

(2011) 03 AHC CK 0411

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 15996 of 2011

Hans Kumar

APPELLANT

Vs

Madan Gopal Rastogi and Others

RESPONDENT

Date of Decision: March 16, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10, 34

Citation: (2011) 2 RCR(Rent) 196

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rakesh Tiwari, J.

Heard learned counsel for the parties and perused the record.

2. This writ petition is directed against the order and judgment dated 5.3.2011 passed by the Prescribed Authority/Civil Judge (Senior Division), Meerut in P. A. Case No. 08 of 2005, appended as Annexure-7 to the writ petition. The petitioner has prayed for a writ of certiorari quashing of the aforesaid order and also a writ of mandamus commanding the Prescribed Authority/Civil Judge (Senior Division), Meerut to implead the petitioner as party to the proceedings and to hear and decide the P. A. Case No. 08 of 2005 in accordance with law.

3. The facts averred by the petitioner in the writ petition are that he along with respondents no. 1 to 4 are the co-owner and landlord of Shop No. 439 (part of building no. 96), Sarrafa Bazar, Meerut. Shyam Saran, respondent no. 5 is the tenant in the said shop; that Shop No. 439 along with other Shops 435 to 438 were the property of one Smt. Sharbati Devi, W/O Sri Budh Prakash and were purchased by Smt. Dayawati W/o Sri Radhey Lal, Sri Krishna Gopal Rastogi, Sri Madan Gopal Rastogi, Sri Shyam Lal and Sri Vijay Pal Rastogi vide registered sale-deed in the year 1969. It is also averred that each of the aforesaid Vendees had 20% share each in

the said shops. On the death of Smt. Dayawati her 20% share devolved upon her sons and daughter and consequently the share of Krishna Gopal and other Vendees increased to 24% each while the share of the daughter Jai Mala Rastogi came to 4%.

4. On 11.12.2000, Shyam Lal Rastogi who had 24% share in the shops sold 16% of his share to the petitioner and remaining 8% share to Sandeep Rastogi, respondent no. 2. Sandeep Rastogi also bought the 4% share of Smt. Jai Mala vide sale deed dated 11.12.2000. Krishan Gopal sold his 12% share in the shops 435 to 439 to Prateek Rastogi, respondent no. 3 and 12% share to Vivek Rastogi vide sale deed dated 30.12.2000 and 31.1.2001. Sri Vijay Pal sold his 24% interest in the shops to Madan Gopal on 15.9.2001. Net result of the sale deed aforesaid is that the petitioner has 16% interest in the shop nos. 435 to 439 while the respondents no. 1 to 4 collectively have 84% share in the shops.

5. The shops no. 435 to 439 including the shop in dispute have not been partitioned and a partition suit being Partition Suit No. 281 of 2002 (Hans Kumar v. Vijay Pal & others) is pending consideration before the VIth Civil Judge (S.D.) Meerut.

6. The respondents no. 1 to 4 on the strength of 84% share in their favour have been keeping the petitioner in the dark by filing PA cases against tenants and getting the possession of the shops which have yet not been partitioned and for which partition suit is still pending. The respondents no. 1 to 4 filed PA Case No. 74 of 2004 (Madan Gopal & others v. Swatantra Prakash & others) in respect of shop no. 436, Sarrafa Bazar, Meerut without impleading the petitioner and got released the shop in just 5 days from filing of the release application u/s 21(1)(a) of U.P. Act No. 13 of 1972. In the year 2005 with a view to grab the possession of the shop no. 439 under the tenancy of the respondent no. 5, the respondents no. 1 to 4 instituted PA Case No. 08 of 2005 (Madan Gopal & Others v. Shyam Saran) without impleading the petitioner. On coming to know about filing of release application, the petitioner filed an application under Order 1 Rule 10 CPC read with Section 34 of the Act for being impleaded in the proceedings. The said application was contested by the respondents no. 1 to 4 by filing objections. Respondent no. 5 also filed his written statement denying the plaint allegations stating therein that all the co-landlords have not been impleaded in the proceedings. The Prescribed Authority vide order dated 5.3.2011 rejected the said impleadment application holding that third party Hans Kumar is not necessary party in the present case. Aggrieved by the said order, petitioner has come up in this writ petition.

7. Learned counsel for the petitioner has assailed the validity and correctness of the order impugned on the ground that the Prescribed Authority/Civil Judge (Senior Division), Meerut while passing the impugned order erred in law in omitting to consider that under the law a person who is entitled to occupy the premises alone can move an application for occupation for himself or any member of his family.

8. In this regard he has placed reliance upon a judgment rendered in the case of Smt. Sughra Begum v. Sri Ram and others reported in 1983 (2) ARC 143 . Paragraphs 8,9 and 10 of the said judgment relied upon by the petitioner are thus:

8. Learned counsel for the petitioner contended that as Smt. Sughra Begam had been realising the rent of the house from respondent no. 1, she was the landlord of the premises, and that she could file the application u/s 21 for her need, even though she may not be its owner, line submission made is not correct. u/s 21 a landlord can move an application for occupation by himself or any member of his family. The fact that only a person who is entitled to occupy can alone move an application indicates that one who is not entitled to occupy or has no right to occupy in his own right cannot apply for release u/s 21. An agent or attorney of an owner of the house may realize the rent of the house in respect of which power is conferred upon him by the owner to do so and for that purpose he may be considered to be landlord within the meaning of that expression defined in Section 3, but such a person would not be entitled to move an application u/s 21.

9. In MM Quassim v. Manohar Lal, this controversy came up for consideration before the Supreme Court in connection with a similar provision in the Bihar Buildings (Lease, Rent and Eviction) Control Act. The Supreme Court held that although the expression landlord given in Section 2(d) of the said Act was couched in a very wide language, but it would not entitle an agent or attorney of the owner of the house to move an application for release as he has no right to occupy the house. The relevant portion of the said decision is quoted below:

Therefore while taking advantage of the enabling provision enacted in Sec. 11(1)(c), the person claiming possession on the ground of his reasonable requirement of the leased building must show that he is "a landlord in the sense that he is owner of the building and has a right to occupy the same in his own right. A mere rent collector, though may be included in the expression landlord in its wide amplitude, cannot be treated as a landlord for the purposes of Section 11(1)(c). This becomes manifestly clear from the explanation appended to the sub-section. By restricting the meaning of expression landlord for the purpose of Section 11(1)(c), the legislature manifested its intention namely that landlord alone can seek eviction on the ground of his personal requirement if he is one who has a right against the whole world to occupy the building himself and exclude any one holding a title lesser than his own.

10. The principles laid down in that case squarely apply to the present case. For being entitled to apply u/s 21(1), that person must be entitled to occupy the premises in his own right. The expression "occupation for himself or for family members" has been deliberately used by the legislature to manifest its intention that the landlord alone can seek eviction on the ground of his personal requirement if he is one who has a right against the whole world to occupy the building. In the instant case, I find that the contention of the petitioner's counsel that Smt. Sughra Begum could get the release order in her favour merely on the ground that she has

been realising the rent, cannot be accepted. Smt. Rabia Begum had not been impleaded in the application either as applicant for release or as opposite party. On the facts, it was found by the learned Additional District Judge that Smt. Rabia Begum had not ceased to be the landlady by virtue of the oral gift made by her. Smt. Sughra Begum and Smt. Rabia Begum both being the landlords, the application filed by Sughra Begum alone was not maintainable.

9. Learned counsel for the petitioner has also assailed the validity and correctness of the order impugned on the ground that the court below erred in law in omitting to consider that if release application is allowed, its result would be the possession of the shop under the tenancy of the respondent no. 5 to be delivered to respondents no. 1 to 4 even when partition suit in respect of the shops including the shop in dispute is pending and the partition is yet to take place. He has further assailed the order impugned on the ground that the court below erred in law in overlooking the import of the Rule 15 (2) of 1972 which requires that the release application to be signed by all the co-landlords and in the instant case the petitioner who is admittedly co-landlord has not signed the release application nor has consented for filing the release application against respondent no. 5.

10. In this context, learned counsel for the petitioner has relied upon a judgment rendered in the case of [Karta Ram Rameshwar Dass Vs. Ram Bilas and Others](#), . The relevant portion of paragraph 7 of the said judgment relied upon by the petitioner is thus:

After a partition is effected or a decree for partition is passed, it would be open to the co-sharers to evict a tenant from that portion of tenanted premises which had fallen in their respective sharers by filing separate proceedings for eviction under rent control laws on the grounds enumerated thereunder.

11. He has also relied upon a judgment rendered in the case of [India Umbrella Manufacturing Co. and Others Vs. Bhagabandei Agarwalla \(Dead\) by Lrs. Smt. Savitri Agarwalla and Others](#), as well as upon a judgment rendered in the case of [Mohinder Prasad Jain Vs. Manohar Lal Jain](#),

12. In later case the Court has relied upon paragraph 10 as relied upon paragraph 6 of the judgment rendered in India Umbrella Manufacturing Co. & others v. Bhagabandei Agarwalla & others (supra).

13. Paragraphs 10 and 11 of the judgment relied upon by the petitioner in Mohinder Prasad Jain v. Manohar Lal Jain (supra) reads thus:

9. This question now stands concluded by a decision of this Court in India Umbrella Mfg. Co. v. Bhagabandei Agarwalla wherein this Court opined: (SCC p. 183, para 6).

6. Having heard the learned counsel for the parties we are satisfied that the appeals are liable to be dismissed. It is well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. (See Sri

Ram Pasricha v. Jagannath and Dhannalal v. Kalawatibai, SCC para 25.) This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In the present case, the suit was filed by both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so as to prejudice the other co-owner. The suit once filed, the rights of the parties stand crystallised on the date of the suit and the entitlement of the co-owners to seek ejectment must be adjudged by reference to the date of institution of the suit; the only exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the tenant comes to an end by act of parties or by operation of law.

10. A suit filed by a co-owner, thus, is maintainable in law. It is not necessary for the co-owner to show before initiating the eviction proceedings before the Rent Controller that he had taken option or consent of the other co-owners. However, in the event a co-owner objects thereto, the same may be a relevant fact. In the instant case, nothing has been brought on record to show that the co-owners of the respondent had objected to eviction proceedings initiated by the respondent herein. The submission of the learned counsel for the appellant to the effect that before initiating the proceedings, the respondent was required to show that he had experience in running the business in Ayurvedic medicines, has to be stated to be rejected. There is no law which provides for such a precondition. It may be so where a licence is required for running a business, a statute may prescribe certain qualifications or preconditions without fulfilment whereof the landlord may not be able to start a business, but for running a wholesale business in Ayurvedic medicines, no qualification is prescribed. Experience in the business is not a precondition under any statute. Even no experience therefor may be necessary. If the respondent has proved his bona fide requirement to evict the appellant herein for his own purpose, this Court may not, unless an appropriate case is made out, disturb the finding of fact arrived at by the Appellate Authority and affirmed by the High Court.

14. Per contra, learned counsel for the respondent has submitted that admittedly the property have not been partitioned and a partition suit is pending. He has further submitted that in whose share would this property fall is not determined as yet and as such it cannot be said that the petitioner will have any right over the property in dispute at this time and as such he is necessary and proper party. Any application filed by co-owner is an application on behalf of other co-owners for release will benefit all the co-owners. He has also submitted that since during pendency of release application the petitioner has sold his share in this particular shop in dispute to respondents no. 1 to 4 and, therefore, he has no right over the said property to oppose the release application or file an application for

impleadment as he is not necessary and proper party in the facts and circumstances of this case. Hence the judgments cited by the petitioner are hereby distinguishable and are not applicable in the facts of the present case.

15. After hearing the counsel for the parties and perusal of record it appears to be well settled law that that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners, until and unless other co-owners determined that they were agreeable to eject the tenant and the suit was filed in spite of their disagreement.

16. The impleadment application was moved on the ground that third party had share of 16% over the property in dispute and the respondents are share holder of 84% in all the shops. According to the averment made in the impleadment application these facts have been concealed by other co-owners when release application was filed by respondents no. 1 to 4. He has sought impleadment on the ground that he may also be heard in the matter. Therefore, it is clear from perusal of impleadment application that he has no objection to release of the shop. Moreover, he has sold his share in the shop in dispute in favour of other co-owner respondent no. 1 and as such had no locus standi to contest the release application in so far as this shop is concerned.

17. As regards cases cited by the petitioner are concerned they may also be considered at this stage. In paragraphs 8,9 and 10 relied upon by the petitioner in the judgment of Smt. Sughra Begum v. Sri Ram and others (supra), the Court has held that u/s 21 of Act No. 13 of 1972, the landlord can move an application for occupation by himself or any member of his family, therefore, for this reason release application is maintainable by the landlord, owner or co-owner. It is apparent from paragraph 9 of the said judgment that person claiming possession on the ground of reasonable requirement must show that he is "landlord in the sense that he is owner of the building and has a right to occupy the same in his own right. A mere rent collector, though may be included in the expression of the landlord cannot be treated as owner until and unless the landlord himself is also owner. Paragraph 10 of the said judgment has been concluded with the view that principle laid down in the judgment of M.M. Quassim v. Manohar Lal will apply in the facts of the present case.

18. In the present case there is no dispute that the respondents no. 1 to 4 are co-owner and landlord of the building in dispute. As the petitioner has already sold her share of property to respondent no. 1 who has filed release application, the case cited by the petitioner are not applicable in the facts and circumstances of the present case.

19. In the case of Mohinder Prasad Jain v. Manohar Lal Jain (supra), petitioner has relied upon paragraphs 10 and 11. In paragraph 10 the Court has quoted paragraph 6 of the judgment in the case of India Umbrella Manufacturing Co. & others v.

Bhagabandei Agarwalla & others (supra) and thereafter in paragraph 11 has held that the suit filed by co-owner is maintainable in law. It has also been held in the said paragraph that it is not necessary for co- owner to show in the release proceedings before the rent controller that co- owner has taken option or consent of other co-owners. Since the petitioner no longer remains as co-owner in the shop in dispute, he should have raised an objection to the release application. As such this case also does not help the petitioner.

20. Lastly, in the case of Messrs Karta Ram Rameshwar Dass v. Ram Bilas and others (supra), the Court has held that after a partition is effected or a decree for partition is passed, it would be open to the co-sharers to evict a tenant from that portion of tenanted premises which had fallen in their respective sharers. The petitioner admittedly has sold her share to respondent no. 1, therefore, this case also does not help the petitioner, but help the respondent.

21. Considering the facts and circumstances of the case, I find that the application filed by one of the co-owner is maintainable and since partition suit is pending and the petitioner having sold his share in the shop in dispute to respondent no. 1, no right accrued over the said property in dispute or for contesting the release application. There is no illegality or infirmity in the order impugned and it is accordingly upheld.

22. For all the reasons stated above, I am not inclined to interfere in this case at this stage.

23. The writ petition is, accordingly, dismissed. No order as to costs.