

Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10548 OF 2017

Pradeep Bhalchandra Keer

...Petitioner

Versus

Chandrakant Ramchandra Pawar & Ors.

...Respondents

Adv. Uzair Z. Kazi, Adv. Jovita Pereira i/b Adv. Anand Jadhav for the
Petitioner.

Mr. Ashish Ghadge i/b Ms. Tamhane & Co. for Respondent No. 6.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : DECEMBER 6, 2023

P. C. :

1. The Petition takes exception to the order dated 24th March, 2017 allowing the Respondent No.6's Application for being impleaded as a party to RAE Suit No. 860 of 2015 instituted by the Petitioner as against the Respondent Nos. 2 and 3 to 7 on the ground of unlawful subletting and other grounds. The admitted position is that the Petitioner as well as the Respondent No. 6 are co-owners of the property and the suit for eviction has been filed against one of the tenant/subtenant by the Petitioner seeking a decree of eviction. In this proceedings, an Application was filed under Order 1 Rule 10(2) of CPC by Respondent No. 6 which

came to be allowed.

2. Heard Mr. Kazi, learned counsel for the Petitioner and Mr. Ghadge, learned counsel for the Respondents.

3. Learned counsel for the Petitioner submits that the settled position is that all the co-owners are not required to be joined in the suit seeking eviction of the tenant. He further submits that the reason for seeking impleadment is that Respondent No. 6 has a share in the property and the suit has been filed without obtaining her consent. He would further submit that in the suit for eviction, the only relief sought is as regards the decree of eviction against the tenant/sub-tenant and as such, the co-owner is neither a necessary nor a proper party. He has invited the attention of this Court to the decision of a learned Single Judge of this Court in Writ Petition No. 11554/2016 in which the Petitioner in the present case was the Petitioner and an Application was moved by the present Respondent No. 6 in another RAE Suit for seeking impleadment. Pointing out the findings in the said Petition, he submits that this Court in identical fact situation had set aside the order of impleadment of the Respondent No. 6.

4. *Per contra*, learned counsel for the Respondents submits that the Petitioner is filing the suits for eviction and accepting the surrender of

tenancies. He further submits that the rights of Respondent No. 6 is required to be protected as she has share in the property and the Petitioner is not complying with the Consent Terms.

5. Considered the submissions and perused the record.

6. Firstly, a perusal of the impugned order dated 24th March, 2017 would indicate that the order is devoid of any reasons. Apart from setting out the relevant statutory provisions of the Maharashtra Rent Control Act, the Trial Court has not given any reasons as to why the Respondent No.6- the co-owner is a necessary or proper party to the proceedings. The Petition deserves to be allowed on this ground alone. However, it needs to be noted that in identical facts between the same parties, a learned Single Judge of this Court by order dated 5th October, 2016 has held that if one the co-owners objects to filing of the Suit by another co-owner, indirectly the rights of the co-owner who intend to institute the Suit or has already instituted the Suit will be curtailed.

7. It is not disputed that the settled position is that a suit by one of the co-owner is maintainable and as such, it is not necessary that all the co-owners be joined as party to the proceedings. In a suit for eviction, the only issue which will require adjudication by the Court is whether the Plaintiff has established the grounds for seeking eviction of the tenant. In

this proceedings the rights inter se between the co-owners will not be a subject matter. On the contrary, in my opinion, if there is dispute between the co-owners and the co-owner is directed to be made a party, the Trial Court will be called upon to adjudicate issues which are beyond the jurisdiction of the Small Causes Court. As regards the protection of the rights of the Respondent No. 6 is concerned, learned counsel for the Petitioner submits that her share set out in the Application is not disputed. It need not be mentioned that the Respondent No. 6 can very well adopt appropriate remedies in the appropriate forum for her share of the property by putting consent terms in execution. For that purpose the Respondent No. 6 cannot be said to be a necessary or a proper party in the eviction suit and as such, the ingredients of Order 1 Rule 10(2) of CPC are not satisfied.

8. Resultantly, Petition succeeds. The impugned order dated 24th March, 2017 is quashed and set aside.

(SHARMILA U. DESHMUKH, J.)