

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8544 OF 2014

Hiralal Manchharam & Sons Pvt. Ltd. & anr. .. Petitioners
vs.
Kamlesh Harnamsingh Chowhan & anr. .. Respondents

Mr. Jaydeep Deo for the Petitioners.
Mr. Vivek Kantawala a/w. Ms Reema Joshi for Respondent No.1.

CORAM : M. S. SONAK, J.
DATE : 21 JULY 2015.

P.C. :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] This petition challenges the orders dated 14 March 2013 and 22 August 2014 made by the Trial Court and the Appeal Court curtailing the petitioners' right to cross-examine the respondent-landlord on the issue whether the landlord is entitled to possession of decree in respect of suit premises.

3] In this Court, the respondent-landlord has instituted R.A.E. Suit No. 495/796 of 2005 seeking eviction of the original tenant and the petitioner, who has been styled as the sub-tenant, *inter alia*, on the ground of unlawful subletting.

4] The original tenant has not filed any written statement. The petitioners herein had filed a written statement and the following defence has been taken at paragraphs 5 and 6.

5. *The Defendants further states that the Plaintiff is not the co-owner of the suit property and thus has misrepresented himself as the co-owner of the suit property and thus committed contempt and perjury of this Hon'ble Court by making false statement. The Defendants states that the Plaintiff has got no right and/or authority to file the present Suit, particularly in view of the fact that there is a litigation pending in the Hon'ble High Court at Allahabad between the Plaintiff and other real co-owners in the said Hon'ble High Court at Allahabad for in the said suit there is an order that the deceased Smt. Chandrakumari (mother of Plaintiff) alongwith Mr. Gangasingh jointly to act as a managers of the suit property.*

6. *The Defendants states that the Plaintiff have misrepresentative himself as the person to collect the rent in respect of the said suit premises. The Defendants states that the admitted and/or undisputed facts and events and the legal proceedings between the parties and the order passed therein from the death of Motisingh Lalsingh upto the date of filing of the present suit.*

5] The issues were framed in this case on 17 June 201, which reads thus:

ISSUES

1. *Does the plaintiff prove that original deceased tenant was found in arrears of rent since from June, 1998 ?*
2. *Does the plaintiff prove that, defendant no. 1 sub-let the portion of suit premises to defendant nos.2 and 3 unlawfully ?*
3. *Whether the plaintiff is entitled for a decree of possession of suit premises as prayed ?*
4. *What order and decree ?*

6] During the course of cross-examination of the respondent-plaintiff, when the petitioners put some questions in the context of ownership, rights of the respondent-plaintiff in respect of the suit premises, the same were objected. The objection was upheld by the Trial Court. The order made by the Trial Court reads thus:

In view of ratio in Harveer Singh- vs. - Shri Kissan Singh Tomar & Ors, 2010(2) RCJ 21 & after hearing Ld. Counsel Shri. D.C. Mehta having gone through law of pleading & ratio Gajanan Laxman Bhalchandra- vs - Rangrao Amrutrao Deshpande & Oths. 1980 BCR 675 defd. no.2 shall restrict his cross-examination to the point of sub-letting only.

7] Learned counsel for the petitioners submitted that in light of pleadings in paragraphs 5 and 6 of the written statement as also issue NO.3, the petitioners were very much entitled to cross-examine the respondent-plaintiff, *inter alia*, on the issue of ownership to the suit premises.

8] On the other hand, Mr. Vivek Kantawala, learned counsel for respondent-plaintiff submitted that a sub-tenant can cross-examine only on the issue of lawfulness or otherwise of the sub-letting. In this regard, Mr. Kantawala has placed reliance upon the decision of Madhya Pradesh High Court in case of ***Harveer Singh Vs. Kishan Singh Tomar and ors.***¹, as also the decision of this Court in case of

1 2020(2) M.P.L.J. 322

Yeshpal J. Parikh vs. Rasiklal Umedchand Parikh².

9] Having heard learned counsel for the parties and perused the record, in my judgment, there is no reason to curtail the cross-examination of the petitioners. This is because, in the present case, the original tenant has not filed any written statement and admitted ownership of the respondent-plaintiff. Further, the petitioners in paragraphs 5 and 6 of the written statement has categorically pleaded that the respondent-plaintiff is not the co-owner in respect of the suit premises and that the respondent-plaintiff has no authority to file the proceeding seeking eviction of the petitioners from the suit premises. Although, the issues are not happily cast, there is an all pervasive issue No.3, which requires the plaintiff to establish that he is entitled to a decree of possession of the suit premises as prayed. In these circumstances, there is no justification curtailing the petitioners' right to cross-examine the respondent-plaintiff on the aspects pleaded in paragraphs 5 and 6 of the written statement.

10] The decision, in case of *Harveer Singh (supra)* is distinguishable. In the said case, the Court found that the

² AIR 1955 Bombay 318

defendant/appellant had not denied the ownership of the plaintiff. On the contrary, there was an admission with regard to the said aspect. It is in these circumstances, that the Court held that the sub-tenant is entitled to oppose the suit only on the grounds of sub-tenancy. This Court, in case of *Yeshpal J. Parikh (supra)*, has laid down the general proposition that the Court has and should have a discretion in controlling the cross-examination.

11] For the aforesaid reasons, the impugned orders are set aside. It is directed that there shall be no curtailment upon the right of the petitioners to cross-examine the respondent-plaintiff on the aspects pleaded in paragraphs 5 and 6 of the written statement.

12] It is, however, clarified that should the petitioners abuse the liberty granted by this order and indulge into cross-examination which is unduly prolix or irrelevant, then the Trial Court would be at liberty to make appropriate orders. Further, the Trial Court is directed to dispose of the R.A.E. Suit NO. 495/ 796 of 2005 as expeditiously as possible and in any case within a period of one year from today.

13] All parties to appear before the Trial Court on 1 August 2015, at 11.00 a.m. and produce an authenticated copy of this order.

14] Rule is made absolute to the aforesaid extent. There shall, however, be no order as to costs.

15] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)

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