

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION (WP) NO. 3681 OF 2022

1) Suresh s/o Krishnarao Bhole, (Since Deceased ...
through LR's)

1(a) Dr. Rajan S/o Suresh Bhole,
Aged – 56 years, Occupation – Medical
Practitioner, R/o 'Pushpagandha
Apartments', Khare Town, Dharampeth,
Nagpur, Tahsil and District – Nagpur
(Maharashtra State)

1(b) Niranajan s/o Suresh Bhole,
Aged – 53 years, Occupation – Service, R/o
'Marigold Avenue', Flat No.A-302, NDA
Road, Near Banjara Hills Hotel, Pashan,
Pune (Maharashtra State)

2) Shriram s/o Krishnarao Bhole,
Aged- 71 years, Occupation-Business, R/o Plot
No.3, West High Court Road, Dharampeth,
Nagpur, Tahsil and District -Nagpur
(Maharashtra State)

.... **Petitioner(s)**
(Intervenors)

// VERSUS //

1) Amarlal S/o Narayandas Katariya, ... (Ori. Plaintiff)
Aged – 53 years, Occupation – Business, R/o
Plot No.17 & 18, K.K. Nagar, Jaripatka,
Nagpur, Tahsil and District - Nagpur
(Maharashtra State)

2) Bank of Maharashtra ... (Ori. Defe. No.1)
having its branch at 'Bhole Building', West
High Court Road, Dharampeth, Nagpur, Tahsil
& District – Nagpur (Maharashtra State)

- 3) Bank of Maharashtra, ... (Ori. Defe. No.2)
Main Branch, PUNE (Maharashtra State)
Lokmangal 1510 Shivaji Nagar Pune, 411005

... Respondent(s)

Shri A.V. Khare, Advocate for the Petitioners
Shri H.D. Dangre, Advocate for the respondent No.1
Shri V.K. Kolte, Advocate for the respondent Nos.2 and 3

CORAM : ANIL S. KILOR, J.
DATED : 27th March 2023

ORAL JUDGMENT :

1. Heard.
2. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.
3. The order below Exh.15 dated 08.02.2022 passed by Judge of Small Causes Court, Nagpur, rejecting the application filed by the petitioners under Order I Rule 10 of the Code of Civil Procedure (CPC), is under challenge.
4. It is the case of the petitioners that they are members of Hindu United Family (HUF) and owned the properties, including building named and styled as “Bhole Building”. It is submitted that Shri Avinash Bhole was managing certain portion of the HUF

property and claimed to have executed a sale deed in favour of the respondent No.1 for a portion of property in his occupation. On realizing so, the petitioners filed the suit for declaration, partition and separate possession of the entire joint family property of HUF so also challenged the sale deed dated 12.10.2010, on the basis of which, the respondent No.1 claimed title to the suit property.

5. The respondent Nos.2 and 3 filed their written statement, opposing the claim of the respondent No.1 and disputing the relationship as landlord and tenant.

6. The petitioners, thereafter, filed an application (Exh.15) for intervention in the RCS No.82 of 2018 on the ground that they have filed Special Civil Suit No.202 of 2012 against Avinash Bhole as well as the respondent No.1 as regards the suit property.

7. It is submitted that the petitioners have questioned the very authority of Avinash Bhole to execute the alleged sale deed dated 12.10.2010 in favour of the respondent No.1 on the ground that the entire property, including the suit property under the said deed dated 12.10.2010, is a part of the joint undivided property.

8. The respondent No.1, by filing reply, strongly opposed the application.

9. The learned trial Court, after hearing both the parties passed the impugned order dated 08.02.2022, rejecting the application for intervention on the ground that the petitioners do not appear to be necessary or proper party to the suit, the same is the subject matter of this petition.

10. The learned counsel for the petitioners submits that though the defendants have denied the ownership of the plaintiff and also denied the relationship as landlord and tenant, their presence as party-defendant is necessary in the said suit (RCS No.82/2018), in view of the Spl.C.S.No.202 of 2012, filed by them seeking cancellation of the sale deed dated 12.10.2010 executed by Avinash Bhole in favour of the respondent No.1.

11. It is submitted that by ignoring the title of the petitioners in the suit property, the application came to be rejected.

12. It is further submitted that under Section 23 of the Provincial Small Cause Courts Act, 1887 (for short “the Act of 1887”), the

Small Clauses Court has to return the plaint once the question of title is raised by the tenant. He therefore, submits that it is necessary to intervene by the petitioners in the said suit and to raise question of title and ownership of the plaintiff. He has expressed an apprehension that, if there is any collusion between the plaintiff and the defendants, the Court may not exercise its discretion under Section 23 of the Act of 1887. The learned counsel for the petitioners, has placed reliance upon the judgment of the Hon'ble Supreme Court of India in the case of *Budhu Mal Vs. Mahabir Prasad and others*¹ and judgment of the Co-ordinate Bench of this Court in the case of *Jivanlal Damodardas Wani Vs. Narayan Ukha Sal*².

13. On the other hand, the learned counsel for the respondent No.1 submits that the petitioners are claiming title in the suit property on the ground that, the suit property is the part of the Hindu Undivided family property.

14. It is submitted that in the suit of eviction filed by the landlord, only the landlord or tenant are necessary parties and the

1 AIR 1988 Supreme Court 1772

2 AIR 1972 Bombay 148

landlord is required to plead and prove only two things; first existence of relationship of landlord and tenant between the parties; and second the ground(s) of eviction mentioned under relevant rent law.

15. It is submitted that the plaintiff being dominus litis cannot be compelled to implead any third party to proceeding, unless that third party proves that he is necessary party and without his presence the suit cannot be proceeded with and nor can be decided effectively. It is submitted that even the co-owner is neither necessary party nor proper party to the eviction proceeding and in his absence, the suit can be decreed or dismissed on merit. For this purpose, he has placed reliance upon the judgment of the Hon'ble Supreme Court of India in the case of *Kanaklata Das v. Naba Kumar Das*³.

16. The learned counsel for the respondent No.1 further submits that after examining the case of the petitioners, the learned trial Court has rightly come to the conclusion that the petitioners are

3 (2018) 2 Supreme Court Cases 352

not necessary or proper party to the suit and accordingly, the application was rightly rejected.

17. The learned counsel for the respondent Nos.2 and 3 points out that he is disputing the ownership of the respondent No.1 and also the relationship as landlord and tenant.

18. In the light of the rival submissions, I have perused the record and the impugned orders.

19. After going through the record, it is evident that the petitioners are not disputing the execution of sale deed dated 12.10.2010 by Avinash Bhole in favour of the respondent No.1, accordingly, they have filed Spl.C.S.No.202 of 2012 for partition, declaration and cancellation of the sale deed dated 12.10.2010.

20. Undisputedly, the petitioners are claiming title on the ground that the suit property is a part of the Hindu United Family as such, the petitioners are having right, title and interest in the suit property.

21. The written statement filed by the respondent Nos.2 and 3 shows that the respondent Nos.2 and 3 have disputed ownership of the respondent No.1 and also denied the relationship as landlord and tenant.

22. Thus, in the above referred backdrop and to find out whether the petitioners are necessary or proper parties to the suit, I will first refer to the law laid down in this regard by the Hon'ble Supreme Court of India in the case of ***Kanaklata Das*** (supra), wherein the Hon'ble Supreme Court of India, has held thus:

“7. Therefore, the short question, which arises for consideration in this appeal, is whether the High Court was justified in allowing the application filed by Respondent 1 under Order 1 Rule 10 (2) of the Code thereby permitting him to become co-plaintiff in the Ejectment Suit filed by the appellants against Respondents 2 to 5 for their eviction from the suit premises.

...

11. There are some well-settled principles of law on the question involved in this appeal, which need to be taken into consideration while deciding the question arose in this appeal. These principles are mentioned infra:

11.1. First, in an eviction suit filed by the plaintiff (landlord) against the defendant (tenant) under the State Rent Act, the landlord and tenant are the only necessary parties. In other words, in a tenancy suit, only two persons are necessary parties

for the decision of the suit, namely, the landlord and the tenant.

11.2. Second, the landlord (plaintiff) in such suit is required to plead and prove only two things to enable him to claim a decree for eviction against his tenant from the tenanted suit premises. First, there exists a relationship of the landlord and tenant between the plaintiff and the defendant and second, the ground(s) on which the plaintiff landlord has sought defendant tenant's eviction under the Rent Act exists. When these two things are proved, eviction suit succeeds.

11.3. Third, the question of title to the suit premises is not germane for the decision of the eviction suit. The reason being, if the landlord fails to prove his title to the suit premises but proves the existence of relationship of the landlord and tenant in relation to the suit premises and further proves existence of any ground on which the eviction is sought under the Tenancy Act, the eviction suit succeeds. Conversely, if the landlord proves his title to the suit premises but fails to prove the existence of relationship of the landlord and tenant in relation to the suit premises, the eviction suit fails. (See Ranbir Singh v. Asharfi Lal).

11.4. Fourth, the plaintiff being a dominus litis cannot be compelled to make any third person a party to the suit, be that a plaintiff or the defendant, against his wish unless such person is able to prove that he is a necessary party to the suit and without his presence, the suit cannot proceed and nor can be decided effectively. In other words, no person can compel the plaintiff to allow such person to become the co-plaintiff or defendant in the suit. It is more so when such person is unable to show as to how he is a necessary or proper party to the suit and how without his presence, the suit can neither proceed and nor it can be decided or how his presence is necessary for the effective decision of the suit. (See Ruma Chakraborty v. Sudha Rani Banerjee)

11.5. Fifth, a necessary party is one without whom, no order can be made effectively, a proper party is one in whose absence an effective order can be made but whose presence is

necessary for a complete and final decision on the question involved in the proceeding. (See Udit Narain Singh Malpaharia v. Board of Revenue)”

11.6. Sixth, if there are co-owners or co-landlords of the suit premises then any co-owner or co-landlord can file a suit for eviction against the tenant. In other words, it is not necessary that all the owners/landlords should join in filing the eviction suit against the tenant. (See Kasthuri Radhakrishnan v. M. Chinnian)”

23. From the above referred observations, it is thus, clear that in eviction suit filed by the landlord only the landlord and tenant are necessary party. The plaintiff being dominus litis cannot be compelled to implead any third party to proceeding, unless that third party proves that he is necessary party and without his presence the suit cannot be proceeded with effectively.

24. It is also evident that the co-owner or co-sharer in the suit property is neither necessary nor proper party to the eviction proceedings and in his absence, the suit can be decided or dismissed on merit.

25. In the present matter, the respondent No.1 is claiming to be the owner of the suit property by virtue of sale deed dated 12.10.2010 and accordingly, he filed the suit for eviction against the

respondent Nos.2 and 3 who have categorically denied the ownership of the respondent No.1 and also relationship as landlord and tenant.

26. The Hon'ble Supreme Court of India in the case of ***Budhu Mal*** (supra) had an occasion to consider, whether under Section 23 of the Small Causes Court, it is obligatory on the Court of the Small Causes to invariably return the plaint once a question of title is raised by the tenant. The Hon'ble Apex Court has held thus:

“9. It is true that Section 23 does not make it obligatory on the court of small causes to invariably return the plaint once a question of title is raised by the tenant. It is also true that in a suit instituted by the landlord against his tenant on the basis of contract of tenancy, a question of title could also incidentally be gone into and that any finding recorded by a Judge, Small Causes in this behalf could not be res judicata in a suit based on title. It cannot, however, be gainsaid that in enacting Section 23 the Legislature must have had in contemplation some cases in which the discretion to return the plaint ought to be exercised in order to do complete justice between the parties. ...”

27. Thus, it is clear that, it is not obligatory on the Court to invariably return the plaint once a question of title is raised by the tenant. The Hon'ble Apex Court has further held that a question of title could also incidentally be gone into and that any finding

recorded by a Judge, Small Causes in this behalf could not be *res judicata* in a suit based on title.

28. It has also been clarified that if the suits cannot be construed to be one between landlord and tenant they would not be cognizable by a court of small causes and in that sense under Section 23 of the Act of 1887 provides that if the court of small causes comes to such conclusion in such cases that the plaint be returned for presentation to appropriate court so that none of the parties would prejudice and such observations can be exercised at the any stage of the suit.

29. In view of the above referred findings, I do not find any substance in the submission of the learned counsel for the petitioners that if the suit filed by the respondent No.1 is decreed and in case the possession is handed over by the respondent Nos.2 and 3 to the respondent No.1, it will prejudicially affect the rights of the petitioners.

30. The Hon'ble Supreme Court of India, in the case of ***Jivanlal Damodardas Wani*** (supra) has categorically held that the question

of title in the matter between the landlord and tenant if incidently decided, it will not operate as *res judicata* in a suit filed on the basis of title. Thus, the apprehension expressed by the petitioners is misconceived and as held by the Hon'ble Supreme Court of India in the case of ***Kanaklata Das*** (supra), even if the petitioner is having any tittle or share in the suit property, he is not a proper or necessary party to the suit.

31. In that view of the matter, I do not find any error committed by the learned trial Court in dismissing the application for intervention filed by the petitioners.

32. In view of the above order, a challenge raised to the order below Exh.22 dated 08.02.2022 passed by the Judge, Small Causes Court in RCS No.82 of 2018, does not survive. Accordingly, the writ petition is **dismissed**.

33. Rule is discharged. No costs.

[ANIL S. KILOR, J.]

Digitally signed byNIRANJAN
DOMAJI THAWRE
Signing Date:03.04.2023
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