

HIGH COURT FORM NO- (J) 2

HEADING OF JUDGMENT IN ORIGINAL SUIT

District-Kamrup

In the Original Court of Munsiff No. 2

Present- Ms. S. Handique

Wednesday the 16th day of Aug'2012

Title Suit No. 809/06 (T.S. 280/04)

Mr. Rajesh Kr. Jalan, HUF

Mr. Dinesh Kr. Jalan, HUF

Mr. Mahesh Kr. Jalan, HUF

Plaintiffs

V

M/S Rekhchand Hulashchand, represented by Dinesh Kr. Betala

and three ors

Defendants

This suit coming for final hearing on 23-7-12 in presence of

Mr. S.S. Sharma

Advocates of the plaintiff

Mr. S. Sancheti

Advocates of the defendant

And stood for consideration to this day the court delivered the following judgment.

JUDGMENT

T.S. 809/06

This is a suit for ejectment and realization of arrear rent. The case of the plaintiffs in brief is as follows:

The plaintiffs are three Hindu Undivided Families (HUF) represented by Sarvasri Rajesh Kumar Jalan, Dinesh Kumar Jalan and Mahesh Kumar Jalan respectively and all the three are the kartas of the respective HUFs which consists of themselves, their wives, sons and daughters. All the three kartas are the sons of Sri Radha Krishan Jalan and all the three HUFs own tenanted premises which comprises holding no. 62, 62A, 62 B of Ward no. 29 of GMC standing in the names of the plaintiff no. 1,2,3 respectively. The defendant no. 1 is the tenant of the premises carrying on the business in the name M/S Rekhchand Hulashchand represented by Dinesh is Kumar Betala but the plaintiff is not aware whether M/S Rekhchand Hulashchand is a sole proprietorship concern or is a HUF, or a partnership firm. The defendant no. 2-4 are the unauthorized sub tenants under defendant no. 1. The tenanted premises was earlier owned by the HUF in the name of J.P. Jalan & sons and Sri Radha Krishna Jalan was the karta of the said HUF. There was an amicable partition of the HUF of J.P. Jalan & sons on 1-4-91 and the three sons of Radha Krishna Jalan got 1/3rd share in the tenanted premises besides other properties and they constituted three separate HUFs. The tenanted premises earlier stood in the name of Ram Prasad Agarwala who is one of their ancestors and after partition three different holdings were obtained in the name of the three plaintiffs. It is stated that even though three separate holding numbers were obtained the tenancy created in favor of the defendant no. 1 remained one and they jointly own the tenanted premises. The defendant no. 1 was intimated about the partition and asked to attorn the plaintiffs as his landlord both orally and in writing on 5-4-91. The defendant no. 1 however did not pay the rent for the month of April and May 1991 and so the plaintiffs vide one letter dtd 24-6-91 again requested the defendant no. 1 to pay the arrear rent and to start paying rent for month of June'91 and onwards by the first week of every succeeding month. But the defendant no. 1 did not respond to their letters even after receiving it. It is stated that the plaintiffs had to shift most of their business outside Assam by limiting their commercial ventures in Guwahati and surrounding areas and could not take follow up action against the defendant no. 1. Their staff was however looking over the affairs in Guwahati. The plaintiffs used to come to Guwahati from time to time and requested the defendant no. 1 to pay rent and to enhance it. But the defendant no. 1 did not pay heed to them and later on the plaintiffs learnt that the defendant no. 1 was paying rent in the name of M/S J.P.

Jalan & sons who is no longer the landlord. It is alleged that the defendant no. 1 did not come forward to tender rent either to Radha Krishan Jalan nor to the plaintiffs and was very irregular in paying rent even to M/S J.P. Jalan & sons even though he had the clear knowledge that the said firm was no longer the landlord. Further it is alleged that the defendant no. 1 has sub let the tenanted premises to defendant no. 2-4 illegally and have made unauthorized alterations thereon. It is also pleaded that the daughters of Rajesh Jalan and Dinesh Jalan are grown up and pursuing their education and will require the tenanted premises for their business and professional ventures and Mahesh Jalan needs sufficient space for starting his own business by erecting a multistoried building after demolishing the present suit premises. The plaintiffs stated that the defendants are liable to be evicted on the ground of default, bonafide requirement. It is also stated that the tenanted premises which was built in 1939 has become old, dilapidated and is required to be demolished so as to erect a multistoried market complex to meet the present and future requirements of all the coparceners. It is further stated that the defendant no. 1 defaulted in paying rent since April 1991 and it became due lastly on 1-3-04 when a notice was sent through their advocate giving one last opportunity to pay the arrear rent and to vacate the suit premises but the defendant no. 1 refused to recognize them as landlords and declined to vacate the suit premises vide one reply letter dtd 25-3-04. Hence arose the present suit.

The defendant no. 1 contested the suit by filing the written statement. The defendant no. 2-4 did not contest the suit. The suit was contested on various grounds such as the suit is not maintainable, is devoid of any cause of action, is bad for non-joinder of all the coparceners of the plaintiffs, the suit is barred by limitation, is barred by the principles of waiver, estoppels and acquiescence. The defendant no. 1 denied that the plaintiffs represent three HUFs owing the tenanted premises having three separate holding numbers and that the defendant no. 2-4 are the sub tenants under him. He contended that he is a tenant under the M/S J.P. Jalan & sons which is still continuing. He denied that any partition was effected on 1-4-91 as stated by the plaintiffs. He stated that the plaintiffs accepted rent by issuing rent receipts in the name of M/S J.P. Jalan & sons even after the so called partition and that he is depositing rent in the court as per law. He denied that he has been depositing rent in the name of M/S J.P. Jalan & sons in clear knowledge of the fact that it is no longer the landlord. He further denied that he has done unauthorized constructions in the tenanted premises or that the suit premises is bonafide required by the plaintiffs. He stated that he never attorned the plaintiffs as his landlord and did not receive any intimation in this regard.

The following issues were framed by my learned predecessor:

ISSUES

1. Whether there is any cause of action for the suit?
2. Whether the defendant no. 1 is a defaulter in paying rent to the plaintiffs from April'1991 and liable to be evicted from the suit premises?
3. Whether the defendant no. 1 has sublet the suit premises to defendant no. 2-4 and in addition thereto the defendants have made unauthorized additions and alterations in the tenanted premises illegally and without obtaining any consent of the plaintiffs and liable to be evicted?
4. Whether the plaintiffs are entitled to get the decree as prayed for?

Additional issue no. 1:

Whether there exists a relationship of landlord tenant between the plaintiffs and defendant no. 1?

Additional issue no. 2:

Whether the suit is bad for non-joinder of necessary parties?

DISCUSSIONS AND REASONS THEREOF

The plaintiffs examined one witness. The defendant side examined one witness. Both the sides adduced documentary evidence. Heard arguments from both the sides and also gone through the written submissions of the parties.

Decision on issue no. 1:

The present suit is filed by the plaintiffs for ejectment of the defendants on the grounds of default, bonafide requirement, unauthorized sub-letting and alterations of the suit premises. A bare perusal of the plaint would reveal that the suit does have a cause of action.

Issue no. 1 is decided in the affirmative.

Decision on issue additional issue no. 1:

The plaintiffs have asserted that they are the sons of Radha Krishna Jalan and vide one family partition effected on 1-4-91 they became 1/3rd share holders in respect of the suit premises and as such they are the landlords of the defendant no. 1 but the defendant no. 1 has denied to attorn them as landlords. The defendant no. 1 has contended that the plaintiffs are not his landlord but M/S J.P. Jalan & sons is his landlord.

The plaintiffs have filed the following documents to prove their case:

Ext. 1: family partition deed dtd 1-6-91

Ext. 2: copy of assessment order

Ext. 3: copy of assessment order

Ext. 4: copy of assessment order

Ext. 5: copy of letter dtd 5-4-91 given by M/S J.P. Jalan & sons

Ext. 6: copy of letter given by plaintiffs dtd 5-4-91

Ext. 7: copy of letter given by plaintiffs dtd 24-6-91

Ext. 8: postal receipt

Ext. 9: A/D Card

Ext. 10: legal notice

Ext. 11: reply of advocate notice by the defendant no. 1

Ext. 12: Postal receipt

Ext. 12 (1), 13,14: certified copies of NJ petitions

Ext. 15, 16,1 7: telephone bills showing address of defendant no. 1

Ext. 18: certified copy of annual return filed by defendant no. 4

Ext. 19: paper publication by plaintiff no. 2

The defendant no. 1 relied upon the following documents:

Ext. A to Ext. D : rent receipts issued by M/S J.P. Jalan & sons for the months of January 1991 to April 1991 respectively.

Ext. E (1) – E(221): rent deposit challans.

The contention of the defendant no. 1 is that the partition deed (Ext.1) is not registered and it does not mention anything about the

1/3rd share of the plaintiffs, so it cannot be relied upon as the proof of a valid family partition.

PW2 is Radha Krishna Jalan, karta of M/S J.P. Jalan & sons . He deposed that the suit premises was let out to the defendant no. 1 by the said M/S J.P. Jalan & sons . he testified that there was an amicable family partition on 1-4-1991 which was later on reduced into writing on 1-6-91 whereby all the three plaintiffs got 1/3rd share of the suit premises and they formed three separate HUFs. He stated that on 1-4-91 itself he and his son Dinesh Kumar Jalan met Rekhchand Betala and informed him about the partition and asked him to attorn the new landlords and again he was informed in writing on 5-4-1991. Ext. 5 is the letter written by him and the Ext. 6 is the letter written by all the three plaintiffs. He testified that the three holding numbers, viz, 62, 62A, 62B in respect of the suit premises stand in the name of the plaintiff no. 1,2 & 3 respectively in regard to first quarter of 1998-99. He denied that Ext. 1, 5,6 are all fabricated and manufactured for the purpose of this suit.

PW1 Dinesh Kumar Jalan is the plaintiff no. 2. He reiterated the statements made in the plaint in his evidence on affidavit. He exhibited the assessment orders in respect of holding no. 62, 62A, 62 B of the GMC (Ext. 2,3,4) to prove that they have separate holding for their separate shares in the suit premises. Ext. 1 mentions that the plaintiffs have 1/3rd share each over the suit premises. It is to be noted that the said family partition deed is a memorandum of partition/ family arrangement reduced into writing as the oral partition took place on 1-4-1991. The deed is executed on 1-6-1991 and it has been given retrospective effect from 1-4-1991. The defendant side objected that the stamp paper is shown to be purchased on 9/6 and no year is mentioned, so it is a manufactured document. It is an admitted fact that Radha Krishan Jain is the karta of HUF named M/S J.P. Jalan & sons and the plaintiffs are his three sons. The partition deed was effected prior to the amendment of the Hindu Succession Act, 1956. The Hindu Succession Act, 1956 was amended in 2005 to include the certain female members as coparceners. The Hindu Undivided Family is a concept which is developed for the purposes of taxation laws and it is synonymous with the concept of Hindu joint family. Thus in the present case the HUF of M/S J.P. Jalan & sons constituted of Radha Krishna Jalan and the three plaintiffs and the partition was effected between them orally and vide Ext. 1. It transpires that non registration of Ext. 1 will not negate the fact of partition which is come out from the mouth of Radha Krishna Jalan himself and PW1. It is also to be noted that by Ext. 1 no new rights were created in favour of the plaintiffs and their

father. The joint properties were distributed among the coparceners. A partition can be effected orally also, what it requires is the will of the members of the joint family. A joint family is presumed to be joint unless contrary is proved. In the present case the members of the joint family who are the coparceners themselves are stating that they have partitioned and in that case nothing more is required to be proved. The fact that the plaintiffs have obtained separate holding numbers in respect of their 1/3rd share each over the suit premises further reaffirms their claim. Further the plaintiff no. 2 vide one paper publication (Ext. 19) declared that 1/3rd portion of the suit premises fell into his share.

The Hon'ble Supreme Court in *Kale & Others vs Deputy Director Of Consolidation*, 1976 AIR 807 has held as follows:

“ To put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:

(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence:

(3) The family arrangement may be even oral in which case no registration is necessary;

(4) It is well-settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of s. 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property 'It which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the

family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement."

It is proved that the plaintiffs were earlier joint owners of the suit premises with their father and now have become the owners of their respective 1/3rd share in the suit premises and they are the landlords. Once there is transfer of ownership no formal obligation is cast on the transferee to notify the tenant under the Assam Urban Areas Rent Control Act, 1972 and the tenant cannot escape his liability by stating that he is not aware who the landlord is. The plaintiffs and the PWs have stated that they notified the defendant no. 1 vide two letters (Ext. 5 &6). The defendant no. 1 has denied having received Ext. 5 & 6. But DW1 has admitted to have received Ext. 10, i.e., the letter dtd 1-3-04 wherein the reference of letters dtd 5-4-91 was made. The defendant no. 1 refused to attorn the plaintiffs as landlords vide reply letter dtd 25-3-04. So it transpires that the defendant no. 1 had knowledge of the fact of transfer of the ownership even though he refused to acknowledge it. The refusal of the tenant to acknowledge the family partition will have no bearing upon the ownership over the property.

DW1 stated during his cross examination that he is aware of the fact that there was a partition and after institution of the suit he came to know that the plaintiffs are the owners of the suit premises. According to him, he is aware of those facts but he does not recognize them as his landlords. Further he admitted that Radha Krishna Jalan has been staying outside Assam for 25/30 years. So even if we presume that the defendant no. 1 had no knowledge of the transfer prior to institution of the suit, but there is no explanation from his side as to why he refused to attorn them as landlords and why he did not offer them any rent.

The plaintiff side relied upon the decision of the Hon'ble Guahati High Court in **Md. Mazid Mir v Smti Kalpana Saikia and ors, (1983) 1 GLR (NOC) 29**. In this case the Hon'ble Guahati High Court has held that the statutory tenancy under the Assam Urban Areas Rent Control Act, 1972 gives no room to the concept of attornment. There is no obligation under the Act on either transferee or transferor to give notice to the tenant and the tenant is not relieved

of his duty to pay rent and he is duty bound to seek who is his landlord and to pay the rent accordingly. He cannot escape his liability by simply invoking the proviso to section 109 of the Transfer of Property Act which gives benefit of protection from eviction to the tenant in case of lack of knowledge. The onus lies on the tenant to satisfy the court that he paid rent regularly.

The defendant no. 1 tried to prove that the M/S J.P. Jalan & sons issued rent receipt on 3-5-91 (Ext. D) for the month of April'91. The plaintiff side denied it. PW2 denied that Ext. D was issued by the M/S J.P. Jalan & sons. Ext. D was exhibited under objection from the plaintiff side. On perusal of Ext. D it transpires that the earlier receipts for the month of January, February, March '1991 were issued from the same receipt book and they bear consecutive serial numbers. Whereas the Ext. D bears the serial no. 1 and is not from the same receipt book. Moreover, the seal of M/S J.P. Jalan & sons is a bit larger in Ext. D than the seal in Ext. A,B & C. DW1 admitted that none of the counter foils of Ext. A-D were called. I do not wish to rely upon Ext. D.

In the present case the plaintiffs constituted the M/S J.P. Jalan & sons along with their father prior to their partition. So earlier also they were the landlords jointly and after partition their shares are defined and specified. I see no reasonable ground why the defendant no. 1 have any objection to recognize the plaintiffs as landlord. The defendant no. 1 could not discharge his burden as to why he waited all these years to find out who the actual landlord is and to deposit the rent in the name of the actual landlord. He cannot escape his liability by merely stating that he has been depositing rent in the name of M/S J.P. Jalan & sons.

After going through all the above, I find that the relationship of landlord and tenant exists between the plaintiffs and defendant no. 1.

This issue is decided in the affirmative.

Decision on additional issue no. 2

The defendant no. 1 has contended that the suit is bad for non joinder of necessary parties as all the coparceners of M/S J.P. Jalan & sons are not made party to the suit. The plaintiffs are claiming that

they are the sons of Sri Radha Krishan Jalan and they have 1/3rd share in the suit premises on the basis of a family partition dtd 1-4-91. It is proved that the plaintiffs are the landlords of the defendant no. 1, so I find that the suit is not bad for non joinder of necessary parties.

This issue is also decided in the negative.

Decision on issue no. 2

The plaintiffs have alleged that the defendant no. 1 is a defaulter in paying rent to the plaintiffs from April'1991. PW1 stated that the defendant no. 1 has not paid any rent to them since April 1991. PW2 stated the defendant no. 1 did not tender any rent to him, nor to his sons before depositing rent in the court. PW1 denied having received any notice as per section 5(4) of the Assam Urban Areas Rent Control Act, 1972. DW1 deposed that the M/S J.P. Jalan & sons collected rent upto April 1991 and then refused to receive the rent and thus he was forced to deposit rent in the court since May'1991. He exhibited the rent deposit challans { Ext. E (1) – Ext. E (221) }. He deposed during cross examination that he tendered rent to Radha Krishna Jalan every month and after his refusal he deposited the same in the court. He also stated that Radha Krishna Jalan has been staying outside Assam for the past 25/30 years and very rarely he visited Guwahati. He admitted that he never tendered any rent to the plaintiffs after coming to know that they are claiming to be the landlords. The testimony of DW1 is not reliable as he could not specify as to whom he had tendered rent prior to depositing it in the court. The element of tender and refusal could not be proved by the defendant no. 1. Moreover, the defendant no. 1 could not prove as to what compelled him to deposit the rent in the court since May'1991 if he had no knowledge of the partition and transfer till receipt of notice dtd 1-3-04 and the rent was collected by M/S J.P. Jalan & sons till April 1991.

The defendant made no endeavour to prove that he issued notices as per section 5 (4) of the Assam Urban Areas Rent Control Act, 1972 even though the plaintiffs could not prove from what source they got to know about the deposit in the court. It however transpires that the plaintiffs vide letter dtd 1-3-04 (Ext. 10) had told the defendant no. 1 that no rent was paid to them nor deposited in the court. So it can be presumed that the plaintiffs have had no knowledge of the deposit of rent till they received the reply letter dtd 25-3-04 (Ext. 11) from the defendant no. 1. It also transpires that DW1 admitted that the rent so deposited was not in proper address. Because in Ext. E 1 –

E 43 the rent is tendered for “ Rekhchand Hulashchand” by Dinesh Kumar Betala. It cannot be considered as due deposit. In few cases the rent was deposited for two months together.

In view of the above discussion I find that the defendant no. 1 has been unsuccessful in defending the allegation of default. The rent deposited in the name of M/S J.P. Jalan & sons cannot be considered to be lawful deposits, moreover, the refusal by Radha Krishan Jalan is not proved. The payment of the rent for the month of April'91 is also not proved. So the defendant no. 1 is a defaulter in the eye of law.

Issue no. 2 is decided in the affirmative.

Decision on issue no. 3:

It is alleged that the defendant no. 1 has sub-let the suit premises to defendant no. 2-4 and made unauthorized alterations thereon, however, the defendant no. 1 has denied it. The defendant no. 2-4 neither contested the suit nor cross examined the PWs. They simply declined to cross examine PWs. Pw1 and PW2 did not file any document to show that defendant no. 2-4 are paying rent to defendant no. 1. DW1 admitted that Jay Finance (India) is a public limited company and he and Rajendra Betala are the directors of the company. He denied that the said company is situated in the suit premises. The plaintiff filed the copy of the annual return by the M/S Jay Finance (India) { Ext. 18} to prove that it is situated in the suit premises. Ext. 18 shows that the residential address of Jay Finance (India) tallies with the address of the defendant no. 1. The preponderance of probability is in favour of the plaintiffs. Moreover, the telephone bills in the name of defendant no. 2-4 (Ext. 15,16,17) contain the address of the defendant no. 1 at the suit premises. DW1 admitted that the telephone no. against which Ext. 15 is issued (in the name of defendant no. 2) is situated in the suit premises. The allegation of sub-letting is proved.

As far as the allegation of unauthorized alterations additions are concerned it is seen that no evidence has been led in this respect by the plaintiffs. No detail description of any such alterations are given in the plaint or evidence. Hence this allegation is not proved.

Issue no. 3 is decided accordingly.

Decision on issue no. 4

As discussed above, the plaintiffs have proved that the defendant no. 1 is a defaulter and has sub-let the suit premises illegally. The plaintiffs have prayed for ejection of the defendants on the ground of bonafide requirement also. PW1 stated that his eldest daughter is a doctor and the daughters of Rajesh Kumar Jalan are grown up and will be completing their education and will soon start their business and professional careers. He stated that plaintiff no. 3 Mahesh Kumar Jalan too requires space for starting his own business ventures. Moreover they are contemplating to erect one multistoried market complex in place of the present suit premises to augment their income and for accommodating different tenants. It is further stated that the suit premises which is old and dilapidated required to be demolished to create additional space. The defendant no. 1 tried to prove that the requirement of the plaintiffs is not genuine and a pressing one. DW1 stated during his cross examination that he too wants that an RCC building is erected and he is accommodated therein. The plaintiff side relied upon the decision of the Hon'ble Supreme Court in **Raghavendra Kumar vs. Firm Frame Machinery & Co., 2001 (1) SCC 679** wherein it was held that the landlord is the best judge of his own requirement for residential and business purpose and has complete freedom in this matter.

The Hon'ble Gauhati High Court in **Shekhar Ch. Swami vs. Indian Umbrella Manufacturing Co., 1997 (1) GLR 5** has held that no rigorous proof is required to prove bonafide requirement. The Supreme Court in **Siddalinganma vs. Mamtha Shenay, 2001 (8) SCC 561** has held that in deciding the questions of bonafide requirement the court should see whether in the given facts of the case the need to occupy the premises can be said to be natural, real, sincere and honest.

In the present case, the requirement as stated by the plaintiffs cannot be regarded as not genuine. Moreover, DW1 has admitted that he wants that an RCC building is constructed and he be accommodated.

So considering all the above, I hold that the defendants are liable to be evicted.

Issue no. 4 is decided in the affirmative.

ORDER

The suit is decreed on contest with cost. The plaintiffs are entitled to recover vacant possession of the suit premises by evicting the defendants. The plaintiffs are also entitled to recover the arrear rent. The rent deposited in the court in the name of M/S J.P. Jalan & sons can be withdrawn by the plaintiffs, however, the said withdrawal will not amount to condoning the default.

Prepare decree accordingly. Given under my hand and seal of the court on 16-8-12.

S. Handique

Munsiff No. 2, Kamrup

APPENDIX

PLAINITFF

PW1.. DINESH KR. JALAN

PW2.. RADHA KRISHAN JALAN

Ext. 1: family partition deed dtd 1-6-91

Ext. 2: copy of assessment order

Ext. 3: copy of assessment order

Ext. 4: copy of assessment order

Ext. 5: copy of letter dtd 5-4-91 given by M/S J.P. Jalan & sons

Ext. 6: copy of letter given by plaintiffs dtd 5-4-91

Ext. 7: copy of letter given by plaintiffs dtd 24-6-91

Ext. 8: postal receipt

Ext. 9: A/D Card

Ext. 10: legal notice

Ext. 11: reply of advocate notice by the defendant no. 1

Ext. 12: Postal receipt

Ext. 12 (1), 13,14: certified copies of NJ petitions

Ext. 15, 16,1 7: telephone bills showing address of defendant no. 1

Ext. 18: certified copy of annual return filed by defendant no. 4

Ext. 19: paper publication by plaintiff no. 2

DEFANDANT SIDE

DW1

DINASH KR. BETALA

DOCUMENTS

Ext. A to Ext. D : rent receipts issued by M/S J.P. Jalan & sons for the months of January 1991 to April 1991 respectively.

Ext. E (1) – E(221): rent deposit challans.