

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO. 5480 OF 2017
WITH
WRIT PETITION NO. 5481 OF 2017**

**SALIMABEE YAKUB SHAIKH
VERSUS
MANJU SUBHASH KARIR AND OTHERS**

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Advocate for the Petitioner : Shri R. R. Karpe
Advocate for Respondent No. 1 : Shri S.D.Munde
Advocate for Respondent Nos.2A to 2D : Shri A.S. Gandhi

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 03rd JULY, 2018.**

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PER COURT :

1. I have heard the learned Advocates for the respective sides who are litigating in recovery of rent suits, R.C.S. Nos. 607/2013 and 619/2013, which the landlord has filed for recovery of rent from the tenant. There is no dispute that the petitioner in both these petitions is said to have purchased the suit shop prior to the institution of the suit by the erstwhile landlord.

2. In both these petitions, the petitioner has moved applications praying for being added as a co-plaintiff in the

pending suits. By the impugned orders, the Trial Court has rejected the said application on the ground that the plaintiff will have to take a decision that as to whether he desires to add any party to the suit.

3. The learned Advocate for the tenant has placed the reliance upon a judgment of the Honourable Apex Court in the matter of ***Kanaklata Das and others Versus Naba Kumar Das and others, 2018 (2) SCC 352***, to support his contention that in a suit for eviction or for recovery of rent in between a landlord and a tenant, only two parties are expected to litigate.

4. The observations of the Honourable Apex Court in paragraph Nos. 11 to 23 in the *Kanaklata Das Case* read as under :-

"11. There are some well-settled principles of law on the question involved in this appeal, which need to be taken into consideration while deciding the question arose in this appeal. These principles are mentioned infra.

12. First, in an eviction suit filed by the plaintiff

(Landlord) against the defendant(Tenant) under the State Rent Act, the landlord and tenant are the only necessary parties.

13. In other words, in a tenancy suit, only two persons are necessary parties for the decision of the suit, namely, the landlord and the tenant.

14. Second, the landlord (plaintiff) in such suit is required to plead and prove only two things to enable him to claim a decree for eviction against his tenant from the tenanted suit premises. First, there exists a relationship of the landlord and tenant between the plaintiff and the defendant and second, the ground(s) on which the plaintiff-landlord has sought defendant's-tenant's eviction under the Rent Act exists. When these two things are proved, eviction suit succeeds.

15. Third, the question of title to the suit premises is not germane for the decision of the eviction suit. The reason being, if the landlord fails to prove his title to the suit

premises but proves the existence of relationship of the landlord and tenant in relation to the suit premises and further proves existence of any ground on which the eviction is sought under the Tenancy Act, the eviction suit succeeds.

16. Conversely, if the landlord proves his title to the suit premises but fails to prove the existence of relationship of the landlord and tenant in relation to the suit premises, the eviction suit fails. (See-Dr. Ranbir Singh vs. Asharfi Lal, 1995(6) SCC 580).

17. Fourth, the plaintiff being a dominus litis cannot be compelled to make any third person a party to the suit, be that a plaintiff or the defendant, against his wish unless such person is able to prove that he is a necessary party to the suit and without his presence, the suit cannot proceed and nor can be decided effectively.

18. In other words, no person can compel the plaintiff to allow such person to become the co-plaintiff or

defendant in the suit. It is more so when such person is unable to show as to how he is a necessary or proper party to the suit and how without his presence, the suit can neither proceed and nor it can be decided or how his presence is necessary for the effective decision of the suit. (See-Ruma Chakraborty vs. Sudha Rani Banerjee & Anr., 2005(8) SCC 140)

19. Fifth, a necessary party is one without whom, no order can be made effectively, a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. (See-Udit Narain Singh Malpaharia vs. Additional Member Board of Revenue, Bihar & Anr., AIR 1963 786)

20. Sixth, if there are co-owners or co-landlords of the suit premises then any co-owner or co-landlord can file a suit for eviction against the tenant. In other words, it is not necessary that all the owners/landlords should join in filing the eviction suit against the tenant. (See-

Kasthuri Radhakrishnan & Ors. vs. M. Chinniyan & Anr., 2016(3) SCC 296)

21. Keeping in mind the aforementioned well settled principles of law and on examining the legality of the impugned order, we find that the impugned order is not legally sustainable and hence deserves to be set aside.

22. In our considered opinion, respondent No. 1, who claims to be the co-sharer or/and co-owner with the plaintiffs (appellants herein) of the suit property is neither a necessary and nor a proper party in the eviction suit of the appellants against respondent Nos. 2 to 5. In other words, such eviction suit can be decreed or dismissed on merits even without the impleadment of respondent No.1.

23. In the eviction suit, the question of title or the extent of the shares held by the appellants and respondent No. 1 against each other in the suit premises cannot be decided and nor can be made the subject matter for its

determination."

5. The learned advocate for the applicant who has moved the applications for being added as a co-plaintiff submits that once a suit property is purchased and an interest in the suit property is created, either prior to the filing of the suit or after the suit has been lodged, he would acquire a right to participate in the proceedings. Reliance is placed on the judgment of the learned Division Bench of this Court in the matter of ***Radhabai Bapurao Shelar Since Deceased By Heirs Madhav Hiralal Shelar And Others Vs. Trimbak Madhavrao Shirole And Others, 1981 Mh.L.J. 967*** and on the judgment of the Single Bench in the matter of ***Bansilal Rampratap Rathi Vs. Suratsing Chandanmal and others, 1982 Mh.L.J. 628*** to contend that such a successor in interest, either by operation of law or by the act of the parties, has the right to be espoused which will not be restricted only to the erstwhile landlord. The successor in interest would also have a right to participate in the proceedings if the result is likely to affect such persons.

6. The learned Advocate for the erstwhile landlord appearing in this matter submits that since he has sold the property to the petitioner, he would have no objection if the petitioner moves a specific application before the Trial Court praying for deletion of the plaintiff or transposing himself in place of the plaintiff so as to prosecute the said suit further.

7. In view of the above, this petition is disposed off with liberty to the petitioner to move an application before the Trial Court praying for deletion of the plaintiff and adding the petitioner as the plaintiff or for transposing the petitioner as the plaintiff. Since consent of the erstwhile landlord has been recorded, it would only be for the tenant to take a stand on such application filed and the Trial Court would consider the said application on its own merits and in accordance with law.

(RAVINDRA V. GHUGE, J.)

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