



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

S.B. Civil Writ Petition No. 7131/2022

Manish S/o Shri Mahaveer Prasad Ji, Aged About 38 Years, B/c  
Mali, R/o Opposite Railway Station, Churu. (Raj.)

----Petitioner

Versus

1. Raj Kumar S/o Shri Jhumar Mal, B/c Kothari, R/o Ward No  
20, Churu (Raj.)
2. Krishna Kumar S/o Shri Magha Ram, B/c Saini (Bagdi) R/  
o Ratan Nagar Road, Near Kisan Ghat, Ward No 15,  
Churu (Raj.)

----Respondents

Connected with

S.B. Civil Writ Petition No. 7133/2022

Manish S/o Shri Mahaveer Prasad Ji, Aged About 38 Years, B/c  
Mali, R/o Opposite Railway Station, Churu. (Raj.)

----Petitioner

Versus

1. Bharat Kumar S/o Shri Jhumar Mal, B/c Kothari, R/o  
Ward No 20, Churu (Raj.)
2. Krishna Kumar S/o Shri Magha Ram, B/c Saini (Bagdi),  
R/o Ratan Nagar Road, Near Kisan Ghat, Ward No 15,  
Churu (Raj.)

----Respondents

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For Petitioner(s) : Mr. Narendra Thanvi with  
Mr. Mahendra Thanvi.  
For Respondent(s) : Mr. S.G. Ojha

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**HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI**

**Judgment**

**Reportable**

**Reserved on 10/05/2023**

**Pronounced on 16/05/2023**

1. The matters were listed on the second stay applications.  
However, with the consent of learned counsel for the parties, the  
arguments in the main petitions were heard finally, and the same  
are being decided by this common judgment.



2. These writ petitions have been preferred claiming the following reliefs:

**S.B. Civil Writ Petition No. 7131/2022:**

*"It is, therefore, respectfully prayed that this Hon'ble Court may be pleased to issue a writ of certiorari or any other appropriate writ, order or direction:-*

*(i) quash the impugned order dated 05.04.2022 **(Annexure-5)** passed by the Learned Rent Tribunal, Churu in Rent Petition No.05/2017; and*

*(ii) the impleadment application filed by the petitioner Under Section 21 of Rent Control Act, 2001 read with Order 1 Rule 10 C.P.C. may be allowed with costs in toto; and*

*(iii) any other appropriate relief which this Hon'ble Court deems fit necessary in the fact and circumstances of the present case be granted in favour of the petitioner; and*

*(iv) Cost of the writ petition kindly ordered to be awarded to the petitioner."*

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3. Since both instant petitions involve a common controversy, though with marginal variation in the contextual facts, therefore,





for the sake of brevity and convenience, the facts are being taken from the above-numbered SBCWP No.7131/2022, while treating the same as a lead case.

4. Brief facts of the case, as pleaded in SBCWP No.7131/2022, are that the respondent no.1 filed an original rent application under Sections 6, 9 (a) (b) (d) (i) of the Rajasthan Rent Control Act, 2001 (*hereinafter referred as 'Act of 2001'*) against the respondent no.2 before the learned Rent Tribunal, Churu, seeking eviction of the respondent no.2 from the rent premises (*Nohra* admeasuring 45 x 35 feet), situated near Railway Station, Churu (towards Western side of Lohiya Mahavidhyalaya), on the ground of default in payment of rent, subletting, nuisance, as also on count of his (respondent No.1's) reasonable and bonafide necessity in respect of the premises in question. As alleged in the eviction application, the subletting of the premises in question was done by the respondent no.2 in favour of Mahaveer Prasad (father of the present petitioner), without seeking prior consent of the landlord (respondent no.1 herein). The learned Rent Tribunal thereafter, proceeded with the trial of the case, during the course of which, statements of the respondent no.1 and his witnesses were recorded.

4.1. The petitioner upon coming to know about filing of the aforementioned eviction application by the respondent No.1, immediately moved an impleadment application on 01.03.2019 under Section 21 of the Act of 2001 read with Order 1 Rule 10 CPC seeking his impleadment as party defendant in the aforesaid eviction case; whereupon, the respondent no. 1 filed reply to the said impleadment application on 01.06.2019.



4.2 As regards, the above-numbered SBCWP No.7133/2022, pertaining to the same subject matter i.e. another eviction application (in respect of other premises - *Nohra* admeasuring 25 x 35 feet, situated at the same location) preferred by the respondent no.1 against the respondent no.2 before the learned Tribunal on the very same grounds, the petitioner preferred an impleadment application therein as well, followed by filing of the reply on behalf of the respondent no.1 to the said impleadment application.

4.2. The learned Tribunal below, however, after hearing the parties, vide the impugned orders dated 05.04.2022 rejected the aforementioned impleadment applications preferred by the petitioner.

4.3. Thus, being aggrieved by the impugned orders dated 05.04.2022 passed by the learned Tribunal, the present petitions have been preferred claiming the aforequoted reliefs.

5. Learned counsel for the petitioner submitted that the premises in question were let out on rent to the respondent no.2, who in turn, allegedly sub-let the same to Mahaveer Prasad (father of the present petitioner), without prior consent of the landlord (respondent no.1 herein), and therefore, the petitioner is the necessary party in the aforementioned eviction applications preferred by the respondent no.1 before the learned Tribunal.

5.1. Learned counsel further submitted that the manner in which the respondent no.2 is contesting the eviction applications preferred against him by the respondent no.1, clearly shows that the respondent no.2 is not at all taking any interest in contesting



such applications in an effective manner; the replies filed by the respondent no.2 to the eviction applications also show that the respondent no.1 and the respondent no.2 want to obtain a collusive decree for eviction regarding the premises in question, behind back of the present petitioner.

5.2. Learned counsel also submitted that the respondent no.1 has not placed on record any document which could establish the landlord and tenant relationship between the respondent no.1 and respondent no.2, and even the documents produced by respondent no.1 are false, being self-created documents, because such documents are not duly notarized.

5.3. Learned counsel further submitted that the petitioner is a necessary party to the aforementioned eviction applications, and thus, if he is not added as a party therein, the effective and fair adjudication of the same would not be possible. Therefore, as per learned counsel, the impugned orders passed by the learned Tribunal are not justified in law.

5.4. In support of such submissions, learned counsel placed reliance on the judgment rendered by the Hon'ble Apex Court in the case of ***Pankajbhai Rameshbhai Zalavadia Vs. Jethabhai Kalabhai Zalavadiya (Deceased) Through LRs & Ors. (Civil Appeal No.15549/2017, decided on 03.10.2017)***; Relevant portion whereof is reproduced as hereunder-:

*"9. Order 1 Rule 10 of the Code enables the Court to add any person as a party at any stage of the proceedings, if the person whose presence in Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of multiplicity of*



*proceedings is also one of the objects of the said provision. Order 1 Rule 10 of the Code empowers the Court to substitute a party in the suit who is a wrong person with a right person. If the Court is satisfied that the suit has been instituted through a bona fide mistake, and also that it is necessary for the determination of the real matter in controversy to substitute a party in the suit, it may direct it to be done. When the Court finds that in the absence of the persons sought to be impleaded as a party to the suit, the controversy raised in the suit cannot be effectively and completely settled, the Court would do justice by impleading such persons. Order 1 Rule 10(2) of the Code gives wide discretion to the Court to deal with such a situation which may result in prejudicing the interests of the affected party if not impleaded in the suit, and where the impleadment of the said party is necessary and vital for the decision of the suit”.*

5.5. Learned counsel also submitted that the sub-tenant is a necessary party in a suit for ejection sought on the ground of sub-letting, as the sub-tenant falls under the definition of the necessary party, as contained in the relevant provision of law. In support of such submission, reliance has been placed on the judgments rendered by a Coordinate Benches of this Hon'ble Court in the case of **Sanwarmal Vs Budh Mal (S.B. Civil Revision Petition No.308/1982** decided on 20.12.1982); and **Satish Chand Vs Bhonrilal & Anr. (Civil Revision Petition No. 454/1990**, decided on 06.02.1991); Relevant portion of the judgment rendered in **Satish Chand (Supra)** is reproduced as hereunder-:

*"19. I have given my thoughtful consideration to the whole matter. It is true that it is not open to the High Court in the exercise of its revisional jurisdiction under Section 115 C.P.C. to question a finding of fact, recorded by a subordinate court. It is also true that Section 115 C.P.C. applies to cases*





*involving questions of jurisdiction i.e. questions regarding irregular exercise or non-exercise of jurisdiction or illegal assumption of jurisdiction by a court and not against an order even though it is not perfectly legal or justified. It is further true that it is not competent for the High Court to correct even errors of fact or errors of law unless the said errors have relation to the jurisdiction of the court to decide the dispute. After the amendment in Section 115 CPC the High Court cannot interfere in revisional jurisdiction unless the impugned order, if allowed to stand, would occasion a failure of justice or shall cause irreparable injury to the party against whom it was made and therefore, it is necessary for us to examine the facts of the present case. Plaintiff Bhonrilal had filed a suit for rent and ejectment impleading Niranjana Lal only as a defendant. But before filing the suit, the plaintiff had given a notice both to the petitioner as well as Niranjana Lal and that notice was duly replied by them mentioning clearly that Niranjana Lal was the tenant up to 31-3-1981 but from 1-4-1981, it was M/s. Mukesh Laghu Udyog, Prop. Satish Chand had become the tenant and it may be averred that rent is being received by the plaintiff from M/s. Mukesh Laghu Udyog. Mukesh Laghu Udyog had also given a notice asking for the number of the bank account so that the rent could be deposited in his account regularly. That notice was duly replied by the plaintiff but the number of the bank account was not supplied because according to the plaintiff it was only Niranjana Lal who was his tenant. Then later on M/s, Mukesh Laghu Udyog deposited the rent u/s. 19A of the Rent Control Act. The petitioner had also applied in the appellate court but the appellate court did not accede to his request vide his order dated 9-10-1987. Thus, we find that the plaintiff was fully aware of the case of the petitioner that he was his direct tenant on and from 1-4-1981 and therefore, it was proper and necessary for the plaintiff to have impleaded the petitioner as the defendant No. 2. He having failed, the petitioner made an application under Order 1 Rule 10 C.P.C. but the trial court has dismissed that application. In his application filed under Order 1 Rule 10 CPC, the petitioner has further submitted that he has no faith in Niranjana Lal that*





he will protect his interest. In the present case, one of the grounds of ejectment is also sub-letting by the original tenant Niranjana Lal to the petitioner. Their Lordships in *South Asia Industries's case* (AIR 1966 SC 346) (*supra*) has held that a sub-tenant is a necessary party, inasmuch as it is only the sub-tenant who is interested in defending the suit. That judgment of the Supreme Court has been followed by Karnataka High Court in *Smt. Yamuna's case* (AIR 1983 Kant 27) (*supra*), by Calcutta High Court in the case of *Benimadhab Mahrotra* (AIR 1985 Cal 172) (*supra*) and by the Delhi High Court in *Harbans Singh's case* (AIR 1979 Delhi 171) (*supra*). If a sub-tenant is not impleaded as a party in the suit for eviction and if a sub-tenant is liable to be evicted in an execution decree against the tenant, the subtenant will suffer an irreparable injury and this will occasion a failure of justice because he will be evicted without taking any defence because it may be that the tenant may be negligent or incompetent. He may be in collusion with the landlord or he may not just bother, as are the allegations here also in the application under Order 1 Rule 10 CPC. Therefore, a sub-lessee is also entitled to be heard to oppose a decree for eviction. The view was taken by our own High Court in *Sanwar Mal's case* (1983 Raj LW 240) (*supra*) with which I am in full agreement. -In that case, learned single Judge had referred to the earlier case of *Kamlesh Kumar* (AIR 1982 NOC 93) (Raj) relied by learned counsel for the respondents in this case and the said case was distinguished. Other cases relied on by the learned counsel for the respondents are distinguishable; some of them are cases where the application under Order 1 Rule 10 C.P.C. was allowed by the trial court and the High Court refused to interfere in revision because the order allowing addition of party would not cause failure of justice or irreparable injury, but in the present case things are different and application under Order 1 Rule 10 CPC filed by the sub-lessee according to the plaintiff, and direct tenant according to the petitioner, has been dismissed by the trial Court and if decree is passed without impleading him as a party, he is bound to suffer an irreparable injury and will also occasion failure of justice. Moreover, if the petitioner







*is allowed to be impleaded as a party, it would avoid multiplicity of proceedings. Even the Kerala High Court in the case of George (1986 (1) Cri CC 328) (supra), relied by the learned counsel for the respondent himself, has observed that a party can be impleaded if addition is necessary for the proper and effective adjudication of the issues involved in the suit and for completely settling the controversy between the parties. Moreover, in the present case, plea of the petitioner is that he is not the sub-tenant but a direct tenant and this was known to the plaintiff even before filing the present suit. Thus, I find that the petitioner was a necessary party and the learned court below has seriously erred in not exercising its jurisdiction in impleading the petitioner as a party by allowing the application under Order 1 Rule 10 CPC."*

6. On other hand, learned counsel appearing on behalf of the respondents, while opposing the aforesaid submissions made on behalf of the petitioner, submitted that the premises in question were let out on rent to the respondent no.2, and for that purpose, a rent agreement was also executed between the respondent no.1 and respondent no.2. It was further submitted that the respondent no.2 paid the rent continuously from 01.02.2000 to 31.03.2014, as detailed out in Exhibits- 6 to 23 of the evictions applications; while the rent amount, in respect of the premises in question, for the period from 01.04.2014 to 30.09.2016, is still due, despite receipt of the legal notice in that regard.

6.1. Learned counsel further submitted that the premises in question were never given on rent to the father of the petitioner by the original landlord i.e. respondent no.1 herein; the petitioner's shop i.e. Sunil Timber is situated at *Nayi Sadak* near Police Chowki, but the disputed premises are situated at near



Railway Station (towards western side of Lohiya Mahavidhalay) Churu. It was further submitted that the averment made in the petitions regarding sub-letting of the premises in question is completely false.

6.2. Learned counsel further submitted that the petitioner has thus, no right to seek his impleadment as a party in the aforementioned eviction applications. Thus, as per learned counsel, the learned Tribunal has committed no error in passing the impugned orders.

7. Heard learned counsel for the parties as well as perused the record of the case, alongwith the judgments cited at the Bar.

8. This Court observes that the eviction applications have been filed by respondent no.1-landlord against respondent no.2-tenant for eviction under Sections 6, 9 (b), (d), (e), and (i) of the Act of 2001; the respondent no.1 let out the premises in question on rent in the year 2000 to the respondent no.2. Subsequently, during pendency of evictions applications in question, the petitioner filed the applications under Section 21 of the Act, 2001 along with Order 1 Rule 10 CPC for being impleaded as a party therein, but the same were rejected vide the impugned orders dated 05.04.2022.

9. This Court further observes that the Act of 2001 was enacted with the aim and object, "*to provide for control of eviction from, letting of, and rents for, certain premises in the State of Rajasthan and matters incidental thereto*"; the whole purpose and intent of the legislature behind such enactment is to protect the rights of the landlord and tenant, and that, only landlord and



tenant are covered therein in case any dispute arises between them under Act of 2001; no third party rights can be created under the dispute, as per the said enactment. This Court also observes that the legislature enacted the Act of 2001 and established the Rent Tribunals and Appellant Rent Tribunals for the purpose of expeditious and lawful resolution of the dispute between landlord and tenant, and therefore, involvement/impleadment of any third party in a case pertaining to the dispute between the landlord and the tenant is not permissible under the law.

10. This Court, in the given factual matrix of the case and the issue involved herein, considers it appropriate to reproduce the relevant portion of the judgment rendered by a Coordinate Bench of this Hon'ble Court at Jaipur Bench in the case of **Managal Das Vs Amar Singh (S.B. Civil Second Appeal No. 596/2005** decided on 20.05.2022), as follows:

*"20. Before parting with the present judgment, this Court would also like to consider the aim and object of the rent control legislation in order to consider that as to whether the appellants tenant who have completed the tenure of tenancy for more than 60 years in the rented shops (tenancy begun from 1948) are entitled to seek protection under the Rent Control Act, 1950. It may be noticed that the rent control legislation was entitled to strike a reasonable balance between the landlord and tenant. At one hand where the tenant requires adequate protection against his eviction at the hands of aggressive designed greedy landlord, at the same time rights of landlord also require protection to increase the rent reasonably and to evict tenant on the grounds permissible in law. **The basic object of the Rent Control Act, 1950 is to save the harassment of tenant from unscrupulous landlords. The***



***object of the Rent Control Act, 1950 may not be misconstrued to deprive the landlords of their bona fide properties for all times to come.”***

11. This Court also observes that the impleadment application under Order 1 Rule 10 CPC deserves to be accepted, only when the concerned person is a necessary party, in whose absence, effective adjudication of the case would not be possible; however, in the present case, the eviction litigation is going on between the respondent no.1 (original landlord) and respondent no.2 (original tenant) under the Act of 2001 before the learned Tribunal, in respect of the premises in question, let out on rent in the year 2000; the same clearly reveals the relationship of the landlord and tenant between the respondent no.1 and respondent no.2; the petitioner premises are situated at some different location, and thus, once he could not substantially establish that he was the sub-tenant in the premises in question, the petitioner could not be termed as a sub-tenant, so as to fall within the definition of the term 'necessary party'.

12. This Court also considers it appropriate to reproduce the relevant portion of the judgment rendered by the Hon'ble Apex Court in the case of ***Kanaklata Das & Ors. Vs Naba kumar Das & Ors (2018) 2 SCC 352***, as follows:

*"11. There are some well-settled principles of law on the question involved in this appeal, which need to be taken into consideration while deciding the question arose in this appeal. These principles are mentioned infra.*

***12. First, in an eviction suit filed by the plaintiff (Landlord) against the defendant(Tenant) under the***



**State Rent Act, the landlord and tenant are the only necessary parties.**

**13. In other words, in a tenancy suit, only two persons are necessary parties for the decision of the suit, namely, the landlord and the tenant.**

14. Second, the landlord (plaintiff) in such suit is required to plead and prove only two things to enable him to claim a decree for eviction against his tenant from the tenanted suit premises. First, there exists a relationship of the landlord and tenant between the plaintiff and the defendant and second, the ground(s) on which the plaintiff-landlord has sought defendant's-tenant's eviction under the Rent Act exists. When these two things are proved, eviction suit succeeds.

15. Third, the question of title to the suit premises is not germane for the decision of the eviction suit. The reason being, if the landlord fails to prove his title to the suit premises but proves the existence of relationship of the landlord and tenant in relation to the suit premises and further proves existence of any ground on which the eviction is sought under the Tenancy Act, the eviction suit succeeds.

16. Conversely, if the landlord proves his title to the suit premises but fails to prove the existence of relationship of the landlord and tenant in relation to the suit premises, the eviction suit fails. (See-Dr. Ranbir Singh vs. Asharfi Lal, 1995(6) SCC 580).

17. Fourth, the plaintiff being a dominus litis cannot be compelled to make any third person a party to the suit, be that a plaintiff or the defendant, against his wish unless such person is able to prove that he is a necessary party to the suit and without his presence, the suit cannot proceed and nor can be decided effectively.

18. In other words, no person can compel the plaintiff to allow such person to become the co-plaintiff or defendant in the suit. It is more so when such person is unable to show as to how he is a necessary or proper party to the suit and how without his presence, the suit can neither proceed and nor it can be decided or how his presence is





necessary for the effective decision of the suit. (See-Ruma Chakraborty vs. Sudha Rani Banerjee & Anr., 2005(8) SCC 140)

19. Fifth, a necessary party is one without whom, no order can be made effectively, a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. (See-Udit Narain Singh Malpaharia vs. Additional Member Board of Revenue, Bihar & Anr., AIR 1963 786)

**20. Sixth, if there are co-owners or co-landlords of the suit premises then any co-owner or co-landlord can file a suit for eviction against the tenant. In other words, it is not necessary that all the owners/landlords should join in filing the eviction suit against the tenant.** (See-Kasthuri Radhakrishnan & Ors. vs. M. Chinnayan & Anr., 2016(3) SCC 296)."

13. This Court further observes that the Hon'ble Apex Court in the case of **Kanaklata Das & Ors. (Supra)** has held that, "First, in an eviction suit filed by the plaintiff (Landlord) against the defendant(Tenant) under the State Rent Act, the landlord and tenant are the only necessary parties". Therefore, the impleadment application under Order 1 Rule 10 CPC can be held to be valid, so as to hold ground and warrant acceptance thereof, in an eviction litigation going on under the Act of 2001, only when it is proved that there exists a relationship of the landlord and the tenant between the plaintiff (seeking eviction) and the applicant (seeking impleadment in the case), as substantiated by the settled proposition of law.

14. The judgments cited on behalf of the petitioner also do not render any assistance to his case.





15. In view of the above and in light of the judgment rendered in ***Kanaklata Das & Ors. (Supra)*** as well as looking into the legislative intent and object behind the enactment of the Act of 2001, so also taking into due consideration the factual matrix of the present case, this Court does not find it a fit case so as to grant any relief to the petitioner in the present petitions.

16. Consequently, the present petitions are dismissed. All pending applications stand disposed of.

**(DR.PUSHPENDRA SINGH BHATI), J.**

Skant/-