

Jagdish Chander Chatterjee and Others

Vs

Shri Sri Kishan and Another

Civil Appeal No. 428(N) of 1971

A. N. Grover, D. G. Palekar JJ )

10.08.1972

JUDGMENT

PALEKAR, J. -

1. This appeal by Special Leave arises in the following circumstances.
2. Plaintiff (Respondent No. 1) filed Civil Suit No. 35 of 1963, against one B. N. Chatterji in the court of Munsif, Ajmer City, for ejection from the first floor of the house known as "Krishna Bhawan". The ejection was sought on the ground that the plaintiff required the house bona fide for the residence of himself and his family. B. N. Chatterji - the defendant, contested the suit and alleged that the landlord did not require the premises bona fide. The learned Munsif by judgment, dated January 17, 1964, held in favour of the landlord and decreed the suit for ejection. From that decree the tenant filed Civil Appeal No. 59 of 1964 in the court of the District Judge, Ajmer. The learned Judge held that the landlord did not require the premises reasonably and bona fide and allowed the appeal and dismissed the suit.
3. Thereupon the landlord filed second appeal No. 390 of 1965, in the Rajasthan High Court. During the pendency of the appeal, the tenant B. N. Chatterji died on July 31, 1967 and his widow and children were brought on record as his heirs and legal representatives. The widow Kalyani Devi died on June 24, 1969 and her heirs are the legal representatives - already on record. When the appeal came before a single Judge of the High Court for hearing, the landlord, who was the appellant in the second appeal, sought the permission of the court to urge the following point :

"That the respondent (original tenant B. N. Chatterji) died after the filing of this appeal. That the deceased after the determination of the tenancy was only a statutory tenant and under the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 the protection granted by Section 13 of the Rajasthan Premises (Control of Rent and Eviction) Act is not available to the heirs of the tenant. As such, even if it be held that the landlord has failed to prove the reasonable and bona fide requirement, which the appellant does not concede, the appellant is entitled to a decree in pursuance of the decision of a division bench of this High Court passed on April 7, 1966, in D. B. Special Appeal No. 3 of 1965."
4. The learned Judge allowed the point to be urged and came to the conclusion that it was not necessary to go into the question of bona fide and reasonable necessity of the landlord as that was only a protection provided to the statutory tenant personally under Section 13 of the Act of 1950. Since the tenancy had been duly terminated by notice and there was no other bar to the passing of

the decree in favour of the landlord the learned Judge set aside the Order of the District Court and restored the decree passed by the Munsif.

5. It was contended before us that the term 'tenant' in Section 3(vii) of the Act referred to above included, on a proper construction, the heirs of a tenant and, therefore, they were entitled in their own right to urge that the landlord did not require the premises reasonably and bona fide. On the other hand, if they were not tenants, it was no longer open to pass a decree of eviction against them and, if necessary, the plaintiff should be referred to a separate suit. In any case, it was contended, in view of the new point urged at the time of hearing, the High Court should have remanded the case for the determination of the question whether the contractual tenancy was validly terminated and whether by acceptance of rent from the legal representatives during litigation the heirs and the legal representatives had not been constituted 'tenants'.

6. In our opinion there is no substance in this appeal. The original tenant of the premises was B. N. Chatterji. The landlord had alleged in the suit that by a notice, dated June 26, 1962, served upon the tenant, the tenancy had been duly terminated. This was not denied in the written statement nor was an issue demanded at the time of the trial. However, the point being essentially a point of law, the learned Judge in second appeal permitted both sides to address him on the point and came to the conclusion that the contractual tenancy had been duly terminated by notice. In these circumstances, we do not think that there is any substance in the submission of the learned counsel for the appellant before us that the learned Judge should have remanded the case for a determination of that question.

7. The position, therefore, is this. The contractual tenancy of the tenant B. N. Chatterji had been duly terminated by notice as after July 31, 1962 and after that date the tenant would be merely a statutory tenant liable to be evicted only in accordance with the special law namely the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 referred to herein as "the Act". Section 13 of that Act provides that notwithstanding anything contained in any law or contract, no Court shall pass any decree, or make any order, in favour of a landlord, whether in execution of a decree or otherwise, evicting the tenant so long as he is ready and willing to pay rent therefor to the full extent allowable by this Act, unless it is satisfied that there are in the case one or the other of the several reasons given in clauses (a) to (l) of sub-section (1) of that section. One of such reasons is that the premises are required reasonably and bona fide by the landlord for the use of occupation of himself or his family. If the Court is satisfied about this reason the court would be entitled to pass a decree against the original tenant. The Trial Court, as we have already seen, was satisfied about this reason and gave a decree for eviction against the tenant. In appeal this finding has been reversed. So the landlord, when he came in second appeal, would have to show that the finding of the Appellate Court, on that point was wrong and that of the Trial Court was correct. There is no dispute whatsoever that if the original tenant B. N. Chatterji had lived till the disposal of the second appeal, this point could have been agitated before the High Court and the court would have been required to give a finding on that point. But the original tenant who was now merely a statutory tenant died during the pendency of the appeal and his heirs and legal representatives were brought on record. It was contended on behalf of the landlord in second appeal that the protection given by the Act was personal to the statutory tenant B. N. Chatterji and on his death it was no longer necessary for the landlord to show that he required the premises bona fide and reasonably and he was entitled to the eviction of the legal representatives on showing that the contractual tenancy had been properly terminated before the suit. The point for consideration is what is the position of the parties before the Court with regard to the relief claimed by the landlord in his eviction suit.

8. It is now settled that after the termination of the contractual tenancy the statutory tenant has only

a personal right to continue in possession till evicted in accordance with the provisions of the Act. It is pointed out by this Court in *Anand Nivas (P) Ltd. v. Anandji Kalyanji Pedhi and Others* ((1964) 4 SCR 892 at 908 : AIR 1965 SC 414 : (1965) 1 SCA 172.), at page 908 "A person remaining in occupation of the premises let to him after the determination of or expiry of the period of the tenancy is commonly through in law not accurately, called a "statutory tenant". Such a person is no a tenant at all; he has no estate or interest in the premises occupied by him. He has merely the protection of the statute in that he cannot be turned out so long as he pays the standard rent and permitted increases, if any, and performs the other conditions of the tenancy. His right to remain in possession after the determination of the contractual tenancy is personal; it is not capable of being transferred or assigned, and devolves on his death only in the manner provided by the statute. These observations have been made with reference to the provisions of the Bombay Rates Hotel and Lodging House Rates (Control) Act, 1947. But they equally apply to the provisions of the Act with which we are concerned. The protection given to B. N. Chatterji was personal to him and if that protection is withdrawn either because there is a change in the statute or because the person who is to be personally protected is no longer living, the question arises as to what is the position of the legal representatives of the deceased statutory tenant qua the landlord in a proceeding of the nature with which we are concerned.

9. It is obvious that the appellant landlord's right to proceed with the appeal with a view to obtain possession of his premises did survive under Order XXII, Rule 4, read with Rule 11 Civil Procedure Code. Where the right to sue and prosecute the appeal survives, the appellant is bound to cause the legal representatives of the deceased-respondent to be made a party and proceed with the appeal. Therefore, the heirs and legal representatives of the aforesaid B. N. Chatterji were rightly brought on record and the appeal had to proceed.

10. Under sub-clause (ii) of Rule 4 of Order XXII, Civil Procedure Code any person so made a party as a legal representative of the deceased, respondent was entitled to make any defence appropriate to his character as legal representative of the deceased-respondent. In other words, the heirs and the legal representatives could urge all contentions which the deceased could have urged except only those which were personal to the deceased. Indeed this does not prevent the legal representatives from setting up also their own independent title, in which case there could be no objection to the court impleading them not merely as the legal representatives of the deceased but also in their personal capacity avoiding thereby a separate suit for a decision on the independent title.

11. The heirs of the tenant purported to contend that after the death of the statutory tenant, they, as next heirs, enjoyed the status of 'tenant'. For this reliance was placed on the definition of the word 'tenant' given in Section 3, clause (vii) of the Act. According to the definition unless there is anything repugnant in the subject or context - "tenant" means the person by whom rent is, or but for a contract express or implied would be, payable for any premises and includes any person holding or occupying the premises as a sub-tenant or any person continuing in possession after the termination of a tenancy in his favour otherwise than under the provisions of the Act. It was contended before us that since the rent was payable by the heirs and in fact it was paid during the pendency of the proceedings, they were tenants within the definition. In our opinion, rent was not payable by the legal representatives and if the rent was paid by them during the course of the proceedings it was not because they were recognised as tenants by the landlord but because the amount was received by him without prejudice to his rights under the orders of the court. Indeed, if the original tenant had died before the contractual tenancy had been terminated then the heirs would have inherited the tenancy and in that sense the rent would have become payable by them. But that

is not the position here. When B. N. Chatterji died, he was only a statutory tenant - with a personal right to remain in possession till eviction under the provisions of the Act, and the heirs were incapable of Inheriting any estate or interest in the original tenancy. It was also not shown to us that they fell within any other part of the definition of 'tenant' reproduced above. Therefore, the heirs and legal representatives of the deceased B. N. Chatterji could not in their own right claim to be 'tenant' within the meaning of the Act. Therefore, the only contentions that they could put forward in the appeal were the contentions appropriate to their representative character and not one which was personal to the deceased. The contention based on the ground of bona fide requirement by the landlord was personal to the statutory tenant and on his death the same is not open to his legal representatives unless there is anything in the provision of the Act which makes the legal representatives statutory tenants to the same extent as the deceased. It is not the case that there is any other provision of the Act which gives protection to the legal representatives of the deceased statutory tenant.

12. As already stated, all contentions except those which are personal to the deceased were upon to the legal representatives to put forward in the second appeal. The contention about the validity of the notice for the termination of the tenancy was one such contention on which they could have supported the decision of the District Court. But as already pointed out the learned Judge has correctly decided that the contractual tenancy had been duly terminated by notice. Apart from that point no other point was urged before the High Court or before us and hence the present appeal must fail. There will be no order as to costs.

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