

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION NO.53 OF 2018

The President, Shetkari Sahkari Sangh Ltd.]	]	Applicants
Kolhapur & another.	]	
Vs.		
Ajit Manoharpant Ghorpade]	]	Respondent

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Mr. Ruturaj P. Pawar, for Applicants.
 Mr. Abhijit M. Adagule, for Respondent.

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CORAM : R.G. KETKAR, J.

DATE : 2nd JULY, 2018.

P.C:

Heard Mr. Pawar, learned Counsel for the applicants and Mr. Adagule, learned Counsel for the respondent at length.

2. By this application under section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C'), applicants, hereinafter referred to as "defendants" have challenged the judgment and decree dated 9th February, 2012 passed by the 2nd Joint Civil Judge, (Junior Division), Kolhapur in R.C.S No.430 of 2008 as also the judgment and decree dated 28th November, 2016 passed by the learned District Judge-7, Kolhapur in Regular Civil Appeal No.148 of 2012. By these orders, the Courts below decreed the suit instituted by the respondent, hereinafter referred to as "plaintiff" and directed the defendants to hand over possession of premises admeasuring 22'x'9' situate in C.T.S No.1552/C at C Ward Laxmipuri, Kolhapur (for short 'suit premises') to the plaintiff within four months from the date of the order. The Courts below also ordered inquiry into mesne profits under Order-XX, Rule-12 of the C.P.C.

3. In support of this application, Mr. Pawar strenuously contended that basically suit instituted by the plaintiff itself is mis-conceived. He submitted that the plaintiff has instituted suit against;

[1] The President, Shetkari Sahakari Sangh Ltd., Kolhapur.

[2] The Secretary, Shetkari Sahakari Sangh Ltd., Kolhapur.

He submitted that suit premises was let out to Shetkari Sahakari Sangh Ltd., Kolhapur (for short 'Society'). The plaintiff did not implead the Society as a party defendant. He submitted that Section 36 of the Maharashtra Co-operative Societies Act, 1960 lays down that registration of a Society renders it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to acquire, hold and dispose of property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all such things as are necessary for the purpose for which it is constituted. He submitted that Society having perpetual succession and common seal is a corporate body. The plaintiff ought to have sued Society and not the office bearers of the Society. The Office bearers go on changing. He submitted that though this plea was specifically raised in the written statement, the Courts below had not dealt with this aspect at all.

4. Mr. Pawar relied on following decisions;

[1] Nandkishor Savalaram Malu (dead) through Legal Representatives Vs. Hanumanmal G. Biyani (dead) through Legal Representatives and others, (2017) 2 Supreme Court Cases 622.

[2] Richard Lee Vs. Girish Soni and another (2017) 3 Supreme Court Cases 194.

He, therefore, submitted that Application requires consideration.

5. On the other hand, Mr. Adagule supported the impugned orders. He invited my attention to paragraphs 24 and 25 of the District Court's judgment. In paragraph 24, the learned District Judge noted the submissions advanced on behalf of the plaintiff. In paragraph 25, the learned District Judge observed that Society was properly represented. The defendant/Society also contested the suit. There was no collusion inter se between office bearers of the Society. He, therefore, submitted that no case is made out for interfering with the impugned orders.

6. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. The plaintiff had instituted suit for recovery of possession of the suit premises, inter alia, invoking grounds of arrears of rent, reasonable and bona fide requirement, non user of the suit premises covered by sections 15, 16 (1) (g) and 16 (1) (n) respectively of the Maharashtra Rent Control Act, 1999 (for short 'Act'). The Courts below have passed the eviction decree.

7. It is no doubt true that perusal of the plaint shows that the plaintiff had impleaded President and Secretary of the Society and in paragraph 2 of the written statement, it was specifically contended that the defendant is a Society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 and was not impleaded. The plaintiff impleaded President and Secretary of the Society and as such suit is liable to be dismissed.

8. With the assistance of learned Counsel, I have perused oral evidence as also findings recorded by the Courts below. A perusal of the oral evidence shows that both the parties proceeded on the premise that Society is impleaded as defendant in the suit. That apart, a perusal of the trial Court's order shows that no issue was framed as regards maintainability of the suit on

the ground that as the Society is not impleaded, the suit is not between the landlord and tenant. As far as judgment of the learned District Judge is concerned, in paragraph 25, the learned District Judge observed that Society was properly represented and Society had also contested the suit. The appeal is filed through defendants which does not indicate that there is inter se collusion between the office bearers of the Society.

9. The defendants ought to have raised this contention at the threshold for dismissal of the suit on the ground that suit is not between the landlord and tenant. Defendants participated in the trial as indicated earlier. The defendants also proceeded on the premise that Society is impleaded in the suit. In this context, the learned District Judge rightly observed that Society was properly represented and has even contested the suit.

10. Mr. Pawar relied on the decision of **Nandkishor Savalaram Malu (dead) through Legal Representatives** (supra). In that case, partnership firm M/s. Biyani Textiles was tenant in respect of House No.47/48 situate in Madhavnagar at Sangli. Defendant No.1 was employee of the said firm. In paragraph 24, the Apex Court observed that an employee of a tenant is never considered to be in actual possession of tenanted premises much less in possession in his legal right. He is allowed to use the tenanted premises only with the permission of his employer by virtue of his contract of employment with his employer. An employee, therefore, cannot claim any legal right of his own to occupy or to remain in possession of the tenanted premises while in employment of his employer or even thereafter qua landlord for want of any privity of contract between him and the landlord in respect of the tenanted premises.

11. Mr. Pawar heavily relied on paragraphs 26 to 29 of that decision. In paragraph 26, the Apex Court observed that tenancy is a creation of contract between the two persons who are capable to enter into contract called lessor/landlord and the lessee/tenant. In paragraph 27, the Apex Court referred to the provisions of the T.P. Act. In paragraph 28, it was observed thus;

“If the lessee/tenant is a living person, then in such event, the tenant would also include his legal representatives in the event of his death together with his dependents living with the tenant in the tenanted premises. Likewise, if the lessee/tenant is a juristic person i.e partnership Firm then such tenant would represent the interest of all the partners of the Firm and the employees working in the Firm. Such persons since claim through the Firm, they have no right of their own in the tenancy and in the demised property qua landlord”.

12. In so far as decision in the case of **Richard Lee Vs. Girish Soni and another, (2017) 3 Supreme Court Cases 194** is concerned, that decision arose out of application moved by the appellant for impleadment as a necessary party under Order-1, Rule-10 of the C.P.C in the eviction suit. In my opinion, the said decision is also not applicable to the facts of the present case. In my opinion, the said decision is of no assistance to the defendants.

13. On merits, the Courts below have concurrently decreed the suit under sections 16 (1) (g) and 16 (1) (n) of the Act. The learned District Judge has considered ground under section 16 (1) (g) from paragraphs 9 to 13 and held that the plaintiff requires the suit premises reasonably and bona fide. From paragraphs 14 to 21, the learned District Judge considered ground of non user as also question of comparative hardship. The learned District Judge, after perusing the evidence on record, observed that the suit premises was taken for running a medical shop. The defendants have shut down their main section of medicine and claimed to have started selling chilly powder. The learned District Judge held that the defendants have not produced on record

any register or documents, books of accounts to substantiate the said plea. The learned District Judge considered the evidence adduced by the sole witness examined on behalf of the defendants. During the course of cross-examination, he admitted that he has no knowledge when business of selling chilly powder was started. In paragraph 18, the learned District Judge noted that consumption of the electricity was “zero”. Thus, the Courts below after appreciating the evidence on record have decreed the suit under sections 16 (1) (g) and 16 (1) (n) of the said Act. The defendants are not in a position to show that the findings recorded by the Courts below are perverse being contrary to evidence on record or that they are based upon no evidence.

14. In view thereof, I do not find that the Courts below committed any error in decreeing the suit. Hence, application fails and the same is dismissed.

15. At this stage, Mr. Pawar orally applies for continuation of ad-interim order dated 8th March, 2018 for a period of 8 weeks from today. He assures that within three weeks from today, defendants will file usual undertaking in this Court after giving advance copy to the other side incorporating therein;

- [a] they are in possession and nobody else is in possession of the suit premises;
- [b] they have neither created third party interests nor parted with possession of the suit premises;
- [c] they will hereafter neither create third party interests nor part with possession of the suit premises;
- [d] within two weeks from today, applicants will deposit the entire arrears in this Court, under intimation in writing to the learned Counsel for the plaintiff.

[e] in case they are unable to obtain suitable orders from the higher Court within eight weeks from today, they will hand over vacant and peaceful possession of the suit premises to the respondents;

16. In view thereof, notwithstanding dismissal of the Civil Revision Application, ad-interim order dated 8th March, 2018 shall remain in force for a period of 8 weeks from today.

17. List the Application for reporting compliance on 30th July, 2018.

[R.G. KETKAR, J.]