Laxmishankar Harishankar Bhatt vs Yashram Vasta (Dead) By L.Rs. on 26 February, 1993

Equivalent citations: AIR1993SC1587, 1993(2)ALT9(SC), (1994)1GLR25, 1993(1)SCALE726, (1993)3SCC49, AIR 1993 SUPREME COURT 1587, 1993 (3) SCC 49, 1993 AIR SCW 1759, (1993) 2 APLJ 5.1, 1993 ( ) JT (SUPP) 21, 1995 SCFBRC 80, (1993) 1 CURCC 578, (1993) 1 RENTLR 502, (1993) 2 ANDH LT 9, (1993) 2 GUJ LH 603, (1993) 2 LANDLR 389, (1994) 1 CIVILCOURTC 437, (1995) 1 ALL RENTCAS 52, (1993) 2 RENCR 453

Bench: Kuldip Singh, S. Mohan

ORDER

1. Undaunted by the failure in both the courts below, the appellant has come up in appeal before this Court. The facts lie in a narrow compass.

2. The appellant filed Special Civil suit No. 54 of 1970 in a court of Civil Judge at Jamnagar for recovery of possession together with mesne profits, of suit properties which are survey No. 34 measuring an extent of 8 acres 7 gunthas and survey No. 35 measuring an extent of 9 acres 8 gunthas and survey No. 35 measuring an extent of 9 acres 8 gunthas. There is also a house situate in survey No. 34. According to the appellant, he purchased the property from Naranshankar Velji and Ors. by a registered sale deed dated 12.2.1968 for a sum of Rs. 6,000/-. As such, he became the sole owner of the suit property. Yashram Vasta was originally the tenant of the appellant's predecessor in title. After the death of said Yashram Vasta, defendant Nos. 1 to 4 his sons and Defendant No. 5, his widow continued in possession of the suit property. A suit notice was issued on 14.4.1968 demanding possession but that did not evoke any response. Therefore, the suit.

3. The respondents in the written statement questioned inter alia the jurisdiction of the civil court to try the suit as it was barred by the provisions of the Saurashtra Barkhali Abolition Act, 1951. The certificate issued by Mamlatdar was without jurisdiction, as matter of fact, the same had been obtained by fraud. Even otherwise, assuming the suit was maintainable, the appellant had not become the owner of the suit property under the sale deed dated 12.2.1968. There were other co-owners of the suit properties. They had not been impleaded in the suit and, therefore, the suit is liable to be dismissed for non-joinder of necessary parties.

4. The learned trial judge found that the Court had jurisdiction to try the suit and the same was not barred under the provisions of Saurashtra Barkhali Abolition Act, 1951. However, it was held that all the co-owners of the suit property were necessary parties. Hence, for non-joinder of necessary parties, the suit would be bad. In this view, he dismissed the suit.

5. Aggrieved by the dismissal, the matter was taken up in First Appeal No. 194 of 1972 filed in High Court of Gujarat The division bench relying on Nanalal Girdharlal v. Gulamnabi 13, G.L.R. 880 held:

> In the absence of other co-owners, the plaintiff suit cannot be held to be maintainable.

6. Thus, it dismissed the appeal.

7. Hence, this appeal by leave.

8. Shri P.H. Parekh, learned Counsel for the appellant would urge that the courts below have completely misdirected themselves as to the maintainability of the suit and the nonjoinder of necessary parties. First and foremost, it is not correct to state that a co-owner cannot maintain a suit This Court has taken a view in Sri Ram Pasricha v. Jagannath and Ors. that for the purpose of West Bengal premises Tenancy Act, 1956, a co-owner can maintain a suit. In Kanta Goel v. B.P. Pathak and Ors. , again for the purpose of Delhi Rent Control Act, it has been held that the absence of other co-owners cannot disentitle the landlord from suing for eviction. In Pal Singh v. Sunder Singh (dead) by Lrs. and Ors. , it is stated that when the other co-owner did not object to the eviction, one co-owner could maintain an action for eviction even in the absence of the other co-owner. In A. Viswanatha Pillai and Ors. v. The Special Tahsildar for Land Acquisition No. IV and Ors. relying on such propositions, this Court has taken the view that any co-owner could file a suit and recover the property against strangers. This being the Jaw, the legal proposition as laid down in these cases ought to have been applied.

9. Factually speaking, the written statement does no specifically say as to who are the other co-owners and the nature of interest they possessed. A vague allegation that there are other co-owners would not be enough. The case of the appellant throughout was that there was nobody else who had any interest in the suit property. The respondents ought to have let in evidence in this regard. They have failed to do so. The courts below proceeded on the assumption as though there were co-owners who required to be impleaded an on that basis, wrongly dismissed the suit as not maintainable as the necessary parties had not been joined. The judgments are unsupportable both on facts and law and hence warrant interference.

10. Mr. Vimal Dave, learned Counsel for the respondents submits that as the courts below have rightly held this is a suit for recovery of the entire properties; unless and until, all the necessary parties are before the Court, recovery of possession was impossible. Objection relating to non-joinder of necessary parties viz. the other co-owners was taken in the written statement itself. In spite of that the appellant would proceed on the basis that he had acquired the entire ownership. Therefore, he took a risk which proved to be fatal on account of non-joinder of necessary parties. The cases cited do not have any bearing on the issue in this appeal. Hence, the appeal is liable to be dismissed.

11. Having regard to the above submissions, the only point that requires to be decided is whether the suit of the appellant was liable to be dismissed on the ground of non-joinder of necessary parties.

This is a case of recovery of possession. The original owner was Gopalji who died leaving behind four sons. The names of all these four sons had been recorded in the revenue record in place of Gopalji. Out of four sons, one of them namely Prabha Shankar died. In his place, the name of his son Mansukhlal Prabha Shankar has come to be substituted. As per the revenue records, no other name as co-owner is found. The sale deed dated 12.2.1968 had been executed by three sons of Gopaljee and a grand son in favour of the present appellant. Mansukhlal had also subscribed to the sale. The sale deed contains a recital that there are no claimants or sharers except the vendOrs. The vendee, the appellant is also indemnified against any such claim. Thus, it will be clear that the appellant took the stand that he has come to purchase the entire right, title and interest in the suit property. As such owner, he sought the recovery of possession.

12. In the written statement about the other co-owners what is stated is interesting. Page 10, paragraph 14 reads thus:

> At present the plaintiffs have got no right or authority to bring the suit regarding disputed land. It is unauthoritative that it is mentioned to the plaintiff that the disputed land has heirs obtained under the so-called sale-deed. Originally this land belonged to one Barkhalidar Gopalji. He had got four heirs-Kala, Velji, Bhavanishanker and Tribhovan. There are many heirs of these four heirs. And the land cannot be sold fully without consents and signatures of all those heirs. And therefore, the plaintiffs do not get the right of entire ownership on the entire land and therefore the plaintiffs do not get entire right or authority on the disputed land. All these heirs have got right title and interest in this disputed land they are necessary party in this suit. Their pedigree is annexed herewith and the same may be considered as a part of this written statement The plaintiff's suit for obtaining possession in absence of the owner is not maintainable. And therefore, on account of the said reason also the plaintiffs suit is liable to be dismissed.

13. A careful reading of above clearly discloses that there is no clear averment as to who are the co-owners and what exactly is the nature of right claimed by them. A vague statement of this character, in our considered opinion, could hardly be sufficient to nonsuit the appellant on the ground of non-joinder of parties. We are unable to comprehend as to how the trial court had come to the conclusion that the executants of the sale deed dated 12.2.1968 could not pass a full title when itself points out that the shares of the other co-owners were not known. May be the appellant took the stand that it was not necessary to implead others but that does not mean the appellant is liable to be non-suited. The stand of the appellant is consistent with his case that he has come to acquire the entire ownership of the suit property. Therefore, the courts should have insisted on some material or record as to the existence of other co-owners and their rights pertaining to suit properties. In juxtaposition to revenue record, there must be some worthwhile evidence for the court to conclude that there are other co-owners. Genealogical tree filed along with the written statement cannot point to the existence of co-owners without specific evidence in this regard. Such an evidence is totally lacking in this case. Therefore, we find it equally impossible to accept the finding of the High Court when it endorsed the view of the trial court in this regard. Accordingly, we conclude that in the absence of a specific finding as to whether there are other co-owners and how

they are necessary parties, the suit could not have been dismissed for non-joinder of necessary parties. On this conclusion, we think it is unnecessary to go into the legal aspect as to whether in the absence of other co-owners, one co-owner could maintain a suit.

14. In view of the above, the appellant would be entitled to succeed. However, during the hearing, Mr. P.H. Parekh, learned Counsel for the appellant responding to a suggestion from the Court agreed to give a 6 acres to the respondents in view of their long enjoyment and possession as tenants. This suggestion was acceptable to the learned Counsel for the respondents Shri Vimal Dave. Therefore, the con-current judgments and decrees of the courts below are set aside. There will be a decree for possession of the suit properties less six acres in favour of the appellant. These six acres shall be given at the option of the appellant to the respondents who will hold the said extent, as full owners thereof and not as tenant In the result, the appeal stand allowed in the above terms. There will be no order as to costs.