

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 11554 OF 2016

Mr. Pradeep Bhalchandra Keer	...Petitioner
<i>Versus</i>	
Commissioner Of Police For Greater Mumbai And Ors.	...Respondents

....

Mr.Chandrakant N. Chavan, Advocate for the Petitioner.
Mr. A.M. Khandekar i/b. M/s. Tamhane & Co., Advocate for
Respondent No.4.
Ms. M.S. Bane, Panel Counsel for Respondent Nos.1 & 2-State.

....

CORAM : R. G. KETKAR, J.

DATE : 05th OCTOBER, 2016

P.C.

1. Not on board. At the request of Mr.Chavan, taken up for admission.
2. Heard Mr. C.N. Chavan, learned Counsel for the petitioner, Ms. M.S. Bane, learned AG.P. for respondents No.1 & 2 and Mr.A.M. Khandekar, learned Counsel for respondent No.4, at length. Mr.Chavan orally applies for leave to delete respondent No.3 from this Petition on the ground that respondent No.4 is the only contesting party. Leave as prayed for is granted. Amendment shall be carried out forthwith.
3. Rule. Learned Counsel for respective respondents waive service. At the request and by consent of parties, Rule

is made returnable forthwith and Petition is taken up for final hearing.

4. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'plaintiff' has challenged the judgment and order dated 28.7.2016 passed by the learned Judge, presiding over Court Room No.14 of the Court of Small Causes at Mumbai below Exhibit-16 in R.A.E. Suit No.258/2015. By that order, the learned trial Judge allowed the application made by respondent No.4 under Order I Rule 10 of C.P.C. and directed the plaintiff to implead respondent No.4 as defendant No.4.

5. In support of this Petition, Mr.Chavan submitted that the plaintiff has instituted suit against respondents No.1 to 3, hereinafter referred to as the 'defendants', for recovery of possession of property in dispute on the ground that defendants No.1 and 2 have unlawfully sub-let the suit premises to defendant No.3; plaintiff requires the suit premises reasonably and bonafide, amongst other grounds.

6. Pending the suit, respondent No.4 filed application on the ground that she is sister of the plaintiff and is one of the co-owners. She has 26.24% share and as against this the plaintiff has share to the extent of 17.08%. The plaintiff has instituted suit without her knowledge and consent. The plaintiff is also accepting surrender of tenancy from the

tenants which is contrary to the agreed terms of consent terms filed in Suit No.807/1947 filed on the Original Side in this Court. According to her, the shares of the plaintiff and respondent No.4 are crystallized by the consent terms and, therefore, she being a necessary party is required to be impleaded as a party in the suit.

7. Mr. Chavan submitted that the learned trial Judge committed serious error in allowing the application. He submitted that the suit for eviction of a tenant can be instituted by one of the co-owner. He submitted that in a suit for eviction one of the co-owners is not a necessary party. He relied upon following decisions to contend that the learned trial Judge was not justified in allowing the application.

1. **Gangubai Baban Kadam and another v. Dr. Vidya Vijay Joshi, 2015(2) Mh.L.J.444;**
2. **Laxman Prasad Kanchan v. Kranti Kumar Kanchan and another, 1992(2) All India R.C.J. 360;**
3. **Jainuddin Abdul Rehman Shaikh v. Sitaram Damodhar Varvadkar and others, 1980 Bom. R.C. 276;**
4. **Kasthuri Radhakrishnan and others v. M. Chinniyan and another, (2016) 3 SCC 296.**

8. On the other hand, Mr.Khandekar supported the impugned order. He also relied upon the order dated 22.2.2016 passed by this Court in Writ Petition [St.]

No.3784/2016 [Pradeep Bhalchandra Keer v. Commissioner of Police for Greater Mumbai and others] and in particular paragraph-5 thereof. He submitted that the learned Single Judge of this Court considered the decision of Apex Court in the case of **Shri Ram Pasricha v. Jagannath and others, (1976) 4 SCC 184**. He, therefore, submitted that no case is made out for interfering with the impugned order more so when it is purely a discretionary order.

9. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. Respondent No.4 has not disputed that the plaintiff has 17.08% share. Mr. Chavan submitted that the plaintiff is disputing this statement. It is, however, material to note that even respondent No.4 does not dispute that the plaintiff is one of the co-owners. 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** (supra), 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 ground 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.”

10. 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.***

11. 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. It is not in dispute that though the decree of partition is passed, as of today the partition by metes and bounds is not effected. In view thereof, the impugned order is liable to be set aside thereby dismissing the application at Exhibit-16. Hence, the following order :

- [i] Impugned judgment and order dated 28.7.2016 passed by the learned Judge, presiding over Court Room No.14 of the Court of Small Causes at Mumbai below Exhibit-16 in R.A.E. Suit No.258/2015 is set aside. Application Exhibit-16 stands dismissed.
- [ii] Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)