A SRI CHAND GUPTA

v.

GULZAR SINGH AND ANR.

OCTOBER 22, 1991

B [K. RAMASWAMY AND YOGESHWAR DAYAL, JJ.]

Delhi Rent Control Act, 1958: Section 14(b)—Sub-letting—Eviction Petition—Eviction order by Rent Controller and Tribunal—Order based on inadmissible evidence—Appraisal of evidence, interference with concurrent findings of fact and dismissal of Eviction Petition by High Court held justified.

C

Indian Evidence Act, 1872: Section 18.

Admission—Eviction proceedings—Admission by tenant's brother in an affidavit before Income Tax Authorities as to exclusive possession held not binding on the tenant.

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The appellant-landlord filed an application under Section 14(1)(b) of the Delhi Rent Control Act, 1958 for ejectment of the respondents and the three courts concurrently found that the respondent was the sole tenant. Relying on an affidavit filed by tenant's brother before Income Tax authorities in which he claimed exclusive possession as tenant, the Rent Controller and the Tribunal concluded that the admission made by the tenant's brother was binding on the tenant as a result of which sub-letting by tenant was proved and consequently allowed the landlord's eviction petition.

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But the High Court dismissed the eviction petition by holding that since the admission made by tenant's brother was not binding on the tenant, the finding of sub-letting by tenant was vitiated in law because it was based on inadmissible evidence.

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In appeal to this court it was contended on behalf of the landlord that (i) the admission made by tenant's brother was binding on the tenant under section 18 of the Evidence Act; (ii) the High Court erred in interfering with the concurrent finding of fact.

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Dismissing the appeal, this Court,

HELD: 1. Section 18 of the Evidence Act postulates that statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorised by him to make them, are admissions. Equally statement made by a person who has any proprietary or pecuniary interest in the subject matter of the proceedings or persons having derivative interest make statements during the continuance of the interest also are admissions. [540 H, 541 A-B] A B

2. In the instant case, admittedly, the respondent-tenant was not a party to the affidavit signed by his brother. Therefore, the admission made by his brother that he is the tenant in exclusive possession of the demised premises does not bind the respondent-tenant. Once it is found that respondent alone is the tenant, his brother cannot claim to have any pecuniary or derivative interest in the demised premises. He is not an agent of his tenant-brother. Since the admission made by tenant's brother was inadmissible and not binding on the tenant, the High Court rightly held that the finding of sub-letting or parting with possession of the premises in dispute was vitiated in law as it was primarily based on inadmissible evidence. Consequently, it was open to the High Court to re-examine and reappreciate the evidence on record. [541 B-E] C D

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 849 of 1987. E

From the Judgment and Order dated 24.9.1985 of the Delhi High Court in S.A.O. (Second Appeal From Order) no. 295 of 1981.

K.R. Nagaraja, R.S. Hegde and C.B. Nath Babu for the Appellant. F

M.L. Bhargava and Randhir Jain for the Respondents.

The following Order of the Court was delivered:

The appellant landlord had filed an application under Sec. 14(1)(b) of the Delhi Rent Control Act, 1958 (for short the 'Act') for ejectment of the respondents. All the three courts concurrently found that Gulzar Singh was the sole tenant. The Rent Controller and the Tribunal found that he sublet the demised premises to Avtar Singh, his brother and therefore ordered ejectment. The High Court found that the tenant was in exclusive possession of the premises bearing No. W.Z. 258/4, Subash Bazar, Nangal G H

A Raya, New Jail Road, New Delhi, and that he did not sublet the premises to Avtar Singh. On that premise the petition for ejectment was dismissed. Thus this appeal by special leave under Art. 136 of the Constitution.

Shri Nagaraja, learned counsel for the appellant has contended that the High Court has committed a gross error in interfering with the concur-
B rent finding of fact recorded by the Addl. Rent Controller and the Rent Control Tribunal that the tenant, Gulzar Singh has sublet the premises in question to his brother, Avtar Singh and that it is not open to the High Court to interfere with the concurrent finding of fact. He placed reliance on Sec. 18 of the Evidence Act and said that in an affidavit filed by Avtar Singh before Income-Tax Authorities he claimed exclusive possession as a
C tenant and that, therefore, the admission made by him would be binding on Gulzar Singh. The Addl. Rent Controller and the Rent Control Tribunal relying upon this admission of Avtar Singh and other oral evidence concluded that Avtar Singh alone was in exclusive possession and that, therefore, subletting was proved as a fact. We find no substance in the contention. Section 18 of the Evidence Act reads as under:-

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> "18. Admission by party to proceeding or his agent; by suitor in representative character; by party interested in subject-matter; by person from whom interest derived. - Statements made by a party to the proceedings, or by an agent to any such party, whom the court regards, under the circumstances of the case,
> E as expressly or impliedly authorised by him to made them, are admissions.
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> Statements made by parties to suits, suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character.
>
> F Statements made by -
>
> (1) persons whom have any proprietary or pecuniary interest in the subject matter of the proceeding and who make the statement in their character of persons so interested, or
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> G (2) persons from whom the parties to the suit have derived their interest in the subject matter of the suit,
> are admissions, if they are made during the continuance of the interest of the persons making the statement."

H Section 18 postulates that statements made by a party to the

proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorised by him to make them, are admissions. Equally statement made by a person who has an proprietary or pecuniary interest in the subject matter of the proceedings or persons having derivative interest make statements during the continuance of the interest also are admissions. In this case, admittedly, Gulzar Singh was not a party to the affidavit signed by Avtar Singh. Therefore, the admission made by Avtar Singh that he is the tenant in exclusive possession of the demised premises does not bind Gulzar Singh. In view of the plea and stand of the appellant, Avtar Singh cannot claim to have any pecuniary interest or any joint interest alongwith Gulzar Singh in the demised premises. Once it is found that Gulzar Singh alone is the tenant, as admittedly pleaded by the appellant, Avtar Singh cannot claim to have any pecuniary or derivative interest in the demised premises. He is not an agent of Gulzar Singh. Under those circumstances, as rightly found by the High Court, that the admission made by Avtar Singh in the affidavit is inadmissible and does not bind Gulzar Singh. Once that admission is excluded from consideration, there is no other evidence worth accepting to conclude that Avtar Singh was in exclusive possession as a tenant. The High Court rightly held that the finding of subletting or parting with possession of the premises in dispute was vitiated in law as it was primarily based on inadmissible evidence. Having found the finding vitiated, it was open to the High Court to re-examine and reappreciate the evidence on record. On reappraisal it disbelieved the oral evidence. We do not find any error in such reappraisal. It is then sought to be contended that Gulzar Singh had other business and it implies that he is not in exclusive possession of the demised premises. We find no force in the contention. It may be that Gulzar Singh had other business but that does not lead to the conclusion that Gulzar singh is not in exclusive possession of the demised premises as tenant or that he sublet the premises to Avtar Singh.

Accordingly, the appeal is dismissed, but in the circumstances, without costs.

T.N.A. Appeal dismissed.