

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1118 OF 2024

ALONGWITH

INTERIM APPLICATION NO. 915 OF 2024

Santosh Rajendra Jajodia & Ors.

**..... Petitioners/
Applicants**

VERSUS

**Rama Ramniklal Soni
(Deleted since deceased) & Ors.**

..... Respondents

Mr. Vivek Salunkhe a/w. Mr.Santosh Thakur for the
Petitioners/Applicants.

Mr.Atharva Dandekar a/w. Mr.Zain Mookhi for the Respondent
Nos. 1(a) to 1(c).

CORAM: RAJESH S. PATIL, J.

DATE : 20 MARCH, 2024

P.C. :-

This writ petition is filed by the defendant nos. 2A and 2B
challenging an order passed on an application allowed by the
Trial Court, in an eviction suit to amend the plaint and add the
names of the legal heirs of the defendant no.1 (who was the
original tenant).

2. There is no dispute that the plaintiff is a landlord of the suit premises which is a Godown No.4, Ground Floor, Ram Niwas Building, 180-186, Dr.Viegas Street, Mumbai – 400 002. The said suit premises which is a commercial premises was given on rent to a tenant “Harjivan Valji”. It is the case of the plaintiff that the said tenant sublet the suit premises to one firm by name “Navratna Process”. Therefore in the year 1973 an eviction suit under the Rent Act on the ground of subletting was filed (for short “the first suit”).

3. In the first suit, the firm to whom the premises were subletted, was added as a party defendant. So also, one person who claimed himself as the legal heir of the original tenant, was added as defendant no.1 and further defendant no.2 was shown as “the heirs and legal representative of the deceased Harjivan Valji”. The said first suit of 1973 was dismissed for default on 25 November, 1996. Thereafter, the plaintiff has not taken any step challenging dismissal of the first suit for default.

4. Subsequently in the year 2009, the plaintiff filed an eviction suit under the Rent Act on the ground of 'subletting' the suit premises first to one Mr.Rajendrakumar Jajodia (defendant no.2) and then to Express Freight System (I) Pvt. Ltd. (defendant no.3) and Dr.Chirag Jain (defendant no.4). So also, Mr.Harjivan Valji, the original tenant was shown as defendant no.1 (for short "the second suit").

5. In the second suit, the plaintiff preferred an application on 11 June, 2022 to bring on record the legal heirs of the original tenant. In the said application, it has been prayed that the plaintiff has now come to know that the names and addresses of all the legal heirs of the original tenant. It is further stated that in the written statement filed on behalf of the defendant no.2, there was no mention that who are the legal heirs of the defendant no.1. It is stated that only after an order was passed on Ex.69 (of framing additional issues) i.e. the maintainability of the suit and bar of limitation in filing the suit, the plaintiff realized about the death of the defendant no.1. It has been pleaded that the original

plaintiff was an housewife and suffering with memory loss. It was submitted in the application that she did not realized that the suit should have been filed against the legal heirs of the original tenant and if the plaintiff is not aware about the names of the legal heirs, then the suit could have been filed against the unknown legal heirs of the tenant. After the application for amendment of the plaint to bring on record, the legal heirs of the original tenant was filed within a period of one week the plaintiff died. Therefore, the application was pursued by the legal heirs of the plaintiff. The said application for bringing on record the legal heirs was allowed, hence the present writ petition is filed by the defendant no.2.

6. I have heard both the sides and I have gone through the documents on record.

7. The plaint has proceeded on the basis that the present petitioners who are before this Court, are the parties to whom the premises has been subletted. The present defendants had

earlier filed an application raising an issue that the suit is barred by principles of *res judicata*, as the plaintiff had earlier filed a suit on the ground of subletting and the same was dismissed on merits.

8. The Trial Court after hearing the plaintiff, by its order dated 12 February, 2016 had rejected the application of the present petitioners on the ground that the earlier suit was 'dismissed for default' and was not dismissed on merits. So also, the Court observed that in the earlier suit, even though the ground was for subletting, the suit premises was 'subletted' to a different party, in the second suit and in the first suit.

9. The present writ petition challenges the proceedings in which the plaintiff had preferred an application to amend the plaint and to add the now known legal heirs to the plaintiff. The application of the plaintiff to bring on record the legal heirs of the original tenant was allowed by the impugned order subject to the plaintiff paying the cost of Rs.10,000/-. It has been informed

to the Court that the original plaintiff did approach the defendants to pay the cost as directed by the Trial Court. However, the defendants refused to accept the cost of Rs.10,000/- from the plaintiff, on the ground that they are in the process of filing the writ petition before this Court challenging the order of allowing the plaintiff to amend the plaint.

10. The first suit filed by the plaintiff on the ground of subletting wherein one person claiming to be the legal heirs has been added as a party defendant no.1 and the defendant no.2 is shown as the legal heirs of the tenant (without naming any persons). The first suit was of the year 1973 which was dismissed for default on 25 November, 1986. The present suit was filed only in the year 2009 where, in the cause title, four defendants have been shown. Therefore, in real sense, it is not as if the suit has been filed only against the unknown persons. The name of the original tenant has been shown as defendant no.1 and the rest of the defendants are shown as the parties to whom the suit premises has been subletted. The case of Mr.Salunkhe, learned

counsel for the petitioners is that this act of the plaintiff of filing a suit against a dead person was not arising out of the *bona fide* mistake but it was purposefully and mischievously.

11. Mr.Salunkhe submitted that he is appearing for the legal heirs of the defendant no.2, against whom the plaintiff had made an allegation that they are the parties to whom there was subletting. He submits that the legal heirs of the defendant no.2 were also parties to the first suit as firm Navratna Process was made a party in the first suit. He submits that the present defendant nos. 2A and 2B were the persons representing the firm Navratna Process. The original defendant no.2 was the proprietor of the firm Navratna Process. Mr.Dandekar has disputed these facts. He submitted that there is no reason to interfere with the impugned order, as the same allows the plaintiff to bring on record the legal heirs of the original tenant.

12. I am not agreeable to the submissions made by Mr.Salunkhe, for the reason that the plaintiff is not at all benefitted if she is knowing the names and addresses of the legal

heirs and purposely not filing the suit against them. In the first suit in fact the plaintiff had filed against one person who claimed himself to be the legal heir of the original tenant, as per the knowledge of the plaintiff, then, that suit ultimately was 'dismissed for default'.

13. The second suit is filed in the year 2009 when the plaintiff inadvertently according to me has inserted the name of the original tenant as defendant no.1, along with the defendant no.1, four more parties have been added as party defendants to whom according to the plaintiff, the suit premises was subletted.

14. As soon as the plaintiff became aware of the name and address of the original tenant, they made an application to add as defendant nos. 1(a) to 1(i). The said application was opposed by the defendant no.2's legal heirs (who are alleged to be sublette). The Trial Court after hearing the parties, was of the view that no prejudice would be caused to the defendants if the legal heirs of the original tenant is brought on record. Accordingly, the application was allowed and cost was imposed on the plaintiff. It

is plaintiff's case that the original plaintiff died within a period of one week after filing of the application. It is also plaintiff's case that the original plaintiff was suffering from memory loss. I am of the opinion that the plaintiff had no benefit of not bringing on record the legal heirs of the original tenant though he was aware of their names and addresses. The legal heirs of the original tenant, have not challenged the order of bringing them on record in the proceeding, it is only the defendant no.2's legal heirs, who are alleged to be sublettee have filed proceedings challenging the maintainability of application to bring on record legal heirs of the original tenant. I find no infirmity in the order passed by the Trial Court.

15. No case is made out to interfere with the findings recorded by the Trial Court. Hence, writ petition is dismissed.

16. In sequel, pending interim application is also dismissed.

[RAJESH S. PATIL, J.]