

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 13350 OF 2018

Nal Properties Pvt. Ltd.

And another

...Petitioners

Versus

Don Robert Aguiar

And another

...Respondents

....

Mr.Jahangir Jeejeebhoy a/w. Shweta Dali i/b. Bilawala & Co. for the
Petitioners.

Mr. Chandrakant N. Chavan, Advocate for Respondent No.1.

....

CORAM : R. G. KETKAR, J.

DATE : 08th JANUARY, 2019

P.C.

1. Heard Mr. Jahangir Jeejeebhoy, learned counsel for the petitioners and Mr.Chandrakant N. Chavan, learned counsel for respondent No.1, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the 'plaintiffs', have challenged the judgment and order dated 30.10.2017 passed by the learned Judge, Court Room No.13 of the Small Causes Court at Bombay below Exhibit-49 in R.A.E. & R. Suit No.2273/2008 as also the judgment and order dated 13.8.2018 passed by the Appellate Bench of the Small Causes Court at Bombay in Revision Application No.32/2018. By these orders, the Courts below rejected the application filed by the plaintiffs

under Order XIV Rule 5 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.') for framing following issues as additional issues.

(1) Does the defendant proves that the plaintiff is not the landlord of the suit premises ?

(2) Are the plaintiffs entitled to decree in eviction due to denial of their title by the Defendants ?

3. Rule. Mr. Chavan waives service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

4. Mr. Jeejeebhoy submitted that the plaintiffs have instituted suit against the defendants for possession of 700 sq. ft. carpet area on the ground floor of Municipal House No.D-1060/47C, C.T.S./C.S. No.550 of Girgaon Division admeasuring approximately 195 sq. ft. square yards equivalent to 163.4 square meters situate at Girgaon, Mumbai (for short, 'suit premises').

5. In paragraph-8, the plaintiffs have referred to the notice dated 27.8.2008 issued through Advocate to the defendants intimating them that the plaintiffs had purchased the suit property under a registered Deed of Conveyance from the original owner Rajendra J. Gupta and called upon the defendants to pay arrears of rent @ Rs.133/-

per month.

6. In paragraph-9, the plaintiffs referred to the letter dated 20.11.2008 issued by defendant No.1 through Advocate denying the contents of the notice dated 27.8.2008 and disputed that Rajendra J. Gupta was the owner of the suit property and in fact claimed legal ownership of the suit property.

7. In paragraph-10, the plaintiffs also claimed possession of the suit property on the ground of denial of title and, therefore, claimed possession under the provisions of the Transfer of Property Act, 1882 (for short, 'T.P. Act').

8. Defendant No.1 filed written statement. In paragraph-9, the defendant admitted receipt of notice dated 27.8.2008. In paragraph-11, defendant contended that he did not set up title for himself and therefore question of forfeiting the rights under Rent Laws or T.P. Act does not arise.

9. Mr. Jeejeebhoy submitted that on 13.12.2013, the learned trial Judge framed issues. On 16.8.2017, the plaintiffs filed application Exhibit-49 for framing additional issues. Defendant No.1 gave reply on 26.9.2017 *inter alia* contending that defendant No.1 did not deny title of the plaintiffs. In the written statement, the defendants had put the plaintiffs to the proof of they being the joint owners of the suit property.

10. By order dated 30.10.2017, the learned trial Judge rejected the application on the ground that in the written statement defendant No.1 contended that he is not aware and does not admit plaintiffs' joint ownership over the suit property. The defendants did not admit the plaintiffs being owners and landlord of the suit property. Defendant No.1 did not deny the title of the plaintiffs but put the plaintiffs to strict proof thereof. In view thereof, application filed by the plaintiffs is not maintainable.

11. Aggrieved by that decision, the plaintiffs preferred Revision Application. In paragraph-10, the Appellate Bench referred to the assertions in written statement to the effect that the defendant in very clear terms stated that, he does not deny title of the plaintiffs but he is justified in putting the plaintiffs to the proof thereof. Mr. Jeejeebhoy submitted that the Courts below have ignored the letter dated 20.11.2008 given by the defendants through Lawyer wherein not only they denied the plaintiffs title but also claimed ownership in themselves. He relied upon Section 111(g) of the T.P. Act as also Section 15 of the Maharashtra Rent Control Act, 1999 (for short, 'Act'). He also relied upon Order XIV Rule 1 to contend that the issues arise when a material proposition of fact or law is affirmed by one party and denied by other party. He also relied upon Order XIV Rule 3(c) to contend that the

Court may frame the issues from all or any of the following materials, namely, the contents of documents produced by either party. He submitted that under Order XIV Rule 5 the Court has power to amend the issues or to frame additional issues on such terms as it thinks fit.

12. On the other hand, Mr. Chavan supported the impugned orders. He has taken me through the written statement filed by defendant No.1 and in particular paragraphs-4, 5, 6 and 9. He submitted that defendant No.1 has not denied title of the plaintiffs but has put the plaintiffs to strict proof thereof. He submitted that on their own showings, the plaintiffs have contended that they have acquired the ownership from Rajendra Gupta. In short, he submitted that the defendants are putting the plaintiffs to strict proof of acquiring title from Rajendra Gupta. In any case it is settled principle of law that derivative title can be challenged. He submitted that as the defendants have not denied the title of the plaintiffs it is not necessary to frame additional issues suggested by the plaintiffs. He relied upon the decision of the Apex Court in **Sheela and others Vs. Firm Prahlad Rai Prem Prakash, (2002) 3 SCC 375** and in particular paragraphs-4, 8 and 18 thereof. In paragraph-18, the Apex Court held that the written statement is determinative. He further submitted that if a tenant makes bonafide demand that the landlord prove his ownership with the aim of protecting

himself or of earning a protection available under rent control law, such demand cannot be said to be a denial of landlord's title or a disclaimer of the tenancy. He, therefore, submitted that no case is made out for interfering with the impugned orders.

13. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As mentioned earlier, the plaintiffs had issued notice dated 27.8.2008 to the defendants. Defendant No.1 issued letter dated 20.11.2008 *inter alia* contending that Rajendra J. Gupta was never the owner of the suit property. It was further contended that he is the legal owner of the suit property. The plaintiffs have specifically made reference to the notice dated 27.8.2008 in paragraph-8 and reply dated 20.11.2008 in paragraph-9 of the plaint. Defendant No.1 has dealt with notice dated 27.8.2008 and reply letter dated 20.11.2008 in paragraphs-9 and 10 of his written statement.

14. Section 111(g) of the T.P. Act reads thus:

“111. Determination of lease.-- A lease of immovable property determines--

xxxxxxx
xxxxxxx

(g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter; or (2) in case the lessee renounces his

character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor his transferee gives notice in writing to the lessee of his intention to determine the lease;”

15. A perusal of above extracted provision shows that a lease of immovable property is determined by forfeiture, that is to say, in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter or in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself. Mr. Chavan relied upon clause (h) to contend that before invoking clause (g), the plaintiff has to issue notice for determination of the lease and in the present case no such notice is issued.

16. Order XIV Rules 1, 3 and 5 of C.P.C. read thus:

**ORDER XIV
SETTLEMENT OF ISSUES AND DETERMINATION
OF SUIT ON ISSUES OF LAW OR ON ISSUES
AGREED UPON**

1. Framing of issues.-- (1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) issues are of two kinds:

- (a) issues of fact,
- (b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after examination under rule 2 of Order X and after hearing the parties or their pleaders, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

3. Materials from which issues may be framed.--
The Court may frame the issues from all or any of the following materials:--

(a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties;

(b) allegations made in the pleadings or in answers to interrogatories delivered in the suit;

(c) the contents of documents produced by either party.

5. Power to amend and strike out issues.--(1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.”

17. In the light of the aforesaid provisions, the Courts below ought to have considered (1) the pleadings of the parties on this aspect and (2) the material produced on record by the parties. In the present case, I have already dealt with the assertions made by the plaintiffs in respect of the notice dated 27.8.2008 and letter issued by the defendants on 20.11.2008 and the written statement of defendant No.1. The Courts below have not at all considered the notice dated 20.11.2008 issued by defendant No.1 claiming title in himself. In view of Order XIV Rule 3(c) of C.P.C., the Courts below were not justified in ignoring this material while rejecting the application.

18. Mr. Chavan relied upon the decision in **Sheela's** case (supra). The Apex Court held that bonafide question as to how title came to vest in landlord is not denial of title. If the tenant makes a bonafide demand that landlord prove his ownership, (i) with the aim of protecting himself or of earning a protection available under rent control law, and (ii) **without disclaiming the character of his own possession of the tenanted premises as a tenant.** Apex Court held that such demand cannot be said to be a denial of landlord's title or a disclaimer of the tenancy.

[Emphasis supplied]

19. In the present case, *prima facie* defendant No.1 has denied the ownership of Rajendra Gupta as also set up his ownership. Mr.

Chavan submitted that intention of the defendant is reflected in the pleadings and the same is determinative as held by the Apex Court in paragraph-18 of this decision. I do not find any merit in this submission. In my opinion, in view of letter dated 20.11.2008 as the defendant has claimed title in himself, the Courts below were not justified in ignoring this material. At the same time it is not possible to frame additional issue as suggested by the plaintiffs, namely, does the defendant prove that the plaintiff is not the landlord of the suit premises. However, the trial Court shall frame following additional issue:

“Are the plaintiffs entitled to decree in eviction due to denial of their title by the defendants ?”

20. In view thereof, the petition is disposed of in following terms:

- (i) Application Exhibit-49 in R.A.E. & R. Suit No.2273/2008 is partly allowed. The trial Court shall frame following additional issue :

“Are the plaintiffs entitled to decree in eviction due to denial of their title by the defendants ?”
- (ii) Impugned orders stand set aside.
- (iii) The trial Court will decide the suit uninfluenced by the observations made herein and on the basis of evidence on record and in accordance with law.
- (iv) All contentions of the parties on merits are expressly kept open.
- (v) Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)