

RICHARD LEE

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v.

GIRISH SONI AND ANR.

(Civil Appeal No. 1345 of 2017)

FEBRUARY 02, 2017

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[KURIAN JOSEPH AND A. M. KHANWILKAR, JJ.]

Code of Civil Procedure, 1908 – Order I, Rule 10 – Impleadment as necessary party – Eviction petition by respondent – Application for impleadment as necessary party by appellant alleging that he was partner in a firm-tenant in the shop in dispute – Application allowed by Rent Controller – However, set aside by tribunal and High Court – On appeal, held: For proper adjudication, both the firm and all its partners should be on the array of parties as proper party – They are not necessary parties from the point of view of the Eviction Petition – However, the Court has a duty to see whether the presence of the proper parties would facilitate the complete determination of the matter in dispute – In view of the power under Order I, Rule 10, suo motu invoked by this Court, the firm and the partners are impleaded by this Court in the proceedings – Parties directed to appear before the Rent Controller who would adjudicate all the questions including the question as to whether there was a partnership as tenant – Eviction petition having been pending since 2010, Rent Controller to dispose of the same expeditiously – Rent Control and Eviction.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1345 of 2017.

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From the Judgment and Order dated 17.10.2014 of the High Court of Delhi at New Delhi in CM (M) No. 1217 of 2013.

C. U. Singh, Sr. Adv., Ankit Sahni, Dhruv D., Ms. Ambika Singh Pratiyush, Jose Abraham, Advs. for the Appellant.

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Sanjeev Mahajan, Ms. Prerna Mehta, Rohit Singh, Advs. for the Respondents.

The Judgment of the Court was delivered by

KURIAN, J. 1. Leave granted.

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and are carrying on the business in the name of M/s. KK Lee therein. It is pertinent to mention here that the rent receipts were being issued in the name of KK Lee by Shri Chuni Lal Soni.” A

3. It is the contention of the respondents that there is no tenancy in favour of the firm in the name and style K.K. Lee as has already been found by the Rent Controller in a previous proceedings as per order dated 24.10.1998 of the Additional Rent Controller, Delhi, when the respondents initiated the eviction proceedings against the original tenants Shri L. QuethKhong. Paragraph 10 of the said order, to the extent relevant, reads as follows: B

“10. The reliance of the respondent on payment of rent by account payee cheque and encashment by the petitioner is of no help as payment of rent will not create the relations of landlord and tenant. Reliance is placed on illegible. Similarly, Ex.AW1/R2 will not create the relationship of landlord and tenant. For creation of relationship of landlord and tenant must be at ad-idem. Ex.AW1/R1 is of no help to the respondent as in my considered view there is inter pollution/cutting in the word Mr. and it has been made as M/s from Mr. this observation of mine is substantiated if we perused Ex.AW1/3 to Ex.AW1/29. All these counter foils of rent receipts on the bottom categorically contained the signatures of the tenant. Mr. L. QuethKhong has signed these receipts as a tenant in his individual capacity. Had the firm been the tenant, then he must have signed on behalf of the firm. Had the intention of Mr. L. QuethKhong have to made the firm M/s K.K. Lee is a tenant, then this fact must have found mention in the lease deed. The firm was in existence since 1960 and the tenancy was created in 1963. Had the firm been tenant, then Mr. L. QuethKhong must have signed as partner of the firm and not in his individual capacity.” C D E F

4. The Rent Controller allowed the application for impleadment, which was challenged by the respondents herein in Revision Petition before the Rent Control Appellate Tribunal. The Tribunal set aside the order passed by the Rent Controller. The said order was challenged by the appellants before the High Court, leading to the impugned order. G

5. The High Court has concurred with the Appellate Authority. Thus, aggrieved, the present appeal. H

A 6. Having extensively heard Shri C.U. Singh, learned senior counsel
appearing for the appellant and Mr. Sanjeev Mahajan, learned counsel
appearing for the respondents, we are of the view that for properly
adjudicating the issue before the Rent Controller in Eviction Petition
No.18/2010, in view of the contentions taken by the parties, both the
B firm in the name and style of K.K. Lee and all its partners should be on
the array of parties as proper party. No doubt, they are not necessary
parties from the point of view of the Eviction Petitioners, but the Court
has a duty to see whether the presence of the proper parties would
facilitate the complete determination of the matter in dispute. The
following are the names of the partners of the firm:

- C i. Mr. Richard Lee
 ii. Mr. Sean Wee Lee
 iii. Mr. Kenneth Lee
 iv. Mrs. Beryl Lee

D 7. The firm as represented by its managing partner, if any, or duly
authorized person amongst the partners to represent the firm will stand
impleaded as additional respondent and all the partners will stand
impleaded also as additional respondents. We leave open all the questions,
to be adjudicated before the Rent Controller including the questions as
to whether there was a partnership as tenant and being an issue once
E adjudicated and concluded before the Rent Controller, whether that finding
is conclusive as far as the present proceedings are concerned.

 8. In view of the power under Order I, Rule 10 suo motu invoked by
us, it is not necessary for the parties to file separate application, since
we have ourselves impleaded the firm and the partners in the proceedings.
F We direct all the parties to appear before the Rent Controller, Delhi on
1.3.2017. Within two weeks from today, the respondents will file an
amended memo of parties before the Rent Controller. The additionally
impleaded respondents, if they chose to file written statement, will file it
either jointly or individually, within a period of thirty days from today.

G 9. Till the complete and effectual adjudication, the interim order
passed by this Court on 13.1.15 with regard to deposit of Rs.75,000/-
per month will continue unless it is duly varied by an appropriate forum.

H 10. We make it clear that the Rent Controller will pass appropriate
orders with regard to the release of the amount when the petition is
finally disposed of.

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11. We direct the Rent Controller, having regard to the fact that the eviction petition has been pending since 2010, to dispose of the same expeditiously and in any case within six months from the date of the first appearance. The appeal is disposed of, as above. A

12. Pending application(s), if any, shall stand disposed of.

13. There shall be no orders as to costs. B

Nidhi Jain

Appeal disposed of.