

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 541 of 2014**

- Bhagwan Das Modi S/o Late Dwarika Das Modi, Aged About 62 Years R/o Main Road, Korba District Korba Chhattisgarh.....Plaintiff

---- Petitioner**Versus**

1.A. Shrimati Laxmin Bai, wd/o Pratap Singh (Died)

1.B Lokpal Thakur Son Of Late Pratap Singh, Aged About 36 Years

1.C Satyendra Thakur, Son Of Late Pratap Singh, Aged About 30 Years

1.D. Khagendra Thakur, Son Of Late Pratap Singh, Aged About 26 Years

1.E. Yogendra Thakur, Son Of Late Pratap Singh, Aged About 22 Years

All R/o Purani Basti Korba, District Korba (Chhattisgarh)

2. Ram Kumar Singh S/o Harihar Singh Thakur, Aged About 28 Years R/o Korba Opp. Usha Complex, Main Road Korba, Distict Korba Chhattisgarh

3.A. Shrimati Geeta Modi, Wd/o Bisambhar Prasad Modi Aged About 61 Years

3.B - Raj Kumar Modi, S/o Late Bisambhar Prasad Modi Aged About 40 Years

3.C. Rakesh Kumar Modi, S/o Late Bisambhar Prasad Modi Aged About 36 Years

3.D.Vinay Kumar Modi S/o Late Bisambhar Prasad Modi Aged About 29 Years

From 3 A to 3D, R/o in front of Sapt-Dev Mandir, Main Road, Korba, District-Korba, C.G.

3.E. Shrimati Vidya Agrawal D/o Bisambhar Prasad Modi Aged About 43 Years, R/o Agroha Marg, Korba, District Korba (C.G.)

3.F. Shrimati Shweta Agrawal D/o Bisambhar Prasad Modi Aged About 27 Years, R/o Rishi Colony, Dayalband, Bilaspur, District Bilaspur (C.G.)

---- Respondents

For Petitioner	:	Shri Shobhit Koshta, Advocate
For Respondents No.3A to 3F	:	Shri Parag Kotecha, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

06/02/2018

1. Heard.
2. The present petition is against the order dated 04.05.2013, whereby an additional issue has been framed about the ownership of the suit property and few of the parties were added as defendant.
3. Learned counsel for the petitioner would submit that initially the suit bearing Civil Suit No.41A/97 was filed by one Bhagwan Das Modi against Pratap Singh & Ram Kumar Singh for ejectment from the suit property on the ground of bona fide need. He would further submit that the suit was filed in the year 1981 and during the pendency of the suit, Pratap Singh, the first defendant, died and his legal heirs were brought on record, whereas Ram Kumar Singh continued as a defendant. Subsequently, one of the brother of the plaintiff namely Vishambhar Prasad Modi had moved an application to array him as a defendant in the plaint claiming that he is the brother of the plaintiff Bhagwan Das Modi and his right and title with respect to the suit property to get a vacant possession and arrears of rent may also be decided. On this application name of Bhagwan Das Modi was added as defendant No.3. He would further submit that thereafter the trial Court has framed the issues on 18.01.2000 to the effect that whether the plaintiff is the sole owner of the suit property? or whether the plaintiff and defendant No.3 i.e. Vishambhar Prasad Modi owned the property jointly? It is contended that though the said issues were framed as issue No.1 but subsequently they were deleted by order dated 18.08.2005. Again by order dated 04.05.2013 the said issue was added, which reads as under:-

– :: अतिरिक्त वाद प्रश्न – ::

(आज दिनांक 04.5.2013 को विरचित)

(8.) क्या वादी एवं प्रति०क० 3 'अ' से 'फ' स्व० द्वारिका प्रसाद मोदी के उत्तराधिकारी होने के कारण वाद मकान पर शामिल सरीक रूप से स्वत्वाधारी है?

(9.) क्या प्रति०क० 3 'अ' से 'फ' वाद मकान के आधे हिस्से पर कब्जे के साथ साथ किराये की आधी रकम भी प्राप्त करने के अधिकारी है?

Learned counsel would further submit that in the suit for eviction, the ownership issue cannot be gone into and the suit was with prayer for decree of eviction on the ground of bona fide need under the Accommodation Control Act and for arrears of rent. It is stated that in such background the order dated 04.05.2013 whereby the additional issues were framed may be set aside. He would further submit that since after the death of Vishambhar Prasad Modi the name of the legal heirs were added as defendants No.3 A to 3 F their names may also be deleted as they are not the necessary party.

4. Shri Parag Kotecha, learned counsel for the respondents No.3A to 3F would submit that the order is well merited which do not call for any interference.
5. Perused the record. It shows that the suit was filed by one Bhagwan Das Modi against Pratap Singh (since deceased) as defendant No.1 and Ram Kumar Singh as defendant No.2. After the death of Pratap Singh (the defendant No.1) his legal heirs were brought on record as defendants No.1A to 1F. Whereas Ram Kumar Singh continued as defendant No.2. Subsequently, the records shows that one of the brother of the plaintiff namely Vishambhar Prasad Modi filed an application to implead him as a party, which was allowed and his name was added as defendant No.3. The said person i.e. Defendant No.3 died and after his death, the legal heirs of

Vishambhar Prasad Modi have been arrayed as defendants No.3A to 3F in
 plaint.

6. With respect to the framing of the issues, the record would reveal that on 18.01.2000 the trial Court has framed the issue to the effect that whether the plaintiff is the sole owner of the suit property? or whether the plaintiff and defendant No.3 i.e. Vishambhar Prasad Modi owned the property jointly? and the record has revealed that the said issues were deleted on 18.08.2005. Subsequently, order dated 04.05.2013 would show that again the issue was framed that Whether the plaintiff and defendants No.3A to 3F are the joint co-owner of the property in question? as they inherit the property from Late Dwarika Prasad Modi the ancestor of the plaintiff and defendant No. 3(since deceased). The other issue was framed to the effect that whether the defendant Nos. 3 A to 3 F are entitled to claim for half of the possession so claim including the arrears of rent? The said issues were numbered as 8 & 9.
7. The perusal of the plaint shows that the suit was filed for ejectment against the tenants under the different provisions of Accommodation Control Act. The respondent Nos. 3 A to 3 F were added as a party. They are the legal heirs of Late Vishambhar Prasad Modi, who is said to be the brother of the plaintiff Bhagwan Das Modi. The relief of ejectment is claimed against defendant Nos. 1 A to 1 F being legal heirs of tenant Pratap Singh and defendant No.2 is Ramkumar Singh. The question falls for consideration as to whether in a suit for ejectment against tenant other co-owner can intervene to get their right decided and claim vacant possession of suit property separately.
8. Like nature of ratio of law came up for consideration in the matter of **J.J.**

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wherein the Supreme Court has held thus in para 28:-

“28.Both the sets of applications raise such controversies as are beyond the scope of these proceedings. This is a simple landlord- tenant suit. The relationship of Municipal Corporation with the respondents and their mutual rights and obligations are not germane to the present proceedings. Similarly, the question of title between Hemlata Mohan and the respondents cannot be decided in these proceedings. The impleadment of any of the two applicants would change the complexion of litigation and raise such controversies as are beyond the scope of this litigation. The presence of either of the applicants is neither necessary for the decision of the question involved in these proceedings nor their presence is necessary to enable the court effectually and completely to adjudicate upon and settle the questions involved in these proceedings. They are neither necessary nor proper parties. Any decision in these proceedings would govern and bind the parties herein. Each of the two applicants is free to establish its own claims and title whatever it may be in any independent proceedings before a competent forum. The applications for impleadment are dismissed.”

9. In the instant case, the suit was against tenant namely Pratap Singh (since deceased) now represented through the legal heirs Ram Kumar Singh and the suit is based on bona fide need is for ejectment. Therefore, it is a simple landlord tenant suit. It being a suit of the nature where the question of title is between the plaintiff and the defendant No.3 through their legal heirs i.e. 3A to 3 F, cannot be decided in this proceeding. The issues if are gone into, it will change the entire complexion of the litigation and would go beyond the scope of the suit filed for ejectment against a tenant. The eviction is claimed under the Accommodation Control Act is a special enactment conferring certain special rights and imposing certain special obligations upon the landlords and tenants. The Accommodation Control Act imposes restrictions on the right of the landlord to evict the tenants on the grounds other than what is specified in the statute.

10. The Supreme Court in the case of ***Om Prakash Gupta Vs. Rattan Singh***

{{(1964) 1 SCR 259}} has observed that ordinarily it is for the Civil Courts to determine whether and, if so, what jural relationship exists between the parties, therefore, the Court while trying the case under the eviction will comply the Accommodation Control Act and have to function within the limits of the statute in respect of the pleading made. Therefore, the question of title cannot be gone into in a case of eviction to decide the question of title. The definition of landlord under the Accommodation Control Act is very wide and encompasses not only an owner but also persons receiving or entitled to receive the rent of the building which has been let out or would be entitled to receive the rent of the building if it were let out to a tenant in one of several capacities. The *inter se* dispute between the rival claimant has to be independently decided in a like suit. If the determination of such dispute is permitted to be carried on in an eviction suit or other allied suits, delay would be caused whereby only tenants would be benefited.

11. Another aspect fall for consideration about deletion & framing of issues time and again the perusal of the record would further show that the issues were initially framed on 18.01.2000 with respect to the title of the added parties which were subsequently deleted on 18.08.2005. Subsequently, again issues were added on 04.05.2013 in other words having the same effect and cause. The said addition of the issues for the second time having deleted earlier is without sufficient cause and almost it amounts to review of the earlier order and framing of the issues. Subsequent order framing the issues afresh which were deleted apparently in the principles as laid down above appears to be illegal and cannot be sustained in the eyes of law. Accordingly, the issues framed on 04.05.2013 are directed to be deleted as the issues cannot be decided in the landlord tenancy suit.

12. Further perusal of this record would show that by an order dated 21.07.2014

the interim protection was granted to the petitioner and it was observed that the proceedings before the Court below may go on but final orders shall not be passed. The legal heirs of Vishambhar Prasad Modi were already added long back as Respondents No. 3A to 3 F. Therefore, except the final arguments, entire evidence stands closed before the Court. In such circumstances in order to shorten the litigation it is directed that the legal representatives of Vishambhar Prasad Modi i.e. Respondents No. 3A to 3F may remain in the array of the defendants and may seek their remedy in appropriate proceeding subsequently as the parties may see another bout of litigation.

13. Accordingly, the petition stands allowed to the above extent. Since the suit is pending since 1981, therefore, the trial Court is directed to decide the suit within a period of 3 months from the date of receipt of this order.

Sd/-

Goutam Bhaduri

Judge

Ashu