

Court No. - 4 (AFR)

Case :- CIVIL REVISION No. - 314 of 2009

Petitioner :- Smt. Preeti Jain & Another

Respondent :- Union Of India & Others

Petitioner Counsel :- Afzal Ahmed,M.K. Gupta

Respondent Counsel :- A.S.G.I.,Akalan Jain,Triloki Singh

Hon'ble Prakash Krishna,J.

Challenging the order dated 3.3.2008 passed by the Additional District Judge, Court No. 6, Kanpur Nagar in SCC Suit No.40 of 1999 whereby the suit has been dismissed, the present revision under section 25 of the Provincial Small Causes Court Act has been filed by the plaintiff-landlords.

The dispute relates to property no. 10/499B Khalasi Line Allenganj Kanpur City, described at the foot of the plaint. Admittely, the said property was owned by two brothers namely Rakesh Jain and Sunil Jain. Plaintiff no. 1 Smt. Preeti Jain, is widow of Rakesh Jain. Plaintiff no. 2 & 3 are the daughters of Late Rakesh Jain. It appears that the property in dispute has been sold during the pendency of the suit in favour of Shri B.K.Bhagat who has been impleaded as applicant no. 2 in the present revision. The suit was filed for ejectment and recovery of arrears of rent for the period 1.5.1990 to 17.11.1998, water charges and damages etc. It was also pleaded that the property in dispute was let out by the erstwhile owners and landlords to Union of India, the tenant.

The tenant namely Union of India filed a written statement admitting that the defendants have entered into lease agreement dated 1.1.1978 with Rakesh Jain and Sunil Jain as they were landlords and lessors. The lease agreement was only for three years and defendants had option to extend the lease agreement for further one year and the government of India has exercised such option. Allegations with regard to payment of water charges and other statutory taxes were denied on the pleas that the taxes have been paid to the respective departments. It was also pleaded that after death of the original landlords, the plaintiffs have not obtained the probate of Will allegedly executed by Sunil Jain in favour of plaintiff no. 1. Unless and until the Will is probated or letters of administration is obtained, there is no landlord after the death of the original landlords.

The trial court by the order under revision has dismissed the suit on the ground that the Will in question has not probated and as such the plaintiffs have no right to institute the suit.

Heard Shri M.K.Gupta and Shri Afzal Ahmed, advocates for the applicants and Shri Triloki Singh, learned counsel appearing on behalf of the respondent nos. 1 to 3. The respondent nos. 4 & 5 are represented by Akank Jain, Advocate.

The only controversy involved in the present revision is whether the trial Court was justified in dismissing the suit filed by the plaintiffs who are heirs and legal representatives of the original lessees on the ground that the Will made by a co-lessee bequeathing his rights in favour of the plaintiff no.1 but having not been probated, the suit is not maintainable. To appreciate the said controversy, it is desirable to have a look to the pleadings of the parties. Copy of the plaint has been filed as Annexure -2 to the affidavit. The suit was instituted by Smt. Priti Jain widow of late Rakesh Jain, Kumari Parul Jain and Pooja Jain daughters of Rakesh Jain. Sri Rakesh Jain expired on 10th of September, 1989 and it has been stated in para 3 that after his death the plaintiffs inherited his share in the premises in question and became the owner thereof by inheritance. In para 2 it has been stated that Sri Sunil Jain during his life time executed a Will in favour of the plaintiff no.1 bequeathing his share in the property in question. Sunil Jain expired on 26.7.1995 and after his death the plaintiff no.1 became the owner of share of Sunil Jain in the property in question. Thus, the plaintiffs became full and absolute owners of the premises in question vide para 5 of the plaint. In the written statement, the contents of aforesaid paragraphs were not admitted for want of knowledge by the defendants. They have come out with the case that they have no knowledge about the ownership of the property in question. However, it has been admitted by them that the property in question was let out by Sri Rakesh Jain and Sunil Jain. In the entire written statement there is not even a slightest whisper that the plaintiffs are not widow and daughters of late Rakesh Jain. There is also no averment that Sunil Jain, the other co-owner/co-lessee has left any other heir who is claiming co-ownership/right of co-lessee in the property in dispute. There being no specific denial of the averments made in the plaint referred to above in the written statement the aforesaid averments that the plaintiffs are heirs of deceased Rakesh Jain stand admitted.

The only defence taken in the written statement with regard to the question of land lordship is that the Will of Sunil Jain set up by the plaintiff no.1 in her favour has not been probated till date in her favour, "hence their L/L rights have no legal sanctity and suit is not maintainable on this ground" vide para 16 of the written statement.

Sri M.K. Gupta, learned counsel for the plaintiff applicants submits the following two points for consideration of this Court:-

1. Submission is that even for the sake of argument it is taken that the Will executed by Sunil Jain is not probated, the fact remains that the plaintiffs are the heirs of deceased co-owner/co-landlord of the property in dispute left by Rakesh Jain being natural heirs and legal representatives. Elaborating the

argument, it was submitted that it is an acknowledged legal position that a suit for eviction of a tenant is maintainable at the instance of a co-landlord/co-owner and as such the trial Court was not justified in dismissing the suit.

2. Secondly, in the State of Uttar Pradesh the law does not cast a duty on the legatee to obtain probate of Will.

Taking the first point first, it appears that the law is well settled in favour of the plaintiffs. In **Shri Ram Pasricha Vs. Jaggannath**, AIR 1976 SC 2335 it has been held that a co-owner is as much as owner of the entire property as any sole owner of a property is. This was a case with reference to the provisions contained in **West Bengal Premises Tenancy Act**. It has been laid down that co-owner/co-landlord is a owner and suit by such landlord for eviction of tenant is maintainable.

In **Giriraj Kishore Vs. Dr. Triloki Nath Vimal**, AIR 1988 All 305, the aforesaid judgement of **Sri Ram Pasricha** has been followed and relied upon by this Court. The plea raised by the tenant that since all the heirs of original landlord had not joined in serving the notice, therefore, the plaintiff alone had no right to file the suit or terminate the tenancy, was negated. The following paragraph from the decision in **Sri Ram Pasricha** has been reproduced:-

"A co-owner is as much 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."

The Court further observed:

"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."

The aforesaid decision has been approved by the Supreme Court in the case of **Kanta Goel Vs. B.P. Pathak**, AIR 1977 SC 1599.

The legal position that a co-owner can institute a suit for eviction of a tenant is well established and it is not necessary to burden this judgement. In other words, the trial Court has committed illegality by overlooking the above aspect of the case in dismissing the suit. The argument of learned counsel for the applicant is, thus, well founded.

Now, I take up the second point with regard to the requirement of obtaining the probate of Will of Sri Sunil Jain. In **Bhaiya Ji Vs. Jageshwar Dayal Bajpai**, AIR 1978 All 268 it has been laid down that a combined reading of the provisions of Sections 213 and 57 of the Succession Act would show that where the parties to the Will are Hindu but the property in question is not in Bengal, Bombay and Madras sub section (2) of section 213 of the Succession Act applies and sub section (1) has no application. As a consequence, a probate will not be required to be obtained by a Hindu in respect of a Will made regarding the immovable property situate in other

territories than Bengal, Bombay and Madras. The High Court has relied upon its earlier judgement in the case **Kundan Lal Vs. Banwari Lal, 1968 Allahabad Law Journal 69**. Therefore, on this score also the Court below was not justified in dismissing the suit for not obtaining the probate of Will executed by Sunil Jain.

In addition to above, the learned counsel for the applicants submits that during the pendency of litigation, the applicant no.1 got the Will probated. It is not necessary for me to say anything in this regard in view of the above discussion holding that even otherwise also the suit was maintainable and it is not required for a Hindu holding the property in States other than Bengal, Bombay and Madras to get the Will probated.

There is yet another circumstance in favour of the plaintiffs. After the death of original owners, Smt. Priti Jain, the plaintiff no.1, applied for mutation of her name in the municipal record and her name has been mutated therein. This is also suggestive of the fact that the plaintiffs became owner/landlord of the property in question.

It is interesting to note that in the written statement the defendants claimed themselves as a tenant but they have not come out with the case as to who is their landlord. There cannot be a tenancy without a landlord. Any other person has not come forward to claim ownership/land lordship of the property in question except the plaintiffs. In this facts situation, the dispute raised by the defendant is for the sake of dispute and has no substance and the Court below has unjustifiably dismissed the suit.

As against the above, the learned counsel for the respondent opposite party/defendant could not place any material before this Court to take a different view of the matter.

Viewed as above, it is held that the trial Court committed illegality in dismissing the suit and the judgment of the trial Court is legally not sustainable. The matter is restored back to the trial Court to decide the suit on other issues expeditiously preferably within a period of three months from the date of production of certified copy of this order before it.

In the result, the revision succeeds and is allowed with costs.

(Prakash Krishna, J.)

Order Date :- 30.1.2012
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