

Jagjit Singh Vs. P.K. Dutt Etc.

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Court : Delhi

Decided On : Aug-09-1972

Reported in : 1973RLR723

Judge : D.K. Kapur, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 88

Appeal No. : Civil R. Appeal No. 432 of 1972

Appellant : Jagjit Singh

Respondent : P.K. Dutt Etc.

Advocate for Pet/Ap. : D.N. Nijhawan,; S.K. Paul and; M.R. Chhabra, Advs

Judgement :

D.K. Kapur, J.

(1) This Revision Petitions raises an important question of law concerning the right of a tenant to institute an interpleader suit against two or more persons who are disputing between themselves the question as to who is the landlord of the premises.

(2) The petitioner before me is Jagjit Singh, one of the persons claiming to be the landlord of Shri P.K. Dutt, the plaintiff in the suit. One of the persons is Gurbux

Singh an advocate from Jullundur. It appears that the present petitioner had instituted proceedings against P.K. Dutt before the Rent Controller where a statement was made by all these three persons that they mutually agreed that the decision in the present inter-pleader suit would be binding on them. An order in this behalf was passed by the Additional Rent Controller. The petitioner alleges that no such statement was made before that authority, but I am not in a position to accept this as being correct in view of the order actually passed in that case. The objection as to the maintainability to inter-pleader suit was raised before the trial court and rejected per orders dated 19th October, 1972. It was held that the suit was maintainable, particularly in view of the statement made before the Additional Rent Controller. However, the objection of the petitioner that an inter-pleader suit could not be instituted by a tenant against his landlord requiring him to inter-plead with another person, was not properly discussed in the order and, hence I find that the order sought to be revised has not really dealt with the legal position raised.

(3) Mr. D.N. Nijhawan, learned counsel for the petitioner contends that the objection he has taken to the maintainability of the suit is an attack on the jurisdiction of the Court. He states that this jurisdiction is not dependent on any statement that might have been made before the Additional Rent Controller and he is not at all estopped from raising the question of maintainability, as that maintainability is dependent on the express provision of the Code of Civil Procedure. I would have dismissed this Revision Petition on the ground of estoppel, but I am satisfied that whatever the law may be, a Civil Court cannot get jurisdiction merely because the parties have agreed before the Additional Rent Controller that a decision given in the inter-pleader suit would be binding upon them. If the inter-pleader suit is not maintainable obviously that statement will become wholly ineffective. It is, therefore, necessary now to deal with the main question before me, which is as to whether an inter-pleader civil suit like the present can be filed by a tenant in which he seeks to have the identity of his landlord determined. The normal rule enacted in Order 35, Rule 5 of the First Schedule of the Code of Civil Procedure is that no landlord can be compelled by the tenant to inter-plead with a person other than a person who claims through him. In other words, if there is a contest between two persons as to which of them

is the landlord, it is not for the tenant to compel them to inter-plead inter se, The main question, therefore is, as to whether the persons claiming to be landlords are claiming through each other or not. If these persons are adverse to each other, then obviously the suit does not lie.

(4) The provisions governing the requirements of all types of inter-pleader suits are to found in Section 88 of the Code of Civil Procedure. That Section provides a remedy for a person against two persons, who adversely to each other, claim a certain sum From that person. In the present case, Gurbux Singh, Jagjit Singh and Shrimati Wazir Kaur are claiming the rent of these premises from the plaintiff, P. K. Dutt. They all claim to be the landlord. The plaintiff is ready to pay the rent, but he does not know which person or persons are to be paid the amount. The provisions of Section 88 of the Code are substantially complied with. On the other hand, Order 35, Rule 5 of the Code of Civil procedure puts a bar of tenants instituting inter-pleader suits. The provision reads:-

'nothing in this Order shall be deemed to enable agents to sue their principals, or tenants to sue their landlords for the purpose of compelling them to inter-plead with any persons making claim through such principals or landlords'

(5) It applies equally to agents and tenants. Thus, by virtue of this provision, no tenant can compel his landlord to interplead with a person who claims otherwise than through that landlord. There is a great deal of authority for the proposition that a suit cannot be instituted by the tenant if there are two persons claiming to be the landlords. The learned counsel for the petitioner has relied on Bhushan Chandra Ghose and other V. Jahar Mal Bhutra and others. (1919) Indian Cases 733, Nanji Koer V. Umatul Batal (1912) 13, Ind Cas 40 and Yeshwant Bhikaji Vilankar V. Sadashiv Govind Arekar and another. : AIR1940 Bom414 , and similar cases. I do not think that any further authority is required for the proposition that a tenant cannot institute a suit by which he compels his landlord to interplead with a person who claims adversely to him. The only question that requires decisions in the present case is, whether the two person who are making a separate claim against the plaintiff in the case before me are claiming through each other or independently of each other. For the purpose of ascertaining the facts of the case

it is necessary to refer to plaint...,

(6) There are two points in the plaint which require emphasis. Firstly Nos. 1 and 2 let out the property to the plaintiff some time in 1953. Thus, it cannot be said that Jagjit Singh and Gurbux Singh are not claiming through each other, because according to the plaintiff both of them let out the property to him conjointly. Secondly, according to the claim of defendant No. 2 Jagjit Singh defendant No. 1 was a Benami for Shrimati Wazir Kaur wife of Gurbux Singh. Thus, Shrimati Wazir Kaur also claimed through Jagjit Singh. The position of defendant No. 4 is not explained at all in the plaint. Defendant No. 4, I may mention is Guru Nanak Public Welfare Trust, Jullundur City. Now, can it be said from these facts that the plaintiff is prevailing upon Jagjit Singh to interplead with a person who does not claim through him. For one thing, Gurbux Singh, defendant No. 2 is himself a landlord, who let out the property Along with Jagjit Singh. It cannot thereforee, be said that he claimed independently of Jagjit Singh. As far as defendant No. 3 is concerned, according to the plaintiff's case, Shrimati Wazir Kaur has claimed that Jagjit Singh is her Benami, i.e., Shrimati Wazir Kaur's claim is that she is the real owner. This again is a case wherein it cannot be said that Shrimati Wazir Kaur is claiming otherwise than through Jagjit Singh. After setting out the main features of the plaint it is necessary again to refer to the provisions of the Code contained in Order 35, Rule 5.

(7) I must confess that the language of Order 35, Rule 5 of the Code of Civil Procedure is not very clear. It provides (after excluding the superfluous words) that no tenant can compel his landlord to inter- plead with a person other than a person making a claim through him. Now the person objecting to the suit is Jagjit Singh, who is being called upon to interplead firstly with Gurbux Singh and secondly with Shrimati Wazir Kaur. I am leaving the Guru Nanak Trust out of consideration altogether because its claim is not set out in the plaint. The claim of the plaintiff regarding Gurbux Singh is that he has been collecting the rent from the inception of the tenancy. but on behalf of both Jagjit Singh and himself. It cannot be said that Gurbux Singh is claiming adversely, to Jagjit Singh Obviously, the fact that Jagjit Singh and Gurbux Singh jointly let out the property shows that they were not acting adversely to each other but conjointly in the beginning of the tenancy As far

as Shrimati Wazir Kaur is concerned, she claims that Jagjit Singh is her Benami. It cannot, therefore, be said that she is not making a claim through Jagjit Singh.

(8) The language of the provisions of Order 35, Rule 5 of the Code has been interpreted in the aforementioned judgment of the Bombay High Court *Yeshwant Bhikaji Vilankar V. Sadashiv Govind Arekar and another* : AIR1940 Bom414 . In that case, it was held that the interpleader suit did not lie because one of the defendants was claiming adversely to the other. Here, in the suit before me, no doubt Jagjit Singh is claiming that he is the sole landlord, but it is not the case of Gurbux Singh or Shrimati Wazir Kaur that have an independent or adverse title to Jagjit Singh. In fact, as far as the plaint seems to indicate, Gurbux Singh conjointly let out the property to the plaintiff, where as Shrimati Wazir Kaur's case is that Jagjit Singh is her Benami and she is the real landlord (landlady). There are other observations in the judgment of *Broomfield J.* showing that Order 35, Rule 5 is really based on the same principle which is to be found in Section 116 of the Evidence Act, namely that a tenant cannot deny the title of his landlord at the commencement of the tenancy. I cannot find from the plaint that the tenant is denying the title of his landlord at the commencement of his tenancy in the present case. In fact, his case is that both Jagjit Singh and Gurbux Singh were his landlords, but subsequent events have made it very doubtful as to which of the two can claim the rent, and also that Shrimati Wazir Kaur has made her claim in place of Jagjit Singh. It does not appear to me that the claims of the three persons do not arise through each other.

(9) A somewhat similar case came before the Punjab High Court in *Court of Wards Amb Estate V. Tikka Chain Singh and others*, . There the Court of Wards, Amb Estate instituted an interpleader suit seeking to have determined which of its Wards were entitled to claim all the property vesting in that Court. The argument advanced before the court was that the Court of Wards was an agent and it could not call upon its principals, namely the Wards to interplead among themselves. The Court decided that such a suit did lie, [After citing relevant para, judgment proceeds.]

Thus, Court held that an interpleader suit was not barred when an agent sought to have two or more principals interplead among themselves. The same situation seems to hold true in the present case. The plaintiff is seeking to get two or more of his landlords to interplead among themselves. The illustrations to Order 35, Rule 5 of the Code help in the interpretation of the some what difficult language in which the rule is couched.

(10) In the first illustration, it is stated that certain jewels are entrusted by 'A' to 'B'. If 'C' claims them from 'B', he cannot institute an interpleader suit by which he compels 'A' to interplead with 'C'. The principle of this illustration is that 'C' is not claiming through 'A', but claims the jewels independently. Thus, if Gurbux Singh or Shrimati Wazir Kaur were claiming this property independently of Jagjit Singh, the present suit would not be maintainable.

(11) In the second illustration to the rule, it is stated that if 'A' has entrusted 'B' with jewels, and 'A' has later pledged them with 'C' and both 'A' and 'C' claim the jewels from 'B' then 'B' can institute an interpleader suit. This is case where 'C' is claiming the jewels as a transferee of 'A'. That is the situation in the present case. Gurbux Singh is claiming to be the landlord because he has been the landlord from the very inception of the tenancy and Shrimati Wazir Kaur is claiming the rent on the basis that Jagjit Singh is her Benami. Clearly, Gurbux Singh's claim is based on his being a co-landlord with Jagjit Singh. He is, therefore, claiming through Jagjit Singh and so also does Shrimati Wazir Kaur. This falls within the ambit of the second illustration. I thus come to the conclusion that the present suit is maintainable.