

Shantilal Thakordas and Others

Vs

Chimanlal Maganlal Telwala

Civil Appeal No. 487-488 of 1976

(CJI A.N. Ray, N.L. Untwalia, P.N. Shinghal JJ)

23.08.1976

JUDGMENT

UNTWALIA, J. -

1. In these appeals by special leave the question which falls for our determination is whether the decision of a bench of this Court consisting of two learned Judges in *Phul Rani v. Naubat Rai Ahluwalia* ((1973) 3 SCR 679 : (1973) 1 SCC 688) is correct. If not, whether the appellants are entitled to get a decree for eviction in respect of the suit premises against the defendant respondent.
2. Thakordas Bhagwandas - the father of the three appellants was owner of the suit premises. He was a partner in a partnership firm styled as *Jai Hind Silk Weaving Works*. There were three more partners in the firm - one of whom was Shantilal Thakordas, appellant 1, son of Thakordas Bhagwandas. The other two were outsiders. The suit was filed against respondent Chimanlal Maganlal Telwala for his eviction from the premises on several grounds. The only ground which needs to be mentioned for the purpose of the disposal of this appeal is Thakordas's claim of requiring the premises reasonably and bona fide for occupation by himself within the meaning of Section 13(1)(g) of the *Bombay Rents, Hotel and Lodging House Rates Control Act, 1947*. The necessity pleaded by the original plaintiff was that he required the premises for the use of the partnership firm aforesaid in which he was a partner. The trial Court decreed the suit in part on April 30, 1965 and passed a decree for eviction of the tenant from a portion of the suit premises. Both sides went upon in appeal before the first appellate Court. Thakordas was dead and his heirs, namely, the present appellants were the appellants in one appeal and respondents in the other. The first appellate Court by its judgment dated November 10, 1966 maintained the partial decree made by the trial Court with slight modification. Both the parties went in revision before the Gujarat High Court. The High Court set aside the decree dated November 10, 1966 of the first appellate Court and remanded the case to it for a fresh disposal of the appeal after trying out an additional issue of comparative hardship of the land lord and the tenant as also the question as to whether the substituted heirs of the original plaintiff required the premises reasonably and bona fide for their occupation.
3. The first appellate Court after remand again passed a decree for eviction from a portion of the suit premises on March 31, 1970. Two revisions were taken to the High Court - one by the appellants and the other by the respondent. Following the decision of this Court in *Phul Rani's* case the High Court allowed the respondent's revision, rejected that of the appellants and dismissed their suit for eviction in toto. Hence these appeals.
4. The foremost and the first question urged before us by Mr. Dholakia was that *Phul Rani's* case

was not correctly decided. We agree with this contention and say with respect that we do not subscribe to the view expressed by the bench of this court in that case. The original plaintiff in that case had filed the application for eviction under Section 14(1)(e) of the Delhi Rent Control Act, 1958. The application was dismissed in the first instance by the Additional Rent Controller, Delhi on the ground that the notices to quit were not valid. Plaintiff filed an appeal but died during its pendency. His widow, son and two married daughters and two children of a deceased daughter were allowed to be substituted by the Rent Control Tribunal where the appeal was pending. The case was remanded by the tribunal and after remand the Additional Rent Controller held that some of the substituted persons require the premises bona fide for their occupation. The tenant's appeal to the tribunal failed. The High Court of Delhi on a further appeal by the tenant took the view that the right to sue did not survive to the heirs of the plaintiff and on that ground it dismissed the ejectment application. The case came up to this Court. The view of the High Court was affirmed. The relevant words of personal requirement of the premises in Section 14(1)(e) of the Delhi Act are : "for occupation as a residence for himself and members of his family". The original plaintiff had pleaded :

The premises are required bona fide by the petitioner for occupation as a residence for himself and members of his family and that the petitioner has no other reasonable residential accommodation.

This Court took the view :

Thus, the requirement pleaded in the ejectment application and on which the plaintiff has founded his right to relief is his requirement, or to use an expression which will effectively bring out the real point, his personal requirement. If the ejectment application succeeds - we will forget for a moment that the plaintiff is dead - the premises in the possession of the tenant may come to be occupied by the plaintiff and the members of his family but that does not make the requirement pleaded in the application any the less a personal requirement of the plaintiff. That the members of his family must reside with him is his requirement, not theirs. Such a personal cause of action must perish with the plaintiff.

In our considered opinion in face of the wordings of Section 14(1)(e) of the Delhi Act, the view expressed in Phul Rani's case, as stated above, is not correct. If the law permitted the eviction of the tenant for the requirement of the landlord "for occupation as a residence for himself and members of his family", then the requirement was both of the landlord and the members of his family. On his death the right to sue did survive to the members of the family of the deceased landlord. We are unable to take the view that the requirement of the occupation of the members of the family of the original landlord was his requirement and ceased to be the requirement of the members of his family on his death. After the death of the original landlord the senior member of his family takes his place and is well competent to continue the suit for eviction for his occupation and the occupation of the other members of the family. Many of the substituted heirs of the deceased landlord were undoubtedly the members of his family and the two married daughters and the children of a deceased daughter in the circumstances could not be held to be not members of the family of the deceased landlord.

5. But even so the appellants cannot succeed in this appeal. Firstly it is doubtful whether the requirement of the premises by the landlord for occupation by the partnership firm in which he is a partner will be tantamount to "occupation by himself" i.e. by the landlord. Certain decisions of some

High Courts were brought to our notice taking the view that it is so. We refrain from expressing our opinion in that regard. We assume, as seems to have been the view of the High Court in this case, that the requirement of the premises for the use of a partnership firm by the landlord in which he is a partner is covered by Section 13(1)(g) of the Bombay Act. Yet on the facts of this case there is an insurmountable difficulty in the way of the appellants. From the judgment dated March 31, 1970 of the first appellate Court it would appear that on the death of Thakordas in June, 1965 a new partnership was constituted. One of his sons Shantilal who was a partner from before was taken as a partner in the new partnership along with Thakordas's another son Dhanvantlal Thakordas, appellant 2. There are some outsider partners. Harish Thakordas, appellant 3, a minor son of Thakordas had not been admitted to the benefits of the partnership. He had, therefore, no interest in the partnership firm Jai Hind Silk Weaving Works. The appellate Court took the view that the substituted plaintiffs wanted to use the suit premises for the purpose of a godown for keeping the yarn clothes and machinery articles and also for a retail shop and showroom of the partnership. This is no sense could be the requirement of appellant Harish even assuming that it could be said to be the requirement of his two elder brothers, appellants 1 and 2. In that view of the matter we have got to dismiss the appeal although Mr. Dholakia, learned Counsel for the appellants succeeded in persuading us to differ from the ratio of Phul Rani's case.

6. Counsel for the appellants endeavoured to bring their case within one of the exceptions noted in Phul Rani's case. He submitted that a decree had already been passed in favour of the original plaintiff by the trial Court and that could not be disturbed on his death either in appeal for revision. We do not accept the contention as sound or correct. In Phul Rani's case no final opinion was expressed on this question. Moreover, we find that on the earlier occasion the High Court had set aside the decree and remanded the suit to the first appellate Court for a fresh decision. There was, therefore, no decree in existence to attract the exception.

7. In the result the appeals fail and are dismissed but without costs.

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