

(1980) 08 BOM CK 0017

In the Bombay High Court

Case No : Writ Petition No. 3111 of 1979

Bhuramal Ishwarlal Sindhi

APPELLANT

Vs

Yakub Baig Shukrulla Baig

RESPONDENT

Date of Decision : 19-08-1980

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(3)

Citation : (1980) 08 BOM CK 0017

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Advocate : J.C. Rajani, for the Appellant; V.V. Kamat, for the Respondent

Judgement

M.L. Pendse, J.—By this petition filed under Article 227 of the Constitution of India, the petitioner is challenging the legality of the judgment dated October 25, 1979 passed by the learned District Judge, Kulaba, ordering eviction of the petitioner from the suit premises. The suit premises consists of an open site admeasuring 10" x 8" out of city Survey No. 853 situate at Panvel in Kulaba District. The petitioner was inducted as contractual tenant under a rent note Ex. 22 of October 8, 1971 on a contractual rent of Rs. 35/- per month. The petitioner was permitted to construct a shed on the said plot and the petitioner is running a shop thereon. The rent note was executed by the petitioner in favour of respondent No. 1 Yakub Baig. The property originally belonged to one Fatamabai w/o Shukrulla Baig and on her death came to the share of Yakub Baig the respondent and Anwar, her two sons and Kureshabibi and Noorjaha, her two daughters, each of them having interest in the property and they are the co-owners.

2. The petitioner committed default in payment of rent from November 1, 1971, to April 30, 1972 i.e. for a period of more than 6 months. In view of this default, the respondent No. 1 terminated the tenancy by a notice dated May 8, 1972 and called upon the tenant to pay the entire arrears within one month. The petitioner, however failed to clear the arrears and respondent No. 1 instituted a suit in the

Court of Civil Judge, Junior Division, Panvel on July 2, 1972. The respondent No. 1 claimed possession u/s 12(3)(a) of the Rent Act.

3. The suit was resisted by the petitioner inter alia contending that he had paid the entire arrears to the landlord but no receipt was issued to him. The petitioner also claimed that standard rent should be determined. It was further claimed that on June 30, 1972, the petitioner sent a money order clearing all the arrears. The tenant also claimed that the notice issued by one of the co-owner was invalid and also the suit institute by one co-owner. The trial Court found that the tenant was in arrears of rent for more than six months and the case clearly falls u/s 12(3)(a) of the Rent Act. The trial Court has also held that the dispute of standard rent was not bona fide and the payment by money order after a period of one month from the service of the notice would not bring the case out of section 12(3)(a) of the Act. The trial Judge, however, dismissed the suit only on the ground that the notice served by one of the co-owners was invalid and more so when it was not established that other co-owners had given him authority. The learned trial Judge in support relied on the decision of Full Bench of the Gujarat High Court in the case of Nanalal Girdharlal and Another Vs. Gulamnabi Jamalbhai Motorwala and Others, , to come to that conclusion.

4. The respondent No. 1 carried an appeal before the District Court, Kulaba, and the learned District Judge has reversed the judgment of the trial Court. The lower Appellate Court held that the suit notice was legal and proper and it is not necessary that all co-owners should join in giving the quit notice or in filing the suit. The lower Appellate Court placed reliance on the decision of the Supreme Court reported in Kanta Goel Vs. B.P. Pathak and Others, in the case of Smt. Kanta Gole v. B.T. Phatak and others, to come to that conclusion. Even otherwise, the Appellate Court held that as per the dictum of the Full Bench of the Gujarat High Court the tenant was estopped from challenging the validity of the notice. The judgment of the District Judge is under challenge.

5. Shri Rajani, the learned Counsel appearing in support of the petitioner did not dispute that the finding of the two courts below that the tenant was a defaulter and the case falls clearly u/s 12(3)(a) of the Rent Act is in accordance with law. The challenge to the suit is only on the basis of the validity of the notice. It was urged by the learned Counsel that the notice dated May 8, 1972 issued by one of the co-owners is illegal, Shri Rajani submits that not the only notice was issued by one of the co-owners but the respondent No. 1, admitted in his deposition that his brothers and sisters---the other co-owners---had not given him any authority to issue such notice. Shri Rajani submits that in view of this admission, the quit notice should be held invalid and the suit should be dismissed. I am not impressed by the submission of the learned Counsel. The Full Bench of the Gujarat High Court has observed in paragraph 11 of the judgment as follows :---

"The result, therefore, is that where there are two or more co-owners of property and either they grant lease acting together or any one of them grants a lease on behalf of himself, and acting as agent on behalf of the other co-owners, no one

single co-owner can give notice to quit determining the lease. The notice to quit must be given by or on behalf of all co-owners, in accordance with the rules which we have thus discussed. The same would be the position where the lease is granted by a landlord who is the sole owner of the leased property and thereafter had testate or intestate succession or by transfer inter vivos, the leased property comes to be owned by two or more co-owners. But where a lease is granted by a co-owner, professing or claiming to be the sole owner of the leased property or one of the co-owners grants the lease without disclosing that he is also acting on behalf of other co-owners, the doctrine of estoppel would apply and the tenant would be precluded from showing that his landlord was not the exclusive owner of the leased property but was only one of the co-owners and that the notice to quit given by him, is, therefore, not sufficient to determine the lease."

From this observation, it is clear that the Full Bench held that where a lease is granted by one of the co-owner professing or claiming to be the sole owner, then the doctrine of estoppel would apply and the tenant would be precluded from showing that his landlord was not the exclusive owner. Turning to the facts of the present case, the rent note Exh. 22 was executed by the tenant in favour of respondent No. 1 only. The respondent No. 1 has styled himself as the legal representative of Fatamabai Shakrullabeg and also as the manager of the family. It is also not in dispute that the respondent No. 1 was recovering rent from the petitioner. As the petitioner has acknowledged the respondent No. 1 as the owner and manager of the property, it must be held, as laid down by the Full Bench of the Gujarat High Court, that the petitioner is estopped from contending that the respondent No. 1 is not the exclusive landlord of the suit property.

6. Apart from this consideration, the reliance by Shri Kamat, appearing on behalf of the landlord, on the decision of the Supreme Court reported in *Kanta Goel Vs. B.P. Pathak and Others*, is very appropriate and really concludes the controversy. Mr. Justice Krishna Iyer, speaking for the Bench observed that the contention that a co-heir cannot be a landlord is without any force and so also the submission that one co lessor cannot sue for eviction even if the other co lessors have no objection. The learned Judge, after quoting the definition of the "landlord" under the Delhi Rent Control Act, which is in pari materia with the definition of the landlord under sub-section (3) of section 5 of the Bombay Rent Act, held as follows :

"The complications of estoppel or even the concepts of the Transfer of Property Act need not necessarily or inflexibly be imported into the proceedings under the rent control law, tried by special Tribunals under a special statute."

The Supreme Court further observed that the co-owner together with the other owners constitute the body of the landlords, and by consent, implicit or otherwise, of the plurality of the landlords, one of them representing them all could collect rent and entitled to institute a suit. The learned Judge, after quoting with approval the earlier decision of the Supreme Court reported in *Sri Ram*

Pasricha Vs. Jagannath and Others, Shri Ram Pasricha v. Jagannath and others, concluded as follows :

"The law having been thus put beyond doubt, the contention that the absence of the other co-owners on record disentitled the first respondent from suing for eviction, fails. We are not called upon to consider the piquant situation that might arise if some of the co-owners wanted the tenant to continue contrary to the relief claimed by the evicting co-owner."

In view of this decision and the settled position of law, the submission of Shri Rajani that the notice given by one of the con-owners is invalid and so also the suit instituted by one of the co-owners, must fall. In my judgment the view taken by the learned District Judge is in accordance with law and requires no interference in this petition.

7. Accordingly, the petition fails and the rule is discharged, but without any order as to costs.