

(2002) 04 BOM CK 0066

In the Bombay High Court

Case No : Civil Rev. Application No. 313 of 1995

Vasant Laxman Mote and Others

APPELLANT

Vs

Rajendra Kumar Pande (dead) by L.Rs. Kamlabai Bajranglal
Pande and Others

RESPONDENT

Date of Decision : 11-04-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : (2002) 4 BomCR 457 : (2002) 2 BOMLR 702 : (2002) 4 MhLj 832

Hon'ble Judges : D.D. Sinha, J

Bench : Single Bench

Advocate : J.N. Chandurkar, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

D.D. Sinha, J.—Heard Shri Chandurkar, learned counsel for the applicants. None appears for the non-applicants though served.

2. The Civil revision application is directed against the order dated 19-41-1994 passed by the 3rd Joint Civil Judge, Junior Division, Amravati in Regular Darkhast No. 73/1987 whereby applications of the non-applicant Nos. 3 and 4/objectors (Exhs. 15 and 16) were allowed.

3. Shri Chandurkar, learned counsel for the applicants, states that applicant No. 1 was the owner of suit plot No. 1/1-B, Sheet No. 48 situated at Amravati and it was let out to non-applicant No. 1 Rajendrakumar Pande and non-applicant No. 2 Jagdish alias Jugalkishore Jethmal Mundhada. The said tenants erected their own shed on the suit plot. The applicant No. 1 issued a quit notice to non-applicant Nos. 1 and 2 on 26-12-1985 and terminated their tenancy with effect from the end of tenancy month of January, 1986. When the quit notice was issued by the applicant No. 1, the provisions of C. P. and Berar Letting of Houses and Rent Control Order were not applicable to the site in question. After termination of tenancy, applicant No. 1 filed Regular Civil Suit No. 122/1986 for ejectment,

possession and other reliefs. The suit was decreed on 19-11-1986.

4. It is contended by the learned counsel for the applicants that the applicant No. 1 by registered Sale Deed dated 4-1-1994 sold the entire plot (suit property) No. 1/1-B to applicant Nos. 2 to 5. Under the terms of the said Conveyance Deed, the applicant Nos. 2 to 5 were entitled to take possession of the suit plot by executing the decree dated 19-11-1986 passed in Regular Civil Suit No. 122/1986, The judgment debtors, namely, Rajendrakumar Pande and Jagdish Mundhada failed to deliver vacant possession of the suit land to the decree holder. The applicant No. 1/decree holder filed execution proceedings vide Regular Darkhast No. 73/1987 in the Court of 3rd Joint Civil Judge, Junior Division, Amravati. The non-applicant Nos. 3 and 4 claiming to be sub-tenants of judgment debtors, filed separate applications u/s 47 read with Section 151 and Order XXI Rule 97 of CPC and objected to executability of the decree on the ground that they were sub-tenants and were not joined parties to the suit and that the judgment debtors did not let out an open site, but a structure and, therefore, permission from the Rent Control Authorities was necessary. The objection which were filed by the present non-applicant Nos. 3 and 4 were at Exhs. 15 and 16 of the record of the executing Court.

5. Learned counsel Shri Chandurkar further submits that the non-applicant Nos. 3 and 4/objectors adduced oral evidence and also placed on record some documents in support of their claim. The applicant No. 1 did not adduce any evidence. The executing Court after hearing parties to the execution proceedings allowed the objections and held that the applicant No. I/decree holder has no right to take possession of the suit property from the objectors without taking legal recourse against them and dismissed the execution proceedings. Being aggrieved by this order, the applicants have filed the present revision.

6. On the backdrop of the above referred facts, following questions fall for determination in the present revision :

(I) Whether objection can be raised by the tenant or sub-tenant in the execution proceedings on the ground that the suit which was instituted without permission of the Rent Controller is bad in law?

(II) Whether sub-tenant is a necessary party in the suit instituted by the landlord for eviction and possession against the tenant and whether the decree is bad in law for non-joinder of necessary party on that count?

7. In the instant case, applicant No. 1 landlord filed Regular Civil Suit No. 122/1986 against the tenants, namely, Rajendrakumar Pande and Jagdish alias Jugalkishore Mundhada for ejectment, possession and other reliefs. The suit came to be decreed on 19-11-1986. Sub-clause (4A) in Clause 2 of the Rent Control Order, 1949 was inserted for the first time by the Amendment Order dated 27-6-1989 whereby definition of "premises" was widened and apart from building, it included any land not being used for agricultural purpose. It is apparent that before the above referred amendment came into force, the decree

was already passed on 19-11-1986. There was no appeal or revision pending when the above referred amendment came into effect. Similarly, Clause 13-A was inserted in the Rent Control Order, 1949 by Amendment Order dated 27-10-1989, which provides that no decree for eviction shall be passed in a suit or proceedings filed and pending against the tenant in any Court or before any Authority unless the landlord produces written permission of the Rent Controller as required by sub- Clause (1) of Clause 13 of the Rent Control Order, 1949. For the purpose of applicability of amended provisions of Clause 13-A, it is necessary that either a suit or proceedings by way of appeal or revision should be pending against the tenant in any Court or before any Authority and the question whether this amendment is applicable to the proceedings initiated by way of execution is no more res integra and is concluded by the judgment of this Court in *Sadiquabai w/o Sadique Hussain v. Santaji Shikshan Vikas Sanstha and Ors.*, 1991 Mh.L.J. 1173. In para (9) of the said judgment, this Court has held thus :--

"Besides this, the phraseology "no decree for eviction shall be passed in a suit or proceedings" as engaged in Clause 13-A is of definite connotation. The same is not susceptible to any liberal interpretation. The phraseology confines only to those proceedings wherein decree for eviction could be passed. Such proceedings could only be a suit and further appeal or revision arising out of such suit. It does not permit any stretching so as to include anything else. Undisputedly, there could not be passing of a decree in a proceeding of execution. Execution being a post decree proceeding is totally outside the purview of the phraseology."

In view of this legal position, provisions of Clause 13-A of the Rent Control Order, 1949 cannot be made applicable to execution proceedings initiated by the applicant No. 1 vide Regular Darkhast No. 73/1987 and hence, permission from the Rent Controller in writing is not necessary. Therefore, the suit instituted and decree passed by the competent Civil Court cannot be held to be bad in law for want of written permission from the Rent Controller as required by Sub-clause (1) of Clause 13 of the Rent Control Order, 1949. Consequently, the first objection raised by the non-applicant" Nos. 3 and 4 is misconceived and devoid of substance.

8. The second objection, which is raised by the objectors/non-applicant Nos. 3 and 4, that the landlord was aware that they were sub-tenants and were in possession of the suit site at the time of filing of the suit and still they were not joined as parties to the suit and, therefore, decree is not binding on them is also mis-conceived and devoid of substance in view of judgment of the Apex Court in *Rup Chand Gupta Vs. Raghuvanshi Private Limited and Another*, . In para (12) of the said judgment, the Apex Court has observed thus :--

"Taking the last action first, viz., Raghuvanshi"s omission to implead the appellant, it is quite clear that the law does not require that the sub-lessee need be made a party. 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 sub-lessee from the land in question 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."

In view of the law laid down by the Apex Court, it is clear that the decree, which is passed in the present case, by the competent Civil Court would bind the sub lessees ,i.e. objectors/non-applicants 3 and 4 and would not affect the rights of the decree holder to eject the lessees and sub-lessees by initiating execution proceedings. The second objection which was raised by the objectors/non-applicants 3 and 4 is also misconceived and cannot be accepted.

9. For the reasons stated hereinabove, both the questions are answered in negative.

10. In the result, the impugned order dated 19-11-1994 passed by the 3rd Joint Civil Judge, Junior Division, Amravati below Exhs. 15 and 16 in Regular Darkhast No. 73/1987 is hereby set aside. The Executing Court is directed to proceed with the execution proceedings. The revision is allowed in the above terms. No order as to costs.