

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8738 OF 2018

Kamlakar Shantaram Mathe @ Gajanan
Shantaram Mathe ... Petitioner
Vs.
The State of Maharashtra and others ... Respondents

Ms Ratna F. Jaiswal for Petitioner.
Mr. Jaydeep Deo for Respondents No.2 and 3.

CORAM : R. G. KETKAR, J.
DATE : OCTOBER 09, 2018

P.C. :

Heard Ms Jaiswal, learned Counsel for the petitioner and Mr.Deo, learned Counsel for the respondents No.2 and 3 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'plaintiff', has challenged the order dated 16.01.2018 passed by the learned Judge, Court Room No.20 of the Court of Small Causes, Mumbai below exhibit-31 in R.A.D. Suit No.1645 of 2012. By that order, the learned trial Judge rejected the application made by the plaintiff for consolidation of Suits bearing R.A.D. Suit No.1645 of 2012 and R.A.E. Suit No.384 of 2006. R.A.E. Suit is instituted by defendants No.1 and 2 in R.A.D. Suit for eviction of the plaintiff and others from shop No.3, Jenabai Building, 99, Dadasaheb Phalke Road, Dadar Central Railway, Mumbai 400 014 (for short 'suit premises').

3. In support of this Petition, Ms Jaiswal invited my attention to R.A.E. Suit filed by the respondents No.2 and 3 herein. She submitted that name of defendant No.2 is wrongly mentioned as 'Gajanan

Shantaram Mathe' instead of 'Kamlakar Shantaram Mathe'. She submitted that respondents No.2 and 3 contended that by indenture dated 22.12.1944, the father of the defendants No.1 and 2, namely, Gopal Ramaya Shetty had purchased the hotel that was being run in shops No.2 to 8 in Jenabai Building. In respect of the suit premises, one Shantaram J. Mahte was the tenant. The defendants therein are the heirs and legal representatives of deceased Shantaram Mahte and have succeeded to the tenancy rights of the suit premises.

4. As against this, plaintiff herein has instituted R.A.D. Suit No.1645 of 2012 against defendants No.2 and 3 and defendant No.8 – Jenabai Hasanalli Co-op. Housing Society Limited and others for declaration of tenancy rights in respect of the suit premises. She submitted that the suit premises among others was owned by one Haji Sultan Haji Hussain. He was issuing rent receipts in respect of the suit premises in the name of Shantaram. The tenants of Jenabai building formed an association namely, Jenabai Hasanali Building Tenants Association (for short 'Association'). The heirs of the original owner Haji Sultan Haji Hussain have sold the property to the Association. Plaintiffs have been regularly paying repair charges, water charges and maintenance charges to the Association. The Association has also been accepting rent @ Rs.80/- per month from the plaintiffs and receipts are issued by the Association in the name of Darbar Hair Cutting Saloon. She submitted that the present Suit is instituted for declaration that the plaintiff is a tenant of defendant No.8 Society. The Suit is instituted after issuing notice under Section 164 of the Maharashtra Co-operative Societies Act, 1960. She submitted that plaintiff took out application exhibit-31 for clubbing both the Suits together as the dispute is between the same parties. The suit premises is also common in both the Suits. In order to avoid conflicting decisions being rendered in both the Suits, it is desirable to club both the Suits together as evidence would be common

in both the Suits. She, therefore, submitted that the impugned order deserves to be set aside thereby allowing application exhibit-31 filed by the plaintiff.

5. On the other hand, Mr. Deo supported the impugned order. He has taken me through the plaint filed by the respondents No.2 and 3 in the eviction Suit, the plaint filed by the plaintiff in R.A.D. Suit and the prayers made in both the Suits. He submitted that whereas in the eviction Suit, respondents No.2 and 3 have claimed possession on the ground that legal representatives of Shantaram - original tenant have succeeded the tenancy rights, the plaintiff has claimed declaration that he is a tenant of defendant No.8 society. He, therefore, submitted that issues are not common in both the Suits and evidence also will not be common.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. A perusal of paragraph 5 of the impugned order shows that the learned trial Judge has recorded a finding that though the parties and the suit premises are one and the same, the issues in both the Suits are not one and the same. In paragraph 6, the learned trial Judge noted that the evidence will not be common in both the Suits.

7. Ms Jaiswal submitted that by order dated 28.08.2017 below exhibit-40 in R.A.E. Suit No.270/384 of 2006, the learned trial Judge has framed additional issue namely, whether respondents No.2 and 3 herein prove that the defendants by denying the title of the plaintiffs have themselves made liable for eviction under provisions of the Maharashtra Rent Control Act, 1999. She, therefore, submitted that the reason given by the learned trial in paragraphs 5 and 6 is erroneous. It is not possible to accept this submission. In paragraph 5, the learned trial

Judge has rightly held that the issues are not common. In paragraph 6, the learned trial Judge observed that the evidence will not be common in both the Suits. That apart, Eviction Suit is instituted in the year 2006 and the Declaration Suit is instituted in the year 2012. In view thereof, no case is made out for interfering with the impugned order. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)

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by Minal Parab
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