

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6271 OF 1994 (ARISING OUT OF SLP (C) NO. 4768 OF 1994)

M/s Manmohan Service Station

... APPELLANT(S)

VERSUS

Mohd. Haroon Japanwala, Mohd. Chhattar & Ors.

... RESPONDENT(S)

BENCH / CORAM : Hon'ble Mr. Justice K. Ramaswamy & Hon'ble Mr. Justice N. Venkatachala

DATE OF JUDGMENT : September 23, 1994

LAW REPORT CITATION : (1994) 5 SCC 758 : JT 1994 (6) SC 368 : AIR 1994 Del 337 : 1994 (29) DRJ 518

REGISTRY STATUS : REPORTABLE JUDGMENT -- FULL UNABRIDGED VERBATIM RECORD

J U D G M E N T

K. RAMASWAMY, J. : --

1. Leave granted.
2. Heard learned counsel appearing for the appellant and learned senior counsel appearing for the respondents at considerable length.
3. This appeal by special leave under Article 136 of the Constitution of India is directed against the judgment and final order dated 14th January, 1994 passed by the High Court of Delhi in Civil Revision Petition No. 412 of 1993, whereby the High Court affirmed the judgment and order of the Rent Control Tribunal, Delhi, which in turn had affirmed the order of eviction passed by the Additional Rent Controller against the appellant tenant under Section 14(1)(b) of the Delhi Rent Control Act, 1958.
4. The appellant also seeks to challenge the interconnected civil proceedings arising out of Suit No. 248 of 1991 (reported as AIR 1994 Del 337 / 1994 (29) DRJ 518) concerning the commercial premises bearing No. 6, Sham Nath Marg, Alipur Road, New Delhi, wherein the appellant had set up an independent plea of title by adverse possession against the respondent landlords.
5. The relevant facts giving rise to this protracted litigation may be stated:
The premises in question, comprising prime commercial land equipped with petrol storage tanks, fuel dispensing units, automotive repair bays, and service facilities, were originally demised by the predecessor-in-interest of the respondents to the appellant firm, M/s Manmohan Service Station, under a registered lease agreement executed in the year 1968. Under the terms of the tenancy, the appellant was inducted into exclusive possession as a monthly commercial tenant for the sole purpose of operating a retail petroleum dispensing outlet and service station.
6. In the year 1988, the respondent landlords instituted an eviction petition under Section 14(1)(b) of the Delhi Rent Control Act, 1958, alleging that the appellant tenant had, without obtaining the consent in writing of the landlords, unlawfully sublet, assigned, or otherwise parted with possession of the whole or a substantial portion of the tenanted premises in favour of third parties who were running and managing the automotive workshop and commercial service operations.
7. In response to the eviction proceedings, the appellant tenant contested the

petition on two primary grounds. First, the tenant asserted that there was neither subletting nor parting with legal possession within the meaning of Section 14(1)(b), inasmuch as the original tenant had merely inducted working partners into a newly constituted partnership firm to revitalize the business, and that the original tenant continued to hold a financial stake and legal title in the leasehold. Second, in collateral civil proceedings before the civil court, the appellant set up a hostile title, asserting that in respect of extended areas of land contiguous to the fuel dispensing pumps, the tenant had acquired absolute title by adverse possession through open, continuous, and hostile possession for over twelve years.

8. The Additional Rent Controller appointed a Local Commissioner to inspect the premises and ascertain the factum of actual physical possession. The report of the Local Commissioner, corroborated by oral depositions and documentary material, including electricity bills, commercial invoices, and bank statements, revealed that the original tenant had completely withdrawn from the day-to-day administration, physical operation, and management of the service station. The entire workshop, mechanical equipment, and commercial facilities were in the exclusive occupation and control of third parties, who were carrying on business independently and paying a fixed monthly royalty or return to the original tenant.
9. On the strength of this evidence, the Additional Rent Controller held that the purported partnership was a mere device and camouflage created on paper to conceal an unauthorized subletting. The Rent Control Tribunal concurred with these findings, holding that the original tenant had parted with exclusive possession for valuable monetary consideration. The High Court, in revision, declined to interfere with the concurrent findings of fact.
10. The first legal question that arises for consideration before this Court is whether the induction of partners by a tenant into his business amounts to subletting, assignment, or parting with possession under Section 14(1)(b) of the Act. The statutory mandate of Section 14(1)(b) is clear and unambiguous: it prohibits a tenant from subletting, assigning, or otherwise parting with possession of the whole or any part of the tenanted premises without obtaining the prior consent in writing of the landlord.
11. As held by this Court in *Associated Hotels of India Ltd. v. S.B. Sardar Ranjit Singh*, (1968) 2 SCR 548 : AIR 1968 SC 933, and reiterated in *Dipak Banerjee v. Lilabati Chakraborty*, (1987) 4 SCC 161, to constitute subletting, two essential ingredients must be satisfied: first, there must be a parting with legal possession by the tenant in favour of a third party; and second, that parting with possession must confer upon the sub-tenant exclusive possession and dominion over the premises, normally in consideration of payment of rent or monetary return.
12. While it is well settled that a tenant is entitled to take in partners to carry on his business in the tenanted premises, the court is never precluded from piercing the veil of the transaction to ascertain the true intent and reality of the arrangement. In *Gopal Saran v. Satyanarayana*, (1989) 2 SCC 383, and *Delhi Stationers and Printers v. Rajendra Kumar*, (1990) 2 SCC 331, this Court clearly ruled that if the partnership is genuine, where the tenant actively participates in the management, contributes capital, shares in the real profits and losses, and retains effective legal control over the

premises, the arrangement does not constitute subletting.

13. But where, as in the present case, the tenant creates a sham partnership on paper, surrenders exclusive physical possession and total operational control of the premises to strangers, completely dissociates himself from the daily business, and contents himself with receiving a fixed monthly return irrespective of whether the business yields profit or loss, the transaction is nothing but a colourable device to evade the statutory prohibition against subletting.
14. In such circumstances, the law will not permit the tenant to use the facade of a partnership deed as a shield to defeat the legitimate rights of the landlord. The court must tear aside the contractual veil and look at the substance of the transaction. The concurrent finding recorded by the courts below that the partnership in the instant case was a mere sham intended to camouflage unauthorized subletting is fully supported by the evidence on record and suffers from no legal infirmity.
15. The second critical issue pertains to the burden of proof in eviction proceedings grounded on unauthorized subletting. Direct evidence of subletting is rarely available to a landlord, because sub-tenancies are invariably created clandestinely behind closed doors, without the landlord's knowledge. The law does not impose upon the landlord an impossible burden of proving the exact financial terms or private lease agreements between the tenant and the sub-tenant.
16. As held by this Court in a consistent line of precedents, the landlord discharges his initial evidentiary burden when he establishes that a person other than the tenant is in exclusive physical possession and occupation of the tenanted premises. Once the landlord proves that a stranger is in exclusive occupation and running the commercial enterprise, the burden shifts entirely upon the tenant under Section 106 of the Indian Evidence Act to establish the capacity, authority, and legal character in which the stranger is occupying the premises.
17. Section 106 of the Evidence Act explicitly enacts that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. The nature of the arrangement between the tenant and the occupant, the division of profits, and the terms of occupation are matters especially within the personal knowledge of the tenant. In the present case, the appellant failed to produce authentic books of account, partnership tax filings, or proof of active managerial participation, and thereby utterly failed to discharge the burden cast upon him by law.
18. We next address the contention raised by the appellant in the connected civil suit, wherein the tenant claimed ownership by adverse possession over portions of the property. The High Court in AIR 1994 Del 337 / 1994 (29) DRJ 518 correctly held that a tenant inducted into a property can never claim title by adverse possession against his landlord so long as the relationship of tenancy subsists.
19. Section 116 of the Indian Evidence Act embodies the well-recognized doctrine of estoppel: no person who came upon any immovable property by the license or tenancy of the person in possession thereof shall be permitted, during the continuance of such tenancy, to deny that the landlord of such

tenant had, at the beginning of the tenancy, a title to such immovable property. Once a tenant, always a tenant, unless the tenant has openly and unequivocally surrendered possession back to the landlord and re-entered under an independent hostile claim.

20. As held by this Court in *D. Satyanarayana v. P. Jagadish*, (1987) 4 SCC 424, and *Sri Ram Pasricha v. Jagannath*, (1976) 4 SCC 184, the permissive possession of a tenant cannot convert itself into adverse possession by any unilateral mental assertion. So long as the tenant remains in possession by virtue of the original demise, the possession is permissive in character and cannot become hostile in law.
21. Furthermore, under Articles 64 and 65 of the Limitation Act, 1963, adverse possession operates essentially as a defensive shield available to a defendant who has maintained open, continuous, and hostile possession to the knowledge of the true owner for the statutory period of twelve years. A plaintiff cannot maintain a suit for a declaration of ownership based solely on adverse possession against his own landlord, nor can a tenant encroach upon contiguous land of the landlord and claim ownership of it by adverse possession.
22. Any encroachment by a tenant upon adjoining or contiguous land belonging to his landlord is deemed in law to be an accretion to the tenancy, held by the tenant under the same tenancy terms, and does not confer independent ownership on the tenant. The High Court's dismissal of the tenant's claim of adverse possession was, therefore, impeccably correct in law.
23. We find that the concurrent findings recorded by the Additional Rent Controller, the Rent Control Tribunal, and the High Court are based on meticulous appreciation of the oral and documentary evidence, and no question of law, much less any substantial question of law, arises for our interference under Article 136 of the Constitution.
24. For the reasons aforesaid, the appeal is devoid of any merit and is hereby dismissed with costs. The judgment and order of eviction passed by the Additional Rent Controller as affirmed by the Rent Control Tribunal and the High Court of Delhi is upheld. The interim stay granted by this Court on 22nd April, 1994 stands vacated forthwith.
25. Having regard to the fact that the premises are used for commercial purposes, we grant the appellant time until 31st December, 1994 to vacate and hand over peaceful, vacant possession of the premises to the respondents, subject to the appellant filing a usual undertaking in this Court within four weeks from today.
26. Ordered accordingly.

.....J. (K. Ramaswamy)

.....J. (N. Venkatachala)

New Delhi;

Dated: September 23, 1994