

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**Writ Petition No.4136 of 2019**  
[Converted from Civil Revision Application NO. 507 OF 2018]

|                                                     |                |
|-----------------------------------------------------|----------------|
| Mr. Shravan L. Joshi                                | ...Petitioner  |
| <i>Versus</i>                                       |                |
| Shri Mahendra Laxmishankar Joshi                    |                |
| And another                                         | ...Respondents |
| ....                                                |                |
| Ms. Minal J. Chandnani, Advocate for the Applicant. |                |
| ....                                                |                |

CORAM : R. G. KETKAR, J.

DATE : 26<sup>th</sup> MARCH, 2019

P.C.

1. Heard Ms. Minal J. Chandnani, learned counsel for the petitioner, at length.
2. By this petition under Article 227 of the Constitution of India, 1950, the petitioner, hereinafter referred to as the 'applicant', has challenged the order dated 2.12.2017 passed by the learned Judge, Court Room No.40 of the Small Causes Court at Mumbai (Bandra Branch) below Exhibit-13 as also order dated 3.5.2018 passed by the Appellate Bench of the Small Causes Court at Mumbai (Bandra Branch) in Revision Application No.18/2018. By these orders, the Courts below rejected the application made by the applicant herein for joining him as plaintiff to the suit.
3. Respondent No.1, hereinafter referred to as the 'plaintiff',

has instituted suit against respondent No.2, hereinafter referred to as the 'defendant', for recovery of possession of room No.3, ground floor, plot No.135, Chandravihar, Road No.9, Jawahar Nagar, Goregaon (West), Mumbai – 400 062 (for short, 'suit premises'), as more particularly described in paragraph-2 of the plaint, *inter alia* invoking the grounds under Section 15, 16(1)(c) and 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short, 'Act').

4. The applicant has filed application being Misc. Application No.13/2015 *inter alia* contending that he is the real elder brother of the plaintiff. The plaintiff is representing himself to be an absolute owner and landlord of the suit property. The defendant is inducted illegally in the suit premises in breach of the injunction order passed by this Court. The applicant contended that the plaintiff alone is not the landlord and owner of the suit premises. All the legal heirs of the deceased L.D. Joshi have equal right, title and interest in the suit premises. Said fact is suppressed by the plaintiff. The applicant also has made reference to partition suit being S.C. Suit No.1969/2013. Said suit is converted into Pauper Petition No.1/2003. In that proceedings, the applicant took out Notice of Motion No.478/2003. By order dated 26.8.2003, the learned Single Judge of this Court made Notice of Motion absolute in terms of prayer clause (b) except the portion bracketed in red as also in terms of prayer clause (d). The prayers granted by this Court are to the following

effect :

- “(b) That pending the hearing and final disposal of the petition, the respondents, their servants and family members be restrained by an order and injunction of this Hon'ble Court from disposing of or inducting any one else or transferring the rent bills or putting up any construction or allowing any one else to put up any construction on the suit properties.
- (d) That pending the hearing and final disposal of the petition, the respondent Nos.1 and 2 who are in charge of the suit properties may be called upon to furnish the accounts of the rents received and consideration for transferring the tenancy rights in the two buildings viz Chandra Vihar and Bharat Bhuvan on plot Nos.135 and 334 respectively at Jawahar Nagar, Goregaon (West), Mumbai – 400 063.”

5. That application was resisted by the plaintiff by filing affidavit-in-reply. The defendant also filed affidavit opposing the application. After hearing both sides, the learned trial Judge rejected the application on 2.12.2017. Aggrieved by that decision, the applicant preferred Revision Application, which was rejected by the Appellate Court on 3.5.2018. It is against these orders, the applicant has instituted present Petition.

6. In support of this Petition, Ms. Chandnani strenuously contended that the plaintiff has committed breach of the injunction order by inducting the defendant in the suit premises. The applicant has taken out contempt proceeding in this Court and the same is

pending. Apart from that the applicant has instituted suit for partition which is also pending. She submitted that the plaintiff is merely a rent collector and not a landlord / owner of the suit premises. She submitted that the pauper proceedings are also pending in this Court. She submitted that as the applicant is one of the owners he is a necessary party in a suit filed by the plaintiff for eviction of the defendant. She, therefore, submitted that the applicant is a necessary party. In support of her submission, she relied upon following decisions:

- (i) **Keshrimal Jivji Shah and another Vs. Bank of Maharashtra and others, 2004 (3) Mh.L.J. 893; &**
- (ii) **Mohinder Prasad Jain Vs. Manohar Lal Jain, (2006) 2 SCC 724** and in particular following portion :

“A suit filed by a co-owner, thus, is maintainable in law. It is not necessary for the co-owner to show before initiating the eviction proceeding before the Rent Controller that he had taken option or consent of the other co-owners. However, in the event, a co-owner objects thereto, the same may be a relevant fact.”

7. I have considered the submissions advanced by Ms.Chandnani. I have also perused the material on record. Insofar as the order of the trial Court is concerned, the learned trial Judge has observed in paragraph-11 that the plaintiff is a co-owner of the suit property and, therefore, he represents himself as owner of the property until applicant prove he is one of the co-owner of the property before

the City Civil Court that he has no right in the property as owner. The plaintiff has denied that he had illegally let out the suit premises by violating the order of this Court.

8. In paragraph-14, the learned trial Judge observed that the suit is between the landlord and tenant for eviction on the grounds more particularly mentioned in the plaint. Admitted position is that the applicant has instituted suit for partition which is pending before the City Civil Court in which the suit premises is also shown as property for partition.

9. In paragraph-15, the learned trial Judge observed that it is settled principle of law that the suit filed by co-owner for eviction against tenant is maintainable. For the reasons recorded in paragraphs-11 to 16, the learned trial Judge rejected the application.

10. Insofar as the order of the Appellate Court is concerned, in paragraph-5 the Appellate Court observed that the Small Causes Court has jurisdiction to deal with the dispute between the landlord and tenant only. If the applicant wants any right as a co-owner in respect of the suit premises he has to raise his claim before the Competent Court. The applicant has already instituted suit for partition. In that suit, the suit premises is also included. The Appellate Court also noted that the applicant did not dispute that the suit premises is let by the plaintiff. For the reasons recorded in paragraph-5 of the impugned order, the

Appellate Court rejected Revision Application.

11. That apart Section 35 of the Act lays down that nothing contained in Sections 33 and 34 shall be deemed to bar a party to a suit, proceeding or appeal mentioned therein in which a question of title to premises arises and is determined, from suing in a competent court to establish, his title to such premises. Thus, the Small Causes Court trying the suit between the landlord and tenant cannot go into the issue of title. Even if it goes into the issue of title incidentally, same does not preclude any party from suing in a competent Court to establish his title to such premises.

12. Ms. Chandnani relied upon the decision in **Keshrimal Shah** (supra). In that case, the questions that fell for consideration were as under :

- “i) is transfer of an immovable property in contravention of a prohibitory or injunction order of a Court illegal or void;
- ii) Whether and to what extent, the procedure under Rule 11 of Second Schedule to Income Tax Act, 1961 is applicable in execution of a recovery certificate issued under Section 19(7) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993.”

13. In my opinion, the decision in **Keshrimal Shah** (supra) is not at all applicable to the facts of the present case. If it is the grievance of the applicant that the plaintiff has violated the order of injunction passed by this Court, his remedy lies elsewhere.

14. Insofar as the decision in **Mohinder Jain** (supra) is concerned, Apex Court has held that when a co-owner objects to filing of the suit, the same may be a relevant fact. In the present case, a perusal of paragraph-6 of the plaint shows that the plaintiff has set out ground of reasonable and bonafide requirement contending that the elder brother of the plaintiff (applicant herein) is living at varandha of the suit premises for want of the suit premises. Thus, in fact the plaintiff has set up applicant's requirement for recovery of the possession of the suit premises.

15. In view thereof, no case is made out for interfering with the impugned orders. Hence, the petition fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)