a ground for eviction under rent control laws, two ingredients have to be established, (one) parting with possession of tenancy or part of it by the tenant in favour of a third party with exclusive right of possession, and (two) that such parting with possession has been done without the*

consent of the landlord and in lieu of compensation or rent.

*(ii) Inducting a partner or partners in the business or profession by a tenant by itself does not amount to sub-letting. However, if the purpose of such partnership is ostensible and a deed of partnership is drawn to conceal the real transaction of sub-letting, the court may tear the veil of partnership to find out the real nature of transaction entered into by the tenant.*

*(iii) The existence of deed of partnership between the tenant and alleged sub-tenant or ostensible transaction in any other form would not preclude the landlord from bringing on record material and circumstances, by adducing evidence or by means of cross-examination, making out a case of sub-letting or parting with possession in tenancy premises by the tenant in favour of a third person.*

*(iv) If the tenant is actively associated with the partnership business and retains the control over the tenancy premises with him, may be along with partners, the tenant may not be said to have parted with possession.*

*(v) Initial burden of proving sub-letting is on the landlord but once he is able to establish that a third party is in exclusive possession of the premises and that tenant has no legal possession of the tenanted premises, the onus shifts to the tenant to prove the nature of occupation of such third party and that he (tenant) continues to hold legal possession in tenancy premises.*

*(vi) In other words, initial burden lying on the landlord would stand discharged by adducing prima facie proof of the fact that a party other than the tenant was in exclusive possession of the premises. A presumption of sub-letting may then be raised and would amount to proof unless rebutted."*

- 42.** Section 4 of the Partnership Act, 1932 provides that the "Partnership" is the relation between person who have agreed to share the profit of

business carried on by all or all of them acting for all. Persons who have entered into partnership with one another are called individually “partners” and collectively a “firm” and the name under which their business is carried on is called the “firm name”.

- 43.** There must be an agreement entered into by all the persons concerned, the agreement must be to share the profit of a business and the business must be carried on by all or any of the persons concerned acting for all. In the instant case though the appellants have brought the partnership deed but have failed to establish about the profit or loss of the partnership business and have also failed to prove that the other partners have assigned the said business to the appellant no.1 and 2.
- 44.** Section 6(a) of the West Bengal Premises Tenancy Act, 1997, provides that:

**“6. Protection of tenant against eviction.- (1)** *Notwithstanding anything to the contrary contained in any other law for the time being in force or in any contract, no order or decree for the recovery of the possession of any premises shall be made [by the Civil Judge have jurisdiction] in favour of the landlord against the tenant, [except on a suit being instituted by such landlord] on one or more of the following grounds:-*

*(a) where the tenant has sublet, assigned or otherwise parted with the possession of whole or any part of the premises without obtaining the consent in writing of the landlord or the tenant has used the premises for a purpose other than that for which it was let out without obtaining the consent in writing of the landlord.”*

45. The appellants have admitted in their evidence that the appellants have not obtained any no objection from the respondent and have also not informed about the same to the landlord.
46. This Court finds that the appellate Court has justified that the appellant no.1 has parted his possession and surrendered his right to occupancy as a monthly tenant and has sublet the premises to the appellant no.2 and the purpose behind execution of partnership was ostensible and granted permission to the firm to operate from the tenanted premises by subletting the premises.
47. In view of the circumstances mentioned above, the substantial questions of law are decided in favour of the respondent and against the appellants. The Judgment and decree passed by the Learned Additional District Judge, Fast Track Court, Sadar, Cooch Behar in Title Appeal No. 1 of 2020 dated 25<sup>th</sup> August, 2023 and 16<sup>th</sup> October, 2023 respectively is hereby affirmed. The appellants are directed to vacate the tenanted premises and hand over the vacant and peaceful possession to the respondent within 60 days from date failing which the respondent will be at liberty to put the decree into execution.
48. The respondent is at liberty to withdraw the arrears of rent deposited by the appellants in the suit.
49. Second Appeal being **SA No. 3 of 2026** is **dismissed**. Decree be drawn accordingly.

**(Krishna Rao, J.)**