

(1983) 09 DEL CK 0036

In the Delhi High Court

Case No : Regular First Appeal No. 156 of 1978

Duli Chand

APPELLANT

Vs

Mahabir Pershad Trilok Chand Charitable Trust

RESPONDENT

Date of Decision : 16-09-1983

Acts Referred:

Citation : AIR 1984 Delhi 145 : (1984) 25 DLT 70 : (1984) 6 DRJ 153

Hon'ble Judges : S. Ranganathan, J; D.K. Kapur, J

Bench : Division Bench

Advocate : R.N. Chitakara and J.K. Seth, for the Appellant;

Judgement

D.K. Kapur, J.

(1) M/S. Mahabir Pershad Tirlok Chand Charitable Trust was the plaintiff in the suit from which this appeal has arisen. The suit was filed for possession of a portion on the ground floor of property No. 2231 and shop No. 2232 situated in Masjid Kazoo, Dharmapura, Delhi. Mesne profits were also claimed. The case of the plaintiff was that Shri Babu Ram was a statutory tenant in the said property ; the contractual tenancy had been terminated by a notice given by Shrimati Vidya Wati, the owner of the property on 19th May, 1972. It claimed that Shri Babu Ram became statutory tenant from 1st July, 1972. On 30th April, 1975, Shri Babu Ram had died and thereafter Shri Duli Chand came into possession of the said property and was nothing more than a trespasser.

(2) The suit was tried by a Subordinate Judge First Class who decreed the suit with costs granting possession in favor of the plaintiff against the defendant and also a decree for Rs. 99.00 as rent/damages. Shri Duli Chand has then appealed to this court.

(3) It may now be mentioned that in the written statement filed in the suit, it was claimed by the defendant that the plaintiff was neither the owner of the property nor a legal entity and there was no locus standi to file the suit. It was further claimed that Shri Babu Ram's tenancy had not been terminated, and

hence, all the legal representatives of Shri Babu Ram including the defendant were tenants by operation of law ; also, there were other legal heirs in possession who were necessary parties in the suit. Some other objections were also raised. A issues were number of framed in the suit, but according to the judgment were not praised ..

(4) Mr. Chitkara on behalf of the appellant passed number of issues at the hearing of the appeal before us. He submitted that the finding on issue No. 2 was erroneous. This issue was as to whether the plaintiff had locus standi to file the suit. Mr. Chitkara urged that a Trust is not a legal entity and, Therefore, cannot sue. It was also submitted that the suit was filed through the Secretary of the Trust, though the Trustees had necessarily to sue. A judgment of this Court, Birdhi Chand Jain Charitable Trust v. Kanhaiyalal Shamlal 1972 R.L.R. 142, in which Deshpande J. (as he then was) had also held that all the Trustees being joint owners had to sue was distinguished by the trial Court. Mr. Chitkara urged that the trial Court had held that there was a resolution by the Trustees permitting Shri Tara Chand to file the suit, but this is an erroneous understanding of the judgment. Mr. Chitkara also referred to a large number of other cases on this very point.

(5) Mr. Chitkara also challenged the decision on issue No. 3 submitting that there was no termination of Shri Babu Ram's tenancy. Furthermore, it was submitted by the learned counsel that the concept of statutory tenant has not been accepted by the Supreme Court in Damadi La] v.paras Ram 1976 R.C.J. 717. We may in this connection say that there is a specific amendment in the Delhi Rent Control Act as far as Delhi is concerned. If a statutory tenant dies, then the protection of the Act is only available to persons specified in the Act and not to others. We would, Therefore, hold that as far as this point is concerned, if Shri Babu Ram's tenancy had been terminated, protection would not be available to the appellant, who is a brother of Shri Babu Ram. If a statutory tenant dies, his widow and some other dependents have a right to occupy residential property during their life time. In this case, part of the premises are residential and part is a shop. As the appellant is neither protected as far as residential property is concerned nor as far as commercial property is concerned, he cannot claim to have any interest as a tenant protected under the Delhi Rent Control Act.

(6) On the other hand, if Shri Babu Ram's tenancy was not terminated according to law, then the Civil Court would have no jurisdiction as the appellant would be a tenant protected by the Rent Control Act and consequently, the landlords or owners could only sue before the Rent Controllers appointed under the Delhi Rent Control Act and not in the Civil Court. We are not here deciding the factual question as to whether Shri Babu Ram's tenancy was terminated or not as we are of the view that the first point raised in the appeal, namely, whether the suit can be filed is a most substantial one.

(7) In order to understand fully the implications of Mr. Chitkara's contentions, it is necessary to note what is stated in the plaint. It is stated that the plaintiffs are

owners of the property and Shri Babu Ram was a statutory tenant therein and his contractual tenancy had been terminated by a notice dated 19th May, 1971 served by Shrimati Vidya Wati, widow of Shri Tirlok Chand who was the owner of the property. The said Shri Babu Ram became a statutory tenant from 1st July, 1972, and he had also sent a reply to the notice through Shri R.K. Sharma, Advocate, which was dated 27th May, 1972. On the death of Shri Babu Ram, the tenancy rights stood terminated as there was no inheritance of the same. Consequently, the defendant's occupation was illegal, unlawful and unauthorised. However, the defendant refused to hand over the possession of the premises, hence the suit.

(8) There is no reference in the entire plaint to the way in which the plaintiff became the owner of the property and nor is there any reference as to how the suit has been filed through the Secretary of the Trust. In fact, there is no mention of the Trust in the body of the plaint.

(9) A preliminary objection was taken in the written statement that the plaintiff was neither owner nor a legal entity and had no locus standi to file the suit. It was claimed that Shri Babu Ram was a contractual tenant under Shrimati Vidya Wati and after his death his legal representatives had come into possession of the suit premises and the defendant was only one of them. It was claimed that the other legal representatives were necessary parties to the suit.

(10) A replication was filed denying the preliminary objection. It has affirmed that the Trust was the owner and was entitled to sue. It is noteworthy that in this suit no pleadings were put forward by the plaintiff showing how the property had come to the Trust and how the Secretary was entitled to sue.

(11) The statement of Shri Tara Chand, the Secretary of the Trust was recorded as Public Witness . 3 on the preliminary objection

(12) Shri Sumer Pershad Jain, Public Witness . 5 was another Trustee of the Trust. He stated that there were four other Trustees, Lal Chand Jain, Sumer Chand Jain, Tara Chand Jain and Narender Parkash Jain. According to him, there was a Minute Book which he wrote and Shri Tara Chand was the Secretary and Treasurer of the Trust who had been authorised to file the suit and sign the plaint. The resolution which was passed by the Trustees was dated 12th May, 1974, and was signed by all the Trustees. There was another resolution dated 8th September, 1972, by which Shri Tara Chand was appointed Secretary and Treasurer of the Trust. The said Minutes Book and other documents were exhibited as Exhibit Public Witness . 5/1 and Public Witness . 5/2.

(13) There is unfortunately no translation of Exhibit Public Witness . 5/1 or Exhibit Public Witness . 5/2 included in the paper-book, but we have seen the original Minute Book. According to the minutes of the meeting held on 8th September, 1972, Exhibit Public Witness . 5/1, Shri Tara Chand Jain, was appointed Treasurer and Secretary of the Trust whereas Lal Chand Jain was appointed President and the Assistant Secretary was Narender Parkash Jain.

(14) In the minutes of the meeting held on 12th May, 1974 Ext. Public Witness . 5/2 there was a discussion that the Trust was running a homeopathic dispensary on the ground floor of the building, but there was some tenants being the heirs of Shri Babu Ram who had been asked to give up the occupation in the interest of the Trust, but had refused. In these circumstances, the Trust decided to file a suit and Shri Tara Chand Jain was authorised to file the suit, sign the plaint, engage Advocates and so on, and take other proceedings.

(15) The question that requires decision is whether this resolution authorises the said Trustee Shri Tara Chand Jain to institute the suit in the name of the Trust or, whether it is necessary that all the trustees should join in the suit.

(16) It is well-known that a Trust is not a legal entity as such. In fact, a Trust may be defined as an obligation imposed on the ostensible owner of property to use the same for a particular object for the benefit of a named beneficiary or a charity. Thus all Trustees in law are owners of the property but they are obliged to use the same in a particular manner. If a number of trustees exist, they are joint owners of the property. It is not like a Corporation which has a legal existence of its own and Therefore can appoint an agent. A Trust is not in this sense a legal entity. It is the trustees who are the legal entities. Section 48 of the Indian Trusts Act, 1882, states:-

" WHEN there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides."

Section 47 reads:

"A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless (a) the instrument of trust so provides, or (b) the declaration is in the regular course of business, or (c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation."

There is, Therefore, a very grave doubt in our mind as to whether a single trustee can sue and whether he can sue in the name of the Trust. It is also very doubtful whether a resolution can be passed authorising only some of the trustees to file a suit. -In the decision given by Deshpande J., *Birdhi Chand Jain Charitable Trust v. Kanhaiyalal Shamlal* 1972, R.L.R. 142, it was held that a resolution could be passed authorising one of the Trustees to file the suit. But, that resolution had not been proved. It was also observed :-

"But the trust is not a legal person and the description of the petitioners is, Therefore, wrong. It could have been amended, if necessary. But that question does not now arise."

This judgment proceeded on the basis that all the trustees could authorise one of them to file the suit. It is possible for some of the trustees to authorise the others to file a suit, but this could only be done by the execution of a power of attorney. It cannot be done by a resolution. If "A", "B" and "C" are owners of a

property, they have to bring a joint suit for possession. They are all necessary parties to the suit. They cannot by resolution allow some of the other co-owners to file the suit. In such a suit, all the owners must be joined as parties as either plaintiffs or, as defendants. Usually, the co-owners who are not joined in the suit are joined as proforma defendants. But, it is not possible for some of the owners to file a suit without joining others. As trustees are owners of the property, the same principle applies. They all have to be joined as parties to the suit, but they can execute powers of attorney allowing themselves to be represented by some other co-trustees. The judgment is not apparently right when it proceeds on the assumption that a resolution can be passed, allowing the other trustees to sue. It may be mentioned that this point arose incidentally before Deshpande, J., and was not the substantial point in that particular case.

(17) On the other hand, there is a Full Bench judgment of the Gujarat High Court which seems in our view to take the right view. This is *Atmaram Rachhodbhai Vs. Gulamhusein Gulam Mohiyaddin and Another*, . The judgment of Bhagwati C.J" sets out the facts in that case which was a reference on this very question, i.e., as to whether some out of several co-trustees could file a suit for eviction. And also, on the question whether some out of several co-trustees could determine the tenancy. It was held on both points that all the trustees must join together. On the second question, namely, as to whether a single trustee could maintain the suit) it was found that there was a unanimity amongst all the High Courts on this question and the conclusion of the Full Bench was as follows:-

"WE are, Therefore, of the view that unless the instrument of trust otherwise provides, all co-trustees must join in filing a suit to recover possession of the property from the tenant after determination of the lease. No one single co-trustee, even he be a managing trustee unanimously chosen by the co-trustees, can maintain such a suit against the tenant without joining the other co-trustees. All Co-trustees must be joined in the suit and if any one or more of them are unwilling to be joined in the suit as plaintiffs or for some reason or the other it is not possible to join them as plaintiffs, they must be imp ledged as defendants so that all co-trustees are before the Court."

We completely agree with this view and are, Therefore, of the opinion that the suit could not have been maintained by one of the co-trustees and further, no resolution passed unanimously by all the other co-trustees could authorise one of the trustees to file the suit. The position of trustees is exactly the same as of any other set of co-owners who must necessarily join together to file a suit.

(18) We would, Therefore, accept Mr. Chitkara's contention and held that the suit was not properly instituted. We would also say here that Mr. Chitkara has urged this point with rare ability.

(19) It may now be mentioned that to provide for a contingency like the present, it is often stated in the trust-deed or some other document by which a trust is created that a managing trustee or other trustees may institute proceedings on

behalf of the Trust. When there are more than one trustee, it often happens that to facilitate the functioning of the Trust the same is registered as a society under the Societies Registration Act, 1860. It so happened, that the present Trust has also been registered under the Societies Registration Act, 1860, and an order to this effect has registered the Trust as a society vide Registration No. 10000 of 1979 dated 25th January, 1979.

(20) For the purpose of amending the plaint, Civil Misc. No. 814/79 was filed on 28th April, 1979. The Court directed that this application should be heard along with the main appeal as per order dated 30th October, 1979. An amended plaint was also filed. In this, it was proposed to make all the trustees as parties to the suit as plaintiffs. The reply of the defendant to this was that the proper course in such suits was for the plaintiff to withdraw the suit under Order 23, Rule I of the CPC and file a fresh suit.

(21) We have examined this application from several points of view. Firstly, we are of the view that there is a considerable misunderstanding regarding the filing of suits like the present. It has been assumed by lawyers that a suit can be filed in the name of a trust. This is because there are several reported decisions of this type showing that suits have been filed in the name of a Trust. There are two ways in which this happens-(a) the trustee deed permits some specific trustee to file a suit or (b) the trust is registered under the provisions of the Societies Registration Act and the provisions of that Act allow the suit to be filed according to the provisions contained therein. There is also the case where all the trustees are joined, but the trust is also named as a party for convenience. The reports are usually silent as to whether all the trustees have been joined or not. Then, as in the case of other corporations or bodies, where the Managing Director, or Chairman or President of the Society, etc., can sue, it is taken for granted that also in the case of a trust, suits can be filed in a similar manner. This is an erroneous impression, but a mistake like it can pass unnoticed in view of the absence of much case-law on this point.

(22) Then, we have to consider the point of view of the trust which is interested in the property now involved in the suit. It is a small charitable trust seeking to recover possession of some of its property. We would not like the suit to be withdrawn and a fresh suit to be filed if an amendment can be allowed.

(23) We have now to consider whether the amendment can be allowed under the provisions of Order 6, Rule 17 of the Code. There is no doubt that the real question involved in the suit was the recovery of the property by the Trust. The suit could only fail either if the defendant is a tenant and Therefore protected or, because of some imperfection in the suit. Learned counsel for the plaintiff has relied on three judgments of the Supreme Court to support the application for amendment. In *L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co.*, a suit for damages based on the tort of conversion was allowed to be changed into a suit for breach of contract. In the suit for damages based on breach of contract it was held that all the allegations were there, but there was no prayer for

alternative relief. This may not be fully applicable to the facts of this case, but the point made by learned counsel is that the amendment was allowed in the interest of justice. It is submitted that in the present case also the amendment should be allowed in the interest of justice.

(24) In Kurapati Venkata Mallayya and Another Vs. Thondepu Ramaswami and Co. and Another, , there was a receiver appointed by the Court who was permitted by an order to collect dues due to the firm, but he had sued in his own name. The Court held that it was only a mis-description as the real plaintiff was the firm and so, the plaint should be allowed to be amended.

(25) In Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon, , the suit was brought by the plaintiff in his business name. An objection was taken that the firm was unregistered and, Therefore, incompetent to sue. The plaint was then allowed to be amended to bring the suit on behalf of the family in the business name. The court observed:-

"Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because, of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs."

There are also other cases of a similar type. Generally the practice of the Courts is to be guided by the interest of justice. We are of firm view that there has been an inadvertent error on behalf of the plaintiff who firmly believed that they were entitled to sue in the name of the Trust through one of its trustees after authorisation from the other co-trustees. That may be described as a blunder, or negligence or inadvertence. We do not think that this is a case in which the plaintiff should be forced to withdraw the suit and file a fresh suit.

(26) We would accordingly accept the application for amendment of the plaint on payment of Rs. 200.00 as costs.

(27) We would accordingly accept this appeal and set aside the judgment and decree of the trial Court. The appellant will get costs in this Court. In view of the amendment permitted by us, the suit will be remanded back to the trial Court for trial. The costs of this appeal as well as the other costs for amendment will be paid to the defendant before the amended plaint is taken on record. The trial Court will permit the plaintiff sufficient time to pay this amount in its discretion.