

Arjandas Jhamatmal Sadarangani Vs. Fatima Bi and ors.

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Court : Karnataka

Decided On : Jul-11-1975

Reported in : AIR1976Kant64; 1975(2)KarLJ253

Judge : G.K. Govinda Bhat, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 30, Rule 10

Appeal No. : Revn. Petn. No. 1335 of 1975

Appellant : Arjandas Jhamatmal Sadarangani

Respondent : Fatima Bi and ors.

Advocate for Def. : R. Narayanappa, Adv.

Advocate for Pet/Ap. : U.L. Narayana Rao, Adv.

Judgement :

ORDER

1. This revision petition arises out of an application made in O. S. No. 322/1974 on the file of the Court of the Munsiff, Civil Station, Bangalore, for an order of temporary injunction restraining the respondents, 1 and 2 from executing the order for eviction passed under the House Rent Control Act. The trial Court refused to pass an order of temporary injunction and that order has been affirmed on appeal to the Court of the civil Judge, Civil Station, Bangalore in M. A. No. 10/74. Hence this revision petition by the plaintiff-petitioner who has been aggrieved by the order of the Courts below.

2. Briefly stated, the facts are-

The suit relates to certain business premises in the City of Bangalore. The landlord filed an eviction petition in H. R. C. 188/69 in the Court of the Munsiff, Civil Station. The party respondent in the H. R. C. case has been described as Jhamatmal Sons. Notice of that petition was served on respondent 4. The mother of respondent 4 however, contested the proceedings before the H. R. C. Court. The Munsiff dismissed the petition for eviction. On appeal by the landlord, that order of the Munsiff was affirmed; but on a revision petition filed by the landlord the orders of the Courts below were reversed and an order for eviction was made granting one year's time for the tenant to vacate the premises. When the landlord filed execution for delivery of possession, the petitioner instituted O. S. 322/74 seeking the relief of declaration that the order of eviction obtained by respondents 1 and 2 is a nullity as the sons of Jhamatmal Rewachand Sadarangani and other heirs were not made parties to the

proceedings and prayed for a perpetual injunction against the landlord from executing the order of eviction.

3. The case of the petitioner who is the plaintiff is that the premises had been taken on lease by his father the late Jhamatmal Rewachand Sadarangani who was carrying on business under the name and style of Jhamatmal Sons and that on the death of the said Jhamatmal Rewachand Sadarangani the business devolved on his sons and widow and since they had not been impleaded as parties to the eviction petition, the decree is a nullity.

4. It is conceded by Sri U. L. Narayana Rao, learned counsel for the petitioner that after the death of the plaintiff's father the business was carried on under the same name, viz., Jhamatmal Sons and that the dealer's License under the Karnataka Sales Tax Act had also been obtained in the same name. Since both the Courts below have refused to make an order of injunction, this Court can interfere in revision only if there is an error in the exercise of jurisdiction or if the order of the Court below is perverse. The argument of Sri Narayana Rao is that Rule 10 of Order 30, Civil P. C. is not applicable to cases where more than one person carry on the business in an assumed name or in the firm name. For that purpose, he relied on the decision in *Chidambaram v. National City Bank*, AIR 1936 Mad 707. He also relied on the judgment of Sulaiman, J. (as he then was) in *Habib Bux v. Samuel Fitz & Co. Ltd.* : AIR1926All161 .

5. The judgment of Sulaiman, J. instead of supporting the case of the petitioner, supports the case of the respondents. The learned Judge has stated:

'When the sole proprietor of a firm dies his heirs certainly inherit the stock in trade the outstanding dues and even the goodwill, but such heirs do not Ipso Facto become partners of the firm. When there was a sole proprietor, there was no question of a partnership which must be between more than one person. On the death of the sole proprietor his heirs do not automatically become partners of the old firm but merely heirs to the assets of the deceased. Before a partnership can come into existence there must be an express or implied agreement between the heirs that the old firm should be continued. This agreement might be inferred from the fact that the firm was allowed to carry on business even after the death of the sole proprietor. But in the absence of any such evidence it would not be just to presume that the heirs of the deceased proprietor became partners of the new firm. Unless after the death of the sole proprietor the firm carries on business which justifies a presumption that his heirs are its partners a suit cannot be instituted under Order XXX, Rule 10 in the old name of the firm. That rule will only apply when business is being carried on at the time when the suit is instituted. If business is not being carried on in that name at the time of the suit and the business has ceased to exist then all persons who are interested in the assets ought to be impleaded.'

Shri. Narayanappa, learned counsel for respondents 1 & 2 brought to my notice a number of decisions of other High Courts wherein it has been held that Order 30, Rule 10 is applicable even to cases where more than one partner carries on business in a firm name. In *Rameshwar Prasad v. Keshab Prasad* : AIR1962Pat360 , *Untwalia, J.* has taken the view that Order 30, Rule 10, Civil P. C, is wide enough to cover within its ambit a single person carrying on a business in a name or style other than his own name, or two or more persons carrying on business in a name or style other than their own name either as a group of persons or as members of a joint Hindu family.

There is nothing repugnant in the subject or context to exclude the application of the principles of law embodied in Section 13 of the General Clauses Act nor is there anything to enable the Court to hold that the word 'person' given in Section 3(42) of that Act is not applicable to the same word used in Rule 10 Of Order 30 of the Code.

6. In my opinion, the view taken by Untwalia, J. is correct and I see no reason to hold that Order 30, Rule 10 is applicable where only one person carries on business in a firm name. Therefore, the contention urged by Sri Narayana Rao for the petitioner is clearly untenable.

7. Accordingly, this revision petition which was heard at the stage of preliminary hearing is dismissed. No costs.

8. Revision dismissed.

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