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IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE JAI KUMAR PILLAI

SECOND APPEAL No. 524 of 2010

M.J.J. SHARMA AND CO.

Versus

M/S CHOPARA TYRES AND OTHERS

Appearance:

Shri Ayushyaman Choudhary – Advocate for the appellant/plaintiff.

Mr. Vivek Patwa – Advocate for the respondents No.1/defendant.

Reserved on : 09/10/2025

Delivered on : 04/11/2025

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J U D G M E N T

Heard on the question of admission.

This second appeal under Section 100 of CPC has been filed by the appellant/plaintiff being aggrieved by the judgment and decree dated



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18/05/2010 passed by Vth Additional District Judge, Indore, District Indore (M.P.) in RCA No.38/2009 whereby the judgment and decree dated 08/08/2006 passed by VIIIth Civil Judge Class-I, Indore, District Indore (M.P.) in RCSA 135-A/2004, was set aside.

Facts of the case, in short are as under :-

2. The plaintiff is a registered partnership firm and the owner of house No. 16/6, Chhoti Gwaltoli, Indore, where the disputed shop is located. Defendant No.1 is also a partnership firm and is a tenant of this shop. On 22th October 1985, the partner of Defendant No.1, Shammi Chopara, signed a registered rent-deed with the plaintiff. The agreed rent was ₹1,000 per month for the first three years and ₹1,150 per month thereafter, for a total period of five years. The agreement stated that the shop could not be sublet or transferred. Later, on 1st April 1991, defendant No.1 filed a case before the Rent Controlling Officer, Indore, for fixation of rent. The plaintiff's partner, Purushottam, appeared in Court and it was alleged that a settlement was made to fix the rent at ₹1,500 per month. Relying on this assurance, Purushottam did not appear further and an ex-parte order was passed fixing the rent at ₹259 per month. The plaintiff then filed several appeals and the matter was remanded multiple times. The last appeal, No.483/2000 is still pending for adjudication before this High Court.

3. The plaintiff stated that defendant No.1 had not paid rent since 16th March 1998, despite being served a legal notice through the plaintiff's



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counsel. The plaintiff also stated that in the month of October 1998, it came to know that defendant No.1 had sublet portions of the shop to defendants No.2 and No.3 without his permission. It was also alleged that defendant No.1 had built a concrete wall dividing the shop into two parts and had not removed these changes even after receiving notice. The plaintiff claimed that these actions violated the tenancy agreement. The plaintiff further stated that rent would be claimed later after the Court-fees were paid and that possession of the disputed shop should be handed back to the plaintiff.

4. Defendant No.1, in its written statement denied the plaintiff's claims and stated that the tenancy had started about four years before 1985 and that the rent-deed was made only for income-tax purposes. Defendant No.1 denied agreeing to pay rent of ₹1,500 per month or making any settlement with Purushottam Sharma. The defendant said it had filed the rent fixation case lawfully and that the rent of ₹259 per month fixed by the Rent Controlling Officer was valid. Defendant No.1 denied any arrears of rent and said it would pay whatever rent was finally fixed by the Court. The Defendant No.1 also denied subletting the premises to defendants No.2 and No.3 and contended that there exists no firm or persons. The defendant further stated that "Chopara Plex" was not a business name but a kind of rubber used in tyres.



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5. Defendant No.1 further said that it had not made any permanent construction or divided the shop. The fittings and racks installed were only for its tyre business. The defendant also denied the plaintiff's claim of personal need stating that the plaintiff and his Son already had many properties and businesses, including four shops, warehouses, a petrol pump, a lubricant business and a Maruti service center in Indore, Rau, Sukhliya and Pithampur. The defendant alleged that the plaintiff had hidden these facts and filed the case only because he was not satisfied with the decision of the Rent Controlling Authority. The defendant further asserted that no rent notice was ever sent and that rent had already been paid in advance. Defendants No.2 and 3 did not file any written statement in this case.

6. The learned Trial Court after considering the material placed on record and evaluating the evidence of both the parties, allowed the suit filed by the appellant/plaintiff. Being aggrieved by this judgment and decree the respondents/defendants preferred an appeal before the First Appellate Court, which after due consideration, allowed the appeal and set-aside the judgment and decree passed by the Trial Court.

7. Being aggrieved by which, the appellant/plaintiff preferred the present second appeal. This Court on 08/01/2014 **admitted** the appeal on the following substantial question of law:-



“1. Whether the judgment of reversal passed by the lower appellate court, setting aside the decree under Section 12(1)(b) of the M.P. Accommodation Control Act as passed by the trial court, is in conformity with law and not perverse ?”

8. The counsel for the appellant submits that the learned First Appellate Court committed serious errors in law and fact while deciding the appeal. It is contended that the Court failed to hold that the suit premises were sub-let or that defendant No.1 had parted with possession in favour of defendants Nos. 2 and 3. The appellant further asserts that the First Appellate Court wrongly allowed an application under Order 41 Rule 27 of the Code of Civil Procedure and admitted additional documents into evidence without granting an opportunity of hearing to the appellant and deprived the appellant of the chance to rebut such evidence. It is argued that the Court ignored material documents proving the presence of persons other than the tenant in the premises and failed to appreciate that once such presence was established, the burden was shifted to the tenant to explain their occupation. The appellant also contends that the Court neglected to decide all issues and did not properly evaluate the oral and documentary evidence on record.

9. The counsel for appellant further argues that the First Appellate Court erred in not recognizing the *bona fide* need of the landlord for the suit accommodation and in overlooking the fact that the landlord had no alternative accommodation available. It is also submitted by counsel for



the appellant that the Court failed to pass a decree under Section 12(1)(a) of the Madhya Pradesh Accommodation Control Act, 1961, despite the defendants' failure to pay arrears of rent and comply with Section 13 of the Act, which mandates timely rent deposits. The appellant maintains that there can be no estoppel against statutory provisions and that the tenant's non-compliance should have resulted in a decree for eviction. Therefore, the appellant prays that the judgment and decree of the Lower Appellate Court, being erroneous, illegal, and contrary to the record, be set aside. The counsel for the appellant relied upon a case **Dhanya Kumar Jain vs. Mata Prasad Gupta and another 2001 (2) MPLJ 497** wherein it has been held that negative burden on tenant to prove that tenanted premises were not sublet and question of sub-letting is best known to the tenant and sub-tenant and not to the landlord.

10. The counsel for the respondent submits that the plaintiff failed to establish the existence of sub-tenancy or any unauthorized structural alteration in the disputed shop. It is argued that no evidence was ever proved by the plaintiff that the alleged sub-tenant was occupied independently by the sub-tenant showing the fact that the defendant No.1 had relinquished control over the property or that rent was being received from such sub-tenant. The counsel for the respondent further asserts that the Trial Court rightly found that no wall had been constructed in the middle of the shop and that defendants Nos.2 and 3 alleged sub-tenants did not in fact exist. The plaintiff's statements were found to be vague



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and unsupported by any oral or documentary evidence, as the exhibits relied upon lacked authentication and signatures. Accordingly, the essential ingredients of sub-tenancy were not established and the claim that structural changes had been made was also not proved.

11. The counsel for the respondent further asserts that both the Trial Court and the First Appellate Court correctly concluded that the plaintiff failed to prove any ground for eviction under Section 12(1)(a), (c), (f), or (n) of the Madhya Pradesh Accommodation Control Act, 1961. The issue of sub-tenancy being one of fact was thoroughly examined by the First Appellate Court and does not warrant interference under Section 100 of the Code of Civil Procedure. It is further contended that the suit is defective as the plaintiff impleaded only the firm and not its partners, although a firm has no separate legal personality in law. The counsel for the respondent further prayed that the appeal is not maintainable and any decree passed in favour of the firm's name cannot be effectively executed. Hence, the findings of the First Appellate Court rejecting the plaintiff's claims and upholding the defendant's possession were based on a proper appreciation of facts, law and evidence.

Analysis and conclusion :-

12. Heard learned counsel for the both the parties at length and perused



the entire records available.

13. Before delving into the facts of the case, this Court deems it appropriate to quote the statutory provisions relevant to the matter at hand. The statutory provisions which govern letting, rent and eviction in the State of M.P. is the **Madhya Pradesh Accommodation Control Act, 1961. Section 12(1)(b)** of the said Act which reads as follows : -

“12. Restriction on eviction of tenants. - (1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any Civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely :

(b) that the tenant has whether before or after the commencement of this Act, unlawfully sub-let, assigned or otherwise parted with the possession of the whole or any part of the accommodation for consideration or otherwise.”

14. This Court considers it necessary to refer the observations of the Hon'ble Supreme Court in **Ram Murti Devi v. Pushpa Devi (2017) 15 SCC 230 : (2018) 2 SCC (Civ) 662 : 2017 SCC OnLine SC 849**, wherein the guidelines for the eviction of tenant on the bases of the sub-letting has been discussed as follows:-

“14. This Court in Associated Hotels of India Ltd. v. S.B. Sardar Ranjit Singh, AIR 1968 SC 933 had occasion to consider a case, wherein suit was filed by the landlord for



eviction of tenant from the hotel building on the ground of sub-letting. In the above context, this Court in para 5 laid down the following:

5. ... The onus to prove sub-letting was on the respondent. The respondent discharged the onus by leading evidence showing that the occupants were in exclusive possession of the apartments for valuable consideration. The appellant chose not to rebut this prima facie evidence by proving and exhibiting the relevant agreements. The documents formed part of the appellant's case. The appellant had no right to withhold them from the scrutiny of the Court. In the absence of the best evidence of the grants, the courts below properly inferred sub-lettings from the other materials on the record.

15. In Jagdish Prasad v. Angoori Devi, (1984) 2 SCC 590, which has also been referred by the High Court, this Court has held that merely from the presence of a person other than the tenant in the shop sub-letting cannot be presumed. Several instances in which a person other than tenant may be found staying in the shop which does not amount to sub-letting were enumerated. In para 2 of the judgment, following was stated: (SCC p. 594)

“2. ... Merely from the presence of a person other than the tenant in the shop sub-letting cannot be presumed. There may be several situations in which a person other than the tenant may be found sitting in the shop; for instance, he may be a customer waiting to be attended to; a distributor who may have come to deliver his goods at the shop for sale; a creditor coming for collection of the dues; a friend visiting for some social purpose or the like. As long as control over the premises is kept by the tenant and the business run in the premises is of the tenant, sub-letting flowing from the presence of a person other than the tenant in the shop cannot be assumed. The Act does not require



the Court to assume a sub tenancy merely from the fact of presence of an outsider.”

16. In **Dipak Banerjee v. Lilabati Chakraborty, (1987) 4 SCC 161**, this Court has again examined the question of proof of sub-letting. The ingredients which are required to be proved for a sub-tenancy were pointed out in para 6 of the judgment which is to the following effect: (SCC pp. 165-66)

“6. ... But in order to prove tenancy or sub tenancy two ingredients had to be established, firstly the tenant must have exclusive right of possession or interest in the premises or part of the premises in question and secondly that right must be in lieu of payment of some compensation or rent.

17. In **Rajbir Kaur v. S. Chokesiri and Co. (1989) 1 SCC 19**, while considering a case of eviction on the ground of sub-letting, following pertinent observations were made in para 59: (SCC p. 43)

“59. ... If exclusive possession is established, and the version of the respondent as to the particulars and the incidents of the transaction is found acceptable in the particular facts and circumstances of the case, it may not be impermissible for the court to draw an inference that the transaction was entered into with monetary consideration in mind. It is open to the respondent to rebut this. Such transactions of sub-letting in the guise of licenses are in their very nature, clandestine arrangements between the tenant and the sub-tenant and there cannot be direct evidence got. It is not, unoften, a matter for legitimate inference. The burden of making good a case of sub-letting is, of course, on the appellants. The burden of establishing facts and contentions which support the party's case is on the party who takes the risk of non-persuasion. If at the conclusion of the trial, a party has failed to establish these to the appropriate standard, he will lose. Though the burden of proof as a matter of law remains constant throughout a trial, the



evidential burden which rests initially upon a party bearing the legal burden, shifts according as the weight of the evidence adduced by the party during the trial.

18. *In Kala v. Madho Parshad Vaidya, (1998) 6 SCC 573, 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, (2005) 1 SCC 31 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, 14 and 16, 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, AIR 1968 SC 933 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,



(2000) 7 SCC 522 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 therefor have to be established.

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.

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.”

15. This Court is of the considered opinion that the finding of the learned Trial Court on the issue of subletting is not based on sound evaluation of evidence. The plaintiff, Purushottam Sharma (PW/1), in his testimony, stated that Defendant No.1, Shammi Chopra had partitioned the disputed shop and sublet it to Defendants No.2 and 3 without permission and that the shop was operating under the names “Sharda Tyres” and “Chopra Tyre Plex.” He relied on certain bills and cash memos (Ex.P/19 to Ex.P/22) relating to Maa Sharda Tyres and Tushar



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Tyres, and on invitation cards Ex.P/23. However, in his cross-examination, PW/1 candidly admitted that he could not identify the signatories of these documents or the ownership of the said establishments. His statement, therefore, rests on mere assumptions arising from the shop boards. It is well settled that the essential element of subletting is transfer of exclusive possession of the premises to another without the landlord's consent. **In Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar, (2010) 1 SCC 217,** the Hon'ble Supreme Court held that "*the existence of a person other than the tenant in the premises does not by itself prove subletting unless it is shown that the tenant has parted with legal possession.*" Applying this principle, this Court finds no credible proof of such transfer of possession in the present case.

16. This Court has carefully examined the testimony of PW/2, Vishwabandhu Chaturvedi, who was produced as a photographer and finds that his evidence does not support the plaintiff's case. PW/2 stated that he took photographs of the shop (Ex.P/24 to Ex.P/26) on the instructions of the plaintiff, and that the negatives are Ex.P/27 to Ex.P/29. However, in cross-examination, he admitted that it is not clear from the photographs that they belong to house No.16/6, Chhoti Gwaltoli, Indore. He also admitted that all the photographs were taken from outside and that he had not inspected the interiors of the shops. There are also contradictions in his testimony regarding the dates of taking the



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photographs, as he earlier claimed to have taken them on two different dates but later admitted that they were all from one roll. This Court thus finds that the photographs do not establish that the disputed shop was ever handed over to another person. The evidence merely shows that signboards bearing tyre brand names were present, which is a common feature of such businesses and cannot amount to proof of subletting.

17. Upon thoughtful consideration of the depositions of PW/3 Yogesh Sharma and PW/4 Anil, this Court finds that their testimonies are inconsistent and unreliable. PW/3 stated that for the past four to five years, the disputed shop had been partitioned and operated under the names “Sharda Tyres” and “Tushar Tyres,” but he admitted that he did not know who conducted those businesses and that he never inquired about the persons sitting there. He also conceded that the persons sitting in the shop could be employees of Shammi Chopra or Prakash Chopra. Similarly, PW4 Anil admitted that the person who issued him tyre bills (Ex.P/19 to Ex.P/22) was one Sitaram, who was working in the shop of Defendant No.1 himself. He further admitted that he did not know the owners of the premises or the signatories of the bills. His statement that his affidavit was prepared as directed by his lawyer further undermines the credibility of his evidence. These admissions, taken together, clearly demonstrate that the shop continued to be under the control of Defendant No.1. **In Associated Hotels of India Ltd. v. R.N. Kapoor, AIR 1959 SC 1262,** the Supreme Court observed that “*the real test is the intention of the*



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parties—whether exclusive possession was parted with so as to confer a right to enjoy the property.” Applying this test, no such transfer is proved here.

18. This Court further finds that the defence evidence of Shammi Chopra (DW/1) inspires confidence and is consistent throughout. DW/1 categorically denied having sublet or partitioned the shop. He stated that “Chopra Tyres” is his own business run by him and his partners, and that the name “Sharda Tyres” belongs to his cousin’s wife, whose shop is located 8–10 shops away. He also clarified that the signboard “Chopra Tyre Plex” refers to a product (“plex strip”) used in tyres, and not a separate business. The certified copy of his earlier statement in Civil Case No.44-A/2000 (Ex.P/33) also does not contradict his stand. The learned Trial Court erred in presuming subletting merely from multiple business names without any proof of transfer of possession. The Hon’ble Supreme Court in **Helper Girdharbhai v. Saiyed Mohmad Mirasaheb Kadri, (1987) 3 SCC 538**, held that *“the burden of proving subletting lies entirely on the landlord, and it cannot be inferred merely from a change in trade name or user.”* Following that principle, this Court concludes that subletting has not been established by the appellant.

19. This Court has also considered the allegation of structural alteration, particularly the construction of a partition wall in the middle of the shop without the landlord’s consent. DW/1 explained that the wall



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was earlier erected by Dunlop Company for wheel alignment and balancing work, and that it remained for convenience after the work stopped in 1998. The plaintiff has not shown that this partition caused any damage or diminished the value of the property. The Hon'ble Supreme Court in **Om Pal v. Anand Swarup, (1988) 4 SCC 545**, held that "*minor internal partitions made for the purpose of business convenience do not amount to substantial alteration of the premises.*" Following this principle, the partition wall cannot be treated as a substantial structural change justifying eviction.

20. Turning now to the issue of *bona fide* requirement, this Court observes that the plaintiff's evidence on this aspect is weak and unconvincing. PW/1 and PW/3 stated that the plaintiff's son, Yogesh Sharma, intended to expand his business of industrial lubricants and greases and needed the disputed shop for that purpose. However, in cross-examination, Yogesh Sharma admitted that he already runs such business from J.J. Sharma & Co. and from other premises in KIBE Compound. No document was produced to show that he is an authorized dealer of IBP Ltd. or that his existing setup is insufficient. **In Raghunath G. Panhale v. Chaganlal Sundarji & Co., (1999) 8 SCC 1**, the Hon'ble Supreme Court held that "*a landlord's desire must be genuine and honest, and not a pretext for eviction.*" The evidence here indicates that the plaintiff already possesses adequate accommodation and that the present claim is more of a convenience than a necessity.



21. This Court further observes that PW/1 admitted in his cross-examination that he owns four shops in the same building and that the firm has already acquired additional shops after eviction of other tenants. It is thus clear that the plaintiff firm possesses sufficient alternative accommodation for carrying on business. The finding of the Trial Court that there was no *bona fide* requirement is therefore correct and supported by evidence. In **Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta, (1999) 6 SCC 222,** the Hon'ble Supreme Court observed that "*bona fide need must be tested by the sincerity of the landlord's intention, not by the availability of convenience.*" In light of this principle, the plaintiff's claim of need cannot be accepted as genuine.

22. The case law **Dhanya Kumar Jain (Supra)** relied upon by the learned counsel for the appellant does not align with the principles laid down by the Hon'ble Supreme Court in **Ram Murti Devi (Supra)**, thus, the case law relied by counsel for the appellant is unsustainable in the present case in hand as the judgment of **Ram Murti Devi (Supra)** has not been considered by the learned Single Judge in the case of **Dhanya Kumar Jain (Supra)** and thus case relied upon is of no avail to the appellant.

23. Considering all the evidence and the law laid down by the Hon'ble Supreme Court, this Court is of the view that the finding of the Trial



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Court on the question of subletting, partition and bona fide requirement is unsustainable in law. The evidence on record does not prove that Defendant No.1 had parted with possession of the disputed shop or that the plaintiff required the premises genuinely for the business of his son. The partition wall was found to be for business convenience and not a substantial alteration. Accordingly, this Court sets-aside the finding of subletting and *bona fide* requirement recorded by the Trial Court and affirms the judgement and decree passed by the First Appellate Court.

24. Thus, in view of the aforesaid discussion and upon due consideration of material available on record and considering the law laid down by the Hon'ble Apex Court, this Court does not find any illegality in the judgment and decree of the First Appellate Court allowing the appeal of the respondents/defendants by setting-aside the judgment and decree passed by learned Trial Court.

25. Resultantly, this Second Appeal fails and is hereby **dismissed**.

26. Pending applications, if any, shall also stands disposed off accordingly.

(Jai Kumar Pillai)
Judge

Aiyer*
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