

CASE NO.:  
Appeal (civil) 6986-6987 of 2005

PETITIONER:  
M/s Karta Ram Rameshwar Dass

RESPONDENT:  
Ram Bilas and others

DATE OF JUDGMENT: 23/11/2005

BENCH:  
B.N.AGRAWAL & A.K.MATHUR

JUDGMENT:  
J U D G M E N T  
(@ SLP (C) Nos. 7982-83 of 2003)

B.N.AGRAWAL, J.

Leave granted.

These appeals by defendant No. 2 arise out of judgment rendered by Punjab & Haryana High Court in second appeals.

The short facts are that a shop measuring 90' in length and 18' in width situate in Jind Mandi was originally owned by one Ram Gopal and upon his death, his two sons, namely, Jai Narain and Chet Ram inherited the same in equal shares. In the year 1956, Chet Ram \026 one of the sons of Ram Gopal, who was co-sharer to the extent of half share, let out front portion of the shop to M/s Karta Ram Rameshwar Dass \026 defendant No. 2 with the consent and authority of the other co-sharer Jai Narain. Subsequently, Chet Ram died and upon his death, his sons and daughters sold their half share in the disputed shop to one Yashpal \026 defendant No. 1 under registered sale deed dated 20th August, 1975. Thereafter on 26th September, 1975, Jai Narain, another co-sharer filed a suit for partition of his half share in the aforesaid shop in which Yashpal, the purchaser, and the firm M/s Karta Ram Rameshwar Dass were impleaded as defendant Nos. 1 and 2 respectively. The share of the plaintiff in the shop in question was not disputed. In the said suit, a preliminary decree was passed in favour of the plaintiff to the extent of his half share in the shop in question and a Local Commissioner was appointed to effect partition who submitted report to the effect that the shop in dispute should be divided horizontally that is to say in such a way that one party would get the front portion opening in the Mandi and other would get its back portion. The plaintiff filed objections to the report of the Commissioner and according to him the shop should have been partitioned longitudinally by constructing a wall through and through, which partition would be a just one between the parties and partitioning the shop horizontally by giving front portion to one party and back portion to another would be unjust and unequal especially when the front portion of shop, which opens in the Mandi, would be more valuable one whereas back portion less valuable. Defendant No.2 who was the tenant in the front portion of the shop objected to the prayer made by the plaintiff stating therein that by erecting a wall, his tenanted premises would be divided into two portions which would amount to evicting him from a portion of the tenanted premises without taking recourse to the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as 'the Act'). Defendant No. 1, who is purchaser from Chet Ram, took the stand that the objections to the local commissioner's report filed by the plaintiff were fit to be rejected.

The trial court allowed the objections filed by the plaintiff to the report of the local commissioner and passed a final decree directing that the shop in question should be partitioned longitudinally by constructing middle wall through and through but the tenant would continue to occupy the shop let out to him unless and until he is evicted therefrom by taking recourse to the

provisions of the Act. Against the final decree passed by trial court, two appeals were filed before the lower appellate court; one by heirs and legal representatives of Jai Narain (since dead); and other by the purchaser defendant No.1. The tenant-firm \026 defendant No. 2 filed a cross objection in the appeal filed by the legal representatives of Jai Narain. The appellate court upheld the final decree passed by the trial court by dismissing both the appeals as well as the cross objection. Thereafter, three appeals were filed before the High Court; one by the heirs of Jai Narain; another by defendant No. 1 \026 transferee from Chet Ram; and the third by tenant-firm (defendant No.2). The High Court dismissed appeals filed by the transferee as well as the tenant but allowed the same filed by legal representatives of Jai Narain, modified decrees of trial court as well as the lower appellate court and granted decree in favour of the plaintiff for vacant possession directing the tenant to be evicted from that portion of the tenanted premises which had fallen to the share of the plaintiff in the final decree. Hence, these appeals by special leave.

Learned counsel appearing on behalf of the appellant in support of the appeals has raised two points. Firstly, it has been submitted that the tenancy was indivisible as such the claim for its partition was unwarranted; and secondly, the tenant-firm could be evicted only by filing an eviction proceeding in accordance with the provisions of the Act upon grounds enumerated thereunder and decree for recovery of vacant possession from it passed by the High Court in the partition suit was not permissible under law. On the other hand, learned counsel appearing on behalf of the respondents submitted that a tenant could not object to the claim for partition by a co-sharer so long the same is bona fide and the High Court was quite justified in passing a decree for recovery of vacant possession against the tenant.

In support of their submissions, both the parties have relied upon conflicting decisions of the High Courts but it is not necessary to refer to the same as both the points are concluded by a judgment of this Court in the case of *Sk. Sattar Sk. Mohd. Choudhari v. Gundappa Amabadas Bukate* AIR 1997 Supreme Court 998. In that case, a shop measuring 23' x 19' belonged to one Shaikh Mohd. Choudhari who died in 1956 leaving behind his two sons, namely, Shaikh Jaffar and Shaikh Sattar. In the year 1964, one of the brothers Shaikh Jaffar let out the premises in question to a tenant Gundappa Amabadas Bukate who continued to pay rent till 1974. In the meantime, there was a partition amongst the two brothers, in which a portion of the shop measuring 23' x 12' fell in the share of Shaikh Sattar whereas the remaining portion in the share of Shaikh Jaffar. Both the brothers intimated the tenant about the partition requesting him to make payment of rent of the premises in question separately in equal proportion to them but no rent was paid. Accordingly by a notice, his tenancy was determined and consequently a petition under Section 15 of the Hyderabad Houses (Rent Eviction and Lease) Control Act, 1954 was filed by one of the brothers Shaikh Sattar for eviction of the tenant on the ground of default as well as bona fide personal necessity of the plaintiff. The tenant objected on the grounds that the partition was not a bona fide one and petition for eviction by one of the brothers was not maintainable. Both the grounds for eviction were denied by the tenant. The Rent Controller granted eviction on both the grounds which was upheld in appeal. Thereafter matter was taken to the High Court of Bombay by filing a civil revision application which, after reversing both the orders impugned before it, dismissed the eviction petition on the ground that the tenancy was indivisible and partition amongst the brothers would not affect the same and the claim for eviction at the instance of only one of the co-sharers would not be maintainable. Challenging the decision of the High Court, the plaintiff filed an appeal before this Court by special leave. During the pendency of the appeal, the tenant purchased the share of Shaikh Jaffar in the property. It has been laid down by this Court that if all the co-owners "agree among themselves and split by partition the demised property by metes and bounds and come to have definite, positive and identifiable shares in that property, they become separate individual owners of each severed portion and can deal with that portion as also the tenant thereof as individual owner/lessor". It was further laid down that there was no right in the tenant to prevent the co-owners from partitioning the tenanted accommodation among themselves unless it was shown that the partition was not bona fide and was a sham

transaction to overcome the rigors of rent control laws which protected eviction of tenants except on grounds specified in the relevant statute meaning thereby that a tenant could be evicted only by taking recourse to the provisions of rent control laws upon proof of the grounds enumerated thereunder. This Court came to the conclusion that the partition between the co-sharers was bona fide and as the tenant had acquired the share of Shaikh Jaffar as owner thereof, the claim for eviction from the remaining portion which fell to the share of the plaintiff was granted.

In view of the foregoing discussion, we hold that in a suit for partition filed by one co-sharer against another if a tenant is made party, he can object to the claim for partition if it is shown that the same was not bona fide and made with an oblique motive to overcome the rigors of rent control laws which protected eviction of tenant except on grounds set out in the relevant statute. After a partition is effected or a decree for partition is passed, it would be open to the co-sharers to evict a tenant from that portion of tenanted premises which had fallen in their respective shares by filing separate proceedings for eviction under rent control laws on the grounds enumerated thereunder. In the present case, the tenant failed to prove that the claim for partition was not bona fide. Therefore, final decree in the suit for partition has been rightly confirmed by the High Court but it was not justified in reversing decree of the trial court, which directed that the possession of the tenant could not be disturbed unless and until proceeding is initiated for its eviction under the Act, and in ordering for recovery of possession from the tenant of that portion of the tenanted premises which had fallen to the share of the plaintiff. In our view, the trial court was quite justified in directing that possession of the tenant would not be disturbed and it can be evicted only in accordance with law by taking steps for eviction under the provisions of rent control legislation upon the grounds enumerated thereunder.

In the result, the appeals are allowed in part and that portion of the impugned judgment, rendered by the High Court, whereby a decree for vacant possession of the portion of the property falling to the share of the plaintiff has been passed in his favour is set aside and judgment and decree passed by the trial court are restored in its entirety. In the circumstances of the case, we direct that the parties shall bear their own costs.