

**SUPREME COURT OF INDIA**

Durga Prasad

Vs.

Narayan Ramchandaani

C.A.No.1305-06 of 2017

(Dipak Misra and R.Banumathi,JJ.,)

07.02.2017

**JUDGMENT**

**R.Banumathi.J.,**

1. These appeals arise from the judgment of the High Court of Uttarakhand at Nainital in Writ Petition(MS) No. 2729 of 2014 dated 09.03.2015 dismissing the writ petition and also the review petition, thereby affirming the findings of Additional District and Sessions Judge-VII, Dehradun that the appellant is an unauthorized occupant in suit premises and that he does not come within the definition of ‘family’ of the deceased tenant as per Section 3(g) nor an ‘heir’ under Section 3(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972.

2. Brief facts which led to filing of these appeals are as under:

“The respondent-landlord filed an eviction petition before the Competent Authority/Civil Judge, (Senior Division) under Section 21(1) (a) of U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972 (hereinafter referred to as the ‘U.P. Act XIII of 1972’ ) for release of property from the tenant-Late Lalita Devi from the suit property bearing No.6/7, Amrit Kaur Road, (New Road), Dehradun on the ground of his bona fide need. Father-in-law of deceased Lalita Devi-Hem Ram Sharma had taken the suit property on rent and after his death his son Baldev (husband of Lalita) became the tenant of the suit property and after the death of Baldev, Lalita became the tenant of suit property. The appellant is the brother of deceased Lalita, who was the tenant of the respondent herein. The application was dismissed vide order dated 19.04.2010 by the Prescribed Authority. Aggrieved by the said order, respondent-landlord preferred an appeal under Section 22 of the U.P. Act XIII of 1972 before the appellate court which was transferred to Additional District Judge-VII, Dehradun. During the pendency of appeal, tenant-Lalita Devi passed away on 06.07.2013. The respondent-landlord moved a substitution application before the appellate court with a prayer that the appellant, who is the real brother of deceased, be

substituted in her place. The said application was allowed and the appellant was impleaded as a defendant/respondent in the said appeal. The appellate Court allowed the said appeal vide order dated 10.10.2014 holding that during the pendency of the appeal the sole tenant-Lalita passed away and Durga Prasad, who has been substituted is not a member of the 'family' and that he has not been able to prove that he was previously residing with his sister Lalita in the said premises. On those findings the appellate court set aside the order of the prescribed authority and allowed the appeal. Thereafter the appellant-tenant preferred a writ petition before the High Court which was dismissed vide the impugned order dated 09.03.2015, holding that the appellant does not come within the definition of 'family' as per Section 3(g) of U.P. Act XIII of 1972. The High Court further held that vacancy was liable to be declared on the demised premises, on the death of sole tenant- Lalita, the review application filed by the appellant also came to be dismissed vide order dated 31.08.2015. Both the orders are impugned in these appeals.”

3. Mr. Parthiv Goswami, learned counsel for the appellant contended that the High Court erred in holding that the appellant is not a legal heir or representative of the deceased tenant and the said finding is perverse and contrary to the materials on record. Learned counsel further submitted that on the death of the tenant Lalita, respondent-landlord himself filed an application for substitution of the present appellant as the legal heir of the deceased tenant Lalita and the address of the appellant at the time of filing of the application was shown as the same disputed property i.e. House No.6/7, Amrit Kaur Road, Dehradun and which by itself establishes that appellant has been residing in the said property at the time of death of tenant Lalita. The learned counsel for the appellant has placed reliance upon *Ganesh Trivedi vs. Sundar Devi and Others*<sup>1</sup> to contend that the brother would inherit the tenancy and would fall within the definition of 'family' .

4. Learned counsel for the respondent-landlord submitted that the High Court rightly held that the appellant being brother of tenant Lalita is not a member of the 'family' as defined under Section 3(g) of the U.P. Act XIII of 1972 and the appellant being an unauthorized occupant, the High Court rightly ordered to be evicted. It was further contended that the tenant of the suit premises was Lalita and that tenant was a female Hindu and on her death, the devolution of tenancy will be determined as per Section 15(2)(b) of the Hindu Succession Act and since the appellant does not fall under the category of 'heir' of the husband of Lalita, the High Court rightly dismissed the writ petition as well as the review petition and the impugned orders do not warrant interference.

5. We have carefully considered the rival contentions and perused the impugned order and the materials on record.

6. The question for consideration is whether the appellant-brother of the deceased tenant-Lalita is included in the definition of 'family' under Section 3(g) or an 'heir' under Section 3(a) of the U.P. Act XIII of 1972.

7. For proper appreciation of the question and the contentions raised, it is apposite to refer to relevant provisions of Section 3 of the U.P. Act XIII of 1972 which defines the term 'tenant' and 'family' as under:-

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

(1) 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; [Explanation - An occupant of a room in a hotel or a lodging house shall not be deemed to be a tenant];

(g) "Family" , in relation to a landlord or tenant of a building means, his or her-

(i) spouse;

(ii) male lineal descendants;

(iii) such parents, grandparents 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."

8. Section 12 of the U.P. Act XIII of 1972 relates to deemed vacancies of a building which reads as under:-

"12. Deemed vacancy of building in certain cases - (1) A landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if-

(a) he has substantially removed his effects therefrom; or

(b) he has allowed it to be occupied by any person who is not member of his family; or

(c) 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.

(3) In the case of a residential building, if the tenant or any member of his family builds or otherwise acquires in a vacant state or gets vacated a residential building in the same city, municipality, notified area or town area in which the building under tenancy is situate, he shall be deemed to have ceased to occupy the building under his tenancy:

9. A careful analysis of the above provisions indicates that Section 3(a) uses the word 'heir'. Definition in Section 3(a) deals with the contingency when a tenant dies. It is significant to note that the word "family member" is absent in Section 3(a). "Family member" is defined under Section 3(g) of the U.P. Act XIII of 1972 and is also referred to in Section 12 of the U.P. Act XIII of 1972. The word 'heir' in Section 3(a) is used in relation to a 'tenant' who has to succeed as "tenant on the tenant's death"; while 'family' is used in Section 12 which deals with a situation of an existing tenant. The definition of 'family' as occurring in Section 3(g) may not be relevant for the purposes of determining the question as to who would become tenant on the death of original tenant, since Section 3(a) uses the word 'heir'

10. In the present case, we are dealing with the case as to who would become 'tenant' on the death of Lalita. Hence, the definition of 'family' is not relevant for the purposes of determining as to who would become tenant on the death of tenant Lalita. The only question falling for consideration is whether the appellant-brother of the tenant Lalita is an 'heir' under Section 3(a) of the U.P. Act XIII of 1972. The word 'heir' is not defined in the Act. 'Heir' is a person who inherits or may inherit by law. Section 3(1)(f) of the Hindu Succession Act defines 'heir' as "heir" means any person, male or female, who is entitled to succeed to the property of an intestate under this Act;". The word 'heir' has to be given the same meaning as would be applicable to the general law of succession. In the present case, as pointed out by the High Court, the deceased tenant-Lalita being a hindu female, the devolution of tenancy will be determined under Section 15 of the Hindu Succession Act.

11. Section 15 of the Hindu Succession Act lays down the general order of succession to the property of a female intestate who dies after the commencement of the Hindu Succession Act and states the scheme of succession to her property which is different from that of order of succession to the property of a male intestate. Sub-section (2) of Section 15 carves out two exceptions to the general scheme and order of succession. We are concerned with clause (b) of sub-section (2) of Section 15 as noted above which has been grafted as an exception to the provisions relating to the general order of succession to the property of a female intestate. Section 15(2)(b) of the Hindu Succession Act reads as under:-

"Section 15. General rules of succession in the case of female Hindus

(1)

(2) Notwithstanding anything contained in sub-section (1),- (a )

(b) Any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.”

The exception carved out in Section 15(2)(b) provides for a special order of succession in case of property inherited by her from her husband or her father-in-law; but its operation is confined to the case of her dying without leaving a son or a daughter or children of pre-deceased children to inherit her property. Language used in the section clearly specifies that the property inherited from the husband and father-in-law would devolve upon the heirs of husband/father-in-law from whom she inherited the property. We may usefully refer to the decision of this Court in the case of *V. Dandapani Chettiar v. Balasubramanian Chettiar (Dead) by Lrs. And Others*<sup>2</sup>, and the relevant para reads hereunder:-

"10. Sub-section (2) of Section 15 carves out an exception in case of a female dying intestate without leaving son, daughter or children of a predeceased son or daughter. In such a case, the rule prescribed is to find out the source from which she has inherited the property. If it is inherited from her father or mother, it would devolve as prescribed under Section 15(2)(a). If it is inherited by her from her husband or father-in-law, it would devolve upon the heirs of her husband under Section 15(2)(b). The clause enacts that in a case where the property is inherited by a female from her father or mother, it would devolve not upon the other heirs, but upon the heirs of her father. This would mean that if there is no son or daughter including the children of any predeceased son or daughter, then the property would devolve upon the heirs of her father. Result would be -- if the property is inherited by a female from her father or her mother, neither her husband nor his heirs would get such property, but it would revert back to the heirs of her father."

12. In the present case, the suit property was taken on rent by the father-in-law of deceased tenant-Lalita that is Hem Ram Sharma and after his death, his son Baldev (husband of Lalita) became tenant of the suit property. Upon his death, Lalita became the tenant of the suit property. Upon death of Lalita, in terms of Section 15(2)(b) of the Hindu Succession Act, in the absence of any son or daughter of deceased Lalita, the tenancy would devolve upon the heirs of her husband. Since the appellant does not fall under the category of ‘heir’ of Lalita’s husband, the tenancy of the suit property will not devolve on him nor can he be called as an ‘heir’ under Section 3(a) of the U.P. Act XIII of 1972.

13. Section 3(g) defines ‘family’, in relation to landlord which includes the spouse that is husband or wife of a person, male lineal descendants which means his or her son, son’s son, son’s son’s son and so on, parents, grandparents, unmarried, widowed, divorced daughter or granddaughter, etc. The definition given in the clause is an inclusive one and is supposed to be construed in its technical meaning which implies what is not given has to be excluded as not forming part of the family of landlord or tenant. Therefore, sisters and

brothers of landlord and tenant are excluded from his/her family. In the facts of present case, the appellant being brother of deceased tenant cannot be held to be the 'family' as the inclusive list given under the Act clearly omits "brother and sister" and the same cannot be read therein as the list has to be read and interpreted strictly.

14. Assuming, for the sake of arguments that the appellant is an heir of Lalita, for devolution of tenancy, on the death of Lalita, the appellant has to be a 'tenant' within the meaning of Section 3(a) of the U.P. Act XIII of 1972. As per Section 3(a)(1), in the case of residential building, in the event of death of a tenant, for heirs to be treated as tenant, the statute requires them to prove that they have been normally residing with the deceased tenant at the time of his/her death. The term used in the section is 'heir' which implies that not any of the family member residing with the tenant would succeed to the tenancy, but only the heirs of tenant normally residing with him/her. The words "normally residing with him" suggests that only those heirs would inherit the tenancy rights of deceased tenant who resided with him ordinarily in normal course and not temporarily. The legislative intent appears to be that only those heirs would inherit tenancy who normally resided with the tenant and not occasionally. In the present case, the appellant claims that he has been carrying on business in the property along with his deceased sister Lalita and had been ordinarily living with her because of the medical business they were running. The appellant being the brother of deceased-Lalita had no reason to normally reside with his married sister. Be it noted, in her written statement filed in the release application, Lalita has not averred that her brother-appellant Durga Prasad was living with her and that he was taking care of her. As rightly held by the Courts below, Durga Prasad is neither a 'heir' within the meaning of Section 3(a) nor fall under the definition of 'family' as per Section 3(g) of the Act.

15. As discussed earlier, originally Lalita's father-in-law-Hem Ram Sharma took the premises on rent in the year 1940. After his death, Lalita Devi's husband-Baldev became the tenant of the suit property and after Baldev's death, Lalita become the tenant of the suit property. During the pendency of the appeal before the First Appellate Court, Lalita expired on 06.07.2013. Thereafter, the respondent-landlord moved a substitution application before the appellate court to substitute the appellant who is the real brother of deceased-Lalita. On that application, the appellant was impleaded as a defendant-respondent in the said appeal. As pointed out by the High Court, the present appellant may have been 'rightly' or 'wrongly' substituted after the demise of his sister. Merely because the appellant has been substituted in the place of tenant-Lalita, the appellant cannot become a 'heir' who normally resided with the tenant Lalita.

16. Learned counsel for the appellant placed reliance on Ganesh Trivedi (supra), wherein this Court found, as a matter of fact, that brother was residing in the tenanted premises and, therefore, tenancy rights will devolve upon him on the death of original tenant within the meaning of Section 3(a)(g) read with Section 12(1)(b) of the U.P. Act XIII of 1972. This is evident from the following observation made in paras (9) and (10) of judgment which are reproduced as under:

“9. The brother of a tenant is not included in the definition of “family” . However, the present one is not a case where the tenant Suraj Prasad had during his lifetime taken up residence elsewhere and/or allowed the suit premises to be occupied by his brother. Deo Narain, being the real brother of late Suraj Prasad, the tenant, had come to stay with his brother and was residing along with him as such, even at the time of death of Suraj Prasad. It will not therefore be correct to say that applicability of clause (b) of sub-section (1) of Section 12 of the Act was attracted to the suit premises during the lifetime of Suraj Prasad and a deemed vacancy had occurred. On the death of Suraj Prasad tenancy rights devolved on Deo Narain, he being the only heir. He too became a “tenant” within the meaning of clause (a) of Section 3. The decision of the High Court cannot, therefore, be faulted.

10. There is yet another reason why no interference with the impugned order of the High Court is called for. Shri Upadhyay, the learned counsel for Respondents 1 to 3 invited our attention to the pleadings and pointed out that admittedly the sale deed executed by Jagdamaba Prasad Awasthi in favour of Ganesh Trivedi, the appellant, contains recitals to the effect that the former owner-landlord was well aware of Deo Narain occupying the suit premises after the death of Suraj Prasad, that he was acknowledged by the landlord as tenant in the premises, and that rent was also paid by Deo Narain to the landlord under receipts issued by the landlord though Deo Narain had fallen into some arrears of rent at the time of sale of the suit premises in favour of the appellant. Such admissions made by Jagdamaba Prasad Awasthi are binding on Ganesh Trivedi, the appellant, inasmuch as the same are contained in the sale deed by which title has been derived by the appellant and thereunder the appellant has stepped into the shoes of the previous owner-landlord. Deo Narain’ s status as tenant in occupation of the suit premises, cannot, therefore, be doubted or disputed by the appellant.”

The aforesaid decision has been rendered in view of proven facts in the said case and, therefore, has no application to the facts of the present case.

17. Upon appreciation of the facts and evidence, the first appellate court and the High Court rightly held that the appellant is neither an ‘heir’ as visualized under Section 3(a) of the U.P. Act XIII of 1972 nor ‘family’ within the meaning of Section 3(g) of the Act and that the appellant is in unauthorized occupation of the suit premises and is liable to be evicted. The High Court has directed the District Magistrate to pass appropriate orders under Section 16 of the U.P. Act XIII of 1972 on the release application of the landlord without further delay preferably within three weeks from the date of judgment of the High Court that is 09.03.2015. Father-in-law of Lalita had taken the suit premises on rent in the year 1940. In the facts and circumstances of the case, without relegating the matter to the District Magistrate to pass orders on the release application of the respondent-landlord, we deem it appropriate to direct the appellant to hand over vacant possession to the respondent-landlord.

18. In the result, the appeals are dismissed. We direct the appellant to hand over the vacant possession of the suit premises to the respondent-landlord within four weeks from the date of this order failing which the appellant shall be liable for contempt of this Court.

Judgment Referred.

<sup>1</sup>(2002) 2 SCC 0329

<sup>2</sup>(2003) 6 SCC 0633