

The High Court of Madhya Pradesh
Bench at Gwalior
CR-403-2021

[Shyamlal Vyas (Dead) through Legal Representatives
Smt. Gopi Vyas & Ors.]

Vs.

[Inderchand (Dead) through Legal Representatives
Shri Om Praksh Jain & Ors.]

Gwalior, Dated:07/01/2022

Shri Sanjay Kumar Dwivedi, learned counsel for the applicants.

Shri Sanjeev Jain, learned counsel for the respondents No.1 & 02.

Shri Kamal Mangal, learned counsel for the respondent No.03.

1. This petition has been filed by the landlord-applicants against the order dated 22.10.2021 passed by the Rent Controlling Authority, Laskar, Gwalior (M.P.) in Eviction Case No.24/95-96X90-7, whereby the application filed by the intervenor-respondents under Order 1 Rule 10 of the CPC for impleadment has been allowed.

2. Brief relevant facts for disposal of this petition are that the applicants had filed an eviction application under Section 23-A of M.P. Accommodation Control Act, 1961 against the respondent No.02 on the ground of *bona-fide* requirement of his son before the Rent Control Authority, Gwalior. The respondent No.03 intervenor filed an application under Order 1 Rule 10 for impleadment in these eviction proceedings with the averment that it has obtained possession of the rented shop from the respondents tenant No.1 & 2 in the execution of a decree passed by the civil court in its favour. The application of the intervenor has been allowed by the impugned order against which

this petition has been filed by the landlord/applicants.

3. Heard learned counsel for both the sides and perused the material available on record.

4. Learned counsel for the petitioners submits that in eviction proceedings pending between the landlord and tenant third party cannot be allowed to be impleaded even if the same claims to be the owner of the rented premises. In this case, the same respondent-intervenor on earlier occasion filed an application for impleadment on 15/06/1998 which was dismissed by the Rent Controlling Authority vide order dated 03/09/1998 with the clear finding that impleadment of alleged owner of the property would convert the application of eviction into a title suit which is not permissible. The same intervenor filed another application seeking dismissal of the proceedings on similar grounds of the decree of civil court in its favour which was dismissed by the same Rent Controlling Authority, but surprisingly the present application filed on the same grounds for impleadment has been allowed. The decree of the civil court on the basis of which impleadment has been sought has been obtained by collusion. The present landlord is not party in the civil suit in which collusive decree has been passed. The dispute with regard to title of the property including disputed rented property herein is pending before the Hon'ble Supreme Court, wherein Hon'ble Supreme Court has allowed the present eviction proceedings to continue. The present application

under Order 1 Rule 10 CPC has been filed concealing the material facts. The learned Rent Controlling Authority did not consider its earlier orders, whereby similar prayer of the impleadment and the application seeking dismissal of the proceedings on similar grounds were already dismissed. It also lost sight of the orders of different courts having bearing on the issue which were filed by the landlord-petitioners alongwith detailed reply to the application. The impugned order is *per-se* illegal which deserves to be set aside. He has placed reliance on the judgment passed by Hon'ble Supreme Court in the case of ***J.J. Lal Private Ltd. Vs. M.R. Murali***, reported in ***(2002) 3 SCC 98***.

5. Learned counsel for the respondent- intervenor has submitted that the intervenor is owner of the rented property. He has filed a suit for eviction against the present tenants which was decreed by the civil court. The decree has attained finality. In execution of the decree, it has obtained possession of the rented shop. The decree of civil court is binding on the Rent Controlling Authority. Though, earlier application for impleadment by intervenor was dismissed but now the circumstances have changed with the decree of civil court passed in favour of intervenor and with the execution there of. In such changed circumstances, the present eviction proceedings cannot be effectively adjudicated without impleading intervenor, hence, there is no legal infirmity in the impugned order. The petition deserves to be

dismissed.

6. Learned counsel for the intervenor-respondents has placed reliance upon **Satish Chander Ahuja Vs. Sneha Ahuja [(2021) 1 SCC 414]**, **Savitri Devi Vs. District Judge, Gorakhpur and others [1999 AIR (SC) 976]**, **Nemichand Jain Vs. Ram Baboo [1995 (1) MPWN 47]**, **Jai Narayan Das Vs. Chhotelal and others [2018 (II) MPWN 113]**.

7. Learned counsel for the respondents No.1 & 2 (tenants) has submitted that in the execution of the decree of civil court passed against them, the intervenor has taken possession of the rented premises. In such circumstances, the impugned order does not call for interference by this court. The petition deserve to be dismissed.

8. Heard. Considered.

9. The issue of impleadment of third party in the eviction proceedings on the basis of title or ownership was considered by Hon'ble Supreme Court in the above cited judgement in the case of **J.J. Lal Private Ltd. Vs. M.R. Murali (supra)** and it was held as under;

“I.A. Nos.33-36 of 2001

26. Hemlata Mohan, the applicant in these IAs seeks her impleadment in these proceedings submitting that on the basis of the Will dated 30.1.1935 executed by her grand-father she is one of the landlords entitled to apportionment of rent. A suit for establishment of her title and share in the property is pending in Madras High Court registered as Civil Suit No.452 of 1988.

I.A. Nos. 41 to 44 of 2001

27. These applications are filed by Municipal Corporation of Chennai seeking its impleadment in the proceedings alleging that the two premises, Door Nos.244 and 264, subject-matter of

litigation in these proceedings are owned by it and therefore it needs to be impleaded as party in these appeals.

28. Both the sets of applications raise such controversies as are beyond the scope of these proceedings. This is a simple landlord-tenant suit. The relationship of Municipal Corporation with the respondents and their mutual rights and obligations are not germane to the present proceedings. Similarly, the question of title between Hemlata Mohan and the respondents cannot be decided in these proceedings. The impleadment of any of the two applicants would change the complexion of litigation and raise such controversies as are beyond the scope of this litigation. The presence of either of the applicants is neither necessary for the decision of the question involved in these proceedings nor their presence is necessary to enable the court effectually and completely to adjudicate upon and settle the questions involved in these proceedings. They are neither necessary nor proper parties. Any decision in these proceedings would govern and bind the parties herein. Each of the two applicants is free to establish its own claims and title whatever it may be in any independent proceedings before a competent forum. The applications for impleadment are dismissed.”

10. In view of the above legal position, it is clear that the scope of eviction proceedings is very limited. If on consideration of the pleadings and the evidence led by both the sides, the landlord-tenant relationship is established between the parties and the ground of eviction is proved then the decree or order of eviction would be passed. To ascertain the landlord-tenant relationship, the issue of title or ownership over the property is not to be decided by the concerned adjudicating forum. Thus, all the issues related to eviction can be finally and effectually decided between the landlord and tenant without impleading any third party may be claiming title over the property. Thus, impleadment of third party in eviction proceedings on the basis of claiming the title over the rented property is not permissible.

11. On perusal of the record of this case, it is clear that the petitioner herein had filed an application for eviction u/S.23-A of M.P. Accommodation Control Act, 1961 in the year 1995 which is pending adjudication before the said Rent Controlling Authority. The landlord-tenant relationship is to be decided on the basis of pleadings and evidence produced by landlord and tenants, hence, in light of above legal position the impugned order of impleadment of third party in the pending eviction proceedings is not sustainable.

12. While passing the impugned order, learned Rent Controlling Authority has lost sight of its earlier order passed on 03/09/1998, whereby application for impleadment by the same party was dismissed with a clear finding that its impleadment is not permissible as it will convert the eviction proceedings into the suit of title for which the Rent Controlling Authority is not competent to deal with.

13. Since the issue of impleadment of the same party was finally adjudicated between the the same parties, hence, this subsequent application for the same purpose is hit by the principle of constructive *res judicata*.

14. Rent Controlling Authority while passing the impugned order has also not considered its recent order, whereby it has dismissed the application of the same party seeking dismissal of the proceedings on the basis of decree of civil court stated to be passed in its favour against the present tenant. Undisputably, the same party has just

thereafter filed this application under Order 1 Rule 10 CPC for impleadment on the same ground of decree of civil court but learned Rent Controlling Authority has allowed this application, whereby it has practically reviewed and recalled its earlier order which is not permissible under law.

15. It is also not in dispute that the petitioner-landlord is not party to the suit, wherein decree of eviction with regard to rented shop has been passed against the present tenant and in favour of intervenor-respondent. However, the said decree will take its own course as per law. This Court under these proceedings is not required to comment over the effect and operation of the said decree. The Rent Controlling Authority would decide landlord-tenant relationship between the parties taking into consideration the pleadings and oral and documentary evidence led by both the sides including said decree of civil court and all other relevant documents related to the disputes which are pending before several courts up to the Hon'ble Supreme Court as produced before it by any of the parties, but present intervenor-respondent, being third party, cannot be treated to be a necessary or proper party in the eviction proceedings as its presence in the eviction proceedings is not necessary for adjudication at all and the same can very well be adjudicated without its impleadment.

16. In the judgments of Satish Chander Ahuja (supra) and Savitri Devi (supra) cited by learned counsel for intervenor-respondents, the

issue of impleadment of necessary party was considered in quite different context and not in eviction proceedings. In Nemichand Jain's case, the landlord himself averred in his suit that original tenant has handed over the possession to the said applicant Nemichand. In Jai Narayan Das's case following the verdict of Nemichand Jain's case, impleadment of person in possession was allowed, but as discussed above in this case, applicant-landlord has nowhere averred or admitted that original tenant has handed over the possession of the rented property to the intervenor, rather he has categorically denied the fact of possession of the intervenor. Further there are several other grounds on which the impleadment of the present intervenor is not permissible. He has also placed on record the judgments, in compliance of which the present landlord has taken possession of shop adjoining to the disputed shop from the same tenant. The facts and circumstances of the cases cited above are quite different to the present case. Hence, the cited judgments do not help the intervenor particularly in view of the clear mandate of Hon'ble Supreme Court in J.J. Lal Private Ltd. (supra) on the same issue in eviction proceedings.

17. In view of above discussion and the reason stated, this Court is of the view that learned Rent Controlling Authority has erred in allowing the application of impleadment by the intervenor-respondent. The impugned order suffers with material illegality and infirmity which is not sustainable in the eyes of law consequently,

petition is allowed. The impugned order is quashed and set aside. The application filed by intervenor-respondent for impleadment under Order 1 Rule 10 CPC is dismissed. The Rent Controlling Authority to proceed further with the eviction application in accordance with law.

18. Since, the eviction proceeding under special provisions are pending for more than 26-27 years, the Rent Controlling Authority shall take up the matter on priority and dispose of the same at the earliest, preferably within a period of three (3) months from the receipt of certified copy of this Order.

19. A copy of this order be sent to learned Rent Controlling Authority, Lashkar, Gwalior (M.P.) for compliance.

(Satish Kumar Sharma)
Judge