

Jaspal Singh

Vs

Additional District Judge, Bulandshahr and Others

Civil Appeal No. 1275 of 1979

E. S. Venkataramiah, R. B. Misra JJ)

28.09.1984

JUDGMENT

R. B. MISRA, J. -

1. The present appeal by special leave against the judgment of the Allahabad High Court dated March 27, 1979 centres round a shop No. 270 situate in Grouceganj, Bulandshahr. This shop was owner by Ratan Lal and Naubat Singh was a tenant of the shop. Naubat Singh died on August 31, 1974. He had no male issue but had four daughters, all of whom was married and were residing with their husbands outside Bulandshahr. He also left behind his widow who was residing in village Rampur, district Bulandshahr. He was carrying on some business in the disputed shop during his lifetime. On his death Ratan Lal, the landlord, filed an application under Section 12 read with Section 16 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (for short, referred to hereinafter as 'the U.P. Act 13 of 1972') for a declaration that the shop was vacant and he required the same for his personal need.
2. The application was resisted by Jaspal Singh, the present appellant, on the ground that he was the heir of Naubat Singh deceased and was in occupation of the disputed shop; that on July 4, 1973 Naubat Singh before his death executed a will conveying all his rights and properties including the tenancy rights in the disputed shop to him; that he had been helping Naubat Singh in this business for the last several years and remained in continuous possession of the disputed shop after the death of Naubat Singh and so he was entitled to get the benefit of Section 14 of the U.P. Act 13 of 1972.
3. The Rent Control and Eviction Officer rejected the application holding that Jaspal Singh, the appellant, had been living with the deceased Naubat Singh and was also assisting him in doing the business in the disputed premises to the full knowledge of the landlord, and so he was entitled to get the tenancy rights under Section 14 of the U.P. Act 13 of 1972, as it stood prior to its amendment made by U.P. Act 28 of 1976.
4. Feeling aggrieved the landlord preferred a revision before the District Judge, Bulandshahr, which was transferred to the Additional District Judge, who dismissed the same on July 8, 1976. He, however, did not agree with the finding of the Rent Control and Eviction Officer that Jaspal Singh was entitled to the benefit of original Section 14 of the U.P. Act 13 of 1972 but since even after the death of Naubat Singh, on August 31, 1974 Jaspal Singh had been permitted to continue in possession of the premises he got the benefit of amended Section 14, as amended by U.P. Act 28 of 1976.
5. Undaunted by his failures, the landlord filed a petition under Article 226 of the Constitution

challenging the orders of the two authorities below. The High Court endorsed the finding of the Additional District Judge that Jaspal Singh could not get the benefit of the unamended Section 14 of the U.P. Act 13 of 1972 inasmuch as on the date immediately preceding the commencement of the Act, i.e., on July 14, 1972 Naubat Singh was very much alive and admittedly he was the tenant of the premises in question and as such no question of regularisation of Jaspal Singh as tenant could arise. The High Court also held that Jaspal Singh was not even entitled to get the benefit of the amended Section 14 as it stood amended by the U.P. Act 28 of 1976. Which came into force on July 5, 1976. According to the High Court the benefit of amended Section 14 would be available to Jaspal Singh, the appellant, only when he was living in the premises with the consent of the landlord provided that no proceedings for his eviction were pending. The landlord, however, in the instant case immediately after the death of Naubat Singh started proceedings for the release of the premises in 1974. The High Court took exception to the assumption of the learned Additional District Judge regarding the consent of the landlord. According to the High Court consent of the landlord cannot be assumed or presumed, it must be proved as a fact but there was no proof of the consent of the landlord. The High Court after construing the scheme and the various provisions of the Act also held that the appellant could not be heir on the basis of the will executed by Naubat Singh nor could Naubat Singh execute any will in respect of the tenancy rights. On these findings the High Court held the possession of Jaspal Singh to be unauthorised. Consequently, the High Court allowed the writ petition and quashed the orders of the authorities below and directed the Rent Control and Eviction Officer to decide the release application afresh in accordance with the law. Jaspal Singh has now approached this Court by special leave, and the counsel for the appellant has reiterated the same points before us.

6. The first question which calls for consideration is whether Jaspal Singh, the appellant is entitled to the benefit of the unamended and amended Section 14 of the Rent Act. It would be appropriate at this stage to read the old unamended and amended Section 14 of the Act. Section 14 as it stood originally in the U.P. Act 13 of 1972 read :

Regularisation of occupation of existing tenants. - Notwithstanding anything contained in any general order made under sub-section (2) of Section 7 of the old Act, any tenant in occupation of a building with the consent of the landlord immediately before the commencement of this Act, not being a person against whom proceedings under Section 7-A of the old Act are pending immediately before such commencement, shall be deemed to be in authorised occupation of such building.

Section 14 of the Act as amended by the U.P. Act 28 of 1976 reads :

14. Regularisation of occupation of existing tenants. - Notwithstanding anything contained in this Act or any other law for the time being in force, any licensee (within the meaning of Section 2-A) or a tenant in occupation of a building with the consent of the landlord immediately before the commencement of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) (Amendment) Act, 1976 not being a person against whom any suit or proceeding for eviction is pending before any court or authority on the date of such commencement shall be deemed to be an authorised licensee or tenant of such building.

A bare perusal of Section 14 as it stood prior to its amendment in 1976 would indicate that in order to get the benefit of this section a person must satisfy that (1) he was a tenant in occupation of a building with the consent of the landlord immediately before the commencement of this Act and

that he was not a person against whom proceedings under Section 7-A of the old Act are pending immediately before such commencement, i.e., on July 14, 1972 (date of commencement of the Act being July 15, 1972). Admittedly Naubat Singh was the tenant of the shop on the date immediately preceding the commencement of the Act (i.e., July 15, 1972) and he was alive and therefore no question of Jaspal Singh being regularised as a tenant arises.

7. In order to attract Section 14 as it stood after the amendment in 1976, Jaspal Singh had to prove that he was a licensee or a tenant with the consent of the landlord immediately before the commencement of the U.P. Act 28 of 1976 came into force on July 5, 1976. At the relevant time, however, the application for release filed by the landlord against Jaspal Singh was pending in Court of Additional District Judge by way of revision petition wherein the landlord Ratan Lal had contested the claim of tenancy by Jaspal Singh. The appellant, therefore, could not get the benefit of amended Section 14 as well and the High Court was right in so holding.

8. This leads us to the next contention that the appellant is a tenant within the meaning of Section 3(a) of Act 13 of 1972 :

In this Act, unless the context otherwise requires -

"tenant", in relation to a building, means a person by whom its rent is payable, and on the tenant's death -

in the case of a residential building, such only of his heirs as normally resided with him in the building at the time of his death;

(2) in the case of a non-residential building, his heirs;

The appellant would be a tenant within the meaning of Section 3(a) only when he is an heir. The appellant is not a son but only a nephew of Naubat Singh. He, however, claims to be an heir on the basis of a will executed by Naubat Singh conveying all his rights and properties including the tenancy rights in respect of the disputed shop in his favour and that he had been helping Naubat Singh in his business for the last several years and continued to remain in possession of the shop even after the death of Naubat Singh. Accordingly he was entitled to the benefit of Section 14. We have already dealt with the question whether the appellant was entitled to the benefit of Section 14 as it stood prior to its amendment in 1976 and also of the amended provisions of Section 14 and we have negated the contention of the appellant. Therefore, the precise question for consideration would be whether the appellant is an heir within the meaning of Section 3(a) on the basis of the will executed in his favour by Naubat Singh. There seems to be a cleavage of opinion on this point in various High Courts. The Allahabad High Court in *Rukmani Devi v. III Addl. District Judge, Kanpur* (1977 All Ren Cas 72) and *Munni Lal v. Shiv Dei* (1981 All Ren Cas 6 (Short Notes of Cases 13)) held that the question as to who are heirs of the deceased tenant, will be decided in accordance with the personal law of the tenant, as this Act does not lay down the list of heirs on whom the tenancy should devolve.

In Some of the Rent Control Acts list of the heirs has been specified for the purpose of devolution of tenancy on the death of the tenant. A Division Bench of the Punjab and Haryana High Court in *Gulzara Singh v. Tej Kaur* (AIR 1961 Punj 288) on the other hand held :

Generally speaking, 'heirs' are those persons whom the law declares to be entitled to the estate of a deceased person, and in common legal parlance the word 'heir' like the expression 'heir-at-law' undoubtedly connotes and is suggestive of a person who succeeds to the estate in case of intestacy under the statutes of succession. But in common speech, this word is also not infrequently used to indicate those who come in any manner to the ownership of any property by reason of the death of the owner or persons upon whom the property devolves on the death of another either by law or by will.

In other words, it is indicative of persons entitled by will or otherwise to share the estate of the deceased. It is thus true that technically the word 'heir' may be distinguishable from the word 'legatee' but it is also at times used in its more general and comprehensive sense as indicating a person upon whom the property devolves on the death of another and hence when the intent is clear the word 'heir' may well be treated as equivalent to 'legatee' or 'devised'. The true scope, effect and significance of this word is, therefore, in all cases a question of intention which has to be determined principally on a consideration of the object and purpose of the statute in which it is used.

Thus, the word 'heir' has been construed both in a wider as well as in a narrower sense. Which sense will be applicable to the facts of a particular case will depend upon the intention and scheme of a particular legislation in which the question occurs. This will also raise an allied question whether the tenancy rights could be devised by a will. It will be relevant at this stage to refer to material provisions of the Act.

The word 'family' has been defined in Section 3(g) of the Act :

"family", in relation to a landlord or tenant of a building, means, his or her -
spouse,

(ii) male lineal descendants,

such parents, grand parents and any unmarried or widowed or divorced or judicially separated daughter or daughter of a male lineal descendant, as may have been normally residing with him or her,

and includes, in relation to a landlord, any female having a legal right of residence in that building;

Section 11 deals with the prohibition of letting without allotment order. It reads :

Save as hereinafter provided, no person shall let any building except in pursuance of an allotment order issued under Section 16.

Section 12 deals with a deemed vacancy of building in certain cases and reads :

A landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if –

he has substantially removed his effects therefrom, or

he has allowed it to be occupied by any person who is not a member of his family, or
©in the case of a residential building, he as well as members of his family have taken up residence, not being temporary residence, elsewhere.

(2) In the case of non-residential building, where a tenant carrying on business in the building admits a person who is not a member of his family as a partner or a new partner, as the case may be, the tenant shall be deemed to have ceased to occupy the building.

Section 13 provides for restrictions on occupation of building without allotment or release, and reads :

Where a landlord or tenant ceases to occupy a building or part thereof, no person shall occupy it in any capacity on his behalf, or otherwise than under an order of allotment or release under Section 16, and if a person so purports to occupy it, he shall, without prejudice to the provision of Section 31, be deemed to be an unauthorised occupant of such building or part.

Section 15 casts an obligation on the landlord or the tenant to intimate vacancy to the District Magistrate. Section 16 deals with allotment and release of a vacant building. Section 20 puts a bar of suit for eviction of a tenant except on specified grounds enumerated therein.

10. From a survey of these provisions it will be clear that if a tenant parts with possession of the premises in his possession, the same would be treated as vacant. There are restrictions in the case of a residential building that the tenant will live only with the members of his family and after he has allowed the same to be occupied by any person who is not a member of his family, the tenant shall be deemed to have ceased to occupy the building. In the case of a non-residential building, when a tenant is carrying on business in the building, admits a person who is not a member of his family as a partner or a new partner, as the case may be, the tenant shall be deemed to have ceased to occupy the building. If a tenant sublets the premises, he is liable to ejectment. Obviously, therefore, there are restrictions placed by the Act on the right of the tenant to transfer or sublet the tenancy rights and he can keep possession of the building or premises for himself and for the purpose of his family, for his business and for the business of his family members. He obviously, cannot be allowed to transfer a tenancy right. A fortiori, the scheme of the Act does not warrant the transfer of the tenancy right to be effective after his lifetime. Thus, the appellant was neither a tenant of the disputed shop nor he was an heir of Naubat Singh, the original tenant. Besides, on a plain reading of the will it is evident that the will has been executed in respect of other properties including his business but not in respect of the tenancy rights. The High Court also recorded a finding to the effect that there was no will in respect of the tenancy rights of the disputed shop.

11. Having given our anxious consideration to the question involved in the case we see no reason to differ from the finding of the High Court. The appeal is accordingly dismissed but in the circumstances of the case the parties are allowed to bear their own costs.

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