Sri Ram Pasricha

Vs

Jagannath and Others

Civil Appeal No. 1223 of 1975

(Y.V. Chandrachud, P.K. Goswami, A.C. Gupta JJ)

24.08.1976

JUDGMENT

GOSWAMI, J. -

1. This is an appeal by the defendant-tenant by certificate from the judgment of the Calcutta High Court. The question that arises for decision is whether a landlord who is a co-owner of the premises with others is "the owner" within the meaning of Section 13(1)(f) of the West Bengal Premises Tenancy Act, 1956 (briefly the Act). It will turn on the interpretation of the expression "if he is the owner" under Section 13(1)(f) of the Act.

2. Briefly the facts are as follows :

> 2A. The plaintiff-respondent (hereinafter to be referred to as the plaintiff) is admittedly the landlord of one late Bhagat Ram Pasricha predecessor-in-interest of the present appellant and respondents 2 and 3 (hereinafter to be referred to as the defendants). The tenancy was in respect of a part of the premises 221/1, Rash Behari Avenue, Calcutta, being the entire second floor of the building. The tenancy commenced sometime in 1946 and Bhagat Ram Pasricha promised to vacate the said premises within March 31, 1947 and positively after March 31, 1948. Bhagat Ram Pasricha, however, did not vacate and died on February 18, 1960, leaving behind the defendants as his heirs. The plaintiff is only a cosharer owner of the suit premises being one of the heirs of his father late Motilal Sen who originally owned the property.

3. The plaintiff instituted a suit for eviction of the defendants in December 1962 on the twin pleas of default in payment of rent and reasonable requirement of the premises for his own occupation as well as for the occupation of the members of the joint family consisting of his mother and his married brother. The suit was contested by the defendants. The trial Court decreed the suit on both the grounds. On the question of reasonable requirement the trial Court held that the plaintiff being only a cosharer owner cannot be said to be the owner within the meaning of Section 13(1)(f) of the Act. The trial Court, however, held that the plaintiff succeeded in proving the case of reasonable requirement of the members of the family "for whose benefit the premises were held by him" within the meaning of the second part of Section 13(1)(f).

4. On appeal by the defendants the lower appellate Court did not accept the plea of default but affirmed the finding of reasonable requirement although the learned Judge was not specific as to which of the two material parts of Section 13(1)(f) would govern the case.

5. In the second appeal by the defendants before the learned single Judge of the High Court the question of factual existence of reasonable requirement was not disputed. It was, however, contended before the learned single Judge that even though the actual reasonable requirement of the premises was established the plaintiff was not entitled to a decree for eviction being only a cosharer and as such not "the owner" of the premises within the meaning of Section 13(1)(f). It was submitted that a co-owner was only a part-owner and was not entitled to an order of eviction under Section 13(1)(f) of the Act. The learned single Judge accepted the contention of the defendants and dismissed the suit observing :

> It will not be sufficient if the reasonable requirement is of all members of the family of the co-owners but such co-owners must again be the landlords who only are made entitled to a decree for recovery of the possession under Section 13(1)(f).

6. In the letter patent appeal before the Division Bench the High Court did not agree with the single Judge and set aside the decision and decreed the suit for eviction. The Division Bench held :

> In our opinion a co-owner is as much an absolute owner as a sole owner is with reference to the interest held by him.

7. Mr. Tarkunde, the learned Counsel appearing on behalf of the appellant submits that the decision of the Division Bench is erroneous and we should accept the views of the single Judge. He submits that a landlord in order to be able to evict a tenant under Section 13(1)(f) must be an absolute owner of the premises from which eviction is sought. A co-owner landlord without impleading all the owners of the premises is not entitled to ask for eviction under Section 13(1)(f) of the Act. Mr. A. K. Sen, who appears on behalf of the sisters of the appellant (respondents 2 and 3) also emphasised upon this part of the case while adopting the arguments of Mr. Tarkunde.

8. Mr. Desai, on the other hand, contests this proposition and submits that the decision of the Division Bench is correct.

9. Mr. Tarkunde referred to certain decisions in support of the submission that a suit by one of the co-sharers for eviction of a tenant has always been held to be incompetent. Counsel relied upon the decision in Bollye Satee v. Akram Ally (1879 LLR 4 Cal 961). This was a case in which it was held that a lessee of a jalkar cannot be ejected by a suit brought by one only of the several proprietors all of whom had granted the lease. This case, with its own fact, is, therefore, of no aid in the present controversy.

10. In Kathusheri Pishareth Kanna Pisharody v. Vallotil Manakel Narayanan Somayajipad (1878-81 ILR 3 Mad 234), the suit was brought by the plaintiffs on behalf of an association (sabha) to recover certain lands demised by the sabha. It was held that all the co-owners must join in a suit to recover property unless the law otherwise provides. This decision will again be of no assistance to the appellant.

11. In Balkrisna Sakharam v. Moro Krishna Dabholkar (1897 ILR 21 Bom 154) it was a case of one of the co-sharer-jagirdars who as a manager filed a suit for recovery of Rs. 99 being the balance due to him on account of the highest rate of assessment for the three years preceding the suit. The defendant dispute the plaintiff's right to demand the highest rate of assessment and contended that the plaintiff had no right to sue alone as he and his cosharers owned the jagir and the defendant cultivated the land in that village by paying the jagirdars something less than the full assessment

prior to the years in the suit. It was in that context that the following observation appears in the judgment which is relied upon by counsel :

> We must, therefore, treat it as settled law that a co-sharer who is manager even with the consent of his co-sharers cannot maintain a suit by himself and in his own name to eject a tenant who has failed to comply with a notice calling on him to pay enhanced rent.

This proposition of law also purports to be in line with the two earlier decisions relied upon by counsel and is of little aid to him.

12. In Dwaraka Nath Mitter v. Tara Prosunna Roy (1890 ILR 17 Cal 160), the objection of the defendant was to the form of the suit and it was pressed from the very commencement by the defendant. This was a suit by the plaintiffs for balance of arrears of rent making other cosharers as defendants. The court held that unless the cosharers had refused to join in the suit or had otherwise acted prejudicially to their interests the plaintiffs were not entitled to sue alone. In this view of the matter the suit was dismissed. We do not see how this decision can come to the assistance of the appellant.

13. It is strenuously submitted by Mr. Tarkunde that unless the landlord is also the absolute owner of the premises, he cannot evict the tenant under Section 13(1)(f). Landlord means landlords under the appropriate General Clauses Act and, therefore, since there are other cosharers the plaintiff alone could not file the suit for eviction.

14. There are two reasons for our not being able to accept the above submission. Firstly, the plea pertains to the domain of the frame of the suit as if the suit is bad for nonjoinder of other plaintiffs. Such a plea should have been raise, for what it is worth, at the earliest opportunity. It was not done. Secondly, the relation between the parties being that of landlord and tenant, only the landlord could terminate the tenancy and institute the suit for eviction. The tenant in such a suit is estopped from questioning the title of the landlord under Section 116 of the Evidence Act. The tenant cannot deny that the landlord had title to the premises at the commencement of the tenancy. Under the general law, in a suit between landlord and tenant the question of title to the leased property is irrelevant. It is, therefore, inconceivable to throw out the suit on account of non-pleading of other co-owners as such.

15. Being faced with this position counsel submits that since the requirements are found to be of the co-owners, the suit cannot be decreed in their absence. This is a repetition of the first submission in a different form. Counsel relied upon McIntyre v. Hardcastle ((1848) 1 All ER 696). The English rule laid down in that decision is that if two or more landlords institute a suit for possession on the ground that a dwelling house is required for occupation of one of them as a residence the suit would fail. The requirement, according to the decision, must be of all the landlords.

16. The High Court of Calcutta and Gujarat have dissented from the rule of English law in McIntyre's case (see Kanika Devi v. Amarendra Nath Roy Chowdhuri (65 Cal WN 1078); Tarak Chandra Mukherjee v. Ratanlal Ghosal (1959 CJN 136); Taherbhai Hebtullabhai v. Ambalal Harilal Shah (ILR (1966) 7 Guj 936); Deb Ranjan Chatterjee v. Swaranarani Biswas (78 Cal WN 1034)).

17. Indeed the rule in McIntyre's case is abhorrent to the Indian conception and structure of social life of our country with its benign sensitivity and ties, which is not based on pure individualism. A

widowed sister, suddenly shipwrecked in the midstream of married life, with no other help, returns to parental home or to her brothers' where sympathetic and affectionate shelter is readily available to her. In such a case the additional requirement of the widowed sister and her children may furnish a reasonable requirement of the father or the brothers for the purpose of eviction of their tenant. It is enough if the requirements are of any one of the members of the family or of dependants to furnish a reasonable plea for eviction on the ground of personal requirement. We endorse the parting of the ways from the English rule on this aspect of the matter by the High Courts. This is in accord with healthy Indian tradition.

18. Keeping in the forefront the observations of the Bombay High Court in Vagha Jesing v. Manilal Bhogilal Desai (37 Bom LR 249 : AIR 1935 Bom 262)(at page 252) where reference has been made to the landlords' rights belonging jointly to several persons and hence warranting a suit by all the co-owners, Mr. Tarkunde drew our attention to the admission of the plaintiff in his deposition regarding the death of his father in 1949 and that Bhagat Ram Pasricha was inducted by him as instructed by his father to do so. From this he submitted that all the heirs of later Motilal Sen were the landlords and, therefore, they should have been impleaded as plaintiffs in the suit. We are unable to give effect to this submission taken for the first time in this Court in view of the clear acknowledgment and admission of the defendants and concurrent findings of the courts the plaintiff is their landlord.

19. Mr. Tarkunde also relied upon a Full Bench decision of the Gujarat High Court in Namlal Girdharlal v. Gulamnabi Jamalbhai Motorwala (AIR 1973 Guj 131 : 13 Guj LR 880 (FB)) and read to us the following passage at page 146 :

> It is, therefore, clear that the rule that a co-owner may maintain an action to eject a trespasser without joining other co-owners in such action can have no application where a co-owner seeks to evict a tenant who is in possession of the property after determination of the lease. Such a tenant can be evicted only by an action taken by all co-owners.

But this rule is not applicable in the present case as would appear from the decision itself. The Gujarat decision at para 10 of the judgment excludes two categories described therein and the rule of estoppel applies to these two categories. The present case, even according to this decision, falls under the excepted category.

20. Before we come to the real question at issue we may turn to Section 13(1)(f) of the Act as it was at the material time :

> Section 13. Protection of tenant against eviction. - (1) Notwithstanding anything to the contrary in any other law, no order or decree for the recovery of possession of any premises shall be made by any Court in favour of the landlord against a tenant except on or more of the following grounds, namely :
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> (f) where the premises are reasonably required by the landlord either for purposes of building or rebuilding or for making thereto substantial additions or alterations or for his occupation if he is the owner or for the occupation of any person for whose benefit the premises are held.

21. This is not a case attracting the second part of Section 13(1)(f), that is to say, the clause providing for the occupation of any person for whose benefit the premises are held. We will not,

therefore, refer to the submission of the appellant and to the decisions relied upon by him with reference to that clause.

22. The present case, on the facts found, is covered by the first part of Section 13(1)(f), namely where the premises are reasonably required by the landlord for his own occupation if he is the owner.

23. There is no dispute that the plaintiff is the landlord. It is, however, found that he is one of the co-owners of the premises - the other cosharers being his mother and married brother, who reside in the same premises long with him. The premises in suit, namely, the second floor of the building in occupation of the tenant is required by the plaintiff for occupation of the members of the joint family and for their benefit. A major portion of the ground floor of the building accommodates the joint family business and the first floor is found by the court to be inadequate to the requirements of the large family of eighteen members including the widowed mother.

24. That the particular requirement is reasonable is no longer in controversy. The only question is whether a decree can still be passed in favour of the plaintiff since he is not the absolute and full owner of the premises, sharing, as he does, the interest in the premises along with other cosharers.

25. The principal question, therefore, is whether the plaintiff being a co-owner landlord can be said to reasonably require the premises for his own occupation within the expression "if he is the owner" in Section 13(1)(f).

26. Mr. V. S. Desai reads to us from Salmond on Jurisprudence (13th edition) and relies on the following passage in Chapter 8 (Ownership), paragraph 46 at page 254.

As a general rule a thing is owned by one person only at a time, but duplicate ownership is perfectly possible. Two or more persons may at the same time have ownership of the same thing vested in them. This may happen in several distinct ways, but the simplest and most obvious case is that of co-ownership, partners, for example, are co-owners of the chattels which constitute their stock-in-trade, of the lease of the premises on which their business is conducted, and of the debts owing to them by their customers. It is not correct to say that property owned by co-owner is divided between them, each of them owning a separate part. It is undivided unity, which is vested at the same time in more than one person ..... The several ownership of a part is a different thing from the co-ownership of the whole. So soon as each of two co-owners begins to own a part of the thing instead of the whole of it, the co-ownership has been dissolved into sole ownership by the process known as partition. Co-ownership involves the undivided integrity of what is owned.

27. Jurisprudentially it is not correct to say that a co-owner of a 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 position will change only when partition takes place. It is, therefore, not possible to accept the submission that the plaintiff who is admittedly the landlord and co-owner of the premises is not the owner of the premises within the meaning of Section 13(1)(f). It is not necessary to establish that the plaintiff is the only owner of the property for the purpose of Section 13(1)(f) as long as he is a co-owner of the property being at the same time the acknowledged landlord of the defendants.

28. Mr. Tarkunde also submitted that since the Calcutta High Court had held in Yogamaya Pakhira v. Santi Sudha Bose (ILR (1968) 2 Cal 70) that a permanent lessee is not an owner within the

meaning of Section 13(1)(f) a co-owner would not be in a better position. We are of opinion that a co-owner is as much an owner of the entire property as any sole owner of a property is. We, however, express no opinion about the case of a permanent lessee as this point does not arise in this appeal.

29. As all the submissions of the appellant fail, the appeal is dismissed. We will, however, make no order as to costs.

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