

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4023/2016
IN
REVISION APPLICATION NO.123/2015
IN
EXHIBIT NO.82/2015
IN
RAE SUIT NO.329/712/2004

Mr. Safarali Ramzanali Mardhani

... Petitioner

V/s.

Ramkishore Rambhajan Yadav & Ors.

... Respondents

Mr. J. J. Tahkkar for the petitioner

Mr. Chetan Yadav i/b. R. V. & Co. for the Respondent Nos.2 and 3.

CORAM: K.K. TATED, J.
DATED : APRIL 26, 2016

PC. :

1. Heard the learned counsel for the parties. By this petition under Article 227 of the Constitution of India, the petitioner defendant challenges the order dated 21.03.2016 passed by the Appellate Bench of the Small Causes Court in revision application No.123/2015 confirming the order dated 26.08.2015 passed by the trial court below exhibit 82 in RAE Suit No.329/712/2004 by which the trial court dismissed the application made by the defendant directing the respondent plaintiff to bring on record the legal heirs of the landlord.

2. The learned counsel for the defendant submits that both the courts below erred in coming to the conclusion that it is not necessary to bring on record all the legal heirs of deceased landlord. He further submits that both the courts below erred in coming to the conclusion that even one of the co-owners can proceed with the matter. He submits that both the courts below failed to appreciate that if all the legal heirs are not brought on record, the suit stands abated. He submits that in the present proceedings, the respondent plaintiff failed to bring on record the daughters of deceased plaintiff No.1 as legal heirs. He submits that in view of the amended provisions of Hindu Succession Act, even the daughters have full right in ancestral property. He further submits that both the courts failed to consider the provisions of Order XXII Rule 3 of the Code of Civil Procedure, 1908. In support of this contention the learned counsel for the plaintiff relies on the judgment of the Apex Court in the matter of ***Smt. Gema Coutinho Rodrigues Vs. Bricio Francisco Pereira*** 1993(2) SCC 620 (paragraph 5 and 6). The learned counsel for the petitioner also relies on the judgment of the Division Bench of this court in the matter of ***Smt. Sarojdevi & Ors. Vs. Charushil & Ors.*** AIR 1986 Bombay 315. On the basis of this submission and the authorities, the learned counsel for the petitioner submits that the impugned order passed by both the courts below on exhibit 82 is liable to be set aside with direction to the plaintiff to bring on record all the legal heirs of deceased plaintiff No.1. He submits that, if the application is not allowed, irreparable loss will be caused to the petitioner.

3. On the other hand, the learned counsel for the respondent - plaintiff vehemently opposed the Writ Petition. He submits that both the courts below concurrently held that the application filed by the defendant, as it is, not maintainable. He further submits that both the courts concurrently held that even one of the co-owners can proceed with the matter and/or file a suit against the tenant for eviction. In support of this contention, the learned counsel for the respondent relies on the judgment of the Apex Court in the matter of *Dhannalal Vs. Kalwatibai and Ors.* 2002(6) SCC 16 (paragraph 16 and 17), *Mohinder Prasad Jain Vs. Manohar Lal Jain* 2006(2) SCC 724 (paragraph 10 and 11) and also unreported judgment of Nagpur Bench of this court (Coram : R. M. Savant, J.) dated 12.08.2011 in Writ Petition No.1933/2011 in the matter of *Ramsukh Mishrilal Jadiya & Ors. Vs. Hangamabai Jawaharmal Jain & Ors.* On the basis of this submission and the authorities cited above, the learned counsel for the respondent plaintiff submits that there is no substance in the Writ Petition and same is liable to be dismissed with costs.

4. Heard both sides at length. It is to be noted that, in the present proceedings, the respondent plaintiff filed RAD Suit No.329/712/2004 in the court of Court of Small Causes Mumbai for vacant and peaceful possession of the suit premises i.e. plot No.113 (Old No.43), Dr. Ambedkar Road, Bandra (W), Mumbai – 400 050 and for other reliefs. During pendency of the suit, plaintiff No.1 Ramkishor Yadav expired. Thereafter, plaintiff Nos.2 to 4 continued the suit as legal heir of deceased plaintiff No.1 as well as co-owner of the suit premises. In that proceedings the defendant made an application below exhibit 82

dated 15.06.2015 which reads thus:

“Application of the defendant for bringing all the legal heirs on record of Shri Ramksihor R. Yadav.

MAY IT PLEASE YOUR LORDSHIP :

1. *The defendant states that Ramkishore Rambhajan Yadav expired and all the legal heirs of the deceased are not brought on record of the court proceedings.*

2. *It is, therefore, humbly prayed that necessary orders be passed in the matter for bringing all the legal heirs of the deceased on record.*

3. *.....”*

5. Bare reading of the application shows that the defendant has failed and neglected to show which legal heirs was not brought on record by the plaintiff. This shows that the defendant tenant made application below exhibit 82 for prolonging the litigation.

6. It is to be noted that, both the decisions in the matter of Smt. Gema Rodrigues (supra) and Smt. Sarojdevi (supra) are not applicable in the facts and circumstances of the present case. In both these matters, the suit was under the Specific Relief Act.

7. It is to be noted that, even a co-owner can file a suit for eviction against a tenant without joining other co-owner. The Apex Court in the matter of Mohinder Prasad Jain (supra) held that the suit instituted by a co-owner is maintainable in law. Paragraph 10 AND 11 of the said judgment reads thus:

“10. This question now stands concluded by a decision of this Court in India Umbrella Manufacturing Co. and Ors. v. Bhagabandei Agarwalla (Dead) by Lrs. Savitri Agarwalla (Smt.) and Ors. AIR 2004 (3) SCC 178 wherein this Court opined:

6. Having heard the learned Counsel for the parties we are satisfied that the appeals are liable to be dismissed. It is well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. (See *Sri Ram Pasricha v. Jagannath* 1976 (4) SCC 184 and *Dhannalal v. Kalawatibai* 2002 (6) SCC 16. This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In the present case, the suit was filed by both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so as to prejudice the other co-owner. The suit once filed, the rights of the parties stand crystallised on the date of the suit and the entitlement of the co-owners to seek ejectment must be adjudged by reference to the date of institution of the suit; the only exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the tenant comes to an end by act of parties or by operation of law.

11. A suit filed by a co-owner, thus, is maintainable in law. It is not necessary for the co-owner to show before initiating the eviction proceeding before the Rent Controller that he had taken option or consent of the other co-owners. However, in the event, a co-owner objects thereto, the same may be a relevant fact. In the instant case, nothing has been brought on record to show that the co-owners of the respondent had objected to eviction proceedings initiated by the respondent herein. The submission of the learned Counsel for the appellant to the effect that before initiating the proceedings, the appellant was required to show that he had experience in running the business in Ayurvedic medicine, has to be stated to be rejected. There is no law which provides for such a pre-condition. It may be

so where a licence is required for running a business, a statute may prescribe certain qualifications or pre-conditions without fulfilment whereof the landlord may not be able to start a business, but for running a wholesale business in Ayurvedic medicine, no qualification is prescribed. Experience in the business is not a pre-condition under any statute. Even no experience therefore may be necessary. If the respondent has proved his bona fide requirement to evict the appellant herein for his own purpose, this Court may not, unless an appropriate case is made out, disturb the finding of fact arrived at by the Appellate Authority and affirmed by the High Court.”

8. The Apex Court in the matter of DhanNalal (supra) held that one of the co-owners can alone and in his own right can institute a suit for ejectment of a tenant. Paragraph 16 and 17 of the said judgment reads thus:

“16. It is well settled by at least three decision of this Court, namely, Sri Ram Pasricha v. Jagannath and Ors. 1976 (4) SCC 184, Kanta Goel v. B.P. Pathak 1977 (2) SCC 814 and Pal Singh v. Sunder Singh (dead) by Lrs. and Ors. 1989 (1) SCC 444 that one of the co-owners can alone and in his own right file a suit for ejectment of tenant and it is no defence open to tenant of question the maintainability of the suit on the ground that other co-owners were not joined as parties to the suit. When the property forming subject matter of eviction proceedings is owned by several owners, every co- owner owns every part and every bit of the joint property along with others and it cannot be said that he is only a part owner or a fractional owner of the property so long as the property has not been partitioned. He can alone maintain a suit for eviction of tenant without joining the other co-owners if such other co-owners do not object. In Shri Ram Pasricha's case (supra) reliance was placed by the tenant on the English rule that if two or more landlord institute a suit for possession on the ground that a dwelling whose is required for occupation of one of them as a residence the suit would fail; the requirement must be of all the landlords. The Court noted that the English rule was not followed by the High Courts of Calcutta and Gujarat which High Court have

respectfully dissented from the rule of English law. This Court held that a decree could be passed in favour of the plaintiff though he was not the absolute and full owner of the premises because he required the premises for his own use and also satisfied the requirement of being "if he is the owner", the expression as employed by Section 13(1)(f) of W.B. Premises Tenancy Act, 1956.

17. It follows that a widow, who is a co-owner and landlady of the premises can in her own right initiate proceedings for eviction under Section 23-A(b), as analyzed hereinbefore, without joining other co- owners/co-landlords as party to the proceedings if they do not object to the initiation of proceedings by such landlady, because she is the owner of the property and requires the tenanted accommodation for the purpose of continuing or starting the business of any of her major sons. The major sons though co-owners/co-landlords may not have been joined as party to the proceedings but it would not adversely effect the maintainability of the proceedings. It would also not make any difference if they are also joined as party to the proceedings. Their presence in the proceedings is suggestive of their concurrence with the widow landlady maintaining the proceedings in her own right. The presence of such co-landlords, as co-plaintiffs or co- applicants, as are not classified landlords as defined in Section 23-J of the Act does not alter the nature of claim preferred by the widow landlady and therefore does not take the proceedings out of them suing alone without joining a widow co-landlord as party to the proceedings may institute a suit before a Civil Court under Section of the Act pleading that the non-residential premises were required bona fide by them or any of them for the purpose of continuing or starting their own or his own business as they would be owners thereof and the requirement will be theirs. It would not make any material difference if the widow co-landlord was joined as party to the proceedings either as plaintiff or as co-applicant because the case pleaded in the plaint would squarely fall within the ambit of Clause (f) Sub-section (1) of Section of the Act."

9. Considering these two authorities of the Apex Court, this court (Coram : R. M. Savant, J.) in the matter of Ramsukh Mishrilal Jadiya &

Ors. also held that it is not necessary to bring all the legal heirs on record of a landlord. One of the co-owners can proceed with the matter if he is already on record. In the present proceedings, initially the suit was filed by plaintiff Nos.2 to 4 along with plaintiff No.1 for eviction. During pendency of the suit, plaintiff No.1 expired. Therefore, the view taken by both the courts below is according to law.

10. Considering these facts and the law declared by the Apex Court as stated hereinabove, I do not find any substance in the Writ Petition. Hence, same stands dismissed with cost of Rs.7500/-. Cost shall either be paid to the plaintiff or deposited in the trial court within six weeks from today.

11. If cost is deposited in the trial court, liberty granted to the plaintiff to withdraw the same without furnishing any security.

12. Considering the facts and circumstances of the present case, hearing of the RAE Suit No.329/712/2004 is expedited.

(K.K. TATED, J.)