



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



S.B. Civil Second Appeal No. 280/2022

1. Manoj S/o Late Shri Moolchand Ji, Aged About 51 Years, By Caste Sindhi, R/o 184 Near Govinddham Mandir, Singhunagar, Bhilwara.
2. Kamal S/o Late Shri Moolchand Ji, Aged About 54 Years, By Caste Sindhi, R/o 184 Near Govinddham Mandir, Singhunagar, Bhilwara. At Present 781, Sector No. 29, Faridabad.
3. Rakesh S/o Late Shri Moolchand Ji, Aged About 50 Years, By Caste Sindhi, R/o 184 Near Govinddham Mandir, Singhunagar, Bhilwara. At Present 781, Sector No. 29, Faridabad.
4. Smt. Rajni D/o Late Shri Moolchand Ji, Aged About 55 Years, By Caste Sindhi, R/o 184 Near Govinddham Mandir, Singhunagar, Bhilwara. At Present 781, Sector No. 29, Faridabad.
5. Smt. Praveen D/o Late Shri Moolchand Ji, Aged About 45 Years, By Caste Sindhi, R/o 184 Near Govinddham Mandir, Singhunagar, Bhilwara. At Present 781, Sector No. 29, Faridabad.
6. Smt. Aasha W/o Late Shri Moolchand Ji, Aged About 75 Years, By Caste Sindhi, R/o 184 Near Govinddham Mandir, Singhunagar, Bhilwara. At Present 781, Sector No. 29, Faridabad.

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Versus

1. Kailashchandra S/o Late Shri Baluram Ji, By Caste Sindhi, R/o Behind Bade Mandir, Bhilwara.
2. Gopallal S/o Late Shri Baluram Ji, By Caste Sindhi, R/o Behind Bade Mandir, Bhilwara.
3. Mahaveer S/o Late Shri Baluram Ji, By Caste Sindhi, R/o Behind Bade Mandir, Bhilwara.
4. Ramesh S/o Late Shri Baluram Ji, By Caste Sindhi, R/o Behind Bade Mandir, Bhilwara.
5. Pawan S/o Late Shri Baluram Ji, By Caste Sindhi, R/o Behind Bade Mandir, Bhilwara.
6. Smt. Kanta D/o Late Shri Baluram Ji, By Caste Sindhi, R/o





Behind Bade Mandir, Bhilwara.

7. Smt. Shakuntala D/o Late Shri Baluram Ji, By Caste Sindhi, R/o Behind Bade Mandir, Bhilwara.
8. Smt. Hema D/o Late Shri Baluram Ji, By Caste Sindhi, R/o Behind Bade Mandir, Bhilwara.
9. Sudhir S/o Late Shri Lilaram Ji Sindhi, By Caste Sindhi, R/o H. No. 184, near Govinddham Mandir, Singhunagar, Bhilwara.
10. Pradeep S/o Late Shri Lilaram Ji Sindhi, By Caste Sindhi, R/o H. No. 184, near Govinddham Mandir, Singhunagar, Bhilwara.
11. Trilok S/o Late Shri Lilaramji Sindhi, By Caste Sindhi, R/o H. No. 184, near Govinddham Mandir, Singhunagar, Bhilwara.
12. Smt. Sobhagyawanti W/o Late Shri Lilaramji Sindhi, By Caste Sindhi, R/o H. No. 184, near Govinddham Mandir, Singhunagar, Bhilwara.

-----Respondents

For Appellant(s)	:	Mr. R.K. Thanvi, Sr. Adv. with Mr. Narendra Thanvi Mr. Mahendra Thanvi
For Respondent(s)	:	Mr. Saurabh Maheshwari

HON'BLE MS. JUSTICE REKHA BORANA

Judgment

Reportable

15/12/2023

1. The present second appeal has been preferred against the judgment and decree dated 25.11.2022 passed by the Additional District Judge No.1, Bhilwara in Civil Appeal No.15/2021 whereby the appeal of the appellant/plaintiff has been dismissed and the judgment and decree dated 06.03.2021 passed by the Additional



Civil Judge No.3, Bhilwara in Civil Original Case No.166/2006 (CIF No.1766/2014 has been confirmed.

The learned Trial Court vide judgment and decree dated 06.03.2021 dismissed the suit as preferred by the plaintiff for declaration of decree dated 26.09.2001 passed in Civil Suit No.330/1992 (68/86) to be null and void.

2. The facts of the case are as under:

(i) In the year 1968, two shops were let out to two brothers Moolchand and Lilaram jointly @ Rs.56/- per month by the joint owners of the property namely, Jaganath, Babulal and Banshilal. When the tenants committed default in payment of rent, a suit (No.390/1977) (288/1970) for eviction and arrears of rent was filed against both of them jointly by all the three owners.

(ii) During the pendency of the suit, a settlement was arrived into between three owners of the property and the two shops in question came in the share of Babulal. Therefore, the names of the other two owners was prayed to be struck off and the consequential order was also passed.

(iii) In the said suit, written statement was filed by one of the tenants Lilaram only wherein he specifically stated that Moolchand had nothing to do with the rented premise as he was just a helper to Lilaram. Further, Moolchand has left Bhilwara since long and hence, he cannot be termed to be a tenant of the premise in question. It was also the specific averment of Lilaram that the rent of both the shops was being paid by him only and he is only running business in the said shops.

(iv) In terms of the above averments as made by Lilaram in his written statement, an application under Order I Rule 10 of the



Code of Civil Procedure was preferred by the plaintiff landlord Baluram with a submission that as Moolchand is no more a tenant in the premise and his whereabouts are not being found since more than last seven years, his name be deleted from the array of defendants. No reply to the said application was filed by any of the defendants. It is relevant to note here that both Lilaram and Moolchand were represented by the same counsel in the said suit.

(v) The application under Order I Rule 10, CPC as preferred by the plaintiff landlord was allowed on 05.03.1984 and the name of Moolchand was ordered to be deleted.

(vi) However, the said suit No.390/1977 was ultimately withdrawn by the plaintiff landlord on 19.03.1985 with liberty to file a fresh suit.

(vii) Thereafter, a fresh suit was filed by the landlord Baluram for eviction and recovery of arrears of rent impleading only Lilaram. In the said suit, it was specifically averred by the plaintiff that as Moolchand has not been heard of or seen for more than seven years, he no more being a tenant, is not impleaded. However, the fact of Moolchand not been heard from last seven years was denied by the defendant Lilaram.

(viii) Vide judgment and decree dated 26.09.2001, the suit was partly decreed and a decree for eviction was passed only qua the eastern side shop. However, the standard rent qua both the shops was fixed @ Rs.750/- per month each and a decree for arrears of rent was also passed.

(ix) The first appeal preferred against the said judgment by Lilaram was dismissed on 30.10.2003 and the second appeal against the same was dismissed by this Court on 14.01.2004.



However, vide the said judgment, the defendant tenant was granted one year time to handover the vacant possession of the east side shop to the landlord. The defendant was directed to file an undertaking to the said effect within two weeks.

(x) In pursuance to the said directions, the tenant Lilaram did file an undertaking before the learned Trial Court on 27.01.2004. Vide the same, he undertook to handover the vacant possession of the premise on 13.12.2015 qua which the decree for eviction was passed. He also undertook to comply with the orders qua the payment of arrears of rent/mesne profit.

(xi) However, before the undertaking as given by the tenant Lilaram to vacate the premise could be complied with, the present suit was preferred by Moolchand on 07.01.2005 for declaration of the decree dated 26.09.2001 to be void and ineffective qua him. Moolchand preferred the said suit with a submission that he was the joint tenant in the premise in question and was running his business in the eastern side shop. Lilaram, in connivance with the plaintiff landlord, got the decree of eviction qua the shop in which he was running his business. It was further averred that he was very much alive and running his business in the shop and the plaintiff did not implead him in the present suit on the wrong and incorrect premise that he was not being heard of from last 7 years. Therefore, the decree as passed qua his shop in a suit wherein he was not impleaded, cannot be said to be binding on him and hence, deserves to be declared as null ineffective qua his interests.



3. In the present suit, Lilaram was also impleaded as defendant No.11 but he did not prefer to appear or file any written statement and ultimately, the suit was proceeded ex-parte against him.

4. Meanwhile, the execution proceedings were initiated by the plaintiff landlord as Lilaram did not handover the vacant possession of the premise in question in terms of the undertaking given by him. In the said execution proceedings, objections under Order XXI Rules 97 and 98, CPC were preferred by present plaintiff Moolchand which were rejected vide order dated 12.08.2022. The appeal against the said order is reported to be pending till date.

Plaintiff Moolchand expired during the pendency of the suit and his legal representatives were brought on record.

5. On basis of the pleadings as made by the parties, the following four issues were framed:

"1- आया प्रतिवादी संख्या-01 लगायत 10 व 11 ने आपस में दुरभि संधि करके प्रकरण संख्या 323/92 ई०दी० में वाद के पैरा संख्या-01 में वर्णित दुकानों में पूर्व दिशा की दुकान को खाली कराने व किराया वादग्रस्त दोनों दुकानों का 56 रुपये प्रतिमाह से बढ़ाकर 750 रुपये प्रतिमाह का प्रति दुकान बढ़ाने बाबत् डिक्री दुर्भावना व बेईमानीपूर्ण आशय से प्राप्त की?

— वादीगण

2- आया वादीगण प्रतिवादीगण के विरुद्ध प्रकरण संख्या 323/92 ई०दी० (68/86) बअनवान श्रीमती नन्दू देवी मालीवाल वगै० बनाम लीलाराम सिंधी में दिनांक 26.09.2001 को पारित डिक्री को शून्य व प्रभावहीन तथा निरस्तनीय घोषित करने की डिक्री प्राप्त करने के अधिकारी है?

—वादीगण

3- आया वादीगण प्रतिवादीगण के विरुद्ध प्रकरण संख्या 323/92 ई०दी० (68/86) बअनवान श्रीमती नन्दू देवी मालीवाल वगै० बनाम लीलाराम सिंधी में दिनांक 26.09.2001 को पारित डिक्री की पालना को स्थगित कराने एवं इस आशय की डिक्री प्राप्त करने के अधिकारी है कि उक्त डिक्री की अनुपालना में वादग्रस्त दुकानों में से पूर्व दिशा की दुकान को खाली नहीं करावे और शांतिपूर्वक ढंग से वादी को



वादग्रस्त दुकान का उपयोग—उपभोग करने देवे और उसके शांतिपूर्ण उपयोग—उपभोग में किसी प्रकार की बाधा न तो स्वयं उत्पन्न करे, न ही किसी अन्य से करावे?

—वादीगण

4— अनुतोष ?”

6. The plaintiff got examined PW-1 Ghanshyam Kumar, the power of attorney (P/A) holder of plaintiff No.1/2 Manoj son of Moolchand and got exhibited four documents. Defendant did not produce any oral or documentary evidence.

7. The learned Trial Court, while deciding all the issues against the plaintiffs, dismissed the suit vide judgment and decree dated 06.03.2021. The first appeal preferred against the said judgment and decree was also dismissed with a cost of Rs.3,000/- vide judgment and decree dated 25.11.2022 against which the present second appeal has been preferred.

8. Learned counsel for the appellants submitted that it is clear on record that the decree dated 26.09.2021 was obtained by collusion between the landlord and Lilaram. When once, it was admitted that it was a joint tenancy and Moolchand was one of the tenants, he ought to have been impleaded in the suit and even if it was averred that Moolchand was not heard of from last seven years, his legal representatives ought to have been impleaded/substituted in his place. Secondly, when an application for deletion of the name of Moolchand was preferred by the plaintiff in the earlier suit, no objection was made by Lilaram which also shows that he was hand in gloves with the plaintiff landlord. Further, even when an application for withdrawal of the suit was preferred by the landlord, Lilaram did not object to that too which proves the factum of they being hand in gloves.



9. Counsel further submitted that Moolchand came to know about the present decree only when he was informed by Lilaram to vacate the premise on 13.01.2005. As he was not a party to the suit, **firstly**, the decree would not be binding on him and **secondly**, it would be a deemed presumption that he was not aware of the said decree. Further, despite no evidence been led by the defendants, the learned Courts below proceeded on to decide all the issues against the plaintiff without there being any material available on record.

10. Per contra, learned counsel for the respondents submitted as under :

(i) The present is a stark example of abuse of process of the Court. Learned counsel submitted that the decree which has been sought to be declared null and void, has been affirmed by the High Court vide judgment dated 14.01.2004 passed on merits. Moolchand never contested any of the matters nor did he challenge any of the orders passed during the complete litigation since the year 1968. He did not file any written statement in the earlier suit, neither did he oppose the application under Order I Rule 10, CPC whereby his name was sought to be deleted and nor did he challenge the decree dated 26.09.2001 which was affirmed by the High Court in the year 2004. It is only after the execution proceedings been initiated that he has chosen to file the present suit which is on the face of it, at the instance of Lilaram/LRs of Lilaram with an oblique motive to somehow hamper the execution proceedings and frustrate the decree.



(ii) Admittedly, the decree had been passed only for one of the shops and had Moolchand been in possession of the said shop, it is not comprehensible as to why Lilaram contested the suit qua the shop of which he was not even in possession, for years and years.

(iii) Even otherwise, the present suit was not maintainable as had Moolchand been aggrieved of the decree dated 26.09.2001, he had a remedy available in terms of Order XXI Rule 99, CPC which he admittedly did not avail.

(iv) The fact that the present suit has been preferred with a malafide intent to frustrate the decree dated 26.09.2001 is also evident from the sole fact that none of the legal representatives of Moolchand came into the witness box and the only witness examined on behalf of the plaintiff who was portrayed to be the power of attorney (P/A) holder of plaintiff No.1/2 Manoj, is the son of Lilaram. On the one hand, the plaintiff has specifically averred that he and Lilaram were not on good terms and that Lilaram malafidely obtained the decree dated 26.09.2001 in collusion with the landlord and on the other hand, the son of Lilaram has entered the witness box in the present suit as power of attorney (P/A) holder of the son of Moolchand. The collusion, if any, is clearly between Lilaram and Moolchand and their representatives.

(v) It is the settled proposition of law that a power of attorney (P/A) holder cannot depose on behalf of the plaintiff qua the facts which can be in the personal knowledge of the plaintiff only.

(vi) The present appeal deserves to be dismissed with heavy costs as even no rent has been paid till date of the disputed premises by Lilaram or Moolchand. If Moolchand claims to be the tenant, his first obligation was to pay the rent of the same.



11. In support of his submissions, learned counsel relied upon the following judgments:

- i. ***Vidhyadhar vs. Manikrao and Ors., (1999) 3 SCC 573.***
- ii. ***Ashok Chintaman Juker and Ors. vs. Kishore Pandurang Mantri and Ors., (2001) 5 SCC 1.***
- iii. ***Janki Vashdeo Bhojwani and Ors. vs. Indusind Bank Ltd. and Ors., (2005) 2 SCC 217.***

12. In rejoinder arguments, learned counsel for the appellants submitted **firstly**, that the judgment dated 14.01.2004 passed in the earlier second appeal cannot be said to be binding on the present plaintiff and hence, would be of no consequence so far as the shop on the eastern side is concerned. Further, the said judgment cannot even be read as the same has not been exhibited in the present suit. **Secondly**, the provision of Order XXI Rule 99, CPC would not even apply as the plaintiff has not still been dispossessed. **Thirdly**, the factum of Moolchand being the tenant was specifically admitted by the plaintiff himself in the plaint wherein it has been averred that 'the premise was rented out to the defendants jointly and further, that the rent was not paid by Lilaram and Moolchand'. **Lastly**, the dues, if any, qua the arrears of rent would be payable by Lilaram only and there being no decree against the present plaintiff Moolchand, he cannot be held liable for payment of the same.

13. Heard learned counsel for the parties and perused the material available on record.

14. Before advertng into the facts, it is to be noted that an application under Order XLI Rule 27, CPC has been preferred on behalf of the defendants in the present appeal seeking a prayer to



take seven documents as annexed along with the application, on record. No reply to the said application has been preferred on behalf of the appellants. A perusal of the documents which have been sought to be placed on record makes it clear that five (Annex.-R/1/2 to Annex.-R/1/6) out of them are the order/judgments passed by the Civil Courts in the earlier proceedings qua the same disputed property.

So far as Annex.-R/1/1 is concerned, the same is a copy of the application under Order I Rule 10 r.w. Section 151 of the Code of Civil Procedure as preferred by the landlords in the earlier suit for deletion of the name of defendant No.2 Moolchand (the present plaintiff).

Annex.-R/1/7 is a copy of the undertaking as filed by Lilaram (defendant No.11 in the present suit) before the learned Trial Court in pursuance to the judgment dated 14.01.2004 passed by this Court in the earlier second appeal.

15. In the opinion of this Court, all these documents pertain to the earlier proceedings between the same parties and qua the same disputed property. Five of them are the orders/judgments of the Civil Court and the other two documents are also not the disputed ones. Further, pleadings regarding the said documents have been made in the present suit too and the said documents, if taken on record, would only facilitate the Court to adjudicate the present dispute promptly and effectively. Therefore, the application under Order XLI Rule 27, CPC is allowed and the documents (Annex.-R/1/1 to Annex.-R/1/7) as annexed along with the application are permitted to be taken on record.



16. After perusing the complete material available on record and hearing both the counsels, this Court does not find any ground to interfere with the impugned judgment and decree. The reasons for such conclusion are as under:

(i) Admittedly, the first suit in the year 1970 was preferred jointly against both Moolchand and Lilaram. It is also an admitted fact that both the defendants were represented by the same counsel. In the said suit, the specific averment was made by Lilaram that he is the tenant of both the rented shops and Moolchand has nothing to do with the said tenancy. It was also averred by Lilaram that Moolchand has left the city years ago and that the rent is also paid by him only. No objection to the said averments was made by Moolchand, who was at that stage, very well a party to the suit. Meaning thereby, the factum of Lilaram being the only person running business in the premise and Moolchand being nowhere related to the said business or the rented premise was not denied by Moolchand and hence, would be deemed to be his admission.

(ii) An application under Order I Rule 10, CPC for deletion of the name of Moolchand was preferred by the landlord and the same was also not objected to by him despite he being a party to the suit. Moreover, the order dated 05.03.1984 whereby his name was permitted to be struck off was never challenged by him. Meaning thereby, he accepted the same and was not aggrieved of the same.

(iii) It is nowhere the case of the plaintiff Moolchand that he ever paid the rent to the landlord. Even if the version of the plaintiff Moolchand that he is running business in one of the shops since



last 30 years, is assumed to be correct, he definitely would have paid the rent qua the same for all these years. There is not a single statement either in the plaint or in the evidence as led by the plaintiff to the effect that he ever paid any rent to the landlord. It is rather the argument of his counsel before this Court that he is not liable to pay any arrears of rent or mesne profit.

(iv) Section 3 (vii) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 defines tenant as under:

"Section 3 (vii) "**tenant**" means-

(a) *the person by whom or on whose account or behalf rent is, or, but for a contract express or implied would be payable for any premises to his landlord including the person who is continuing in its possession after the termination of his tenancy otherwise than by a decree for eviction passed under the provisions of this Act; and*

(b) *in the event of death of the person as is referred to in sub-clause (a), his surviving spouse, son, daughter and other heir in accordance with the personal law applicable to him who had been, in the case of premises leased out for residential purpose, ordinarily residing and in the case of premises leased out for commercial or business purposes, ordinarily carrying on business with him in such premises as member of his family upto his death."*

In terms of the above provision of law, to hold a person to be a tenant of a premise, there are two essential requirements:

(a) The first is that he is the person by whom or on whose account or behalf, the rent is paid. Admittedly, in the present matter, the rent was never paid by Moolchand or his legal representatives. Even before this Court, it has been argued that the liability of payment of the rent/mesne profit, if any, is of



Lilaram only and not Moolchand. It is also not the case of the plaintiff that the rent was paid by Lilaram on his behalf. The specific averment of Lilaram had been that he is only the tenant who is using the premise and is paying the rent for the same. Therefore, by any means, it cannot be concluded that the rent was ever paid or is being paid by Moolchand or his legal representatives.

Hence, it can safely be concluded that the accrued right of tenancy, even if any, had been waived/surrendered by Moolchand. In the present matter, it is clear on record that the same was waived/surrendered by acquiescence. By all means, Moolchand cannot be held to be a tenant and hence, the finding of both the learned Courts below holding him to be disentitled to get the decree dated 26.09.2001 annulled cannot be interfered with, being totally in consonance with law and deserves to be affirmed.

(b) As the present was a premise let out for commercial purposes, the present plaintiffs i.e. the legal representatives of Moolchand, were under an obligation to prove that they were carrying on business with him in the premise upto his death. There is no pleading or evidence available on record to prove the same. On the contrary, it is the specific admission of PW-1 that no document pertaining to the business being carried on in the premise by the plaintiffs is available with him and there is no proof of the fact that Manoj (plaintiff No.1/2) was carrying on business with his father Moolchand upto the date of his death. Therefore also, the present plaintiffs cannot be termed to be the tenants of the premise in question and hence, cannot be entitled to challenge the decree for eviction passed against Lilaram.



(v) Mostly importantly, if the version of Moolchand, he being a joint tenant, is admitted, he *ipso facto*, would be bound by the decree dated 26.09.2001. As is the settled proposition of law, once it is held that the tenancy was joint, a notice to one of the joint tenants is sufficient and further, even the suit against one of the tenants would be good. Further, a decree passed in such a suit shall also be binding on all the tenants. The said proposition of law has been reiterated by the Hon'ble Apex Court in **Ashok Chintaman Juker's** case (supra) wherein, while dealing with a similar situation, the Hon'ble Apex Court observed as under:

"11. The question that arises for consideration in such cases is whether the tenancy is joint or separate. In the former case notice on any one of the tenants is valid and a suit impleading one of them as a defendant is maintainable. A decree passed in such a suit is binding on all the tenants."

Dealing with the facts of the said matter, the Hon'ble Apex Court held as under:

"16. In the case on hand, as noted earlier, on the death of the original tenant Chintaman the rent bills in respect of the premises in question were issued in the name of his elder son Kesrinath and on his death the rent bills were issued in the name of his widow Smt. Kishori Kesrinath Juker. It is not the case of the appellant no. 1 that there was any division of the premises in question or that rent was being paid to the landlord separately by him. Indeed the appellant no. 1 took the plea that he was paying the rent through Smt. Kishori Kesrinath Juker. Thus the tenancy being one, all the members of the family of the original tenant residing with him at the time of his death, succeeded to the tenancy





together. **In the circumstances the conclusion is inescapable that Smt. Kishori Kesrinath Juker who was impleaded as a tenant in the suit filed by the landlord represented all the tenants and the decree passed in the suit is binding on all the members of the family covered by the tenancy.** In the circumstances the decree passed in terms of the compromise entered between the landlord and Smt. Kishori Kesrinath Juker can neither be said to be invalid nor inexecutable against any person who claims to be a member of the family residing with the original tenant, and therefore, a 'tenant' as defined in section 5(11)(c). **The position that follows is that the appellants have no right to resist on the ground that the decree is not binding on them.** Further, the trial Court and the appellate Court concurrently held that the appellant no. 1 has not been residing in the premises since 1962 i.e. when his elder brother Kesrinath was alive. **Therefore, when the suit was filed in the year 1992 there was no necessity for the landlord to implead appellant no. 1 or members of his family in the suit since he (landlord) had no cause of action for seeking a decree of recovery of possession from them.** In that view of the matter the decree under execution does not suffer from any illegality or infirmity. Viewed from any angle the appellants have no justification on the facts as well as in law to resist execution of the decree for possession of the premises by the landlord."

In the opinion of this Court, the observations made by the Hon'ble Apex Court in **Ashok Chintaman Juker's** case (supra) and the ratio laid down therein, squarely applies to the present matter, the facts being totally akin. In view of the above ratio, it can safely be concluded that Moolchand and his legal





representatives, the present plaintiffs, would definitely be bound by the decree dated 26.09.2001. The findings as arrived by both the learned Courts below, therefore, cannot be interfered with and the findings on all the three issues deserve to be affirmed.

(vi) Further, the finding of both the learned Courts below taking adverse inference against the plaintiffs for not coming into the witness box also does not deserve any interference. In view of the settled proposition of law as reiterated in **Vidhyadhar's** case (supra), where a party to the suit does not appear in the witness box and state his case on oath and does not offer himself to be cross-examined, a presumption would arise that the case set up by him is not correct.

(vii) It is also the settled proposition of law as reiterated in **Janki Vashdeo Bhojwani's** case (supra) that a power of attorney (P/A) holder cannot depose for the principal for the acts done by the principal and not by him. He is not supposed to have the personal knowledge of the facts which only the principal would know and hence, he cannot be cross-examined on those facts.

17. In view of the above analysis and observations, this Court is of the clear opinion that the present suit is a stark example of a collusive suit of a highest degree and the most disdainful attempt of abuse of the process of Court. It is very painful situation that a landlord, who is seeking eviction of a premise since the year 1970, has not been able to get the vacant possession of even a part of the said premise after more than 50 years. A landlord who has a decree in his favour which has been affirmed till the stage of second appeal by the High Court way back in the year 2004 and even has an undertaking of a tenant to vacate the premise on



13.01.2005, has not been able to get the premise vacated even after 18 years of the said undertaking. The present is a classic example wherein the two mischievous litigants have attempted to make a mockery of the process of the Court and even succeeded in the same.

Interestingly, both the brothers claim themselves to be tenants but both deny the liability to pay the rent and the landlord has been deprived of the rent/mesne profit since years despite the same being his unfettered right. Herein is a case where one of the brothers claims himself to be the tenant of both the shops and contest the suit for more than 30 years. The said brother denies the other brother to be a tenant. After his having contested for more than a period of 30 years and having lost, the other brother comes into picture claiming himself to be the tenant. In the first suit where the first brother claimed to be the tenant, no objection was raised by the other brother. In the second suit, where the second brother claims himself to be the tenant, no objection is made by the first brother. Interestingly, both of them claim themselves to be the tenants but hold the other to be liable to pay the rent. What is crystal clear on record is that Lilaram and his legal representatives conveniently, in connivance, continued to enjoy the commercial premises without paying any rent. This Court has no hesitation in holding that the present suit proceedings have been initiated by the legal representatives of Moolchand at the behest of Lilaram/LRs of Lilaram only who actually is in possession of the premise in question and against whom a decree of eviction exists.



18. In ***Haryana Urban Development Authority and Ors. Vs. Jagdeep Singh; AIR 2023 SC 2257***, the Hon'ble Apex Court held as under:

"14. For filing the present frivolous appeal, in our opinion, the Appellants deserve to be burdened with heavy cost. This Court had deprecated the conduct of the litigants in flooding this Court with frivolous litigations, which are choking the dockets as a result of which the matters, which require consideration are delayed. Observations made in *Dynandeo Sabaji Naik and Ors. v. Pradnya Prakash Khadekar and Ors. (2017) 5 SCC 496* are extracted below:

13. This Court must view with disfavour any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly. A litigant who takes liberties with the truth or with the procedures of the Court should be left in no doubt about the consequences to follow. Others should not venture along the same path in the hope or on a misplaced expectation of judicial leniency. Exemplary costs are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practised in our country, there is no premium on the truth.

14. Courts across the legal system-this Court not being an exception – are choked with litigation. Frivolous and groundless filings constitute a serious menace to the administration of justice. They consume time and clog the infrastructure. Productive resources which should be deployed in the handling of genuine causes are dissipated in attending to cases filed only to benefit from delay, by prolonging dead issues and pursuing worthless causes. No litigant can have a vested interest in delay. Unfortunately, as the present case exemplifies, the process of dispensing justice is misused by the unscrupulous to the detriment of the legitimate. The present case is an illustration of how a simple issue has occupied the time of the courts and of how successive applications have been filed to prolong the inevitable. The person in whose favour the balance of justice lies has in the process been left in the lurch by repeated attempts to revive a





stale issue. This tendency can be curbed only if courts across the system adopt an institutional approach which penalizes such behaviour. Liberal access to justice does not mean access to chaos and Indiscipline. A strong message must be conveyed that courts of justice will not be allowed to be disrupted by litigative strategies designed to profit from the delays of the law. Unless remedial action is taken by all courts here and now our society will breed a legal culture based on evasion instead of abidance. It is the duty of every court to firmly deal with such situations. The imposition of exemplary costs is a necessary instrument which has to be deployed to weed out, as well as to prevent the filing of frivolous cases. It is only then that the courts can set apart time to resolve genuine causes and answer the concerns of those who are in need of justice. Imposition of real time costs is also necessary to ensure that access to courts is available to citizens with genuine grievances. Otherwise, the doors would be shut to legitimate causes simply by the weight of undeserving cases which flood the system. Such a situation cannot be allowed to come to pass. **Hence it is not merely a matter of discretion but a duty and obligation cast upon all courts to ensure that the legal system is not exploited by those who use the forms of the law to defeat or delay justice. We commend all courts to deal with frivolous filings in the same manner."**

In **Charu Kishor Mehta Vs. Prakash Patel and Ors.**

(Special Leave Petition (C) No.11030/2022) decided on

22.06.2022, the Hon'ble Apex Court held as under:

"18.....Under the facts and circumstances of the case, the Bombay High Court was absolutely justified in imposing the cost of Rs. 5 lakh, on the Petitioner. It is not only the proceedings before the Civil Court initiated by the Petitioner in the year 2022 which was on abuse of the law, but the entire conduct of the Petitioner is a clear reflection of the fact that the Petitioner has been doing so repeatedly, after being a signatory to the settlement as back as 01.10.2013.

19. The Supreme Court in Dalip Singh v. State of Uttar Pradesh and Ors. reported in (2010) 2 SCC 114 has this to say for methods adopted at the hands of



litigants under similar circumstances. Paragraph Nos. 1 and 2 as produced below:

1 . *For many centuries, Indian society cherished two basic values of life i.e., 'Satya' (truth) and 'Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.*

2. *In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.*

20.....*The present petition is no doubt an abuse of the process of law and has caused harm to the other parties to the litigation, some of whom may have been needlessly drawn into the litigation. We may refer here an observation given in the case of Subrata Roy Sahara v. Union of India (2014) 8 SCC 470:*

191. *The Indian judicial system is grossly afflicted, with frivolous litigation. Ways and means need to be evolved, to deter litigants from their compulsive obsession, towards senseless and ill-considered claims. One needs to keep in mind, that in the process of litigation, there is an innocent sufferer on the other side, of every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and*





restlessness, whilst the litigation is pending, without any fault on his part."

In **Rajappa Hanamantha Ranoji vs. Mahadev Channabasappa and Ors., (2000) 6 SCC 120**, the Hon'ble Apex Court held as under:

"13. It is distressing to note that many unscrupulous litigants in order to circumvent orders of courts adopt dubious ways and take recourse to ingenious methods including filing of fraudulent litigation to defeat the orders of courts. Such tendency deserves to be taken serious note of and curbed by passing appropriate orders and issuing necessary directions including imposing of exemplary costs. As noticed, despite eviction order having become final nearly a quarter century ago, Respondent 1 still could not enjoy the benefit of the said order and get possession because of the filing of the present suit by the brother of the person who had suffered the eviction order. Under these circumstances, we quantify the costs payable by the appellant to Respondent 1 at Rs. 25,000/-."

19. In view of the ratio as laid down in the above judgments, this Court is of the specific view that the present is a clear attempt by the litigant to abuse the process and take liberty with the procedures of the Court. As is clear on record, despite an eviction order having been passed nearly more than 30 years ago, the respondent could not enjoy the benefit of the said decree because of filing of the present frivolous suit by the present plaintiff. As held by the Hon'ble Apex Court in the case of **Haryana Urban Development Authority** (supra), the imposition of exemplary costs is a necessary instrument which has to be deployed to weed out as well as to prevent the filing of frivolous cases. In the case of **Rajappa Hanamantha Ranoji** (supra), the Hon'ble Apex Court



specifically recommended that the tendency of unscrupulous litigants entering into fraudulent litigation is to be taken serious note of and curbed by passing appropriate orders and issuing necessary directions including imposing of exemplary costs.

Keeping in with the intent of the Hon'ble Apex Court and the ratio as reiterated from time to time and as observed above and analysed, as no substantial question of law arises in the present appeal, the present appeal is **dismissed** with a cost of Rs.1,00,000/- payable by the plaintiffs to the respondents. Let the decree be drawn accordingly.

20. The stay application and all pending applications stand disposed of.

(REKHA BORANA),J

65-Sachin/-