

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 3595 OF 2000

SHAKUNTALA VASANT PAHADI & ORS

Appellant (s)

VERSUS

PURUSHOTTAM VASANT PETHE & ORS

Respondent(s)

(With prayer for interim relief)

Date: 27/09/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. AGRAWAL

HON'BLE MR. JUSTICE P.P. NAOLEKAR

HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

For Appellant(s)

Mr. A.S. Bhasme, Adv.

Mr. Sanjay Kuamr Dubey, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following

O R D E R

Heard learned counsel for the appellants.

The appeal is allowed, impugned order rendered by the High Court
is set aside and the judgments and decrees passed by the trial Court as well
as the lower appellate Court are restored.

[Charanjeet Kaur]

Court Master

[Om Prakash]

Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3595 OF 2000

Shkuntala Vasant Pahadi & Ors. .. Appellant(s)

Versus

Purushottam Vasant Pethe & Ors. .. Respondent(s)

O R D E R

Heard learned counsel for the appellants.

The appellants filed a suit for eviction in the year, 1977 impleading therein wife of one Vasant Pethe, who was the original tenant and died in the year, 1969. The said suit was decreed against the wife of Vasant Pethe and decree passed by the trial Court has been confirmed and the same attained finality, the matter having not been taken to any higher Court. For execution of the said decree, an execution petition was filed. In the meantime, children of Vasant Pethe filed another suit in the year, 1987 challenging the validity or otherwise of decree passed in the eviction suit referred to above filed in the year, 1977 on the ground that at the time of death of their father who was the original tenant, they were minors and

they along

..2/-

2

with their mother were residing in the rented premises, as such were necessary parties in the said eviction suit and they having not been made parties, the decree passed in such a suit was not binding upon them.

The said suit was dismissed by the trial Court and the decree of the trial Court was confirmed on appeal being filed by the plaintiffs-respondents. Thereafter, plaintiffs filed a writ petition in the High Court challenging the judgments rendered by the trial Court as well as the appellate Court. By the impugned order, the High Court has allowed the writ petition, set aside the judgments rendered by the trial Court as well as the appellate Court and decreed the suit on the sole ground that as the plaintiffs who were some of the heirs of the original tenant- Vasant Pethe, were not impleaded in the eviction suit wherein only their mother was impleaded, who was only one of the heirs of the original tenant- Vasant Pethe, the eviction decree passed therein was not binding upon them. Hence, this appeal by special leave.

In the present case, in spite of service of notice, the

plaintiffs-respondents have not appeared before this Court to contest the prayer made herein. Learned counsel for the appellants submitted that if an original tenant dies leaving behind more than one heir, it is not necessary under law to implead all the heirs in a suit for eviction but the same can be filed only against one of the heirs who could have represented interest of the deceased tenant; in other words, his interest has been looked after in a bona fide manner, but if there is any clash of interest between the person concerned and his assumed representation or if the later due to collusion or for any other reason mala fide neglect to defend the case, he cannot be considered to be a representative. Reliance in this connection has been placed upon decision of this Court in the case of Surayya Begum (MST) vs. Mohd. Usman & Ors., 1991(3) SCC 114. In our view, in the absence of any allegation and proof against the mother, showing collusion with the landlord or mala fide neglecting the interest of her sons, i.e., the plaintiffs, present case is squarely covered by the aforesaid decision of this Court, as such the High Court was not justified in decreeing the suit.

Accordingly, the appeal is allowed, impugned order rendered by the High Court is set aside and the judgments and decrees passed by the trial Court as well as the lower appellate Court are restored.

.....J

[B.N. AGRAWAL]

.....J

[P.P. NAOLEKAR]

.....J

[LOKESHWAR SINGH PANTA]

NEW DELHI,

SEPTEMBER 27, 2006.