
(1982) 04 GUJ CK 0012
In the Gujarat High Court

Jagannath Keshavlal Barot

APPELLANT

Vs

Rasiklal Somalal Pandya

RESPONDENT

Date of Decision : 27-04-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 3
Evidence Act, 1872 — Section 116, 116

Citation : (1982) GLH 729 : (1982) 2 GLR 120

Hon'ble Judges : N.H. Bhatt, J

Bench : Single Bench

Judgement

N.H. Bhatt, J.—This is a revision application by the original defendant of the H.R.P. Suit no. 3662 of 1981 pending in the court of Small Causes at Ahmedabad. The opponent Rasiklal S. Pandya has filed the said suit, alleging that this petitioner-defendant-landlord had rented the premises to him in March 1974, that the petitioner-landlord was threatening him directly and indirectly for the purpose of securing his eviction and the plaintiff, therefore, sought a prayer that the defendant be restrained from taking possession of the rented premises otherwise than in due course of law and also be restrained from causing any obstruction in the enjoyment of the rented property by him. The suit was pending for the purpose of filing the reply of this petitioner. Then the original plaintiff filed an application. Ex. 16, for adding one Hargovan Nathuram Barot as the defendant no. 2, without seeking any relief against him. The basis of this application is that as per the telegraphic information received by the plaintiff-tenant subsequently from said Hargovanbhai the premises did not belong to the defendant, but belonged to that Hargovanbhai N. Barot, who had sent him a telegram directing the plaintiff-tenant not to have any dealing with this defendant-petitioner in respect of the suit property, because the alleged power of attorney given by said Hargovan N. Barot to this petitioner was cancelled by him. The application was stoutly resisted by the defendant, as noted by the learned Judge himself. Unfortunately, the learned Judge allowed that application by observing as follows:

The plaintiff is a master of his suit and he can join as many persons as party as he likes. Since the proposed party claims that he is a landlord, the plaintiff has got to join him as a party. Otherwise no purpose will be served at his filing this suit. It may be that there are disputes about the ownership, but that cannot preclude the plaintiff from joining the person who claims himself as landlord.

2. Above are the only reasons that prompted the learned Judge to add said Hargovanbai N. Barot as the defendant no. 2 in the suit. I am sorry to observe that the learned Judge has totally misdirected himself in the exercise of his jurisdiction. In the plaint, the plaintiff tenant categorically stated that he had hired the premises from the defendant as back as in the year 1974. He had filed two rent receipts issued by this petitioner-defendant as the landlord at Ex. 3/1 and 3/2. Simply because a third party raises a dispute qua the defendant, disowning his right to the property as a landlord, that party raising the dispute does not become a necessary or a proper party to the suit. The nature of the suit is already disclosed by me above. The plaintiff alleged that the defendant, his landlord, who had let the premises to him, was trying to evict him otherwise than in due course of law and was obstructing him in the enjoyment of the rented property. So his cause of action, even after the proposed addition of the said new party remains the same. With this cause of action, the third party is not concerned. That third party has raised a dispute qua the defendant-applicant alone and there is no tripartite dispute. Moreover, the learned Judge has lost sight of the fact that there is Section 116 of the Indian Evidence Act, which estops the tenant from denying the title of his landlord. If some third party raise the dispute, it is not open to this defendant to get that dispute brought over to his suit filed by him against a person whom he has specifically called as a landlord of his and from whom he has stated to have hired the premises as a tenant.

3. The learned Judge is labouring under some misconception of law, when he holds that the plaintiff is the master of his suit and he can implead as many persons as parties to his suit. It would have been better if the learned Judge had kept before his mind the provisions of Order 1 Rule 1 read with Order 1 Rule 3 of the CPC in this regard. Had the learned Judge taken note of Order 1 Rule 3 of the Code, he would not have observed that any person and every person under the Sun can be made as a party-defendant according to the plaintiffs sweet will. Only those persons are to be joined as the defendants, where any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist against such persons whether jointly, severally or in the alternative. The plaintiff wants the third party to be brought to this suit, in order to watch with pleasure the wrangle between the defendant and that third party and enjoying merrily all the while the fight between the two, to the considerable prolongation of the dispute which prolongation may be his objective in borrowing the alleged dispute between the defendant and said Hargovan Barot here in this suit. The application was, therefore, granted by the learned Judge without Jurisdiction or at and rate he had committed material irregularity of

procedure in the exercise of his jurisdiction by allowing an unconcerned party to be in the arena.

4. Mr. R.N. Shah, the learned advocate appearing for the original plaintiff-tenant, however, very vigorously contended before me that in view of the Supreme Court's judgment in the case of Razia Begum Vs. Sahebzadi Anwar Begum and Others, , the question of addition of a party under Order I Rule 10 of the CPC is generally not one of initial jurisdiction of the court, but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case and, therefore, this Court had no revisional jurisdiction to go behind that order of the learned trial Judge. In my view, Mr. Shah is not right. The very judgment then proceeds to state that in some cases it may raise controversies as to the power of the court in contradistinction to its inherent jurisdiction or in other words of jurisdiction in the limited sense in which it is used in Section 115 of the Code. So the authority is not the one laying down any absolute proposition of the type canvassed by Mr. Shah. The Supreme Court's judgment further proceeds to state that in a suit relating to property, in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest, in the subject matter of litigation. In the case of hand, as far as the plaintiff is concerned, it is his admission that the premises were hired by him from the original defendant, the present applicant. If that be so, and particularly when no relief is sought for or is attempted to be sought for against the defendant no. 2 sought to be added, he is sought to be dragged into the present suit of injunction against the landlord only for the purpose of widening the scope of the litigation in the rent court, which has no jurisdiction to decide qua the tenant who is the landlord out of the two. The dispute between the defendant No. 1 and the defendant no. 2 sought to be added here is a dispute falling within the realm of the jurisdiction of the ordinary Civil Court and not of the Rent Court.

4.1. Mr. Shah then invited my attention to the judgment of my brother R.C. Mankad J. in the Civil Revision Application nos. 2038, 2039 of 1980 and 1210 of 1981 decided on 2-12-81. There was no question of the admitted relationship of a landlord and a tenant) as is the case here. "The purchaser at the court auction is not shown to be the landlord, who had inducted the said tenants, who wanted that some third person, namely, Manubhai Rambhai Patel, should be impleaded as a party-defendant because according to them, he was the landlord. Mr. Shah no doubt asserted that the tenants there were inducted by the auction purchaser, but I am not prepared to believe that part because in that case, Section 116 of the Indian Evidence Act would have estopped these tenants from denying the title of the auction purchaser and attributing the same to Manubhai Rambhai Patel. To me, therefore, it appears clear that the circumstances which made my Brother R.C. Mankad, J. allow the tenants" Revision Application were quite distinct from the facts of the case on hand.

5. The result is that the petition succeeds. The impugned order passed by the

learned Judge below Ex. 16 is set aside and the said application Ex. 16, is dismissed. Rule is accordingly made absolute with costs.