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C.A.No. 6400 OF 2000
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6400 OF 2000

KAILASH CHANDER ... APPELLANT (S)

VERSUS

OM PRAKASH & ANR. ... RESPONDENT (S)

O R D E R

The unsuccessful landlord before the High Court is before us in this appeal. The appellant fi led a petition seeking eviction of respondent Nos. 1 and 2 on the ground of sub-letting. The respondent No.1 is the father of respondent No.2. The Rent Controller, after considering the evidence placed on record in the light of the pleadings of the parties, allowed the petition and directed eviction of the respondent Nos. 1 and 2 from the premises in question. The respo ndents took up the matter in appeal. The Appellate Authority by a detailed and well consider ed order, dismissed the appeal concurring with the findings recorded

by the Rent Controller. Aggrieved by and not satisfied with the order of the Appellate Author ity, the respondents filed revision petition before the High Court. The High Court allowed th e revision petition reversing the concurrent findings recorded by the Rent Controller as well as by the Appellate Authority. Hence this appeal by the landlord.
It was contended on behalf of the appellant that the High Court committed a serious error in u psetting the concurrent findings of fact recorded by the Rent Controller and the First Appella te Authority in exercise of its revisional jurisdiction under Section 15(6) of the Haryana Ur ban (Control of Rent & Eviction) Act, 1973 (for short, 'the Act'). It was further contended t hat on the facts found and established in the case the High Court was not justified in interfe ring with the order of eviction made. The learned counsel for the appellant also submitted th at the High Court having found that the findings of fact recorded by the Rent Controller as af firmed by the Appellate Authority were correct, but still interfered on the ground that the ap pellant did not establish exclusive possession of the respondent No.2 on the part of the premi ses and there was no proof of sub-letting by the respondent No.1 in favour of respondent No.2.

Per contra, learned counsel for the respondents made submissions supporting the impugned or der. The learned counsel submitted that it was incumbent upon the appellant to establish that respondent No.2 was in the exclusive possession of the portion of the premises and that respo ndent No.1 was receiving any consideration for parting with the part of the premises. When th e appellant failed to establish these essential requirements of sub-letting, the High Court wa s right and justified in interfering with the order of eviction made against the respondents.

The facts found are : Respondent No.2 is the son of respondent No.1 In the premises in questi on there has been a partition by wooden frame/plank. Respondent No.2 has been using the rear portion to carry on his activities as UTI agent and respondent No.1 was carrying on cloth busi ness in the front portion of the premises. Respondent No.2 has nothing to do with the cloth b usiness in any capacity whatsoever. The respondents did not explain the nature of the possess ion of respondent No.2 in the premises in their written statement but denied his possession. During the trial, the possession of the respondent No.2 was sought to be justified stating tha

t respondent No.1 did not part with

the possession of any portion of the premises so as to place the respondent No.2 in exclusive possession and that the respondent No.2 was in permissive possession of the premises in question having close relation with the respondent No.1. The Rent Controller, as already noticed above, on appreciation of the evidence held that the respondent No.1 had sub-let the portion of the premises to respondent No.2. The Appellate Authority affirmed the same. These findings recorded are based on the evidence. It is not possible to say that these findings recorded by the Rent Controller and affirmed by the Appellate Authority, are either perverse or not based on evidence. The High Court was exercising its revisional jurisdiction under Section 15(6) of the Act. As to the scope of exercise of that power it is explained in the judgment of this Court in Lachhman Dass vs. Santokh Singh [(1995) 4 SCC 201]. In paragraph 7 of the said Judgment it is stated thus :

The first question that arises for our consideration is whether the learned Single Judge of the High Court was justified in reassessing the value of the evidence and substitute his own conclusions in respect of the concurrent findings of fact recorded by the two courts below, in exercise of his revisional powers vested in the High Court under Section 15(6) of the Act. In the present case as discussed earlier the Rent

Controller passed the order of eviction against the respondent on the ground mentioned under Section 13 of the Act against which the respondent preferred an appeal under sub-section (2) of Section 15 of the Act and the appellate authority affirmed the order of eviction passed by the Rent Controller. Here it may be noted that the Act does not provide a second appeal against the order passed in appeal by the appellate authority under sub-section (2) of Section 15.

The Act, however, under sub-section (6) of Section 15 makes a provision for revision to the High Court against any order passed or proceedings taken under the Act. Thus, the Legislature has provided for a single appeal against the order passed by the Rent Controlling Authority and no further appeal has been provided under the Act. The Legislature has, however, made a provision for discretionary remedy of revision which is indicative of the fact that the Legislature has created two jurisdictions different from each other in scope and content in the form of an appeal and revision. That being so the two jurisdictions - one under an appeal and the other under revision cannot be said to be one and the same but distinct and different in the ambit and scope. Precisely stated, an appeal is a continuation of a suit or proceedings wherein the entire proceedings are again left open for consideration by the appellate authorities which has the power to review the entire evidence subject, of course, to the prescribed statutory limitations. But in the case of revision whatever powers the revisional authority may have, it has no power to reassess and reappreciate the evidence unless the statute expressly confers on it that power. That limitation is implicit in the concept of revision. In this view of the matter we are supported by a decision of this Court in State of Kerala vs. M.M. Charia Abdullah and Co."

This Court proceeded to say further that unless the High Court comes to the conclusion that the concurrent

findings recorded by the two courts below are wholly perverse and erroneous, which manifestly appear to be unjust, there should be no interference. In the case on hand also two courts below have appreciated evidence placed on record and on a proper appreciation concluded that the case of sub-letting, as pleaded by the appellant, is proved. In our view, the High Court was not justified in interfering with such concurrent finding. It is not shown on behalf of the respondents herein that the findings recorded by the two courts below were either perverse or not based on evidence. We must also keep in mind that when the appellant established the fact that the respondent No.2 was carrying on his activities as UTI agent in the part of the premises exclusively by him, it was for the respondent to establish that his possession on that prem

ises was not as a sub-tenant. Merely because the respondent No.1 is the father of respondent No.2 there cannot be any justification to say that it was not a case of sub-letting.
Under these circumstances, we find justification to upset the impugned order. In this view, the appeal is entitled to succeed. Accordingly the appeal is allowed, the impugned order of t he High Court is set aside and the order of the First Appellate Authority affirming the order of the Rent Controller is restored. No costs.

At this stage, the learned counsel for the respondents prayed that some reasonable time may be granted for vacating the premises in question. The learned counsel for the appellant submit ted that any reasonable time may be granted. Having regard to the facts and circumstances of the case, we grant six months' time to the respondents to vacate and deliver peaceful posses sion to the appellant-landlord, subject to the respondents filing usual undertaking within the period of four weeks from today.

.....J.
(SHIVARAJ V. PATIL)

.....J.
(D.M. DHARMADHIKARI) New Delhi,
July 17, 2003.
ITEM NO. 101 COURT NO. 9 SECTION IV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO.6400/2000

KAILASH CHANDER .... APPELLANT

VERSUS

OM PRAKASH & ANR..... RESPONDENTS
(With office report)

DATE : 17/07/2003 This appeal was called on for hearing today.

CORAM

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For appellant(s)Mr. A.K. Ganguli, Sr.Adv.
Mr. Dileep Tandon, Adv.
for Mr. J.M. Khanna, Adv.

For respondent(s)Mr. Mahabir Singh, Adv.
Mr. Ajay Pal, Adv.
Mr. Rakesh Dahiya, Adv.

Mr. Balaji Srinivasan, Adv.
Mr. V. Sudeer, Adv.
for Mr. S. Srinivasan, Adv.

UPON hearing counsel the Court made the following
O R D E R

Mr. A.K. Ganguli, learned Senior Counsel for the appellant commenced his arguments at 10.30 a.m. and

concluded at 11.35 a.m. After that, Mr. Mahabir Singh, learned counsel for the respondent made his submissions till 12.5 p.m.

The appeal is allowed in terms of the signed order. No costs.

Six months' time is granted to the respondents to vacate and deliver peaceful possession to the appellant-landlord, subject to the respondents filing usual undertaking within the period of four weeks from today.

Sarita(Shelly Sengupta)
Court Master

(Signed order is placed on the file)