
(1998) 04 RAJ CK 0034

In the Rajasthan High Court

Case No : Civ. Revision Petition No. 181 of 1998

Bhupal Singh and Others

APPELLANT

Vs

Bhagwati Prasad and Others

RESPONDENT

Date of Decision : 20-04-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Rajasthan Premises (Control of Rent and Eviction) Act, 1950 — Section 13

Citation : AIR 1999 Raj 41

Hon'ble Judges : P.C. Jain, J

Bench : Single Bench

Advocate : K.C. Samdariya, for the Appellant; Ravi Bhansali, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Jain, J.—The petitioners have filed this petition u/s 115 CPC against the order dated 21-1-1998 passed by the learned Additional Civil Judge (Sr. Div.), Bhilwara in civil original suit No. 122/93 by which the learned Civil Judge dismissed the application filed by the petitioners under Order 1 Rule 10 CPC.

2. The plaintiff Bhagwati Prasad-non-pet. No. 1 filed a suit against defendant-non-pet. No. 2 in the trial Court for ejectment and recovery of rent with the allegations that the defendant took the suit shop described in para I of the plaint on rent at Rs. 335/- per month for doing business of motor part machinery from the plaintiff and the former executed a rent note in favour of the latter. A perusal of the rent note shows that Lalit Kumar mentioned himself as proprietor of firm M/s. Pankaj Machinery Mart. Laxminarain Mandir Road, Bhilwara. The plaintiff alleged that the defendant did not pay rent as per contract and also abandoned the suit shop for the last three years. The defendant has left Bhilwara and joined service in Government College, Rajkot, Gujarat as Lecturer. He has allowed other persons to occupy the same illegally. The plaintiff further stated that he required the suit shop reasonably and bona fide for the business of his son Rajkumar described in para 5 of the plaint. The plaintiff, therefore, prayed for the

ejection of the defendant and decree for arrears of rent.

3. The petitioners moved the above application with the allegations that the suit shop was in fact taken on rent by the petitioners and Lalit Kumar jointly for running the business in the name and style "M/s. Pankaj Machinery Mart". The petitioners and Lalit Kumar constituted a Joint Hindu Family and the suit shop was taken for doing the joint family business in the above name and style. It was also alleged that Lalit Kumar went to the plaintiff to negotiate the agreement for taking the suit shop on rent and during the negotiations Lalit Kumar clearly stated that the suit shop was being taken for the joint family business by the Joint Hindu Family of which he and his brothers are members. Since Lalit Kumar is the eldest, the rent note was written by him. The petitioners stated that after taking the suit shop in the above manner, the petitioners are carrying on business of machinery mart and Lalit Kumar also joins the firm whenever he comes to Bhilwara. It was further stated by the petitioners that the rent was paid to the plaintiff several times by one petitioner or the other. Rent receipts have also been produced by the petitioners. The application was stoutly resisted by the plaintiff on the ground that the suit shop was only taken on rent by Lalit Kumar individually as a proprietor of the above firm. The plaintiff categorically denied that the suit shop was also given on rent to the petitioners along with Lalit Kumar. The rent note was executed by Lalit Kumar in his individual capacity mentioning himself as proprietor of M/s. Pankaj Machinery Mart. After obtaining the shop on rent, he surrendered the sales tax numbers and the petitioners, thereafter, obtained fresh sales tax numbers. This clearly shows that the business of Lalit Kumar was distinct from the business of the petitioners. Lalit Kumar has abandoned the shop and also surrendered his own sales tax numbers. The petitioners are attempting to take undue advantage of their relationship with Lalit Kumar and also of the fact that Lalit Kumar illegally handed over the possession of the suit shop to the petitioners. The petitioners are, therefore, trespassers and not entitled to any protection. The learned trial Court, after hearing both the parties, came to the conclusion that the suit shop was taken on rent by Lalit Kumar alone. The petitioners have got no right, title or interest in the suit shop. They are in occupation of the same as unauthorised persons. He, therefore, dismissed the application.

4. I have heard learned counsel for the petitioners and the learned counsel for the non-petitioner no. 1.

5. Learned counsel for the petitioners has invited my attention to the fact that the suit shop was taken by Shri Lalit Kumar for the business under the name and style "M/s. Pankaj Machinery Mart". Since Lalit Kumar was the eldest in the Joint Hindu Family of the petitioners, he executed the rent note but it was clearly stated to the plaintiff that the suit shop was being taken by Lalit Kumar for running the business of the Joint Hindu Family. This fact is further demonstrated by the fact that the rent was deposited by the petitioners and the receipt was issued in the name of the above firm. Even if Lalit Kumar has left Bhilwara, the

petitioners are the other members of the Joint Hindu Family or running the business of Joint Hindu Family. They are, therefore, in possession of the above premises in the capacity of co-tenants. It was also argued by him that in case the petitioners are not accepted as tenants, they are sub-tenants inasmuch as they were admitted in the suit premises by Lalit Kumar. Learned counsel has submitted that a sub-tenant in such circumstances, is a necessary party. In this regard he has placed reliance on the cases *Satish Chand Vs. Bhonrilal and Another*, *Shanti Lal v. Laxminarain*. 1997 (3) RLW 2066 and *Samast Panch Kaum Helan Vs. Jameel Mohammed and Others*,

6. Learned counsel for the non-petitioner No. 1 has supported the impugned order. A perusal of the rent note eloquently proves that the suit shop was taken on rent by Lalit Kumar alone. He has stated the fact that he is the proprietor of the firm M/s. Pankaj Machinery Mart because this fact has been mentioned by him below his name. The rent note was executed by him alone. The allegations made by the defendant that Lalit Kumar in fact negotiated the shop on rent for the business of the Joint Hindu Family as stated above, though being the eldest, rent note was executed by him. This allegation runs counter to the recitals made in the rent note executed by non-petitioner no. 2 defendant. The petitioners cannot be allowed to lead evidence contrary to the contents of the rent note. Rent can be paid by any person on behalf of the defendant and if the petitioners or any of them paid rent to the plaintiff in respect of the suit shop, it hardly proves that the petitioners are the tenants of the plaintiff. It can only be treated that they paid rent on behalf of Lalit Kumar.

7. Learned counsel has submitted that the suit was filed in the year 1992 and this application has been moved after more than 5 years. All the facts, as alleged by the petitioners, were within their knowledge. The unexplained inordinate delay with which the application has been filed, is vital and the application is liable to be dismissed on this ground alone as has been held in *Rampratap v. Vijay Kumar* 1989 (2) RLW 518.

8. I have considered the rival contentions. After a perusal of the rent note, it is clear that the same was executed by Lalit Kumar in favour of the plaintiff. Lalit Kumar has only stated the other fact in the rent note that he is the proprietor of firm M/s. Pankaj Machinery Mart. From the above it can also be inferred that he claimed to be the sole proprietor of the above shop. It is not stated in the rent note that the suit shop was being taken on rent for the business of the Joint Hindu Family. The averments made by the petitioners that they were also tenants along with Lalit Kumar is not corroborated by any documentary evidence. On the contrary, the rent note runs counter to their averments. However, I will not dwell on this point any further because this is an interim application. The fact that rent was paid by applicants or any of them would not change the situation because rent can be paid on behalf of the rent by any other person. The receipts were given in the name of the firm "M/s. Pankaj Machinery Mart". However, it is an admitted position that the petitioners are now in possession of the above suit

shop. The question for determination is that what is their capacity? It may be stated that the petitioners have also claimed themselves to be co-tenants along with Lalit Kumar. The allegation of the non-petitioner-plaintiff is that they are mere trespassers. However from the averments made by both the Parties it is clear that it is the case of neither party that the petitioners are the sub-tenants in the above shop. The definition of tenant is given in Section 3(vii) of the Act as follows :--

TENANT : "(a) the persons by whom or on whose account or behalf rent is, or, but for a contract express or implied would be payable for any premises to his landlord including the person who is continuing in its possession after the termination of his tenancy otherwise than by a decree for eviction passed under the provisions of this Act; and

(b) in the event of death of [he person as is referred to in Sub-clause(a), his surviving spouse, son, daughter and other heir in accordance with the personal law applicable to him who had been, in the case of premises leased out for residential purpose, ordinarily carrying on business with him in such premises as member of his family up to his death."

9. In the instant case as the facts stand, there is no allegation either of the plaintiff or even the petitioners that the petitioners are the sub-tenants in the above shop. The petitioners have made a categorical claim that they are tenants or sub-tenants along with Lalit Kumar in the suit premises and that when Lalit Kumar took suit shop on rent it was on behalf of the Joint Hindu Family of which the petitioners are the members. According to the plaintiff, they are trespassers. If it is held that the petitioners are not tenants or co-tenants, they cannot be treated to be sub-tenants. They therefore, can only be levelled as trespassers as alleged by the plaintiff. I have already stated that in the facts and circumstances of the case, I do not find prima facie evidence that the petitioners are the tenants of the suit shop or that Lalit Kumar took the suit shop on their behalf from the plaintiff. Once it is held that the petitioners are mere trespassers, they are not entitled to any legal protection in suit for eviction. A person who occupies premises without the consent of the landlord and the occupier is not a sub-tenant or licensee, he is a trespasser and he is not entitled to any legal protection. Learned counsel for the petitioners have cited ruling under which it has been laid down that a sub-tenant is a necessary party and is entitled to be impleaded as such in a suit for ejectment. Since, according to the above discussion, the petitioners are not tenants or subtenants, they are not entitled to be impleaded as party in the suit. The suit is of eviction and arrears of rent between the plaintiff and the defendant. The petitioners are absolutely strangers to the suit and they cannot have any interest in the subject matter of the suit.

10. I also uphold the objection of the learned counsel for the non-petitioner that this application is quite belated inasmuch as it was moved after more than 5 years when the above facts were within the exclusive knowledge to the petitioners. Such a belated application is liable to be dismissed as has been held

in Rampratap v. Vijay Kumar (supra). The law cited by the learned counsel for the petitioners do not apply in view of the finding recorded in this order.

11. I, therefore, find no force in the revision petition and the same is hereby dismissed. However, I would like to make it clear that whatever observations have been made in this order will not prejudice the trial Court while trying the suit.