

NANDKISHOR SAVALARAM MALU (DEAD) THROUGH LRS. A

v.

HANUMANMAL G. BIYANI (D) THR. LRS. & ORS.

(Civil Appeal No. 11868 of 2016)

NOVEMBER 29, 2016 B

[A.K. SIKRI AND ABHAY MANOHAR SAPRE, JJ.]

*Rent Control and Eviction:*

*Bombay Rent Control Act, 1947 – Eviction proceedings – Property let out to a partnership firm – Eviction proceedings initiated by the landlord-plaintiffs against employee-defendant no.1 of the firm and partners of the firm-defendant nos.2 to 9 – Dismissal of suit against defendant no.1 whereas decreed against firm and its partners-defendant nos.2 to 9 – In first appeal, suit decreed against all the defendants – In Revision, the High Court restored the order of the trial court – On appeal, held: If tenant is a partnership Firm then such tenant would represent the interest of all the partners of the Firm and the employees working in the Firm – Such persons since claim through the Firm, they have no right of their own in the tenancy and in the demised property qua landlord – As such employee of the firm is not necessary party, to the eviction proceedings initiated by the landlord – On facts, High Court erred in setting aside the order of the first appellate court which rightly reversed the order of the trial court by passing eviction decree against all the defendants – High Court overlooked the facts that the Firm was held to be the tenant whereas defendant no.1 was Firm's employee; and that defendant no.1 was held to be in possession of the suit house as 'trespasser' and not as 'tenant' – Thus, order of the High Court set aside and that of the first appellate court restored.* C D E F

**Allowing the appeal, the Court**

**HELD: 1.1** There was absolutely no legal basis for the High Court to reverse the well-reasoned order of the first appellate court which had rightly reversed the order of the trial court by passing decree for arrears of rent, eviction and mesne profits against all the defendants jointly and severally. The High Court, unfortunately, failed to apply the settled legal principles applicable to the instant case, in the light of following factual findings of fact G H

A recorded by the two courts below that the Firm was held to be the tenant whereas defendant no.1 was held to be Firm's employee; that the Firm failed to prove that they surrendered their possession to the appellants and cleared all arrears of rent; and that defendant no.1 was held to be in possession of the suit house as 'trespasser' and not as 'tenant'. [Paras 21, 22] [819-B-D]

B 1.2 Neither the Firm nor their partners and nor defendant no.1 had any legal right to remain in possession of the suit house. The reason being that the Firm and its partners-defendant Nos. 2-9, being the tenant rightly suffered the decree for payment of arrears of rent and eviction and defendant no.1 was neither owner of the suit house nor a tenant inducted by the appellants and nor a licensee but was held to be an employee of the Firm and a rank trespasser in the suit house. The legal effect of eviction decree under the Rent Act was that the possession of the tenant-firm and persons claiming through such tenant became unauthorized. C Since the tenant was a Firm, persons connected with the internal affairs of the Firm such as its partners and the employees working therein were also bound by the eviction decree since all such persons were claiming through the tenant-Firm. [Para 23-24] D [819-D-G]

E 1.3 An employee of a tenant is never considered to be in actual possession of tenanted premises much less in possession in his legal right. Indeed, he is allowed to use the tenanted premises only with the permission of his employer by virtue of his contract of employment with his employer. An employee, therefore, cannot claim any legal right of his own to occupy or to remain in possession of the tenanted F premises while in employment of his employer or even thereafter qua landlord for want of any privity of contract between him and the landlord in respect of the tenanted premises. There was, therefore, no need for the appellant to file a separate suit to claim possession of the suit house against defendant no.1 under the G general law as he was well within his legal right to execute the decree for eviction from the demised premises not only against the original tenant but also against all the persons who were claiming through such tenant. Defendant no.1 was held to be claiming through the tenant being its employee and was, therefore, bound by the decree once passed against his employer-tenant. H [Para 25, 26] [819-G-H; 820-A-C]

1.4 If the lessee/tenant is a living person, then in such event, the tenant would also include his legal representatives in the event of his death together with his dependents living with the tenant in the tenanted premises. Likewise, if the lessee/tenant is a juristic person, i.e., partnership Firm then such tenant would represent the interest of all the partners of the Firm and the employees working in the Firm. Such persons since claim through the Firm, they have no right of their own in the tenancy and in the demised property qua landlord. It was not necessary for the appellants to have impleaded defendant no.1 in the rent proceedings. The lessee/tenant is the only necessary or/and proper party and none else. A person, who claims through lessee/tenant, is not a necessary party. [Para 29-30] [820-F-H]

1.5 The impugned order is not legally sustainable and, is set aside and the judgment/decree passed by the first appellate court is restored. [Paras 31-32] [821-A, B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11868 of 2016. D

From the Judgment and Order dated 23.03.2010 of the High Court of Judicature at Bombay in Civil Revision Application No. 493 of 2008.

R. S. Hegde, Chandra Prakash, Mrs. Farhat Jahan, Rehmani, Rajeev Singh, Advs. for the Appellant. E

Sukhbir Singh, Mohd. Irshad Hanif, Advs. for the Respondents.

The Judgment of the Court was delivered by

**ABHAY MANOHAR SAPRE, J.** 1. Leave granted. F

2. This appeal is filed against the final judgment and order dated 23.03.2010 passed by the High Court of Judicature at Bombay in Civil Revision Application No.493/2008 allowing the said revision application filed by the respondents herein.

3. Facts of the case lie in a narrow compass so are the issues involved in the appeal, a short one. It would, however, be clear from the facts mentioned infra. G

4. The appellants are the plaintiffs (landlords) whereas the respondents are the defendants (tenant).

5. One Mr. Sawalaram Shriram Malu and Mr. Nandkishore H

- A Sawalaram Malu (father and son respectively) jointly owned House No.47/48 situated in Madhavnagar at Sangli (MH) (hereinafter called "the suit house"). They let out the suit house to a firm called "M/s Biyani Textile" (hereinafter referred to as "the Firm") on a monthly rent of Rs.260/-.
- B 6. On 09.03.1982, the landlords served a quit notice on the tenant-Firm and determined the tenancy by demanding arrears of rent for the period 01.06.1980 to 28.02.1982 and possession of the suit house. Since the Firm did not pay the arrears as demanded and nor vacated the suit house, the landlords were constrained to file a civil suit being Regular
- C Civil Suit No. 317 of 1982 claiming decree for arrears of rent and eviction under the provisions of the Bombay Rent Control Act. The suit was filed against one employee of the Firm-defendant no.1 and partners of the Firm-defendant nos.2 to 9 in the Court of IInd Civil Judge, Jr. Division, Sangli.
- D 7. Defendant no.1 filed his written statement whereas defendant nos. 3, 4 to 9 filed their written statement jointly. So far as defendant no.1 is concerned, he set up his case contending that he was working as employee of the Firm. He further contended that in 1980, there was some discussion between the plaintiffs and the partners of the Firm about vacating of the suit house and pursuant thereto, the Firm vacated the
- E suit house. The suit house was then let out to defendant no.1 by the plaintiffs. It was then contended that plaintiff no.1 died and his legal representatives not having been brought on record, the suit could not be continued at the instance of plaintiff no. 2 for want of any privity of contract between defendant no.1 and the plaintiff no.2.
- F 8. So far as the partners of the Firm, i.e., defendant nos. 3, 4 to 9, are concerned, they contended that they having vacated the suit house in May 1980 and cleared all their arrears of rent, they are no more liable to do anything in the case and, therefore, suit against them is liable to be dismissed.
- G 9. The Trial Court, vide judgment dated 14.10.1991, dismissed the suit against defendant no.1 whereas it was decreed against defendant nos. 2 to 9. Firstly, it was held that the suit house was let out to the Firm through their partners (defendant nos.2 & 3) and, therefore, the Firm was the tenant. Secondly, the Firm had committed defaults in payment of arrears of rent and also failed to re-pay when demanded by the plaintiff.
- H

Thirdly, defendant no.1 was an employee of the Firm. Fourthly, defendant no. 1 was not the tenant of the plaintiff as claimed by him and was in unauthorized occupation of the suit house as a trespasser. Fifthly, the Firm and its partners (defendant Nos.2 to 9) having failed to pay the arrears of rent, are liable to be evicted from the suit house under the Bombay Rent Control Act. Sixthly, the suit did not abate on the death of plaintiff no.1 because plaintiff no.2 is already on record and sufficiently represent the estate of the deceased, plaintiff no.1. Seventhly, liberty was granted to the plaintiff to file separate suit against defendant no.1 under the general law to claim possession of suit house because he was found to be in possession of the suit house as trespasser and no eviction decree can be passed against a trespasser under the Rent laws.

10. Felt aggrieved, Plaintiff no.2 filed first appeal being R.S.A. No. 577 of 1991 before the District Judge, Sangli. By order dated 03.02.2006, the District Judge allowed the appeal and decreed the suit against all the defendants as claimed by the plaintiffs. It was held that defendant no.1 being an employee of the Firm was bound by the decree passed against the Firm and its partners (defendant Nos.2 to 9). It was further held that the defendants failed to prove that the Firm or/and its partners surrendered the possession of the suit house to the plaintiffs on 12.05.1980 and vacated the suit house. It was further held that defendant no.1 failed to prove that he became plaintiff's tenant in his individual capacity by entering into a fresh contract of tenancy on vacating the suit house by the original tenant as claimed by them and lastly, the defendants are liable to pay the *mesne profits* at the rate of Rs.260/- per month from 01.05.1980 till delivery of possession of the suit house to the plaintiff.

11. Felt aggrieved, the defendants filed revision application being C.R.A. No. 493 of 2008 before the High Court. While the revision application was pending, defendant no.1 died and hence his legal representatives were brought on record. The High Court, by impugned order, though did not disturb the factual finding of the first appellate Court yet allowed the revision and while setting aside the order of the appellate Court, restored the order of the Trial Court. It is against this order, plaintiff no. 2 (landlord) felt aggrieved and filed this appeal by way of special leave before this Court. During the pendency of this appeal, he also died and hence his legal representatives were brought on record to continue the *lis*.

12. Heard Mr. R.S. Hegde, learned counsel for the appellants and

A Mr. Sukhbir Singh, learned counsel for the respondents.

13. Learned counsel for the appellants (plaintiff) while assailing the legality and correctness of the impugned order argued three points.

B 14. In the first place, he argued that the High Court was not right in allowing the revision. Learned Counsel urged that the High Court failed to even take note of the settled legal principles applicable to the controversy at hand and thus committed jurisdictional error.

C 15. In the second place, learned counsel argued that without disturbing any of the factual findings of the first appellate Court, which were otherwise binding on the High Court in its revisionary jurisdiction, the High Court committed jurisdictional error in holding that once it is held in rent proceedings that defendant no.1 was a trespasser then no decree under the Rent laws could be passed against a trespasser for his eviction from the suit house and the remedy of the plaintiffs in such circumstances is to file regular civil suit under the general law for obtaining possession.

D 16. In the third place, learned counsel argued that the High Court failed to see that a decree for eviction was rightly passed against the Firm and its partners holding them as tenant and this decree, according to him, was binding on defendant no.1 on all force for the simple reason that firstly, defendant no.1 even according to his own case was an employee of the Firm and the Courts also held him to be so. Secondly, defendant no.1 failed to establish his independent contract of tenancy with the plaintiffs though claimed. Thirdly, the Firm through their partners failed to prove that they surrendered the vacant possession of the suit house to the plaintiffs on 12.05.1980.

E 17. According to learned counsel, it was, therefore, a clear case where tenant having suffered a decree for eviction, all persons claiming through such tenant or/and those acting for and on behalf of the tenant-Firm, had to be dispossessed on the strength of the decree suffered by the tenant-firm.

G 18. On these submissions, learned Counsel for the appellants prayed for reversal of the impugned order and restoration of the order of the first appellate Court.

H 19. In reply, learned counsel for the respondents supported the impugned order and contended for its upholding.

20. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to accept the submissions of the learned counsel for the appellants as, in our opinion, it has a force. A

21. Indeed, we are constrained to observe that there was absolutely no legal basis for the High Court to have reversed the well-reasoned order of the first appellate Court which had rightly reversed the order of the Trial Court by passing decree for arrears of rent, eviction and *mesne profits* against all the defendants jointly and severally. The High Court, unfortunately, failed to apply the settled legal principles applicable to the case at hand as are enumerated herein below in the light of following factual findings of fact recorded by the two Courts below. B C

22. Firstly, the Firm was held to be the tenant whereas defendant no.1 was held to be Firm's employee. Secondly, the Firm failed to prove that they surrendered their possession to the appellants and cleared all arrears of rent and lastly, defendant no.1 was held to be in possession of the suit house as "trespasser" and not as "appellants' tenant". D

23. With these concurrent findings of fact, we are of the considered opinion that neither the Firm nor their partners and nor defendant no.1 had any legal right to remain in possession of the suit house. The reason being that so far as the Firm and its partners were concerned (defendant Nos. 2 to 9), they being the tenant rightly suffered the decree for payment of arrears of rent and eviction under the Rent Act and so far as defendant no.1 was concerned, he was neither an owner of the suit house nor a tenant inducted by the appellants and nor a licensee but was held to be an employee of the Firm and a rank trespasser in the suit house. E

24. The legal effect of such eviction decree under the Rent Act was that the possession of the tenant-firm and persons claiming through such tenant became unauthorized. Since the tenant was a Firm, persons connected with the internal affairs of the Firm such as its partners and the employees working in the Firm were also bound by the eviction decree for the simple reason that all such persons were claiming through the tenant-Firm. F G

25. An employee of a tenant is never considered to be in actual possession of tenanted premises much less in possession in his legal right. Indeed, he is allowed to use the tenanted premises only with the permission of his employer by virtue of his contract of employment with his employer. An employee, therefore, cannot claim any legal right of his H

A own to occupy or to remain in possession of the tenanted premises while  
in employment of his employer or even thereafter *qua* landlord for want  
of any privity of contract between him and the landlord in respect of the  
tenanted premises.

B 26. There was, therefore, no need for the appellant to file a separate  
suit to claim possession of the suit house against defendant no.1 under  
the general law as he was well within his legal right to execute the  
decree for eviction from the demised premises in this very litigation not  
only against the original tenant but also against all the persons who were  
claiming through such tenant. As mentioned above, defendant no.1 was  
C such person who was held to be claiming through the tenant being its  
employee and was, therefore, bound by the decree once passed against  
his employer-tenant.

D 27. A tenancy is a creation of contract between the two persons  
who are capable to enter into contract called lessor/landlord and the  
lessee/tenant. The two persons can be either living person or juristic  
persons such as Partnership Firm or a Company.

E 28. Once the tenancy is created either orally or in writing with respect  
to a land or building then it is always subject to the relevant provisions of  
the Transfer of Property Act, 1882 (hereinafter referred to as "the TP  
Act") and the State Rent Acts. Sections 105 to 111 of the TP Act provide  
certain safeguards, create some statutory rights, obligations, duties  
whereas the State Rent Acts, *inter alia*, specify the grounds to enable  
the lessor to evict the lessee/tenant from the demised premises.

F 29. If the lessee/tenant is a living person, then in such event, the  
tenant would also include his legal representatives in the event of his  
death together with his dependents living with the tenant in the tenanted  
premises. Likewise, if the lessee/tenant is a juristic person, i.e., partnership  
Firm then such tenant would represent the interest of all the partners of  
the Firm and the employees working in the Firm. Such persons since  
claim through the Firm, they have no right of their own in the tenancy  
and in the demised property *qua* landlord.

G 30. As a matter of fact, in our view, it was not necessary for the  
appellants to have impleaded defendant no.1 in the present rent  
proceedings. The reason being that in rent proceedings the lessee/tenant  
is the only necessary or/and proper party and none else. A person, who  
claims through lessee/tenant, is not a necessary party.  
H



31. The aforementioned factors were completely overlooked by the High Court. It is for these reasons, the impugned order is not legally sustainable and, therefore, deserves to be set aside. A

32. In the light of foregoing discussion, the appeal succeeds and is accordingly allowed with cost quantified at Rs.5000/- payable by the respondents to the appellants. The impugned order is accordingly set aside and, in consequence thereof, the judgment/decree passed by the first appellate Court (District Judge, Sangli) dated 03.02.2006 in Civil Appeal No.577 of 1991 is hereby restored. B

33. The respondents are granted three months' time to comply with the judgment and decree of the first appellate Court by depositing the entire money part of the decree as awarded therein and further to handover the vacant possession of the suit house to the appellant. The respondents would also pay to the appellants three months' rent by way of damages in advance and the cost awarded by this Court within one month and to submit the usual undertaking to this Court, failing which the decree dated 03.02.2006 be executed against the respondents forthwith on the expiry of one month. C D

Nidhi Jain

Appeal allowed.