

Satish Dhirajlal Vithalani and Others ...Petitioners
vs.
The Raghuvanshi Mills Limited and Others ...Respondents

CORAM : R. G. KETKAR, J.

P.C.:

Heard Mr. Jahagirdar, learned senior counsel for the Petitioners and Mr. Singh, learned counsel for Respondent No. 159 at length.

2. On the oral application made by Mr. Jahagirdar, leave to delete Respondent Nos. 1 to 158 is granted. Amendment shall be carried out forthwith.

3. By this Petition under Article 227 of the Constitution of India, the Petitioners- original Plaintiffs have challenged the order dated 4th June, 2019 passed by the Appellate Bench of the Small Causes Court at Mumbai in Revision Application No. 268 of 2017. By that

order the Appellate Court allowed the Revision filed by Respondent No. 159 and set aside the order dated 20th July, 2016 passed by the learned trial Judge passed below Exhibit 637 in T.E. & R. Suit No. 5/6 of 2008. The Appellate Court directed the Plaintiff to implead Respondent No. 159 as Defendant No. 3 in the suit by making necessary correction in array of the parties to replace her name in place of “M/s. Flora Art” (Defendant No. 3).

4. Rule. Mr. Shardul Singh waives service on behalf of Respondent No. 159. Having regard to the narrow controversy in this Petition and at the request of the parties, rule is made returnable forthwith and the Petition is taken up for final hearing.

5. In support of this Petition Mr. Jahagirdar submitted that the Plaintiff had leased the piece of land bearing C.S. No. 107 of Lower Parel Division admeasuring 31677.79 sq.yds. equivalent to 26486.75 sq. mts (for short unit premises) to Defendant No. 1 Raghuvanshi Mills Limited (for short “Mills”) for a period commencing from 1st April, 2004 and expiring on 11th September, 2008 on payment of lease rent and as per the terms and conditions contained in Lease Deed dated 26th December, 2005. He invited my

attention to paragraph 20 of the Plaint of the Plaintiff where the Plaintiff contended that Defendant Nos. 2 to 126 are in possession of the various structures erected on the demised premises i.e. suit premises. Defendant Nos. 2 to 126 have not right, title or interest of any nature whatsoever in respect of the demised premises i.e. suit premises let alone any independent rights in suit premises. Defendant Nos. 2 to 126 are bound by the decree that may be passed against Defendant. Mr. Jahagirdar also invited my attention to clause 6 of the Lease Deed which lays down that lessees shall not be entitled to transfer, assign, mortgage, let, sub let or otherwise part with possession of the demised premises or any part thereof. The lessees shall however henceforth be entitled to give on leave and license basis the buildings or any portion or part thereof constructed on the demised premises to any person or partly which lease and license shall expire on or before 12th August, 2087. He submitted that Respondent No. 159 filed application (Exhibit 637) under Order I Rule 10 of the Code of Civil Procedure, 1908 (for short CPC) *inter alia* contending that Smt. Chanda Devi Ram Gopal is the absolute owner of unit No. 101, 1st Floor, A wing of the society situated in Raghuvanshi Mills Ltd. Compound, Mahalaxmi, Mumbai 13 (in short “said unit”). The

Respondent No. 159 has not claimed any right or interest in the land to the Mills. He submitted that there is no privity of contract between the Plaintiffs on one hand and Respondent No. 159 on the other. In paragraph Nos. 40 and 41 of the impugned order, the Appellate Court however observed that Respondent No. 159 herein being the owner of one of the unit just like so many other Defendants already impleaded, she would be a necessary party to the suit and is entitled to get impleaded as the Defendant. In paragraph No. 41 the Appellate Court observed that in the absence of Respondent No. 159, her interest in the said suit would remain unrepresented in a suit which would be prejudicial to her rights. Her presence in the suit is necessary to have effective and complete adjudication of the rights of the parties in the suit. The Appellate Court observed that in strict sense, applicant may not be a necessary party but she would be definitely a proper party to the suit.

6. Mr. Jahagirdar submitted that these findings are contrary to the law laid down by the Apex Court and this Court. He relied upon the decision of ***Ramkrishna Girishchandra Dode vs. Anand Govind Kelkar, 1999 Bom. R.C. 32.*** In paragraph No. 23

learned single Judge referred the decision ***Jamnadas Dharmdas vs. Dr. J. Josheph, AIR 1980 SC 1605***. The reference was made to paragraph No. 18 of that decision is whether the landlord was entitled to claim relief of possession of the land and in effect the decree for possession of the land would mean that the land should be delivered to him without structures. He submitted that the Plaintiff have prayed for relief in terms of prayer clause (a) for issuing direction for removing of the structure standing on the open land and if the Defendants fail to remove the same. Mr. Jahagirdar, without prejudice to the rights and contentions of the Plaintiff, submitted that in view of paragraph No. 20 of the Plaint, he is ready and willing to implead Respondent No. 159 in the place of M/s. Flora Art as earlier Respondent No. 159 had inducted M/s. Flora Art licensee and after the period was over, M/s. Flora Art surrendered the possession to Respondent No. 159.

7. Mr. Shardul Singh confirms that earlier Plaintiff had impleaded M/s. Flora Art as Defendant No. 3 in the suit. M/s. Flora Art were inducted as licensee of Respondent No. 159 in unit No. 101 and after the licence period was over, they have surrendered possession to Respondent No. 159. He therefore

submitted that Appellate Court was justified in directing the impleadment of Respondent No. 159.

8. I have considered the rival submissions of the learned counsel for the parties and perused the record.

9. In paragraph Nos. 40 and 41 of the Appellate Court order, it is observed thus:

40. Under such circumstances, we are of the considered view that the applicant being the owner of one of the suit premises just like so may other Defendants already impleaded, she would be a necessary party to the suit and is entitled to be get impleaded as the Defendant. According to us, there is no question of conversion of suit in representative suit. Effect of forming association by some of the Defendants to represent their common interest through their association will not ipso facto result in conversion of suit in representative suit. Even in such representative suit, any person having interest in the subject matter in the suit can be impleaded as a Defendant independently.

41. Therefore, according to us, in absence of the applicant, her interest in the suit premises would remain unrepresented in a suit which would be prejudicial to her rights. Therefore, her presence in the suit is necessary to have effective and complete adjudication of the rights of the parties in the suit. According to us, in strict sense, applicant may not be necessary part but she would be definitely a proper party to the suit.

10. In the case of **Ramkrishna Dode** (supra) this Court referred to the decision of this Court in **Ramchandra Raghunath Shirgaonkar vs. Vishnu Balaji Hindalekar, AIR 1920 Bom 87**; The learned single Judge referred the decision of **Dinkar Vaidya vs. Ganpat S. Gore, AIR 1981 Bom 190** wherein it is clearly held that the doctrine of dual ownership has been recognised in India and that in every case where the owner of the land leases the same to another person who constructs structure upon the land and lets it out to his own tenants, the tenants of the structure do not automatically become the Sub-tenants of the owner of the land, but must be deemed to have been given licence in respect of the land. In every case where the owner of the land leases the same to another person who constructs structure upon the land and lets it out to his own tenants, the tenants of the structure do not automatically become the Sub-tenants of the owner of the land, but must be deemed to have been given licence in respect of the land.

11. In view thereof, *prima facie* the occupant of the structure cannot claim right and interest in the land. There is no privity of contract nor privity of estate between the head landlord on the one

hand and the sub-tenant on the other or the Plaintiffs and the occupants of the structure on the land. In view thereof, the impugned order dated 4th June, 2019 passed by the Appellate Court and more particularly the observations in paragraph Nos. 40 and 41 are liable to be set aside. In view thereof, the Petition partly succeeds in the following manner.

12. In view of paragraph 20 and without prejudice to the rights and contentions of statement of Mr. Jahagirdar of the Plaintiff, will implead Respondent No. 159 as Defendant No. 3.

13. Amendment to be carried out within 14 days. Amended copy shall be served to Respondent No. 159.

14. Rule is made absolute accordingly with no order as to cost.

(R.G. KETKAR, J.)