

(1990) 03 AHC CK 0030

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 18675 of 1989

Kishan Lal Singhania

APPELLANT

Vs

District Judge, Kanpur Nagar and another

RESPONDENT

Date of Decision : 08-03-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 1, Order 2 Rule 2, Order 2 Rule 2(1), Order 2 Rule 3, Order 2 Rule 4
Constitution of India, 1950 — Article 226
Transfer of Property Act, 1882 — Section 106

Citation : AIR 1991 All 13

Hon'ble Judges : B.L. Yadav, J

Bench : Single Bench

Advocate : Poonam Srivastava, for the Appellant;

Final Decision : Dismissed

Judgement

1. By the present petition under Art. 226 of the Constitution of India the order dated 15-7-1989 passed by the District Judge, Kanpur Nagar, rejecting the application filed by the petitioner for dismissing the suit filed by respondent No. 2 for ejectment and arrears of rent as in the said suit the relief for ejectment in same suit which was not permissible under law and the suit was bad for multifariousness of the cause of action.

2. The factual matrix of the case is that the plaintiff respondent No. 2 has filed a suit for ejectment and arrears of rent in respect of Flat No. 1 and Flat No. 2 on the third floor of House No. 26/41-42-43, Birhana Road, Kanpur. Flat No. 1 was let out to Ms. Singhania & Sons Pvt. Ltd. in June, 1959 for a rent of Rs. 200/- per month which was later on enhanced to Rs. 260/- and Rs. 270/- per month. Whereas Flat No. 2 was let out to the same tenant on a rent of Rs. 175/- and later on enhanced to Rs. 189/- and Rs. 236.75/- per month. But later on the present petitioner as Managing Director of the said firm was permitted to occupy the said flats by the landlord. However, the rent receipt was issued in the name

of original tenant. There were arrears of rent hence a notice to terminate the tenancy was served on the tenant (Annexure 1) and as he failed to pay the rent or vacate the premises, hence the present suit was filed and the aforesaid objection was taken by the defendants about the maintainability of the suit.

3. Learned counsel for the petitioner urged that two accommodations, Flat No. 1 and Flat No. 2 were let out on different dates and different tenancy were created hence the cause of action for both the accommodations could not be joined by the plaintiff respondent No. 2 in the same suit, hence the same suit may be dismissed for misjoinder of the cause of action. Reliance was placed on Smt. Samundari Devi v. Nand Kishore 1987 All LJ 255.

4. Having heard the learned counsel for the petitioner the point for determination is as to whether the suit for ejectment and arrears of rent filed by respondent No. 2 is bad for misjoinder of cause of action as alleged by the petitioner. It is to be noted that as stated in paras 3 and 4 of the writ petition, Flat No. 1 was taken on lease in June 1959 on a monthly rent of Rs. 200/- and the same was later on enhanced to Rs. 270/-. Flat No. 2 was taken on a monthly rent of Rs. 175/- in January, 1954, but the same was later on enhanced to Rs. 236.25/- by M/s. Singhanian & Sons Pvt. Ltd., who occupied the said two flats for running the firm and particularly for residential purposes. Later there was some difficulty in the working of the firm and the landlord permitted the petitioner to continue as tenant. Even in view of the allegations in the plaint tenancy was created in favour of Singhanian & Sons Pvt. Ltd. on different dates and in respect of Flats Nos. 1 and 2 of the same premises on the third floor. The question is that if the landlord wants to institute a suit for arrears of rent and ejectment of the tenant in respect of two portions of the same premises can he file a single suit or join the cause of action in respect of two accommodations to be the part of same building. It is not at present stage the controversy as to who was the tenant and whether the sub-letting was proved or the suit could be decreed on merits or not. But the controversy is about the maintainability of the suit in respect of joinder of the causes of action. Apart from other characteristics of filing suit by the plaintiff in respect of the subject in dispute, particular cause of action is available and there were similar causes of actions in respect of other similar part of the subject in dispute. In the present case the landlord was the same and the tenant was also the same. Even though the tenancy was in respect of Flats Nos. 1 and 2, but they constituted on the spot a specific portion on the third floor of the same building. In such a situation there are certain relevant provisions of the Civil P.C. (for short the Code) which require consideration.

5. Order 2, Rule 1 of the Code provides that every suit shall, so far as practicable, be framed so as to afford ground for final disposal upon the subject in dispute and to prevent further litigation concerning them. Even though the expression "subject in dispute" has not been defined in the Code, but for our purposes it refers to the alleged claim by one party against the other with reference to particular local relief or transaction between the parties. In other

words, it can be said loosely a cause of action or the subject matter of litigation. Under Rule 1 of Order 2, the plaintiff is required to bring forward his whole case as to the particular legal relation or transaction on which his suit is based, but does not require him to raise in the same suit a matter pertaining to different legal relations. In the present case legal relation between the parties was letting out of Flats Nos. 1 and 2 to the same tenant by the same landlord and enhancement of rent on different dates. Hence in view of Rule 2, Order 2 of the Code the law requires the plaintiff respondent to frame his suit so as to afford ground for final decision of the subjects in dispute and to prevent further litigation concerning them. In case the submission of the learned counsel for the petitioner is accepted that there was separate cause of action, even though that was not, as I am of the view that as the same tenant has failed to make payment of arrears of rent and refused to vacate the premises on the composite notice being served that would lead to only one cause of action and not two or different causes of action.

6. Rule 2(1) of Order 2 of the Code provides that every suit shall include the whole of the claim in which the plaintiff is entitled to make in respect of the cause of action, but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any court. Whereas, Rule 2(2) provides that where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. Under the circumstances I am of the view that in case the plaintiff would have filed one suit for one cause of action and would not have included remaining portion of the cause of action in respect of a portion of the same building (may be Flat No. 1 or 2 of the third floor), the suit could be said to have been barred by O.2, R. 2(2) of the Code, as in that event the defendant, present petitioner would have raised the objection that the suit was barred by O. 2, R. 2(2) of the Code. Similarly, u/s 11, Explanation 4 of the Code it has been provided that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been the matter directly and substantially in issue in such suit and would not be allowed to be re-opened in subsequent suit between the same parties.

7. In a suit for ejectment and arrears of rent the considerations are somewhat different. As the rent fell due to the landlord and the defendant, the present petitioner, refused to vacate the premises, even after service of notice of composite cause of action created in favour of plaintiff-respondent No. 2 to file suit for ejectment and arrears of rent in respect of specified portion of the same building (may be Flat No. 1 or 2 on the third floor), the plaintiff has no option but to join both the causes of action.

8. There is no explanation added to O. 2, R. 3 to the effect that if a person entitled to more than one relief in respect of the same cause of action, may sue for all or any of such reliefs, but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

There is an explanation thereafter, but in its application to the State of Uttar Pradesh there will be State Amendment as follows :

"Uttar Pradesh -- In Order II, Rule 2 :--

(a) the existing explanation shall be numbered as Explanation I, and after Explanation I, as so numbered, the following Explanation II, shall be inserted, namely :

Explanation II -- for the purposes of this Rule a claim for ejectment of the defendant from immovable property let out to him and a claim for money due from him on account of rent or compensation for use and occupation of that property shall be deemed to be claims in respect of distinct cause of action. "(U. P. Act No. 57 of 1976, Section 4 (1-1-1977)).

9. In view of the aforesaid State amendment the claim for ejectment of the defendant from the immovable property let out to him and claim for arrears of rent or permission for use and occupation is to be deemed distinct cause of action. But in case in view of the Explanation he omits any relief in respect of rent, he would not be permitted to claim the omitted relief again. In this view of the matter the cause of action may be distinct, but in view of the requirement of O. 2, R. 2(2) and (3) of the Code, in case the plaintiff omits to sue for any portion of his claim, he shall not sue in respect of the portion so omitted or in case he fails to claim relief in respect of same cause of action, he shall not afterwards sue for any such relief so omitted. Even though the plaintiff may be deemed to have distinct cause, of action, but he has to claim his relief and frame suit in view of the provisions of O. 2, R. 1 and O. 2, R. 2 of the Code.

10. In such matters I am of the considered opinion that even though two portions of the same building might have been let out on different dates for different rents, but the landlord was entitled to composite rent of both the flats, may be that amount might have been paid on different dates or in two cheques, but as the tenant has been the same from the very inception of the creation of tenancy, even though the amount was not paid in lump sum or by one cheque or more than one cheque, that would not lead to inference that the tenancy was separated. The same landlord was receiving the amount paid by the same tenant, may be in respect of flat No. 1 or flat No. 2. Even though flats Nos. 1 and 2 might be occupied by the same tenant, one for residential purposes and the other for its Manager or the other for the purposes of the firm carrying out business, the rent was acknowledged by the same landlord, may be under two receipts. It is the only single tenancy which could be said to have come into existence even though in respect of two flats of the same building. As the entire portion of the same building was leased out by the same landlord in favour of the same tenant and where the use of two flats was different by the same tenant, would not be decisive to ascertain the nature of tenancy and the tenancy would continue to be composite tenancy rather single tenancy and the single tenancy can be said to have come into existence. (See Subhash Kumar Lata Vs. R.C.

Chhiba and Another, ; Hindustan Petroleum Corporation Ltd. and Another Vs. Shyam Co-operative Housing Society and Others, and Hindustan Petroleum Corporation Ltd. and Another Vs. Shyam Co-operative Housing Society and Others, .

11. To put it differently, every suit must include the whole of the claim which the plaintiff is entitled to make in respect of a cause of action for which plaintiff brought the suit. If the cause of action enabled the plaintiff as in the present case, to ask for a wider and layer relief than that to which he limits his claim, he cannot recover the balance by independent proceedings. (See Sidramappav. Raja Shetty AIR 1970 SC 1057; Mohd. Hafiz v. Mohd. Zakaria AIR 1922 PC 23).

12. To be more precise, even at the cost of repetition and in order to take a realistic view the provisions of O. 1, R. 1 (who may be joined as plaintiffs), R. 3 (who may be joined as defendants), R. 9 (no suit shall be defeated by reason of misjoinder and non-joinder of parties, (except in the case of non-joinder of necessary party), and O. II (Two) Framing suit, R. 2(suit to include the whole claim and if not its consequences), R III (three) (joinder of causes of action) and S. 11 (Eleven) (Explanation IV) may be read together. All persons have to be joined as plaintiffs where 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 in such persons and similarly those may be joined as defendants where any right to relief in respect of or arising out of same act or transaction or series of acts or transactions is alleged exist against such persons. No suit shall be defeated by misjoinder or non-joinder of parties except, non-joinder of necessary party. In view of R. 3 O. II (two) a plaintiff can unite in the same suit several causes of actions against the same defendant or defendants jointly and any plaintiff may unite causes of action in the same suit. But this is subject to the provisions of O. II (two) R. 2 (two) and S. 11, Explanation IV. In case the plaintiff does not include the whole of his claim or fails to claim only a part of the relief and leaves any portion of his claim, in that event he would not be able to claim the remaining part of relief in a subsequent suit of proceedings. At the same time any matter which might and ought to have been made a ground of attack or defence in a former suit, shall be deemed to have been a matter directly and substantially in issue.

13. I am of the considered opinion that the legislative intendment is manifest by the language employed under O. II, R. III that a plaintiff can join several causes of action in one suit, in order to avoid multiplicity of proceedings or the operation of the bar of O. II, R. II or S. 11 Explanation IV of the Code.

14. In Smt. Samundari Devi v. Nand Kishore (1987 All LJ 255) (supra) relied upon by the learned counsel for the petitioner, is a case which does not help him, inasmuch as in that case it was held that in view of the provisions of R. III of O. II of the Code, several causes of action against the same defendant can be joined by the plaintiff and it cannot be said that the joinder of causes of action suffers from any multifariousness.

15. A Full Bench of this court in Ambika Upadhaya Vs. Nakched Upadhaya, , held that where there were several mortgages, but the creditors and debtors were the same, in that event in view of the provisions of R. 3 of O. 2, as the creditors and debtors were common, there was no bar to the creditor combining the claim for the money due under the other four mortgages.

16. In Murari Lal Agarwal v. Mithai Lal 1977 AWC 41, it was held that the termination of three tenancies (three tenants of the same plaintiff landlord) created separately in favour of the same defendants by a single notice under S. 106 of the Transfer of Property Act), was perfectly valid. The case of Ram Chandra v. Judge Small Cause Court 1983 All WC 955 : (1984 All LJ 143) was already distinguished in Smt. Samundari Devi v. Nand Kishore (1987 All LJ 255) (supra), and it was observed that the case of Ram Chandra v. Judge, Small Causes Courts (supra), was a case decided on peculiar facts of that case and that ratio was confined to those facts of that case and that need not be extended any further. Consequently that case is of no assistance to the petitioner.

17. In the present case the plaintiff respondent No. 2, has correctly joined two or more causes of action in the same suit. That has been correctly done. In view of the nature of suit and relief claimed and nature of tenancies and the provisions of O. 2, Rr. 2, 4, 3 of the Code, it cannot be said that there was any multifariousness or misjoinder of the causes of action.

18. Applying the posteriori and priori reasonings I am of the view that no case for interference under Art. 226 of the Constitution of India has been made out and the impugned order does not suffer from any error much less an error apparent on the face of record.

19. In the result, the petition fails and it is dismissed. There shall be no order as to costs. The interim stay order dated 4-10-1989 as extended from time to time, is hereby vacated.

20. The petitioner appears to prolong the decision of the suit by raising frivolous objections. The court below is directed to dispose of the suit as expeditiously as possible.

21. Petition dismissed.