2026 INSC 348

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4353 OF 2026
[Arising out of SLP (C) No. 25957 of 2023]

SRI M.V. RAMACHANDRASA SINCE DECEASED REPRESENTED BY LEGAL HEIRS … APPELLANT(S)

VERSUS

M/S. MAHENDRA WATCH COMPANY REPRESENTED BY ITS PARTNERS & ORS. … RESPONDENT(S)

J U D G M E N T

R. MAHADEVAN, J.

1. Leave granted.

2. This Civil Appeal is directed against the judgment and order dated 23.05.2023 passed by the High Court of Karnataka at Bengaluru[1] in House Rent Revision Petition No. 56 of 2017, whereby the High Court allowed the revision petition preferred by Respondent Nos. 1 to 3 and set aside the order dated 14.07.2017 passed by the Chief Judge, Court of Small Causes, Bengaluru[2] in H.R.C. No. 63 of 2016. By the said order, the trial Court had allowed the

[1] Hereinafter referred to as "the High Court"
[2] Hereinafter referred to as "the trial Court"

eviction petition and directed the respondents to vacate the schedule premises and hand over vacant possession to the appellant (since deceased), within a period of three months.

3. The appellants are the legal representatives of late Sri M.V.Ramachandrasa, who originally initiated the rent control proceedings before the trial Court. It is their case that the deceased appellant now represented through his legal representatives, was a long-term lessee in respect of immovable properties bearing Municipal New Nos. 22 to 33, situated at Uttaradhi Mutt Lane, Chickpet, Bengaluru. The said lease was created by virtue of a registered lease deed dated 02.02.1983 for a period of 55 years. Under the terms of the lease, the deceased appellant was duly authorised to sub-lease the whole or any portion of the property.

4. It is the further case of the appellants that Respondent No. 1, M/s.Mahendra Watch Company, a partnership firm, became a tenant under the deceased appellant[3] through its partner, Rajesh Kumar, Respondent No. 4, in respect of premises *viz.*, Shop No.1, Ground Floor, Maruthi Plaza, Block C, U.M. Lane, Chickpet, Bangalure, by virtue of a lease deed dated 22.02.1985 registered as Document No. 3669 / 1985. Subsequently, the landlord came to be aware that Respondent Nos. 1 and 4 were no longer in possession of the premises and that the business therein was being carried on by Respondent Nos.

[3] Hereinafter referred to "the landlord"

2 and 3, namely Ashish M. Jain and Atul M. Jain, who were not parties to the said lease agreement. Upon issuance of notice in this regard, the landlord instituted H.R.C. No. 63 of 2016 under Sections 27(b)(ii), 27(d)(i)(ii) and 27(p) of the Karnataka Rent Act, 1999, seeking eviction on the ground that Respondent No. 1 had unlawfully sublet the premises and parted with possession in favour of third parties without the consent of the landlord.

5. The trial Court, upon consideration of the pleadings and the oral as well as documentary evidence on record, concluded that the persons in actual occupation of the premises were strangers to the original tenancy and that the tenant had unlawfully parted with possession in their favour. Pointing out that the lease deed expressly prohibited sub-letting or parting with possession without the consent of the landlord, the trial Court held that the respondents had rendered themselves liable for eviction. Accordingly, by order dated 14.07.2017, the eviction petition was allowed and the respondents were directed to vacate the premises and hand over vacant possession to the landlord.

6. Aggrieved thereby, the respondents preferred House Rent Revision Petition No. 56 of 2017 under Section 46 of the Karnataka Rent Act, 1999 against the appellants herein, who are the legal representatives of the deceased appellant / landlord. The High Court, by its impugned judgment dated 23.05.2023, allowed the revision petition and set aside the eviction order passed

by the trial Court. It is in these circumstances that the appellants have approached this Court by way of the present appeal.

7. The learned Senior Counsel appearing for the appellants submitted that the High Court has clearly transgressed the well-settled limits of its revisional jurisdiction under Section 46 of the Karnataka Rent Act, 1999. The revisional power is supervisory in nature and does not confer upon the High Court the status of a court of first appeal. It was submitted that the High Court, instead of confining itself to examining jurisdictional error, illegality, or perversity, has proceeded to reappreciate the entire oral and documentary evidence and substituted its own findings in place of those recorded by the trial Court. Such an exercise is wholly impermissible in law.

7.1. Reliance was placed on the judgment of this Court in ***Hindustan Petroleum Corporation Limited v. Dilbahar Singh*** [4] **,** wherein, it was categorically held that revisional jurisdiction under rent control statutes is limited and cannot be equated with appellate jurisdiction. Interference is warranted only where findings are perverse, based on no evidence, or suffer from manifest illegality.

7.2. It was submitted that the trial Court, upon a comprehensive appreciation of the evidence on record, returned well-reasoned findings of fact, and categorically held that Respondent Nos. 2 and 3 failed to establish their status as

[4] (2014) 9 SCC 78

partners of the original tenant firm namely M/s. Mahendra Watch Company. The documentary evidence relied upon by the respondents was found unreliable, and significantly, no partnership deed or credible material was produced to substantiate the claim that Respondent Nos. 2 and 3 were partners of the original tenant firm. These are pure findings of fact and could not have been interfered with by the High Court in the absence of perversity or patent illegality, which is conspicuously absent in the present case.

7.3. It was further submitted that Clause 19 of the registered lease deed dated 22.02.1985 (Ex. P4) expressly prohibits sub-letting or transfer of the tenancy rights, including sale of the business, without prior written consent of the landlord. The respondents have failed to produce any document evidencing such consent. The material on record clearly establishes that persons presently in occupation, namely Respondent Nos. 2 and 3 have no lawful nexus with the original tenancy. Their claim of deriving rights through an alleged partnership is unsupported by any legally admissible document.

7.4. It was submitted that the respondents' case rests on an alleged reconstitution of the partnership firm. However, the so-called reconstitution deed is unregistered and legally untenable; no original partnership deed was produced; there is no documentary evidence to establish that Mohanlal, claimed to be the father of Respondent Nos. 2 and 3, was ever a partner; RW-1 (Mohanlal) himself admitted that at the time of execution of the lease deed in

1985, there were five partners, yet, only Respondent No. 4 signed the lease deed. As such, the trial Court rightly concluded that the respondents failed to prove any valid induction into the partnership with the consent of the landlord.

7.5. It was further submitted that the reliance placed by the respondents on Ex. R2 series (rent receipts) is wholly misplaced. The said receipts stand in the name of the original tenant firm and do not confer any independent right upon Respondent Nos. 2 and 3. In this regard, reference was made to the decision in ***S.R. Radhakrishnan v. Neelamegam***[5], wherein, this Court held that mere payment of rent or continuance in possession does not ipso facto confer the status of a tenant.

7.6. It was submitted that the appellants have clearly established grounds for eviction under Sections 27(2)(b)(ii) and 27(2)(p) of the Karnataka Rent Act, 1999 inasmuch as there has been unauthorised sub-letting / transfer of possession; the terms of the lease deed have been violated; and the respondents are in unlawful occupation without any legal right or privity of contract.

7.7. It was submitted that the High Court, without adverting to the above material aspects and settled principles of law, has erroneously reversed the well-reasoned judgment of the trial Court and set aside the eviction order. Therefore, the impugned judgment suffers from serious legal infirmity and warrants interference by this court.

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[5] (2003) 10 SCC 705

8. *Per contra*, the learned counsel appearing for the respondents at the out, submitted that the present appeal is liable to be dismissed in limine as the appellants have not approached this Court with clean hands and have in fact, suppressed material particulars in the list of dates and events. It was contended that the appellants have failed to place true and correct facts and therefore are not entitled to any relief much less the discretionary relief under Article 136 of the Constitution of India.

8.1. The learned counsel further submitted that the respondent firm, represented by its partners, has been a lawful tenant in respect of the suit shop since the year 1978, having acquired tenancy rights upon payment of goodwill to the original owner, namely Shrimad Jagadguru Madhav Acharya Moola Mahasamsthane, Uttaradhi Math, Bengaluru. It was submitted that subsequently, the landlord obtained a long-term lease of the larger property under a registered lease deed dated 02.02.1983 for a period of 55 years, taking symbolic possession of tenanted portions and physical possession of vacant portions. Upon such acquisition, he proposed redevelopment of the property and assured all existing tenants, including the respondent firm, that they would be accommodated in the newly constructed complex, while also offering temporary alternate accommodation.

8.2. It was submitted that acting upon such assurance, the tenants vacated the old premises, following which the landlord demolished the existing structure

and constructed a new shopping complex. Upon completion, the respondent firm was allotted a shop measuring 95 sq.ft. in place of the earlier 164 sq.ft. and a registered lease deed dated 22.02.1985 was executed for a period of 53 years, expiring on 22.02.2038. The agreed rent was fixed at Rs. 275/- per month with a provision for periodic enhancement. Since then, the respondent firm has been in continuous possession and has been carrying on business in the said premises without interruption.

8.3. The learned counsel emphasised that the lease deed confers valuable and enduring rights upon the respondent firm, including heritability, transferability among partners and their heirs, and liberty to carry on business in partnership. It was further submitted that the lease deed does not contain any forfeiture clause attracting Section 111(g) of the Transfer of Property Act, 1882, and therefore, the tenancy cannot be prematurely terminated. It was contended that the respondent firm is entitled to peaceful possession and enjoyment of the premises for the entire duration of the lease, and the eviction proceedings initiated during the subsistence of such lease are wholly misconceived and not maintainable in law.

8.4. The learned counsel further submitted that the allegation of subletting, which forms the foundation of the eviction petition, is entirely baseless. It was contended that the respondent firm has at no point sublet, assigned, or parted with possession of the premises. The business has continuously been carried on

by the partners of the firm, and any change in the constitution of the partnership does not amount to subletting. It was submitted that a partnership firm is not a separate legal entity distinct from its partners, and the firm name is merely a compendious description of the partners who carry on the business.

8.5. Reliance was placed on the judgments of this Court in ***Associated Hotels of India Ltd v. S.B. Sardar Ranjit Singh***[6]***, Jagan Nath (D) through LRs v. Chander Bhan and another***[7]***,*** *and* ***Mahendra Saree Emporium (II) v. G.V. Srinivasa Murthy***[8], wherein it was held that subletting necessarily requires parting with legal possession in favour of a third party and the mere use of premises by others, including partners, does not constitute subletting so long as the tenant retains legal possession. It was submitted that in the present case, there is no evidence whatsoever to show that any third party has been put in exclusive possession of the premises.

8.6. The learned counsel further contended that the burden of proving subletting squarely lies upon the landlord, which burden has not been discharged in the present case. In the absence of any material to establish exclusive possession by a third party for consideration, no presumption of subletting can arise. It was submitted that the High Court rightly appreciated the

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[6] AIR 1968 SC 933
[7] 1988 (3) SCC 57
[8] (2005) 1 SCC 481

evidence on record and applied the settled principles of law in setting aside the eviction order.

8.7. It was also submitted that the partnership firm was reconstituted on 01.07.2000, prior to the coming into force of the Karnataka Rent Act, 1999, and that the continuing partners, including Ashish M. Jain, have been carrying on business in the suit premises before 31.12.2001. The appellants were fully aware of the same, as rent was being regularly collected from the respondent firm. It was contended that mere reconstitution of a partnership firm or induction of partners does not amount to assignment or subletting, particularly when the firm continues to retain possession and control over the premises.

8.8. The learned counsel submitted that the eviction petition is based on a wholly illusory cause of action and has been filed by suppressing the existence of the registered lease deed dated 22.02.1985. A meaningful reading of the petition would demonstrate that the appellants have attempted to mischaracterise the partners of the firm as sub-tenants, which is impermissible in law. It was thus contended that the proceedings are an abuse of the process of court and liable to be dismissed.

9. We have carefully considered the rival submissions and perused the material available on record.

10. The admitted position is that the appellants are the legal heirs of the deceased appellant, Sri M.V. Ramachandrasa, who himself acquired leasehold rights in respect of the property bearing Nos. 22 to 33 under a lease deed dated 02.02.1983 executed by Uttaradi Math represented by its Presiding Swamiji through its power of attorney, for a period of 55 years with liberty to sub-let the properties. It is not in dispute that after obtaining the said lease, the landlord leased the premises to Respondent No. 1 represented by Respondent No. 4, under a registered lease deed dated 22.02.1985 (Document No. 3669/1985) for a period of 53 years. Clause 19 of the lease deed expressly restricts subletting without prior written consent of the landlord. Since the actual and original partner of Respondent No. 1 firm was not in occupation and possession of the premises, the landlord preferred eviction petition before the trial Court. After examining the oral and documentary evidence, the trial Court allowed the petition and directed the respondents to vacate and hand over the possession of the premises within a period of three months. However, the High Court allowed the revision petition and set aside the eviction order. Therefore, the present appeal at the instance of the appellants, who are the legal representatives of the deceased appellant / landlord.

11. On the basis of the pleadings, the following issues arise for consideration in the present appeal:

(i) Whether the High Court was justified in interfering with the findings of fact recorded by the trial Court while exercising its revisional jurisdiction under Section 46 of the Karnataka Rent Act, 1999?

(ii) 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?

(iii) Whether the alleged retirement of the original tenant – partner and continuation of business by Respondent Nos. 2 and 3 constitutes a mere reconstitution of partnership or amounts to unlawful sub-letting / assignment under Sections 27(2)(b)(ii) and 27(2)(p) of the Karnataka Rent Act, 1999?

Issue No. 1

12. ***Whether the High Court was justified in interfering with the findings of fact recorded by the trial Court while exercising its revisional jurisdiction under Section 46 of the Karnataka Rent Act, 1999?***

12.1. At the outset, it must be noted that the scope of revisional jurisdiction under Section 46 is well-settled and narrowly circumscribed. The provision empowers the High Court to examine the legality, correctness or propriety of an order; however, it does not confer appellate powers permitting reappreciation of

evidence or substitution of factual findings. For ease of reference, the said provision reads as under:

> ***"46. Revision.-*** *(1) The High Court may, at any time call for and examine any order passed or proceeding taken by the Court of Small Causes or the Court of Civil Judge Senior Division referred to in items (i) and (ii) of clause (c) of section 3 for the purpose satisfying itself as to* ***the legality or correctness of such order or proceeding and may pass such order in reference thereto as it thinks fit.***
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> *(2) The District Judge may at any time call for and examine any order passed or proceeding taken by the Court of Civil Judge Junior Division referred to in item (iii) of clause (c) of section 3 for the purpose of such order or proceeding and may pass such order in reference thereto as he thinks fit.*
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> *(3) The costs incidental to all proceedings before the High Court or the District Judge shall be in the discretion of the High Court or the District Judge as the case may be.*

12.2. In ***Rukmini Amma Saradamma v. Kallyani Sulochana and others***[9], this Court held that even where the statutory language appears wide, the revisional court cannot act as a court of appeal and undertake a fresh evaluation of evidence. It was categorically observed that the High Court cannot reappreciate oral and documentary evidence under the guise of examining "propriety" as doing so would obliterate the distinction between appellate and revisional jurisdiction. The following paragraphs are pertinent:

> ***"9.*** *Notwithstanding the fact that Section 20 of the Act conferring revisional jurisdiction of the High Court is widely worded, such a jurisdiction cannot be converted into an appellate jurisdiction. This Court in* ***Rai Chand Jain v. Chandra Kanta Khosla***[10] *has clearly pointed out* ***the scope of such revisional jurisdiction and has held that it cannot act as a second court of appeal.***

[9] (1993) 1 SCC 499
[10] (1991) 1 SCC 422

> ***Therefore, the impugned order is liable to be set aside.*** *Without prejudice to the above, it is submitted that this Court in* ***Aundal Ammal v. Sadasivan Pillai***[11] *has held that no second revision is permissible to the High Court either under Section 115 of the Code or under Section 20 of the Act. The District Court has exercised the revisional jurisdiction. Hence, the remit order in C.R.P. No. 1719 of 1985 is void and is illegal. If that remit order goes, what remains is only the revisional order of the District Court, Kollam, confirming the appellate order directing revision on the ground of bona fide need. Hence, the impugned order calls for interference."*
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> ***"20.*** *We are afraid this approach of the High Court is wrong. Even the wider language of Section 20 of the Act cannot enable the High Court to act as a first or a second court of appeal. Otherwise, the distinction between appellate and revisional jurisdiction will get obliterated.* ***Hence, the High Court was not right in re-appreciating the entire evidence both oral or documentary in the light of the Commissioner's report (Exts. C-1 and C-2 mahazar).*** *In our considered view, the High Court had travelled far beyond the revisional jurisdiction. Even by the presence of the word "propriety" it cannot mean that there could be a re-appreciation of evidence. Of course, the revisional court can come to a different conclusion but not on a re-appreciation of evidence; on the contrary, by confining itself to legality, regularity and propriety of the order impugned before it. Therefore, we are unable to agree with the reasoning of the High Court with reference to the exercise of revisional jurisdiction."*

12.3. The legal position stands conclusively settled by the Constitution Bench of this Court in ***Hindustan Petroleum Corporation Ltd*** *(supra)*, wherein it was held that revisional jurisdiction, though wider than that under Section 115 of the Civil Procedure Code, 1908, remains qualitatively distinct from appellate jurisdiction. The High Court cannot reassess or reanalyse evidence to arrive at a different conclusion merely because another view is possible. Interference with findings of fact is permissible only when such findings are perverse, based on no evidence, suffer from misreading of evidence, or result in a miscarriage of justice. The following paragraphs are apposite:

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[11] (1987) 1 SCC 183 : AIR 1987 SC 203

"28. *Before we consider the matter further to find out the scope and extent of revisional jurisdiction under the above three Rent Control Acts, a quick observation about the "appellate jurisdiction" and "revisional jurisdiction" is necessary.* ***Conceptually, revisional jurisdiction is a part of appellate jurisdiction, but it is not vice versa.*** *Both, appellate jurisdiction and revisional jurisdiction are creatures of statutes. No party to the proceeding has an inherent right of appeal or revision. An appeal is continuation of suit or original proceeding, as the case may be. The power of the appellate court is coextensive with that of the trial court. Ordinarily, appellate jurisdiction involves rehearing on facts and law but such jurisdiction may be limited by the statute itself that provides for the appellate jurisdiction. On the other hand, revisional jurisdiction, though, is a part of appellate jurisdiction but ordinarily it cannot be equated with that of a full-fledged appeal. In other words, revision is not continuation of suit or of original proceeding. When the aid of Revisional Court is invoked on the revisional side, it can interfere within the permissible parameters provided in the statute. It goes without saying that if a revision is provided against an order passed by the Tribunal/appellate authority, the decision of the Revisional Court is the operative decision in law. In our view, as regards the extent of appellate or revisional jurisdiction, much would, however, depend on the language employed by the statute conferring appellate jurisdiction and revisional jurisdiction."*

"31. *We are in full agreement with the view expressed in Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar*[12] *that* ***where both expressions "appeal" and "revision" are employed in a statute, obviously, the expression "revision" is meant to convey the idea of a much narrower jurisdiction than that conveyed by the expression "appeal". The use of two expressions "appeal" and "revision" when used in one statute conferring appellate power and revisional power, we think, is not without purpose and significance.*** *Ordinarily, appellate jurisdiction involves a rehearing while it is not so in the case of revisional jurisdiction when the same statute provides the remedy by way of an "appeal" and so also of a "revision". If that were so, the revisional power would become coextensive with that of the trial court or the subordinate tribunal which is never the case. The classic statement in* ***Dattonpant Gopalvarao Devakate v. Vithalrao Maruthirao Janagaval***[13] *that revisional power under the Rent Control Act may not be as narrow as the revisional power under Section 115 of the Code but, at the same time, it is not wide enough to make the High Court a second court of first appeal, commends to us and we approve the same. We are of the view that in the garb of revisional jurisdiction under the above three rent control statutes, the High Court is not conferred a status of second*

[12] (1980) 4 SCC 259
[13] (1975) 2 SCC 246

court of first appeal and the High Court should not enlarge the scope of revisional jurisdiction to that extent."

"33. Rai Chand Jain v. Chandra Kanta Khosla[14]** that follows **Ram Dass v. Ishwar Chander[15], also does not lay down that the High Court in exercise of its power under the Rent Control Act may reverse the findings of fact merely because on reappreciation of the evidence it has a different view on the findings of fact.** The observations made by this Court in **Rai Chand Jain** must also be read in the context we have explained **Ram Dass"

"36.** The statement in **M.S. Zahed v. K. Raghavan[16]** that under **Section 50 of the Karnataka Rent Control Act, the High Court is entitled to reappreciate the evidence with a view to find out whether the order of Small Cause Court is legal and correct must be understood in the light of the observations made therein, namely, that revisional power cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal."

***"43.** We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate court/first appellate authority because on reappreciation of the evidence, its view is different from the court/authority below. **The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law.** In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. **The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal.** Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity."*

[14] (1991) 1 SCC 422
[15] (1988) 3 SCC 131
[16] (1999) 1 SCC 439

12.4. This principle has been consistently reiterated including in ***Thankamony Amma and others v. Omana Amma N. and others***[17], where this Court disapproved reappreciation of evidence in exercise of revisional powers.

12.5. Applying the aforesaid principles, it is evident that the trial Court upon a detailed appreciation of oral and documentary evidence, recorded specific findings of fact. These included material discrepancies in the respondents' case *inter alia* inconsistencies regarding the dates relating to purchase and stamping of stamp paper, non-production of the original partnership deed dated 01.03.2000, absence of proof of retirement of the original partner, and lack of written consent from the landlord for induction of alleged partners. These findings were based on the evidence on record and were neither shown to be perverse nor vitiated by any illegality or procedural irregularity.

12.6. However, the High Court, while exercising jurisdiction under Section 46, undertook a fresh analysis of the evidence, including depositions of PW-1 (M.R.Goverdhan) and RW-1 (Mohanlal), partnership documents, and rent receipts, and arrived at independent factual conclusions. Such an exercise clearly amounts to reappreciation of evidence, which is impermissible in revisional jurisdiction.

12.7. It is also significant that the statutory scheme provides for an appeal under Section 26 of the Karnataka Rent Act, 1999. Where the legislature has

[17] (2020) 19 SCC 254

consciously created a separate appellate remedy, the revisional jurisdiction cannot be expanded so as to substitute or bypass the appellate mechanism.

12.8. In view of the above, this Court is of the considered opinion that the findings recorded by the trial Court were pure findings of fact based on proper appreciation of evidence. No perversity, illegality, or jurisdictional error has been demonstrated.

12.9. Accordingly, the High Court transgressed the limits of its revisional jurisdiction by reassessing the evidence and substituting its own conclusions. The impugned interference under Section 46 of the Karnataka Rent Act, 1999 is therefore unsustainable in law as it effectively converts revisional jurisdiction into appellate jurisdiction.

Issue No. 2

13. ***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?***

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***[18]**,** 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 and others***[19]**,** 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***

[18] (2005) 1 SCC 31
[19] (2017) 15 SCC 230

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***[20]*, 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: (SCC p. 577)*

> *"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: (SCC pp. 36-37)*

> *"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. Sardar Ranjit 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***[21]***,*** *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.*
>
> *.....*
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> *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.*

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[20] (1998) 6 SCC 573
[21] (2000) 7 SCC 522

17. We are unable to appreciate the contention. As observed by this Court in ***Bharat Sales Ltd. v. LIC[22],*** *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."***

(emphasis in original)

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: (SCC pp. 490-91)*

*"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

[22] (1998) 3 SCC 1

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.

13.6. Applying the aforesaid principles, it is evident that the landlord has successfully discharged the initial burden. The lease deed recognizes only Respondent No. 4 as the tenant. Respondent Nos. 2 and 3 are not parties to the lease and therefore, cannot claim any independent tenancy rights. The material on record clearly establishes that the original tenant is no longer in possession, and Respondent Nos. 2 and 3 are in exclusive occupation of the premises. This finding has been categorically recorded by the trial Court. In such circumstances, the landlord has successfully proved exclusive possession of third parties thereby discharging the initial burden and giving rise to a presumption of unlawful sub-letting.

13.7. The burden, therefore, shifted upon the respondents to rebut the said presumption. However, the respondents have failed to discharge this burden. No cogent or reliable evidence has been adduced to establish the existence of a valid partnership, reconstitution deed, lawful induction, or consent of the landlord to such arrangement. In the absence of such evidence, the possession of Respondent Nos. 2 and 3 remains unexplained and unlawful. As held in *Joginder Singh Sodhi,* direct proof of monetary consideration is not indispensable and may be legitimately inferred from the surrounding circumstances, particularly where exclusive possession is established without lawful explanation.

13.8. Accordingly, this Court holds that the burden of proving unlawful sub-letting initially lay upon the landlord, which has been duly discharged by establishing exclusive possession of third parties and absence of the original tenant. The burden thereafter shifted to the respondents, who have failed to rebut the presumption by adducing cogent evidence. Consequently, unlawful sub-letting stands proved.

Issue No. 3

14. ***Whether the alleged retirement of the original tenant – partner and continuation of business by Respondent Nos. 2 and 3 constitutes a mere reconstitution of partnership or amounts to unlawful sub-letting / assignment under Sections 27(2)(b)(ii) and 27(2)(p) of the Karnataka Rent Act, 1999?***

14.1. The law governing sub-letting through the device of partnership is well-settled and no longer *res integra*. In ***Amar Nath Agarwalla v. Dhillon Transport Agency***[23]**,** this Court reiterated that a partnership firm is not a separate legal entity but merely a compendious name for its partners, and that sub-letting necessarily involves parting with legal possession. The following paragraphs are pertinent:

> ***"8.*** *In* ***Murlidhar v. Chuni Lal***[24] *this Court had repelled the contention that the old firm and the new firm being two different legal entities, the occupation of the shop by the new firm was occupation by the legal entity other than the original*

[23] (2007) 4 SCC 306
[24] 1969 Ren CR 563 : 1970 Ren CJ 922 (SC)

tenant and such occupation proved sub-letting. Repelling the contention this Court held:

> *"This contention is entirely without substance.* ***A firm, unless expressly provided for the purpose of any statute which is not the case here, is not a legal entity.*** *The firm name is only a compendious way of describing the partners of the firm. Therefore, occupation by a firm is only occupation by its partners. Here the firms have a common partner. Hence the occupation has been by one of the original tenants."*

9. *In* ***Mohammedkasam Haji Gulambhai v. Bakerali Fatehali***[25] *this Court observed: (SCC p. 618, para 13)*

> ***"There is absolute prohibition on the tenant from sub-letting, assigning or transferring in any other manner his interest in the tenanted premises. There appears to be no way around this subject of course if there is any contract to the contrary between the landlord and the tenant. In a partnership where the tenant is a partner, he retains legal possession of the premises as a partnership is a compendium of the names of all the partners. In a partnership, the tenant does not divest himself of his right in the premises. On the question of sub-letting etc. the law is now very explicit. There is prohibition in absolute terms on the tenant from sub-letting, assignment or disposition of his interest in the tenanted premises."***

14.2. This position has been comprehensively analysed in ***Celina Coelho Pereira (Ms) and others v. Ulhas Mahabaleshwar Kholkar and others***[26]**,** wherein the Court, after considering earlier precedents, distilled the governing principles. The following paragraphs are pertinent:

> ***"17.*** *In* ***Helper Girdharbhai v. Saiyed Mohmad Mirasaheb Kadri***[27] *this Court held that in a case where a tenant becomes a partner of a partnership firm and allows the firm to carry on business in the demised premises while he himself retains legal possession thereof, the act of the tenant does not amount to sub-letting.* ***It was held that whether there is genuine partnership or not must be judged in the facts of each case in the light of the principles applicable to partnership.***

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[25] (1998) 7 SCC 608
[26] (2010) 1 SCC 217
[27] (1987) 3 SCC 538

18. *While dealing with the mischief contemplated under Section 14(1)(b) of the Delhi Rent Control Act, 1958 providing for eviction on the ground of sub-letting, this Court in* ***Jagan Nath v. Chander Bhan***[28] *held: (SCC p. 61, para 6)*

> *"6. The question for consideration is whether the mischief contemplated under Section 14(1)(b) of the Act has been committed as the tenant had sub-let, assigned, or otherwise parted with the possession of the whole or part of the premises without obtaining the consent in writing of the landlord.* ***There is no dispute that there was no consent in writing of the landlord in this case.*** *There is also no evidence that there has been any sub-letting or assignment. The only ground perhaps upon which the landlord was seeking eviction was parting with possession. It is well settled that parting with possession meant giving possession to persons other than those to whom possession had been given by the lease and the parting with possession must have been by the tenant; user by other person is not parting with possession so long as the tenant retains the legal possession himself, or in other words there must be vesting of possession by the tenant in another person by divesting himself not only of physical possession but also of the right to possession. So long as the tenant retains the right to possession there is no parting with possession in terms of clause (b) of Section 14(1) of the Act. Even though the father had retired from the business and the sons had been looking after the business, in the facts of this case, it cannot be said that the father had divested himself of the legal right to be in possession. If the father has a right to displace the possession of the occupants i.e. his sons, it cannot be said that the tenant had parted with possession."*

19. *The question whether the tenant has assigned, sub-let or otherwise parted with the possession of the whole or any part of the premises without the permission of the landlord within the meaning of* ***Section 13(1)(e) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 fell for consideration in Gopal Saran v. Satyanarayana***[29]*. This Court held: (SCC pp. 69-70, para 16)*

> *"16. ... Sub-letting means transfer of an exclusive right to enjoy the property in favour of the third party. In this connection, reference may be made to the decision of this Court in* ***Shalimar Tar Products Ltd. v. H.C. Sharma***[30] *where it was held that to constitute a sub-letting,* ***there must be a parting of legal possession i.e. possession with the right to include and also right to exclude others and whether in a particular case there was sub-letting was substantially a question of fact.*** *In that case, a reference was made at SCC p.*

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[28] (1988) 3 SCC 57
[29] (1989) 3 SCC 56
[30] (1988) 1 SCC 70

77, para 16 of the Report to the treatise of Foa on Landlord and Tenant, 6th Edn., at p. 323, for the proposition that:

> *'The mere act of letting other persons into possession by the tenant, and permitting them to use the premises for their own purposes, is not so long as he retains the legal possession himself, a breach of the covenant.'*

In para 17 of the Report, it was observed that parting of the legal possession means possession with the right to include and also right to exclude others. In the last mentioned case, the observations of the Madras High Court in ***Gundalapalli Rangamannar Chetty v. Desu Rangiah***[31] *were approved by this Court in which the legal position in* ***Jackson v. Simons***[32] *were relied upon. The Madras High Court had also relied on a judgment of* ***Scrutton, L.J. in Chaplin v. Smith***[33] *at p. 211 of the Report where it was said:*

> *'He did not assign, nor did he under-let. He was constantly on the premises himself and kept the key of them. He did business of his own as well as business of the company. In my view he allowed the company to use the premises while he himself remained in possession of them.'*

This position was also accepted in ***Vishwa Nath v. Chaman Lal Khanna***[34] *wherein it was observed that parting with possession is understood as parting with legal possession by one in favour of the other by giving him an exclusive possession to the ouster of the grantor. If the grantor had retained legal possession with him it was not a case of parting with possession."*

The Court also reiterated that to prove sub-tenancy, two ingredients have to be established, firstly, the tenant must have exclusive right of possession or interests in the premises or part of the premises in question and secondly, the right must be in lieu of payment of some compensation or rent.

20. *In* ***G.K. Bhatnagar v. Abdul Alim***[35] *this Court held as follows:(SCC p. 518, para 5)*

> *"5. A conjoint reading of these provisions shows that on and after 9-6-1952,* ***sub-letting, assigning or otherwise parting with the possession of the whole or any part of the tenancy premises, without obtaining the consent in writing of the landlord, is not permitted and if done, the same provides a ground for eviction of the tenant by the landlord.*** *However, inducting a*

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[31] AIR 1954 Mad 182
[32] (1923) 1 Ch 373 : 1922 All ER Rep 583
[33] (1926) 1 KB 198 (CA)
[34] AIR 1975 Del 117
[35] (2002) 9 SCC 516

partner in his business or profession by the tenant is permitted so long as such partnership is genuine. If the purpose of such partnership may ostensibly be to carry on the business or profession in partnership, but the real purpose be sub-letting of the premises to such other person who is inducted ostensibly as a partner, then the same shall be deemed to be an act of sub-letting attracting the applicability of clause (b) of sub-section (1) of Section 14 of the Act."

21. *A three-Judge Bench of this Court in* ***Parvinder Singh v. Renu Gautam***[36] *commented upon the device adopted by tenants many a time in creating partnership as a camouflage to circumvent the provisions of the Rent Control Act. The following observations are worth noticing: (SCC pp. 799-800, paras 8-9)*

"8. The rent control legislations which extend many a protection to the tenant, also provide for grounds of eviction. One such ground, most common in all the legislations, is sub-letting or parting with possession of the tenancy premises by the tenant. ***Rent control laws usually protect the tenant so long as he may himself use the premises but not his transferee inducted into possession of the premises, in breach of the contract or the law, which act is often done with the object of illegitimate profiteering or rack-renting.*** *To defeat the provisions of law, a device is at times adopted by unscrupulous tenants and sub-tenants of bringing into existence a deed of partnership which gives the relationship of tenant and sub-tenant an outward 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. Merely because a tenant has entered into a partnership he cannot necessarily be held to have sub-let the premises or parted with possession thereof in favour of his partners.* ***If the tenant is actively associated with the partnership business and retains the use and control over the tenancy premises with him, maybe along with the partners, the tenant may not be said to have parted with possession. However, if the user and control of the tenancy premises has been parted with and deed of partnership has been drawn up as an indirect method of collecting the consideration for creation of sub-tenancy or for providing a cloak or cover to conceal a transaction not permitted by law, the court is not estopped from tearing the veil of partnership and finding out the real nature of transaction entered into between the tenant and the alleged sub-tenant.***

9. 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 partnership with strangers. Quite often partnership is entered into between the members of any

[36] (2004) 4 SCC 794

family as a part of tax planning. There is no stranger brought on the premises. So long as the premises remain in occupation of the tenant or in his control, a mere entering into partnership may not provide a ground for eviction by running into conflict with prohibition against sub-letting or parting with possession. This is a general statement of law which ought to be read in the light of the lease agreement and the law governing the tenancy. There are cases wherein the tenant sub-lets the premises or parts with possession in defiance of the terms of lease or the rent control legislation and in order to save himself from the peril of eviction brings into existence, a deed of partnership between him and his sub-lessee to act as a cloak on the reality of the transaction. The existence of deed of partnership between the tenant and the alleged sub-tenant 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 or interest in tenancy premises by the tenant in favour of a third person. The rule as to exclusion of oral by documentary evidence governs the parties to the deed in writing. A stranger to the document is not bound by the terms of the document and is, therefore, not excluded from demonstrating the untrue or collusive nature of the document or the fraudulent or illegal purpose for which it was brought into being. An enquiry into reality of transaction is not excluded merely by availability of writing reciting the transaction."

***22.** In yet another decision, a three-Judge Bench of this Court in **Mahendra Saree Emporium (II) v. G.V. Srinivasa Murthy** considered earlier decisions, few of which have been referred to above, while dealing with a matter relating to sub-letting of the premises within the meaning of **Section 21(1)(f) of the Karnataka Rent Control Act, 1961** and observed as follows: (SCC pp. 490-92, para 16)*

"16. The term 'sub-let' is not defined in the Act-new or old. However, the definition of 'lease' can be adopted mutatis mutandis for defining 'sub-lease'. What is 'lease' between the owner of the property and his tenant becomes a sub-lease when entered into between the tenant and tenant of the tenant, the latter being sub-tenant qua the owner landlord. A lease of immovable property as defined in Section 105 of the Transfer of Property Act, 1882 is a transfer of a right to enjoy such property made for a certain time for consideration of a price paid or promised. A transfer of a right to enjoy such property to the exclusion of all others during the term of the lease is sine qua non of a lease. A sub-lease would imply parting with by the tenant of the right to enjoy such property in favour of his sub-tenant. Different types of phraseology are employed by different State Legislatures making provision for eviction on the ground of sub-letting. Under Section 21(1)(f) of the old Act, the phraseology employed is quite wide. It embraces within its scope sub-letting of the whole or part of the premises as also assignment or transfer in

any other manner of the lessee's interest in the tenancy premises. The exact nature of transaction entered into or arrangement or understanding arrived at between the tenant and alleged sub-tenant may not be in the knowledge of the landlord and such a transaction being unlawful would obviously be entered into in secrecy depriving the owner landlord of the means of ascertaining the facts about the same. However still, the rent control legislation being protective for the tenant and eviction being not permissible except on the availability of ground therefor having been made out to the satisfaction of the court or the Controller, the burden of proving the availability of the ground is cast on the landlord i.e. the one who seeks eviction. In ***Krishnawati v. Hans Raj***[37] *reiterating the view taken in* ***Associated Hotels of India Ltd. v. S.B. Sardar Ranjit Singh*** *this Court so noted the settled law: (****Hans Raj case*** *, SCC p. 293, para 6)*

> ***'6. … [T]he 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. In the context of the premises having been sub-let or possession parted with by the tenant by adopting the device of entering into partnership, it would suffice for us to notice three decisions of this Court. ***Murlidhar v. Chuni Lal*** *is a case where a shop was let out to a firm of the name of Chuni Lal Gherulal. The firm consisted of three partners, namely, Chuni Lal, Gherulal and Meghraj. This partnership closed and a new firm by the name of Meghraj Bansidhar commenced its business with partners Meghraj and Bansidhar.* ***The tenant firm was sought to be evicted on the ground that the old firm and the new firm being two different legal entities, the occupation of the shop by the new firm amounted to sub-letting. This Court discarded the contention as 'entirely without substance' and held that a partnership firm is not a legal entity; the firm name is only a compendious way of describing the partners of the firm. Therefore, occupation by a firm is only occupation by its partners****. The two firms, old and new, had a common partner, namely, Meghraj, who continued to be in possession and it was fallacious to contend that earlier he was in possession in the capacity of partner of the old firm and later as a partner of the new firm. The landlord, in order to succeed, has to prove it as a fact that there was a sub-letting by his tenant to another firm. As the premises continued to be in possession of one of the original*

[37] (1974) 1 SCC 289

tenants, Meghraj, then by a mere change in the constitution of the firm of which Meghraj continued to be a partner, an inference as to sub-letting could not be drawn in the absence of further evidence having been adduced to establish sub-letting. In ***Helper Girdharbhai v. Saiyed Mohmad Mirasaheb Kadri*** *the tenant had entered into a 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 sub-letting 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 who is in legal possession of the premises. So long as the 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. In* ***Parvinder Singh v. Renu Gautam*** *a three-Judge Bench of this Court devised the test in these terms: (SCC p. 799, para 8)*

> *'8. ... If the tenant is actively associated with the partnership business and retains the use and control over the tenancy premises with him, maybe along with the partners, the tenant may not be said to have parted with possession. However, if the user and control of the tenancy premises has been parted with and deed of partnership has been drawn up as an indirect method of collecting the consideration for creation of sub-tenancy or for providing a cloak or cover to conceal a transaction not permitted by law, the court is not estopped from tearing the veil of partnership and finding out the real nature of transaction entered into between the tenant and the alleged sub-tenant.' "*

23. *In* ***Vaishakhi Ram v. Sanjeev Kumar Bhatiani***[38]*, one of us (Tarun Chatterjee, J.) in a case of* ***sub-letting under Section 14(1)(b) of the Delhi Rent Control Act,*** *held: (SCC pp. 360 & 362, paras 15 & 21)*

> *"15. ... A plain reading of this provision would show that if a tenant has sub-let 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 sub-letting:*
>
> *(1) the tenant has sub-let or assigned or parted with the possession of the whole or any part of the premises;*

[38] (2008) 14 SCC 356

(2) such sub-letting or assigning or parting with the possession has been done without obtaining the consent in writing of the landlord.

...

21. 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."

24. *In* ***Nirmal Kanta v. Ashok Kumar***[39] *this Court held thus: (SCC p. 727, para 16)*

"16. What constitutes sub-letting has repeatedly fallen for the consideration of this Court in various cases and it is now well established that a sub-tenancy or a sub-letting comes into existence when the tenant inducts a third-party stranger to the landlord into the tenanted accommodation and parts with possession thereof wholly or in part in favour of such third party and puts him in exclusive possession thereof. *The lessor and/or a landlord seeking eviction of a lessee or tenant alleging creation of a sub-tenancy has to prove such allegation by producing proper evidence to that effect. Once it is proved that the lessee and/or tenant has parted with exclusive possession of the demised premises for a monetary consideration, the creation of a sub-tenancy and/or the allegation of sub-letting stands established."*

25. *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

[39] (2008) 7 SCC 722

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."

14.3. From the above decisions, the essence of the law is that:

(i) sub-letting requires parting with legal possession, i.e., transfer of the right to exclusive possession;

(ii) mere induction or retirement of partners does not amount to sub-letting so long as the tenant retains control and legal possession;

(iii) courts are entitled to lift the veil of partnership where it is used as a device to conceal an impermissible transfer; and

(iv) once exclusive possession of a third party is established, the burden shifts to the tenant to prove that the arrangement is bona fide.

Thus, the determinative test is whether the original tenant continues to retain legal possession and control over the premises.

14.4. It is not in dispute that Respondent No. 4 alone was the original tenant under the lease. The material on record indicates that he retired from the business around the year 2000. Significantly, no legally admissible evidence has been produced to establish either the factum of such retirement in accordance with law or that he continued to retain legal possession or control thereafter.

14.5. The respondents have failed to produce the original partnership deed, any duly proved retirement deed, or any document evidencing continuity of the original tenant firm. The alleged reconstitution deed (Ex. R3), apart from being unregistered, has not been proved in accordance with law and is shrouded in doubt. There is also no material to show that Respondent Nos. 2 and 3 were partners in the original tenant firm. Their induction into possession is, therefore not traceable to the original tenancy.

14.6. On the contrary, the material on record, including the cross-examination of RW-1, clearly demonstrates that the original tenant has ceased to have any role in the business or the premises, and that Respondent Nos. 2 and 3 are in exclusive possession and control. This satisfies the test of parting with possession, both in fact and in law, as explained in *Jagan Nath v. Chander Bhan.*

14.7. Once such exclusive possession by third parties is established, the burden shifts to the respondents to prove that the arrangement is a genuine partnership

and not a device to conceal sub-letting. The respondents have failed to discharge this burden by producing any cogent or reliable evidence.

14.8. The mere fact that rent receipts may continue in the name of the original tenant does not advance the respondents' case, as it is legal possession and control and not the formality of rent payment, which is determinative.

14.9. In the present case, the original tenant has clearly divested himself of legal possession, and Respondent Nos. 2 and 3, who are strangers to the tenancy, are in exclusive occupation of the premises without the consent of the landlord. The so-called reconstitution is nothing but a cloak to conceal an unlawful transfer of possession, warranting lifting of the veil.

14.10. Accordingly, the arrangement cannot be regarded as a bona fide reconstitution of partnership. It squarely amounts to unlawful sub-letting / assignment within the meaning of Section 27(2)(b)(ii) of the Karnataka Rent Act, 1999. Further, the continued occupation by Respondent Nos. 2 and 3 without any lawful right, attracts Section 27(2)(p) of the Act. The respondents are, therefore, liable to eviction.

15. For the reasons aforesaid, the Civil Appeal is allowed. The judgment and order dated 23.05.2023 passed by the High Court in House Rent Revision Petition No. 56 of 2017 is set aside and the order dated 14.07.2017 passed by the trial Court in H.R.C. No. 63 of 2016 directing eviction of the respondents

from the schedule premises is restored. The respondents are granted three months' time from today to vacate and handover vacant possession of the premises to the appellants. There shall be no order as to costs.

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

……..……J.
[AHSANUDDIN AMANULLAH]

…….J.
[R. MAHADEVAN]

NEW DELHI;
APRIL 10, 2026.