

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.621 OF 2018

Prakash Devchand Chavle	...	Petitioner
Vs.		
Rajkumar Devchand Chavle and another	...	Respondents

Mr. Kunal Bhanage for Petitioner.
Mr. Vincent D'Silva for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : APRIL 19, 2018

P.C. :

Heard Mr. Bhanage, learned Counsel for the petitioner and Mr. D'Silva, learned Counsel for the respondent No.1 at length.

2. Mr. Bhanage orally applies for deleting respondent No.2 on the ground that no relief is claimed against her in the present Petition. Leave as prayed for is granted. Amendment shall be carried out forthwith. Rule. Mr. D'Silva waives service for the respondent No.1. In view of the order dated 15.03.2018 by which notice for final disposal was issued, Rule is made returnable forthwith and the Petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as plaintiff, has challenged the order dated 11.09.2017 passed by the learned Judge, Court Room No.34 of Court of Small Causes, Bandra below exhibit-20 in R.A.E. Suit No.176/307 of 2013. By that order, the learned trial Judge has partly allowed the application and directed the plaintiff to implead respondent No.1 as party defendant No.2.

4. In support of this Petition, Mr. Bhanage submitted that respondent

No.1 is neither a necessary nor a proper party. He submitted that Section 35 of the Maharashtra Rent Control Act, 1999 (for short 'Act') lays down that nothing contained in Sections 33 and 34 shall be deemed to bar the party to a Suit, proceeding or appeal mentioned therein in which a question of title to premises arises and is determined, from suing in a competent court to establish his title to such premises. He relied upon the following decisions:

- a. ***Bibi Begum Vs. Mohmed Khalid*, 2007 (3) Mh.L.J. 302,**
- b. ***Sirsiwala Realty Vs. Gyasudding Kifayatulla Zariwala*, Writ Petition No.7506 of 2015 decided on 18.10.2016.**

5. By order dated 15.03.2018, notice was issued to the first respondent for final disposal. In pursuance thereof, Mr. D'Silva has made elaborate submissions on behalf of the first respondent. He submitted that in the plaint, petitioner claims that Leelabai Devchand Chavle was the landlady of the premises in question. She died on 31.08.2011. Plaintiff contended that deceased Leelabai had executed Will, which is registered before the Joint Registrar at Bandra on 16.01.2002. Plaintiff claims that the suit property is bequeathed to him by his mother. He submitted that plaintiff has not obtained probate of the Will. Respondent No.1 does not accept genuineness of the Will relied by the plaintiff. He submitted that in the entire plaint, plaintiff has not averred that the Suit is instituted by him for himself and for benefit of other legal representatives of the landlady Leelabai, since deceased. There is also no averment to the effect that plaintiff has obtained consent of other legal heirs of Leelabai, since deceased. He submitted that it is the case of respondent No.1 that plaintiff and defendant are colluding and that defendant will vacate the suit premises and plaintiff will induct the third person by charging the premium. Thus, if plaintiff and defendant collude with each other, they will defeat the claim of

respondent No.1 in case the third person is inducted in the suit premises then there will be multiplicity of proceedings. He submitted that respondent No.1 is a brother of the plaintiff and as such, he is a necessary party to the eviction Suit filed by the plaintiff. He, therefore, submitted that no case is made out for interfering with the impugned order.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that plaintiff and respondent No.1 are brothers and are sons of landlady Leelabai, since deceased. It is also not in dispute that Leelabai died on 31.08.2011. Even if the plaintiff has asserted that he has instituted Suit on the basis of the Will executed by Leelabai, the fact remains that he is one of the sons of landlady Leelabai. Plaintiff is a co-owner. It is settled law that one co-owner can maintain eviction Suit. In view thereof, it cannot be said that plaintiff has no locus to maintain the Suit for recovery of possession of the suit premises. Section 35 of the Act reads thus,

“35. Saving of suit Involving title.-

Nothing contained in sections 33 and 34 shall be deemed to bar a party to a suit, proceeding or appeal mentioned therein in which a question of title to premises arises and is determined, from suing in a competent court to establish his title to such premises.”

7. In the case of **Bibi Begum** (*supra*), the learned Single Judge of this Court (Coram: H. L. Gokhale, as His Lordship then was) has considered Sections 28(1) and 29-A. In paragraph 16, the learned Single Judge referred to the decision of **Babulal Bhuramal Vs. Nandram Shivram**, AIR 1958 SC 677 and extracted paragraph 9 of that judgment, which is to the following effect:

“... The Apex Court observed in para-9 in *Babulal Bhuramal* (*supra*) that as per Section 29-A, the legislature clearly intended that no finality should be attached to the decision of

a Court trying a Suit under Section 28 on a question of title de hors the Act. His submission is that if the present applicants claim to be landlords, nothing prevents them from filing their Suit to establish their title. As far as the present Suit for eviction of the persons is concerned, in his submission, they are not necessary party to the present proceedings.”

8. After considering the decision, in paragraph 17, it was observed that for the other persons who claim to be the landlords of the property, their forum is to go to the Civil Court and establish their title. That is not an issue which is incidental to the determination and necessary in the Suit which is being tried under Section 28 of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947. The jurisdiction of the Rent Court under Section 28 is a limited jurisdiction circumscribed by the provisions of the Act. It cannot be expanded beyond that. A determination of the title to the property at the instance of a person who claims to be an owner of the property is outside the jurisdiction of the Rent Act.

9. In view thereof, I find that the learned trial Judge was not justified in allowing the application made by the respondent No.1 under Order I, Rule 10 of C.P.C. Mr. D'Silva submitted that plaintiff and defendant are colluding in the matter and after defendant surrendering the premises, plaintiff will induct the third person by charging premium. In the event of induction of third party in the suit premises, there will be multiplicity of the proceedings. In my opinion, the said submission is without any merit. If at all, respondent No.1 apprehends collusion between the plaintiff and defendant and surrendering the premises by defendant to plaintiff, his remedy is to approach the Civil Court for partition and claim appropriate interim relief in that Suit. In my opinion, it cannot be said that respondent No.1 is either a necessary or a proper party. In the absence of respondent No.1, Court can effectively pass a

decree against the defendant. Equally for enabling the Court to decide the matter effectively and completely, presence of respondent No.1 is not necessary. In other words, respondent No.1 is not a proper party.

10. In view thereof, the impugned order cannot be sustained and as such, it is set aside. Application exhibit-20 is dismissed. Liberty is reserved to the respondent No.1 to approach the Civil Court for appropriate reliefs in accordance with law. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

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