

H. C. Pandey

Vs

G. C. Paul

Civil Appeal No. 3342 of 1979

(CJI R. S. Pathak, S. Natarajan JJ )

28.04.1989

JUDGMENT

PATHAK, C. J. –

1. This is a landlord's appeal by special leave arising out of suit for ejectment.
2. The respondent's father B. M. Paul, was the tenant of the premises in question. On his death he left behind the respondent, his mother, brothers and sisters who inherited the tenancy. A notice under Section 106 of the Transfer of Property Act terminating the tenancy was addressed to the respondent and was served on him. It was not addressed and served on the other tenants. A suit for ejectment was filed by the appellant against the respondent. The validity of the notice to quit was challenged by the respondent. It was contended that notice should have been addressed to all the members of the family and served on them, and in the absence of notice to all the suit was incompetent. The trial court upheld the validity of the notice relying upon the decision of the Allahabad High Court in *Shrimati Vishnawati v. Bhagwat Vithu Chowdhry* ((1969) ALJ 1131 : AIR 1970 All 389) on the footing that the defendants were joint tenants and constituted a single unit and therefore notice to one of the defendants was sufficient to determine the tenancy. The view proceeded on the basis that the heirs of the original tenant held the tenancy as joint tenants. When the matter ultimately came to the High Court in second appeal, the High Court took the view that as heirs of the deceased tenant they held the tenancy as tenants in common and not as joint tenants. Accordingly, the High Court said, notice to quit should have been served on each one of the successor tenants. In that view, the High Court allowed the appeal and dismissed the suit. The High Court relied on *Ramesh Chand Bose v. Gopeshwar Prasad Sharma* (AIR 1977 All 38 : 1976 AWC 301 : 1976 Ren CJ 380 : (1976) 2 ALR 711) where it was held that a tenancy was a heritable property right and the heirs of the deceased tenant became tenants themselves.
3. In this appeal the entire question is whether the notice addressed to the respondent alone is a valid notice.
4. It is now well settled that on the death of the original tenant, subject to any provision to the contrary either negating or limiting the succession, the tenancy rights devolve on the heirs of the deceased tenant. The incidence of the tenancy are the same as those enjoyed by the original tenant. It is a single tenancy which devolves on the heirs. There is no division of the premises or of the rent payable thereof. That is the position as between the landlord and the heirs of the deceased tenant. In other words, the heirs succeed to the tenancy as joint tenants. In the present case it appears that the respondent acted on behalf of the tenants, that he paid rent on behalf of all and the accepted notice also on behalf of all. In the circumstances, the notice served on the respondent was sufficient. It

seems to us that the view taken in Ramesh Chand Bose (AIR 1977 All 38 : 1976 AWC 301 : 1976 Ren CJ 380 : (1976) 2 ALR 711) is erroneous where the High Court lays down that the heirs of the deceased tenant succeed as tenants in common. In our opinion, the notice under Section 106 of the Transfer of Property Act served by the appellant on the respondent is a valid notice and therefore the suit must succeed.

5. In the result, the appeal is allowed, the judgment and decree of the High Court are set aside and the judgment and decree of the First Appellate Court are restored. There is no order as to costs.

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