

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**



S.B. Civil Writ Petition No. 19611/2023

1. Ganpat Singh S/o Late Shri Raghunath Singh Panwar, Aged About 68 Years, Residing At Shri Krishna Motor Repair Works, 6, Thakkar Bappa Colony, And Anand Vihar Colony, Tekri Madri Link Road, Udaipur.
2. Narendra Singh S/o Shri Ganpat Singh Panwar, Aged About 39 Years, Residing At Shri Krishna Motor Repair Works, 6, Thakkar Bappa Colony, And Anand Vihar Colony, Tekri Madri Link Road, Udaipur.

----Petitioners

Versus

1. Chandra Prakash S/o Late Shri Kyali Lal Nagda, Residing At 100 Feet Road, Mali Colony, Udaipur, Rajasthan.
2. Narendra Kumar S/o Late Shri Kyali Lal Nagda, Residing At 100 Feet Road, Mali Colony, Udaipur, Rajasthan.
3. Dinesh Chandra S/o Late Shri Kyali Lal Nagda, Residing At 100 Feet Road, Mali Colony, Udaipur, Rajasthan.
4. Rajesh S/o Late Shri Laxmi Lal Nagda, Residing At 100 Feet Road, Mali Colony, Udaipur, Rajasthan.
5. Vimal S/o Late Shri Laxmi Lal Nagda, Residing At 100 Feet Road, Mali Colony, Udaipur, Rajasthan.
6. Inder Jeet S/o Late Shri Hamer Singh Panwar, Residing Nayapura, Behind Hotel Bawarchi, Delhi Gate, Udaipur, Rajasthan.
7. Bhim Singh S/o Late Shri Raghunath Singh Panwar, Residing Nayapura, Shiv Motor Parts, Shop No. 2,3 7, Hotel Devdarshan, In Front Of Ashok Cinema, Udaipur, Rajasthan.

----Respondents

For Petitioner(s) : Mr. Rajendra Saraswat
For Respondent(s) : Mr. Gaurav Chaudhary for
Mr. Muktesh Maheshwari

HON'BLE DR. JUSTICE NUPUR BHATI
Judgment

Reserved on- 19/01/2024

Pronounced on- 24/01/2024

1. Though the matter was listed in 'Fresh' Category but on the joint request of both the counsel for the parties, the matter is heard finally today itself.

2. This writ petition has been filed under Article 227 of the Constitution of India claiming the following reliefs:

*"1. The impugned order dated 09.11.2023 (Annexure-1) passed by the Learned Trial Court may kindly be quashed and set aside;
2. Any other relief/reliefs, which this Hon'ble Court may deem just and proper in the facts and circumstances of the case, may also be granted in favour of the Petitioners."*

3. The respondents had preferred a rent petition under Section 9 the Rent Control Petition, 2001 (hereinafter referred to as the 'Act of 2001'). In response to the same, the Petitioners filed an application under Order VII Rule 11 of the Civil Procedure Code, 1908 (hereinafter to referred to as 'CPC') for the rejection of the Plaint, on the ground that the respondents are not the owner and landlord of the property, (which is Arajji No. 429, wrongly mentioned as 490), instead it is owned by the Urban Improvement Trust, Udaipur (hereinafter referred to as 'UIT').

4. In addition to this, the petitioners also filed an application to bring certain documents on record, which include the detail of land record, to which the respondents filed a reply. After hearing submissions from both the parties, the learned Rent Tribunal rejected the application filed under Order VII Rule 11 of CPC vide order dated 09.11.2023 (Annexure-1).

5. Being aggrieved by the order dated 09.11.2023 (Annexure-1), the petitioners preferred this Writ Petition.

6. Learned Counsel for petitioners submitted that the respondents have no *locus standi* to prefer the rent petition since the property in dispute is owned by the UIT, and thus belongs to

the State. Thus, application filed by the respondents is not maintainable by virtue of Section 3(c)(i) of the Act. The relevant Section has been reproduced as under:

"3. Chapter II and III not to apply to certain premises and tenancies.- Nothing Contained in Chapter II and III of this Act shall apply,-

xxxx

(c) rupees two thousand or more, in case of premises let out at places situated in other municipal areas. to which this Act extends for the time being;

(i) to any premises belonging to or let out by the Central Government or the State Government or a local authority;

xxxx"

7. Learned Counsel for petitioners also submitted that though they have been paying the rent to the respondents but this payment of rent would not make the respondents, the owner of the property in question, since the said rent had been paid under the impression that the respondents were the owner of the property. He also submitted that the respondents do not fall within the definition of "Landlord" as mentioned under Section 2(c) of the Act of 2001 and thus in the absence of relationship of landlord and tenant, the petitioners cannot be evicted from the premises in dispute.

8. Learned Counsel for petitioners further submitted that the details of the said property as mentioned in the documents submitted by the respondents do not match with the details of the property in dispute, as both the documents are relating to different properties. It was also submitted that the respondents

have not placed on record any document to establish as to how the property in question, came in his or his ancestors' possession.

9. Learned Counsel for petitioners also submitted that the learned Rent Tribunal ought to have considered the preliminary issue, which included allowing Order VII Rule 11 of CPC, before going into the merits of the case. Learned Counsel for petitioners placed reliance upon ***Union of India & Ors. v. Adani Exports*** **AIR 2002 SC 26** decided on 31.10.2001. The relevant portions of the judgment read as under:

"5. Having considered the arguments addressed on behalf of the parties and having perused the records, we are of the considered opinion that the question of jurisdiction should be first decided by us before going into the merits of the case in hand. As a matter of fact, we feel it would have been more appropriate on the facts of these cases if the High Court had proceeded under Order XIV Rule 2 of Civil Procedure Code by deciding the question of jurisdiction as a preliminary issue first instead of deciding the case on merit."

10. Per Contra, Learned Counsel for Respondents submitted that though the property in question is owned by the State, on papers, however, the same had come into their possession through their ancestors.

11. Learned Counsel for respondents further submitted that the fact that even if the ownership of the disputed property is in question, the petitioners cannot be allowed to challenge the status of respondents as the owners, since petitioners had been paying rent to the respondents for the disputed property. Learned Counsel for the respondents have relied upon ***Mukesh Kumar***

Garg v. Naveen Bansal [S.B. Civil Writ Petition No. 24441/2018 decided on 19.03.2021]. The relevant portion of the judgment reads as under:

"11. Undisputedly, the petitioner has paid rent to the respondent without raising any doubt as to his competence to receive the same, therefore, he is estopped from challenging status of the respondent being his landlord claiming the gift deed dated 06.04.1968 having been held to be a sham transaction in earlier round of litigation which; otherwise also, he has failed to establish. It is trite that in an application seeking eviction, the applicant is not required to establish his title qua the rented premises and to have a recovery certificate, it is sufficient that if he establishes relationship of landlord and tenant between the parties. From the material on record, it is beyond any doubt that the respondent has been successful in establishing such relationship. Therefore, the contention raised by the learned counsel for the petitioner cannot be countenanced."

12. Learned Counsel for respondents also submitted that while deciding the application under Order VII Rule 11 of CPC, only the averments of the Plaint have to be looked upon and the pleas taken by the petitioner-defendant in the written statement are wholly irrelevant. Learned Counsel for respondents relied upon ***The Church of Christ Charitable Trust and Educational Charitable Society v. Ponniammam Educational Trust*** [Civil Appeal No. 4841 of 2012 decided on 03.07.2012]. The relevant portion of the judgment is reproduced as under:

"9. A perusal of Order VII Rule 11 Code of Civil Procedure makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial

court can exercise the power under Order VII Rule 11 Code of Civil Procedure at any stage of the suit - before registering the plaint or after issuing summons to the Defendant at any time before the conclusion of the trial. For the purposes of deciding an application under Clauses (a) and (d) of Rule 11 of Order VII Code of Civil Procedure, the averments in the plaint are germane; the pleas taken by the Defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order VII Rule 11 Code of Civil Procedure cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court....

*It is clear that in order to consider Order VII Rule 11, the Court has to look into the averments in the plaint and the same can be exercised by the trial Court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the Defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in **Raptakos Brett and Co. Ltd. v. Ganesh Property** (1998) 7 SCC 184 and **Mayar (H.K.) Ltd. and Ors. v. Owners and Parties, Vessel M.V. Fortune Express and Ors.**"*

13. Heard learned counsel for parties, perused the material available on record and the judgments cited at the Bar.

14. This Court observes that by filing an application under Order VII Rule 11 of CPC, the petitioners have questioned the ownership in respect to the said property in dispute, and this issue is beyond the jurisdiction of the learned Rent Tribunal.

15. In the eviction petition filed by the respondents, a categorical stand has been taken that the petitioner-tenant has been paying the rent to the respondents and the petitioners in his written statements before the learned Rent Tribunal, has admitted the said fact. In the written statements submitted by the petitioners before the learned Rent Tribunal, the petitioners have not disputed the landlord and tenant relationship between the petitioners and the respondents and it is an afterthought that the petitioners by way of filing application under Order VII Rule 11 of CPC have disputed the relationship of landlord and tenant between the petitioners and the respondents. In the Act of 2001, under Section 2(c), the definition for landlord has been laid down in which any person who for the time being is receiving or is entitled to receive rent of any premises is said to be a landlord. The relevant Section has been reproduced as under:

"2. Definitions.- In this Act, unless subject or context otherwise requires,-

(a) xxxx

(b) xxxx

(c) "landlord" means any person who for the time being is receiving or is entitled to receive the rent of any premises, whether on his own account or as an agent, trustee, guardian or receiver for any other person, or who would so receive or be entitled to receive the rent, if the premises were let to a tenant; xxxx"

In the present case, it is undisputed that the respondents have been receiving the rent from the petitioners and thus, there is no iota of doubt that the respondents cannot be said to be the landlord in terms of provisions of the Act of 2001.

16. Thus, the submissions of the learned counsel for the petitioners that the relationship of landlord and tenant is *prima facie* not established and eviction application is not maintainable before the learned Rent Tribunal, is not sustainable.

17. This Court finds that in the case of **Nanak Ram Lalwani Vs. Gajendra** reported in **(2009) SCC Online RAJ 882**, the Hon'ble Division Bench of this Court has observed that for the determination of the question of landlord and tenant relationship in a suit for eviction under the provisions of the Act of 2001, the question of title or ownership of the premises is not required to be gone into but the questions with regard to their rights and liabilities arising in the matter have to be determined and if the applicant is not able to establish the landlord and tenant relationship in terms of the provision of the Act of 2001, the application for eviction can result into dismissal of the same.

18. This Court finds that the petitioners have failed to establish that the petitioners and the respondents did not have the relationship of the landlord and tenant in respect to the premises in dispute, for the reason that the rent was duly given by the petitioners and accepted by the respondents and therefore, the application filed by the petitioners under Order VII Rule 11 of CPC raising the question of title/ownership of the property in dispute, of the respondents has rightly been rejected by the learned Rent Tribunal.

19. Thus, no interference is called for in the impugned order dated 09.11.2023 (Annex.-1) passed by the learned Rent Tribunal,

Udaipur, therefore the writ petition is dismissed. Stay petition as well as all pending applications, if any, stand dismissed.

(DR. NUPUR BHATI),J

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