

2026:PHHC:031740



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

CR-1730-2010 (O&M)

Date of Decision: 20.02.2026

Bishamber Lal Ahuja and Another

....Petitioners

Versus

Arun Kumar Jain

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Rahul Sharma, Senior Advocate, with
Dr. Praveen Hans, Advocate,
Mr. Ayush Lamba, Advocate, and
Mr. Shrome Garg, Advocate, for the petitioners.

Mr. Animesh Sharma, Advocate, for the respondent.

VIKRAM AGGARWAL, J. (Oral)

The tenants are in revision against the eviction order passed by the Court of learned Rent Controller, Bhiwani, vide judgment dated 13.12.2007 affirmed by the Appellate Authority vide judgment dated 18.12.2009.

2. The respondent-landlord had filed an ejectment petition against the petitioner-tenants, averring therein that he was owner and landlord of the shop (as detailed in the head note of the petition), situated opposite Gurudwara and Golcha Tailor, Railway Road, Bhiwani (hereinafter referred to as 'the demised premises'). It was further asserted that petitioner No.1 (Bishamber Lal Ahuja) had been a tenant in the demised premises under an oral agreement on a monthly rent of

Rs.300/- for the business of dry cleaning of clothes. Ejectment was sought on the grounds of arrears of rent for the period 01.06.2002 to 31.05.2005 amounting to Rs.10,800/-, subletting and the petitioners having caused material alterations in the demised premises by covering the open verandah and merging it with the demised premises. It was alleged that petitioner No. 1 had parted with possession of the demises premises in favour of Surender Kumar, sub-lettee (petitioner No.2), without any written consent of the respondent-landlord.

3. The petitioner-tenants filed their joint written statement taking preliminary objections regarding maintainability, *locus standi*, cause of action, estoppel and the respondent-landlord not having approached the Court with clean hands.

3.1 On merits, the relationship of landlord and tenant was admitted, so was the rate of rent. However, it was asserted that the arrears of rent had already been tendered. The factum of delivering the possession of the demised premises to petitioner No.2-Surender Kumar, was denied and it was asserted that he had no concern with the tenancy of the demised premises. It was further averred that petitioner No.1 had taken another shop on rent near Hansi Gate, Adarsh College Market due to increase in volume of work. It was also denied that any alteration had been made in the demised premises.

4. On the basis of the pleadings of the parties, the following issues were framed by the Rent Controller:-

- “1. Whether respondents are liable to be ejected on the ground of non-payment of rent? OPA**
- 2. Whether the respondents are liable to be ejected on the ground of sub-letting as alleged? OPA**
- 3. Whether the respondents are liable to be ejected on the ground that they have *(sic)* impaired the value and utility of the building? OPA**
- 4. Whether the petition is not maintainable in the present form? OPR**
- 5. Whether the petitioner has no locus-standi nor has any cause of action to file the present petition? OPR**
- 6. Whether the petitioner is estopped by his own act and conduct to file the present petition? OPR**
- 7. Whether the petition is bad for non-joinder of necessary parties? OPR**
- 8. Whether the respondents are entitled for special cost under Section 35A CPC? OPR**
- 9. Relief.**

5. Vide order dated 13.12.2027, the Rent Controller, allowed the eviction petition on the ground of subletting directing the petitioner-tenants to vacate the demised premises within a period of two months. Appeal against the said order was also dismissed by the Appellate Authority, vide order dated 18.12.2009, leading to the filing of the instant revision petition.

6. I have heard learned counsel for the parties.

7. Learned Senior counsel representing the petitioners has submitted that both Courts gravely erred in holding it to be

a case of subletting. It has been submitted that it had duly been proved on record that both Bishamber Lal Ahuja (petitioner No.1) and his son Surinder Kumar Ahuja (petitioner No.2), had a common ration card, meaning thereby that they were having a joint mess. It has been submitted that it was erroneously recorded by both Courts that since both father and son had separate ration cards, it would stand proved that they had a separate mess. Learned Senior Counsel has submitted that merely having separate ration cards, would not indicate a separate mess and many times, separate ration cards are made for the purpose of availing amenities available under the same. It has been argued that even as per the voter list, both father and son, were joint in mess.

7.1 Learned Senior counsel has further submitted that mere possession of the demised premises by the son would not amount to subletting and that the case of subletting would have to be proved by leading cogent evidence. Learned Senior counsel has further submitted that even the pleadings in this regard were insufficient, for, it had nowhere been averred that the exclusive possession of the demised premises had been parted with for consideration. Learned Senior counsel has further submitted that under the circumstances, the pleadings were insufficient and, therefore, the eviction petition could not have been allowed.

7.2 Learned Senior counsel has submitted that undue reliance was placed upon the statement (Exhibit P.9), which was

given by petitioner No.1, in another matter instituted by him against a different party. He submits that if one reads the statement as a whole, it emerges that it had duly been stated by him that he was running his business from the demised premises.

7.3 Learned Senior counsel has also submitted that petitioner No.1, had expired and after his death, the tenancy had been inherited by his son. Learned Senior counsel has further submitted that the respondent-landlord had duly been accepting rent from the son of the petitioner-tenant and, therefore, under the circumstances, he was estopped from raising the plea of subletting. In support of his contentions, he relies upon the judgments of the Hon'ble Supreme Court in **Dev Kumar (Died) through LRs. Vs. Swaran Lata (Smt.), (1996)1 SCC 25; M/s Bharat Sales Ltd. Vs. Life Insurance Corporation of India, (1998)3 SCC 1** and a Division Bench of this Court in **Hari Chand Vs. Banwari Lal and others, 1985(2) RCR (Rent) 322** and Single Benches of this Court in **Ram Lal Vs. Parshotam Lal, 1977(2) RentLR 686; Lal Singh Vs. Ashok Kumar, 1999(2) RCR (Rent) 453; Lajwanti and another Vs. Daulat Ram, 1990(1) RCR (Rent) 45; Rajinder Parshad and another Vs. Parveen Kumar, 1992(2) RCR (Rent) 150 and Kulwant Singh Vs. Shri Kharaiti Lal, 1988(1) RCR (Rent) 695** and a Single Bench of Delhi High Court in **Chander Kishore Sharma and another Vs. Shrimati Kampa Wati, 1983(2) RCR (Rent) 652.**

8. Per contra, learned counsel for the respondent-landlord has submitted that there is no illegality in the findings recorded by both Courts. It has been argued that it had duly been proved on record that possession had exclusively been parted with in favour of the son of the petitioner No.1, which becomes clear from statement (Exhibit P.9) given by petitioner No.1, in a separate case. It has been argued that in so far as the averments as regards parting of possession for consideration are concerned, it had duly been pleaded in the eviction petition that the demised premises had been sublet, which includes the averments as regards consideration as well.

8.1 Learned counsel has pointed out that a joint ration card was got made by the petitioners after the institution of the eviction petition, which had also been noticed by both Courts and previously, there were separate ration cards, meaning thereby, both father and son were separate in mess.

8.2 Learned counsel has argued that subletting is a clandestine act between the parties and more so, when it is between father and son and, therefore, the factum of parting with possession for consideration, is very difficult to prove. Learned counsel has submitted that such matters can be proved only by the evidence produced on record and the attending circumstances.

8.3 While referring to the oral and documentary evidence led on the record of the case, especially the statements of PW2-Arun Kumar and PW3-Sandeep Kumar, it has been argued that

the factum of parting with exclusive possession, duly stands proved. Reference has also been made to the statement (Exhibit P.9) given by petitioner No.1 in another matter. It has also been submitted that no perversity has been shown in the impugned orders warranting interference in revisional jurisdiction. In support of his contentions, he has relied upon the judgments of the Hon'ble Supreme Court in **Joginder Singh Sodhi Vs. Amar Kaur, (2005)1 SCC 31; Bhairab Chandra Nandan Vs. Ranadhir Chandra Dutta, (1988)1 SCC 383; Ajit Singh and another Vs. Jit Ram and another, (2008)9 SCC 699 and Prem Prakash Vs. Santosh Kumar Jain & Sons (HUF) and another, (2018)12 SCC 637** and the Coordinate Benches of this Court **Mohri Ram (Died) LRs. Ramji Dass and other Vs. Shivshankar Lal (Died) Lrs. Smt. Kamla Rani and others, 2006(4) RCR (Civil) 111; Pratisht Mandir Murti Thakur Shyama Balaji (Trust) Vs. Yad Ram and others, 2024(1) RCR (Rent) 260; Ram Avtar Vs. Sushma Kumari and another, 2007(4) RCR (Civil) 143 and Arjun Dass Vs. Smt. Birinder Kaur and another, 2012 SCC Online P&H 20425** and Single Benches of Delhi High Court in **Surender Singh Chadha Vs. Subhash Chand Saini, 2020(2) RCR (Rent) 542** and Rajasthan High Court in **Shankar Lal s/o Shri Hanuman Prasad Vs. LRs of Satya Narayan and others, 2021(1) RCR (Rent) 195.**

9. I have considered the submissions made by learned counsel for the parties.

10. It would be essential to mention here that arrears of rent were duly tendered and the ground of material alteration was not pressed, as a result of which, eviction was pressed on the ground of subletting alone.

11. Subletting is always a clandestine arrangement between a tenant and a sub-tenant. It is always done at the back of the landlord. Under the circumstances, to prove parting with exclusive possession and that too, for consideration, is a tough task, though, it is the requirement of law that the same has to be proved to the best possible extent. When it is a matter wherein a father is alleged to have sublet a premises to his son, it becomes all the more difficult to prove the same. It is now well settled that since subletting is a clandestine arrangement, once a landlord is, *prima-facie*, able to show that a tenant has parted with possession, the onus shifts upon the tenant to show that he has not done so and further to prove as to in what capacity, the sub-tenant is in exclusive possession of the demised premises. In the absence of any evidence to this effect, subletting would be presumed.

12. In taking this view, this Court draws support from the judgment in the case of **Pratishth Mandir Murti Thakur Shyama Balaji (Trust)'s case** (supra), wherein such a view was taken. The said view was taken, while relying upon another judgment of this Court in the case of **Lajwanti** (supra). In fact, the Hon'ble Supreme Court had taken this view as far back as in 2017 in **Prem Prakash's case** (supra), wherein the Hon'ble

Supreme Court held that only the initial burden to prove that the sub-tenant was in exclusive possession of the property, was on the landlord and the onus to prove such a fact was on the basis of preponderance of probability. It was further held that the landlord has to prove the same, *prima facie* and if he succeeds, the burden to rebut the same lies on the tenant. It was further held that it is very difficult for the landlord to prove, by direct evidence, the contract or agreement or understanding between the tenant and the sub-tenant and the exact particulars of such person and payment made by him to the tenant.

13. Reverting to the facts of the present case, it duly came on record that both father and son had separate ration cards. Exhibit P.1 was in the name of petitioner No.2, his wife and son, whereas Exhibit P.3 was in the name of petitioner No1 and his wife. However, another ration card (Exhibit R.5) was produced, which was a joint ration card. The same was, however, prepared on 14.11.2005 i.e. much after the filing of the eviction petition, which had been filed on 26.07.2005. Under the circumstances, both Courts rightly discarded the said ration card. As regards the voter lists, they had not been proved in accordance with law and, therefore, they were rightly not considered.

14. To prove the factum of parting of possession, the landlord stepped into the witness box as PW2 and stated in so many words about the tenant having parted with exclusive possession in favour of his son. PW3-Sandeep Kumar, who

claimed to have known both parties, also stated that both petitioner No.1 and petitioner No.2, were residing separately and had separate residences and kitchens. It was further stated that petitioner No.1 was doing his separate business at Hansi Gate, Adarsh College Market, Bhiwani and he (the witness) had been getting his clothes dry-cleaned from both shops. He duly stated that petitioner No.1 had no concern with the demised premises and the same was in exclusive control and possession of his son (petitioner No.2). Not only this, RW3-Raju, who appeared on behalf of the tenant, stated that petitioner No.2 did not sit at the shop at Hansi Chowk and it was only his father, who was sitting there.

15. To clinch the issue, both Courts rightly relied upon the statement given by petitioner No.1 in another case, which had been produced on record as Exhibit P.9. It was a case instituted by petitioner No.1, against one Mahesh Kumar, alleging that Mahesh Kumar was also using the name of M/s New Ahuja Dry Cleaners, which was deceptively similar to the name of his shop i.e. M/s Ahuja Dry Cleaners. In the examination-in-chief, he stated that he had been doing the business of Dry Cleaning by the name and style of M/s Ahuja Dry Cleaners, situated in Adarsh College Market (Shop Nos. 44 and 45) for the last 17 years and that earlier he was doing the same business at Sarai Chopta (the demised premises is at Sarai Chopta). In the cross-examination, he stated that he had another shop in the same name and style of M/s Ahuja Dry

Cleaners, in which his son was sitting. In the very next line, he stated that the said shop was being run by him. However, his statement in the examination-in-chief that he was earlier doing the same business at Sarai Chopta, spilled the beans and it was proved that the said shop (the demised premises) was being occupied by his son (petitioner No.2).

16. In so far as the pleadings are concerned, it was duly pleaded by the respondent-landlord that the demised premises had been sub let. Subletting means parting with possession for consideration. Even otherwise, such hyper technical views cannot and should not be taken.

17. In the case of **Joginder Singh Sodhi (supra)**, the Hon'ble Supreme Court noted that once it had come on record that both father and son were staying separately, it could be concluded that it was proved that the tenant had parted with possession in favour of his son. As regards monetary consideration also, the Hon'ble Supreme Court, while relying upon the judgment in the case of **Bharat Sales Ltd.'s (supra)**, held that an arrangement of subletting comes about under a mutual agreement or understanding between the tenant and the person to whom the possession is so delivered and rather such a scene is enacted behind the back of the landlord, concealing the overt acts and transferring possession clandestinely. It was held that in such a case, it is difficult for the landlord to prove by direct evidence that the person to whom the property had been sublet had paid monetary consideration to the tenant. Reference

was made by the Hon'ble Apex Court to a host of other judgments i.e. **Smt. Rajbir Kaur and Anr. Vs. M/s S. Chokesiri & Co., (1989)1 SCC 19** and **Kala and Anr. Vs. Madho Parshad Vaidya, (1998)6 SCC 573.**

18. Further, it is also well settled that on the death of a tenant, the son of a tenant does not inherit the tenancy. Reference can be made to the judgment of in **Mohri Ram's case** (supra). Not only this, no perversity is found in the impugned decisions vide which concurrent findings of facts and law have been recorded, warranting interference in revisional jurisdiction.

19. I have gone through the judgments relied upon by learned Senior counsel representing the petitioner-tenants as well. There is absolutely no dispute in the ratio laid down in the said judgments. However, they would not come to the aid of the petitioners, in view of the peculiar facts of the present case and the judgments referred to in the preceding paragraphs.

20. That being so, the instant petition is found to be devoid of merit and the same is accordingly dismissed.

21. Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

20.02.2026
ds

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No