

(2000) 09 BOM CK 0085

In the Bombay High Court

Case No : Writ Petition No. 5127 of 1988

S.G. Bajpai

APPELLANT

Vs

Chimanlal B. Kansara since deceased by his legal
representatives and Another

RESPONDENT

Date of Decision : 15-09-2000

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(3)

Citation : (2001) 1 BomCR 347 : (2001) 1 MhLj 71

Hon'ble Judges : J.N. Patel, J

Bench : Single Bench

Advocate : P.N. Karlekar, for the Appellant; Rajesh Shah, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Patel, J.—The petitioner has impugned the judgment and decree dated 15-1-1985 passed by the Joint Civil Judge, Junior Division, Palghar, in R.C.S. No. 177 of 1977 and that in Civil Appeal No. 70 of 1985 in which by judgment and order dated 22-6-1988, the appeal preferred by the petitioner-tenant came to be dismissed by the IV Addl. District Judge, Thane.

2. The plaintiff-landlord was required to file the suit against the defendant-tenant for eviction and possession on the sole ground of arrears of rent i.e. u/s 12(3)(a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the "Bombay Rent Act"). It was the case of the original plaintiff-landlord that he is the owner and rent collector of a building known as "Chandan Niwas" situate at Boisar, Dist. Thane, wherein the defendant is occupying Room No. 4 as a monthly tenant of the plaintiff at a monthly rent of Rs. 20/-. That the defendant is in arrears of rent from 1-10-1973 till 28-2-1977 i.e. for a period of 41 months amounting to Rs. 1330 and, therefore, by notice dated 15-3-1977 the tenancy of the defendant was deemed to be terminated. The said notice was acknowledged and received by the defendant on 18-3-1977 and in spite of notice, the defendant failed to pay arrears of rent and also rent

for the period of March and April 1977. The plaintiff claimed compensation for the period commencing from 1-5-1977 till 30-9-1977 i.e. for a period of five months and, therefore, according to the plaintiff, as the defendant was in arrears of rent for a period exceeding six months, he was liable to be evicted.

3. The defendant took up the plea that the plaintiff is not the only owner of the suit premises. That the plaintiff being joint owner of the suit chawl along with other co-owners, he alone cannot file the present suit. The defendant also took up the plea that it is not the plaintiff alone who has been collecting rent, but other co-owners and co-sharers are also collecting rent from the defendant. This was in addition to other issues raised by the defendant such as the plaintiff's claim is false, frivolous and bad in law and that the defendant's tenancy is not validly terminated and so on.

4. During the pendency of the trial, the original plaintiff having expired, legal representatives were brought on record. The trial Court found that there is a relationship of landlord and tenant between the plaintiff and the defendant. The rent was Rs. 30/- per month and the defendant was in arrears of rent for more than six months and, therefore, the plaintiff is entitled for a decree of eviction. The trial Court negatived the issue raised by the defendant that the suit is bad for non-joinder of necessary parties and decreed the suit in favour of the plaintiff.

5. The tenant carried the matter in appeal. The Appellate Court found that one of the co-owners can institute a suit for eviction of the tenant and as the petitioner was in arrears of rent for more than six months, he is liable to be evicted and dismissed the appeal.

6. Mr. Karlekar, learned Counsel for the petitioner, submitted that as the suit premises is a joint family property and the plaintiff being one of the co-owners, he has no right under the law to claim rent and seek eviction of the tenant. It is submitted that the other co-owners have objected payment of rent to the plaintiff by giving notice to the plaintiff on 1-12-1972. The tenant was specifically informed by Gunwantlal Kansara, one of the co-owners, that he is also the co-owner of Chandan Niwas and Laxmi Niwas and, therefore, he should not pay rent to the plaintiff, Chimanlal Bhagwandas without his signature and in case he pays the rent, he will have to pay additional rent. Similarly, by notice dated 3-3-1977, Gunwantlal Shivilal, Ramniklal Shivilal, Champaklal Shivilal, Harshadrai Shivilal and Mrs. Laxmibai Shivilal informed the tenant through their Advocate Mr. P.V. Karandikar that they are the co-owners of the suit premises and have share in the rent collected from him and that rent receipts have been issued by the plaintiff as well as Gunwantlal and others. Therefore, the tenant was warned that as there is a dispute between the co-owners concerning Rice Mill and other properties, they had informed the tenant not to give rent to Chimanlal Bhagwandas alone without taking consent of the co-owners and if he does so, it will be treated as non-payment to the landlords of the premises and he would be treated as a defaulter and not ready and willing to pay the rent to the landlords concerned. Copies of this notice were forwarded to Chimanlal Bhagwandas and

his brothers.

7. It is, therefore, submitted that non-payment of rent to the plaintiff does not amount to default on the part of the tenant in paying the rent as the plaintiff alone was not entitled to recover. In support of his contention, the learned Counsel for the petitioner has placed reliance on the decision of the Gujarat High Court in Nanalal Girdharlal and Another Vs. Gulamnabi Jamalbhai Motorwala and Others, in which it was held that the suit for recovery of possession from tenant by co-owner without joining the other co-owner is not maintainable and that such tenant can be evicted only on the action taken by all co-owners.

8. Another decision on which the learned Counsel for the petitioner-tenant has placed reliance is in Sk. Sattar Sk. Mohd. Choudhari Vs. Gundappa AMabadas Bukate, in which it was held that the co-sharer cannot initiate action for eviction of the tenant from the portion of the tenanted accommodation nor can he sue for his part of the rent. The tenancy cannot be split up either in estate or in rent or any other obligation by unilateral act of one of the co-owners. Therefore, it is submitted that the judgment and decree passed by the two courts below suffer from material irregularity and illegality as co-owner like the plaintiff could not have filed a suit for eviction on the ground of default without joining the other co-owners as parties to the suit and, therefore, the suit deserves to be dismissed.

9. The learned Counsel for the petitioner-tenant has also placed reliance on the decisions reported in AIR 1952 Mys 68, and Ananda Prakash Dey and Others Vs. Lokendranath Maulik, , so as to emphasise that the liability to pay rent could not stand discharged if the same is paid to one of the co-owners, unless there is such an arrangement between the co-owners and, therefore, in case the tenant could not comply with the notice, it would not discharge his liability to pay the rent insofar as the other co-owners are concerned and, therefore, in view of the controversy between the co-owners in reference to the notices sent by the co-owners not to pay rent to the plaintiff without their consent, the defendant-tenant was justified in not tendering rent.

10. The learned Counsel for the respondent-landlord submitted that the issue whether suit is bad for non-joinder of parties and has been rightly decided in the negative. It is submitted that insofar as the collection of rent from the defendant-tenant was concerned, it was admittedly made by the original plaintiff i.e. Chimanlal Kansara who has issued receipts on behalf of the owners of the properties and, therefore, the plaintiff being the owner and rent collector was entitled to claim arrears of rent from the defendant-tenant. It is submitted that the defendant-tenant having failed to comply with the notice and being in arrears of rent for more than six months was liable to be evicted from the suit premises.

11. The learned Counsel for the respondent plaintiff has placed reliance in the case of Sri Ram Pasricha Vs. Jagannath and Others, which was followed in the case of Kanta Goel Vs. B.P. Pathak and Others, in which the Apex Court has clearly laid down that for the purpose of receiving rent from the tenant, one of

the co-owners is entitled to recover rent and initiate suit for eviction of the tenant and for that purpose, it is not necessary that all the co-owners should be joined in the suit for recovery of arrears of rent and eviction of the tenant. It is submitted that the decisions of the Apex Court in Sri Ram Pasricha and Kanta Goel were followed by this Court in Bhausahab Tavnappa Mahajan and Others Vs. State of Maharashtra and Others, and also in Hiralal Vithaldas Gujarathi and Others Vs. Namdeo Mahadu Jadhav, . It is submitted that the view taken by the Full Bench of the Gujarat High Court in Nanalal Girdharlal and Another Vs. Gulamnabi Jamalbhai Motorwala and Others, was not followed in the case of Amrutlal Saremal v. Smt. Deviben 1982(1) GujLR 208 by placing reliance in the case of Sri Ram Pasricha (supra). The learned Counsel for the respondent has also drawn the attention of this Court to the decision of Allahabad High Court rendered in Girraj Kishore Vs. Dr. Trilokinath Vimal, in which identical question was involved and the Allahabad High Court held that as the plaintiff was recovering rent from the tenant, he functioned for all practical purposes as the landlord and notice served by him alone terminating the tenancy is valid, by following the decision of the Apex Court in Sri Ram Pasricha and Kanta Goel's case (supra).

12. The learned Counsel for the respondent has submitted that in the case of Sk. Sattar Sk. Mohd. Choudhari Vs. Gundappa AMabadas Bukate, , the facts were totally different and the question which was considered by the Apex Court was whether a co-sharer can initiate action for eviction by (sic of) the tenant from the portion of the tenanted accommodation by splitting up either in estate or in rent or any other obligation by unilateral act of one of the co-owners and, therefore, the same would not be applicable to the case in hand. In the circumstances, it is submitted that the petition deserves to be dismissed.

13. In reply, the learned Counsel for the petitioner submitted that the trial Court ought to have considered that after the death of the original plaintiff, the legal representatives of the original plaintiff were brought on records, ignoring the co-owners and in the facts and circumstances of the case, at least after the death of Chimanlal, it was incumbent upon the co-owners to prosecute the suit and, therefore, even if it is assumed that Chimanlal was collecting rent on behalf of the co-owners on his death, the co-owners ought to have been brought on record and in the absence of joining all the co-owners, the suit deserves to be dismissed.

14. It is not disputed by the plaintiff that the suit property has five shares and that the original plaintiff was one of the co-owners of the suit property. The building in which the suit premises are situate belonged to one Bhagwandas who had two wives. Out of the first wife, Shivilal was born and from the second wife Chimanlal, Kanchanbhai, Natwarlal and Rameshchandra are born. Gunwantlal, Harshadrai, Champaklal and Ramniklal are the sons of Shivilal. The rent receipt in respect of the suit premises stands in the name of Chimanlal Bhagwandas, Kanchanlal Bhagwandas, Rameshchandra Bhagwandas, Gunwantlal Shivilal (elder son of Shivilal) and nephew of the co-owners mentioned in the rent receipt and it

also contains the name of Sou. Chandanben Bhagwandas i.e. the second wife of Bhagwandas. The petitioner-tenant has been issued this receipt which he has accepted. In the notice dated 3-3-1977 given by Advocate P.V. Karandikar on behalf of Gunwantlal Shivilal and his brothers and their mother Mrs. Laxmibai, it has been categorically stated that rent receipts are passed in the names of Chimanlal Bhagwandas and others which clearly goes to show that the original plaintiff was recovering rent on behalf of joint family. In this fact situation, it does not entitle the petitioner-tenant to claim that he need not tender rent when demanded under the said notice by Chimanlal Bhagwandas as the other branch of the co-owner headed by Gunwantlal Shivilal objected to any further payment of rent to Chimanlal. The obligation of the petitioner-tenant to pay rent to Chimanlal Bhagwandas who was collecting rent on behalf of the joint family could not get obliterated merely because one of the branches of the joint family issued him with the notice. The two notices relied upon by the petitioner-tenant does not, in any manner, help the petitioner-tenant in justifying the default in payment of rent. These facts and circumstances clearly go to show that the rent was being recovered by Chimanlal Bhagwandas on behalf of the joint family and he was competent to initiate proceedings for eviction not only on his behalf but also on behalf of the joint family for the default committed by the tenant in tendering the rent and, therefore, the two courts below were justified in passing the decree for eviction u/s 12(3)(a) of the Bombay Rent Act. The contention of the learned Counsel for the petitioner-tenant that a co-owner is not entitled to initiate eviction proceedings or claim rent from the tenant by relying upon the decision in Sk. Sattar Sk. Mohd. Choudhari Vs. Gundappa AMabadas Bukate, cannot be accepted as in the case of Sk. Sattar Sk. Mohd. Choudhari, the Apex Court was dealing with a situation where an eviction proceedings came to be initiated against the tenant by one of the brothers who had a share in part of the premises in occupation of the tenant and, therefore, the Apex Court in the facts and circumstances of that case held :-

"..... a co-sharer cannot initiate action for eviction of the tenant from the portion of the tenanted accommodation nor can he sue for his part of the rent. The tenancy cannot be split up either in estate or in rent or any other obligation by unilateral act of one of the co-owners."

It further observed :-

"If, however, all the co-owners or the co-lessor agree among themselves and split by partition the demised property by metes and bounds and come to have definite, positive and identifiable shares in that property, they become separate individual owners of each severed portion and can deal with that portion as also the tenant thereof as individual owner/lessor."

In the present case, the suit premises are situate in a property belonging to joint family and it was managed by the original plaintiff. Therefore, there can be no legal impediment on the part of the original plaintiff to have initiated a suit for eviction against the tenant as what the plaintiff represented was joint interest of

the family and obviously would be accountable to the other members of the joint family in the matter. This is not a case where the parties have actually initiated a suit for partition of the joint family property nor is it a case of tenant who is in doubt about the status of his landlord and if that was so, one can appreciate the contention made by the learned Counsel for the petitioner-tenant in the matter.

15. The decision rendered by the Apex Court in the case of Sri Ram Pasricha Vs. Jagannath and Others, which was also referred to and relied upon in Kanta Goel Vs. B.P. Pathak and Others, almost settled the law covering the controversy in hand. The Apex Court in Kanta Goel's case observed :-

"6. Nor do we set much store by the submission that the 1st respondent is not a landlord, being only a co-heir and the Will in his favour having been disputed. Equally without force in our view is the plea that one co-lessor cannot sue for eviction even if the other co-lessor have no objection. Section 2(e) of the Act defines "landlord" thus :

"2(e) "Landlord" means a person who, for the time being is receiving or is entitled to receive, the rent of any premises, whether on his own account or on account of or on behalf of, or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the premises were let to a tenant."

"Tenant, by definition (section 2(1)) means any person by whom or on whose account or behalf the rent of any premises is payable. Read in the context of the Rent Control Law, the simple sense of the situation is that there should be a building which is let. There must be a landlord who collects rent and a tenant who pays it to the one whom he recognizes as landlord. The complications of estoppel or even the concepts of the Transfer of Property Act need not necessarily or inflexibly be imported into the proceedings under the Rent Control Law, tried by special Tribunals under a special statute. In this case, rent was being paid to the late Dass who had let out to the appellant, on the death of the former, the rent was being paid to the 1st respondent who signed the receipts in his name and added that it was on behalf of the estate of the deceased Dass. At a later stage the rent was being paid to and the receipts issued by the 1st respondent in his own name. Not that the little change made in the later receipts makes much of a difference, but the fact remains that the tenant in this case had been paying the rent to the 1st respondent. Therefore, the latter fell within the definition of "landlord", for the purposes of the Act. We are not impressed with the investigation into the law of real property and estoppel between landlord and tenant, Shri Nariman invited us to make. A fair understanding of the relationship between the parties leaves little room for doubt that the appellant was the tenant of the premises. The 1st respondent, together with the other respondents, constituted the body of landlords and, by consent, implicit or otherwise, of the plurality of landlords, one of them representing them all, was collecting rent. In short, he functioned for all practical purposes as the landlord, and was therefore entitled to institute proceedings qua landlord.

7. This Court, in *Sri Ram Pasricha Vs. Jagannath and Others*, clarified that a co-owner is as much an owner of the entire property as any sole owner of the property is; "Jurisprudentially, it is not correct to say that a co-owner of property is not its owner. He owns every part of the composite property along with others and it cannot be said that he is only a part owner or a fractional owner of the property..... It is, therefore, not possible to accept the submission that the plaintiff who is admittedly the landlord and co-owner of the premises, is not the owner of the premises within the meaning of section 13(1)(f). It is not necessary to establish that the plaintiff is the only owner of the property for the purpose of section 13(1)(f) as long as he is a co-owner of the property, being at the same time acknowledged landlord of the defendants." That case also was one for eviction under the Rent Control Law of Bengal. The law having been thus put beyond doubt, the contention that the absence of the other co-owners on record disentitled the first respondent from suing for eviction, fails. We are not called upon to consider the piquant situation that might arise if some of the co-owners wanted the tenant to continue contrary to the relief claimed by the evicting co-owner."

The aforesaid decision has been subsequently followed by the Gujarat High Court in *Amrutlal Saremal v. Smt. Deviben* 23 GujLR 208, this Court in *Rahimtulla Abdul Rahiman Nakib Vs. Chandrakant Anant Moog and Others*, and in *Hiralal Vithaldas Gujarathi and Others Vs. Namdeo Mahadu Jadhav*, and the Allahabad High Court in *Girraj Kishore Vs. Dr. Trilokinath Vimal*, . The Authority of the Full Bench of the Gujarat High Court relied upon by the learned Counsel for the petitioner-tenant was considered in the case of *Amrutlal Saremal v. Smt. Deviben*, Vol. XXIII(1) Gujarat Law Reporter 208 and held to be no longer good law. As regards the application of section 45 of the Indian Contract Act, as urged by the learned Counsel for the petitioner by relying upon the decision in *Ananda Prakash Dey and Others Vs. Lokendranath Maulik*, , I have no hesitation in saying that it will not be applicable in the case of joint family property managed by one of the male members as in the case of the respondent-landlord.

16. Therefore, in my view, the petitioner has no case on merits. The petition is dismissed. The rule is discharged with costs. Interim order stands vacated.

17. The learned Counsel for the petitioner submits that as this matter involves a substantial question of law, the petitioner would like to approach the Apex Court and, therefore, he may be granted eight weeks" time. The respondent-landlord would not execute the decree for a period of eight weeks from today. The petitioner-tenant would not create any encumbrance or third-party rights or part with possession of the suit premises and continue to deposit the rent.

18. Issuance of certified copy is expedited.