filed have been assailed by Mr. Hardy, but I consider it altogether unnecessary to decide these matters. Nor does the second point urged by Mr. Misra require determination, because in my opinion there was lack of jurisdiction in the Administrator to admit additional material or evidence for the purpose of deciding the appeal. I am well aware and have little doubt that the petitioner has tried to prolong his occupation of the premises in dispute as much as he could and he may also have indulged in such tactics which litigants normally employ for prolonging or defeating proceedings for eviction, but I am constrained to strike down the order of the Administrator as it suffers from the infirmities already mentioned.

In the result the petition is allowed and the order of the Administrator is set aside. However, in the exercise of my powers under Article 227 of the Constitution, I direct that the appeal shall be reheard and redecided by the Administrator in accordance with law. Keeping in view the entire facts, I leave the parties to bear their own costs.

B.R.T.

REVISIONAL CIVIL

Before Inder Dev Dua and Prem Chand Pandit, JJ.

SHYAM SUNDER AND OTHERS,—*Petitioners*

versus

M/s BRIJ LAL-CHAMAN LAL AND OTHERS,—*Respondents.*

Civil Revision No. 805 of 1965

September 6, 1966

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13(2)(ii)(a)—Applicability of—Tenant being a firm, dissolved after death of a partner—Goodwill along with lease-hold rights falling to share of one of the partners—Relinquishment of rights in the leased property by the legal representatives of deceased partner—Whether amounts to transfer—Remaining partner forming another partnership and continuing business in the same shop—Whether amounts to sub-letting—Partnership Act (IX of 1932)—Ss. 4 and 14—Partnership—Nature of—Partnership property—Rights of partners therein.

Held, that the firm Brij Lal-Chaman Lal consisting of only two partners, namely Brij Lal and Chaman Lal, was the tenant of the shop in question. These two persons were the tenants and owners of the lease-hold rights and not the firm as such. A firm is not an entity or 'person' in law, but is merely an association of individuals and a firm name is only a collective name of those individuals who constitute the firm. A firm is merely an expression, only a compendious mode of designating the persons who have agreed to carry on business in partnership. All the members of an ordinary partnership are interested in the whole of the partnership property. No partner has a right to take any portion of the partnership property and say that it is his exclusively. In a partnership each partner has a right to enjoy and use the entire joint property for his own benefit as any other co-owner. Community of interest and unity of possession are the necessary attributes of partnership property. By the deed of dissolution dated 12th October, 1961, the goodwill along with the lease-hold rights in the shop in dispute which were a part of the partnership assets had fallen to the share of Chaman Lal. The relinquishment of the rights by the legal representatives of Brij Lal in favour of Chaman Lal in lieu of some other partnership property could not be strictly said to be covered by the word transfer occurring in section 13(2)(ii)(a) of the East Punjab Urban Rent Restriction Act, 1949. By dissolution, each partner got specific property in place of his undivided right in the entire partnership property. To put it differently, at the time of the dissolution of the partnership, various partners got exclusive title to the joint partnership property coming to their share and relinquished their rights in the remaining partnership property going to the other partners. Before dissolution, all the partners jointly enjoyed the entire partnership property, of course as full owners, whereas after dissolution, they exclusively enjoyed the part of the joint property coming to their share. That is to say, the property coming to the share of each partner after dissolution was already owned by him as full owner and consequently it could not be said that if on account of the dissolution of a partnership firm, the lease-hold rights in a certain shop came to the share of one partner, it would be a transfer by the remaining partners of their rights under the lease within the meaning of section 13(2)(ii)(a). Moreover, the 'transfer' by the tenant of his rights under the lease, as contemplated by this sub-section must be in favour of some stranger. On the dissolution of the partnership in the instant case, the tenancy rights in the shop in dispute had fallen to the share of Chaman Lal, who was no stranger to the landlord. As a matter of fact he was the original tenant of the entire premises. On this ground also, therefore, the relinquishment of the lease-hold right in the shop in dispute by the legal representatives of Brij Lal in favour of Chaman Lal would not amount to a 'transfer' of their rights under the lease as envisaged under section 13(2)(ii)(a) of the East Punjab Urban Rent Restriction Act, 1949.

Held, that by forming another firm with his brother and brother's son which continued to carry on business in the shop, it could not be said that Chaman Lal had sub-let the shop to his new partners as they were not given any share

in the lease-hold rights in the shop nor did they become the tenants of the shop. Subletting necessarily implies the transfer of some of the lease-hold rights in the tenanted premises.

Case referred by the Hon'ble Chief Justice Mr. D. Falshaw, by order, dated the 9th March, 1966, to a larger Bench for decision owing to the important question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua, and the Hon'ble Mr. Justice P. C. Pandit, on 6th September, 1966.

Petition under section 15(5) of Punjab Act III of 1949 as amended by Act 29 of 1956 for revision of the order of Shri A. D. Koshal, District Judge, Amritsar, dated the 4th June, 1965, affirming that of Shri T. R. Handa, Rent Controller, Amritsar, dated 30th May, 1964, dismissing the application.

H. L. Sarin, with Balraj Bahl and Miss Asha Kohli, Advocates, for the Petitioner.

Bhagirath Dass and B. K. Jhingan, Advocates, for the Respondents.

ORDER OF THE DIVISION BENCH

Pandit, J.—Shyam Sunder and his two brothers, Madan Mohan and Manohar Lal, were the owners of the premises in dispute which consist of a building used for business purposes in Amritsar City. This building was given on rent to firm Brij Lal-Chaman Lal, with effect from 1st of February, 1957, on a monthly rent of Rs. 97 per mensem. The rent deed was, however, executed on 11th of October, 1957 by Brij Lal on behalf of the firm which had two partners, Brij Lal and Chaman Lal. Brij Lal died on 16th of June, 1961, leaving behind a widow and two sons as his legal representatives. On 12th of October, 1961, the partnership firm was dissolved and a deed of dissolution was executed between Chaman Lal and the legal representatives of Brij Lal. Under this document, the rights in the shop in dispute fell to the share of Chaman Lal, who alone carried on his business in this building. Later on Chaman Lal took his brother Madan Lal and the latter's son as partners with him and started his business under the name and style of Madan Lal-Chaman Lal. On 15th of April, 1963, Shyam Sunder and his two brothers filed an application under section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter called the Act) against the firm Brij Lal-Chaman Lal, the widow and two sons of Brij Lal and Chaman Lal, respondents 1—5, praying for their eviction from the

premises in dispute on two grounds, but we are in the present petition concerned with only one of them, namely:—

> "That the firm respondent 1, was dissolved by the death of Shri Brij Lal and in any case by voluntary dissolution between Shri Chaman Lal and other respondents Nos. 2—4 about a year ago. The firm respondent No. 1, thus ceased to exist about a year ago. Furthermore, the possession of the building has been parted with and given to M/s Madan Lal-Chaman Lal, since about a year ago."

This application was resisted by Chaman Lal both in his individual capacity as well as being the proprietor of the dissolved firm M/s Brij Lal-Chaman Lal. According to him—

"The firm was not dissolved on the death of Brij Lal, but it continued. Thereafter a dissolution took place between the heirs of Shri Brij Lal and the replying respondent,—*vide* deed of dissolution of 12th October, 1961 and the goodwill along with lessee rights of the shop in dispute fell to the share of the replying respondent (Chaman Lal) and as the tenancy rights were of the co-lessee and by dissolution one of the lessees became the owner thereof, the said change does not fall within the mischief of Rent Act. The question of firm's name of respondent No. 1, having ceased to exist is of no avail to the landlord. This fact is denied that the replying respondent has parted with possession of the demised premises. Madan Lal-Chaman Lal is nobody else than the replying respondent, his brother and son, who were carrying on business in the demised premises and the replying respondent is also one of the proprietors of the same. The allegations as made do not fall within the ambit of any of the provisions of the Rent Restriction Act and as such the replying respondent is not liable to ejectment.

The allegations do not make up the case of sub-letting or assignment of lessee rights nor has there been any sub-letting or assignment of lessee-rights. As such the present application is liable to be dismissed, even otherwise the petitioners having accepted the rent from the replying respondents in the name of Madan Lal-Chaman Lal for more than three months are estopped by their act and conduct from pleading otherwise now."

On the pleadings of the parties, the Rent Controller framed only one issue in the case, viz., "Are the applicants entitled to an order of ejectment on the grounds pleaded in para 5(ii) of the application ? He held that Brij Lal and Chaman Lal were the joint tenants of the premises in dispute under the applicants and that being so both of them had a right to occupy the entire tenanted premises and they were not tenants in respect of their shares only. One co-tenant could not surrender the tenancy rights so as to bind the other co-tenant. On surrender of his rights by one of the co-tenants, the other had a right either to recognise the surrender or to insist on the performance of the original lease deed. A co-tenant who surrendered his rights in the joint tenancy had no interest left in the tenancy rights after the surrender and the other co-tenant could continue as the sole tenant. A transfer of a right in the lease by a co-lessee in favour of the other lessee would not be a breach of the covenant against assignment without the consent of the landlord. After the dissolution of the firm Brij Lal-Chaman Lal, according to the Rent Controller, Chaman Lal became the sole tenant under the applicants. He himself being a partner in the firm Madan Lal-Chaman Lal, Chaman Lal could not be said to have parted with possession of the premises in favour of the firm Madan Lal-Chaman Lal. There was no provision in the Act which prevented a tenant from taking a third person as a partner in his business. Chaman Lal was a partner of the firm Madan Lal-Chaman Lal and since he himself worked in the premises in dispute in that capacity, he could not be deemed to have parted with possession of the demised building or assigned his rights in the lease in favour of the firm Madan Lal-Chaman Lal. In view of these findings, he dismissed the ejectment application.

Against this decision, the owners of the premises in dispute went in appeal before the appellate authority. There it was conceded by their counsel that there could be no objection to Chaman Lal taking other partners with him. His argument, however, was that the relinquishment of the rights of Brij Lal as a co-lessee in the premises by his heirs and legal representatives in favour of Chaman Lal amounted to a transfer of Brij Lal's right of tenancy and the same was hit by Section 13(2)(ii)(a) of the Act. This contention was, however, repelled by the appellate authority who was of the view that Brij Lal's death had the effect of not only automatically dissolving his partnership with Chaman Lal, but it also operated to

extinguish his rights in the tenancy. That, however, did not mean that the rights of tenancy enjoyed by Chaman Lal as a co-lessee with Brij Lal were affected by the latter's death in any manner. In spite of Brij Lal being his co-lessee, Chaman Lal, himself was a lessee of the entire shop in his own right and he continued to enjoy that status even on Brij Lal's death. Even if it be assumed that Brij Lal's rights as a co-lessee survived to his legal representatives, the position, according to the appellate-authority, remained unchanged, because transfer by a co-lessee in favour of another co-lessee of a right in the lease would not be a breach of the covenant against assignment without the consent of the landlord. The appeal was, consequently, dismissed.

Against this decision, the present revision petition was filed in this Court by the owners under section 15(5) of the Act. The same came up for hearing before Falshaw, C.J. According to him, the view taken by the learned appellate authority was based on a decision of Rajamannar, C.J., and Mack, J., in K. *Devarajulu Naidu* v. *C. Ethirajavathi Thayeramma by power-of-attorney agent, C. Ranganayakulu Chetty and others* (1), which was a case under the Madras Buildings (Lease and Rent Control) Act, 1946, where it was held that where one of the two partners, after the dissolution of the partnership, assigned to the other partner the interest of the partnership in premises which had been taken on lease by the partnership, it did not amount to a breach of the covenant prohibiting assignment of the lease without the consent of the lessor. According to the learned Chief Justice, the learned Judges of the Madras High Court had based their conclusion on a decision of a Single Judge of that Court regarding the non-applicability of the principles laid down by the English Courts to landlord and tenant relationship. Since the learned Chief Justice did not, *prima facie*, agree with the view taken by the Madras High Court, he referred this case to a Division Bench. That is how the matter has been placed before us.

Learned counsel for the petitioners submitted that the firm Brij Lal-Chaman Lal, being the tenant of the premises in dispute, the tenancy came to an end on the dissolution of this partnership either on the death of one of its partners Brij Lal or at any rate when the deed of dissolution was executed between the heirs of Brij Lal and Chaman Lal, on 12th October, 1961. The relinquishment of the

(1) A.I.R. 1950 Mad. 25.

lease-hold rights of Brij Lal, deceased in the shop in dispute by his heirs and legal representatives in favour of Chaman Lal, amounted to a transfer of the rights in the tenancy within the meaning of section 13(2)(ii)(a) of the Act. That being so, the application of the petitioners for ejectment ought to have been allowed. He also contended that Chaman Lal's taking his brother Madan Lal and the latter's son as partners with him and starting his business in the name and style of Madan Lal-Chaman Lal, in the premises in dispute also afforded the petitioners a ground for ejectment under section 13 (2)(ii)(a). It was proved on the record that firm Madan Lal-Chaman Lal was a different entity from the firm Brij Lal-Chaman Lal and the former came into existence when the latter was dissolved. Firm Madan Lal-Chaman Lal were not the tenants of the petitioners and the possession of the shop in dispute had been parted with in their favour and under these circumstances, an order of ejectment should have been passed against the respondents on this ground as well.

The sole question for determination is whether the petitioners have been able to make out a case for the ejectment of the respondents under section 13(2)(ii)(a) of the Act. This is the only provision which, according to the petitioners, applies to the instant case. That section reads—

"13. (1) * * * * * *

"(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied—

(i) * * * * * *

(ii) that the tenant has after the commencement of this Act without the written consent of the landlord—

(a) transferred his right under the lease or sublet the entire building or rented land or any portion thereof; or

* * * * * *

the Controller may make an order, directing the tenant to put the landlord in possession of the building, or rented land and if the Controller is not so satisfied, he shall make an order rejecting the application:

* * * * * * * * *".

On going through the pleadings in the present case, I am of the view that the petitioners have not even alleged the grounds of ejectment given in section 13(2)(ii)(a). All that is stated in the application for ejectment is that the firm Brij Lal-Chaman Lal had rented the premises in dispute through their partner Brij Lal and a rent note incorporating the terms of the tenancy was executed on 11th October, 1957. Thereafter, Brij Lal died more than a year ago before the filing of the ejectment application, leaving behind respondents, 2—4 as his heirs and legal representatives. Chaman Lal, respondent No. 5 was the other partner of this firm and two grounds had been given for ejectment, first that the firm Brij Lal-Chaman Lal was dissolved by the death of Brij Lal and in any case by the voluntary dissolution of the partnership between Chaman Lal and the legal representatives of Brij Lal and the firm thus ceased to exist about a year ago; and second that the possession of the building had been parted with and given to M/s. Madan Lal-Chaman Lal since about a year ago.

Under section 13(2)(ii)(a), in order to succeed the landlord has to establish to the satisfaction of the Rent Controller that the tenant has, without his consent, either transferred his right under the lease or sublet the entire building or a portion thereof. In the ejectment application referred to above, the landlord has not alleged as to who had transferred his rights under the lease or sub-let the tenanted building. A reading of this application shows that according to the petitioners, firm Brij Lal-Chaman Lal, which was their real tenant, had ceased to exist about a year before the institution of the ejectment proceedings and since that very time firm Madan Lal-Chaman Lal had got into possession of the tenanted premises without any title. That is to say, firm Madan Lal-Chaman Lal was occupying the premises as mere trespassers. That being so, the petitioners were not entitled to take the benefit of the provisions of section 13(2)(ii)(a) and the ejectment application should have been dismissed on that short ground alone.

Let us now examine the case in the way in which it was dealt with by the Rent Controller and the Appellate Authority and the manner in which it was argued before us. The first question that arises for decision is—Has the landlord been able to prove that the tenant had transferred his rights under the lease without his consent ? According to the petitioners, when the legal representatives of

Brij Lal, deceased relinquished their lease-hold rights in the premises in dispute in favour of Chaman Lal, that act amounted to the transfer of their rights under the lease and since this was done without their consent, the respondents were liable to ejectment. It will be noticed that this sub-section does not mention the person or persons in whose favour the rights under the lease should be transferred by the tenant. As I read this provision, to me it appears that the idea of the legislature was that in order to attract the applicability of this sub-section it was necessary that the tenant should transfer his rights under the lease in favour of some stranger, the reason being that a tenant was not authorised to impose a stranger on his landlord without his consent. If A is the tenant of X, he is not entitled to transfer his rights under the lease to B and inflict him as a tenant on X. Applying this test to the case in hand, let us see who was the original tenant of the petitioners. It is common ground that the firm Brij Lal-Chaman Lal consisting of only two partners, namely, Brij Lal and Chaman Lal, was the tenant of the shop in question. In other words, these two persons were the tenants and owners of the lease-hold rights and not the firm as such. A firm is not an entity or 'person' in law, but is merely an association of individuals and a firm name is only a collective name of those individuals who constitute the firm. In other words, a firm name is merely an expression, only a compendious mode of designating the persons who have agreed to carry on business in partnership. (See in this connection *Dulichand Laxminarayan* v. *Commissioner of Income-Tax, Nagpur* (2). It is undisputed that all the members of an ordinary partnership are interested in the whole of the partnership property. No partner has a right to take any portion of the partnership property and say that it is his exclusively (*Vide* Lindley on Partnership. Eleventh Edition, page 426). In a partnership each partner has a right to enjoy and use the entire joint property for his own benefit as any other co-owner. Community of interest and unity of possession are the necessary attributes of partnership property. By the deed of dissolution, dated 12th October, 1961, the goodwill along with the lease-hold rights in the shop in dispute which were a part of the partnership assets had fallen to the share of Chaman Lal. The relinquishment of the rights by the legal representatives of Brij Lal in favour of Chaman Lal in lieu of some other partnership property could not, in my

(2) A.I.R. 1956 S.C. 354.

view, be strictly said to be covered by the word 'transfer' occurring in section 13(2)(ii)(a). By dissolution, each partner got specific property in place of his undivided right in the entire partnership property. To put it differently, at the time of the dissolution of the partnership, various partners got exclusive title to the joint partnership property coming to their share and relinquished their rights in the remaining partnership property going to the other partners. Before dissolution, all the partners jointly enjoyed the entire partnership property, of course as full owners, whereas after dissolution, they exclusively enjoyed the part of the joint property coming to their share. That is to say, the property coming to the share of each partner after dissolution was already owned by him as full owner and consequently it could not be said that if on account of the dissolution of a partnership firm, the lease-hold rights in a certain shop came to the share of one partner, it would be a transfer by the remaining partners of their rights under the lease within the meaning of section 13(2)(ii)(a). Moreover, as I have already indicated above, the 'transfer' by the tenant of his rights under the lease, as contemplated by this sub-section must be in favour of some stranger. On the dissolution of the partnership in the instant case, the tenancy rights in the shop in dispute had fallen to the share of Chaman Lal, who was no stranger to the landlord. As a matter of fact he was the original tenant of the entire premises as explained above. On this ground also, therefore, the relinquishment of the lease-hold rights in the shop in dispute by the legal representatives of Brij Lal in favour of Chaman Lal would not in any way amount to a 'transfer' of their rights under the lease as envisaged under section 13(2)(ii)(a).

The view that I have taken above finds support in a Bench decision of the Nagpur High Court in *Mathuradas* v. *Purushottam Das* (3), where it was held—

> "If the tenancy of a house is an asset of the partnership and if on dissolution of the partnership, the asset goes to one of the partners, it cannot be said that he becomes a sub-tenant only by virtue of the fact that the partnership was dissolved. If the tenancy is a partnership

(3) 1959 Nagpur Law Journal, Notes 11.

> asset, then the position is that during the period of the partnership the asset was of the joint ownership of both the partners, and if on dissolution, that asset goes to the share of one of the partners, it only means that the part ownership which he enjoyed in the asset was enlarged into full ownership."

Similarly a Single Judge of the Madras High Court in *Koragalva* v. *Jakri Beary and others* (4), held that an alienation in favour of a co-lessee by another lessee of his right in the lease is not an alienation which will work a forfeiture unless such is prohibited by the lease deed. This Single Bench was later on followed by a Division Bench of the same Court consisting of Rajamannar C.J. and Mack, J., in *K. Devarajulu Naidu* v. *C. Ethirajavathi Thayaramma by power-of-attorney agent C. Ranganayakulu Chetty and others* (1), where it was observed—

> "Where one of two partners after the dissolution of the partnership assigns to the other partner the interest of the partnership in premises which had been taken on lease by the partnership, it does not amount to a breach of the covenant prohibiting an assignment of the lease without the consent of the lessor. The landlord therefore, is not entitled to eviction on that ground."

So far as these two Madras authorities are concerned, Falshaw, C.J., while referring this case to a larger Bench observed—

> "It would thus seem that the learned Judges of the Madras High Court based their decision on a decision of a Single Judge of that Court regarding the non-applicability of the principles laid down by the English Courts to landlord and tenant relationship and I am by no means sure that I agree with this view."

No reasons, however, I say so with respect, had been given by the learned Chief Justice for differing from the view taken by the learned Judges of the Madras High Court.

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(4) A.I.R. 1927 Mad. 261.

Reference may also be made to a recent decision of the Supreme Court in *V. N. Sarin v. Major Ajit Kumar Poplai and another* (5), In that case the premises in dispute belonged to the joint Hindu Family consisting of father and his two sons. The three members of this undivided Hindu Family partitioned their coparcenary property and as a result of the said partition; the premises in question fell to the share of one of the sons who then filed an application for the ejectment of the tenant who had been inducted by the father before the said partition. One of the defences taken by the tenant was based on section 14(6) of the Delhi Rent Control Act, 1958, which provided that where a landlord had acquired any premises by transfer, no application for the recovery of possession of such premises would lie under subsection (1) on the ground specified in clause (e) of the proviso thereto, unless a period of five years had elapsed from the date of the acquisition. The argument raised by the tenant was that when, by the partition of the Joint Hindu Family property, the premises in dispute had fallen to the share of the son, it should be held that he had 'acquired' those premises by 'transfer' within the meaning of section 14(6) and consequently he could not file an ejectment application unless a period of five years had elapsed from the date of the acquisition. While dealing with this contention of the tenant, the Supreme Court observed thus—

> "Mr. Purshottam, however, contends that when an item of property belonging to the undivided Hindu Family is alloted to the share of one of the coparceners on partition, such allotment in substance amounts to the transfer of the said property to the said person and it is, therefore, an acquisition of the said property by transfer. *Prima facie*, it is not easy to accept this contention. Community of interest and unity of possession are the essential attributes of coparcenary property; and so, the true effect of partition is that each coparcener gets a specific property in lieu of his undivided right in respect of the totality of the property of the family. In other words what happens at a partition is that in lieu of the property allotted to individual coparceners they, in substance, renounce

(5) 1966 P.L.R. 164 (Delhi Section).

their right in respect of the other properties; they get exclusive title to the properties allotted to them and as a consequence, they renounce their undefined right in respect of the rest of the property. The process of partition, therefore, involves the transfer of joint enjoyment of the properties by all the coparceners into an enjoyment in severalty by them of the respective properties allotted to their shares. Having regard to this basic character of Joint Hindu Family property, it cannot be denied that each coparcener has an antecedent title to the said property, though its extent is not determined until partition takes place. That being so partition really means that whereas initially all the coparceners have subsisting title to the totality of the property of the family jointly, that joint title is by partition transformed into separate titles of the individual coparceners in respect of several items of properties allotted to them respectively. If that be the true nature of partition it would not be easy to uphold the broad contention raised by Mr. Purshottam that partition of an undivided Hindu Family property must necessarily mean transfer of the property to the individual coparceners. As was observed by the Privy Council in *Girja Bai* v. *Sadashiv Dhundiraj and others* (6) at P. 161 "Partition does not give him (a coparcener) a title or create a title in him; it only enables him to obtain what is his own in a definite and specific form for purposes of disposition independent of the wishes of his former co-sharers".

These observations also in a way support the view that I have taken above.

In view of the foregoing, I would hold that the relinquishment of the lease-hold rights in the shop in dispute by the legal representatives of Brij Lal deceased in favour of Chaman Lal did not amount to a 'transfer' by a tenant of his rights in the lease without the consent of the landlord within the meaning of section 13(2)(ii) (a) of the Act.

The second question that is now left for determination is this. When Chaman Lal started business in the shop in dispute

(6) 43 I.A. 151.

under the name and style of Madan Lal Chaman Lal after joining with him his brother Madan Lal and the latter's son, could it be said that he had sub-let the shop to Madan Lal and his son within the meaning of section 13(2)(ii)(a)? It is undisputed that Chaman Lal himself carried on business in the shop and he was the tenant of the landlord. It has not been established by the petitioners that Madan Lal and his son were given a share in the lease-hold rights in the shop and they too had become the tenants of the said shop. All that is stated is that the partnership business was carried on jointly by these two with Chaman Lal. There was no transfer of any interest in the lease-hold rights in their favour, because they had not been made partners in the lessee rights of the shop in question. Neither they nor even the partnership as such had been proved to be liable to pay any rent to the petitioners. This was the sole responsibility of Chaman Lal. All this shows that Madan Lal and his son never became tenants of the petitioners either in their individual capacity or as partners of the firm Madan Lal Chaman Lal. They were merely carrying on the business along with Chaman Lal, who remained the sole tenant of the petitioners. It could not, therefore, be said that Chaman Lal had in any way sub-let the shop to them. Sub-letting necessarily implies the transfer of some of the lease-hold rights in the tenanted premises.

My view that Madan Lal and his son would have become sub-tenants only if the lease-hold interest in the shop in dispute was also transferred to them by Chaman Lal while taking them as partners in the business, finds support in the decision of Subba Rao, J., in *Gundalapalli Rangamanner Chetty* v. *Desu Rangiah and others* (7), where he held—

> "It is clear from the aforesaid decisions that there cannot be a sub-letting, unless the lessee parted with legal possession. The mere fact that another is allowed to use the premises while the lessee retains the legal possession is not enough to create a sub-lease. Section 105 of the Transfer of Property Act defines a lease of immovable property as transfer of right to enjoy such property. Therefore, to create a lease or sub-lease a right to exclusive possession and enjoyment of the property should

(7) A.I.R. 1954 Mad. 182.

be conferred on another. In the present case the exclusive possession of the premises was not given to the second respondent. The first respondent continued to be the lessee, though in regard to the business carried on in the premises he had taken in other partners. The partners are not given any exclusive possession of the premises or a part thereof. The first respondent continues to be in possession, subject to the liability to pay rent to his landlord. The partnership deed also, as I have already stated, does not confer any such right in the premises on the other partners. I, therefore, hold that in the circumstances of the case the first respondent did not sublet the premises to the second respondent, and, therefore, he is not liable to be evicted under the provisions of Act No. 25 of 1949."

Similar view was taken in a Bench decision of the Saurashtra High Court in *Karsandas Ramji* v. *Karsanji Kalyanji and others* (8).

So far as this Court is concerned, Bishan Narain, J., in *Ajit Parshad* v. *Gian Singh and others* (9), held that the mere fact that the tenant allowed his partners to use the rented premises in furtherance of the partnership business did not amount to sub-letting of the premises. This observation was subsequently followed by Chopra, J., in *Darshan Singh and others* v. *Kulwant Rai* (10),

Reliance by the learned counsel for the petitioners was placed on a Bench decision of the Nagpur High Court in *Tansukhdas Chhogonlal* vs. *Smt. Shombir and another* (11), where it was held—

"Where, in the first instance 'A' alone was the tenant of the premises and he allowed other persons to enter into partnership along with himself to carry on business in those premises, the partnership which 'A' entered into along with the third parties was a personality in law

(8) A.I.R. 1953 Saurashtra 113.
(9) 1956 P.L.R. 124.
(10) 1958 P.L.R. 650.
(11) A.I.R. 1954 Nag. 160.

> distinct from that of 'A' himself. A thus brought himself within the purview of the law prohibiting subletting except with the permission of the landlord, and was, therefore, liable to ejectment on the ground of unauthorised subletting."

In the first place, it is not clear from the report whether the other persons with whom 'A' entered into partnership for carrying on business in the premises in dispute were made partners in the lease-hold rights as well or not. Secondly, the finding of the learned Judges that the partnership which the petitioner in that case entered into along wih third party was a personality in law distinct from that of the petitioner himself, if I may say so with great respect, runs counter to the Supreme Court decision in *Dulichand Laxminarayan* v. *Commissioner of Income-tax, Nagpur* (2), where it was held that a firm was not an entity or 'person' in law but was merely an association of individuals and a firm name was only a collective name of those individuals who constituted the firm.

During the course of arguments, reference was also made by the learned counsel for the petitioners to three unreported decisions of this Court in Civil Revision 728 of 1951 (*Tirloki Nath, etc.*, v. *Seth Chiranji Lal*), decided by G. D. Khosla, J., on 20th June, 1952, Civil Revision 372 of 1961 (*Lala Jogi Parshad and others* v. *Firm Hukam Chand Bhagwan Dass*) decided by S. B. Capoor, J., on 18th December, 1961 and Civil Revision 291 of 1961 (*Sheo Narain* v. *Duli Chand and others*) decided by my learned brother Dua, J., on 4th of May, 1962.

I may at once state that none of these cases supports the contention of the petitioners. In *Tirloki Nath's case*, what was held was this—

> "The simple question in my view is this. Tirloki Nath hired these premises for a certain purpose and he is still in possession of these premises and the business carried on is exactly the same business or at any rate very similar business. There is no evidence whatever to show that Tirloki Nath has sublet the premises to anyone else and has been receiving rent from any one.

> Nor is there any evidence of assignment and the evidence showing that he has parted with the premises is of a witness who does not appear to know anything whatever about this matter and his evidence has not been considered by the learned Senior Subordinate Judge. I must, therefore, hold that there is no evidence whatsoever to show that any of the grounds set out in section 9(1)(b) have been proved and that being the case the plaintiff's relief for the vacation of the premises cannot be granted."

In the case of *Lala Jogi Parshad*, the facts were that the shop in dispute was originally let out to firm Hukam Chand Bhagwan Dass and the ground on which eviction was sought was that the firm had sublet or assigned its rights in the shop to firm Jiwan Dass Mehar Chand without the landlord's permission. The learned Judge, agreeing with the trial Court, found as a fact that the shop in dispute was occupied by the firm Jiwan Dass Mehar Chand which was a distinct entity from the firm Hukam Chand Bhagwan Dass and both these firms were working separately. Ram Lal, one of the partners of firm Hukam Chand Bhagwan Dass was not a partner of the firm Jiwan Dass Mehar Chand and he had been excluded from the possession of the shop in dispute. There was no evidence whatsoever to show that these two firms were doing the same business or had any link between them. As a matter of fact they were paying income-tax separately and were being separately entered in the records of the marketing committee. On these facts, it had been found that the tenant had transferred his rights under the lease or sublet the building to some other party. In *Sheo Narain's case*, the position was that the shop in dispute was taken on lease by one Duni Chand, owner of the firm Dewan Chand Radha Kishan. The landlord applied for eviction of Duni Chand and others on the ground that Duni Chand had sublet the shop to others without the landlord's consent. In the written statement the plea taken on behalf of the defendants was that they had been the tenants of the landlord from the very inception and that there was no subletting in the case. The Rent Controller found that Duni Chand alone was the tenant of the landlord and that he had sublet the shop to three other persons without the consent and authority of the landlord. On appeal, the appellate authority reversed the decision of the Rent Controller and held that the appellants had been working in the

shop as partners and agents of each other with the result that no question of subletting by one to the other arose. On these findings, the application for eviction was dismissed. On revision; it was found as a fact by Dua, J., that it had not been established that the lease was in favour of the firm constituted by the respondents, at the time when the lease actually came into existence. On that finding, the decision of the appellate authority was reversed and that of the Rent Controller restored.

Counsel for the petitioners also referred to a decision of my learned brother Dua, J., in *Bhag Singh* v. *Surjan Singh* (12), where it was held—

> "That, transfer of rights under a lease to a partnership consisting of the lessee and a stranger is clearly hit by section 13(2)(ii)(a) of the East Punjab Urban Rent Restriction Act. But it is unnecessary to decide the question as to how far assignment of the right under the tenancy to a partnership which is a personality distinct from the tenant, would be covered by the expression 'sub-let' used in the section because there is no genuine partnership."

This authority again does not advance the case of the petitioners, because as already held above, it has not been established in the present case that the lease-hold rights had been transferred by Chaman Lal in favour of Madan Lal and the latter's son, with whom he was running business under the name and style of Madan Lal Chaman Lal.

I would, therefore, hold that when Chaman Lal took into business his brother Madan Lal and the latter's son, it could not be said that he had sublet the shop in dispute to them so as to attract the provisions of section 13(2)(ii)(a).

In view of what I have said above, this petition fails and is dismissed. In the circumstances of this case, however, I leave the parties to bear their own costs in this Court as well.

INDER DEV. DUA, J.—I agree.

B.R.T.

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(12) 1966 P.L.R. 466.