

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.4654 of 2015

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful petitioners/defendants 1 and 2 is directed against the order dated 22.07.2015 of the learned I Senior Civil Judge, City Civil Court, at Hyderabad passed in I.A.no.2126 of 2014 in O.S.no.1620 of 2013 filed by the said petitioners/defendants under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 requesting to implead the proposed parties, viz., (1) A.P. Wakf Board ('the Wakf Board', for short); and (2) Princess Durrai Shawar Technical Waqf ('the Waqf', for short) as party defendants 3 and 4 in the suit filed by the 1st respondent/plaintiff for eviction of the petitioners/ defendants 1 and 2 from the plaint schedule premises.

2. I have heard the submissions of the learned senior counsel appearing for both the parties. I have perused the material record. The parties in this revision shall hereinafter be referred to as 'the plaintiff', 'the defendants' and 'the proposed defendants' for convenience and clarity.

3. To begin with, it is necessary to note that the plaintiff brought the suit against the defendants 1 and 2 for eviction and that the defendants 1 and 2 are resisting the said suit. According to the plaintiff and the admitted facts, the plaintiff is a leaseholder of premises bearing no.4-3-548/1, Boggulakunta of Hyderabad with powers to sub lease the property. The plaintiff had admittedly sublet the present plaint schedule property to the defendants 1 and 2. There was also a lease deed dated 29.05.2002 for a term of three years. Further, while doing business in shop no.15, the defendants had also obtained on lease mulgies bearing no.15/A and 54. Thus, the defendants are the tenants in respect of shop nos.15, 15A and 54, i.e., the plaint schedule property. According to the plaintiff, the monthly rent as enhanced from 01.09.2012 is Rs.33,385/-. However, according to the defendants, the monthly rent is Rs.27,965/-. Be that as it may. The proposed defendant no.4

is the original lessor/original owner and it had originally leased out their property to the plaintiff herein with powers to sublease the property. In the said suit of the plaintiff, the defendants 1 and 2 who are the tenants of the plaintiff in the plaint schedule property filed the aforementioned application for impleadment of the 3rd defendant-wakf Board and also the 4th defendant-Princess Durru Shehwar Education Waqf, the original lessor, as party defendants 3 and 4. The said application was resisted by the plaintiff. On merits and by the order impugned in the revision, the trial Court had dismissed the petition of the defendants. Therefore, the defendants 1 and 2 are before this Court.

4. The case of the defendants in support of their request for impleadment of the said proposed defendants as party defendants 3 and 4 to the suit of the plaintiff, in brief, is as under:

The lease of the plaintiff with the original lessor had expired on 05.02.2012. The original lessor/original owner (proposed defendant no. 4) had issued a legal notice to the plaintiff terminating the tenancy of the plaintiff and seeking eviction of the plaintiff from the property, which was leased out to the plaintiff by the proposed 3rd defendant. Since the original lease of the plaintiff with the original lessor is not satisfactory, there is no relationship of lessor and lessee between the plaintiff and the defendants 1 and 2. The plaintiff did not renew the lease of the defendants, which had expired on 15.08.2012. The proposed 4th defendant made the defendants to enter into a lease agreement on 01.10.2013; and since then, the defendants have become direct lessees under the original owner, i.e., the proposed 4th defendant. In fact, the plaintiff had given oral consent to enter into a lease agreement with the proposed defendant no.4 directly, who is the original owner. The plaint schedule property is a Wakf property and the Wakf Board and the Waqf, i.e., the proposed defendants 3 and 4 are necessary and proper parties to the suit. But the plaintiff did not implead them in the suit. Hence, the present petition is filed by the defendants 1 and 2 requesting for impleadment of the original lessee/the original owner and the Wakf Board, i.e., the proposed defendants 3 and 4 as party defendants 3 and 4 to the suit.

5. On the other hand, the case of the plaintiff, which is relevant for consideration in this revision, in brief, is this:

The plaintiff is a leaseholder of certain property with powers to sublease the property. The plaintiff had sub-let the instant suit property to the defendants 1 and 2. Thus, the defendants 1 and 2 had obtained the present plaint schedule property on lease from the plaintiff. The total monthly rent payable as stated in the plaint was Rs.27,965/-. Thus, the plaintiff is the landlord and the defendants 1 and 2 are the tenants. The monthly rent was enhanced from 01.09.2012 to Rs.33,385/- The said rent is exclusive of electricity and water charges and service tax. The total deposit made by the defendants with the plaintiff is Rs.9,75,000/- and it is an interest free deposit refundable to them on their vacating the property. On the various grounds mentioned in the plaint, the suit was brought for eviction against the defendants 1 and 2. The original owner/original lessor of the plaintiff has nothing to do with the jural relationship of landlord and tenant between the plaintiff on one hand and the defendants 1 and 2 on the other. The allegation that the plaintiff had consented for the defendants entering into a lease with the proposed 4th defendant is false. The defendants 1 and 2 have no right to dispute the relationship of landlord and tenant between the plaintiff and the defendants 1 and 2. They are estopped under facts and law. At no point of time, the possession of the property was taken over from the plaintiff by the proposed 3rd defendant. The proposed defendants 3 and 4 are not necessary and proper parties to the present suit. The defendants 1 and 2 are squatting on the property without paying the rents. Hence, the petition may be dismissed.

6. At the hearing, the learned counsel for both the sides had advanced arguments in line with the respective pleadings. In view of the contentions of the parties, it is apt to refer to Section 116 of the Indian Evidence Act, which reads as under:

“116. Estoppel of tenant; and of licensee of person in possession. – No tenant of immovable property, or person claiming through such tenant, shall, during the

continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.”

The defendants 1 and 2, who are the sub-tenants and who are inducted into the premises by the plaintiff/tenant are claiming that after the tenancy of the plaintiff/tenant was terminated by the original lessor/original owner, the defendants 1 and 2 had directly entered into the lease agreement with the original owner/original lessor. Therefore, they are contending that since they have become the tenants directly under the original owner/original lessor, the plaintiff is no longer their lessor/landlord and that there is no jural relationship between the plaintiff on one hand and the defendants 1 and 2 on the other. However, the plaintiff contends that the defendants 1 and 2 are estopped from denying the jural relationship with the plaintiff and that their plea of absence of jural relationship of landlord and tenant between the plaintiff on one hand and the defendants 1 and 2 on the other is untenable under facts and in law.

7. The following facts and propositions emerge from the pleadings and the submissions:

Firstly, the plaintiff/tenant in relation to the defendants/sub-tenants is a landlord and the defendants/sub-tenants are his tenants. **Secondly**, in spite of the tenancy of the plaintiff having come to an end under the provisions of the Transfer of Property Act, the plaintiff/tenant does not cease to be a tenant of the original lessor/original owner and continues to hold that status unless and until a decree for eviction has been passed against him in accordance with law. In spite of the termination of tenancy by contract or under the general law, the plaintiff/tenant continues to be a tenant of the original lessor and is liable to pay rent. Therefore, it can safely be concluded *prima facie* that the plaintiff/tenant is in relation to the defendants/sub-tenants is a landlord, and the sub-tenants/defendants are tenants in relation to the tenant/plaintiff, who has inducted them in the suit schedule property. In spite of the plaintiff's tenancy coming to an end, either under the provisions of the Transfer of Property Act or by the terms of the

Contract, the plaintiff does not cease to be a tenant and continues to hold such status until and unless a decree for eviction is passed against him by a competent civil Court or a Forum. The plaintiff/tenant cannot be evicted by his original lessor unless a ground for eviction under the relevant provisions of law is made out. The questions as to whether the Plaintiff's/tenant's tenancy is validly terminated and whether he is liable for eviction in the suit originally filed by his lessor (original owner) have to be determined in the suit between the said parties. In short, so far as the defendants/ sub-tenants are concerned, the title of the plaintiff/tenant will not come to an end till the passing of a decree for eviction against him in the suit filed against him by the original lessor. Even though the original lessor had instituted the suit for eviction, the tenant/plaintiff herein has a right to contest. The suit may or may not be decreed. Therefore, the defendants/sub-tenants who are the tenants of the plaintiff herein must discharge their statutory obligation to put their landlord, i.e., the plaintiff in possession of the premises in view of his entitlement to hold the tenancy until his own right comes to an end by a decree in a suit for eviction filed against him by the original lessor. Further, the plaintiff/tenant has his own statutory obligations to put his landlord/original lessor in possession of the tenanted premises on his entitlement to hold the tenancy premises coming to an end, pursuant to eviction decree in the eviction suit becoming final. The present case is not a case where the original owner/original lessor is armed with the legal process for eviction, which cannot be resisted by the defendants 1 and 2/subtenants who are the tenants of the plaintiff herein. Therefore, the attornment pleaded by the defendants/sub-tenants is not under compulsion. Therefore, neither the plea of mere voluntary attornment urged by the defendants/sub-tenants nor the plea of mere institution of suit for eviction against the plaintiff by the original owner/original lessor is of any avail to the defendants herein. The views of this Court are reinforced by the ratio in the decision in **Vashu Deo v. Bal Kishan**^[1]. For all the reasons afore said and keeping in view the scope of the suit, this Court holds that in a suit by the plaintiff/tenant against his sub-tenants/defendants, the original owner/original lessor is not a necessary

party. The settled legal position may be stated as follows: "A 'necessary party' is a person, who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a 'necessary party' is not impleaded, the suit itself is liable to be dismissed. A 'proper party' is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for eviction." As a sequel to the discussion coupled with reasons it must be held that the presence of the proposed parties is not necessary in order to enable the trial Court to effectively and completely adjudicate upon and settle all the questions involved in the instant suit for eviction by the plaintiff/landlord against the defendants/tenants.

8. In view of the detailed discussion supra and the legal position, this Court finds that there are no valid and sufficient grounds made out by the defendants 1 and 2 for considering their request for impleadment of proposed defendants 3 and 4 as party defendants to the suit.

9. Viewed thus, this Court finds that the Court below is justified in passing the order impugned and that the revision is devoid of merit and is liable to be dismissed.

10. In the result, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

27th June, 2016
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[\[1\]](#) (2002) 2 Supreme Court Cases 50