

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7524 OF 2017

Mrs. Indira K. Karippara and anr. .. Petitioners
vs.
Mr. Chandran Shetty and anr. .. Respondents
WITH
WRIT PETITION NO.7836 OF 2017

Mrs. Indira K. Karippara and anr. .. Petitioners
vs.
Mr. Gopi Nath and anr. .. Respondents
WITH
WRIT PETITION NO. 7834 OF 2017

Mrs. Indira K. Karippara and anr. .. Petitioners
vs.
Mr. Harish Dayani and anr. .. Respondents
WITH
WRIT PETITION NO. 7751 OF 2017

Mrs. Indira K. Karippara and anr. .. Petitioners
vs.
Mr. Jagdish C. Thakar and anr. .. Respondents
WITH
WRIT PETITION NO. 7831 OF 2017

Mrs. Indira K. Karippara and anr. .. Petitioners
vs.
Mr. Kanubhai Babuldas Nai and anr. . Respondents
WITH
WRIT PETITION NO. 7355 OF 2017

Mrs. Indira K. Karippara and anr. .. Petitioners
vs.
Legal Heirs and representatives
of Mr. Rammanna Shetty and anr. .. Respondents
WITH
WRIT PETITION NO. 7843 OF 2017

Mrs. Indira K. Karippara and anr. .. Petitioners
vs.

Mr. S.P. Naik and anr. .. Respondents

WITH
WRIT PETITION NO. 7847 OF 2017

Mrs. Indira K. Karippara and anr. .. Petitioners

vs.

Radheshyam R. Yadav and ors. .. Respondents

WITH
WRIT PETITION NO. 7536 OF 2017

Mrs. Indira K. Karippara and anr. .. Petitioners

vs.

Renuka Bhatt and anr. .. Respondents

Mr. B. S. Kothari for the Petitioners in all petitions.

CORAM : M. S. SONAK, J.
DATE : 14 DECEMBER 2018.

ORAL COMMON JUDGMENT :-

1] Heard the learned counsel for the petitioners in all the petitions.

2] Rule in each of the petition. Rule is made returnable forthwith. Since, by detailed order dated 11th April 2018, it was made clear that subject to the time constraint and convenience of the Court, the petitions will be disposed of finally at the stage of admission. Mr. Kothari, the learned counsel for the petitioners in all these petitions makes a statement that all the respondents have been duly served

and necessary affidavit of service is also been filed in this matter. Accordingly, it is only appropriate that these petitions be disposed of finally today.

3] The issue involved in all these petitions is one and same and therefore, Writ Petition No. 7751 of 2017 is taken as lead petition.

4] On 11th April 2018, this Court made the following order:

“ Heard Mr. Kothari, learned Counsel for the petitioners.

2. By these Petitions under Article 227 of the Constitution of India, the petitioners have challenged the judgments and orders dated 5th December, 2016 passed by the learned trial Judge in an application taken out by the second respondent for his impleadment as also the judgments and orders dated 5th January, 2017 passed by the Appellate Bench of the Small Causes Court at Mumbai (Bandra Branch) in Revision Applications. By these orders, the Courts below allowed the application of the second respondent for his impleadment in the suit instituted by the petitioners herein.

3. Mr. Kothari submitted that respondent No.2 came with the case that the property in question originally belonged to Mr. Karippara Sankaran Krishnan, who by a registered Deed of Conveyance dated 8th October, 1985 had sold, transferred and conveyed all his rights, title and interest in favour of Mr. Marutirao Namdevrao Tanpure. He submitted that in the order dated 21st March, 2018, his statement that Mr. Karippara Sankaran Krsihnan by letter dated 8th October, 1985 informed the tenants that he has sold and transferred

the property in dispute by the said letter, the said letter was not produced on record was made inadvertently.

4. *In view of his submissions, Record and Proceeding from the trial Court was called for. After perusing the original record and proceedings, it is evident that letter of attornment dated 8th October, 1985 is produced on record in the trial Court. Prima facie, it appears that Indenture of Conveyance Deed was executed on 8th October, 1985 and was registered on 16th November 2015. By order dated 12th September, 2017, this Court issued notice to the respondents indicating that endeavour will be made to dispose of these Petitions finally at the stage of admission. Despite service, respondent No.2 has not entered appearance.*

5. *In view thereof, issue a fresh notice to the second respondent who is only contesting respondent returnable on 7th June 2018. Parties are put to notice that subject to the time constraint and convenience of the Court, Petitions will be disposed of finally at the stage of admission. Notice shall further indicate that despite service if respondent No.2 fails to appear, the Court will proceed to decide the petitions on its own merits. Ad-interim order granted earlier to continue. Record and Proceeding shall be transmitted to the trial Court forthwith"*

5] In all these petitions, the petitioners are the original plaintiffs before the Small Causes Court in suits which they instituted against various tenants seeking their eviction from the suit premises. In such suits, one Mr. Mohd. Ali Madar Nadaf (respondent No.2) in each of the petitions applied for impleadment on the alleged ground that he has purchased

the suit premises from the petitioners. The Trial Court as well as the Revisional Court have permitted such impleadment. Therefore, it is against these orders permitting impleadment of Nadaf that these petitions have been instituted.

6] Mr. Kothari, the learned counsel for the petitioners, submits that in a suit instituted by the landlord against his tenant, a person like Nadaf, who claims to be title to the suit premises is neither a necessary nor proper party. He submits that impleadment of Nadaf will completely embarrass the proceedings in the eviction suit. He submits that the issues of title *per se* are not at all relevant and in any case, Nadaf claims any title to the suit premises, then it is always open to him to institute separate and independent proceedings before a competent Civil Court to establish his alleged right. Mr.Kothari points out that even the conveyance on basis of which Nadaf claims to be title to the suit premises is unregistered conveyance. Therefore, he relies upon the decision of the Apex Court in ***Kanaklata Das and ors. vs. Naba Kumar Das and ors. - Civil Appeal No. 3018 of***

2018 decided on 25th January 2018 in support of his submissions.

7] The respondents, though duly served and put to notice that these petitions are to be disposed of finally at the stage of admission, have chosen not to remain present.

8] The Hon'ble Apex Court in case of *Kanaklata Das (supra)* has made the following observations precisely in the context of impleadment of third parties in suits for eviction instituted by the landlord against his tenants. The observations in paragraphs 9 to 26 are quite relevant and the same read as follows:

“9. Having heard the learned counsel for the appellants and respondent No. 1, in-person, who alone is the contesting respondent in this appeal and on perusal of the record of the case, we are inclined to allow the appeal and while setting aside the impugned order of the High Court, restore the order of the Trial Court with observations hereinbelow.

10. In other words, we are inclined to dismiss the application filed by respondent No. 1 under Order 1 Rule 10(2) of the Code in appellants' ejectment suit.

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.

24. The reason being that this is not a suit between the appellants (plaintiffs) and respondent No.1 where their inter se rights relating to the suit premises can be gone into but rather is an ejectment suit filed by the appellants against respondent Nos. 2 to 5 for their

eviction from the suit premises.

25. Therefore, the Lis in the suit is between the appellants on the one hand and respondent Nos. 2 to 5 on the other hand and the decision in the suit would depend upon the question as to whether there exists any relationship of landlord and tenant between the appellants and respondent Nos. 2 to 5 in relation to the suit premises and, if so, whether the grounds pleaded in the plaint for claiming eviction of respondent Nos. 2 to 5 are established or not. For deciding these two main questions, the presence of respondent No. 1 is not necessary.

26. For these reasons, we are of the considered opinion that respondent No. 1 is neither a necessary and nor a proper party in the suit.”

9] In a suit between landlord and tenant ordinarily, there is no scope for a party like Nadaf who claims to be an independent title to the suit premises to seek impleadment. In the context of relationship between the landlord and tenant, it is well settled that the landlord may not in every case be a title holder as such but yet, may answer the definition of landlord under the rent legislations. In any case, such a suit is not an appropriate proceedings to decide *inter se* disputes between two persons claiming title to the suit premises. Therefore, if at all Nadaf has any rights in respect of suit premises, then, it will always be open to Nadaf to institute a separate and independent proceedings before a

competent Court of law to assert or establish such independent right. However, in the present proceedings instituted by the petitioners seeking eviction of the tenants, Nadaf is neither a necessary nor a proper property. In fact, impleadment of Nadaf is bound to change the entire nature of the suits instituted by the petitioners against the tenants. The trial in such suits is bound to embarrass. The issues of title, which are quite alien to proceedings for eviction before the Small Causes Court may arise. For all these reasons, and by following dictum in Kanaklata Das (supra), the impugned orders will have to be set aside and the Nadaf's application for impleadment will have to be dismissed.

10] Accordingly, Rule in each of the petitions is made absolute in terms of prayer clause (a) only. This means that the impugned orders are set aside and the Nadaf's application for impleadment /intervention is hereby dismissed.

11] However, prayer clause (b) in each of the petition is entirely misconceived. It is not for this Court to declare that

Nadaf has no immediate and direct interest in the suit premises without any substantive suit for ownership. Such an issue does not at all arise in these proceedings and the petitioners, by inserting such a prayer, cannot prejudice the interests of Nadaf, if any, in the suit premises. Therefore, though the impugned orders are being set aside, it is made absolutely clear that the issue of Nadaf's alleged title or interest in the suit premises is kept open and Nadaf will be at liberty to agitate such issue by instituting separate and independent proceedings before a competent Court of law. Further, it is made clear that any findings whether direct or indirect which might be recorded by the Small Causes Court in the proceedings for eviction touching the question of title over the suit premises will not be binding on Nadaf and regardless to the outcome of such suits, Nadaf will be at liberty to file independent suits/proceedings for declaration of rights, title and interest in the suit premises. This clarification is consistent with what is observed by the Apex Court in *Kanaklata Das and ors (supra)* at paragraph 27 which reads thus:

“27. We, however, make it clear that any finding whether directly or indirectly, if recorded by the Trial Court

touching the question of title over the suit property, would not be binding on respondent No.1 regardless of the outcome of the suit and respondent No. 1 would be free to file an independent civil suit against the appellants for a declaration of his right, title and interest in the suit premises and in any other properties, if so, and claim partition and separate possession of his share by metes and bounds in all such properties.”

12] Therefore, Rule in each of the petition is made absolute only in terms of prayer clause (a). There shall be no order as to costs.

(M. S. SONAK, J.)