
(1978) 01 PAT CK 0017
In the Patna High Court
Case No : Civil Revision No. 1482 of 1974

Md. Zamiruddin and Others	Vs	APPELLANT
Mrs. Fatima Ahmad and Others		RESPONDENT

Date of Decision : 24-01-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4, Order 6 Rule 17

Citation : AIR 1978 Patna 153 : (1978) 26 BLJR 320

Hon'ble Judges : K.B.N. Singh, C.J;B.S. Sinha, J

Bench : Division Bench

Advocate : S.C. Ghose and Bagishwar Prasad, for the Appellant; Balbhadra Prasad Singh, Shreenath Singh, Umesh Prasad Singh and Mahfooz Ahmed, (for No. 1), for the Respondent

Final Decision : Dismissed

Judgement

B.S. Sinha, J.—This application in revision by defendants Nos. 1 to 10 in the court is directed against the order, dated the 12th September, 1974. passed in Title Suit No. 12/92 of 1973/74 by Shri Ashok Kumar Sinha, Additional Subordinate Judge, 3rd Court, Patna. By this order the learned Subordinate Judge has permitted the plaintiff of suit, opposite party No. 1, to expunge the name of defendant No. 25 from the plaint and has rejected the objection filed by the defendants.

2. The plaintiff-opposite party No. 1. has filed the above mentioned suit for the eviction of the defendants from the suit premises and has also claimed arrears of rent and future damages. The averment in the plaint is that defendants Nos. 1 to 10 the petitioners) are the lessees under the plaintiff and defendants Nos. 11 to 28 opposite parties Nos. 2 to 20 are the subtenants under defendants Nos. 1 to 10. The lease was for a fixed period of five years which commenced on the 1st of December, 1967, and stood terminated on the expiration of the period of five years in the end of November, 1972, and, as such, they are liable to be evicted. It has further been averred that defendants 1 to 10 inducted defendants Nos. 11

to 28 as sub-tenants and, as such, they have been made parties to the suit for the sake of convenience.

3. Defendants 1 to 10 in their written statement have stated that defendants 11 to 28 were not necessary parties and, as such, the suit was bad for misjoinder of parties. Defendants 11 to 28 filed a petition adopting the written statement filed by defendants 1 to 10. In this petition, it was further alleged that they are tenants and men of defendants 1 to 10.

4. The plaintiff on 9th September, 1974 filed in the court below an application u/s 151 of the CPC stating that as defendant No. 25, who was a sub-tenant of defendant No. 6, has left the suit premises in his occupation and surrendered his possession to defendant No. 6 who is one of the lessees of the plaintiff, the name of defendant No. 25 be expunged from the plaint. In a rejoinder filed to this petition, the defendants objected to the prayer of the plaintiff alleging that as defendant No. 25 died in August, 1973, leaving behind his heirs, the suit had abated as a whole as the legal heirs of defendant No. 25 had not been substituted in time. This petition of rejoinder by the defendants, however, was not supported by an affidavit. The learned Subordinate Judge by the impugned order held that the plaintiff had impleaded defendants 11 to 28 by way of abundant caution and hence if the plaintiff wanted to expunge the name of defendant No. 25, she was within her right to do so at her own risk and there could not be any objection to it. It was further held that the suit as a whole could not abate if the heirs of defendant No. 25 had not been substituted, because the relief claimed by the plaintiff is against defendants Nos. 1 to 10. Aggrieved by the above-mentioned order, defendants Nos. 1 to 10 have filed this application in revision, which, at the time of admission, was referred to a Division Bench as Mr. Justice Hari Lal Agrawal doubted the correctness of a Bench decision of this Court in *Suresh Mohan Thakur Vs. Shamal Mall Bubna*, . In that case, Raj Kishore Prasad, J. held that on a true construction of Section 2 (h) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 (hereinafter to be referred to as "the Act"), the expression "tenant" includes also a sub-lessee from him and, as such, a sub-lessee is a tenant within the meaning of Section 2 (h) of the Act, and, therefore, a necessary party to an application for eviction by the landlord u/s 11 (1) of the Act. In *Rup Chand Gupta Vs. Raghuvanshi Private Limited and Another*, , one of the questions that fell for determination was whether in a suit for eviction, it was necessary to implead the sub-lessee as a party. It was held (at p. 1892):

"It has been rightly pointed out by the High Court that in all cases where the landlord institutes a suit against the lessee for possession of the land on the basis of a valid notice to quit served on the lessee and does not implead the sub-lessee as a party to the suit, the object of the landlord is to eject the sublessee from the land in execution of the decree and such an object is quite legitimate. The decree in such a suit would bind the sub-lessee. This may act harshly on the sub-lessee; but this is a position well understood by him when he took the sub-

lease. The law allows this and so the omission cannot be said to be an improper act."

Thereafter, in a Bench decision of this Court in Protap Chandra Singh Vs. Nibaran Kumar Mitra and Another, , Untwalia, Chief Justice, as he then was, and S. K. Jha, J. held by reference to the passage quoted above in the case of Rupchand Gupta that the proposition laid down in Suresh Mohan Thakur's case that a sub-lessee is a necessary party no longer holds good. Therefore, the proposition of law is settled now that in a suit for eviction by the landlord, a sub-lessee is not a necessary party. I have already stated that the plaintiff's case is that defendants Nos. 11 to 28 are the sub-tenants under defendants Nos. 1 to 10 and hence, if subsequently, the plaintiff made a prayer to expunge the name of defendant No. 25, who, on the pleading of the parties, is a sub-tenant, the suit would not abate, because defendant No. 25 was not a necessary party to be impleaded in the suit.

5. It would further be relevant to point out that in Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others, , the majority decision held that a person remaining in occupation of the premises let to him after the determination of or expiry of the period of the tenancy is commonly, though in law not accurately, called a statutory tenant, and even if it was assumed that the tenant was entitled to sublet the premises, under the terms of the lease, he could not exercise the right to sub-let granted under the lease, after he became a statutory tenant. Therefore, in any view, if in the instant case, the lease was, as averred in the plaint, for a fixed period of five years which elapsed in November, 1972, defendant Nos. 1 to 10 would not have a right to sub-let after they became statutory tenants.

6. I am accordingly of the view that by the impugned order, the learned Subordinate Judge has not acted in the exercise of his jurisdiction illegally or with material irregularity,

7. Mr. S. C. Ghose, learned counsel appearing for the petitioners, however, tried to distinguish Protap Chandra Singh Vs. Nibaran Kumar Mitra and Another, on the ground that in that case, the sub-lessee was a party. The law is now settled that in a suit for eviction, a sub-tenant is not a necessary party and accordingly, even if he is made a party by way of abundant caution, the expunging of his name from the suit at the instance of the plaintiff would not lead to the abatement of the suit as a whole and on principle, to my mind, it would hardly make a difference whether such a sub-tenant was made a party or not,

8. Thereafter, by reference to paragraph 10 of the plaint as also to the reliefs claimed in it, Mr. Ghose urged that the suit was for a joint decree for eviction and realisation of arrears of rent and future damages with interest. He therefore, relying upon the decision in Jiyabha Pathabhai v. Halubha Muluji AIR 1953 Sau 159) and Kedar Nath Vs. L. Manak Chand and Others, urged that the suit being indivisible and the liabilities of the defendants being joint, the suit would abate

as a whole if the name of one of the sub-tenants was expunged. In paragraph 10 of the plaint, it is stated that against the terms of the lease and without the consent of the plaintiff, the defendants Nos. 1 to 10 have inducted defendants Nos. 11 to 28 in the different Katras of Tin sheds on the demised premises as their sub-tenants and the plaintiff asked all the defendants to remove themselves and also their business materials from the demised premises and to give vacant and khas possession to the plaintiff after the expiry of the lease period. The paragraph concludes with the recital that, therefore, the suit is for eviction and for realisation of arrears of rent and future damages with interest. In the relief sought for, there is also a prayer for the eviction of all the defendants as also for recovery of rent in accordance with the terms of the lease and for damages past and future for illegal possession. In the Saurashtra case, the plaintiffs, who were Mulgirasias had brought a suit against the defendants who were peta girasias for recovery of arrears of "Vero" in respect of land held under them and had claimed a joint decree against the whole body of defendants whose interest in the land was joint and indivisible. During the pendency of the suit, some of the defendants died and their heirs were not brought on record within the period of limitation. It was accordingly held that as on the pleading of the plaintiffs themselves, the liability of the defendants was joint and indivisible, the suit abated as a whole and not only against the deceased defendants. In the Punjab case, the question for consideration was that where one of the defendants dies pending a suit, it had to be examined whether the suit is one in which the liability of the defendants is joint and indivisible or joint and several. In that case, it was held that if the suit was permitted to continue against the surviving defendants and a decree is made, it would lead to an unfair situation inasmuch as the surviving defendants would be deprived of the right of contribution against the legal representatives of the deceased defendants. Accordingly, it was held that the suit had abated, in both these cases, it was laid down that if the liability is joint, then the death of a defendant who is joint with the surviving defendants the suit would abate if there was no substitution of the heirs of the deceased defendant within the period of limitation. The plaintiff's case is that the lease was in favour of defendants Nos. 1 to 10 for a fixed period of five years and had been created by a registered document, which stood terminated by efflux of time, and accordingly, the plaintiff was entitled to a vacant possession of the lease-hold premises. Defendants Nos. 1 to 10 in their written statement have asserted that defendants Nos. 11 to 28 have been inducted as tenants by them and were tenants at will, which stand has been adopted by defendants 11 to 28 in their petition. Further, in the petition rejoinder filed on the 9th September, 1974, it has been stated that defendants Nos. 11 to 24 as also defendants Nos. 26 to 28 are men of defendants Nos. 1 to 10. In such a situation, the plaintiff would be entitled to expunge the name of defendant No. 25, who was a sub-tenant and not a necessary party to the suit, though he may be a proper party and could have been included by way of abundant caution. In *Sheikh Yusuf Vs. Jyotish Chandra Banerjee and Others*, , Suhrawardy, J. with whom Graham, J. agreed held that it would be unreasonable to force a landlord

to make in a suit for ejectment against his lessee, all the under-lessees or even persons under such wider-lessees, who may be in actual possession, parties to the suit the nature of which may change from a simple suit for ejectment on forfeiture or determination of the lease, because so far as the landlord is concerned the possession is with his lessee. The possession of the lessee may be by his occupying the premises himself or by his allowing other persons to occupy the premises on his behalf either as sub-lessees or licensees or as servants. It was accordingly held that it would be most oppressive to insist upon the landlord to make all such persons parties to a suit.

9. I am accordingly of the view that there is no merit in this application, which is dismissed, but in the circumstances of the case would make no order as to costs.

10. When arguments were being concluded, Mr. Balbhadra Prasad Singh, learned counsel appearing for the opposite party No. 1, stated that he would file an application in this case under Rule 17 of Order 6 of the CPC making a prayer for amendment of the plaint. Such a petition was filed on 21-11-1977 and a copy had been served on the petitioners' counsel. Paragraph 15 of the plaint runs thus:

"15. That the plaintiff aforesaid prays for the following reliefs:--

a) a decree for eviction of all the defendants i .e. the defendants 1st and 2nd parties be passed in favour of the plaintiff and against the defendants aforesaid from the premises described in Schedule T below and the defendants aforesaid be ordered to remove all their business materials from the said demised land leaving the structures intact on the demised land and the plaintiff be put in Khas possession of the same with the said structure thereon;

b) a decree for arrears of rent to the sum of Rs. 19,680/-, with interest as detailed below in Schedule 2 of the plaint be passed in favour of the plaintiff against the defendants 1st and 2nd parties;

(c) if it be held that for any reason, the structures standing over the said demised land have not vested in the plaintiff and the title of the same remains with the defendants aforesaid, then a decree of Rs. 5,608.56 Paise with interest at the rate of Re. 1/- per cent per month as stipulated in the deed of lease itself and which dues the plaintiff had paid to the Patna Municipal Corporation for the defendants 1st party, be passed in favour of the plaintiff against the defendants aforesaid;

(d) a decree for damages past and future for illegal possession like that of a trespasser, the defendants 1st party and 2nd party in the said demised land till recovery of possession be passed in favour of the plaintiff against the defendants aforesaid;

(e) cost of the suit be passed in favour of the plaintiff and against the defendants 1st and 2nd parties;

(f) any other relief or reliefs to which the plaintiff be found entitled to, be granted to the plaintiff against the defendants 1st party and 2nd party.

11. The amendment prayed for is that the words "and second parties" occurring in Clauses (b) and (e) of para. 15 and the words "and second party" occurring in Clauses (d) and (f) of the same paragraph be omitted. Rule 16 of Order 6 provides that at any stage of the proceeding, the Court may order to be struck out or amended any matter in the pleading which may be unnecessary or scandalous or which may tend to prejudice the merits or delay the fair trial of the suit. In the instant case by seeking this amendment, the plaintiff at her risk has sought to make the above-mentioned amendment in the plaint on the ground that regardless of the defendant Nos. 11 to 28, subtenants being impleaded in the suit as party defendants, the plaintiff is entitled to a decree for eviction, which would be binding on the sub-lessees and that the sub-lessees are not the necessary parties to the suit, being only proper parties. The amendment was being sought for the purpose of determining the real question in controversy between the parties which would not in any manner change the nature of the suit or introduce any fresh cause of action and the same was consistent with the pleadings and necessary in the ends of justice. No rejoinder has been filed to this application and by the amendment asked for, the nature of the suit would not change nor any fresh cause of action has been introduced. The plaintiff at her own risk has prayed by the amendment to strike out an unnecessary portion of the pleading. I accordingly further direct that the amendment to the plaint, as prayed for in the application filed on the 21st November. 1977, in terms of Annexure 1 thereof, be allowed.

K.B.N. Singh, C.J.

I agree.