

CASE NO.:
Appeal (civil) 5357 of 1996

PETITIONER:
M/s. India Umbrella Manufacturing Co. & Ors.

RESPONDENT:
Bhagabandei Agarwalla (Dead) by Lrs.Smt. Savitri Agarwalla & Ors.

DATE OF JUDGMENT: 05/01/2004

BENCH:
R.C.LAHOTI & ASHOK BHAN

JUDGMENT:
JUDGMENT

With C.A.No.5358 of 1996)

R.C. Lahoti, J.

The suit property consists of a house and outhouses bearing Municipal No. 47 Ward No.5 (new Ward No.20), S.R.C.B. Road, Fancy Bazaar, Guwahati. The house property is situated over a piece of land which bears patta Nos. 1382 and 1064. The entire property including the land and the building standing thereon was owned by late Ladi Aggrawalini. It was in possession of two tenants. On 24.8.1957, late Ladi Aggrawalini made a gift of the suit property in favour of her two daughters namely Bhagabandei and Buchi Devi. The tenants were informed and they attorned in favour of the donee sisters. On 1.6.1967, fresh deeds of lease came to be executed between the two co-landlords jointly and the two tenants individually. M/s. India Umbrella Manufacturing Company (the appellant in Civil Appeal No. 5357 of 1996) agreed to continue to hold the tenancy premises on a monthly rent of Rs.1200/- undertaking to pay Rs.600/- each to the two co-owners. M/s. Bharat Stores & Agencies through its proprietor Tulsiram Swami (who and whose alleged sub-tenants are the appellants in Civil Appeal No. 5358 of 1996) agreed to continue in possession of the tenancy premises on a monthly rent of Rs.500/- undertaking to pay Rs.250/- to each of the two co-owners separately. Thus, though the property was undivided and jointly owned by the two sisters, the rent agreed upon by the two tenants was by consent apportioned in equal shares between the two co-owner landladies.

In the year 1971-72, the two co-owners namely Bhagabandei and Buchi Devi initiated proceedings for partition of land in Case No.63 of 1971-72 under the local law governing the partition of land holdings. Pursuant to the order passed in the Partition Case, Partition Patta No.1382 with Dag Nos. 2435, 2436, 2437, 2438, 2439, 2400 and 2484 was issued in the name of Bhagabandei and Partition Patta No. 1064 with Dag Nos. 2327, 2379, 2339, 2333, 2386 and 2387 was issued in the name of Buchi Devi. The land was thus partitioned. The two sisters did not consider it necessary to have the structure of house standing over the land also partitioned by metes and bounds inasmuch as they had mutually agreed to demolish the superstructure and then to construct their separate houses on their respective pieces of land which had fallen to their respective shares pursuant to the land partition proceedings.

To the extent of what has been stated hereinabove the facts are not disputed. The co-owner and co-landlady sisters joined together in filing suits for ejectment of the two tenants. The two landladies pleaded that they did not have any other house of their own and on being vacated by the tenants the present structure was to be demolished and on reconstruction used for their own occupation. The tenants were alleged to have defaulted in payment of rent and then fallen into arrears. There was also allegation of

creation of sub-tenancy. The trial Court found the plaintiffs not entitled to the decree for eviction and directed the suits to be dismissed vide judgment and decree dated 30.4.1981.

Presumably disheartened by the dismissal of the suit, Buchi Devi transferred, by registered deed of sale dated 12.6.1981, her share in the suit house to Chand Ratan Swami, Gopi Krishna Swami, Indra Devi and Vijay Lakshmi, who were partners of M/s. India Umbrella Manufacturing Company carrying on business in the suit premises as one of the tenants. Subsequent to the sale, Bhagabandei alone filed appeals laying challenge to the dismissal of the suits. Buchi Devi, having lost her interest in preferring and prosecuting the appeals, was impleaded as a proforma respondent. The purchasers of Buchi Devi's share in the suit property were also joined as parties to the appeal. During the pendency of the appeal, on 5.7.82, the buyers of the share of Buchi Devi filed an application in the appeal submitting that they were not interested in the ejection of the tenants so far as their share in the property is concerned and prayed for the suit being dismissed. Another application was filed by the tenant submitting that right to evict vests in the co-landlords and as one of them had transferred away her rights and the transferees were not interested in pursuing eviction, the appeal was incompetent and hence liable to be dismissed. On 23.3.83, the learned District Judge allowed the appeal by a common judgment in the two appeals arising out of the two suits and directed decrees for eviction to be passed holding the availability of all the three grounds for ejection in favour of the appellant namely bona fide need, default in payment of rent and subletting of the premises. As to the application dated 5.7.82 filed by Buchi Devi's transferees and the other application filed by the tenant-respondent, the learned District Judge opined that they were of no consequence. However, in the operative part of the judgment, the learned District Judge added a rider. He directed that inasmuch as some of the partners of the tenant firm M/s. India Umbrella Manufacturing Company have purchased the rights of Buchi Devi in the house property they were not liable to be ejected unless and until the house property has been partitioned between the two co-owners, though they would continue to pay rent to Bhagabandei in the same proportion in which it was being paid till then. Thus, in substance, it appears that the learned District Judge has found the interest of the landlords in the suit house to the extent of one half, i.e. owned by Buchi Devi, having vested in the partners of one of the tenants firm M/s. India Umbrella Manufacturing Company and therefore the tenancy having been extinguished to the extent of one half by merger but continuing to the extent of one half equivalent to the share owned by Bhagabandei. The other tenant was directed to be ejected.

Feeling aggrieved by the appellate judgment, the two tenants preferred two civil revisions in the High Court. In the civil revisions the buyers pendente lite reiterated their stand that they were not interested in seeking eviction and therefore the decree for eviction should be set aside. With the tenant M/s. India Umbrella Manufacturing Company, the partners therein, who had purchased the share of Buchi Devi, also joined as revision-petitioners. Both the revision petitions have been dismissed. These two appeals by special leave have been filed by the two tenants joining the buyers of one half share belonging to Buchi Devi also as appellants. The landlords have not chosen to file any appeal against that part of the judgment of the High Court which has upheld the judgment of the appellate Court putting an embargo on the right of the plaintiff-decree-holder to execute the decree for eviction from that part of the property which is in possession of M/s. India Umbrella Manufacturing Company as tenants "until the suit house is partitioned amicably or through Court".

Having heard the learned counsel for the parties we are satisfied that the appeals are liable to be dismissed. It is well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. (See: Sri Ram Pasricha Vs. Jagannath & Ors., (1976) 4 SCC 184; Dhannalal Vs. Kalawatibai & Ors., (2002) 6 SCC 16, para 25). This principle is based on the doctrine of agency. One co-owner

filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In the present case, the suit was filed by both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so as to prejudice the other co-owner. The suit once filed, the rights of the parties stand crystallised on the date of the suit and the entitlement of the co-owners to seek ejectment must be adjudged by reference to the date of institution of the suit; the only exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the tenant comes to an end by act of parties or by operation of law.

Buchi Devi had willingly joined with Bhagabandei in filing the suit. During the continuity of litigation she parted with her share in the property. One out of the two tenants purchased her share. It seems that the tenancy is in the name of a partnership firm and some of the partners have purchased the share of Bhagabandei. It is not clear if all the partners or only a few out of all the partners are the buyers. The fact remains that they have purchased only a share in the property and not the entire property. The applicability of doctrine of merger within the meaning of Clause (d) of Section 111 of the Transfer of Property Act, 1882 is not attracted. In order to bring the tenancy to an end the merger should be complete, i.e. the interest of the landlord in its entirety must come to vest and merge into the interest of tenant in its entirety. When part of the interest of the landlord or the interest of one out of many co-landlords-cum-co-owners comes to vest in the tenant, there is no merger and the tenancy is not extinguished. In our opinion, the first appellate Court was not justified in placing a rider on the right of the decree-holders to execute the decree unless the property was partitioned between the co-owners. However, we need not dwell much upon this aspect as that part of the decree has achieved a finality as the landlords have not pursued their challenge to the decree of the first appellate Court by filing special leave petitions in this Court.

The decree, in so far as the other tenant and sub-tenants i.e. the appellants in C.A. No.5358/1996 are concerned, has to be sustained. The partners of the other tenant firm i.e. M/s. India Umbrella Manufacturing Co. (appellant in C.A. No.5357/1996) have purchased the property pendente lite and therefore they cannot be allowed to take a stand contrary to the one taken by their predecessor in interest and to the prejudice of the other plaintiff whose rights they have not purchased. Their filing an application that they were not interested in securing eviction of the other tenant is in the facts and circumstances of the case immaterial and irrelevant.

In order to cut short further litigation we are inclined to invoke the jurisdiction vesting in this Court under Article 142 of the Constitution. As noted in the earlier part of the judgment, the land standing below the structure has been partitioned. The need for partitioning the super structure standing over the land was not felt by the co-owner-landlords as the super structure was just debris in their assessment as they had decided to demolish the same and reconstruct the property separately on their respective pieces of land falling to their respective shares by virtue of partition. In the absence of the super structure having been actually partitioned it can be assumed that the super structure would go with the land and each of the co-owners would, in any case, be entitled to that part of the super structure which corresponds with the land underneath as fallen to the separate shares of the two. The decree for eviction in favour of the heirs of Bhagabandei (who has died during the pendency of the proceedings and whose heirs have come on record) as against the judgment-debtors Sekhar Chand Swami, Smt. Chanda Devi Swami and M/s. Bharat Stores & Agency shall be available for execution and the tenants shall be liable to be evicted from that part of the house and super structure as corresponds with the share of the land which has fallen to the share of Bhagabandei.

During the pendency of this appeal, we had directed, vide order dated 11.9.2003, the parties to explore possibility of settlement, if any, and also to draw an agreed map of the property showing the house property divided into two portions indicated in separate colours, so as to point out that part of the property to which the heirs of Bhagabandei would be entitled and that part of the property to which Buchi Devi and now her transferees, pendente lite, would be entitled. Unfortunately, the parties have not been able to draw an agreed map. Both the parties have filed their separate maps. On a perusal of the two maps, we do not find any substantial difference therein. Out of the two maps we find the one drawn by M/s. Gautam Baruah & Associates on 26.9.2003 and filed by the plaintiff-landlords to be comparatively more accurate and clear. That map shall be transmitted to the trial Court and shall form part of the decree.

Both the appeals are dismissed with costs throughout. The judgment and decrees of the appellate Court maintained by the High Court are confirmed. However, in order to save the tenants from the peril of sudden eviction it is directed that the decree for eviction shall not be available for execution for a period of three months from today subject to the tenant-appellants filing an usual undertaking and clearing the entire money part of the decree by making deposit with the executing Court within a period of four weeks from today. Decrees in the terms of the judgment of the first appellate Court, if not already drawn up by it, shall be drawn by the trial Court annexing the map as a part of the decree therewith.