

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL REVISION APPLICATION NO. 317 OF 2024**

Hitesh Patel

....Applicant**V/s.**

Asmita Mogra CHS LTD. And Ors.

....Respondents

Mr. Vaibhav Sugdhare *a/w Mr. Bahriaz Irani, Mr. Afrin Dalal and Anosh Irani, for the Applicant.*

Mr. Kunal R. Vora, *for the Respondent Nos. 1 and 2.*

CORAM : SANDEEP V. MARNE, J.

Date : 12 SEPTEMBER 2024.

P.C. :

1) Revisionary jurisdiction of this Court is invoked under the provisions of Section 115 the Code of Civil Procedure 1908 (**the Code**) to set up a challenge to the Judgment and decree dated 5 April 2023 passed by the Appellate Bench of Small Causes Court by which Appeal No. 92 of 2019 filed by the Applicant has been dismissed and decree dated 8 February 2018 passed by the learned Judge of the Small Causes Court in RAE Suit No. 800 of 2016 has been confirmed. Plaintiffs' suit has been decreed on the ground of unauthorized subletting of suit premises by Defendant No.1-tenant in favour of the Defendant No.2 and later in favour of the Defendant No.3-Applicant.

2) I have heard Mr. Sugdhare, the learned counsel appearing for Applicant and Mr. Vora, the learned counsel appearing for Respondent Nos. 1 and 2 – Original Plaintiffs.

3) After having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that the Plaintiffs averred in the plaint that Defendant No.1 was inducted as tenant in respect of the suit premises whereas Defendant Nos. 2 and 3 were found to be unauthorized occupants therein. This is how the ground of unauthorized subletting was sought to be raised in the plaint. Defendant No.3 appeared in the suit and filed his written statement claiming possession in respect of the suit premises. However, in paragraph No.9 of the written statement, Defendant No. 3 admitted as under :

“With reference to Paragraph 6, the first defendant who was the original tenant expired about two years ago”.

4) Thus, there is direct admission by the third Defendant – Applicant that Defendant No.1 was the original tenant in respect to the suit premises.

5) After admitting that the first Defendant was the original tenant in respect of suit premises, Defendant No.3 – Applicant did not make any attempt to demonstrate in his written statement as to how he came in possession of the suit premises. Though it is sought to be contended that the land on which suit premises are situated were originally own by one John Francis Baptista, Defendant No.3-Applicant did not raise any contention

that he was inducted as a tenant by said John Francis Bapista. On the contrary, by admitting that the first Defendant was the original tenant, Defendant No.3 – Applicant has virtually accepted the case of Plaintiffs that they inducted the first Defendant as the tenant in respect of the suit premises.

6) In my view therefore, in absence of pleadings and evidence to indicate valid possession of suit premises by Defendant No. 3, the ground of subletting was conclusively established.

7) Mr. Sugdhare is at pains to point out that as plaint was itself faulty and not maintainable on account of the fact that the first Defendant had expired prior to filing of the suit. He would object to impleadment of Defendant No.1 through ‘unknown legal heirs’ without disclosing their names by amending the suit. He has relied upon Judgments of this Court in ***Smt. Sheel Arora Vs. Sanjay Fetah Bahadur Srivastava***¹ in support of his contention that it is impermissible to implead Defendant as ‘unknown heirs of deceased’. However, the Judgment ***Smt. Sheel Arora (supra)*** appears have been rendered in the peculiar facts of that case were the Plaintiff personally knew family of deceased Defendant therein and it was therefore held that deceased Defendant ought to have been impleaded through legal heirs by disclosing their names.

¹ AIR 2004 Bom.99

8) Mr. Sugdhare has also relied upon Judgment of this Court in ***Shrikant Shambu Volvoikar Vs. Narendra Pandu Chatim & Ors.***² in which this Court has held in paragraph No. 12 as under :-

“12. A suit cannot be allowed to be filed against unknown heirs of a deceased defendant because personal service cannot be effected on them. Likewise, summons cannot be effected on a defendant whose address is not known. If no service can be effected, obviously the defendants cannot defend the action. In such a situation substituted service can only be a farce. If a suit cannot be filed against unknown heirs as held by this Court in the case of *Donald Gonsalves Vs. Penha de Franca Youth Clud (supra)* and other decisions cited herein above, a suit which is filed against a defendant with no address given to locate and serve summons on him, is also not maintainable. The learned trial Court having come to the conclusion that the judgment / decree of the learned trial Court was illegal, arbitrary and perverse had no other option, but to set it aside and dismiss the suit”.

9) Mr. Sugdhare at the same time is fair in pointing out Judgment delivered by this Court in ***Trustees of the tenant Petit Charity Fund Vs. Heirs & Legal Representatives***³ in which the issue taken up for consideration has been crystallized in paragraph No.2 as under :-

“2. The issue at hand is this : there are cases in this city where a landlord does not know the names or addresses or both of the heirs of a deceased tenant. None come forward when the tenant dies. What is the process that a landlord should follow to recover his property? Is it at all permissible for the landlord to bring a formal eviction action in the names of, for instance, the heirs and legal representatives, in any of the late tenant? In our system of civil procedure, this seems to present procedural difficulties. In whose name would a Writ of Summons be issued? Where and how would it be served? What procedure should that Court of competent jurisdiction adopt? What safeguards are necessary to ensure that an unscrupulous landlord does not deliberately try and undermine or bypass legitimate statutory tenancy inheritance rights to the prejudice of the deceased tenant’s family?”.

2. 2010(4)Bom.C.R.336

3. 2018 SCC OnLine Bom 1068

10) This Court thereafter proceeded to decide as to whether in a suit filed by Plaintiff – landlord for eviction and he is unable to locate and name legal heirs of deceased tenant, the decree would be nullity. This Court held in paragraph No. 16 and 18 as under :-

“16. As the emphasized portion shows there is no good reason why the provisions of Order XXII Rule 4-A cannot be used or invoked in a situation like this or why we must have so rigid a line between a case where a defendant-tenant dies after the suit but without leaving heirs and a case where a tenant is only a potential defendant who dies without heirs before the suit is brought. This is the reason why I have noted the historicity of this legislation and pointed out the restrictions that it imposes on the rights of a landlord and the consequences of following too slavishly some procedural norm that only operates to oust substantive legal rights of property ownership. These rights are valuable. They are not to be underestimated. Apart from the sheer value, there are cases where locking up a property forever is against the public interest. A case in point might be that of the present Petitioners, the mandate of which Trust is to make available its property on license or tenancy basis as affordable housing to the poor and needy of a defined community. If premises after premises are to be held to be such as cannot be recovered by a landlord, then that entire charitable purpose is negated. This can never be a sound legal or jurisprudential basis.

18. I note these prescient words “there are however circumstances which may necessitate a suit being filed in the manner it is done.” That is precisely our situation today. It is true that where there are legal heirs they should and must be named, but this does not mean that a suit without naming heirs where none are found is not maintainable or that a decree in such a suit is a nullity”.

11) In my view in *Trustees of the tenant Petit Charity Fund*, this Court dealt with the case where there was no allegation of subletting and the Defendant himself had locked the premises and had gone missing. There was no reasonable means of tracing the

whereabouts of Defendant and in the event of his death, whether he has any surviving legal heirs. Even in that extreme case, this Court took a view that the suit filed against unknown legal heirs of deceased tenant, whose whereabouts are unknown to the landlord, cannot be treated as not maintainable and more importantly the decree passed therein cannot be treated as illegal.

12) In the present case, though the first Defendant tenant was apparently dead as on the date of filing of the suit, the suit is ultimately contested by the third Defendant. Third Defendant – Applicant, is admittedly in possession the suit premises. The deceased Defendant or his legal heirs are no longer interested in defending the suit as they do not possess the suit premises. It is the case of the third Defendant – Applicant that he has been in possession of the suit premises for quite some time, but he is unable to explain authorization in his favour for seeking entry into the suit premises.

13) Be that as it may. What is important to note is the fact that, it is third Defendant – Applicant who is the main contesting party in the present case.

14) While in *Trustees of tenant Charity Fund*, this Court has gone to the extent of holding that a suit filed against the unknown heirs of deceased Defendant-tenant would be maintainable in absence of any other party, the present case involves much better facts in which there are other parties and there has been is at least contest to the suit by the third Defendant – Applicant.

15) In my view therefore, the decree cannot be said to be invalid on technical ground of impleadment of unknown legal heirs of the deceased tenant.

16) In my view, the ground of unauthorized subletting has been conclusively and concurrently held to be proved by the Trial Court and its Appellate Bench. The findings do not suffer from the vice of perversity and no interference is warranted by this Court in exercise of revisionary jurisdiction.

17) The Civil Revision Application is accordingly rejected.

18) After the order is pronounced Mr. Sugdhare would pray for continuation of interim stay granted by this Court by order dated 15 December 2023. The request is opposed by Mr. Vora. It appears that *ex-parte* interim stay was granted by this Court on 15 December 2023 only on account of the medical ailment then suffered by the Revision Applicant. Since this Court has not found any merit in the Revision Application, I do not think that any case is made out for continuation of interim stay any longer. The request for stay is accordingly rejected.

[SANDEEP V. MARNE, J.]

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