

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.680 OF 2015

Gopal Bhiva Nagale (deleted) and others ... Applicants
Vs.
Pandurang Ratnu Nagle (decd) through his legal
heirs and others ... Respondents

Mr. Arun J. Jadhav for Applicants.
Mr. Nachiket V. Khaladkar for Respondents.

CORAM : R. G. KETKAR, J.
DATE : MARCH 4, 2019

P.C. :

Heard Mr. Jadhav, learned Counsel for the applicants and
Mr.Khaladkar, learned Counsel for the respondents at length.

2. By this Application under Section 115 of the Code of Civil Procedure, applicants, who are the heirs and legal representatives of defendant No.3, have challenged the judgment and decree dated 01.10.2012 passed by the learned Judge, Court Room No.11 of the Court of Small Causes at Bombay in R.A.D. Suit No.21 of 2005 as also the judgment and decree dated 23.04.2015 passed by the learned Appellate Bench of the Small Causes Court at Bombay in R.A.D. Appeal No.63 of 2012. By these orders, the Courts below decreed the Suit instituted by legal representatives of respondent No.1 and declared that original plaintiff, Pandurang is the co-tenant of the suit premises along with defendants No.3 A to 3D and defendants No.4(a) to 4(d).

3. In support of this Application, Mr. Jadhav contended that one Govind Balaji Nagle was tenant in respect of room No.2 (re-numbered as room No.4), Anand Ghigiji Chawl No.38, Bhagwantrao Paralkar Road, Parel, Mumbai 400 012 (for short 'suit premises'). He died in the

year 1947 leaving behind his widow Savitribai. Savitribai died in the year 1983. The couple had no issues. Late Govind had two brothers by name Bhiwa and Ratnu. Plaintiff Pandurang is son of Ratnu Nagle. Defendants No.3 and 4 are the sons of other brother Bhiwa. The rent receipt continued to be issued in the name of Govind after his death and even after the death of Savitribai. In the year 1998, landlords issued rent receipt in favour of defendant No.3 Gopal. The plaintiff instituted Suit in the year 2005, which was hopelessly barred by limitation. Mr.Jadhav submitted that cause of action for the first time accrued to the plaintiff-Pandurang in the year 1947 when tenant Govind expired. In any case, cause of action accrued to the plaintiff in the year 1983 when Savitribai expired. The Courts below held that Suit is not barred by limitation because in the year 2001, Pandurang was dispossessed from the suit premises. He filed Suit in the City Civil Court, which was decreed in the year 2004, and therefore, the Suit for declaration of tenancy filed in the year 2005 was within limitation.

4. Mr. Jadhav relied upon the decision in ***Khatri Hotels Private Limited Vs. Union of India*, (2011) 9 SCC 126** to contend that the Courts below were not justified in decreeing the Suit when it was barred by limitation.

5. On the other hand, Mr. Khaladkar supported the impugned orders. He relied upon the decision in ***Dattaram Shripat Khurase Vs. Harikisandas Laxmidas Ghaswalla*, 1979 Mh.L.J. 663** to contend that interest of statutory tenant is heritable and transmissible and heirs of deceased tenant are entitled to succeed apart from Section 5(11)(c) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Bombay Rent Act'). The correct way and proper terminology of describing persons, who are more than one in number holding as tenants of property, is to describe them as co-tenants or co-lessees. On

the question of limitation, he submitted that after the death of tenant Govind, rent receipts were issued in his name even after the death of his widow Savitribai. The landlords issued tenancy receipt in the name of the defendant No.3 in the year 1998 surreptitiously. The plaintiff was dispossessed in March 2001. The Suit filed by him was decreed by the City Civil Court on 15.12.2005. C.R.A.No.20 of 2005 preferred by the defendants was dismissed by this Court on 31.03.2005. The possession of the plaintiff was thereafter restored. He, therefore, submitted that the Courts below rightly held that Suit is not barred by limitation.

6. The Application was heard at length on 18.02.2019 and was adjourned till today so as to enable the learned Counsel for the parties to address the Court as to whether the concept of co-tenancy is recognized under the Rent Act.

7. Mr. Jadhav submitted that neither under Section 5(11)(c) of the Bombay Rent Act nor under Section 7(15)(d) of the Maharashtra Rent Control Act, 1999 (for short 'Maharashtra Rent Act'), concept of joint tenancy is recognized. He submitted that the Courts below were, therefore, not justified in declaring that plaintiff is a co-tenant of the suit premises along with defendants No.3A to 3D and defendants No.4(a) to 4(d).

8. On the other hand, Mr. Khaladkar relied upon following decisions:

- a. ***Bai Amina Vs. doctor Abdulrehman Gulam Mohamad Mansuri***, AIR 1992 Gujarat 67, and in particular paragraph 2 thereof;
- b. ***Zahid Ahmedali Vs. Gulshan Pyarali***, 2006 (5) Mh.L.J. 522, and in particular paragraph 10 thereof;
- c. ***Mini Peter Philips Vs. Dina J. S. Fanibanda***, 2007 (4)

Bom.C.R.526, and in particular paragraphs 39, 40, 43 and 45;

9. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. In the plaint, plaintiffs have prayed for following reliefs:

- c. That defendant No.1 to 4, their agent or their servant or any body on behalf them be restrained by a permanent order of injunction by this Hon'ble Court from any manner dealing with disposing of the suit premises being Room NO.2 Anand Ghighaji Chawl No.38, Bhagwantrao Paralkar Road, Parel, Mumbai 400 012, or from inducting any third party therein or from creating any third party right, therein or from surrendering the tenancy right thereof without the consent of the plaintiff and or further dispossessing the plaintiff from the suit premises and or ota of the suit premises.
- d. That pending the hearing and final disposal of the suit the defendants No.1 to 4, and their agents and servants and anybody on their behalf be restrained from any manner dealing with, disposing off the suit premises being Room No.2, Anand Ghighaji Chawl No.38, Bhagwantrao Paralkar Road, Parel, Mumbai 400 012, or from surrendering the tenancy right thereof without the consent of the plaintiff and or further dispossessing the plaintiff from the suit premises and or from the ota of the suit premises.

10. In so far as the first contention advanced by Mr. Jadhav that the Suit is barred by limitation is concerned the learned trial Judge has considered this submission from paragraphs 10 to 12. In paragraph 10, the learned trial Judge dealt with the contention of the defendant that the Suit is instituted in the year 2005 while the cause of action for the first time accrued to the plaintiffs in the year 1998. In paragraph 11, the learned trial Judge considered the contention of the plaintiff that no sooner his possession was restored by the order of the City Civil Court recognizing his lawful possession over the suit premises, the Suit was immediately instituted by the plaintiff, and therefore, it is within limitation. In paragraph 12, the learned trial Judge observed that the relationship between plaintiff and other legal representatives of Govind

Nagle was not in dispute. The plaintiff's possession was restored in the suit premises by the order of the Court, and thereafter, he has instituted Suit for declaration of his tenancy rights. The learned trial Judge, therefore, held that Suit is not barred by limitation.

11. In so far as the Appellate Court is concerned, the Appellate Court has considered this aspect in paragraphs 17 to 19. The Appellate Court affirmed the finding of the trial Court and held that the Suit is not barred by the law of limitation.

12. It is material note that Govind Balaji Nagle died in the year 1947 leaving behind his widow Savitribai. Savitribai died in the year 1983. The couple had no issues. Late Govind had two brothers by name Bhiwa and Ratnu. Plaintiff Pandurang is son of Ratnu Nagle. Defendants No.3 and 4 are the sons of other brother Bhiwa. Even after the death of Govind in the year 1947, the rent receipt continued to be issued in the name of Govind. Even after the death of his widow in the year 1983, rent receipts continued to be issued in the name of Govind. It is for the first time in the year 1998, landlords have issued rent receipts in favour of defendant No.3 Gopal. It has come on record that plaintiff was residing in the suit premises along with defendants No.3 and 4, sons of Bhiva. He was dispossessed from the suit premises in the year 2001. He instituted Suit in the City Civil Court, which was decreed in the year 2004 and immediately thereafter, present Suit was instituted in the year 2005.

13. Mr. Jadhav relied upon the decision in **Khatri Hotels Private Limited** (*supra*) to contend that the Suit is barred by limitation. It is not possible to accept this submission. The Courts below have concurrently held that right to sue firstly accrued to the plaintiff after the possession was restored to him in the year 2004 and not from the year 1998 when

the rent receipt was transferred in the name of defendant No.3. In view thereof, the decision in **Khatri Hotels Private Limited** (*supra*) does not advance the case of the applicants. I, therefore, do not find that any error is committed by the Courts below in holding that the Suit is not barred by limitation.

14. In so far as the concept of joint tenancy is concerned, in the case of **Dattaram Shripat Khurase** (*supra*), this question was considered at length. The learned Single Judge M. N. Chandurkar, J. (the learned Chief Justice then was) referred to several decisions on this subject. In paragraphs 13 to 16, it was observed thus,

“13. In the instant case, the original tenant had died long back and it is clear on the averments in the plaint that the plaintiff himself had treated defendants Nos. 1 to 4 as persons who had tenancy rights. They were described as tenants in the plaint itself and though it is not clear on the averments in the plaint as to whether four separate notices of termination of tenancy were issued, the plaint in so many terms states that

“The plaintiff, therefore, by his advocate's notice dated April 18, 1963 terminated the tenancy of the defendants No. 1 to 4 in respect of the said shop No. 1 ...

” Now, it is, no doubt, true that so far as the landlord is concerned, there is only one tenancy and merely because the tenants are more than one in number, there cannot be said to be more than one tenancy in respect of the suit premises as between the tenants on the one side and the landlord on the other. As between the tenants themselves, there is unity of possession giving right to each one of the defendant-tenants to occupy and use the tenanted premises. The concept of one tenancy vis-a-vis the landlord appears now to be a settled position in law. This question was considered by a Full Bench of the Lahore High Court in *Moti Lal v. Kartar Singh*, AIR 1930 Lahore 515, in which dealing with a joint occupancy and tenancy in respect of land, it is pointed out that the tenants as between themselves hold their shares independently of each other and on the death of any one of them, his share passes to his own heir or heirs but as against the landlord, they or their heirs taken together constitute a single tenant. This decision was considered by this Court in *Ramubai v. Jiyaram Sharma*, AIR 1964 Bombay 96 where the question was as to whether a notice to quit given to one of the

joint tenants was a valid notice to all or whether the notice to quit had to be served on all the joint tenants. The facts in that case were that the tenanted premises were occupied by tenant Bhagwanbhai against whom the landlords started proceedings for permission! to terminate the tenancy before the Rent Controller. Bhagwanbhai died during the pendency of those proceedings and the widow, the sons and the married daughters of Bhagwanbhai were brought on record. The necessary permission having been granted by the Rent Controller, a notice addressed to all the eleven defendants was issued calling upon them to vacate the premises. This notice was not served on one of the married daughters of deceased Bhagwanbhai. The plaintiff, therefore, issued a second notice which was also addressed to all the eleven defendants, but it was served on some of the defendants.. In the suit for ejectment, the main defence was that the tenancy of the joint tenants had not been terminated according to law. The contention was that under the Hindu Succession Act, 1956, the heirs of the deceased took the property as tenants in common and not as joint tenants and that each of the defendants, inherited the property, namely, the leasehold property in his or her own right as a tenant-in-common. Thus, according to the defendants in that case, since they did not inherit the leasehold interest as joint tenants, each of them had separate interest in the property which would devolve in case a succession of such interest arises to his heir or heirs. There was thus no right of survivorship inter se amongst the heirs in respect of the leasehold interest and each one of the heirs was entitled to individual notice if that leasehold interest is to be terminated according to law. The contention was that the leasehold interest of the defendants Nos. 1 to 10 was terminated by the first notice with effect from August 4, 1961 while the second notice served on defendant No. 11 terminated the tenancy with effect from September 4, 1961. Therefore, according to the defendants, the lease was not properly terminated. It was contended on behalf of the plaintiffs that the concept of holding property either as joint tenants or as tenants-in-common had nothing to do with the relation of tenant as a whole. The question which was, therefore, posed for consideration of this Court was whether when a lease is given to more than one person, it can be held that they are joint tenants. Referring to the decision, in *Moti Lal's case* cited supra and to the decision in *White v. Tyndall*, (1883) 13 A.C. 263 and *United Dairies Ltd. v. Public Trustee*, [1923] 1 K.B. 469 where it was held that each of the tenants had a share in every part of the estate and it would be true to say that there was a privity of estate between him and the

landlord in the whole of the leased property and, therefore, each was liable to perform the covenant contained in the lease in its entirety, this Court observed as follows (p. 651):

“If that be the true position with respect to totality of the rights under the leasehold and there is unity of enjoyment and possession in respect of leasehold property vis-a-vis the landlord, it is difficult to see why notice to one of these joint tenants could not be considered as a valid notice to all provided such a notice was given.
”

It was also pointed out in *Ramubai's* case that the phrase "tenants-in-common" or "joint tenants" used in Section 19 of the Hindu Succession Act or in other texts when considering the rights of owners of property inter se cannot be confused with the right to hold land as joint tenant in the sense of joint lessees or co-lessees or co-tenants of property and that the word 'tenant' in Section 19 was not used in the sense of lessees. It was pointed out that it is an incident of ownership that has been referred to in Section 19 and that incident in the case of persons holding as tenants-in-common is that the devolution in the case of each of these tenants-in-common would be according to the personal law while in the case of persons holding as joint tenants, it will be by survivorship. In *Ramubai's* case, this Court observed that it is preferable to refer to rights of more than one person holding under the leasehold vis-a-vis the landlord as co-tenants or co-lessees. Thus it was pointed out that if understood in that sense, there will be no difficulty in holding that all the co-lessees or co-tenants held as joint tenants in the sense that they had a single relationship with the landlord and they were not different tenants vis-a-vis the landlord.

14. With respect I agree with the decision in *Ramubai's* case that the correct way and proper terminology of describing persons who are in number more than one holding as tenants of property would be "co-tenants" or "co-lessees" and when they are said to hold the tenanted premises as joint tenants, it is intended to indicate that they have a single tenancy relationship with the landlord and they are not different tenants vis-a-vis the landlord. Thus the question of applicability of the principle of survivorship, which is typical of the concept of devolution of property under the Hindu law or even under the Hindu Succession Act will be wholly

inapplicable in the case of a statutory tenancy like the one with which we are dealing.

15. As pointed out by the Privy Council in *Mt. Baku Rani v. Rajendra Baksh*, the principle of joint tenancy is unknown to Hindu law except in the case of joint property of an undivided Hindu family governed by the Mitakshara Law which under that law passes by survivorship.

16. The same view was taken by the division Bench of the Allahabad High Court earlier in *Kishori Dubain's* case cited supra, where after referring to the earlier decisions of the Privy Council, it was pointed out that the principle of joint tenancies is unknown to Hindu law except in the case of coparcenary between the members of an undivided family. Thus the concept of joint tenancy and property going by the principle of survivorship to the surviving joint tenant which is, typical of coparcenary property governed by the principles of Hindu law cannot be made applicable in the case of a tenancy right.
”

15. In view thereof, I do not find that the Courts below committed any error in declaring that plaintiff is a co-tenant of the suit premises along with defendants No.3A to 3D and defendants No.4(a) to 4(d). Hence, Application fails and the same is dismissed.

(R. G. KETKAR, J.)

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