

Tara Chand and Another

Vs

Ram Prasad

Civil Appeal No. 5052 of 1985

(K. N. Saikia, K. Ramaswamy JJ)

03.05.1990

JUDGMENT

K. RAMASWAMY, J. -

1. The appellants had leave under Article 136 to appeal against the judgment and decree of the High Court of Rajasthan at Jaipur Bench in Second Appeal No. 240 of 1978 dated July 5, 1985 reversing the decrees of the courts below and decreeing the suit for the ejection of the appellants from the demised shop in Jaipur. The facts lie in a short compass : that Smt. Anandi, wife of appellant 1 and the mother of the appellant 2, Nand Kishore had lease of the demised premises for 11 months from May 1, 1964 on payment of monthly rent of Rs. 18 which expired on March 31, 1965. The respondent landlord terminated the lease by a notice under Section 106 of Transfer of Property Act but she remained in possession and enjoyment of the shop carrying on small kirana business. She died in September 1966. The demised premises are governed by the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (Act 26 of 1950 for short the 'Act') Section 13(1) thereof, postulates that "notwithstanding anything contained in any law or a contract, no court shall pass any decree or make any order in favour of the landlord, whether in execution of a decree or otherwise evicting the tenant so long as he is ready and willing to pay rent thereof to the full extent allowable by the Act" unless the landlord proves to the satisfaction of the court any one of the grounds enumerated in clauses (a) to (k) thereof. The action for the ejection was initiated by the respondent on the premise that on the death of the tenant, the appellants have no right to continue in occupation of the demised premises. The findings recorded by all the courts are that Smt. Anandi was the tenant. The appellants during her lifetime, had not carried on the business with her till date of her death. The trial court dismissed the suit on the ground that Smt. Anandi paid and the respondent accepted the rent after determination of the lease. So she was a tenant holding over. During the pendency of the appeal, the Act was amended through Rajasthan Premises (Control of Rent and Eviction) Ordinance 26 of 1975 which was replaced by Act 14 of 1976 (for short 'Amendment Act'). Therein the definition of 'Tenant' was amended by Section 3(ii) of the Amendment Act introducing to Section 3 clause (vii), thus :

"3. (vii) "tenant" means -

(a) the person by whom or on whose account or behalf rent is, or, but for a contract express or implied, would be payable for any premises to his landlord including the person who is continuing in its possession after the termination of his tenancy otherwise than by a decree for the eviction passed under the provisions of this Act; and

(b) in the event of death of the person as is referred to in sub-clause (a), his surviving spouse, son, daughter and other heir in accordance with the personal law applicable to him who had been in the case of the premises leased out of the for residential purpose, ordinarily residing and in the case of premises leased out for commercial or business purposes, ordinarily carrying on business with him in the such premises as members of his family up to his death."

2. Consequently, the appellant amended the written statement adding therein paragraphs 16 and 17 contending that they have been jointly carrying on the business in the demised premises along with Smt. Anandi and, therefore, they are entitled to the continuance of the tenancy. The amendment was allowed by the appellate court and it called for a finding from the trial court in that regard. After giving an opportunity to both the parties to adduce evidence afresh the court recorded the finding in the negative. On its receipt and consideration thereof the appellate court affirmed the finding but confirmed the decree of the trial court on the other grounds. The High Court held that as the appellants had not carried on the business with the tenant during her lifetime as family business they were not entitled the benefit of the amended definition of the tenant. Accordingly decreed the suit.

3. The contention of the learned counsel for the appellants is that the leasehold right is an heritable estate and on death of the tenant in September 1966, the succession thereto was opened and the appellants, being Class I heirs under the Hindu Succession Act, 1956 inherited by intestate succession the leasehold estate in the tenancy rights held by Smt. Anandi. The said right received express recognition under the Amendment Act which is not in derogation to the personal law. The High Court, thereby, committed manifest error of the law. Shri Dalveer Bhandari, learned counsel for the respondent, on thorough preparation of the case, has vehemently resisted the contention. He also circulated written arguments. According to him preceding the Amendment Act the commercial or business tenancy was not heritable as held in *J. C. Chatterjee v. Sri Kishan* ((1972) 2 SCC 461 : (1973) 1 SCR 850) by the High Courts of Rajasthan, Punjab and Haryana and Delhi. For the first time the right to succession has been created under the Amendment Act. The finding recorded by all the courts is that during the life time and till the date of death of the tenant, Smt. Anandi, the appellants did not carry on business with her as family business in the demised premises. On determination of tenancy the appellants became trespassers. Thereby the appellants became disentitled to remain in possession of the demised premises. It is seen that Section 13(1) of the Act engrafts non obstante clause, namely, "notwithstanding any thing contained in any law or contract, no court shall pass any decree of eviction against the tenant so long as the tenant is ready and willing to pay rent therefor to the full extent allowable by the Act" unless one or other ground or grounds specified in clauses (a) to (k) of sub-section (1) of the Section 13 are established. Admittedly, the settled legal position preceding the Amendment Act, prevailing in the State of Rajasthan was that the leasehold rights of the tenanted premises for commercial or business purposes governed by the Act is not heritable. It is a personal right to the tenant. A reading of the amendment to the definition of 'tenant' is Section 3 sub-clause (vii)(b) makes the legislative intent manifest that from the date the Amendment Act came into force, on the death of the tenant, his surviving spouse, son, daughter, and other heir, in accordance with personal law as applicable to him, who had been, in the case of the premises leased out of residential purposes, ordinarily residing and, in the case of premises leased out for commercial or business purposes, ordinarily and been carrying on business with him/her in such premises as members of his/her family up to his/her death would be the tenant. Therefore, under the amended definition of tenant, if one seeks to make avail of the benefit of statutory tenancy under the Act, he must establish to the satisfaction of the court that the surviving spouse, son or daughter and other heir, in case of residential premises, he/she/they - ordinarily had been residing in the premises alongwith the tenant and continued to the do so till

date of death of the tenant. Similarly, in respect of premises leased out for commercial or business purposes it must be established that the surviving spouse or son or daughter and the heir as the case may be ordinarily had been carrying on the business during the lifetime of the tenant as members of the family in the demised premises and continued to do the business till date of the death of the tenant. In other words to the avail of the statutory right of the under Section 3(vii)(b) there must continue to subsist the unity of action and continuity of membership of the family between the deceased tenant and the spouse etc. The break in either of the links snaps off the right denuding the continuity of the statutory tenancy.

4. Every tenancy is founded, initially, upon a contract. The contractual tenant has an estate or property in the leasehold interest of the tenancy and his heritability is an incidence of the tenancy. Despite termination of the tenancy this tenancy this Court eulogised the resultant consequences in *Damadilal v. Parashram* ((1976) 4 SCC 855 : 1976 Supp SCR 645) in which three Judges bench held that (SCC p. 864 para 11)

"It cannot be assumed, however, that with the determination of the tenancy the estate must necessarily disappear and the statute can only preserve his status of the irremovability and not the estate he had in the premises in his occupation."

5. The facts in that the case were that the tenancy of business premises was governed by the Madhya Pradesh Accommodation Control Act, 1961. The contracted tenancy was determined and a suit for eviction from a shop was laid in the civil court against the tenant. During its pendency he died and his legal representatives were sought to come on the record which was resisted. The word 'tenant' had been defined under the Section 2(1) of that Act, thus :

"a person by whom or on whose account or behalf the rent of the any accommodation is, or, but for a contract express or implied would be payable for any accommodation and includes any person occupying the accommodation as a sub-tenant and also any person continuing in possession after the termination of his tenancy whether before or after the commencement of this Act, but shall not include any person against whom any order or decree of for the eviction has been made."

6. The definition is the same as in the present case on the hand under clause (a) of section 3(vii) of the Rajasthan Act. It was contended that the tenancy came to a terminus with its determination by issuance of notice under Section 106 of Transfer of Property Act and the legal representatives do not succeed to the estate of the deceased tenants so as to prosecute the proceedings. While repelling that contention, noticing the definition referred to above, Gupta, J. speaking for the court held that : (SCC pp. 864-65, para 12)

"The definition makes a person continuing the in possession after the determination of his tenancy a tenant unless a decree or order for eviction has been made against him, thus putting him on par with a person whose contractual tenancy still subsists. The incidents of the such tenancy and a contractual tenancy must, therefore, be the same unless any provision of the Act conveyed a contrary intention. That under this Act such a tenant retains an interest in the premises, not merely a personal right of occupation, will also appear from section 14 which contains provisions restricting the tenants' power of subletting. There is nothing to suggesting that this section does not apply to all tenants as defined in Section 2(i). A contractual tenant has an estate or interest in premises from which he carves out what he gives to the sub-tenant.

Section 14 read with Section 2(i) makes it clear that the so-called statutory tenant has the right to sub-let in common with a contractual tenant and this is because he also in has an interest the premises occupied by him."

7. Accordingly it was held that they succeeded as legal representatives to the leasehold interest of the commercial premises.

8. How to resolve the controversy between the ratio therein and that the majority contra view taken in *Anand Niwas (Pvt.) Ltd. v. Anandji Kalyanji Pedhi* ((1964) 4 SCR 892 : AIR 1965 SC 414) and *Jagdish Chander Chaterjee v. Sri Kishan* ((1972) 2 SCC 461 : (1973) 1 SCR 850), the later case on which heavy reliance was placed by Mr. Dalveer Bhandari that arose directly under the Rajasthan Rent Control Act, referred to the Constitution Bench in *Gian Devi Anand v. Jeevan Kumar* ((1985) 2 SCC 683 : 1985 Supp SCR 1). The facts therein were that the definition of tenant under the unamended Delhi Rent Control Act, similar to Section 3(vii)(a) of the Act was in vogue in the Delhi Rent Control Act, 1958. The premises in question therein was commercial premises. The definition of tenant was amended with the retrospective effect. The contention raised was that the amended Act accords heritability to residential tenancy while omitting the benefit of the commercial or business tenancy. The legal representatives of the deceased tenant, did not acquire heritable interest in the commercial tenancy under the Act. A. N. Sen, J. speaking for the Constitution Bench surveyed the case law in extenso and upheld the view in *Damadilal* case ((1976) 4 SCC 855 : 1976 Supp SCR 645). It was held at pp. 24 to 25 thus : (SCC pp. 700-02, paras 23 and 24)

"For an appreciation of the question it is necessary to understand the kind of protection that is sought to be afforded to a tenant under the Rent Acts and his status after the termination of the contractual tenancy under the Rent Acts. It is not in dispute that the so long as the contractual tenancy remains subsisting, the contractual tenancy creates heritable rights; and, on the death of a contractual tenant, the heirs and legal representatives step into the position of the contractual tenant, and, in the same way on the death of a landlord the heirs and legal representatives of a landlord become entitled to all the rights and privileges of the contractual tenancy and also come under all the obligations under the contractual tenancy. The Rent Acts seek to preserve social harmony and promote social justice by safeguarding the interests of the tenants mainly and at the same time protecting the legitimate interests of the landlords. Though the purpose of the various Rent Acts appear to be the same, namely, to promote social justice by affording protection to tenants against undue harassment and exploitation by landlords, providing at the same time for adequate safeguards of the legitimate interests of the landlords, the Rent Acts undoubtedly lean more in favour of the tenants for whose benefits the Rent Acts are essentially passed. It may also be noted that various amendments have been introduced to the various Rent Acts from time to time as and when situation so required for the purpose of mitigating the hardship of tenants.

Though provisions of all the Rent Control legislation is that a contractual tenant on the termination of the contractual tenancy is by virtue of the provision of the Rent Acts not liable to be evicted as a matter of course under the ordinary law of the land and he is entitled to remain in possession even after determination of the contractual tenancy and no order or decree for eviction will be passed against a tenant unless any ground which entitles the landlord to get an order or decree for possession specified in the Act is established. In other words, the common feature of every Rent Control

Act is that it affords protection to every tenant against eviction despite termination of tenancy except on the grounds recognised by the Act and the no order or decree for eviction shall be passed against the tenant unless any such grounds is established to the satisfaction of the court."

9. The seven Judges bench of this Court reported in *V. Dhanapal Chettiar v. Yesodai Ammal* ((1979) 4 SCC 214 : (1980) 1 SCR 334) while considering the effect of termination of the tenancy under the Section 106 of Transfer of the Property Act vis-a-vis right of the tenant under T.N. Buildings (Lease and Rent) Control Act, 1960 held that various State Rent Control Acts make serious encroachment in the field of freedom of the contract. It does not permit the landlord to snap his relationship with the tenant merely by his act of serving a notice to quit on him. In spite of the notice, the law says that he continues to be a tenant and he does not so enjoying all the rights of a lessee and at the same time is deemed to be under all the liabilities such as payment of rent etc., in accordance with law. Similarly while considering the language of section 10(1) of the A.P. Building (Lease, Rent and Eviction Control) Act. 1960 similar to section 13(1) of the Act, whether the statutory lease is to be terminated by issuance of notice under Section 106 of the Transfer of Property Act, it was further held at p. 352-B that "even a special provision is provided by way of abundant precaution only that without this a tenant continuing in possession after the termination of the contractual tenancy and until an eviction order is passed against him, continues on the same terms and conditions as before and he cannot be evicted unless a ground is made out for his eviction according to the State Rent Act." In *Gyan Devi Anand* case ((1985) 2 SCC 683 : 1985 Supp SCR 1) the Constitution Bench further held at p. 32-F that : (SCC pp. 707-08, para 31)

"The termination of the contractual tenancy in view of the definition of tenant in the Act does not bring about any change in the status and legal position of the tenant, unless there are contrary provisions in the Act; and the tenant notwithstanding the termination of the tenancy does enjoy an estate or interest in the tenanted premises. This interest or estate which the tenant under the Act despite termination of the contractual tenancy continues to enjoy creates a heritable interest in the absence of any provision to the contrary."

At p. 33-E to G was held that : (SCC p. 708, para 31)

"As the status and rights of the contractual tenant even after determination of his tenancy when the tenant is at times described as the statutory tenant, are fully protected by the Act and the heirs of such tenants become entitled by virtue of the provisions of the Act to inherit the status and position of the statutory tenant on his death, the legislature which has created this right has thought it fit in the case of the residential premises to limit the rights of the heirs in the manner and to the extent provided in Section 2(1)(iii). It appears that the legislature has not thought it fit to put any such restrictions with regard to tenants in respect of the commercial premises in this Act."

At p. 35-D to G, it was observed that : (SCC p. 710, para 34)

"So long as the contractual tenancy of a tenant who carries on the business continues, there can be no question of the heirs of the deceased tenant not only inheriting the tenancy but also inheriting the business and they are entitled to run and enjoy the same. We have earlier held that mere termination of the contractual tenancy does not

bring about any change in the status of the tenant and the tenant by virtue of the definition of the 'tenant' in the Act and the other Rent Acts continues to enjoy the same status and position, unless there be any provisions in the Rent Acts which indicates to the contrary. The mere fact that in the Act no provision has been made with regard to the heirs of tenants in respect of the commercial tenancies on the death of the tenant after termination of the tenancy, as has been done in the case of the heirs of the tenants of residential premises, does not indicate that the legislature intended that the heirs of the tenants of commercial premises will cease to enjoy the protection afforded to the tenants under the Act."

At pp. 36-B to 37-A it was concluded that : (SCC pp. 710-11 para 34)

"We are of the opinion that in case of commercial premises governed by the Delhi Act, the legislature has not thought it fit in the light of the situation at Delhi to place any kind of restriction on the ordinary law of inheritance with regard to succession. It may also be borne in mind that in case of commercial premises the heirs of the deceased tenant not only succeed to the tenancy rights in the premises but they succeed to the business as a whole. It might have been open to the legislature to limit or restrict the right of the inheritance with regard to the tenancy as the legislature had done in the the case of the tenancies with regard to the residential houses but it would not have been open to the legislature to alter under the Rent Act, the law of the succession regarding the business which is a valuable heritable right and which must necessarily devolve on all the heirs in the accordance with law. The absence of any provision restricting the heritability of the tenancy in respect of the commercial premises only establishes that commercial tenancies notwithstanding the determination of the contractual tenancies will devolve on the heirs in accordance with law and the heirs who step into the step into the position of the deceased tenant will continue to enjoy the protection afforded by the Act and they can only be evicted in accordance with the provision of the Act. There is another significant consideration which, in our opinion, lends support to the view that we are taking. Commercial premises are let out not only to individuals but also to companies, corporations and other statutory bodies having a juristic personality. In fact, tenancies in respect of commercial premises are usually taken by companies and corporations. When the tenant is a company or a corporation or anybody with juristic personality, question of the death of the tenant will not arise. Despite the termination of the tenancy, the company or the corporation or such juristic personalities, however, will go on enjoying the protection afforded to the tenant under the Act. It can hardly be conceived that the legislature would intend to deny to one class of tenants, namely, individuals the protection which will be enjoyed by the other class namely, the corporations and companies and other bodies with the juristic personality under the Act. If it be held that commercial tenancies after the termination of the contractual tenancy of the tenant are not heritable on the death of the tenant and the heirs of the tenant are not the entitled to enjoy the protection under the Act, an irreparable mischief which the legislature could never have intended is likely to be caused."

10. On the facts of the case it was held that the tenant who continues to remain in possession even after the termination of the contractual tenancy till a decree for eviction against the him is passed, continues to have an estate or interest in the tenanted premises and tenancy rights in respect of commercial premises are heritable. There is no provision in the Act regulating the rights of its heirs

to inherit the tenancy rights of the tenanted commercial or business premises. The tenancy rights devolved on the heirs under the ordinary law of succession. Accordingly it was held that the tenancy rights of Wasti Ram devolved on all the heirs of Wasti Ram on his death. The ratio with equal force applies to the facts of this case.

11. The unamended definition of the tenant under Section 3(vii) of the Act reads thus :

"tenant" means the person by whom the 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 subtenant, or any person continuing in possession after the termination of a tenancy in his favour otherwise than under the provisions of the Act."

12. This definition is mutatis mutandis same as the one defined under Madhya Pradesh Act and also the Delhi Rent Act. Equally it would be the same under the amended clause (a) of Section 3(vii) with slight elongation. Under Hindu Succession Act the heirs of the deceased tenant are entitled to succeed, not only to his business, but also to his tenancy rights under the Rent Act which protects the heirs from ejection except in accordance with that Act. Therefore, despite the termination of the tenancy, the tenancy rights are heritable and the heirs of the tenant are entitled to enjoy the protection of the Act.

13. The ratio in Bhavarlal Labhchand Shah v. Kanaiyalal Nathalal Intawala ((1986) 1 SCC 571) does not help the respondent. The facts therein was that the tenant by testamentary disposition "will" bequeathed his occupancy rights in the tenanted property in favour of the stranger legatee. The question was whether such a legatee is entitled to the benefit of continuance of tenancy under Bombay Rents, Hotel and Lodging House Rents Control Act, 1947. It was held that since the bequest was in favour of the third party, the testator thereby, cannot confer rights under the provisions of the Rent Act on the stranger who was not a member of the family. The march of law culminated in Gian Devi Anand case ((1985) 2 SCC 683 : 1985 Supp SCR 1) knocked off the bottom of J. C. Chatterjee ((1972) 2 SCC 461 : (1973) 1 SCR 850) ratio. Similarly the foundation in Sita Ram v. Govind (1969 WLN 108), Balkesh v. Shanti Devi (1972 RCT 285), Mohan Lal v. Jaipur Hosiery Mills Pvt. Ltd. (1974 RCJ 240 (Raj HC)) has been shaken and no longer remain to be good law.

14. Admittedly Smt. Anandi was inducted into possession of the demised property under a contract of tenancy which was determined by issuance of notice under Section 106 of Transfer of Property Act. Even thereafter she continued to remain in possession as statutory tenant under the Act. The finding of trial court as affirmed by the first appellate court is that the respondent landlord after termination of tenancy received the rent from her and thereby she became tenant holding over till date of her death.

15. Smt. Anandi enjoyed the status as a statutory tenant of the premises even after the determination of the tenancy. Notwithstanding the termination of the contractual tenancy the jural relationship of the landlord and tenant between the respondent and Smt. Anandi under the Act was not snapped off. The heritable property or interest in the leasehold right in the tenancy continued to subsist in the tenant Anandi.

16. On her death, the rights to succession to an estate of the deceased owner vested immediately on his/her than (sic then) nearest heirs and cannot be held in abeyance except when a nearer heir is then

in the womb. The vested right cannot be divested except by a retrospective valid law. The appellants by virtue of intestate succession under Hindu Succession Act, being Class I heirs, succeeded to the heritable interest in the leasehold right of a demised premises held by Smt. Anandi. They, thereby, stepped into the shoes of the tenant. They continued to remain in possession on the date of the suit as statutory tenants. Thereby, they are entitled to the protection of their continuance as a statutory tenant under the Act. The succession having been opened to the appellants and succeeded in September 1966 to the estate of the tenant without any hiatus and restriction on the heritable interest in the leasehold right held by the tenant Smt. Anandi, the Amendment Act being admittedly prospective in operation, does not apply to the facts of the case and does not have the effect of divesting their vested rights in the leasehold held by the tenant. They are entitled to enjoy the tenancy rights without any restrictions or hedge put by the Amendment Act. We, thereby, hold that the Amendment Act does not apply to the facts of this case. But the appellants succeeded to the heritable interest in the leasehold right in the demised premises governed by the Act subject to the rights and limitations prescribed under the Act and also subject to the rights in favour of the respondent created under Section 13(1)(a) to (k) and other provisions of the Act.

17. Accordingly, we have no hesitation to hold that the appellants are entitled to remain in possession of the demised shop in question till the appellants are duly evicted in accordance with the provisions of the Act as amended from time to time. The appeal is accordingly allowed and the decree and judgment of the High Court is reversed and that of the trial court is restored. The suit, accordingly, stands dismissed, but in the circumstances, each party is directed to bear their own costs throughout.

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