

Surayya Begum (Mst.)

Vs

Mohd. Usman and Others

With

Renu Sharma and Another

Vs

Raghubir Kaur Bhatia (Mrs.) and Others

Civil Appeal Nos. 2056

(L. M. Sharma, J. S. Verma JJ)

26.04.1991

JUDGMENT

SHARMA, J. –

1. Special leave is allowed in both the cases. Since they involve decision of some common questions of law they are being disposed of together by this judgment.
2. The appellant Surayya Begum in the first case claims herself as one of the nine legal representatives of Khalil Raza, the original tenant of the premises in question, and is objecting to the execution of the decree of eviction obtained by the landlord-respondent 1 against respondents 2 to 9 who are sons, daughters and wife of Khalil Raza. Her case is that she is also a daughter of Khalil Raza, which is denied by respondent 1; and it is contended on her behalf that since she was not impleaded as a party to the eviction proceeding started by the respondent, her right in the tenancy which is an independent right, cannot be put to an end by permitting the decree obtained to be executed. She alleges collusion between them and the decree holder.
3. The landlord-decree holder has denied the existence of another daughter of Khalil Raza by the name of Surayya Begum. It is averred that the appellant who is an objector has been set up by respondents 2 to 9 to defeat the decree against them which was contested for a decade up to the stage of Supreme Court.
4. The executing court heard the parties and held that in view of the controversy on questions of fact arising in the case the appellant's objection can be finally decided only after the parties are allowed to lead evidence. A date was accordingly fixed for trial of the disputed issue. Respondent 1 challenged this order before the Delhi High Court. The High Court agreed with the decree holder-respondent holding that the appellant was bound by the decree and her objection was filed with the sole object of delaying the execution. Her application under Sections 47 and 151 of CPC and Section 25 of the Delhi Rent Control Act was accordingly dismissed. The appellant has challenged the High Court's decision in the present appeal.

5. It has been contended on behalf of the appellant that she was as much a tenant as her mother, brothers and sisters, and it is not sufficient for the landlord-respondent to have obtained an eviction decree against the others leaving out the appellant, as a result of which the decree is not binding on her. Heavily relying upon the decision in *Textile Association (India) Bombay Unit v. Balmohan Gopal Kurup* ((1990) 4 SCC 700) it was urged that the decree could not be kept alive even against the others and so the landlord cannot be put in possession of the premises at all.

6. In the civil appeal arising out of S.L.P. No. 15021 of 1990 *Shri Shiv Kumar Sharma*, who was a tenant in possession of the shop under dispute, died in 1982 leaving behind his widow, three sons and four daughters as his heirs and legal representatives. Thereafter, the respondent-landlord commenced an eviction proceeding in 1985, out of which the present matter arises, and impleaded only the wife and the sons of the deceased. Two of the four daughters were married and the remaining two daughters, appellants in the present appeal, were staying in the house but not joined as parties. The suit was contested by the mother and the brothers of the appellant but, ultimately a decree for eviction was passed. In execution, the unmarried daughters filed an objection *inter alia* contending that they have independent title in the tenancy and the decree obtained against the other members of the family would not bind them. Reliance has been placed upon the decision in the aforementioned *Textile Association* case ((1990) 4 SCC 700) read with Section 19(b) of the Hindu Succession Act.

7. The learned advocates representing the decree holders in these two appeals have argued that when the tenancy rights devolve on the heirs of a tenant on his death, the incidence of tenancy remains the same as earlier enjoyed by the original tenant and it is a single tenancy which devolves on them. There is no division of the premises or of the rent payable, and the position as between the landlord and the tenant continues unaltered. Relying on *Kanji Manji v. Trustees of the Port of Bombay* (1962 Supp 3 SCR 461 : AIR 1963 SC 468) and borrowing from the judgment in *H. C. Pandey case* (*H. C. Pandey v. G. C. Paul* (1989) 3 SCC 77) it was urged that the heirs succeed to the tenancy as joint tenants. The learned counsel for the appellants have replied by pointing out that as the aforesaid two decisions were distinguished by this Court in the latter case of *Textile Association* ((1990) 4 SCC 700), it was not open to the landlords to support the impugned judgments by relying upon the earlier two cases.

8. So far as Section 19 of the Hindu Succession Act is concerned, when it directs that the heirs of a Hindu dying intestate shall take his property as tenants-in-common, it is dealing with the rights of the heirs *inter se* amongst them, and not with their relationship with a stranger having a superior or distinctly separate right therein. The relationship between the stranger and the heirs of a deceased tenant is not the subject matter of the section. Similar is the situation when the tenant is a Mohammedan. However, it is not necessary for us to elaborate this aspect in the present appeals. The main dispute between the parties, as it appears from their respective stands in the courts below, is whether the heirs of the original tenants who were parties to the proceeding, represented the objector heirs also. According to the decree holder in *Miss Renu Sharma's* case their interest was adequately represented by their mother and brothers and they are as much bound by the decree as the named judgment debtors. In *Surayya Begum's* case respondent 1 has denied the appellant's claim of being one of the daughters of *Khalil Raza*, and has been contending that the full estate of *Khalil Raza* which devolved upon his heirs on his death was completely represented by respondents 2 to 9. In other words, even if the appellant is held to be a daughter of *Khalil Raza* the further question as to whether her interest was represented by the other members of the family will have to be answered.

9. The principle of representation of the interest of a person, not impleaded by name in a judicial proceeding, through a named party is not unknown. A karta of a Joint Hindu Family has always been recognised as a representative of the other members of the Joint Hindu family, and so has been a trustee. In cases where the provisions of Order I, Rule 8 of the Civil Procedure Code are attracted a named party in a suit represents the other persons interested in the litigation, and likewise a receiver appointed in one case represents the interest of the litigating parties in another case against a stranger. Similarly the real owner is entitled to the benefits under a decree obtained by his benamidar against a stranger and at the same time is also bound by the decision. Examples can be multiplied. It is for this reason that we find Explanation VI in the following words in Section 11 of the Code of Civil Procedure :

"Explanation VI. - Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating."

This, of course, is subject to the essential condition that the interest of a person concerned has really been represented by the others; in other words, his interest has been looked after in a bona fide manner. If there be any clash of interests between the person concerned and his assumed representative or if the latter due to collusion or for any other reason, mala fide neglects to defend the case, he cannot be considered to be a representative. The issue, when it becomes relevant, has, therefore, to be answered with reference to the facts and circumstances of the individual case. There may be instances in which the position is absolutely clear beyond any reasonable doubt one way or the other and the question can be settled without any difficulty; but in other cases the issue may have to be decided with reference to relevant evidence to be led by the parties. Surayya Begum's case is of this class while Renu Sharma's appeal belongs to the first category.

10. In Surayya Begum's case disputed questions of fact are involved including the parentage of the appellant and her allegations of collusion between the landlord and the respondents 2 to 9, and the executing court had, therefore, invited the parties to lead their evidence in support of their respective cases. The High Court, in the circumstances, should not have closed the matter finally without waiting for the evidence. We, therefore, set aside the impugned judgment and remit the matter to the executing court for decision in the light of the observations made above, after permitting the parties to lead evidence. Her appeal is accordingly allowed but the parties shall bear their own costs of this Court.

11. So far Renu Sharma's matter is concerned, the situation is very different. The judgments of the Additional Rent Controller, Delhi and the Rent Control Tribunal, Delhi, indicate that although the adequate liberty was given to the present appellant to lead evidence in support of their cases, they never availed of the same and went on delaying the proceedings by repeated prayers of adjournment. They have also pointed out to the other circumstances adverse to the case of the appellants, including the facts that the rent was paid to the landlord by their mother and brothers and never by them, and they are young girls in the family who are being looked after by the elders. We are, in the circumstances, of the view that they must be held to be effectively represented by the named judgment-debtors. Their appeal is accordingly dismissed with costs.

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