

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2782 OF 2014

Kundanmal P. Jain.	]	... Petitioner
Versus		
Kamlaben Babulal Bhat (Since Deceased)	]	
and Ors.	]	... Respondents

Mr. J. S. Kini i/b Mr. Suresh Dubey for Petitioner.
 Mr. P. J. Thorat for Respondent Nos.1[a] and 1[b].

CORAM :- M. S. SONAK, J.
DATE :- JULY 15, 2015

P. C. :-

1. This petition challenges orders dated 20/06/2009 and 15/01/2014 made by the Trial Court and Appeal Court ordering the eviction of the Petitioner from the suit premises. There is no dispute that the Respondent No.1 is a landlord in respect of the suit premises. The landlord instituted R.A.E. & R. Suit No.683/1261 of 2004 before the Trial Court seeking eviction, *inter alia*, of Respondent Nos.2 to 6 (legal representatives of original tenant Vallabhadas) and the Petitioner, who was impleaded in the said suit as Defendant No.7. This suit was instituted on the ground of default in payment of rent, sub-letting without the consent of the landlord and non-user. In the suit, it was alleged that the suit premises have been unlawfully sub-let to the Defendant No.7 i.e. Petitioner herein. The suit was decreed by the Trial Court on 20/06/2009, *inter alia*, on the ground of default in payment of rent and unlawful sub-letting. The Appeal Court, by

Judgment and Order dated 15/01/2014, has dismissed the appeal. Hence the present petition.

2. Mr. J. S. Kini, learned Counsel for Petitioner, submitted that no eviction decree could have been made on the ground of default in the payment of rent, because in the pleading as well as in the evidence, there are admissions that the mandatory notice under Section 15(2) of the Maharashtra Rent Control Act, 1999 ('Rent Act') was served only upon one of the heirs of the original tenant Vallabhdas. Mr. Kini submitted that service upon only one of the legal heirs does not constitute compliance or in any case, substantial compliance with the mandatory provisions contained in Section 15(2) of the Rent Act and in absence of the same, no decree of eviction could have been made upon the said ground.

3. Mr. Kini further submitted that the material on record clearly establishes that the Petitioner was in possession of the suit premises in his capacity as the member of the tenant's family at the time of the tenant's demise. Therefore, in terms of the definition of the expression 'tenant' in Section 7(15)(d) of the Rent Act, the Petitioner was indeed the tenant in respect of the suit premises and that this was not case of unlawful sub-letting.

4. For the aforesaid reasons, Mr. Kini submitted that the impugned orders made by the two Courts are vitiated by jurisdictional error and perversity.

5. Mr. P. J. Thorat, learned Counsel for Respondent No.1-landlord, submitted that it is settled position in law that service of notice under Section 15(2) to even one of the legal representatives of the deceased shall constitute sufficient compliance. In this regard, the reliance was placed upon the decisions in cases of *Karayadathil Kunhimoosa Manjerintha and Another Vs. Valiaparambath M. T. Kalliani (Smt.) and Others*¹, *H. C. Pandey Vs. G. C. Paul*² and *Kanji Manji Vs. The Trustees of the Port of Bombay*³.

6. Mr. Thorat further submitted that in the present case, there was absolutely no material on record in respect of the Petitioner's contention that he was the member of the family of the deceased tenant. On the contrary, Mr. Thorat submitted that there were admissions to the effect that the Petitioner was in no manner related to the family of the deceased tenant. Relying upon the decision in the case of *Kailasbhai Shukaram Tiwari Vs. Jostna Laxmidas Pujara and Another*⁴, Mr. Thorat submitted that even a relative cannot become a member of the tenant merely by choosing to reside with the tenant for the sake of convenience.

7. Having heard the learned Counsel for parties, and perused the material on record, in my Judgment, there is no case made out to interfere with the findings of fact concurrently made by the two Courts. Such findings of fact are neither vitiated by any jurisdictional error nor perversity.

1 1995 Supp (3) Supreme Court Cases 403

2 (1989) 2 Supreme Court Cases 77

3 AIR 1963 Supreme Court 468

4 (2006) 1 Supreme Court Cases 524

8. Insofar as the first contention of Mr. Kini is concerned, the same has been answered against him by the decision of the Hon'ble Apex Court in the cases referred to by Mr. Thorat. In case of *Karayadathil Kunhimoosa Manjerintha and Another Vs. Valiaparambath M. T. Kalliani (Smt.) and Others (supra)*, the Hon'ble Apex Court has held that service of notice upon one of the co-heirs of the tenant is sufficient service for the purposes of Section 106 of the T.P. Act, 1882. To the same effect, is the ruling in the case of *H. C. Pandey Vs. G. C. Paul (supra)*.

9. Apart from the legal issue, in the present case, the landlord, in the plaint, had clearly pleaded that notice was served upon one of the legal heirs i.e. Defendant No.1, who was representing the estate of the deceased tenant. The Defendant Nos.1 to 6, i.e. legal heirs of the deceased tenant, who, though impleaded in the suit for eviction, chose not to file any written statement or contest the said pleading. One of the legal heirs of Defendant No.1 Alpa, daughter of late Chandrakant Trivedi, examined herself in the proceeding and even in such examination, no serious grievance was made in the context of notice under Section 15(2) of the Rent Act. In light of such circumstances, a grievance, at the behest of the Petitioner, whom the landlord claimed, the suit premises were unlawfully sub-let, can hardly be countenanced. The two Courts, therefore, are right in rejecting the submission of the Petitioner on the basis of alleged non-compliance with the provisions of Section 15(2) of the Rent Act.

10. Section 7(15)(d) of the Rent Act, in the context of expression '*tenant*', provides that in relation to any premises, when the tenant dies, whether the death occurred before or after the commencement of this Act, any member of the tenant's family, who, where they are let for residence, is residing with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, shall be the tenant for the purposes of Section 7(15) (d) of the Rent Act. In the present case, there is absolutely no evidence on record to conclude that the Petitioner was the member of the tenant's family. The pleadings in this regard are extremely sketchy and devoid of any details as to the basis upon which such a claim is made. In the course of evidence, the Petitioner has admitted that he has no blood relation with Defendant No.3 and with Shantaben (legal representative of deceased tenant Vallabhadas). The relevant extract from the deposition of the Petitioner would make it clear that the Petitioner, failed completely in establishing any relationship, which was itself very alleged. The Petitioner, in his deposition, has stated that, *"It is true to say that, I have no blood relations with the defendant No.3 and with Shantaben. Witness volunteers that Shantaben was treating me as her son. I do not have anything to show that I was financially helping Shantaben."* The Petitioner further deposed that, *"It is true to say that there is no blood relation between my brother Kantilal and Chandrakant with deceased Shantaben."*

11. The Hon'ble Apex Court, in the case of *Kailasbhai Shukaram Tiwari Vs. Jostna Laxmidas Pujara and Another (supra)*, in

the context of claim of a person that he was member of the tenant's family, has held that it is futile to attempt to lay down a straitjacket formula as to who can be considered to be the member of the family of the tenant, particularly in the absence of definition of "family" in the Act. Having regard to relevant considerations, the question must be decided on the facts and circumstances of each case. Apart from the parents, spouse, brothers, sisters, sons and daughters, if any other relative claims to be a member of tenant's family, some more evidence is necessary to prove that they have always resided together as members of one family over a period of time. The mere fact that a relative has chosen to reside with the tenant for the sake of convenience, will not make him a member of the family of the tenant in the context of rent control legislation.

12. In the light of the aforesaid material on record, as well as the legal position, it is difficult to accept the Petitioners' contention that the findings of fact recorded by two Courts are vitiated by perversity or jurisdictional error. In fact, the Defendant No.3 i.e. Alpa Trivedi who deposed in the matter, has vaguely deposed that the Petitioner, his brother and their spouses used to stay in the suit premises and that her grandmother had kept '*Kantibhai*' (brother of Petitioner) '*as her son*'.

13. The Petitioner, it appears, has not even been consistent with the case with regard to the claim of tenancy. On one hand, it was contended that the Petitioner, being a member of the deceased

tenant's family who was residing with the tenant at the time of the demise, becomes a tenant as defined under Section 7(15) of the Rent Act. In the deposition, however, the Petitioner comes up with yet another case which is evident from the following :-

“.... I say that in or about 3rd August 2000, father of Alpa expired at Borivali and therefore the said Alpa after relinquishing and surrendering all her tenancy right & title acquired by her as surviving legal heir of the deceased Shantaben in respect of the suit premises as per the provision of sec 5(11)(c) of the Bombay Rent Act in our favour left the suit premises. I say that thereafter the said Alpa started residing with her mother, brother & sisters at Borivali and since they were not in possession of suit premises other legal heirs did not claim tenancy of suit premises after the demise of the Shantaben. I say that all the legal heirs requested the landlady to transfer the rent bill of the suit premises in the name of my elder brother, Kantilal P. Jain. I say that as such we have acquired the status of the protected tenant under sec (5)(11)(c) as we were residing jointly in the suit premises alongwith the deceased tenant as her family members at the time of the death and we have continued and are still residing in the suit premises as tenant.”

14. From the aforesaid, it appears that it is also the case of the Petitioner that one of the legal representatives of the deceased tenant

surrendered the tenancy rights in respect of the suit premises in favour of the Petitioner. There can, in my judgment, be no clearer evidence of unlawful sub-tenancy or unlawful assignment of tenancy rights. Thus, on the basis of evidence led by and on behalf of the Petitioner himself, the impugned decree of eviction, *inter alia*, on the grounds of unlawful sub-letting, shall have to be sustained.

15. For the aforesaid reasons, this Writ Petition is dismissed. There shall be no order as to costs.

16. At this stage, Mr. Kini, learned Counsel for Petitioner, seeks a stay on the execution of the decree of eviction for a period of 12 weeks from today. Subject to the Petitioner filing the usual undertaking in this Court within a period of two weeks from today, the eviction decree shall not be executed for a period of 12 weeks from today, as the Petitioner seeks to take recourse against this order before the Hon'ble Apex Court.

17. A copy of such undertaking to be furnished to the learned Counsel for Respondent No.1-landlord.

(M. S. SONAK, J.)