

Textile Association (India) Bombay Unit

Vs

Balmohan Gopal Kurup and Another

Civil Appeal No. 3569 of 1990

(K. Jagannatha Shetty, P. B. Sawant, M. M. Punchhi JJ)

24.07.1990

ORDER

1. Special leave granted.

2. The premises in question was under the occupation of one Gopal Kurup. He left behind his widow, two sons and daughters. After the death of Gopal Kurup the appellant-landlord filed an eviction petition on the ground of bona fide requirement and default in payment of rent. That was R.A.E. Suit No. 5136 of 1976 on the file of the Small Causes Court, Bombay. In that suit, the respondent 1 was not a party. His mother and brother alone were impleaded as parties. On March 31, 1977, the suit was decreed ex parte, apparently on the ground of failure to pay the arrears. That decree was put into execution and the possession was recovered by the landlord.

3. On August 13, 1979 respondent 1 filed a suit out of which the present appeal arises. He claimed that he was one of the tenants living in the premises at the time of death of his father Gopal Kurup and the ex parte decree obtained by the landlord was, therefore, not binding upon him. The trial court found that he was also one of the tenants who lived along with the father and declared that the ex parte decree for eviction was not binding on him. The appeal against the said decree was dismissed and so too the writ petition by the High Court.

4. Mr. Lalit, counsel for the appellants argued that the ex parte decree obtained against the joint tenants was equally binding on the respondent. Reference was made in this context to the decisions of this Court in Kanji Manji v. Trustees of the Port of Bombay (1962 Supp 3 SCR 461 : AIR 1963 SC 468) and H. C. Pandey v. G. C. Paul ((1989) 3 SCC 77). Both the cases relate to the validity of the notice issued to one of the joint tenants. It was held that the notice issued to one of them would be valid. We do not think that the principle stated in those cases on the facts obtained are relevant to the present case. There is a finding in this case that the respondent was as much a tenant as the mother and the other brother. That being the position the ex parte decree for eviction obtained against his mother and brother without impleading him in that suit has to be set aside. It is not sufficient as the courts below have said that that decree was not binding upon the respondent. That decree cannot be kept alive against two other tenants and possession of the premises could be exclusively given to the respondent. The respondent cannot be put into exclusive possession of the premises since his mother and brother are also equally entitled to. It seems to us therefore, the ex parte decree for eviction should be set aside and the petitioner should be impleaded as a party to that suit and it should proceed on merits.

5. We accordingly allow the appeal in part, and set aside the ex parte decree dated March 31, 1977 and direct the respondent to be impleaded as party to that suit - R.A.E. No. 5136 of 1976 on the file

of the Small Causes Court, Bombay. The suit should now proceed from that stage with liberty to the respondent to file his defence.

6. It is needless to state that since we set aside the ex parte decree, the mother and the two sons who are now the parties to the suit, are entitled to possession. The possession shall be restored to them within six months from today. It is also directed that the tenants shall not induct any other person into the premises or encumber the same with any liability. The decree under appeal is accordingly modified.

7. In the circumstances of the case, we make no order as to costs.

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