
(1998) 09 BOM CK 0015

In the Bombay High Court

Case No : Writ Petition No. 4657 of 1987

Shantaram Hirachand Danez

APPELLANT

Vs

Narayan Bapusa Fulpagar (since deceased by his heirs)

RESPONDENT

Date of Decision : 11-09-1998

Acts Referred:

Citation : AIR 1999 Bom 16 : (1998) 4 ALLMR 253 : (1999) 1 BomCR 46

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

**Advocate : M.V. Sali, for the Appellant; Lalita Panchakshari for Respondents
Nos. 1A, 1B, 1C and 2, for the Respondent**

Judgement

R.M. Lodha, J.—The judgment and decree dated June 22, 1987 passed by the IInd Additional District Judge, Nasik in Civil Appeal No. 82 of 1985 affirming the judgment and decree passed by the Civil Judge, Junior Division, Yeola on 10-12-1984 in Suit No. 46 of 1977 decreeing plaintiff's suit for eviction is under challenge. The only contention raised by the learned counsel for the petitioner is that the suit for eviction was filed by the Court Receiver without obtaining leave of the Court which appointed him and, therefore, the said suit being bad in law right from inception, the decree passed therein is also bad in law and unsustainable.

2. The brief facts relevant and necessary for deciding the contention raised by the learned counsel for the petitioner are :-

The premises in question comprise of two rooms, room No. 1 and 4 situated at CTS No. 3027 at Yeola, Dist. Nasik. The premises in question belonged to Narayan Bapusa Fulpagar, original respondent (since deceased and now represented by his legal representatives). The landlord let out the said premises to the present petitioner's father on monthly rent of Rs. 11/-and after his death petitioner is tenant therein. It appears that a suit for partition was filed which was registered as Special Civil Suit No. 28 of 1956. In that suit the Court

Receiver was appointed. The Court Receiver filed the suit for eviction against the petitioner in the Court of Civil Judge, Junior Division, Yeola on the ground of arrears of rent. It was averred that in the plaint filed by the Court Receiver that tenant had not paid rent since 1-1-1972 and that he was defaulter. A notice was issued to the tenant on 20-10-1976 terminating his tenancy and called upon him to pay arrears of rent. The tenant admittedly did not make payment of arrears of rent as was called upon by the notice dated 20-10-1976 and as a result thereof the Court Receiver was constrained to file the suit. After the suit was filed by the Court Receiver, it seems that the suit for partition in which the Court Receiver was appointed was decreed in favour of the landlord and the landlord got possession of the suit property from the Court Receiver. The landlord made an application thereafter before the trial Court for substituting him in place of the Receiver and also made an application for amendment of the plaint which was allowed and the landlord was substituted in place of the Court Receiver. After recording the evidence, the trial Court decreed the suit on 10-12-1984. The judgment and decree passed by the trial Court has been affirmed by the Appeal Court.

3. No material was placed by the Court Receiver that before filing the suit he had obtained requisite leave of the Court. It may be assumed therefore that the Court Receiver filed the suit for eviction of the tenant without obtaining leave of the Court. The fact is thereafter the landlord was substituted in place of Receiver and after the trial landlord's suit for eviction has been decreed. The question that needs to be considered is whether in the facts and circumstances aforesaid when the suit was filed by the Court Receiver without obtaining leave of the Court and thereafter the Court Receiver was substituted by the landlord, irregularity in filing of the suit by the Court Receiver is cured or not?

4. The filing of the suit by the Court Receiver without obtaining leave of the Court is an irregularity curable in law and is not fatal if either after the filing of the suit by the Court Receiver the leave is obtained from the concerned Court which appointed him or where the Court Receiver is discharged and is substituted by a party having right, title or interest in the property over which the Court Receiver was appointed. The irregularity in filing the suit by the Court Receiver without obtaining permission at its inception does not render the proceedings in the suit ultra vires if subsequent to the filing of the suit the Court Receiver ceases and in his place the party who is entitled to the property is substituted. It is true that sanction of the Court is necessary for maintainability of the suit but the initial lapse in obtaining the sanction can be suitably made up by obtaining requisite sanction during the pendency of litigation. I find ample authority in the proposition that where the Receiver has subsequently been substituted by a person himself for whose estate the Receiver was appointed, the objection of want of sanction is no longer available as the Receiver ceased to be on record. In Jagana Sanyasiah and Others Vs. Mycherla Peda Atchanna Naidu, , the Division Bench of the Madras High Court held thus :

Then there was a contention raised by the appellants that as the 14th defendant was impleaded as the Receiver of the estate of a person, Basaya Reddi, who owned one half of the equity of redemption in items Nos. 1 to 8 and was sued without the plaintiff's obtaining the permission of the District Court which had appointed him Receiver in a litigation involving the rights of the representatives of Basaya Reddi, the suit, so far as that half share was concerned, should have been dismissed. In Karooth Parakote Ammukutty vs. Manavikraman this Bench held that while such sanction was necessary for the maintainability of the suit, the failure to obtain the sanction, can be effectively cured by the plaintiff's obtaining the sanction during the course of the litigation and that the necessity to obtain the sanction was imposed by the Common Law, merely to enforce due respect towards Courts of Justice and that the omission does not affect the jurisdiction of the Courts. It appears from High on Receivers, paragraph 261, that a Receiver, might waive his right to put forward such a plea and that he might by his conduct be estopped from raising such a plea in certain circumstances. The Receiver has now been substituted by the heirs of Basaya Reddi himself and I think that the objection to want of sanction is no longer available as against the plaintiff, the Receiver having ceased to be on the record.

5. I, therefore, have no hesitation that after filing the suit the landlord having been substituted in place of the Receiver, the irregularity in filing the suit by the Court receiver without sanction was cured and the proceedings in the suit were not rendered ultra vires. The objection of the tenant that the suit was defective for want of sanction of the Court which appointed the Court Receiver did not survive any longer the moment the landlord was substituted in place of the Court Receiver. On substitution of the landlord in place of Court Receiver, the Court Receiver ceases to be on record and the objection of the tenant about the sanction also ceased.

6. No other point was urged by the learned counsel for the petitioner.

7. In view of the aforesaid discussion, the concurrent judgment and decree passed by the Courts below cannot be faulted.

8. The Writ Petition accordingly has no merit and is dismissed with no order as to costs. Rule is discharged.

9. At this stage, the learned counsel for the petitioner submits that reasonable time may be granted to the petitioner for vacation of the disputed premises where he is carrying on business.

10. The learned counsel for the landlord has no objection if the reasonable time is granted subject to filing of the usual undertaking by the petitioner.

11. The petitioner is granted time upto 31-3-1999 for handing over peaceful and vacant possession of the disputed premises subject to the following conditions :-

(i) The petitioner files undertaking before this Court within two weeks from today that on or before 31-3-1999 he would hand over peaceful vacant possession of

the disputed premises to the landlord.

(ii) The arrears of rent, if any, upto date and future rent for use and occupation upto 31-3-1999 shall be paid/deposited by the petitioner within one month from today.

(iii) In the undertaking the petitioner should undertake that he would not sub let, assign or part with possession or create any third party interest nor make any alterations in the premises in question during the time he occupies and vacate the premises on or before 31-3-1999.