



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12580 OF 2022

1. Sunil Subhash Aarya
2. Satish Subhash Aarya

... PETITIONERS
(Original Defendants)

Versus

1. Laxminarayan Purshottam Pipriye
Died Through its LR.S
- 1-A. Vikram Laxminarayan Pipriye
- 1-B. Padma Rajesh Dogra
- 1-C. Rina Rajesh Dogra
- 1-D. Jyoti Vishal Tetwar
- 1-E. Priya Nitin Gurubhayye
- 1-F. Aarti Vaibhav Agrawal
2. Hiralal Prushottam Pipriye
3. Rukhminbai Prushottam Pipriye
Died

... RESPONDENTS
(Original Plaintiffs)

Mr. S. S. Bora, Advocate for the petitioners
Mr. B. R. Kedar, Advocate for Respondent Nos.1-A to 1F and 2.

CORAM : R. M. JOSHI, J.

RESERVED ON: 19th JUNE, 2024

PRONOUNCED ON : 27th JUNE, 2024

ORDER :-

1. Original defendants in R.C.S. No. 49/2015 have preferred this petition against order passed below Exhibit 107 filed by the defendants rejecting application under Order 14 Rule 5 of the Code of Civil Procedure (fort short 'CPC') for framing of additional issues casting

burden upon the plaintiffs to prove their title and earlier tenancy with his predecessor.

2. The facts as they appear from the record indicate in nutshell that the plaintiffs claimed themselves to be owner of the suit property and landlord of defendants. It is claimed that the defendants are in occupation of the suit property but have failed to pay rent to the landlord. Plaintiffs filed suit for eviction of defendants from the suit property on the ground of arrears of rent as well as bonafide requirement.

3. Defendants filed written statement denying the ownership of plaintiffs over the suit property specific averments are raised as to how defendants came in to the suit property not by plaintiffs or their predecessor. There is specific denial of relationship of landlord and tenant.

4. Learned Trial Court framed issues on 13/07/2015 which reads thus:

"ISSUES

1. Whether plaintiffs proves that, defendants are their tenants in the suit premises?

2. Whether plaintiffs proves that, defendants have committed default in payment of rent of the suit premises?

3. Whether plaintiffs proves that, they are reasonable and bonafide requires suit premises for occupation by

themselves or any person for whose benefit the premises are held?

4. Would greater hardship be caused to defendants by passing decree than to plaintiffs by refusing to pass it?

5. Whether the suit is under valued?

6. Whether plaintiffs are entitled to the relief claimed?

7. What order and decree?"

5. Plaintiffs as well as defendants led evidence and the suit was posted for final argument. At this stage, defendants filed application Exhibit 107 under Order 14 Rule 5 for recasting of issues by adding following issues.

A. Is the plaintiff firstly proved that he is the owner of the suit property?

B. Is the plaintiff's predecessor in title entitled to rent out the suit premises?

C. Is plaintiff prove that the suit property was rented out by their predecessor?

6. This application was opposed by the plaintiffs. Learned Trial Court by passing impugned order rejected the application.

7. Learned counsel for the petitioners-defendants submits that irrespective of provisions of 116 of Evidence Act, it is open for the tenant raise plea of derivative title of plaintiffs landlord. It is his submission that when such defence is set up by the defendants that the title of the landlord is in the third party, such issue needs to be framed and decided

by the Court. To support his submission he placed reliance on the judgment of the Hon'ble Supreme Court in case of ***Sheela and Ors. Vs. Firm Prahlad Rai Prem Prakash, MANU/SC/0150/2002***. He further argued that owing to the pleadings of the parties, the Trial Court ought to have framed additional issues as prayed by the defendants. According to him, no prejudice much less and irreparable loss is caused to the plaintiffs by framing of such additional issues.

8. Learned counsel for the respondents opposed the said submissions by pointing out the scope of the suit filed under Rent Control Act. It is his submission that once plaintiffs have filed suit against the defendants claiming themselves to be landlord of the defendants, the burden is on them to prove that they are landlords. It is submission that it is immaterial as to whether the landlord has title perfect or defective. According to him, the issue of title of the suit property cannot be gone into and decided in the suit under the Rent Control Act and it would be domain of the Civil Court to decide the issue relating the title of any immovable property. It is his submission that in order to support plea claiming title with third party there is no iota of/even *prima facie* evidence placed on record by the defendants and in absence thereof, such objection cannot be permitted to be raised by the defendants-tenant. By referring to the cross-examination of defendants it is submitted that there is candid admission on record to show that suit property stands in

the name of plaintiffs and in response to one of the questions in the cross-examination there is specific admission that the defendants are tenants of the predecessor of the plaintiffs. It is submitted that in these facts of the case the impugned order does not suffer invalidity. To support his submission he placed reliance on the judgments of this Court in case of *Mohammad Ishak Mohammad Kasam Versus Hariram Gulabchand Mahajan, 2008(6) All MR 380* and *Narendra Vyankatesh Tambat Versus Pravinkumar Khushalchand Tated, 2016(1) All MR 25*.

9. Undisputedly the suit is filed for eviction by plaintiffs against the defendants with specific averment to the landlord of the defendants in respect of the suit property. The allegation of the plaintiffs is that the defendants have failed to pay rent of the suit premises and their eviction is sought on that ground of arrears of rent coupled with bonafide requirement. Section 7(3) of the Maharashtra Rent Control Act defines 'Landlord' as under:

7. (3) "Landlord" means any person who is for the time being, receiving, or entitled to receive, rent in respect of any premises whether on his own account or on account, or on behalf, or for the benefit of, any other person or as a trustee, guardian, or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant; and also includes any person not being a tenant who from time to time derives title under a landlord, and further includes in respect of his sub-tenant, a tenant who has sub-let any premises; and also includes, in respect of a licensee deemed to be a tenant under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the licensor who has given premises on licence

and in respect of the State Government or as the case may be, the Government allottee referred to in sub-clause (b) of clause (2) deemed to be a tenant by section 27, the person who was entitled to receive the rent if the premises were let to a tenant immediately before the 7th December, 1996, that is before the coming into force of the Bombay Rent, Hotel and Lodging House Rates Control, Bombay Land Requisition and the Bombay Government Premises (Eviction) (Amendment) Act, 1996.”

10. This definition clearly shows that the landlord would be a person who is entitled to receive rent from the tenant who is in occupation of the suit property. It is clear from the said definition in order to be a landlord, such person it is not mandatory for him to have title in the suit property. In view of Section 116 of Evidence Act, a tenant is not permitted to dispute status of landlord, who has inducted tenant in the suit property. However, at the same time whenever there is any such objection raised with regard to the title of the suit property with third party or in tenant himself, the said aspect of the matter requires consideration and will have to be established to some extent.

11. Question arises as to whether in such circumstances issue of title of the suit property can be framed and decided/determined by the rent court. A candid answer thereto would be in negative as having regard to the scope of the suit under Rent Act such issue would not fall for determination of the Court. Moreover, tenant claims that title of the suit property vest with third party, no such issue can be decided in

absence of such person and such person would neither be proper nor necessary party in a suit under Rent Act. In any case it would be the domain of the Civil Court to decide title in respect of any immovable property.

12. Considering the definition of the landlord as enumerated herein above, the issue before the Rent Court would be as to whether the plaintiffs prove to be landlord of defendants in respect of suit property. Learned Trial Court has already framed the said issue. The issue covers the objection sought to be raised by the defendants denying landlord and tenant relationship between them and to a limited extent it would be permitted to the defendants to substantiate said defence.

13. There can not be dispute about the proposition that a issue is required to be framed by placing burden of prove in a suit on a person who would fail if no evidence is led by either side. In the instant case if no evidence is led by either side, plaintiffs would fail to prove his case that the landlord and defendants is tenant of suit property. If plaintiffs fail to prove themselves to be landlord suit would fail, requiring no other issue arising for consideration.

14. Apart from the above position of law, certain material facts as they appearing from record are also relevant to be taken into consideration. It is pertinent to note that on the basis of the pleadings of

the parties as recorded herein above including the objection raised to be title of plaintiffs over the suit property, both sides led evidence and nature of evidence led, apparently indicates that both sides are conscious of issues involved therein. Perusal of the evidence on the face of it indicates that parties after being fully conscious of the issues evidence is also sought to be led including on the point of objection raised by the defendants. The learned counsel for the plaintiff/respondents has pointed out the admissions given by the defendant in his cross-examination to the effect that suit property stands in the name of the predecessor of the plaintiffs. There is further admission in no uncertain terms that defendants are tenant Bhulchand who is grandfather of plaintiffs. Such admission cannot be ignored while testing the correctness of the impugned order. Considering these admissions on one side and there being no even *prima facie* evidence placed on record before the Trial Court on other hand indicating title in the suit property being vested in third person, the learned Trial Court was not required to frame the issue as proposed by the defendants.

15. This court is in complete agreement in the observations made by the learned Trial court to the effect that when the derivative title is challenged then the same has to be established some form but he did not require to prove title. By relying upon the definition of landlord it is observed that there is no need to decide the ownership of the property in

question. According to the learned Trial Court issue No.1 framed by it is sufficient to cover the objection raised by the defendants in the written statement.

16. One more aspect which requires to be noted is that the suit is filed in the year 2015. The issues were framed in the same year. The parties including the defendants led evidence on the basis of the said issue and at the fag end of the trial in the year 2023 the framing additional issues is sought. This Court finds no reason to discard submission made on behalf of the plaintiffs that the such application is moved only with an intention to delay the decision of the suit. Having regard to the facts of the case and discussion above, this Court finds no merit in the petition. Hence, it stands dismissed.

(R. M. JOSHI, J.)

ssp