
(2014) 05 RAJ CK 0056
In the Rajasthan High Court
Case No : Civil Writ Petition No. 512/2009

Prem Narain Asawa and Others

APPELLANT

Vs

Shridhar and Others

RESPONDENT

Date of Decision : 23-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151 — Trusts Act, 1882 - Section 48

Citation : (2014) 05 RAJ CK 0056

Hon'ble Judges : R.S. Chauhan, J.

Bench : Single Bench

Advocate : Ajeet Bhandari, for the Appellant; Bihari Lal Agrawal and S.K. Budania, for the Respondent

Final Decision : Allowed

Judgement

R.S. Chauhan, J.—The petitioners-plaintiffs have challenged the order dated 4.3.1998 passed by the Civil Judge (Jr. Div.) & Judicial Magistrate (West), Ajmer whereby the learned Magistrate had accepted the application moved by the respondent-defendant under Order 22, Rule 3(2) read with Section 151 CPC and had declared the suit to have abated.

2. The brief facts of the case are that the petitioners alongwith Mr. Kanwar Lal Asawa, Mrs. Gaiind Kanwar, Mr. Ganga Prasad and Mrs. Ramsukhi Bai had filed a suit for eviction against the respondent No. 1, Mr. Shridhar, in respect of premises bearing No. AMC 2/590, Ram Nagar, Pushkar Road, Ajmer, on the ground of default in payment. of rent. According to the petitioners and other plaintiffs, the property belonged to a trust, and they were the trustees. The property in dispute was rented out to Mr. Shridhar @ Rs. 41/- per month. However, Mr. Shridhar had not paid the rented amount since 17.3.1976. Mr. Shridhar filed his written statement and denied the averments made in the plaint. In turn, he claimed that he had bought the property in dispute from one Noratmal for a consideration of Rs. 12,000/- by an agreement to sale dated 5.6.1973.

3. During pendency of trial, Mrs. Gaind Kanwar, Mr. Ganga Prasad and Mrs. Ramsukhi Bai expired. Therefore, the respondent filed an application under Order 22, Rule 3 (2) read with Section 151 CPC. According to the respondent, although three of the plaintiffs, mentioned above, had expired, but their legal representatives were not taken on record. Therefore, the civil suit had abated. The petitioners replied to the said application. They pointed out that the legal representative of Mrs. Gaind Kanwar was already on record as plaintiff No. 2, the legal representatives of Mrs. Ramsukhi Bai were already on record as plaintiffs No. 4, 5 and 7. Moreover, as the property in dispute belong to a trust and they were the trustees, even if one of the trustees has expired, the suit could not abate. However, after hearing both the parties, by order dated 4.3.1998, the learned Magistrate accepted the said application and declared the suit as abated.

4. Aggrieved by the order dated 4.3.1998, the petitioners filed an appeal before the Additional District Judge No. 1, Ajmer. By order dated 26.5.2005, the learned Judge allowed the appeal and set aside the order dated 4.3.1998. Since the respondent was aggrieved by the said order, he filed a revision petition before this court, namely SB Civil Revision Petition No. 83/2005. By order dated 23.10.2008, this court allowed the revision petition and held that the appeal filed before the learned Judge was not maintainable. Therefore, this court set aside the order dated 26.5.2005. But this court gave a liberty to the petitioners to challenge the order dated 4.3.1998 before this court under the legal remedies available to them. Hence, this petition before this court.

5. Mr. Ajeet Bhandari, the learned counsel for the petitioners, has raised the following pleas before this court: firstly, the plaintiffs had filed a suit for eviction on the basis that the trust property had been rented out to the respondent. They had filed the suit as trustees, representing the landlord trust. Relying on the case of Mohinder Prasad Jain Vs. Manohar Lal Jain, , the learned counsel has contended that it is not necessary that all the co-owners of the property should join as plaintiff. A co-owner can file a suit for eviction on behalf of other co-owners. Therefore, even if one of the trustees has expired, the other trustees can bring a suit for eviction.

6. Secondly, since the legal representatives of those trustees who have expired were already on record, and the legal representatives of Mr. Ganga Prasad were not taken as trustees, therefore, there was no need to bring his L.Rs. on record.

7. Lastly, the right to sue still survives on the remaining trustees against the respondent. Thus, the petitioners were sufficient to pursue the suit. Therefore, the learned Magistrate was not justified in declaring that the suit has abated.

8. On the other hand, Mr. Bihari Lal Agrawal, the learned counsel for the respondent-defendant, has relied on Section 48 of the Indian Trust Act, 1882 in order to argue that when there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust, otherwise provides. Thus, with the death of one of the trustees, it was imperative to bring his L.Rs.

on record. Since his L.Rs. were not brought on record, the learned Magistrate was justified in declaring that the entire suit has been abated. Therefore, the learned counsel has supported the impugned order.

9. Heard the learned counsel for the parties, perused the impugned order as well as considered the case laws cited at the Bar.

10. This court has asked Mr. Bihari Lal Agrawal whether according to the trust deed the Legal representatives of a deceased trustee automatically become trustees or not? Although he has answered this query in the affirmative, but he has not produced a copy of the trust deed to buttress his plea. However, according to the petitioners, the trusteeship is not hereditary in nature. Therefore, the legal representatives or heirs of the trustee do not automatically become trustees of the trust. Only those legal representatives will become trustee who are appointed as trustee by the remaining trustees. Since the legal representatives of Mr. Ganga Prasad were not taken on the Board of Trustees, it was not essential that they should be brought on record.

11. In the case of Mohinder Prasad Jain (supra), the Hon''ble Supreme Court has observed as under:-

"10. This question now stands concluded by a decision of this Court in India Umbrella Manufacturing Co. and Others Vs. Bhagabandei Agarwalla (Dead) by Lrs. Smt. Savitri Agarwalla and Others, wherein this Court opined:

"6. Having heard the learned counsel for the parties we are satisfied that the appeals are liable to be dismissed. It is well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. (See Sri Ram Pasricha Vs. Jagannath and Others, and Dhannalal Vs. Kalawatibai and Others, . This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In the present case, the suit was filed by both the co-owners. Once of the co-owners cannot withdraw his consent midway the suit so as to prejudice the other co-owner. The suit once filed, the rights of the parties stand crystalised on the date of the suit and the entitlement of the co-owners to seek ejectment must be adjudged by reference to the date of institution of the suit; the only exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the tenant comes to an end by act of parties or by operation of law. "

12. Admittedly, the case of the petitioners is that they are trustees of the trust property which was rented out to the respondent. Therefore, the trustees have filed an eviction suit being agent of the landlord trust. Therefore, the right to sue continues with the remaining trustees. Hence, the learned Magistrate was not justified in declaring that the suit had abated.

13. For the reasons stated above, this petition is hereby, allowed. The impugned order dated 4.3.1998 is set aside. The parties are directed to appear before the learned trial court on 08.07.2014. The trial court is directed to recommence the trial from the stage that it was left of on 4.3.1998, i.e. the date of passing of the impugned order.