

(1983) 02 BOM CK 0001
In the Bombay High Court
Case No : Writ Petition No. 860 of 1979

Hiralal Vithaldas Gujarathi and Others	APPELLANT
Vs	
Namdeo Mahadu Jadhav	RESPONDENT

Date of Decision : 01-02-1983

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(2)
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 1
Constitution of India, 1950 — Article 227

Citation : (1983) 2 BomCR 71

Hon'ble Judges : R.A. Jahagirdar, J;M.P. Kanade, J

Bench : Division Bench

Advocate : A.P. Vaze, for the Appellant; V.D. Hon, for A.V. Savant, for the Respondent

Judgement

M.P. Kanade, J.—By this petition under Article 227 of the Constitution of India the petitioners challenge the order passed by the learned Assistant Judge, Ahmednagar, dated November 8, 1978 confirming the order passed by the Joint Civil Judge (Junior Division), Kopargaon, in Regular Civil Suit No. 575 of 1972. This matter was referred by a Single Judge of this Court in view of the conflicting views in the two judgments of this Court as to the concept of the "Landlord entitled to give ejectment notice", being 65 Bom.L.R. 15 and Mohan Sons (Bombay) Private Ltd. Vs. Lady Sonoo Jamatji Jejeebhoy and Others, and therefore, this matter is placed before us for hearing and final disposal.

2. Few facts leading to this petition are that the respondent is a tenant in respect of a room of 8 khans on the ground floor of a building bearing C.S.T. No. 1694 at Kopargaon, District Ahmednagar. The building originally belonged to the late Vithaldas Vishnudas Gujrathi. He died on June 20, 1967, leaving behind three sons, the petitioner herein, and three married daughters. The tenant did not pay the rent and, therefore, the petitioners issued a notice demanding the arrears of rent with effect from October 1, 1970 to July 31, 1972, i.e. nearly 22 months, at the rate of Rs. 20.50/- per month. By the said notice the tenancy of the tenant

was terminated as the tenant did not pay the rent within one month from the receipt of the said notice, as provided u/s 12(2) of the Bombay Rent Act. Accordingly, the petitioners filed a suit on October 7, 1972 for an order of ejection against the respondent. The respondent resisted the said suit by denying that is in arrears of the rent. According to him the munim of the petitioners was regularly recovering the rent from the respondent but he was not passing the receipt in respect thereof. It is inter alia further contended that the suit property was leased to the respondent by the father of the petitioners and since that time the respondent was in possession of the said suit property. The petitioners-plaintiffs have not joined their three married sisters who have got interest in the suit property, and as they have not been made parties to suit, the suit is bad for non-joinder of the necessary parties. Admittedly, the sisters were not joined as parties to the quit notice issued by the petitioners to the respondent. On the pleadings of the parties, the learned trial Judge framed necessary issues and recorded the evidence adduced by the parties. The learned trial Judge held that the respondent was a wilful defaulter and, therefore, the petitioners are entitled for decree for arrears of rent. However, on another point the learned trial Judge refused to pass a decree for possession on the ground that the suit notice cannot be given only by one of the landlords. The sisters have not been joined as parties to the said notice, and, therefore, the decree for possession was refused. The petitioners, feeling aggrieved by the said judgment and order of dismissal of their suit on the ground of illegal notice and denial of possession, preferred an appeal before the learned Assistant Judge, but the said appeal was also dismissed by the learned Assistant Judge by his judgment and order dated November 8, 1978. Against the said order the present writ petition has been filed, challenging the legality and correctness of the said finding recorded by the learned Assistant Judge.

3. Shri Vaze, in support of the petition contended that in view of the judgment of the Supreme Court in *V. Dhanapal Chettiar Vs. Yesodai Ammal*, a quit notice was not necessary and, therefore, the view taken by the lower Court is incorrect in law and not tenable. Secondly it is contended that it is not necessary that all the co-owners should be joined to file a suit for eviction against the tenant. One of the co-owners can file a suit, and accordingly the petitioners are the co-owners, and, therefore, the suit is maintainable. In support of this contention Shri Vaze relied upon the judgment of this Court reported in 1981 Mh.L.J. 498 *Jainuddin Abdul Rehman Shaikh v. Sitaram Damodar Varvadkar and others*, and contended that is a well-settled law that one of the co-owners can file a suit for eviction. It is observed in the said judgment of a Single Judge of this Court that it is a well-settled law that one of the co-owners can file a suit, for eviction in view of the judgments of the Supreme Court reported in *Sri Ram Pasricha Vs. Jagannath and Others*, and AIR 197 S.C. 1599 *Smt Kanta Goel v. B.P. Pathak and others*. We entirely agree with the view taken by one of use (Kanade, J.) In view of clear judgments of the Supreme Court referred to above there is no conflict left to be resolved.

4. The petitioners' suit has been dismissed by the lower Court only on the ground that some of the co-owners cannot file a suit without joining all the co-owners. However, a decree for arrears has been passed against the tenant by the trial Court. That part of decree has not been challenged by the tenant, and thus the finding becomes final. The appellate Court has only decided the case on preliminary point as to the maintainability of the suit by some of the co-owners. That view has been set aside by this judgment, and therefore, the part of the decree passed by the trial Court and confirmed by the appeal Court will have to be set aside.

5. In the result the rule is made absolute. Accordingly the decree passed by the trial Court and confirmed by appeal Court as to the dismissal of the plaintiffs' suit for possession is set aside and the same is substituted by passing a decree for possession of the suit premises. The respondent-defendant do deliver possession of the suit premises to the appellants-plaintiffs. The plaintiffs claim for mesne profits is also granted. An enquiry under Order XX, Rule 12(1)(c) of the Code of Civil Procedure, 1908 be held, and mesne profits in respect of the suit premises be determined. In the facts and circumstances of the case, there will be no order as to costs.