

RAJASTHAN HIGH COURT

Gyaneshwar Bhati

Vs.

Balu Ram

S.B. Civil Revn. Pet. No. 183 of 2008

(Dr. Vineet Kothari, J.)

06.02.2009

ORDER

Dr. Vineet Kothari, J.

1. This revision petition has been filed by the defendant Gyaneshwar Bhati being aggrieved by the order of the learned trial Court dated 12-6-2008 whereby the learned trial Court rejected the application of the defendant under Order 7, Rule 11, CPC holding that suit No. 39/2008 filed by the plaintiffs was maintainable and deserved to be tried.
2. The other defendants Sh. Ghanchi Mahasabha represented by its President Shyam Lal and Secretary Poonam Chand s/o. Udai Ram also filed an application under Order 7, Rule 11, CPC and both the applications came to be dismissed by the learned trial Court by the impugned order. Being aggrieved by the same, the defendant No. 4 Gyaneshwar has filed the present revision petition.
3. Mr. S. C. Maloo, learned counsel for the petitioner-defendant No. 4 submitted that by a resolution dated 13-4-2008, the General body of Sh. Ghanchi Mahasabha had given on rent the first floor of the premises situated at 5th Road, Sardarpura, Jodhpur belonging to defendant No. 1 Sh. Ghanchi Mahasabha upon an auction in which lease money of Rs. 11,61,000/- and further monthly lease of Rs. 7000/- was fixed by the said general body and accordingly the present petitioner-defendant No. 4 was given possession of these premises as a tenant, whereas the plaintiffs claiming to be the other members of the said community of Ghanchi Samaj have filed the suit in question claiming a declaration and injunction against the said resolution dated 13-4-2008 against which the defendants filed separate applications under Order 7, Rule 11, CPC for dismissal of the suit as being barred by law as hit by Section 18 of the Rajasthan

Rent Control Act, 2001 which defines jurisdiction of Rent Tribunal.

4. The learned counsel for the petitioner submitted that only the Rent Tribunal and no Civil Court shall have jurisdiction to hear and decide the disputes between the landlord and the tenant and the matters connected therewith and ancillary thereto filed under the provisions of the Act. He also submitted that proviso to Section 18(1) of the Act permitted the Rent Tribunal to take into account the provisions contained in the Transfer of Properties Act, Indian Contract Act and other substantive law applicable to such matters in the same manner which could be brought before they Civil Court by way of suit. He, therefore, submitted that if the plaintiffs wanted to challenge the resolution dated 13-4-2008, they could only file a suit before the Rent Tribunal and could not approach the Civil Court by way of present suit. He further submitted that without claiming possession of the suit premises, a mere suit for declaration and injunction could not be filed against such resolutions, which could have the effect of terminating the tenancy in favor of the petitioner and his eviction from the suit premises. He relied upon various judgments of the Hon'ble Supreme Court as well as this Court. A mention to few of which may be relevant here.

5. The learned counsel for the petitioner relied upon a decision of Hon'ble Supreme Court in the case of *Ram Saran v. Smt. Ganga Devi*, reported ¹ in for the proposition that where the defendant is in possession of some of the suit premises and the plaintiff in his suit does not seek possession of those properties, but merely claims declaration that he is owner of the suit properties, the suit is not maintainable.

6. Another Hon'ble Supreme Court's decision in the case of *ITC Limited v. Debt Recovery Appellate Tribunal* reported ² in was relied upon for the proposition that if there was no cause of action even from the plaint allegations against the applicant, the plaint would be liable to be rejected under Order 7, Rule 11(a), CPC as against the applicant.

7. The learned counsel for the petitioner then relied upon the decision of this Court in the case of *Sher Khan v. Bambhu*, reported ³ in and submitted that fruitless litigation should be nipped in the bud and the jurisdiction of the Civil Court was barred under Section 256 of the Rajasthan Tenancy Act, 1955 read with item 83 of Schedule III and the Civil Court has no jurisdiction to try such a suit.

8. The learned counsel for the petitioner also relied on the decision of this Court in the case of *Smt. Nalini Mehta v. State Bank of India*, reported in ⁴ on the issue of territorial jurisdiction of the learned trial Court and submitted that where the suit property in

question was situated outside the territorial jurisdiction of the learned trial Court, the learned trial Court could not extertain the suit. He submitted that in the present case the suit premises situated at Sardarpur were outside the territorial jurisdiction of the concerned Court. He further submitted that the Court below even did not have pecuniary jurisdiction looking to valuation of the suit in question. He then referred to the decision of this Court in the case of *Temple of Thakur Shri Mathuradassji, Chhota Bhandar v. Shri Kanhaiyalal*, reported in ⁵ wherein this Court held that if the suit is in abuse of process of Court and cannot be dismissed under Order 7, Rule 11, CPC, the Court is not helpless and a can accordingly invoke the powers under Section 151, CPC and can dismiss the suit under Section 151, CPC to avoid frivolous litigation to this Court.

9. Sh. S. C. Maloo, the learned counsel for the petitioner submitted that the suit in question was nothing but an effort of the plaintiffs, one of whom, even participated in the said auction, namely, the plaintiff No. 1 Balu Ram and since his bid was not accepted being lower, being annoyed and in order to oust the petitioner from the said premises, they have preferred this suit which was not only barred by law, but did not disclose any cause of action. He also submitted that learned trial Court passed the impugned order and entertained the suit during summer vacations of the Courts in June, even though the matter was not of urgent nature.

10. Mr. L. R. Calla and Mr. Girish Johsi representing the plaintiffs vehemently submitted that for the purpose of Order 7, Rule 11, CPC only the plaint allegations have to be seen and since it was not a suit filed under the Rent Control Act, 2001, there was no question of applying Section 18 of that Act to oust the jurisdiction of the Civil Court. They further submitted that the property in question was let out to the defendant No. 4 at nominal rate causing loss to the entire Ghanchi community and therefore, the plaintiffs belonging to the said community had *locus standi* to file the present suit which deserved to be tried on merits. They further submitted that the issue relating to the Court fee and jurisdiction could not be gone into for the purpose of Order 7, Rule 11, CPC and only after framing the relevant issues, the Court can decide against the plaintiffs. Thus, they submitted that the application under Order 7, Rule 11, CPC was rightly rejected by the learned trial Court and the present revision petition filed by the defendant No. 4 deserves to be dismissed. They relied upon the following judgments of the Hon'ble Supreme Court and this Court :

11. A reference to the case of *Mayor (H.K.) Ltd. v. Owners and Parties, Vessel M. V. Fortune Express*, reported ⁶ in was made for the proposition that whether essentially

the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct.

12. In the case of *Kalyan Singh v. Smt. Chhoti*, reported in ⁷ it was held that any member of the community may successfully bring a suit to assert his right in the community property or for protecting such property by seeking removal of encroachment therefrom. Such a suit need not comply with the requirements of Order 1, Rule 8, CPC.

13. Mr. Calla, learned counsel for the respondents also relied upon the decision of Calcutta High Court in the case of *British Airways v. Art Works Export Limited*, reported ⁸ in and the decision of Hon'able Supreme Court in the case of *D. Ramachandran v. R. V. Janakiraman*, reported in ⁹ to the effect that rejection of suit at the threshold under Order 7, Rule 11(a), CPC without trial was not justified by dissecting pleadings into several parts and striking out the portion which does not disclose the cause of action. A reference to the Supreme Court decision in the case of *Abdulla Bin Ali v. Galappa*, reported in ¹⁰ was also made to support the submission that the jurisdiction of the Court does not depend upon the defence taken by the defendants in the written statement, but on the allegations made in the plaint to the same effect. The learned counsel for the respondents also relied upon the decision of Allahabad High Court in the case of *Municipal Board, Faizabad v. Edward Medial Hall, Faizabad*, reported in ¹¹

14. There is no dispute on proposition of law laid down in the aforesaid judgments relied upon by both the sides. They are well settled propositions of law and this Court does not hold different opinion on them.

15. However, having heard the learned counsels at length and upon perusal of the impugned order of the learned trial Court and the judgments cited at the bar, this Court is of the opinion that the learned trial Court has erred in rejecting the application under Order 7, Rule 11, CPC filed by the defendants. In fact, the contentions raised by the defendant N - Present petitioner in his application which have been reproduced in para 1 at pages 3 and 4 of the impugned order have not been met by the learned trial Court at all, but the findings have been returned against him while discussing the reply filed by the plaintiffs to the application under Order 7, Rule 11, CPC filed by other defendants No. 1 to 3, namely, Shri Ghanchi Mahasabha through its President and the Secretary. The said reply was discussed in para 2 at page 8 of the order of the learned

trial Court below. The learned trial Court while holding on the one hand in para 5 that under resolution dated 13-4-2008, the General Body of Ghanchi Mahasabha had led out the premises in question to the defendant No. 4 for auction sum of Rs. 11,61,000/- and Rs. 7000/- per month, hastened to add his finding that the general body of Shri Ghanchi Mahasabha was not the owner of the suit property. In the opinion of this Court, there was no basis for giving this finding by the learned trial Court. Secondly in para 3(a) at page 7 of the order, the learned trial Court has proceeded to give finding that there was no relationship of landlord and tenant between the defendant No. 4 and the plaintiffs. Obviously it was not so because it was for general body of Shri Ghanchi Mahasabha which upon an open auction held on 13-4-2008, in which one of the plaintiffs himself had participated, decided to give the suit premises to the defendant No. 4-present petitioner as a tenant. Once the relationship of tenant and landlord between Shri Ghanchi Mahasabha and the present petitioner was *prima facie* established, any suit which has the effect of ousting the defendant No. 4 who was put in possession under the said resolution of the general body would fall within the terms "matters connected therewith and ancillary thereto" used in Section 18 of the Rajasthan Rent Control Act, 2001. If this was not so, any disgruntled member of the Society can upset such established relationship of landlord and the tenant by filing a suit without claiming any relief of possession and thus avoiding payment of court-fee ad-valorem. If the main but hidden purpose of filing of suit is to dispossess the tenant put in possession through resolution of general body, the Court can always lift such veil and see real purpose of filing of suit. Section 18 of the Rent Control Act of 2001 admittedly bars the jurisdiction of any Civil Court in the matters relating to tenancy and even ancillary matters are liable to be decided by the Rent Tribunal. In sum and substance, the suit filed by the present plaintiffs was to see revocation of resolution dated 13-4-2008 which could only have the effect of terminating the tenancy in favor of the present petitioner-defendant No. 4. Therefore, such a suit could only be filed before the Rent Tribunal.

16. There is no dispute on the proposition for which the learned counsel relied upon the various judgments cited by them and the only thing to be seen by this Court is as to whether the suit was of the nature which could fall within the purview of jurisdiction of Rent Tribunal under Section 18 of the Act or not and if it does fall, the jurisdiction of Civil Court is naturally ousted. This Court is of the considered opinion that suit filed by the plaintiffs is essentially of the nature which is covered by the ambit and scope of Section 18 of the Act. Consequently, this Court is of the opinion that the learned trial Court has erred in rejecting the application under Order 7, Rule

11, CPC filed by the present petitioner.

17. Accordingly the present revision petition is allowed. The impugned order of the learned trial Court dated 12-6-2008 is set aside and the application of the petitioner-defendant No. 4 under Order 7, Rule 11, CPC is allowed. The suit No. 39/2008 filed by the plaintiffs before the learned trial Court is dismissed. No order as to costs.

Revision allowed.

Cases Referred.

1. AIR 1972 SC 2685
2. AIR 1998 SC 634
3. 1980 WLN 465
4. 2007 (3) CDR 1903
5. 2008 (3) WZC (Raj) 534: (AIR 2008 (NOC) 1259 (Raj))
6. AIR 2006 SC 1828
7. AIR 1990 SC 396
8. AIR 1986 Cal 120
9. AIR 1999 SC 1128
10. AIR 1985 SC 577
11. AIR 1976 All 349