

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 6194 OF 2018

Nitin S/o. Janardan Behere,
Aged about 44 years, Occupation:
Business, Shop situated at Sakkardara
Road, Chitnavispura, Zenda Chowk,
Mahal, Nagpur, R/o. 65, Rani Indirabai
Bhosle Vihar, Opp. C.P. & Berar College,
Tulshibag, Nagpur.

.... **PETITIONER.**

// VERSUS //

Girish S/o. Radheshyam Bajpayee,
Aged about 45 years, Occupation :
Business, R/o. Sakkardara Road,
Chitnavispura, Zenda Chowk, Mahal,
Nagpur.

.... **RESPONDENT.**

Shri H.D.Dangre, Advocate for Petitioner.
Shri M.A.Sable, Advocate for Respondent.

CORAM : ANIL S. KILOR, J.
DATED : JUNE 22, 2023

ORAL JUDGMENT :

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard finally by
consent of the parties.

3. An unsuccessful tenant in the suit for eviction before both the Courts below, has approached this Court by way of the present writ petition, challenging a decree of eviction passed under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 (hereinafter referred to as “the Rent Act”).

4. The suit property in the present matter is a shop which is received by the plaintiff (respondent herein) from his father by way of a registered Will.

5. It is the case of the plaintiff that the petitioner (defendant) is a tenant and was in arrears of rent and as he failed to pay the rent and further as the suit shop was required for *bona fide* occupation, a suit for ejectment, possession, recovery of arrears of rent, mesne profit and notice charges was filed, which came to be partly allowed granting decree of ejectment under Section 16(1)(g) of the Rent Act by the trial Court and affirmed by the first appellate Court, except the direction to pay Rs.33,000/-, issued by the trial Court.

6. Shri Dangre, learned counsel for the petitioner makes following submissions :

- i) As the agreement of tenancy was between the defendant and brother of the plaintiff-Manendra, Mahendra is the landlord and not the plaintiff.
- ii) Both the Courts below have failed to consider the rent receipts issued by Mahendra, which show that there is no relation in between the plaintiff and the defendant as landlord and tenant;
- iii) The plaintiff has not derived the title from Mahendra, but he derived title from Radheshyam i.e. from his father, hence, plaintiff is not a landlord as defined under Section 7(3) of the Rent Act;
- iv) There are no sufficient pleadings made in support of *bona fide* requirement and unless adequate averments are made, decree of eviction under Section 16(1)(g) of the Rent Act cannot be passed;
- v) The Appellate Court has held that the Will, through which the plaintiff is claiming ownership, is not proved. Thus, in absence of any title in favour of the plaintiff or in absence of relation between the plaintiff and defendant as landlord and tenant, both the Courts below erred in decreeing the suit.

7. Shri Dangre, learned counsel for the petitioner, in support of his contentions, has placed reliance on the judgments in the cases of

(i) *Kanaklata Das ..vs.. Nabha Kumar Das*, reported in **(2018) 2 SCC 352**, (ii) *Yashpal ..vs.. Ram Bilas and Others*, reported in **2002 SCC OnLine P&H 848**, (iii) *Abdid-UI-Islam ..vs.. Inder Sain Dua*, reported in **(2022) 6 SCC 30** and (iv) *Irene ..vs.. V.S.Venkatraman*, reported in **(2010) 15 SCC 711**.

8. On the other hand, the learned counsel for the respondent makes following submissions :

- a) The plaintiff has established the relations as landlord and tenant by leading sufficient evidence, hence, the plaintiff can maintain the suit for eviction against the defendant;
- b) Even if the Will executed in favour of the plaintiff is ignored, there cannot be any dispute about the status of the plaintiff as co-owner and co-owner can maintain a suit for eviction against the tenant;
- c) Due to ill-health, father of the plaintiff permitted Mahendra to collect the rent. However, the owner of the suit shop was the father of the plaintiff;
- d) The necessary and sufficient averments are made in the plaint to establish the *bona fide* need;

- e) The defendant/ petitioner has not raised any challenge to oral evidence led by the plaintiff in support of his case on the point of *bona fide* need;
- f) The defendant has not raised any plea in his written statement as regards hardship.

9. The learned counsel for the respondent/ plaintiff has relied on the judgments in the cases (i) *Shiv Sarup Gupta ..vs.. Dr. Mahesh Chand Gupta*, reported in **AIR 1999 SC 2507**, (ii) *Gaya Prasad ..vs.. Pradeep Shrivastava*, reported in **AIR 2001 SC 803**, (iii) *Joginder Pal ..vs.. Naval Kishore Behal*, reported in **AIR 2002 SC 2256**, and (iv) *Pratap Rai Tanwani and another ..vs.. Uttam Chand and another*, reported in **AIR 2005 SC 1274**.

10. In light of rival contentions, I have perused the record and the impugned judgments and decrees.

11. In this case, the whole controversy revolves around *bona fide* need. Hence, it would be appropriate to reiterate the law as regards *bona fide* need, before proceeding further to examine the matter on merits.

12. In the case of *Ram Dass ...vs.. Ishwar Chander*, reported in (1988) 3 SCC 131 the Hon'ble Supreme Court of India has held that statutes enacted to afford protection to tenants from eviction on the basis of contractual rights of the parties make the resumption of possession by the landlord subject to the satisfaction of certain statutory conditions. One of them is the bonafide requirement of the landlord. But the essential idea basic to all such cases is that the need of the landlord should be genuine and honest, conceived in good faith.

13. The Hon'ble Supreme Court of India in the case of *Kanaklata Das and others ..vs.. Naba Kumar Das and others*, reported in (2018) 2 SCC 352 discussed the well settled principles of law in relation to the dispute between the landlord and tenant, which are to be taken into consideration while deciding any such dispute. The Hon'ble Apex Court has mentioned such principles which read thus :

“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 which 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's-tenant's eviction under the Rent Act exists. When these two things are proved, the 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 vs. 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 vs. 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 vs.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.Chinniyar.)”

14. From the above referred observations, it is thus clear that the protection under the statute, afforded to the tenant from eviction on the basis of contractual rights of the parties make the resumption of possession by the landlord subject to satisfaction of certain statutory conditions. One of them is the *bona fide* requirement of the landlord. The essential idea basic to such case is that the need of landlord should be genuine and honest, conceived in good faith.

15. It is further evident and relevant for the present case that the question of title to the suit premises is not germane for the decision of the eviction suit, the only requirement is to prove the existence of relationship of landlord and tenant in relation to the suit premises and further to prove existence of any ground on which the eviction is sought under the Tenancy Act.

16. Further, it is also evident from the observations made by the Hon'ble Supreme Court in the above referred judgments that if there are co-owners or co-landlords, then any co-owner or co-landlord can file a suit for eviction against the tenant and it is not necessary that all the owners / landlords should join in filing the eviction suit against the tenant.

17. In the teeth of above referred well settled principles of law, I revert back to the facts of the present case.

18. In the matter at hand, undisputedly the suit shop was owned by Radheshyam, father of the plaintiff. During the lifetime of Radheshyam, brother of the plaintiff-Mahendra, entered into the agreement with the petitioner as regards tenancy of the suit shop. There is no dispute that Mahendra has no written authority to execute the said agreement, but it was executed on the instructions of Radheshyam and in pursuance to the said agreement the petitioner used to pay rent to Mahendra.

19. Mahendra was examined as a witness by the defendant, who has admitted the execution of rent agreement and the fact as regards payment of rent by the petitioner to him.

20. However, there was no fresh tenancy agreement between Mahendra and the defendant after the death of Radheshyam.

21. In the circumstances, at this juncture, it is pertinent to note that the defendant admitted in his written statement that the plaintiff used to come to his shop for collecting the rent after the death of Radheshyam and after becoming the co-owner of the suit property.

22. Thus, from the above referred facts and from the definition of landlord given under the Rent Act, it can be said that the plaintiff has established the relation between him and the defendant as relation of landlord and tenant. Thus, I do not find any substance in the submission of the learned counsel for the petitioner that there is no relation between plaintiff and defendant as landlord and tenant, hence, the said contention needs to be rejected.

23. As far as absolute ownership of the plaintiff is concerned, he has produced registered Will on record, which was held to be not proved by the learned appellate Court for the reason that while proving the said Will the mandate of Section 68 of the Evidence Act was not complied with.

24. The plaintiff has not raised any challenge to the said finding and therefore, there is no need to go into the validity or correctness of the said finding given by the learned lower appellate Court.

25. However, there is no dispute that the property was owned by Radheshyam and plaintiff and Mahendra are the sons of Radheshyam. Therefore, even if the finding recorded by the learned first appellate Court is accepted that the Will is not proved, it will not take away the status of the plaintiff as co-owner of the suit shop and since a suit for eviction against the tenant can be maintained by one of the co-owners or co-landlords, the submission of the learned counsel for the petitioner that the plaintiff cannot maintain the suit against the defendant needs to be rejected.

26. Moving further to consider the question as regards *bona fide* need raised by the plaintiff. The plaintiff has specifically averred in the plaint that he wants the suit property for his *bona fide* need as he is intending to open a shop in the suit property and for that purpose he want to make certain renovation in the property and the same is not possible unless the premises is vacated by the defendant. The same is the oral evidence of the plaintiff.

27. In the written statement, the defendant has not specifically denied or raised no challenge to the plea of *bona fide* requirement.

28. Similarly, the defendant has not raised any challenge to the *bona fide* need of the plaintiff in the cross-examination of the plaintiff.

29. Thus, the question of *bona fide* need has gone unchallenged and therefore, it cannot be said that both the Courts below have committed error in decreeing the suit in favour of the plaintiff on the ground of *bona fide* need.

30. Similarly, the defendant did not plead on the hardship or lead any evidence on it. Thus, in absence of any pleading or oral evidence led by the defendant, the point of 'comparative hardship' cannot be held in favour of the defendant.

31. In the circumstances, the judgments namely, *Yashpal ..vs.. Ram Bilas*, *Abdid-Ul-Islam* and *Irene ..vs.. V.S.Venkatraman*, cited supra by the learned counsel for the petitioner are of no help, as they are distinguishable to the facts of the present case.

32. In light of the above referred findings, I do not find any perversity or illegality committed by the Courts below in decreeing the suit for ejectment in favour of the plaintiff and against the defendant. I see no reason to interfere with the impugned orders. Accordingly, I proceed to pass the following order:

The writ petition is **dismissed**. Rule stands discharged. No order as to costs.

Pending Civil Application(s), if any, shall stand disposed of.

(ANIL S. KILOR, J)

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