

(1960) 01 RAJ CK 0003
In the Rajasthan High Court
Case No : Second Appeal No. 353 of 1954

Hari Pratap and Another

APPELLANT

Vs

Ramgopal and Another

RESPONDENT

Date of Decision : 22-01-1960

Acts Referred:

Registration Act, 1908 — Section 49

Transfer of Property Act, 1882 — Section 108, 111

Citation : AIR 1961 Raj 18 : (1960) RLW 219

Hon'ble Judges : I.N. Modi, J

Bench : Single Bench

Advocate : B.N. Chanda and Jai Gopal Chhangani, for the Appellant; Shrikishen Mal, for the Respondent

Final Decision : Dismissed

Judgement

I.N. Modi, J.—This is a second appeal by the plaintiffs Hari Pratap and Shyamkumar in a suit for arrears of rent and ejectment.

2. The material facts leading to this appeal may be shortly stated as follows. There is a shop situate in the town of Didwana, which, according to the plaintiffs, belonged to them and one Harnath pro indiviso and that the defendant Ramgopal was let in as a tenant under a rent-note dated Baisaka Vadi 3 Smt. 1995 (corresponding to 1938 A. D.), alleged to have been executed by him in favour of all the landlords.

It was agreed between the parties that the defendant would pay Rs. 2/- per mensem as rent for the shop. The plaintiffs' case further was that the defendant had paid rent up to Baisakh Vadi 3 Smt. 2001 but thereafter he defaulted. Consequently the landlords gave a notice to the defendant to terminate the tenancy and eventually filed the present suit on the 13th March, 1951, against him for ejectment and for recovery of arrears of rent.

The rent appears to have been claimed at the original rate of Rs. 2/- P.M. up to

the date of notice but thereafter at the enhanced rate of Rs. 10/-which was stated to be a fair rate of rent according to the market conditions prevailing at the relevant time. It may also be mentioned here that one of the landlords Harnath was impleaded as a defendant apparently because he was not willing to join in the suit. This Harnath died during the pendency of the suit in the trial court and is represented by his son Bhanwarlal who is respondent No. 2 in the present appeal.

3. Defendant Ramgopal resisted the suit on a number of grounds. He denied that he had ever executed any rent-note in favour of the landlords and asserted that there was no relationship of landlord and tenant between him and the plaintiffs. He further pleaded that he had been in possession of the shop for a very long time and that he had purchased a one-third share of the shop from the defendant Harnath for a sum of Rs. 051/- and produced an unregistered sale-deed in support of the story of sale.

4. The trial court decreed the plaintiffs' suit for ejectment and partly decreed their claim for arrears of rent allowing the rent at double the original rate of rent, namely, at Rs. 4/- P.M. until the defendant delivered possession of the shop to the plaintiffs. This rent was allowed for the whole shop inasmuch as the trial court came to the conclusion that the sale-deed on which the defendant relied for his version that he had purchased one-third share of the shop from the defendant Harnath was an unregistered one and such a deed could not be recognized by courts of law.

5. Defendant Ramgopal went in appeal to the Civil and Additional Sessions Judge, Merta. The learned Judge partly allowed the appeal. It does not appear that the execution of the rent-note was challenged before him. The execution of the rent-note in suit by the defendant must, therefore, be accepted as unimpeachable at this date.

The main controversy which was raised before the learned Judge was that the sale of one-third share of the shop in question was proved on the plaintiffs' own admission, and, as this was undoubtedly correct, the learned Judge held that the sale was proved. He was also of the opinion that the sale-deed could be relied upon to show the character of the possession of the defendant over the one-third portion of the shop as that of an owner even if it was not admissible for the purpose of proving the sale itself.

The learned Judge further went on to hold that in these circumstances the plaintiffs were not entitled to eject the defendant outright from the shop, and, consequently, he passed a decree for joint possession in favour of the plaintiffs to the extent of two-thirds of the shop and further directed that the defendant must pay arrears of rent for two-thirds of the shop in his possession amounting to Rs. 162/10/-and that he should also continue to pay rent at the rate of Rs. 2/10/- (being 2/3rds of the rate of Rs. 4/-allowed by the court below) for the period until the plaintiffs received joint possession of the shop from the defendant.

6. Aggrieved by the above judgment and decree, the plaintiffs have now come up in second appeal before this Court.

7. Two questions have been raised in this second appeal on behalf of the plaintiffs. In the first place, it was contended that the sale-deed relied on by the defendant with respect to one-third of the shop as having been sold to him by the defendant Harnath deceased being compulsorily registrable was not registered, and, therefore, it was not admissible in evidence and the finding of the court below that the sale was proved to that extent could not be sustained in law.

The second contention was that even though this Court came to the conclusion in agreement with the finding of the court below that the sale was proved, no merger of the interests of the lessor and the lessee had come about within the meaning of Clause (d) of Section 111 of the Transfer of Property Act, and, therefore, the learned Judge of the court below had fallen into an error in not decreeing the plaintiffs' suit for ejectment even though the shop belonged to all the three landlords in three undivided shares. I propose to deal with both these questions in order.

8. There is no doubt that the sale-deed on which the defendant bases his story of sale was not registered though it was compulsorily registrable. The question, therefore, arises whether the court below was right in holding that this deed could be looked at to ascertain the character of possession with respect to one-third share of the shop on the ground that it was a collateral matter.

9. But in this connection it is important to point out that the factum of the sale in question stands admitted on the plaintiffs' own evidence. The plaintiffs produced Bhanwarlal, son of the deceased Harnath, as a witness on their own side. It is quite clear from the evidence of this witness that he and his father Harnath had sold their one-third share in the shop to the defendant Ramgopal.

Furthermore, the plaintiff Shyamkumar admitted in his deposition on oath that the deceased Harnath had sold his one-third interest in the disputed shop to the defendant and that he had come to know of this after the present suit had been filed. He has not said a word in his deposition to challenge the factum of this sale. In this state of affairs, I am disposed to hold the opinion that it hardly lies in the mouth of the plaintiffs to challenge the factum of sale of the one-third share of the shop in question by Harnath to the defendant at this stage.

Therefore, I am inclined to think that the fact of sale should be accepted as correct and beyond any further challenge notwithstanding the circumstance that the deed of sale itself being unregistered is inadmissible in evidence to prove the sale. Learned counsel for the plaintiffs placed strong reliance on the decision of their Lordships of the Supreme Court in *Mst. Kirpal Kaur Vs. Bachan Singh and Others*, . But the facts of that case are entirely different, and, therefore, with profound respect, I think that that case is entirely distinguishable on facts and is not applicable to the present case.

It also seems to me that where the vendor and the vendee both admit the sale, broadly speaking and unless the interests of a third party are directly affected by such sale, it hardly lies in the mouth of the latter to contend that the sale did not take place at all. In any case, I am definitely disposed to hold the view in all the circumstances of this case "that the relationship of landlord and tenant between the plaintiffs and the defendant no longer subsisted so far as the one-third share of the suit shop belonging to the deceased Harnath and P. W. Bhanwarlal is concerned and that the defendant was not liable to the plaintiffs in any manner with respect to this one-third share.

10. This brings me to the next question as to whether even on the assumption that the defendant had become the owner of one-third share of the shop by sale from one of the landlords of his share, the plaintiffs are entitled to a decree for ejectment from the entire shop. It was forcefully contended on behalf of the plaintiffs before me that the tenancy in this case had not been extinguished by merger and reliance was placed in this connection on Clause (d) of Section 111 of the Transfer of Property Act, and, therefore, the plaintiffs were entitled to eject the defendant from the shop as a whole.

11. Now, Section 111 of the Transfer of Property Act sets out the various modes exhaustively how a tenancy can be determined, and one of the modes mentioned in Clause (d), on which learned counsel for the plaintiffs relied, arises where the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right. I have no hesitation in saying that, on the facts, it is impossible to hold that any merger of the interests of the lessor and the lessee has come about in the present case in accordance with the principle enshrined in Clause (d) of Section 111.

For quite obviously it is nobody's case that the defendant Ramgopal has acquired proprietary interest in the whole of the shop. The language of the Clause itself is plain enough to lead us to this conclusion; but if authority is required for this proposition, reference may be made to *Abdul Hasan Khan v. Bhura*, 1906 All WN 226, *Mata Ghulam Vs. Sheo Mangal and Others*, , *Mt. Kesar Kuar Vs. Kallu Ram*, , *Niadar and Others Vs. M. Mohammad Ahmad*, , *Ramakrishna Rao v. Subba Rao*, AIR 1937 Mad 398 and *Badri Narain Jha and Others Vs. Rameshwar Dayal Singh and Others*, . I have, therefore, no manner of doubt whatever that there was no merger of the interests of the lessor and the lessee in the whole of the property in suit and consequently the tenancy cannot be said to have come to an end in the entirety of the shop.

12. That however does not end the matter. The question which then arises is whether even granting that there has been no merger in this case, can the defendant be ejected from the whole of the shop although on the facts found he has become a landlord of a fractional share in the shop which is undivided. I have given the matter my very careful and anxious consideration and am disposed to hold the view that the cases cited above and on which learned counsel for the plaintiffs has placed strong reliance cannot be accepted as any

authority for the proposition that the plaintiffs can eject the defendant from the entire shop.

The true effect of those cases will be seen if, for instance, the defendant were to argue that inasmuch as he had become the owner of a portion of the shop, therefore, he was not liable to pay any rent to the other landlords. If any such contention had been raised before me, then the answer thereto would, without any doubt, be that there was no merger of the tenancy of the defendant in his proprietary title because the two were not co-extensive and, therefore, he would still continue to be a tenant to the extent of the share of the other landlords and that he must abide by the terms of the tenancy to that extent and pay proportionate rent.

That is, however, not the position in the case and it is hotly debated on the side of the plaintiffs that the defendant should be ejected from the whole of the shop for the reason that there has been no merger within the meaning of Clause (d) of Section 111, and, therefore, the tenancy still enures as it did before. This argument, to my mind, is based on a fallacy, and if I may say so, without any disrespect, born of some kind of confusion on the side of the plaintiffs.

13. Thus in *Mata Ghulam Vs. Sheo Mangal and Others*, on which learned counsel for the plaintiffs placed his reliance, *Kanhniyalal J.* observed as follows :

"The purchase by the defendants of a fractional share in the village did not terminate their tenancy of the said plots any more than the purchase of a fractional share by the plaintiff gave him a right to oust the defendants from that tenancy. They are co-sharers in the village and the plaintiff may have a right to sue for partition....."

14. Again in *Mt. Kesar Kuar Vs. Kallu Ram*, , the learned Judges laid down having regard to some earlier cases of their Court including 19 06 All WN 226 that

"All these cases are authorities for the proposition that there is nothing in law to prevent a cosharer in a coparcenary mahal from having tenant rights of any kind and being liable to the payment of rent either to another cosharer or to the general body of cosharers, and that if a tenant subsequently acquires proprietary rights in the land, his tenancy does not automatically come to an end in its entirety."

The true principle of these cases, in my judgment, is that where a tenant purchases a fractional share of a certain property in respect of a portion of which he is a tenant, he does not become a proprietor of the whole of that property and cannot be allowed to urge that his tenancy has come to an end, and, therefore, he is not liable to pay rent for that portion of the property of which he was the tenant, the reason being that it cannot be postulated of such cases that by a mere fractional purchase of a portion of such property he has become the owner of the entire property, or, in the language of Clause (d) of Section 111, the interests of the lessee and the lessor cannot be said to have become vested at

the same time in one person in the same right in the whole of the property.

Those rulings go so far but no farther, and the further, question which arises for determination is whether the other landlords can eject such a tenant who has himself become a landlord by virtue of a fractional purchase of the property from the whole of the property where it is held *pro indiviso*. Having given my most earnest and careful consideration to this question, my answer to it is in the negative. The simple reason, to my mind, is that such a person occupies a dual position -- the position of a tenant with respect to a portion of the property and the position of a landlord with respect to the remaining portion of the property which he has acquired by purchase.

15. The question may be posed here: can the remaining landlords compel a tenant of this type to pay rent for the whole of the property. I do not think, they can. Even so far as the plaintiffs are concerned, they have not raised this ground either in their memorandum of appeal or in the grounds before me. For the same reason, the correct position seems to me to be that the plaintiffs landlords cannot be allowed a decree to eject the defendant from the entire shop including the portion of which he has become owner during the interval. He has a right in law to remain in occupation of the shop being a landlord of a fractional portion therein, and of this right, in my opinion, he cannot be deprived.

16. The position may indeed be different where the various portions of the several landlords are separate and divided; but that admittedly is not the case here and the suit shop is jointly owned in three undivided shares. In such a case, the plaintiffs cannot justly be allowed to oust the defendant from the entire shop any more than the defendant can be allowed to repudiate his tenancy with respect to the portions of the shop held by the other co-owners. See *Joy Gopal Singha and Others Vs. Probodh Chandra Bhattacharjee and Others*, , in this connection. The only correct decree, therefore, which may be passed in a case of this character is for joint possession leaving the parties to work out further rights by a suit for partition if they choose to do so and in the meantime by allowing a decree to the plaintiffs for proportionate rent with respect to their shares in the shop. This is precisely what the court below has done.

17. For the reasons mentioned above, this appeal fails and is hereby dismissed. Having regard to all the circumstances of the case, I would leave the parties to bear their own costs here and below.