

HIGH COURT FORM NO. (J) 2.

HEADING OF JUDGMENT IN ORIGINAL SUIT.

IN THE COURT OF MUNSIF NO. 3 AT GUWAHATI.

DISTRICT-KAMRUP

Title Suit Case No. 492/2007

Present:

Naguib Ahmed. A.J.S
M.Sc (Agriculture), LL.B
Munsiff No.3, Kamrup,
Guwahati.

31st day of August, 2012

Sri. Gajraj Surana.

S.O: Late Manik Chand Surana.

Sole proprietor of M/s Bajaj Scooter House

G.S Road, Paltan Bazaar

Guwahati

District: Kamrup, Assam.....: Plaintiff(s).

-Versus-

Sri. Sunil Kumar Surana.

S.O: Late Manik Chand Surana.

Prop. M/s Kuber Auto House

G.S Road, Paltan Bazaar

Guwahati

District: Kamrup, Assam

R.O: Kamakhya Apartment,

Near Happy Child School,

Rehabari, Guwahati-781016

District: Kamrup, Assam: Defendant(s)

This suit coming on for final hearing on 31.07.2012 and 02.08.2012 in

the presence of:-

1. Sri. O.P Bhatti

: Advocate for the plaintiff(s).

And

2. **Sri. P.C. Dey**

: Advocate for the defendant(s).

and having stood for consideration to this day, the court delivered the following Judgment.

JUDGEMENT

1. **Plaintiff's case:** The plaintiff and defendant are businessmen carrying on their business at Paltan Bazaar. The plaintiff is the elder brother carrying on the business of scooter parts under the name and style of M/s Bajaj Scooter House. The defendant is the younger brother who is also carrying on the business of scooter parts under the name and style of M/s Kuber Auto House. The room in which the plaintiff originally carried on the business was of 500 sq.ft area approximately. The room is in the ground floor of "Kejriwal Bhawan" situated at Paltan Bazaar which is described in Schedule-A annexed to the plaint and referred to as tenanted premises. The tenancy in respect of tenanted premises was created w.e.f 1st January 2000 by tenancy agreement dated 01.08.2001 at a monthly rent of Rs. 5,000/- (Five Thousand) only. On 2nd October 2004 the defendant who happens to be the younger brother of the plaintiff requested the plaintiff to allow him to start his own business in a part of the tenanted premises only for a temporary period of 2 (Two) years by which period he would march out for a suitable place. The portion of the room given to the defendant is more specifically described in Schedule-B annexed to the plaint. Accordingly defendant was allowed to occupy the Schedule-B premises as the permissible occupier or licensee only for which no rent or license fee had been charged by the plaintiff and still the same is not charged. The defendant on being requested on 15.09.2007 to vacate the Schedule-B premise, refused to vacate the same.
2. **Plaintiff's prayer:** The plaintiff therefore prayed for:
 - a) A decree for ejection of the defendant by removing him his men and materials from the Schedule-B premises.
 - b) A decree for possession of the plaintiff over Schedule-B premise.
 - c) Cost of the suit.

d) Other reliefs.

3. **Defendant's version:**

The defendant filed written statement (W.S) and contested the suit. The defendant submitted that he is running an individual independent business in the premise mentioned in Schedule-B of the plaint as a tenant under landlord Sri. Satya Narayan Kejriwal, son of Late Gauri Sankar Kejriwal. Plaintiff and defendant belong to a joint family. An agreement was executed between the plaintiff and the landlord Sri. Satya Narayan Kejriwal to run a common business under the name and style of M/s Bajaj Scooter house from the suit premises. But subsequently due to some family dispute the joint family of the plaintiff and defendant was parted by mutual partition and it was agreed by the parties to make partition of the suit premises in equal shares. Accordingly Schedule-A premises was partitioned on 17.09.2004. Thereafter the defendant started a new separate business under the name and style of M/s Kuber Auto House independently from Schedule-B premise. The rent was also divided at the rate of Rs. 2,000/- (Two Thousand) only per month (P.M) by the plaintiff and at the rate of Rs. 3,000/- (Three Thousand) only per month (P.M) by the defendant, till the new agreement between the defendant and landlord Sr. Satya Narayan Kejriwal is executed. The suit premises were not portioned for a temporary period of 2 years. Subsequently the landlord Sri. Satya Narayan Kejriwal entered into a new tenancy agreement with the defendant on 01.12.2006 with respect to the Schedule-B premise at a monthly rent of Rs. 6,500/- (Six Thousand Five Hundred) only per month, and since then the defendant has become a tenant under the power and control of the landlord. Defendant begs to state that he is neither a permissive occupier nor a licensee under the plaintiff.

In the premises the defendant prayed for dismissal of the suit.

4. **Issues:**

Upon determination of the rival pleadings the following issues were framed on 26.05.2008.

1. Whether the suit is bad for non-joinder of necessary party?
2. Whether the plaintiff is entitled to get the decree as prayed for?
3. To what relief/ reliefs is the plaintiff entitled?

5. **Witnesses:**

In the suit the plaintiff examined 1 witness and defendant examined 4 witnesses. Either party has also exhibited many documents.

6. **Discussions, Decisions and Reasons thereof:**

I have also heard arguments at length advanced by both the sides.

7. **Issue No. 2:**

In the present circumstances of the case the issue appears to be the most vital one and hence taken up for discussion first. ***PW-1 Gajraj Surana*** deposed in his cross-examination that on 01.08.2001 the tenancy agreement was executed between him and his landlord Sri. Satya Narayan Kejriwal. He deposed that he does not know if there is any agreement between the defendant and the landlord. He has not exhibited any documents to show the agreement between him and the defendant. He did not serve any notice to the defendant after the end of 2 (Two) years of the alleged agreement of the plaintiff.

Exhibit-1 : The tenancy agreement dated
01.08.2001 of Schedule-A premise.

Exhibit-1(5) to 1(8) : Are the signatures of attorney Sri.
Ram Gopal Kejriwal.

Exhibit-2 to 100 : Are the rent paying receipts.

DW-1 Sunil Kumar Surana the defendant deposed in his cross-examination that the joint family property was partitioned in September 2004. 2 flats were also partitioned between 2 (Two) brothers. One flat each was given in the name of the 2 (Two) brothers. Both purchased the two flats jointly.

Exhibit-A : Trading license.

Exhibit-B : Money receipts paid to GMC from 2004 to 2008.

Exhibit-C : Electricity bills.

Exhibit-D : Tenancy agreement executed between the
defendant and landlord Sri. Satya Narayan
Kejriwal.

DW-2 Sri. Roshan Surana deposed that as the plaintiff created some problems with the landlord, the landlord Sri. Satya Narayan Kejriwal entered into a new tenancy agreement dated 01.12.2006 with the defendant. The landlord was represented by Ram Gopal Kejriwal and he was a witness to the said agreement. In cross-examination he deposed that the shop Bajaj Scooter House at Delhi, Chatribari and Kharupeta are also divided among the plaintiff and the defendant. He has met the landlord Sri. Satya Narayan Kejriwal and also his agent Ram Gopal Kejriwal. He has not seen any documents of partnership business between the plaintiff and the defendant. **DW-3 Smt. Ratni Devi Surana** is the mother of both the plaintiff and defendant. She deposed that the joint property was mutually partitioned. The plaintiff remained in possession of half of the shop where from he runs his business in the name and style of M/s Bajaj Auto House. Thereafter the defendant entered into a new agreement with the landlord for his shop, the M/s Kuber Auto House. **DW-4 Sri. Ram Gopal Kejriwal** is the attorney holder of Sri. Satya Narayan Kejriwal. In his cross-examination he deposed that some 5 years back from then, he entered into a tenancy agreement with the defendant Sri. Sunil Kumar Surana. Exhibit-1 is the tenancy agreement with the plaintiff and Exhibit-D is the subsequent tenancy agreement with the defendant which was executed on 01.12.2006 for a room area of 250 sq.ft and a monthly rent of Rs. 6,500/- (Six Thousand Five Hundred) only. He denied the suggestion that Exhibit-D is invalid and Exhibit-D is executed in collusion with the defendant.

8. Now appreciating the aforesaid evidences it is evident that the tenancy agreement had been executed between the defendant and the landlord. I have also perused the relevant tenancy agreement vide Exhibit-D. The said agreement reveals an agreement of tenancy between the landlord and the defendant. DW-4 the attorney holder of the landlord also confirms the legality of the said tenancy agreement. DW-2 the attesting witness of the said agreement also deposed that a tenancy agreement was executed between the landlord and the defendant. Exhibit-E to Exhibit-E21 goes to show that monthly rents have been paid by the defendant to the landlord. Accordingly the existence of tenancy has been proved between the landlord and the defendant. Admittedly such tenancy is over the Schedule-B premise between the aforesaid two parties. During the continuance of such valid tenancy

agreement between the landlord and the defendant, the prayer of the plaintiff to evict the defendant is a matter which needs to be determined on the basis of law and facts. Plaintiff argued that the tenancy agreement between the plaintiff and the landlord vide Provision 7 (Seven) allows the tenant to sub-let the premise to any family members. However the claim of the plaintiff that the defendant was a permissible occupier for 2 (Two) years only, cannot be substantiated by any form and evidences. The tenancy agreement vide Exhibit-1 has not been alleged to have been violated by either party i.e. the plaintiff and the landlord. In the absence of such violation and in the stage of continuation of a valid tenancy agreement between the landlord and the defendant, the prayers of the plaintiff are not all tenable in law and facts. In totality of the present circumstances of the case, the plaintiff is not entitled to pray for eviction of the defendant from the suit premises.

Accordingly this issue is decided and goes against the plaintiff.

The plaintiff is not entitled to get the decree as prayed for.

9. **Issue No. 1:**

The plaintiff has deposed that he is a tenant of Sri. Satya Narayan Kejriwal and a tenancy agreement was executed between them vide agreement dated 01.08.2001. The terms and conditions as per the agreement has also been laid out between the two parties. During the continuance of such agreement the plaintiff claims, that the defendant in collusion with the landlord executed a new tenancy agreement dated 01.12.2006.

The defendant argued that the present suit is bad for non-joinder of the landlord as a necessary party. The defendants relied upon ***Dambarudher Das -Vrs- Pabitra Mohan Das (2009) 1 GLR 403*** and submitted that the present suit can be dismissed in the event of failure to implead necessary party. It has been held in the said judgment that the defendants must give necessary particulars as to how and in what manner and for whose non-joinder and misjoinder the suit is bad. The court can decide the question of necessary party only if such necessary particulars are pleaded by the defendant in the written statement. In the instant suit the defendant through their written Statement has already pleaded that the suit is bad for non joinder of necessary party Sri. Satya Narayan Kejriwal, the landlord of the suit premises and as such the suit is liable to be dismissed.

The same principle has also been laid down in *L.H Bhat -Vrs- Y. Vasta (1993) 3 SCC 49*. Moreover in *K. Biswal -Vrs- A.K Baral and others (2004) 1 SCC 317* it was held that the procedural law as well as the substantive law both mandates that in absence of a necessary party, the order passed is a nullity and does not have a binding effect.

As discussed earlier in this issue and in relation to the principles laid down in the aforesaid authorities, I am of the considered opinion, that landlord Sri. Satya Narayan Kejriwal is a necessary party to this suit. The whole claim of the plaintiff rest on the matter of tenancy, that exists between him and the landlord Sri. Satya Narayan Kejriwal. Not impleading the said necessary party takes away the merit of the plaintiff's case.

Accordingly this issue is decided and goes against the plaintiff. The suit is bad for non-joinder of necessary party.

10. **Issue No. 3:**

On the basis of the discussions made in Issue No. 1 and 2 and in view of the decisions arrived there-in, no further discussion is required in this issue under the present circumstances of the case.

Accordingly the plaintiff is not entitled to any relief as such.

The issue is decided in negative and goes against the plaintiff.

11..

ORDER

In the conclusion, the suit is dismissed on contest with cost.

Prepare decree accordingly.

The case is disposed of, on contest.

Given under my hand and seal of this court on *31st day of August 2012*

Naguib Ahmed
Munsiff No.-3, Kamrup,
Guwahati.

APPENDIX

Plaintiff's Witnesses

1. PW-1: Gajraj Surana

- Exhibit-1 : The tenancy agreement dated 01.08.2001 of Schedule-A premise.
- Exhibit-1(5) to 1(8) : Are the signature attorney Sri. Ram Gopal Kejriwal.
- Exhibit-2 to 100 : Are the rent paying receipts.

Defendant's Witnesses

1. DW-1: Sunil Kumar Surana

- Exhibit-A : Trading license.
- Exhibit-B : Money receipts paid to GMC from 2004 to 2008.
- Exhibit-C : Electricity bills.
- Exhibit-D : Tenancy agreement executed between the defendant and landlord Sri. Satya Narayan Kejriwal.

2. DW-2: Sri. Roshan Surana.

3. DW-3: Smt. Ratni Devi Surana.

4. DW-4: Sri. Ram Gopal Kejriwal.

Case laws discussed

1. Dambarudher Das -Vrs- Pabitra Mohan Das (2009) 1 GLR 403
2. K. Biswal -Vrs- A.K Baral and others (2004) 1 SCC 317
3. L.H Bhat -Vrs- Y. Vasta (1993) 3 SCC 49.

***Naguib Ahmed
Munsiff No.-3, Kamrup,
Guwahati.***