

Judgment in C.S.No.497/2008

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Received on : 06.10.2008

Registered on : 07.11.2008

Decided on : 09.12.2010

Duration : Yrs. Ms. Ds.
02 02 03

Exh.No.38

IN THE COURT OF THE JUDGE, SMALL
CAUSES COURT, PUNE, AT : PUNE.
(Presided over by Uttam Telgaonkar)

CIVIL SUIT No.497/2008

Mr.Vijay Tukaram Bhujbal,

Age 50 yrs. Occ- Business,

R/o.12, Someshwarwadi,

Pashan, Pune-08.

.....

Plaintiff

Vs.

Mr.Vijay Mohanlal Nahar,

Age about 65 yrs. Occ- Advocate,

R/o.1202/20, Near Hotel "Surya"

Off Gohle Road, Shivaji Nagar,

Pune.

.....

Defendant

SUIT FOR POSSESSION

APPEARANCES : Shri.S.N.Chandrachood, Advocate for
the plaintiff
Shri.Srinivas Joshi, Advocate for
the defendant

JUDGMENT

(Delivered on 09.12.2010)

This is a suit for recovery of possession in respect of two rooms on ground floor of House No.209, Shivaji Nagar, Pune, within the limits of Pune Municipal Corporation and bounded as follows :-

To East - A small bye-lane running North South

To South - AADP Road running East - West

To West - 02 rooms' block in the same property

To North - open space and staircase of the same property together with right to use common toilet on the ground floor.

The above mentioned property is referred as 'suit premises' hereinafter.

2. Plaintiff's father Tukaram Dagdoba Bhujbal

was the original owner of the suit property. The suit property was let out to Dr.M.L.Nahar. Dr.M.L.Nahar was running a clinic in the suit premises. There was relationship of landlord and tenant between Tukaram Dagdoba Bhujbal and Dr.M.L.Nahar. Dr.M.L.Nahar died in 1993. Dr.Roma V. Nahar, daughter in law of Dr.M.L.Nahar filed civil suit No.802/1993 against the original owner Tukaram Dagdoba Bhujbal for declaration of her tenancy right in the suit premises. Her claim was rejected by the Court and the order is confirmed by District Court in appeal No.1180/1996. The matter is pending before the Hon'ble High Court. These are an admitted facts.

3. According to plaintiff, the tenancy came to an end with the death of original tenant Dr.M.L.Nahar. Nobody from the family of Dr.M.L.Nahar has inherited tenancy right. Therefore, nobody is deemed tenant in respect of suit premises after the death of Dr.M.L.Nahar. However, defendant is impleaded in the suit for the sake of obtaining possession from him and not for any other purpose. He is

impleaded as a party defendant as contemplated in clause (b) of (viii) of Item 15 of Section 7 of The Maharashtra Rent Control Act, 1999. Plaintiff also says, suit premises is not used for the purpose it was let since after the death of original tenant. Hence the suit. Plaintiff has prayed for direction to the defendant to put plaintiff in actual, physical and peaceful possession, user and vahivat of the suit premises. Plaintiff also prayed for mesne profits and cost of the suit.

4. Defendant has filed his written statement at Ex.12 and resisted the suit. He appeared with the defence of total denial. He has denied the relationship of landlord and tenant. He has denied possession of suit premises with him. Every thing is denied by him. As he is not in possession of suit premises, how he can deliver the same. He has also raised objection of non joinder of necessary parties and limitation. Lastly he prayed for dismissal of the suit.

5. Following points arise for determination and my

findings thereon for the reasons stated below are as follows :

POINTS :

FINDINGS :

- | | |
|---|--------------------|
| 1] Whether suit is bad for non joinder of necessary parties ? | In the negative |
| 2] Whether suit is barred by limitation ? | In the affirmative |
| 3] Whether plaintiff proves that defendant is liable to hand over possession of the suit premises ? | In the negative |
| 4] What order and decree ? | As per final order |

R E A S O N S

6. Plaintiff has filed his evidence affidavit at Ex.14 and closed his oral evidence by filing pursis at Ex.36. Defendant has not led any oral evidence and filed such purshis at Ex.37. Heard both the sides at length.

7. **Point No.1** :- According to defendant, suit is bad for non joinder of necessary parties. It is argued by the

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learned counsel for the plaintiff, when defendant raise objection of non joinder of necessary parties then he has to give particulars of the parties necessary for the suit but the defendant has not given so. On the other hand, it is argued by the learned defence counsel that the plaintiff knows very well who are the legal heirs of deceased tenant. Learned defence counsel pressed upon the contents of para 3 of the plaint. Wherein, plaintiff has pleaded that Dr.M.L. Nahar expired in 1993 at Pune, leaving behind him his son and two married daughters. He further says that plaintiff knows that there are two daughters of Dr.M.L.Nahar who are not made parties to the suit.

8. Learned counsel for the plaintiff argued that being married daughters, they are not necessary parties to the suit and second, it is for the Court to determine one of the legal heirs of deceased tenant U/s.7(15)(viii)(d) of The Maharashtra Rent Control Act, 1999. Necessary parties are those in absence of whom the issue in controversy can not be determined. Here in this particular case though there

are two daughters of deceased tenant, they are married and residing at their respective matrimonial places. Furthermore, it is for the landlord to choose one of the heirs of deceased tenant. Therefore, question of adding total heirs of deceased tenant and to file suit against one is the choice of plaintiff landlord. Therefore, the question of non joinder of necessary parties does not arise. The sisters of defendant are not necessary parties. Hence, point No.1 is answered in the negative.

9. **Point No.2** :- It is argued by learned defence counsel that it is the suit by the landlord for recovery of possession. It governs under Article 67 of the Limitation Act. The limitation is 12 years from the date on which tenancy is determined. He further argued that as per own pleadings of plaintiff, the tenancy is determined with the death of original tenant which happened somewhere in the year 1993. If the period of 12 years counted from 1993, 12 years expires in 2005 and the suit is filed in the year 2008. Therefore, it is barred by limitation. Learned defence

counsel relied on **AIR 1987 S.C. 1823 – Shakuntala Tiwari Vs. Hem Chand Singhania**. Wherein it is held that the suit for possession by the landlord governs under Article 67 of The Limitation Act. The learned counsel for the plaintiff admitted that the suit is governed under Article 67 of The Limitation Act. He has submitted that after the death of original tenant one Roma Nahar, daughter in law of original tenant claimed tenancy right in suit premises and that litigation was going on, which is still pending in the Hon'ble High Court. The appeal is decided on 27.9.1996. The limitation starts from 27.9.1996. If limitation is counted since 27.9.1996, then also the suit is not filed within prescribed period of 12 years. Because, the suit is filed on 6.10.2008. The dispute between Dr.M.L.Nahar and Roma Nahar is still subjudice before the Hon'ble High Court.

10. Plaintiff came with specific case that the tenancy is determined on the death of original tenant Dr.M. L. Nahar which happened in 1993. If plaintiff says that tenancy is determined at the death of original tenant, then

naturally suit is barred by limitation, because it is not filed within 12 years as per Article 67 of The Limitation Act. Hence, point No.2 is answered in the affirmative.

11. **Point No.3** :- Plaintiff is seeking possession of suit premises from the defendant and defendant is saying that he is not in possession of suit premises. It is argued by learned Counsel for plaintiff, there is no relationship of landlord and tenant existing between plaintiff and defendant but the defendant is made party only because he is legal heir of original tenant and for the sake of obtaining possession. On the other hand, it is argued by the learned defence counsel that when there is no any relationship of landlord and tenant, then this Court has no jurisdiction to decide the matter. Plaintiff has made party defendant only because defendant is legal heir of deceased tenant. Total claim of plaintiff is based on the definition given U/s.7(15)(viii)(d). The definition says, if any member of the tenant's family resides or running business in the suit premises at the time of tenant's death, the tenancy right

devolve upon him. In absence of such a family member, any heir of the deceased tenant, as may be decided by the Court. Now the question arises whether this particular defendant can be decided as a tenant or not. Defendant is not denying that he is the son of Dr.M. L. Nahar, who was the original tenant but he is denying to be a tenant. Plaintiff is also saying that tenancy is determined with the death of original tenant but this defendant is made party only for the sake of taking possession. Plaintiff is also not saying that this particular defendant is in possession of the suit premises . In such circumstances, the question is whether such decree can be passed or not.

12. In prayer clause (b) plaintiff has prayed for issuing direction to the defendant to put plaintiff into actual, physical and peaceful possession, user and vahiwat of the suit premises. When the suit premises is not in possession of the defendant, then how defendant can deliver such possession of the suit premises is the question. A person who himself is not in possession, the thing which is not with

the defendant, then how he can be directed to deliver possession and how he can satisfy the decree. If the decree is passed , it will be a paper decree and it would not be satisfied by the defendants.

13. It is argued by learned counsel for plaintiff that the defendant is the legal heir of original tenant but he has not disclosed who is in possession of the suit premises. When he is not in possession, then who has to explain about it. On the other hand, it is argued by the learned defence counsel that it is not the business of defendant to explain who is in actual possession. It is for the landlord to see who is in actual possession. He pressed on the own pleadings of plaintiff and argued that plaintiff knows very well who is in actual possession of the suit premises. In para 7 of the plaint plaintiff has specifically mentioned that District Court has dismissed the appeal preferred by Dr.Roma Nahar and two month's time was granted to her for vacating the suit premises. This single sentence of para 7 of the plaint indicates that Dr.Roma Nahar is in possession of the suit

premises but she is not party to the suit. When the suit premises is in possession of third party, then how the defendant can be directed to hand over its possession. Considering the facts and circumstances, such decree can not be passed and such direction can not be given to the defendant. Hence, point No.3 is answered in the negative and pass the following order :-

O R D E R

1. Suit is dismissed.
2. No order as to costs.

09.12.2010. sd/-xxx
(**Uttam Telgaonkar**)
Judge, Small Causes Court
Pune.

REMARK : I affirm that the contents of this P.D.F.
File/judgment are same, word to word as
per the original judgment.

Name of the steno : M.M.A. Hussain,

Court's Name : Principal Judge,
Small Causes Court Pune.

Date : 27.12.2010.

Judgment signed on 27.12.2010.

Judgment uploaded on 27.12.2010.