
(2016) 04 RAJ CK 0058
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2646 of 2008

Abdul Khalid

APPELLANT

Vs

Rent Tribunal, Jodhpur & Ors.

RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:

Rajasthan Rent Control Act, 2001 — Section 15, 21, 9(1), 9(d), 9(e)

Citation : (2016) 2 RCRRent 201

Hon'ble Judges : Sangeet Lodha, J.

Bench : Single Bench

Advocate : O.P. Mehta, Advocate, for the Appellant; R.K. Thanvi, Senior Advocate with Narendra Thanvi, Advocates, Raju Chaynan, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Sangeet Lodha, J.—This petition is directed against order dated 4.4.08 passed by the Rent Tribunal, Jodhpur in Rent Case No.419/05, consolidating the petition seeking eviction preferred by the petitioner against the tenants, the respondents no.2 to 4 herein, with yet another petition being No.63/07, preferred by the respondent no.5-Mustaffa, the brother of the petitioner, against the respondent no.2 & 4 herein.

2. The relevant facts are that the petitioner filed a petition being No.419/05, seeking eviction from the rented premises consisting of three rooms i.e. room nos. 5,6 & 7, against the respondents no.2 to 4, before the Rent Tribunal, Jodhpur, on the grounds of reasonable and bona fide requirement of the premises, for his three sons namely, Yaya Khan, Mohd. Tahir and Mohd. Jahid, for doing business of lodging and boarding, material alteration and nuisance, in terms of provisions of Section 9 (i), (d) & (e) of the Rajasthan Rent Control Act, 2001 (for short "the Act"), respectively.

3. The premises in question was owned by Abdul Shakoar, the father of the

petitioner, who expired on 11.4.91 and after his death, on the strength of the Will executed by his father, the petitioner became exclusive owner of the property. After the death of the father of the petitioner, the respondents-tenants are paying the rent of the premises to the petitioner.

4. The petition is being contested by the tenants, the respondents No. 2 to 4 herein, by filing a reply thereto, wherein, the factum of landlord and tenant relationship is not disputed and it is also not denied that after the death of the petitioner's father, the rent of the premises is being paid by them to the petitioner.

5. During the pendency of the petition, the petitioner's brother Mustaffa, the respondent no.5 herein, preferred an application for impleading him as party to the petition, which stood rejected by the Rent Tribunal, vide order dated 12.1.07, observing that there is no evidence brought on record that the applicant-Mustaffa received the rent of the premises after 1986 and further that in a petition preferred by the landlord against the tenants, seeking eviction from the rented premises, the question regarding ownership over the premises is not required to be gone into. The order passed by the Rent Tribunal as aforesaid, has attained finality.

6. At this stage, the petitioner's brother Mustaffa, preferred a petition against the respondents no.2 & 4, seeking eviction from the rented premises, stating that his father Abdul Shakoor had executed a Will dated 10.4.85, of the room no.6 in his favour and thus, after death of his father, he has become owner of the room no.6 and a kitchen attached thereto w.e.f. 11.4.91. The eviction is sought on the ground of reasonable and bona fide requirement, stating that the premises is required for the stay of the employees engaged in the hotel business carried on by him in the name of Kohinoor Hotel, as also to use the same for store. That apart, the eviction is also sought on the grounds of material alteration, damage to the property and non user of the premises.

7. After filing of the petition seeking eviction by the petitioner's brother Mustaffa, the respondent no.5, as aforesaid, the respondent no. 2 to 4 herein, preferred an application under Section 21 of the Act read with Section 151 CPC in petition No.419/05, for consolidation of both the petitions i.e. petition No.419/05 and the petition No.63/07.

8. The application seeking consolidation, was rejected by the Rent Tribunal vide order impugned. Aggrieved thereby, the respondents no. 2 & 3 herein, preferred a writ petition being No.748/08 before this court. The petition was allowed by a coordinate Bench of this court vide order dated 10.3.08 and the matter was remitted to the Rent Tribunal to decide the application afresh, by passing a speaking order.

9. After due consideration of the rival submissions, the application preferred by the respondents no.2 to 4, seeking consolidation of both the matters, has been allowed by the Rent Tribunal, vide order dated 4.4.08. Hence, this petition.

10. Learned counsel appearing for the petitioner contended that the order impugned passed by the Rent Tribunal without appreciating the factual and legal position in correct perspective, is not sustainable in the eyes of law. Learned counsel submitted that indisputably, the two petitions are filed by two different persons and both the petitions are based on different cause of action and grounds. Learned counsel submitted that the persons seeking consolidation of the matter are regularly paying the rent to the petitioner for last 20 years and the landlord and tenant relationship between them, is not in dispute. Learned counsel submitted that as a matter of fact, the application preferred by the respondent no.5-Mustaffa for impleading him as party in the petition No.419/05 preferred by the petitioner having been dismissed, this collusive petition No.63/07 was filed and thereafter, through a planned device, the application seeking consolidation of both the matters was filed by the tenants, the respondents no.2 & 5, who have accepted the petitioner as the landlord and paying the rent of the premises i.e. room no.5,6 & 7 for last 20 years. Learned counsel submitted that strangely enough, the respondent no.2 & 4 even did not file reply to the petition filed by the respondent no.5-Mustaffa so as to bring the correct factual position before the Rent Tribunal that the respondent no.5, who has filed the petition seeking eviction is not their landlord. Learned counsel submitted that parties in the two petitions are different, the issues involved in the two petitions are not substantially and sufficiently similar and therefore, the question of consolidation of two petitions, does not arise. Learned counsel submitted that in view of the fact that landlord and tenant relationship between the petitioner and the respondents no.2 to 4 is not in dispute and the petitioner has sought eviction of the tenants from the premises consisting three rooms, on the ground of bona fide necessity of the premises for his sons and thus, the issues involved and the evidence to be led by the parties will be different and thus, in absence of the relevant circumstances for consolidation, the order impugned passed by the Rent Tribunal is not sustainable in the eyes of law. In support of the contentions, learned counsel has relied upon the decisions of this court in the matters of "Pratap Singh v. Madan Lal & Anr.", 1992(2) Current Civil Cases, 702, "Vishnu Kumar v. Smt. Sohni Devi & Ors.", 1995 DNJ (Raj.), 684, "Ganeshdas & Anr. v. Ramesh Chandra & Anr.", AIR 2002 Raj.341, "Anurag & Co. (M/s) & Anr. v. Additional District Judge & Ors.", 2006(1) DNJ (Raj.), 239, "Jamna Das v. Sanwar Mal & Ors.", 2014(2) WLN, 246 (Raj.), "Bundu v. Prem Kishan & Anr." (S.B.C.Revision Petition No.178/89) and other High Courts i.e. High Court of Gujarat, Delhi and Karnataka, reported in "Bhopo Fakirbhai (minor) & Anr. v. Bai Mani d/o Jijibhai Bechardas & Ors.", AIR 1961 Gujarat, 92, "Bharat Nidhi Ltd. v. Shital Prasad", AIR 1981 Delhi, 251 and "B.S. Bhagavan Singh & Ors. v. Smt. Sharada Bai", AIR 1990 Karnataka, 222. Learned counsel submitted that while exercising inherent power, the Rent Tribunal was required to look into the bona fides of the respondents no.2 to 4, in making the application seeking consolidation inasmuch as, apparently, the application preferred is collusive and the same has been filed so as to delay the proceedings in the petition filed by the petitioner in the year 2005, which is presently posted for his cross examination.

11. On the other hand, the counsel appearing for the respondents no. 2 to 4, Mr.R.K.Thanvi, Senior Advocate, contended that it is not the law that the consolidation can be ordered by the court only where the parties to one or more suits are the same and the issues involved are also identical. Learned counsel submitted that the consolidation can be ordered even where it is considered necessary to avoid two contradictory decrees. Learned counsel submitted that admittedly, the petitioner and the respondent no.5 in two different petitions preferred, are claiming themselves to be owner of the property on the strength of the different Wills executed in their favour by their father and thus, the Rent Tribunal cannot pass two different decrees of eviction in respect of the same premises. Learned counsel submitted that having regard to the controversy raised in two petitions, the Rent Tribunal has to decide as to who is the owner of the property. Learned counsel submitted that it needs to be determined by the Rent Tribunal as to who is the landlord of the respondents no.2 to 4, either the petitioner or the respondent no.5 herein. Learned counsel would submit that so as to avoid the multiplicity of the proceedings and the contradictory decrees, it is absolutely necessary that both the petitions are consolidated, tried and disposed of together. In support of the contentions, the petitioner has relied upon decision of the Hon'ble Supreme Court in the matter of "M/s. Chitivalasa Jute Mills v. M/s. Jaypee Rewa Cement", 2004 (3) SCC 85, decisions of this court in the matters of "Shabir Ahmed Khilji v. Mehar M.Sadique & Ors.", 2004(1) Civil Court Cases, 449 (Rajasthan), "Shikhar Chand v. Suresh Chand & Anr.", 2007 WLC (Raj.), 736 and decisions of the Punjab & Haryana High Court in the matters of "Nand Kishore v. Ram Dev", 2002(3) Civil Court Cases, 618 (P&H) and "Mustaq Ahmed v. Mohd. Ramzan & Ors.", 2005(2) Civil Court Cases, 507 (P&H).

12. I have considered the rival submissions and perused the material on record.

13. Indisputably, neither the Act nor CPC specifically provides for consolidation of the suits. That apart, by virtue of provisions of sub-section (3) of Section 21, the Rent Tribunal is not bound by the procedure laid down under CPC but shall be guided by the principle of natural justice and therefore, in case the issues involved in the two or more petitions are found substantially and sufficiently same and if it is found necessary to meet the ends of justice, exercising the inherent power, it is not precluded from directing consolidation of the petitions for inquiry and decision as contemplated under sub-section (6) of Section 15 of the Act.

14. It is to be noticed that the petition No. 419/05, is filed by the petitioner against the respondent No. 2 & 4 in respect of the premises consisting of three rooms i.e. room no.5, 6 & 7 whereas, the petition No.63/07, is filed by the respondent no.5, the brother of the petitioner, against the respondent no.2 & 4 in respect of only room no.6 and thus, apparently, some of the parties in two petitions are common but it cannot be said that the parties in two petitions are same. It is pertinent to note that the respondent no.2 to 4 herein, have not disputed the landlord and tenant relationship in the petition filed by the

petitioner and have also accepted that they are paying rent to the petitioner since 1986. In this view of the matter, in the petition filed by the petitioner, the question with regard to the ownership of the premises or the landlord and tenant relationship between the parties, is not required to be gone into by the Rent Tribunal. It is pertinent to note that in the petition filed by the petitioner, the Rent Tribunal is required to determine the reasonable and bona fide requirement of the premises, consisting of three rooms as pleaded by the petitioner whereas, in the petition filed by the respondent no.5, the question with regard to the reasonable and bona fide requirement of the premises i.e. room no.6 is required to be gone into by the Rent Tribunal, only if the landlord and tenant relationship between the respondent no.5 and the respondents no. 2 to 4, is established and thus, only common feature in both the petitions is that eviction of the petitioner is sought from the room no.6 albeit by two different persons. In this view of the matter, in the considered opinion of this court, apart from the fact that parties in two petitions are different, even the issues involved, cannot be considered to be substantially and sufficiently similar.

15. In Pratap Singh's case (supra), this court while dealing with the issue of consolidation of the suits, observed that the conditions to be fulfilled for consolidation of the suits are that real contesting parties are same and the determination of the rights of the parties in one suit must be intimately connected with the determination of rights of the parties in another suit.

16. In Vishnu Kumar's case (supra), this court has followed the decision in Pratap Singh's case (supra).

17. In Ganeshdas's case (supra), where in four different suits filed, the parties were not same, cause of action was also different and the documents on the basis of which litigations were being fought were also different and the evidence of the plaintiff had already been recorded, the rejection of the application preferred for consolidation was upheld. The court relying upon the decision of this court in Vishnu Kumar and Pratap Singh's case (supra), held that for consolidation of the suits certain conditions have to be fulfilled including that parties must be identical and the rights to be determined must also be identical and in case both the conditions are not fulfilled, consolidation is not permissible.

18. Again in Anurag & Company's case (supra), this court inter alia relying upon the decision of the Hon'ble Supreme Court in Chitivalasa Jute Mills's case (supra), summarised the relevant circumstances for consolidation the civil suits as under:

"28. The upshot of aforesaid discussion of judgments is that some of the relevant circumstances for consolidating the civil suits are as follows:

(i) The parties are substantially the same.

(ii) Complete or even substantial and sufficient similarity of the issues arising for decision in two suits.

(iii) Common evidence is to be led, if parties are substantially the same, if only one party is common then burden of proof of facts in issue will be on different person and no common evidence can be led.

(iv) The consolidation in the aforesaid circumstances will fulfil the object of consolidation. Any other circumstances may be relevant then also the object of consolidation will be decisive for passing appropriate order."

19. Suffice it to say that in the matters where there was no substantial similarity between the parties, the issues involved, cause of actions arose and burden of proof was on different persons, the court upheld the order passed by the trial court refusing to consolidate the suits.

20. In *M/s. Chitivalasa Jute Mill's case* (supra), relied upon by learned counsel appearing for the respondents, the Hon'ble Supreme Court observed that the Code of Civil Procedure does not specifically speak of consolidation of the suits but the same can be done under the inherent powers to make such order as may be necessary for the ends of justice or to prevent abuse of the process of the court as it saves parties from multiplicity of the proceedings, delay and expenses.

21. In *Shabir Ahmed Khilji's case* (supra), where the trial court had accepted the contention of the defendant therein that the trial of two suits and decision thereof may result into multiplicity of the conflicting orders by different courts, ordered transfer and consolidation of two suits relating to the dispute in respect of management of Educational Institution for trial before one court.

22. In *Shikhar Chandra's case* (supra), this court relying upon the decision of the Hon'ble Supreme Court in *Chitivalasa Jute Mill's case* (supra), directed consolidation of the suits where in two suits, the parties were same and were pending before the same court relating to the dispute regarding a common property, to secure the ends of justice.

23. In *Mustaq Ahmed's case* (supra), the Punjab & Haryana High Court, in order to avoid two contradictory decrees being passed in two suits filed by two purchasers on the basis of different agreement to sell in respect of the same land, directed consolidation for disposal together.

24. Similarly, in the case of *"Nand Kishore v. Ram Dev"*, 2002 (3) Civil Court Cases, 618 (P&H), where the subject matter of the suit was common, two suits filed by the rival parties, one seeking mandatory injunction for removal of alleged encroachment from the site and another seeking injunction against the Municipal Committee for restraining the letter from removing the structure from the site, were directed to be consolidated for trial together.

25. The upshot of the various decisions relied upon by the learned counsel for the parties is that the consolidation of the suits can be ordered by the court where the parties to the suits are the same and the issues involved in two or more suits are substantially and sufficiently the same and where to avoid the multiplicity of the proceedings and contradictory decrees, it is considered

necessary to meet the ends of justice.

26. As discussed herein above, in the instant case, the parties to the two petitions are not the same inasmuch as, one petition has been filed by the petitioner herein and another by the respondent no.5. Of course, one of the property in respect whereof the suit for eviction has been filed by two different persons is common but then, the fact remains that the question with regard to the landlord and tenant relationship is not disputed in the petition filed by the petitioner seeking eviction of the respondents no. 2 to 4 from the rented premises consisting of three rooms and thus, the question of either ownership over the premises or the landlord and tenant relationship in respect thereof is not required to be gone into by the Rent Tribunal. That apart, the question of reasonable and bona fide necessity raised by the petitioner herein in the petition filed by him seeking eviction of respondent no.2 & 4 from the premises consisting of three rooms is apparently different than the reasonable and bona fide requirement of the premises i.e. room no.6 pleaded by the respondent no.5 herein. Moreover, the respondents no.2 to 4 having accepted the petitioner as the landlord, and therefore, the question with regard to landlord and tenant relationship shall arise only in the petition filed by the respondent no.5 if the respondents no.2 & 4 takes the stand in the said petition denying the landlord and tenants relationship. It is also pertinent to note that respondent no.3 is not the party respondent in the petition filed by the respondent no.5. It is relevant to mention here that an application preferred by the respondent no.5 for impleading him as party to the proceedings in petition no.419/05 has already been rejected by the Rent Tribunal vide order dated 12.1.07 and the same has attained finality and therefore, the question of permitting him to inter meddle in the petition filed by the petitioner herein indirectly, does not arise. Thus, the Rent Tribunal has erred in permitting the consolidation of two petitions at the instance of the respondent no.2 to 4, who have not even denied the factum of the petitioner being their landlord. In the considered opinion of this court, the respondent-tenants cannot be permitted to enlarge the scope of inquiry in the petition filed against them by their landlord, indirectly, by way of consolidation of two petitions. It is not out of place to mention here that in the petition filed by the petitioner, seeking eviction is pending since 2005 and the matter is posted for the cross examination of the petitioner and thus, obviously, if consolidation as prayed for is permitted at this stage, the proceedings which already stands delayed on account of pendency of this petition, shall be further delayed.

27. In view of the discussion above, in the considered opinion of this court, the Rent Tribunal has erred in directing consolidation of two petitions wherein the parties are different and the issues involved are also not substantially and sufficiently the same and therefore, the order impugned deserves to be set aside.

28. Accordingly, the writ petition is allowed. The order impugned dated 4.4.08 passed by the Rent Tribunal, Jodhpur in Rent Case No. 419/05, is set aside. No order as to costs.