

Richard Lee vs Girish Soni And Anr on 2 February, 2017

Equivalent citations: AIR 2017 SUPREME COURT 921, 2017 (2) ADR 399, 2017 (2) AJR 250, AIR 2017 SC (CIVIL) 816, (2017) 2 CIVILCOURT 124, (2017) 1 CAL HN 171, (2017) 3 MPLJ 1, (2017) 135 REVDEC 569, (2017) 3 ANDHLD 16, (2017) 2 UC 882, (2017) 1 CLR 761 (SC), (2017) 121 ALL LR 530, (2017) 2 ALL RENTCAS 194, (2017) 1 RENCRA 213, (2017) 1 WLC(SC)CVL 406, (2017) 1 RENTLR 610, (2017) 1 CURCC 58, (2017) 3 CIVLJ 189, (2017) 4 MAD LW 78, (2017) 4 MAH LJ 48, (2017) 2 ICC 864, (2017) 171 ALLINDCAS 18 (SC), 2017 (3) SCC 194, 2017 (2) KCCR SN 142 (SC)

Bench: A.M. Khanwilkar, Kurian Joseph

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1345 OF 2017
[ARISING FROM SPECIAL LEAVE PETITION (C) NO.823/2015]

RICHARD LEE

PETITIONER(S)

VERSUS

GIRISH SONI AND ANR.

RESPONDENT(S)

J U D G M E N T

KURIAN, J.

Leave granted.

2. The simple issue that arises for consideration in this case is whether the appellant should be a proper party in the Eviction Petition No.18/2010 filed by the respondents herein before the Rent Controller, Delhi. The appellant herein moved an application for impleadment as a necessary party in the eviction petition. Paragraph 3 of the application for impleadment filed under Order I Rule 10 reads as follows:

“3. That the petition filed by the petitioners is false. It is submitted that the shop in dispute was let out by Shri Chuni Lal Soni to a partnership firm M/s. K.K. Lee with effect from November, 1963 M/s. K.K. Lee was a partnership firm comprising of three

brothers namely Shri Lee Queth Khong, Shri Lee Sheam Khong and Lee Aches Khong as its partners. Shri Chuni Lal Soni had been recovering rent from the said partnership firm from the inception of tenancy till he continued to recover the rent, through A/c Payee cheques issued from the Bank account of the said partnership firm, Shri Chuni Lal Soni somewhere in 1968-69 called upon the said partnership firm to pay rent to Dr. P.C. Soni, his brother. The said partnership firm thereafter paid the rent to Dr. P.C. Soni by way of cheques from its bank account. Dr. P.C. Soni however did not issue any receipt after receiving the said cheques. The shop in dispute was initially let out at Rs.350/- per month. Thereafter somewhere in 1983 on an understanding and contract entered into between Dr. P.C. Soni and the said partnership firm M/s. KK Lee the rent was increased to Rs.500/- per month. It is pertinent to mention here that initially Shri L. Queth Khong started the business in the name of M/s K.K. Lee as its sole proprietor at 28A, Khan Market New Delhi. He took Shri Le Sheam Khong and Shri Lee Aches Khong, his brothers as partners in the said business with effect from 1.11.1960. The said partnership took the shop in dispute on rent from Shri Chuni Lal Soni and shifted its business to the shop in dispute. Shri L. Queth Khong was never a tenant in the shop in dispute in his personal capacity. All the said three brothers have died. The applicant is the son of Shri Lee Sheam Khong and is one of the tenants in the shop in disputes.

The applicant is carrying on business in the shop in dispute along with the Shri Sean Wee Lee S/o Late Shri Lee Queth Khong, Shri Kenneth Lee, s/o Shri Late Lee Aches Khong and Mr. Beryl A Lee, w/o Shri Late Lee Sheam Khong as partners of M/s. K.K. Lee. All the said partners are the tenants in the shop in dispute and are carrying on the business in the name of M/s. KK Lee therein. It is pertinent to mention here that the rent receipts were being issued in the name of KK Lee by Shri Chuni Lal Soni.”

3. It is the contention of the respondents that there is no tenancy in favour of the firm in the name and style K.K. Lee as has already been found by the Rent Controller in a previous proceedings as per order dated 24.10.1998 of the Additional Rent Controller, Delhi, when the respondents initiated the eviction proceedings against the original tenants Shri L. QuethKhong. Paragraph 10 of the said order, to the extent relevant, reads as follows:

“10. The reliance of the respondent on payment of rent by account payee cheque and encashment by the petitioner is of no help as payment of rent will not create the relations of landlord and tenant. Reliance is placed on illegible. Similarly, Ex.AW1/R2 will not create the relationship of landlord and tenant. For creation of relationship of landlord and tenant must be at ad-idem. Ex.AW1/R1 is of no help to the respondent as in my considered view there is inter pollution/cutting in the word Mr. and it has been made as M/s from Mr. this observation of mine is substantiated if we perused Ex.AW1/3 to Ex.AW1/29. All these counter foils of rent receipts on the bottom categorically contained the signatures of the tenant. Mr. L. QuethKhong has signed these receipts as a tenant in his individual capacity. Had the firm been the tenant, then he must have signed on behalf of the firm. Had the intention of Mr. L.

QuethKhong have to made the firm M/s K.K. Lee is a tenant, then this fact must have found mention in the lease deed. The firm was in existence since 1960 and the tenancy was created in 1963. Had the firm been tenant, then Mr. L. QuethKhong must have signed as partner of the firm and not in his individual capacity.”

4. The Rent Controller allowed the application for impleadment, which was challenged by the respondents herein in Revision Petition before the Rent Control Appellate Tribunal. The Tribunal set aside the order passed by the Rent Controller. The said order was challenged by the appellant before the High Court, leading to the impugned order.

5. The High Court has concurred with the Appellate Authority. Thus, aggrieved, the present appeal.

6. Having extensively heard Shri C.U. Singh, learned senior counsel appearing for the appellant and Mr. Sanjeev Mahajan, learned counsel appearing for the respondents, we are of the view that for properly adjudicating the issue before the Rent Controller in Eviction Petition No.18/2010, in view of the contentions taken by the parties, both the firm in the name and style of K.K. Lee and all its partners should be on the array of parties as proper party. No doubt, they are not necessary parties from the point of view of the Eviction Petitioners, but the Court has a duty to see whether the presence of the proper parties would facilitate the complete determination of the matter in dispute. The following are the names of the partners of the firm:

- i. Mr. Richard Lee
- ii. Mr. Sean Wee Lee
- iii. Mr. Kenneth Lee
- iv. Mrs. Beryl Lee

7. The firm as represented by its managing partner, if any, or duly authorized person amongst the partners to represent the firm will stand impleaded as additional respondent and all the partners will stand impleaded also as additional respondents. We leave open all the questions, to be adjudicated before the Rent Controller including the questions as to whether there was a partnership as tenant and being an issue once adjudicated and concluded before the Rent Controller, whether that finding is conclusive as far as the present proceedings are concerned.

8. In view of the power under Order I, Rule 10 suo motu invoked by us, it is not necessary for the parties to file separate application, since we have ourselves impleaded the firm and the partners in the proceedings. We direct all the parties to appear before the Rent Controller, Delhi on 1.3.2017. Within two weeks from today, the respondents will file an amended memo of parties before the Rent Controller. The additionally impleaded respondents, if they chose to file written statement, will file it either jointly or individually, within a period of thirty days from today.

9. Till the complete and effectual adjudication, the interim order passed by this Court on 13.1.15 with regard to deposit of Rs.75,000/- per month will continue unless it is duly varied by an appropriate forum.

10. We make it clear that the Rent Controller will pass appropriate orders with regard to the release of the amount when the petition is finally disposed of.

11. We direct the Rent Controller, having regard to the fact that the eviction petition has been pending since 2010, to dispose of the same expeditiously and in any case within six months from the date of the first appearance. The appeal is disposed of, as above.

12. Pending application(s), if any, shall stand disposed of.

13. There shall be no orders as to costs.

.....J. [KURIAN JOSEPH]J. [A.M. KHANWILKAR] NEW DELHI;

FEBRUARY 02, 2017.