

VIRENDRA KASHINATH RAVAT AND ANR.

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v.

VINAYAK N. JOSHI AND ORS.

NOVEMBER, 11 1998

[S. SAGHIR AHMAD AND K.T. THOMAS, JJ.]

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Rent Control & Eviction :

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947—Section 13(1)(e) and 15A—Eviction—Death of original tenant—Unlawful subletting of premises—Trial Court passing Eviction Order—Confirmed by appellate court—High Court quashed the eviction order on the ground that landlords failed to recognise second respondent as tenant and no averment in plaint that the Building was sublet to first respondent—On appeal—Held, High Court not justified in quashing the Eviction Order on the ground that the second respondent was not treated as tenant—An approach of abundant caution by the landlords cannot be used for non suiting them—Insufficient pleading in the plaint—Never raised by the respondents before the lower courts—Hence plaint not elaborated—However this could not have been a premise on which High Court could have interfered under Article 227—Civil Procedure Code Order VI Rule 5.

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Constitution of India—Article 227—Jurisdiction—Exercise of—Concurrent findings of facts—Interference by High Court—Held : High Court exceeded its jurisdiction.

Appellants, owners of the suit premises, let out their building to one 'S'. On the death of original tenant 'S', the appellants filed a suit for eviction on the ground that the premises was sub-let to respondents 1 and 2. The second respondent claimed that she being the daughter of original tenant 'S', the tenancy rights have devolved on her with the death of her mother. The case of first respondent was that he was permitted by the tenant to occupy the building on lease and licence basis under an agreement and thus claimed protection under Section 15A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The Trial Court found that the second respondent was the daughter of the original tenant and first respondent was inducted into possession by second respondent. The Trial Court held that

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- A** induction of first respondent into the building amounted to unlawful sub-letting. It therefore, granted decree for eviction. On appeal, the appellate court confirmed the decree for eviction. But the High Court quashed the Eviction Order on the ground that the appellants have not treated the second defendant as their tenant and that there was no clear averment in the plaint to the effect that the building has been sub-let to the first respondent. Hence
- B** the present appeal.

Allowing the appeal, this Court

- C** **HELD : 1.** The High Court has exceeded its jurisdiction by upsetting the concurrent findings of facts by two fact finding Courts, on a very fragile reasoning that there was no sufficient averment in the plaint regarding the ground under Section 13(1)(e) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. [648-A]

- D** **2.** The High Court was not justified in non-suiting the appellants on the premises that they have nowhere treated the second respondent as their tenant. The appellants in their averments in the plaint have clearly recognised ‘S’ as their tenant in respect of the suit premises. On her death it became doubtful for the appellants to spell out who are the real legal heirs of the tenant. Whoever were the real legal heirs, they became entitled to the tenancy right and hence appellants left it to the Court to finally say as to
- E** who among the claimants are the legal heirs. An approach adopted by the appellants by way of abundant caution cannot now be used against them for non-suiting them altogether. [647-B-F-G]

- F** **3.** The High Court has quashed the Order of Eviction on the ground that the pleadings in the plaint were insufficient to make out a case of sub-letting. This point was never raised before the two fact finding Forums. Order VI Rule 5 of the Code of Civil Procedure confers powers on the Court to order a party to make a further statement or better statement or further and better particulars in the pleadings. If the contesting respondent had raised the objection that the pleadings was scanty, appellants would have
- G** further elaborated it as provided in Rule 5. At any rate this should not have been a premise on which interference by the High Court should have been made in exercising a jurisdiction of superintendence under Article 227 of the Constitution. [648-F-G]

- H** *Manphul Singh v. Surinder Singh*, AIR (1973) SC 2158 and *M/s Ganesh Trading Co. v. Moji Ram*, AIR (1978) SC 484, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5664 of 1998. A

From the Judgment and Order dated 18.2.98 of the Bombay High Court in W.P. No. 2050 of 1987.

Harish N. Salve, Nikhil Sakhardande, Ms. Meenakshi Arora and S.R. Grover for the Appellants. B

A.M. Khanwilkar and V.D. Khanna for the Respondents.

The Judgment of the Court was delivered by

THOMAS, J. Leave granted. Appellants are landlords of one Ms. Shanta Sabnis. A building situate at Benham Hall Lane, Girgaum, Mumbai is owned by the appellants and was let out to the aforementioned Shanta Sabnis. Appellants succeeded in obtaining an order of eviction from the Court of Small Causes, Bombay, on the ground, *inter alia*, that the premises were sub-let to respondents 1 & 2. That order was confirmed in appeal. But the High Court of Bombay interfered with it under Article 227 of the Constitution of India and quashed the decree for eviction. Hence, the landlords have filed the Special Leave Petition. C D

Some more facts are these :

Shanta Sabnis, the original tenant, died and her mother, who was living with her, also died later. Second respondent claimed to be the daughter of Shanta Sabnis. Appellants filed a suit for eviction on different grounds, main among them was that the premises were sub-let to the fourth respondent (who was third dependent in the suit). During the pendency of the suit landlords got the plaint amended for incorporating a further allegation that first respondent and his sister were inducted into the building after institution of the suit without the consent of the landlords. E F

Second respondent (who was arrayed as second defendant in the suit) contended that she is the only daughter of Shanta Sabnis and hence the tenancy right has devolved on her with the death of her mother. She disputed the contention of the appellants that the building had been sublet to the third respondent but stated that she was allowed by her mother and grand-mother to reside in the building for the purpose of looking after her mother and grand-mother who were old and sick. G H

- A First respondent admitted that he is in possession of the suit premises. But he contended that he was permitted by the tenant to occupy the building on leave and licence basis under an agreement dated 16.10.1971 and he continued in such possession on 1.2.1973 and also thereafter. So the first respondent claimed protection under Section 15A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short the 'Act').

- B Trial Court found that second defendant is the daughter of the original tenant Shanta Sabnis and that the case of landlords regarding sub-letting to the third defendant is not a subsisting issue to be considered because the third defendant had already vacated the premises. Trial court further found that first respondent was inducted into possession by the second defendant. The claim made by first respondent for protection under Section 15A of the Act was repelled and the trial court concluded that induction of first respondent into the building amounted to unlawful subletting. On the strength of the above finding a decree for eviction was granted.

- D The appellate authority under the Act confirmed the decree for eviction, but went a step further by holding that sub-letting to third defendant would also enure to the ground of eviction under Section 13(1) (e) of the Act despite the fact that the aforesaid sub-tenant later vacated the premises.

- E Learned single judge of the High Court approached the issue from a new angle untouched by the trial court and the appellate authority. Learned single judge observed first that appellants have not treated the second defendant as their tenant and secondly that there is no clear averment in the plaint to the effect that the building has been sub-let to the first respondent.

- F The following is the summed up reasoning made by the leaned single judge for upsetting the concurrent finding:

- G "It is therefore, clear that in order to be entitled to a decree of eviction against the tenant on the ground of unlawful sub-letting an averment in the Plaint is a must that the tenant has unlawfully sub-let the suit premises. It is clear from the allegation in the plaint that the plaintiffs were not treating any of the named defendants as their tenants. The tenant of the plaintiffs viz. Ms. Shanta had expired before institution of the suit. Therefore, there is no question of the plaintiffs being in a position to make a statement that the tenant inducted defendants No. 4 and 5 as unlawful subtenant. In these circumstances, therefore,
- H in my opinion, a decree of eviction could not have been passed

against the petitioner under section 13(1)(e) of the Act because averments necessary for passing a decree under Section 13(1)(e) of the Act itself were absent in the Plaint. Therefore, in my opinion, both the courts below have committed grave error of law in overlooking these aspects of the matter which were crucial for deciding the controversy in the matter."

The High Court was not justified in non-suiting the appellants on the premise that they have "no where treated the second defendant as their tenant." The clear averments in the plaint regarding the tenant are the following:

"One Miss Shanta B. Sabnis during her life time was Plaintiffs' monthly tenant in respect of the building bearing No. 7 on a monthly rent of Rs. 12.85."

The said Miss Shanta B. Sabnis died some time ago leaving behind her mother as the heir and legal representative. However, in or about the month of February 1970 the said mother of the said Miss Shanta B. Sabnis also died. The plaintiffs in spite of efforts have not been able to get the names and addresses of the heirs and legal representatives of the said Miss Shanta B. Sabnis. Defendant No. 2 claims to be the daughter of the said Miss Shanta B. Sabnis. According to the Plaintiffs' information the said Miss Shanta B. Sabnis was a spinster till her death and hence the Plaintiffs do not admit that the defendant No. 2 is the heir and legal representative of the said Miss Shanta B. Sabnis. However, in view of her contention Defendant No. 2 has been joined as a party to this suit."

It admits of no doubt that appellants have clearly recognised Ms. Shanta Sabnis as their tenant in respect of the suit premises. On her death it became doubtful for the appellants to spell out who are the real legal heirs of the said tenant. Whoever are the legal heirs, they become entitled to the tenancy right and hence appellants left it to the court to finally say as to who among the claimants are the legal heirs. An approach adopted by the appellants by way of abundant caution cannot now be used against him for non-suiting him altogether. It must be remembered that when trial court found the second defendant as the sole heir of Ms. Shanta Sabnis appellants submitted to that finding as they are not interested in any dispute between different claimants to the legal heir-ship of the original tenant.

Regarding the second aspect *i.e.* subletting to the first respondent, the

- A High Court has obviously exceeded its jurisdiction by upsetting the concurrent finding of facts reached by the two fact finding courts, on a very fragile reasoning that there was no sufficient averment in the plaint regarding the ground under Section 13(1)(e) of the Act.

- B In the plaint, as it originally stood the following averment was made as regards the case of subletting to the third defendant:

“The said premises have been unlawfully sublet to the third defendant who is at present in unlawful occupation of the said premises. The third defendant is further about to part with possession to a third party.”

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It was the case of the appellants that during the pendency of the suit first respondent and his sister (second respondent) were unlawfully, inducted into possession of the building. So appellants moved an application for amendment of the plaint and the same was granted by the trial court. In the D plaint so amended paragraph 5-A was inserted, the material portion of which reads thus:

“The Plaintiffs say that pending the suit the defendants have or any of them has inducted in the suit premises Defendant Nos. 4 & 5 unlawfully.”

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Learned Single Judge treated the aforesaid pleading as insufficient to make out a case for subletting. This was not a point considered by or even raised before the two fact finding forums. Order 6 Rule 5 of the Code of Civil Procedure (For short ‘the Code’) confers powers on the Court to order a party to make a further statement or even a better statement or further and better particulars of any matter already mentioned in the pleading. This is incorporated in the Code to indicate that no suit shall be dismissed merely on the ground that more particulars are not stated in the pleadings. If the contesting respondents, or any of them had raised objection that the pleading was scanty perhaps appellants would have further elaborated it as provided in F Rule 5 above. At any rate this should not have been a premise on which G interference by the High Court should have been made in exercising a jurisdiction of superintendence under Article 227 of the Constitution.

- H That apart, the averment extracted above cannot, by any standard be dubbed as bereft of sufficiency in pleading. Under Order 6 Rule 2(1) of the Code the requirement is the following:

“Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.” A

The object of the Rule is two-fold. First is to afford the other side intimation regarding the particular facts of his case so that they may be met by the other side. Second is to enable the court to determine what is really the issue between the parties. The words in the sub-rule “a statement in a concise form” are definitely suggestive that brevity should be adhered to while drafting pleadings. Of course brevity should not be at the cost of setting out necessary facts, but it does not mean niggling in the pleadings. If care is taken in the syntactic process, pleadings can be saved from tautology. Elaboration of facts in pleadings is not the ideal measure and that is why the sub-rule embodied the words “and contain only” just before the succeeding words “a statement in a concise form of the material facts”. B C

This Court has indicated the position in *Manphul Singh v. Surinder Singh*, AIR (1973) SC 2158. On a subsequent occasion this Court has again reiterated the principle in *M/s. Ganesh Trading Co. v. Moji Ram*, AIR (1978) SC 484. Following observations made in the said decision are useful in this context: D

“Procedural law is intended to facilitate and not to obstruct the course of substantive justice. Provisions relating to pleadings in civil cases are meant to give to each side intimation of the case of the other so that it may be met, to enable Courts to determine what is really at issue between parties, and to prevent deviations from the course which litigation on particular causes of action must take.” ... E F
(para 2)

We have no doubt that appellant by making the averments in paragraph 5-A in the plaint, as quoted above, afforded sufficient notice to the other side that he was putting forth a case that first respondent was inducted into the premises by the tenant and such induction is unlawful. Appellant could not make a further elaboration as to who is the legal heir of the original tenant and hence appellant adopted the cautious approach without committing themselves as to who, among the rival claimants to the legal heir-ship of Ms. Shanta Sabnis is responsible for such unlawful act. We are, therefore, of the clear view that learned single judge ought not have disturbed the concurrent H

A findings on such an erroneous consideration.

High Court has thus erred as it exceeded its jurisdiction. Hence we allow this appeal and set aside the impugned judgment of the High Court and restore the order of the trial court as confirmed by the Appellate Court.

B S.V.K.I

Appeal allowed.