

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 3383 OF 2009

Prabhakar N. Nirgudkar (deceased)
by Lrs.- Vijaya Prabhakar Nirgudkar
And Ors.

...Petitioners

Versus

Mohan Shankar Bhokare
And Anr.

...Respondents

....

Mr.Rahul P. Walvekar, Advocate for the Petitioners.

....

CORAM : R. G. KETKAR, J.

DATE : 7th OCTOBER, 2016

P.C.

1. Not on board. At the request of Mr.Walvekar, taken up for final hearing.
2. Heard Mr.Rahul Walvekar, learned Counsel for the petitioners, at length.
3. By this Petition under Article 227 of the Constitution of India, the petitioners hereinafter referred to as the 'plaintiffs' have challenged the judgment and order dated 3.10.2008 passed by learned Joint Civil Judge, Junior Division, Kolhapur below Exhibit-72 in Regular Civil Suit No.630/2005. By that order, the learned trial Judge allowed the application made by respondent No.2, hereinafter referred to as the 'applicant', made under Order I Rule 10 of C.P.C. and directed the plaintiffs to implead the

applicant as a defendant in the suit.

4. By order dated 6.4.2009, this Court issued notice before admission returnable in two weeks. By order dated 12.8.2009, fresh notice was issued to the respondent returnable on 25.9.2009. Petition was thereafter admitted by issuing Rule on 4.3.2010. Rule on interim relief was made returnable on 21.4.2010. Till returnable date, ad-interim order in terms of prayer clause (C) was granted. Office remark shows that notice of rule is duly served by bailiff on respondent No.2. However, none appears on her behalf.

5. The plaintiffs have instituted suit against respondent No.1 hereinafter referred to as the 'defendant' for recovery of possession of room No.1 admeasuring 126 sq. ft. in City Survey No.418, 'E' Ward, Shahupuri, Taluka – Karveer, District – Kolhapur (for short, 'suit property'). During pendency of the suit, respondent No.2 filed application under Order I Rule 10 of C.P.C. on the ground that she is sister of plaintiff No.1. The suit property is the ancestral property of Nirgudkar family. According to her, after partition the suit property was distributed between plaintiff No.1 and parents of the applicant by allotting half share to them. Accordingly order was passed in Special Civil Suit NO.39/1963. Father of the applicant Narayan Nirgudkar died in 1963 and her mother died in 1985. The

applicant further came with the case that she is entitled to 1/5th share in the suit property. She also contended that she has instituted Special Civil Suit No.4/2003 against the plaintiff and said suit is pending. She apprehends that the plaintiff will grab her share also and, accordingly she made application under Order I Rule 10 of C.P.C. for impleading her as a party. By the impugned order, the learned trial Judge has allowed the application. It is against this order, the plaintiffs have instituted present Petition.

6. In support of this Petition, Mr.Walvekar submitted that the suit between the plaintiffs and the defendant is for eviction. The Court exercising powers under the Rent Control Act cannot decide *inter se* dispute between the co-owners. The Court under the Rent Control Act cannot decide *inter se* dispute as regards title between the parties. He submitted that the applicant is neither a necessary nor a property party.

7. I have considered the submissions advanced by Mr.Walvekar. I have also perused the material on record. The moot question is whether in a suit for eviction of a tenant, the applicant is either a necessary or a proper party. It is settled position in law that in eviction proceedings, the Rent Court is not expected to decide *inter se* dispute between the parties on the issue of title. In the case of **Jainuddin Abdul Rehman Shaikh v. Sitaram**

Damodhar Varvadkar and others, 1980 Bom. R.C. 276, the learned Single Judge of this Court has referred to law on the subject and in particular paragraph-13 has observed thus :

“13. Take for instance, the tenant is damaging the suit premises, causing waste to it, sub-letting the premises or demolishing the same and without the permission of the landlord altering the structure or constructing a permanent structure and if a co-owner files a suit on the grounds mentioned above against the tenant for eviction, how the co-owner can oppose such a suit? If one of the co-owners is trying to remove the encumbrance on the tenanted premises within the ambit of the provisions of the Rent Act, then the decree for eviction in any way will not be inconsistent with, or contrary to the interest of the co-owners. In such a suit if a co-owner is added as a party, no relief can be asked against him. If the co-owner obtains possession in pursuance of the decree passed in his favour by the competent Court, his possession will be deemed to be the possession on behalf of all the co-owners. And if the co-owner is not happy with possession of the other co-owners, his remedy is only to file a separate suit for petition and possession and get his share in a proper proceedings demarcated. Shri Rane has no disputed that the co-owners can file a suit for bona fide requirement for his use and occupation of the suit premises for himself or for any member of his family. However his grievance is that if a co-owner

opposes such suit, no decree for exclusive possession in favour of one of the co-owners can be passed. It is rather not possible to accept this submission of Shri Rane. Because in such a suit filed by one of the co-owners for eviction, it cannot be detrimental to the interest of the other co-owners. Take a case where the tenant does not pay arrears of rent and a suit is filed for recovery of arrears of rent making the co-owners as party defendant, can he oppose the said suit on the round that the rent should not be paid to the co-owners. Take a case, where a suit for eviction is opposed on the ground of causing damage to the building let out to a tenant, or causing waste of some kind, can the co-owners join the hands with the tenant to oppose the suit contending that the decree should not be passed in favour of co-owners. It will be dangerous proposition to allow the co-owners to oppose such a suit for a eviction by another co-owners or any grounds whatsoever, joining the hands with recalcitrant tenant and refuse to give consent for institution of the suit. In these circumstances and having regard to the observations made by the Supreme Court in the two cases referred to above, the contention of Shri Rane cannot be accepted.”

8. The decision of learned Single Judge was quoted with approval by another learned Single Judge in the case of ***Rahimtulla Abdul Rahiman Nakib v. Chandrakant Anant Moog and others, AIR 1982 BOMBAY 282.*** The decision in ***Jainuddin's case (supra)*** was also approved by

Division Bench of this Court in **Hiralal Vithaldas Gujarathi and others v. Namdeo Mahadu Jadhav, 1983(2) Bom.C.R. 71.**

9. Apart from that, the learned Single Judge in the case of **Ms.V. Prabha & Co. Pvt. Ltd. & Anr. v. Kuljit Singh Chadha & Anr., 2007(2) ALL MR 352** has also followed the decision of **Jainuddin's** case (*supra*). That apart, if one of the co-owners objects to filing of the Suit by another co-owner indirectly the rights of the co-owners who intend to institute the Suit or already instituted the Suit will be curtailed. In other words, such co-owners will not be entitled to exercise right incidental to the right of ownership of the property. In such situation, as observed by the learned Single Judge in **Jainuddin's case** (*supra*), remedy of other co-owner/s is to institute Suit for partition and separate possession. Thus, as far as this Court is concerned, this issue is no longer *res integra*. In view thereof, in my opinion, the learned trial Judge was not justified in allowing the application. Hence impugned order is set aside and application Exhibit-72 filed by respondent No.2 is dismissed. Rule is made absolute in aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)