

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No.544/2018**

% **17th July, 2018**

NAVIN CHANDER ANAND Appellant

Through: Mr. Siddharth Yadav, Advocate
with Mr. Dalip Mehra,
Advocate.

versus

UNION BANK OF INDIA & ORS. Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.27796/2018 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

RFA No.544/2018

2. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the judgment of the Trial Court dated 22.2.2018 by which trial court has dismissed the suit for possession and *mesne* profits filed

by the appellant/plaintiff. It is noted that possession of the suit premises has already been received by the appellant/plaintiff along with other co-owners/co-landlords and who were the defendant nos.2 to 5 in the suit (respondent nos.2 to 5 in this appeal), and therefore, the only issue in this appeal to be decided is as to whether the appellant/plaintiff is entitled to *mesne* profits with respect to period of the alleged illegal stay of the respondent no.1/defendant no.1/tenant on account of alleged termination of tenancy. The suit premises comprises of ground floor and half portion basement of property no.26/2, East Patel Nagar, New Delhi. It may be noted that subject suit has been dismissed on the ground that the appellant/plaintiff, being only one co-owner/co-landlord cannot claim possession and recovery of damages once the other co-owners being respondent nos.2 to 5 /defendant nos.2 to 5 have not supported the appellant/plaintiff and have in fact opposed the termination of tenancy by the appellant/plaintiff of the respondent no.1/defendant no.1/tenant.

3. Though the trial court has decided the relevant issue no.6 by simply observing in para 21 of the impugned judgment that only one co-landlord cannot terminate the tenancy, and there is no

discussion or reference to case law in this regard, however, I have pointed out to the counsel for the appellant/plaintiff the judgments of the Supreme Court in the cases of ***Sk. Sattar Sk. Mohd. Choudhari Vs. Gundappa Amabadas Bukate (1996) 6 SCC 373*** and ***Jagdish Dutt and Another Vs. Dharam Pal and Others (1999) 3 SCC 644*** and which judgments hold that one co-owner/co-landlord is not entitled on his own, in the face of opposition of other co-owners/co-landlords, to terminate the tenancy.

4(i) The relevant observations of the Supreme Court in the case of ***Sk. Sattar Sk. Mohd. Choudhari (supra)*** are contained in para 37 of the said judgment and which para 37 reads as under:-

“37. In view of the above discussion, it is obvious that the law with regard to the splitting of tenancy is not what the High Court has set out in the impugned judgment. As pointed out earlier, a co-sharer cannot initiate action for eviction of the tenant from the portion of the tenanted accommodation nor can he sue for his part of the rent. The tenancy cannot be split up either in estate or in rent or any other obligation by unilateral act of one of the co-owners. If, however, all the co-owners or the co-lessors agree among themselves and split by partition the demised property by metes and bounds and come to have definite, positive and identifiable shares in that property, they become separate individual owners of each severed portion and can deal with that portion as also the tenant thereof as individual owner/lessor. The right of joint lessors contemplated by Section 109 comes to be possessed by each of them separately and independently. There is no right in the tenant to prevent the joint owners or co-lessors from partitioning the tenanted accommodation among themselves. Whether the premises, which is in occupation of a tenant, shall be retained jointly by all the lessors or they would partition it among themselves, is the exclusive right of the lessors to which no objection can be taken by the tenant, particularly where the tenant knew

from the very beginning that the property was jointly owned by several persons and that, even if he was being dealt with by only one of them behalf of the whole body of the lessors, he cannot object to the transfer of any portion of the property in favour of a third person by one of the owners or to the partition of the property. It will, however, be open to the tenant to show that the partition was not bona fide and was a sham transaction to overcome the rigours of Rent Control laws which protected eviction of tenants except on specified grounds set out in the relevant statute.”
(underlining added)

(ii) The relevant observations of the Supreme Court in the judgment in the case of *Jagdish Dutt (supra)* are contained in para 7 and this para 7 reads as under:-

“7. When a decree is passed in favour of a joint family the same has to be treated as a decree in favour of all the members of the joint family in which event it becomes a joint decree. Where a joint decree for actual possession of immovable property is passed and one of the coparceners assigns or transfers his interest in the subject matter of the decree in favour of the judgment debtor, the decree gets extinguished to the extent of the interest so assigned and execution could lie only to the extent of remaining part of the decree. In case where the interest of the coparceners is undefined, indeterminate and cannot be specifically stated to be in respect of any one portion of the property, a decree cannot be given effect to before ascertaining the rights of the parties by an appropriate decree in a partition suit. It is no doubt true that the purchaser of the undivided interest of a coparcener in an immovable property cannot claim to be in joint possession of that property with all the other coparceners. However, in case where he is already in possession of the property, unless the rights are appropriately ascertained, he cannot be deprived of the possession thereof for a joint decree holder can seek for execution of a decree in the whole and not in part of the property. A joint decree can be executed as a whole since it is not divisible and it can be executed in part only where the share of the decree holders are defined or those shares can be predicted or the share is not in dispute. Otherwise the executing court cannot find out the shares of the decree holders and dispute between joint decree holders is foreign to the provisions of Section 47 CPC. Order XXI Rule 15 CPC enables a joint decree holder to execute a decree in its entirety but if whole of the decree cannot be executed, this provision cannot be of any avail. In that event also, the decree holder will have to work out his rights in an appropriate suit for partition and obtain necessary relief thereto. Various decisions cited by either side to which we have referred to do not detract

us from the principle stated by us as aforesaid. Therefore, a detailed reference to them is not required.” (underlining added)

5. A reading of the ratio of the aforesaid two judgments makes it clear that when there are various co-owners/co-landlords, only one co-owner/co-landlord cannot terminate the tenancy for seeking possession of the tenanted property and/or *mesne* profits

6(i) Learned counsel for the appellant/plaintiff has placed reliance upon the judgment of the Supreme Court in the case of ***Om Prakash and Another Vs. Mishri Lal (dead) represented by his legal representative Savitri Devi (2017) 5 SCC 451*** to argue that one co-owner can file a suit for possession, and in this regard paras 32 to 34 of the said judgment are relied upon and which paras read as under:-

“32. It is no longer *res integra* and is settled by this Court in *Sri Ram Pasricha v. Jagannath*, *Dhannalal v. Kalawatibai* and *India Umbrella Manufacturing Co. v. Bhagabandei Agarwalla* that a suit for eviction of a tenant can be maintained by one of the co-owners and it would be no defence to the tenant to question the maintainability of the suit on the ground that the other co-owners were not joined as parties to the suit. The judicially propounded proposition is that when the property forming the subject matter of eviction proceedings is owned by several co-owners, every co-owner owns every part and every bit of the joint property along with others and thus it cannot be said that he is only a part owner or a fractional owner of the property and that he can alone maintain a suit for eviction of the tenant without joining the other co-owners if such other co-owners do not object. In the contextual facts, not only the compromise decree, as aforementioned, has declared the Appellants to be the joint owners of the suit premises, their status as such has not been questioned at any stage by anyone interested in the title thereto.

33. Further, the original Defendant having accepted Smt. Chameli Devi as his landlady and thereafter continued to pay rent to her son Bhola Nath, the father of the Appellants, in terms of the definition of "landlord" in Section 3(j) of the Act, he during his life time and after his demise, the Respondents are estopped Under Section 116 of the Indian Evidence Act, 1872 to dispute the status of the Appellants as their landlord in a suit for his eviction from the tenanted premises.

34. That a tenant during the continuance of the tenancy is debarred on the doctrine of estoppel from denying the title of his landlord through whom he claims tenancy, as is enshrined in Section 116 of the Indian Evidence Act, 1872, is so well-settled a legal postulation that no decision need be cited to further consolidate the same. This enunciation, amongst others is reiterated by this Court in *S. Thangappan v. P. Padmavathy* and *Bhogadi Kannababu v. Vuggina Pydamma*. In any view of the matter, the Appellants, being the son of Bhola Nath, who at all relevant time, was the landlord vis-a-vis the original Defendant and the Respondents in terms of Section 3(j) of the Act, their status as landlords for the purpose of eviction under the Act, could not have been questioned so as to non suit them for want of locus."

(ii) The argument urged on behalf of the appellant/plaintiff by placing reliance upon the judgment in the case of *Om Prakash (supra)* is completely misconceived because the judgment of the Supreme Court in the case of *Om Prakash (supra)* as also the judgments which are referred to in para 32 in the judgment, only lay down the ratio that one co-owner can file a suit for eviction against a tenant if there is no opposition of the other co-owners/co-landlords. This is the settled law because in the proceedings for eviction under various Rent Control Acts, any one co-owner can seek possession of the tenanted premises in case there is no opposition to the sole petitioner/plaintiff taking possession of the tenanted premises from the

tenant by the other co-owners/co-landlords of the property. However in the present case the other co-owners, being defendant nos.2 to 5/respondent nos.2 to 5, have in fact opposed the termination of tenancy and also of the appellant/plaintiff seeking possession and *mesne* profits of the tenanted premises through the subject suit. Therefore, what will apply in the facts of the present case will be the ratio of the judgments of the Supreme Court in the cases of ***Sk. Sattar*** ***Sk. Mohd. Choudhari (supra)*** and ***Jagdish Dutt (supra)*** and not the ratio of the judgment in the case of ***Om Prakash (supra)***.

7. It is therefore seen that the present appeal is a completely frivolous appeal. The suit was dismissed rightly by the trial court in view of the fact that other co-owners/co-landlords being the respondent nos.2 to 5/defendant nos.2 to 5 did not agree to termination of tenancy and the eviction of the tenant/respondent no.1/defendant no.1 from the suit property. This appeal is therefore dismissed.

JULY 17, 2018
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VALMIKI J. MEHTA, J