

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 07 OF 2018
WITH
CIVIL APPLICATION NO. 632 OF 2018

RAMCHANDRA KANHAYYALAL SENBHAGAT
@ NARDYA (DIED) THROUGH LR
VERSUS
GOPAL BADRINARAYAN TAPDIYA AND OTHERS

Advocate for Appellant : Mr. S.G. Dodya.
Advocate for Respondent No. 1 : Mr. S.S. Rathi.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 13.03.2019

PER COURT :

1. The appellant Swapnil S/o. Shamsundar Senbhagat is aggrieved by the impugned order dated 12.10.2017, by which, an application Exhibit 51 filed by him in RCA No. 87/2012, originating out of RD No. 41/2010, praying for being brought on record as the LR of the deceased appellant Ramchandra, has been rejected.

2. The contention of the appellant is that Gopal/the original plaintiff, has filed a suit before the Trial Court bearing RCS No. 127/2001, seeking recovery of possession. He was admittedly the owner of the suit house which was rented to the original tenant Kanhayyalal. After the death of Kanhayyalal, it was canvassed by the defendants that his two sons Bodulal and Ramchandra were in

possession of the suit premises. Since Bodulal passed away during the litigation, his three sons Satyanarayan, Shamsundar and Ajaykumar were brought on record, as is reflected from Regular Civil Appeal No. 70/2007. Ramchandra, claims to be the son of Kanhayyalal.

3. The suit proceedings were conducted by the three sons of Bodulal versus the original plaintiff Gopal. Ramchandra @ Nardya being the son of Kanhayyalal, had never sought participation in the said suit proceedings. However, the petitioner contends that Ramchandra was a bachelor and did not have any children. Swapnil, who is the present petitioner and son of Shamsunder, claims to be the legal representative of Ramchandra and further claims to be the person taking care of Ramchandra and residing with him in a portion of the tenanted property. It is, therefore, contended that as Ramchandra passed away on 11.03.2013 and had left a will declaring the petitioner as his LR, the petitioner had moved application Exhibit 51 in RCA No. 87/2012, praying for being brought on record as the LR of Ramchandra who had preferred the RCA No. 87/2012. The appellate Court has rejected Exhibit 51 on the ground that there is no evidence that he was entitled to be declared as the LR of the deceased appellant Ramchandra.

4. The petitioner places reliance upon the following judgments :

1. Kanhiya Singh Santok Singh & others Vs. Kartar Singh, [AIR 2009 SC 1600],

2. Krishnagopal Bishwambharlal Maheshwari & others Vs. Ramesh I. Gajjar since deceased through his legal heirs & others, [2003 (1) All.M.R. 278],

3. Textile Association (India) Bombay Unit Vs. Balmohan Gopal Kurup & another [1991 (3) Bom.C.R. 639].

5. While placing reliance upon Kanhiya Singh (supra), it is pointed out that the Hon'ble Apex Court has dealt with the case of the appellants claiming to be in business at the time of death of their father. As they were ordinarily carrying out their business along with their father as members of his family till this date, the status of the appellant was required to be determined. It is, therefore, submitted that the status of the present petitioner of being the LR of Ramchandra needs to be determined.

6. By placing reliance of Krishnagopal (supra), it is contended that though persons may be occupying tenanted premises as trespassers, their contention that they were heirs of the deceased tenants, needs to be gone into. By placing reliance upon Textile Association (supra), it is contended that as the main tenant had left

behind his widow, two sons and daughters, the ex-parte decree granted as against the persons without impleading the sons and daughters, led the Hon'ble Apex Court to conclude that such a decree is liable to be set aside.

7. Learned advocate for the original plaintiff Gopal submits that the Ramchandra @ Nardya, has actually deposed in the suit in support of the tenants who were sought to be evicted by the plaintiff. In his deposition, he has never stated that he is also one of the tenant and is occupying a particular portion of the tenanted premises. The original defendants Satyanarayan, Shamsundar and Ajaykumar had taken a plea in RCA No. 27/2007, in which the judgment of the Trial Court dated 31.08.2007, was challenged, that Bodulal and Ramchandra @ Nardya were sharing the tenanted property. As Ramchandra @ Nardya was not arrayed in the proceedings, the suit was bad for non joinder of necessary parties.

8. The appellate Court, while dismissing the suit by judgment dated 18.03.2010, concluded that the suit was not bad for non joinder of necessary parties. It arrived at a conclusion that the defendants had admitted that the suit was decreed against them and they had never pointed out any time in the suit that Ramchandra @ Nardya was also a tenant and he could not have been evicted without

being arrayed as a defendant. The appellate Court, therefore, concluded that the judgment and decree of the trial Court need not be interfered with since the issue of non joinder of necessary parties would not affect, once it was concluded that Satyanarayan, Shamsundar and Ajaykumar were the defendant who were sought to be evicted by the plaintiff. Shri Rathi, therefore, adds that there was no reason for Gopal to exclude Ramchandra @ Nardya from the civil proceedings, had he been a tenant and occupying the tenanted premises. The plaintiff would not derive any advantage by seeking eviction of some tenants and excluding the purported tenant Ramchandra @ Nardya from the suit as it would actually affect the interest of the plaintiff had Ramchandra @ Nardya being a tenant. He, therefore, points out that the appellate Court has rightly dismissed the appeal filed by the original appellant.

9. He then points out that a Civil Revision Application No. 160/2010 was filed by the original defendants in this Court. The grounds for challenge were considered by this Court while delivering its order on 27.10.2010 and it was held that the eviction of the original defendants is proper. The need of the plaintiff on the grounds of necessity and for personal use, was accepted.

10. I do find with the contention of this petitioner needs to be

prima facie considered in order to make a *prima facie* assessment, as to whether it could be said that he had any interest in the tenanted premises. For the said purpose, the case as to relate back to the original defendant in order to find out as to whether there was any pleading that Ramchandra @ Nardya was a tenant. It is quite surprising that on the one hand, Ramchandra @ Nardya has claimed, undisputedly, that he was having strained relations with Bodulal and on the other hand, he had deposed as a witness on behalf of the defendants in the suit. It was nowhere stated by him in his deposition that he is also a tenant in the same suit property. So also, he did not move an application before the trial Court to claim that he is also a tenant and he should be permitted to participate in the proceedings vide which the plaintiff desires to evict all the tenants.

11. It is undisputed that after this Court delivered a judgment on 27.10.2018, in CRA No. 160/2010, concluding that the original defendants having rightly been evicted from the suit property, none of the defendants or even Ramchandra @ Nardya, had approached the Hon'ble Apex Court. It is, therefore, crystallized that the suit filed by the plaintiff was not held to be affected by the non joinder of Ramchandra as a defendant and at the same time, Ramchandra never moved any application seeking leave to be added as a defendant on the ground that he was also purportedly one of the tenants.

12. When the decree was put to execution in RD No. 41/2010, Ramchandra @ Nardya raised objections under Order XXI Rule 97 of the Code of Civil Procedure, at Exhibit 30 and contended that after Kanhayyalal passed away, Ramchandra has taken the possession of the property. It was, therefore, prayed that the impugned judgment and decree of the trial Court be stayed. By order dated 11.09.2012, the said application Exhibit 30 was rejected by the executing Court by recording its conclusions that the judgments before the Court delivered in the civil litigation between the parties, would indicate that Shamsundar is paying the rent of the suit and it is not necessary to add a member of a joint family. The objections raised by Ramchandra @ Nardya were, therefore, rejected. It was then concluded that the plea taken by Ramchandra @ Nardya that he had no knowledge about the previous suits, was not a stand which deserved to be accepted.

13. Ramchandra @ Nardya then filed RCA No. 87/2012 before the appellate Court contending that the order rejecting his objections was unsustainable. He was about 72 years of age when he preferred the said appeal. He did not even whisper in his eight pages of the Appeal that the present petitioner Swapnil was his nephew and that he was taking care of the appellant and that he was residing along with the appellant in the tenanted premises.

14. I find two aspects to be intriguing. Firstly that Ramchandra @ Nardya did not appear in any proceedings and did not claim that he is one of the tenants and that the eviction suit cannot be conducted without arraying him as a defendant as the judgment and decree would result in his eviction without he being heard. Secondly, after Ramchandra @ Nardya appeared as a obstructionist by raising objections in the execution proceedings under Order XXI Rule 97, he did not care to make any statement in his objections that he was staying all alone at the age of 72 years and that the present petitioner Swapnil was residing with him and was taking care of him. Absence of such averments is not a pure co-incidence, but is a conspicuous absence of necessary pleadings in legal proceedings. In this backdrop, the application filed by Swapnil is a statement made for the first time in the two decades of this litigation that he was residing along with Ramchandra @ Nardya and has become his LR on the basis of a will deed.

15. Notwithstanding the above, even if it is presumed that there need not be any pleadings disclosing the identity of the petitioner Swapnil, yet I find from application Exhibit 51 filed by Swapnil that he merely avers that as Ramchandra @ Nardya has passed away on 11.03.2013, Swapnil would be presumed to be the grand son of Ramchandra @ Nardya on the basis of a will deed. The details of the

will deed are not mentioned, the date of the will deed is also not mentioned and the alleged statement in the will deed, by which, Swapnil claims to be the adopted grand son, is also not mentioned. Even if it is assumed that Swapnil is the grand nephew of Ramchandra @ Nardya, I find it quite conspicuous that Ramchandra @ Nardya never disclosed that Swapnil was living along with him. It cannot be ignored that Swapnil is the son of Shamsundar who is original defendant No. 2 and who has suffered an eviction order sustained even by this Court. It, therefore, indicates that Swapnil appears to be put up by the other defendants.

16. Even if the case of Swapnil is looked at from another angle, it is again intriguing as to why he has not sought a probate on the basis of the will after Ramchandra @ Nardya passed away on 11.03.2013, in these last five years. Swapnil did not find it appropriate to seek a probate on the basis of the said will.

17. The learned counsel for the plaintiff has relied upon the judgment delivered by the Hon'ble Apex Court in the matter of Jaspal Singh Vs. The Additional District Judge, Bulandshahr and others [AIR 1984 SC 1880]. The Hon'ble Apex Court considered the definition and meaning of "Tenant" under Section 3 (a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act. While

considering the facts of the case wherein the tenant died leaving no male issue as an heir, the nephew of the deceased tenant claimed to be his heir on the ground that the deceased tenant had executed a will conveying tenancy rights in the disputed shop property. It was concluded by the Hon'ble Supreme Court that the nephew of such an original tenant cannot be said to have inherited the tenancy rights from the said shop.

18. The conclusions of the Hon'ble Apex Court in paragraph No. 9 read thus :

“9. From a survey of these provisions it will be clear that if a tenant parts with possession of the premises in his possession, the same would be treated as vacant. There are restrictions in the case of a residential building that the tenant will live only with the members of his family and after he has allowed the same to be occupied by any person who is not a member of his family, the tenant shall be deemed to have ceased to occupy the building. In the case of a non-residential building, when a tenant is carrying on business in the building, admits a person who is not a member of his family as a partner or a new partner, as the case may be, the tenant shall be deemed to have ceased to occupy the building. If a tenant sublets the premises, he is liable to ejectment. Obviously, therefore, there are restrictions placed by the Act on the right of the tenant to transfer or sublet the tenancy rights and he can keep possession of the building or premises for himself and for

the purpose of his family, for his business and for the business of his family members. He obviously cannot be allowed to transfer a tenancy right. A fortiori, the scheme of the Act does not warrant the transfer of the tenancy right to be effective after his lifetime. Thus, the appellant was neither a tenant of the disputed shop nor he was an heir of Naubat Singh, the original tenant. Besides, on a plain reading of the will it is evident that the will has been executed in respect of other properties including his business but not in respect of the tenancy rights. The High court also recorded a finding to the effect that there was no will in respect of the tenancy rights of the disputed shop.”

19. In view of the above, though the impugned order appears to be a brief order without considering all the above factors in details, I find that this Appeal is devoid of merits in the facts and circumstances of the case. The same, is therefore, dismissed. The pending Civil Application does not survive and stands disposed off.

(RAVINDRA V. GHUGE, J.)