

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10460 OF 2015

M/s. Brijbihari Dying & Printing Works .. Petitioner
VS.
Brijwasi B. R. Goyal – since deceased
Mahendra Goyal & Anr. .. Respondents

Ms Anjali N. Helekar for Petitioner.
Mr. Mahendra Goyal Respondent No.2 present in person.

CORAM : M. S. SONAK, J.
DATE: 20 OCTOBER 2015

P.C. :-

1] **Not on board. Upon production, taken on board.**

2] This Petition challenges order dated 2 September 2015 made by the Appeal Court permitting Mahendra Goyal and Prateek Goyal to bring themselves on record in Appeal No. 72 of 2014.

3] RAE Suit No. 304/522 of 2000 was instituted by Brijwasi Goyal against the Petitioner herein. The same was dismissed. Thereafter, Appeal No. 72 of 2014 was instituted by Brijwasi Goyal. During the pendency of Appeal, Brijwasi Goyal has expired. Therefore, Mahendra Goyal and Prateek Goyal, who are the son and grand son respectively of late Brijwasi Goyal applied to bring themselves on record and continue with the appeal. This application

was made on the basis of gift deed executed in the year 2004, in terms whereof, Mahendra Goyal and Prateek Goyal claimed that the suit premises have been gifted to them. By the impugned order dated 2 September 2015, the Appeal Court has permitted Mahendra Goyal and Prateek Goyal to come on record and pursue Appeal No. 72 of 2014.

4] Ms Helekar, the learned counsel for the Petitioner has submitted that the so-called gift deed was executed in the year 2004 when the suit was pending. Mahendra Goyal has appeared in the suit as power of attorney of Brijwasi Goyal. There was no disclosure about the gift deed. The gift deed was not even produced when leave was applied to come on record. Other legal heirs of late Brijwasi Goyal have also not been brought on record. For all these reasons, Ms Helekar submits that the impugned order could not have been made and there is failure to exercise jurisdiction or in any case the impugned order made is in excess of jurisdiction.

5] Having heard the learned counsel for the Petitioner, as also Mr. Mahendra Goyal, who appears in person, in my judgment, no case is made out to interfere with the impugned order. It is settled position that even one of the co-owners can institute or pursue a suit for eviction. Suit or appeal for eviction can be instituted by

landlord as defined under the relevant Rent Control Legislation. Such a person need not always be the owner of the suit premises. The issue as to whether Mahendra Goyal and Prateek Goyal are the exclusive owners of the suit premises is not an issue which is required to be decided in Appeal No. 72 of 2014. In any case, the tenant cannot object to the continuation of the Appeal by Mahendra Goyal and Prateek Goyal on the ground that other legal heirs of Brijwasi Goyal have not been brought on record. The issue as to whether Mahendra Goyal and Prateek Goyal can claim on the basis of gift deed or not is also not strictly speaking relevant for the purposes of effective decision in the Appeal. There is no dispute that factually Mahendra Goyal and Prateek Goyal are the son and grand-son of deceased Brijwasi Goyal. Adjudication on merits therefore cannot be denied.

6] In any case, the Appeal Court has kept the issues open.

7] There is no jurisdictional error in making of the impugned order. This petition is therefore dismissed.

(M. S. SONAK, J.)