

Bal Kishan

Vs

Om Parkash and Another

Civil Appeal No. 1960 of 1980

(E. S. Venkataramiah, V. Khalid JJ)

26.08.1986

JUDGMENT

VENKATARAMIAH, J. -

1. Respondent 1 Om Prakash is the landlord of a building situated in Ferozpur Jhirka District Gurgaon in the State of Haryana. He had leased out the said premises in favour of one Musadi Lal for a commercial purpose. After Musadi Lal took the premises on lease he sublet the premises in favour of Med Ram - respondent 2 without the written consent of the landlord Om Parkash. Thereupon Om Prakash filed a petition for eviction against Musadi Lal and Med Ram before the Rent Controller, under the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (Act 11 of 1973) (hereinafter referred to as 'the Act') on the ground mentioned in Section 13(2)(ii)(a) of the Act which entitled the landlord to file a petition for eviction where the tenant had after the commencement of the Act without the written consent of the landlord transferred his right under the lease or sublet the building. Musadi Lal and Med Ram, the tenant and the alleged sub-tenant respectively were impleaded as the respondents to the petition. During the pendency of the petition Musadi Lal died. Thereupon Bal Kishan, the appellant herein, filed an application before the Rent Controller to bring him on record as the legal representative of the deceased Musadi Lal alleging that he was the adopted son of Musadi Lal. The said application was opposed by the landlord. Overruling the objections of the landlord the Rent Controller ordered that the appellant Bal Kishan should be brought on record as the legal representative of the deceased Musadi Lal. After the above order was passed Bal Kishan filed an additional written statement contending that the premises in question being non-residential and commercial premises, the legal heir of a tenant could not be treated as a tenant as defined under Section 2(h) of the Act and, therefore, the possession of such legal heir of a tenant would be that of a trespasser. That being the case, according to the appellant, the Rent Controller had no jurisdiction to proceed with the case as the Rent Controller was not competent to pass a decree for possession against a trespasser. On the above ground the appellant prayed for the dismissal of the eviction petition. Overruling the said contention, the learned Rent Controller allowed the petition for eviction holding that Musadi Lal had sublet the premises in favour of Med Ram, respondent 2 without the written consent of the landlord. Against the judgment of the Rent Controller, the appellant filed an appeal before the Appellate Authority at Gurgaon. That appeal was dismissed. Against the judgment in that appeal, the appellant filed a revision petition before the High Court which was also dismissed. This appeal by special leave is filed against the judgment of the High Court.

2. In this appeal also it is contended that the proceedings before the Rent Controller were without jurisdiction since the appellant was not a tenant as defined in Section 2(h) of the Act because the building in question was a non-residential building. That Musadi Lal was a tenant under respondent

1 is not disputed. We shall assume for purposes of this case, but without deciding, that the appellant Bal Kishan was not entitled to be treated as a tenant of the building in question under the Act on the death of Musadi Lal. The question for consideration is whether in the circumstances of this case the Rent Controller had lost his jurisdiction to try the case before him.

3. Order XXII Rule 4 of the Code of Civil Procedure, 1908 provides that where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit. Since the action in this case related to property, the right to sue did survive and the Rent Controller was right in bringing the legal representative of the deceased Musadi Lal on record. Sub-rule (2) of Rule 4 Order XXII authorises any person who is brought on record as the legal representative of a defendant to make any defence appropriate to his character as legal representative of the deceased defendant. The said sub-rule authorises the legal representative of a deceased defendant or respondent to file an additional written statement or statement of objections raising all pleas which the deceased tenant had or could have raised except those which were personal to the deceased defendant or respondent. In the instant case Bal Kishan, the appellant could not have, therefore, in the capacity of the legal representative of the deceased respondent Musadi Lal who was admittedly a tenant, raised the plea that he was in possession of the building as a trespasser and the petition for eviction was not maintainable. It is true that it is possible for the court in an appropriate case to implead the heirs of a deceased defendant in their personal capacity also in addition to bringing them on record as legal representatives of the deceased defendant avoiding thereby a separate suit for a decision on the independent title as observed in *Jagdish Chander Chatterjee v. Sri Kishan* [(1973) 1 SCR 850 : (1972) 2 SCC 461 : AIR 1972 SC 2526]. The relevant part of that decision at page 854 reads thus : (SCC pp. 464-5, para 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 representative 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.

4. But in the instant case the appellant cannot claim the benefit of the above decision for two reasons. First, the appellant had not been brought on record as a respondent in the eviction petition in his personal capacity but had been brought on record only as the legal representative of Musadi Lal. Secondly, in the circumstances of this case, even if a prayer had been made to bring the appellant on record in his personal capacity, the Rent Controller could not have allowed the application and permitted him to raise the plea of independent title because such a plea would oust the jurisdiction of the Rent Controller to try the case itself. The observations made in the *Jagdish Chander Chatterjee* case [(1973) 1 SCR 850 : (1972) 2 SCC 461 : AIR 1972 SC 2526] have to be confined to only those cases where the court hearing the case has jurisdiction to try the issues relating to independent title also. The Rent Controller, who had no jurisdiction to pass the decree for possession against a trespasser could not have, therefore, impleaded the appellant as a respondent to the petition for eviction in his independent capacity. We do not, therefore, find any substance in the above plea of the appellant. Further the plea of the appellant that he was holding the property as a trespasser is also not tenable because the possession of Musadi Lal being permissive, the possession

of the appellant who had succeeded to the estate of Musadi Lal as his heir could not be that of a trespasser in the circumstances of the case. He could not, therefore, resist the passing of the decree for eviction on proof of the ground in Section 13(2)(ii)(a) of the Act.

5. We agree with the findings recorded by the Rent Controller and the Appellate Authority which have been affirmed by the High Court that Musadi Lal had sublet the premises without the written consent of the landlord and, therefore, the legal representative of the tenant and the sub-tenant were liable to be evicted from the premises under the Act. The appeal, therefore, fails and it is dismissed. There will be no order as to costs.

</html