

In the High Court of Punjab and Haryana at Chandigarh

CR-6877 of 2017(O&M)
Reserved on : 23.5.2018
Date of Decision:- 1.6.2018

Sharad Kapoor

.....Petitioner

Versus

Manjit Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present : Mr. Vaibhav Narang, Advocate, for the petitioner.

Mr. T.S.Sandhu, Advocate, for respondents No.2 and 3.

GURVINDER SINGH GILL, J.

The petitioner-landlord assails order dated 18.5.2017 passed by learned Rent Controller, Amritsar whereby an application under Order 1 Rule 10 CPC filed by respondents No.2 and 3 i.e. Uma Kapoor and Vinay Kapoor for being impleaded as a party to the ejectment proceedings has been accepted.

The petitioner-landlord Sharad Kapoor had filed an ejectment application seeking eviction of tenant namely Manjit Singh from the demised premises on the ground of non-payment of rent which is being contested by respondent No.1 Manjit Singh. During the course of proceedings of the ejectment application, respondents No.2 and 3 namely Uma Kapoor and Vinay Kapoor i.e. the brother and mother of the petitioner, moved an application under Order 1 Rule 10 CPC for being impleaded as party to the ejectment proceedings while stating therein that in fact the demised premises were

owned by father of the present petitioner-Sharad Kapoor who had died intestate on 11.12.2013 but the petitioner, after his death fabricated a forged Will dated 27.2.2013 of his father and upon coming to know about the same, applicants i.e. respondents No.2 and 3 filed a civil suit against the present petitioner titled as “Uma Kapoor and others Vs. Sharad Kapoor and others” which is still pending. It is further stated in the application that present petitioner Sharad Kapoor is not the exclusive owner of the demised premises and since the applicants-respondents No.2 and 3 are also the co-owners, therefore, they be also impleaded as a party especially since the respondent-tenant Manjit Singh has colluded with petitioner Sharad Kapoor.

Petitioner Sharad Kapoor filed reply to the aforesaid application denying all the material averments stated therein while asserting that his father late Sh. Madan Mohan had executed a Will in his favour. The learned Rent Controller after considering the matter regarding impleadment of the applicants accepted application under Order 1 Rule 10 CPC. The relevant portion of the impugned order reads as under:

“..... However, it is also an admitted fact that the applicant Uma Kapoor and Vinay Kapoor have challenged a Will dated 27.02.2013 allegedly executed by Sh. Madan Mohan in favour of petitioner Sharad Kapoor. The said case is pending for adjudication before the Court of Ms. Gurpreet Kaur, CJ(JD), Amritsar who has granted status quo with regard to properties of Sh. Madan Mohan. Now the title of the suit property cannot be decided by this Court and as such, the applicant Uma Kapoor and Vinay Kapoor are also a necessary party as no adjudication can be made by this Court without impleading them as parties in the present suit. As such the application in hand is allowed

and applicant Uma Kapoor w/o late Sh. Madan Mohan Kapoor and Vinay Kapoor s/o Late Sh. Madan Mohan Kapoor are impleaded as parties in the present rent petition.”

Learned counsel for the petitioner while assailing the impugned order has submitted that the lis pertaining to ejectment proceedings cannot be converted into a lis regarding ownership and that a person can be a landlord even without being an owner and that the learned Rent Controller by accepting the application under Order 1 Rule 10 CPC has virtually forced the petitioner-landlord to enter into lis with the said applicants when in fact a separate litigation on the basis of Will is already pending. Learned counsel for the petitioner in order to hammer forth his aforesaid submission has pressed into recent judgment of Hon'ble Supreme Court reported as Kanaklata Das and others Vs. Naba Kumar Das and others 2018 (2) SCC 352.

As against the aforesaid submission, the learned counsel for respondents No.2 and 3 has submitted that admittedly the petitioner and respondents No.2 and 3 are related inter se and that dispute regarding ownership of the demised premises has arisen on account of the petitioner having set up a Will of his father whereas in fact he had died intestate. The learned counsel has submitted that since it is not disputed that the demised premises were owned by father of the petitioner and litigation regarding inheritance of his property is still pending, therefore, it will be certainly in the interest of justice to avoid multiplicity of litigation and that even propriety demands that respondents No.2 and 3 who are none else but brother and mother of the petitioner be also arrayed as a party so as to enable him to watch their interest.

I have considered rival submissions addressed before this Court.

There is certainly no dispute as regards the fact that the demised premises were owned by father of the petitioner and that respondents No.2 and 3 are brother and mother of the petitioner who had moved an application under Order 1 Rule 10 CPC for impleading them as a party asserting therein that owner of the demised premises had died intestate and that they being his widow and son have acquired interest in the same. The ejectment application had been filed in the year 2016 wherein the petitioner had specifically asserted that a rent note dated 19.5.2014 had been executed by respondent No.1 Manjit Singh in favour of petitioner Sharad Kapoor @ Rs.4200/- per month. It is however noteworthy that father of the petitioner had admittedly expired in the year 2013 whereas the present ejectment application was filed in year 2016. A perusal of the application, filed by respondents No.2 and 3 shows that applicants-respondents No.2 and 3 have nowhere averred that there exists a relationship of landlord and tenant amongst them and respondent No.1 Manjit Singh. Rather a stand has been taken therein that Manjit Singh and Sharad Kapoor have colluded. However, a perusal of the written statement filed on behalf of respondent No.1 Manjit Singh shows that it is tenant Manjit Singh who has himself taken an objection regarding non-joinder of necessary parties. The relevant extract of preliminary objection No.3 from the written statement, annexed with the application reads as under:

“3. The application is bad for the non-joinder and mis-joinder of the necessary parties. Late Sh. Madan Mohan Kapoor, father of the applicant, was the landlord of the respondent, who had inducted the respondent in the tenanted shed as tenant on a monthly rent of Rs.4200/-. Sh. Madan Mohan Kapoor has

expired and he was survived by his widow Uma Kapoor, daughter Sanjna and two sons Sharad Kapoor and Vinay Kapoor. There is a dispute amongst all the legal heirs of the deceased Landlord Sh. Madan Mohan Kapoor, with respect to the survivorship and inheritance of the properties left by the deceased. They have filed civil and criminal cases against each other with respect to the claims of their ownership of the properties left by Late Sh. Madan Mohan Kapoor. Under such circumstances, the respondent is unable to ascertain about the landlord of the tenanted shed, however the respondent had paid the rent to Uma Kapoor wife of Madan Mohan Kapoor after the death of Madan Mohan Kapoor. The respondent is going to file an inter-pleader suit against all the legal heirs of the deceased landlord so that the question of the landlord ship could be decided by a competent court.”

Had there been any collusion between respondent No.1 Manjit Singh and petitioner Sharad Kapoor, then they would have taken steps to ensure that respondents No.2 and 3 i.e. the brother and mother of the petitioner-landlord do not get to know anything and would have tried to secure some order in a clandestine manner.

In this regard, observations of Hon’ble Supreme Court in Kanaklata Das and others Vs. Naba Kumar Das and others Civil Appeal No.3018 of 2008 need to be borne in mind which read as follows:

- “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. Chinnian & 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.”

Applying the ratio of the above referred judgment to the facts of the present case, where a dispute as regards the ownership of the demised premises raised after the death of the original owner is pending in a separate suit and apparently there is nothing on record to suggest any collusion between the petitioner and respondent No.1, there is certainly no ground for impleading any other person as a party to the lis. Consequently, the impugned order cannot sustain and deserves to be set aside.

The revision petition merits acceptance and is hereby accepted. The impugned order dated 18.5.2017 passed by learned Rent Controller, Amritsar, impleading respondents No.2 and 3 as a party to the ejectment application is set aside. It is, however, made clear that any findings returned by Rent Controller, directly or indirectly, as regards title of petitioner over suit property shall not be binding on respondents No.2 and 3 and will not, in any manner, affect the outcome of civil suit regarding title pending amongst the petitioner and respondents No.2 and 3.

June 1, 2018
mohan

(GURVINDER SINGH GILL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No