

(1971) 04 BOM CK 0002

In the Bombay High Court

Case No : Civil Revision Application No. 243 of 1970

Nagnath Tatya Halge

APPELLANT

Vs

Kishan Tatya Kale

RESPONDENT

Date of Decision : 13-04-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, 11

Citation : AIR 1972 Bom 228 : (1972) 74 BOMLR 141 : (1972) MhLj 334

Hon'ble Judges : K.K. Desai, J

Bench : Single Bench

Advocate : H.G. Vaishnav and A.H. Vaishnav, for the Appellant; B.N. Deshmukh, for the Respondent

Judgement

1. There is no substance in this revisional application on behalf of the original plaintiff from the order dated September 8, 1969, made by the trial Court, whereby findings were made in favour of the plaintiff on issues 1, 2 and 6 and directions were given that the trial of the issues 4 and 5 should be proceeded with after the decision of the Rent Controller in the application made by the original defendant for fixation of reasonable and / or standard rent.

2. Prior to the present suit No. 127 of 1968, the plaintiff had instituted a previous Suit No. 258 of 1967. The suit was for recovery of rent at the rate of Rs. 125/- per month for a period of one year from November 13, 1966, to November 12, 1967. In that suit the defendant made three contentions as follows:-

3. Prior to the lease in suit, an agreement was made between the parties that the plaintiff would construct two rooms and a latrine and a bath room and the rent of Rs. 125/- was agreed on the promise made by the plaintiff to make the above further constructions. The parties had agreed that in default of the plaintiff making the further constructions the rent was to be Rs. 50/- per month. The third contention was that until the question of reasonable and / or standard rent was decided by the Rent Controller the further hearing of the suit for rent should be stayed. Issues were framed on the above contentions made by the defendant.

These issues were answered against him and decree as prayed in the previous suit was passed. The plaintiff thereafter filed the present suit No. 127 of 1968 for recovering rent of 7 months at the rate of Rs. 125/- per month. The defendant made self same and / or similar contentions by his written statement in the present suit. The plaintiff by his application Ex. 17 submitted that additional issue be framed as follows :-

"Whether the defendant is barred by principles of res judicata to raise the contentions decided in the previous suit ?"

The plaintiff further applied that a finding be made on the above additional issue in his favour and accordingly without recording any further evidence a decree as prayed be passed in the present suit. The learned Judge below by the above order dated September 8, 1969, held that the questions of merits raised by the defendant had been adjudicated upon in the previous suit and were res judicata. He, then referred to the plaintiff's application before the Rent Controller for fixation of standard and / or reasonable rent. He held that the decision of Court in the previous s suit that the hearing should not be stayed till the Rent Controller decided the defendant's application was not res judicata. That decision was not disposal of any question on merits. He, therefore, held that the suit should be stayed till the disposal by the Rent Controller of the defendant's application for fixation of the standard and / or reasonable rent. He accordingly held that issues 4 and 5, viz. "(4) Whether the plaintiff is entitled to the relief claimed ?" and "(5) What decree and order ?", should be decided after the Rent Controller disposed of the defendant's application for fixation of standard rent.

4. Mr. Vaishnav for the plaintiff contents that the learned Judge below was wrong in holding that the issue whether the suit should be stayed till the Rent Controller decided and fixed the monthly rent was not barred by principles of res judicata. It is extremely difficult to understand this argument of Mr. Vaishnav. The question of stay and / or adjournment of a suit for certain purpose must be altogether different in two suits. It is quite clear that refusal to adjourn a previous suit can never be res judicata in connection with an application for adjournment of another suit, though the application may be based on same and / or similar grounds. This contention made by Mr. Vaishnav appears to be frivolous. The revisional application itself is accordingly entirely frivolous. The learned Judge below was right in adjourning the suit till the Rent Controller had disposed of the question of reasonable rent.

5. It requires to be recorded that the question of res judicata that may be raised on behalf of any party in a suit should not ordinarily be disposed of as a preliminary issue as has been done in the present case. This question should normally be tried and disposed of at the final hearing of the suit; when all the issues can be adjudicated upon by Court at the same continuous hearing. The learned Judge below has not borne this principle in mind when he disposed of three issues as preliminary issues and adjourned the trial of two issues for decision on merits.

6. The rule is discharged with costs.

7. Rule discharged.