BOMBAY HIGH COURT

Ramubai

Vs.

Jiyaram Sharma

Second Appeal No. 23 of 1963

(N.L. Abhyankar, J.)

24.04.1963

JUDGMENT

N.L. Abhyankar, J.

1. This is an appeal by original defendants 1 to 8 in an action for ejectment and recovery of possession of shop premises in Amravati town.

2. The suit was filed by respondents 1 and 2 against 11 defendants. Their case was that the double-storeyed house described in paragraph 1 of the plaint was occupied by one Bhagwanbhai as a monthly tenant and the rent was Rs. 16/- per month. As the plaintiffs wanted to terminate the tenancy of Bhagwanbhai, they filed an application before the Rent Controller seeking his permission to terminate his tenancy. While those proceedings were pending in Revenue Case No. 552/71(2)/57-58, Bhagwanbhai died on 1st of March 1959. Thereafter defendants 1 to 11 were brought on record in those proceedings as heirs of Bhagwanbhai. Out of these defendants, defendant No. 1 is the widow of Bhagwanbhai, defendants 2 to 8 are sons, and defendants 9, 10 and 11 are daughters of the said Bhagwanbhai. Defendants 9 to 11 are married and residing with their husbands at different places outside Amravati. The Rent Controller granted permission to the plaintiffs on 30th June 1961. Thereafter the plaintiffs issued a notice on 10-7-61 through their pleader, addressed to all the 11 defendants. By this notice all the defendants were called upon to vacate the premises by the end of 4th August 1961. It is common ground that this notice was actually served on appellants 1 to 6 and respondents 3 and 4, i.e. two out of the married daughters by names Homibai and Narbadabai. It may be mentioned that appellants 7 and 8 are the minor sons of deceased Bhagwanbhai and their mother, appellant No. 1, is their guardian. The first notice itself was not served on respondent No. 5 Kanubai i.e. the third daughter of the deceased Bhagwanbhai, The plaintiffs therefore seem to have been advised to issue another notice. This notice was issued on 8-8-61. This notice was also addressed to all the 11 defendants and by this notice they were called upon to vacate by 4th September 1961. Now, this latter notice

was however issued and served only on appellants nos. 7 and 8 i.e. the two minor boys, and respondent no. 5 i.e. defendant no. 11 Kanubai, the third daughter of Bhagwanbhai. Thereafter plaintiffs filed their suit on 20th September 1961.

3. A common defense was raised by defendants 1 to 8. No written statement was filed by defendants 9 to 11. The principal plank in the defense was that the plaintiffs had not duly terminated the lease of the defendants according to law. They alleged that defendants 1 to 6 reside together but the rest of the defendants were separate in their residence and mess. According to them, the tenancy could not be terminated piecemeal, and therefore on the facts alleged by the plaintiffs it was apparent that the tenancy of the joint tenants defendants 1 to 11 has not been terminated according to law.

4. This defense prevailed in the trial Court. That Court held that defendants 1 to 6 and 9 and 10 were served with notice dated 11-7-61, terminating the tenancy by the end of 4-8-61, but defendants 7, 8 and 11 were served by notice dated 8-8-61, terminating the tenancy by 4-9-61. According to the learned Judge of the trial Court, the proposition that service on one of the joint tenants should be presumed to be proof of service on all the others, was not warranted by the wording of second clause of Section 106 of the Transfer of Property Act. The learned Judge held that so far as minor Defendant 7 and 8 are concerned, service on their guardian i.e. defendant No. 1 was good service. But there being nothing on record to show that other defendants i.e. defendants 9, 10 and 11 who were married daughters, were served, the learned Judge held that the three married daughters i.e. defendants 9 to 11 who were residing with their husbands, are not of the family. It was held that the mere fact that these three defendants acquired the right of joint tenants by virtue of their right to succeed to the property of their father under the Hindu Succession Act, did not alter the position regarding service of notice as they were no longer in law of the family. The learned Judge therefore held that piecemeal termination of the tenancy would amount to splitting up of the tenancy and was therefore an ineffective termination not warranted by law. The learned Judge also rejected the contention of the plaintiffs that the notice was addressed to all the defendants though it was served on defendants 1 to 6, and therefore should be treated as good notice. On this view of the law, the learned Judge dismissed the plaintiffs' suit.

5. Against this judgment and decree the plaintiffs preferred appeal to the District. Court. That Court held that service of the first notice, namely, Ex. 6/2 on the first 8 defendants was binding on other defendants. At this stage it may be mentioned that the reference in the judgment of the trial Court that the notice was not, validly served on defendants 9, 10 and 11 is incorrect. The first notice dated 10-7-61 was served on defendants 9 and 10 as well and the trial Court itself held that the notice served on defendant No. 1 who was guardian of defendants 7 and 8, must be taken as valid and sufficient service of notice on defendants 7 and 8 as well. Thus, so far as actual service of notice of termination is concerned, notice is found to have been duly served on defendants 1 to 10. It was only non-service on defendant No. 11 that could be put forward in

support of the contention raised by the Defendants.

6. The District Judge held that the second notice was merely a surplus age if the first notice is taken to be good) notice to all the defendants, and on that view of the matter, the appeal was allowed and the plaintiffs' suit has been decreed against all the defendants.

7. Original defendants 1 to 8 alone have challenged this decree in this second appeal. Neither defendants 9 and 10 nor defendant No. 11, all of whom are the married daughters of the deceased Bhagwanbhai, have cared to join the appeal, and apparently do not resist the decree for ejectment.

8. In this appeal it is contended that Bhagwanbhai held a leasehold interest in the property. The property was shop premises. It is not clear from the pleadings of the parties whether Bhagwanbhai was introduced as a lessee in the premises in his individual capacity or as karta of his joint family. It will be assumed for the purpose of this appeal that Bhagwanbhai obtained a lease in his own right and that leasehold interest was his separate properly. On the death of Bhagwanbhai, the leasehold interest being heritable, was inherited by his heirs according to the Hindu law under the Hindu Succession Act. Bhagwanbhai is not shown to have left any testamentary disposition and must be held to have died interest, at any rate with respect to the leasehold interest and the subject-matter of the suit. Under Section 8 of the Hindu Succession Act his interest in the leasehold therefore devolved upon his heirs specified in clause 1 of the Schedule and it is not in dispute that defendants 1 to 11 are all the heirs entitled to inherit the leasehold interest of Bhagwanbhai and the subject-matter of the suit. According to the defendants when two or more heirs succeed together to the property of an interest Hindu under the Hindu Succession Act, they take the property as tenants-in-common and not as joint tenants. It is also not disputed that the property is taken per capita and not per stripes so far as this case is concerned. They are all heirs of the first degree. It is therefore urged that each of the defendants inherits the property viz. the leasehold interest in his or her own right as a tenant-in-common. As they do not inherit the leasehold interest as joint tenants, each of them has separate interest in the property which will devolve in case a succession to such interest arises to her or his heirs. In other words, what is contended is that there is no right of survivorship inter se among these heirs in respect of the leasehold interest, and therefore each one of the heirs is entitled to individual notice if that leasehold interest is to be terminated according to law. As that has not been done simultaneously but by different notices terminating the leasehold interest at different dates, the termination of tenancy is invalid and ineffective. According to this contention leasehold interest of defendants 1 to 10 is terminated with effect from 4th August 1961, while that of defendant no. 11 is terminated with effect from 4th September 1961. As there would be two different dates of termination of the same leasehold interest, the lease is not properly terminated and therefore the suit based on such notice is untenable in law.

9. As against this contention, the learned counsel for the plaintiffs-respondents supports the

decree of the trial Court on the ground that on a true interpretation of the relationship between the landlord and tenant in the case of lease of immovable property where such lease is granted to two or more persons, or leasehold interest was inherited or acquired by two or more persons, the lease is one and indivisible. The tenancy is one. It is not as if there is an individual relationship of landlord and tenants independently with each sharer in the leasehold interest. In that sense all the defendants are joint tenants, namely, co-tenants or co-lessees. It is also urged that the concept of holding property either as joint tenants or as tenants-in-common has nothing to do with relation of the tenantry as a whole with the landlord. It is relevant in determining the rights inter se between the tenants or the whole body of tenants with respect to devolution of their interest if and when a question arises. If the property is held as joint tenants, there is a right of survivorship, but the interest of tenant-in-common devolves according to his personal law. In this connection the learned counsel relied principally on the decision of the Privy Council in *Harihar Banerji v. Ramshashi Roy*[1], the facts leading to that dispute are given. It is clear from the recitals therein that the case arose out of a suit by landlords against their former tenants and there were two sets of defendants as named in the plaint. The first set contained names of persons some of whom were members of the joint family and others were once such members and had ceased to be so. The other set of defendants was comprising certain incorporated companies. One of the questions that arose before the Privy Council was whether the notice served on one of the defendants could be held to be a valid notice against the whole body of tenants who were treated as joint tenants, and at p. 480 (of ILR Cal) their Lordships have observed as follows :

> "Next and lastly as to the service of the notice to quit. The 106th section of the Transfer of Property Act, 1882, only requires that such a notice should be tendered or delivered to the party intended to be bound by it either personally or to one of his family or servants at his residence, or if such tender or delivery be not practicable, affixed to a conspicuous part of the property. The personal tender or delivery may take place anywhere; the vicarious tender or delivery must take place at the residence of the person intended to be bound by the notice. Well, in the case of the joint tenants, each is intended to be bound, and it has long ago been decided that service of a notice to quit upon one joint tenant is prima facie evidence that it has reached the other joint tenants."

The question therefore that arises in such and similar cases is whether when a lease is given to more than one person it can be held that they are joint tenants. In fact, what is meant by joint tenants has also been judicially considered and in this connection reference is invited to the Full Bench decision of the Lahore High Court in *Moti Lal v. Kartar Singh*[2], At p. 432 (of ILR Lah) the Full Bench observed :

> "The rule ..... is that in the case of a 'joint' occupancy tenancy of the kind mentioned in the question the tenants, as between themselves, hold their shares independently of each other, and on the death of any one of them his share passes to his own 'heir' or 'heirs' under Section 59(1) and (2); but as against the landlord, they or their 'heirs' taken together

> constitute a single tenant, and as long as any of these persons is in existence, the landlord cannot claim the share of him ....."

In the case before the Full Bench the occupancy tenancy was held by three persons, one of them died without leaving any heir. The landlord therefore claimed that so far as his interest was concern, the land would revert to the landlord because of the extinction of his tenancy. In repelling this contention it was observed that all the persons together constitute a single tenant, and so long as any heir or heirs of any one of them is available, to claim that right, the landlord would have no right of reverter. It is also observed that in such cases it is well settled that in the absence of a clear provision to the contrary, the entire body of tenants constitutes a single tenant qua the landlord, though as between themselves their rights may be specified and the tenancy may be held by them in well-defined shares.

10. The same view is taken in *William White v. Tyndall*[3]

[1] ILR 46 Cal 458 at p. 472 : (AIR 1918 PC 102 at p. 107)

[2] ILR 11 Lah 427 : AIR 1930 Lah 515

[3](1888) 13 AC 263 at p. 270

where Lord Halsbury observed as follows :

> "It is true that the parties to whom the demise is made are to hold it as tenants-in-common, but what they covenant to do is to pay one rent, not two rents, and not each to pay half a rent, but one rent."

In *United Dairies Ltd. v. Public Trustee*[4], Greer, J. remarked that each of the tenants have a share of every part of the estate and it would be true to say that there was a privity of estate between him and the landlord in the whole of the leased property, and therefore each was liable to perform the covenant contained in the lease in its entirety. If that be the true position with respect to totality of the rights under the leasehold and there is unity of enjoyment and possession in respect of leasehold property vis-a-vis the landlord, it is difficult to see why notice to one of these joint tenants could not be considered as a valid notice to all provided such a notice was given.

11. In this connection it is contended by the learned counsel for the appellants that the provisions of Section 11 of Hindu Succession Act in terms lay down that property acquired by heirs who inherit by interstate succession is acquired by them as tenants-in-common and not as joint tenants. In this context reference is also invited to paragraph 31 of Mulla's Hindu Law, page 99, 12th edition. In my Judgment, the phrase "tenants-in-common" or "joint tenants" used in Section 19 of the Hindu Succession Act or in other texts, when considering the rights of owners of property inter se cannot be confuted with the right to hold land as joint tenant in the sense as joint lessees or co-lessees or co-tenants of property such as the subject-matter of the suit. The word "tenant" in Section 19 is not used in the sense of lessees. That word is used in the sense of owners of property whether they are joint owners of property or holding in defined shares. It is an incident of ownership that has been referred to in Section 19 and that incident in the case of persons holding as tenants-in-common is that the devolution in the case of each of these tenants-

in-common would be according to the personal law while in the case of persons holding as joint tenants it will be by survivorship. The expression is not germane in deciding whether the leasehold is held as joint tenants. That expression may have led to some confusion anti it is preferable to refer to rights of more than one person holding under the leasehold vis-a-vis the landlord as co-tenants or co-lessees, If understood in that sense, there will be no difficulty in holding that all the co-lessees or co-tenants hold as joint tenants in the sense that they have a single tenancy relationship with the landlord and they are not different tenants vis-a-vis the landlord.

12. If this is the correct interpretation of the position of persons even succeeding under Section 19 to a leasehold interest of the deceased Hindu, there would be no difficulty in holding that notice to one of the joint tenants in this case should be held to be a valid and good notice provided notice is intended to be notice to ail these joint tenants. It is in that sense that the decision of the Privy Council in ILR 46 Cal 458 has been applied in several Courts.

13. It will now be useful to make a reference to these decisions. In *Mohanlal v. Governor-General in Council*[5], a notice to quit was addressed to all the joint tenants but served only

[4](1923) 1 KB 469

[5] AIR 1945 Nag 255

on one of them, and yet it was held that those who were joint tenants, though they had not received notice, were bound by the notice served on one of such joint tenants. In this Court also the same view has been taken in *Vaman v. Khanderao*[6], At p. 251 the Division Bench observed that it is clear that if the notice is served on some of the defendants who were joint tenants on the land, then following the decision of the Privy Council in Harihar Banerji's case, ILR 46 Cal 458 it must be held that service of notice to quit on one of several joint holders affords prima facie evidence that it has reached the rest of them.

14. The law regarding issue of notice is the same, whether the notice is given by the landlord or the tenant, i.e. lessor or the lessee. In one of the cases in this Court in *Ebrahim Pir Mahomed v. Cursetji Sorabji De Vitre*[7], the question was whether notice given by one of co-owners of certain property terminating the lease, could operate as a valid notice terminating the lease in the absence of the notice by other co-owner and this Court held that such n notice given by one of the co-owners of the property was a valid notice and suit was maintainable by the plaintiff who had given notice. In that case two persons K and P were owners of certain property and a lease was granted in respect of the whole of the property to the defendant. Subsequently one of the co-owners, P, conveyed her equal and undivided moiety to the plaintiff. The plaintiff gave a notice to determine the tenancy of the defendants. The defense was that notice to quit being given by one of the co-owners was invalid and plaintiff alone was not entitled to sue. This has been repelled with the observations already referred to. The reason why notice to one of the joint tenants should be sufficient as notice to all is not difficult to understand. Apart from the fact that there is a community of interest in possession and enjoyment of the property vis-a-vis the landlord, action by one enures for the benefit of all. The law undoubtedly makes a presumption

that the relation between co-tenants will be amicable rather than hostile and the acts of one tenant are the acts of all. On the basis of this principle the Calcutta High Court took the view in *Biswanath Chakravarti v. Rabija Khatun*[8], that the entry of one co-tenant or the act of one co-tenant must be taken as being in subordination of the title of all the co-tenants, and this rule prevails not merely on behalf of those who are co-tenants when the entry was made, but extends to all who afterwards acquire undivided interest in the property. If that be the incident of tenancy, it is difficult to resist the conclusion that notice accepted by one of the several joint tenants should be effective against others who have the same interest in the property.

15. This would also appear to be the correct position in law as stated in Halsbury's Laws of England, Simonds Edition, Volume 23, paragraph 1179, page 527. It is observed in this connection that where the premises were held by two tenants jointly, the service of notice on one who lives on the premises is evidence that it reaches the other who lives elsewhere, and even without such evidence it is effectual as to both.

16. Now, in this connection another contention that is raised on behalf of the defendants is that the daughters who are married and have gone out of the family are admittedly residing at other places in their husbands' families. As they are not resident in the leasehold property and yet have an interest in the same, having inherited it from their father, they were entitled to independent notice if their interest in the leasehold property was required to be terminated according to law. Under Section 106 of the Transfer of

[6] AIR 1935 Bom 247 [8] ILR 56 Cal 616

[7] ILR 11 Bom 644

Property Act notice can be given by one of the several modes prescribed in that section. Notice could be given by sending it by post to the party intended to be bound by it, or it could be tendered or delivered personally to such party or it could be tendered or delivered to a servant of such person at his residence. According to the learned counsel for the defendants even assuming that the notice to one of these joint tenants could serve as a notice to all the joint tenants, the vicarious mode of service which is permitted under this section requires that the notice should be given to one of his family. It is urged that the married daughters who have gone out of the family cannot be considered to be of the family of the remaining members. Therefore, notice served on defendants 1 to 6 or any of them cannot be considered to be a notice to defendants 9 to 11 or any of them as they are no longer members of the family. Therefore, the question is what is meant by the word "family" as used in Section 106 of the Transfer of Property Act. Does it mean persons who live under the same roof or has a wider meaning namely, all those who are connected by blood relation or by marriage with each other ? The learned counsel for the defendants would want a restricted meaning to be given to the word "family" inasmuch as married daughters are not normally in the family, or at least not residing therein. In this connection reliance was placed on the observations at page 700 of Mulla's Hindu Law, paragraph 546, 12th edition. The learned author has observed that a daughter on marriage ceases to be a member of her father's family, and become a member of her husband's family; thenceforth she is entitled to be maintained by her husband and, after his death, out of his estate. It is, however, to be observed that the

interpretation to be put on the ambit of the word "family" or its concept cannot be determined with reference to a personal law, in a given case. The word is used in a general sense because that section operates to terminate tenancies, whether the tenant belongs to one community or another. In trying to gather the concept in which this word is used, it cannot receive a limited meaning given to that word in Hindu law for the purpose of construction. Even assuming that it may be right to hold in certain circumstances that a daughter who is married goes out of the family, I am not persuaded to give a restricted interpretation to the word "family" in the context in which the word is used in Section 106 of the Transfer of Property Act. In *Shah Maidal Islam v. Commissioner of Wakfs*[9], an occasion had arisen to construe the meaning of the word "family" in Section 3(a) of the Mussalman Wakf Validating Act, and at p, 639 it has been observed that the word "family" is one of great flexibility and is capable of many different meanings according to the connection in which it is used; even when it is used in a statute it may indeed be of narrow or broad meaning as the intention of the Legislature using it may be made to appear; in its ordinary sense, the term signifies the collective body of persons living in one house, or under one head or manager or one domestic Government; it may include all members of the household living under the authority of the head thereof, as also the servants employed in the house; various meanings of the term can also be conceived; the term is often used to include those descended or claiming descent from a common ancestor.

17. Thus, it cannot be said that merely because the parties to this litigation are Hindus the word "family" should receive a restricted interpretation. The word seems to be used in a broad sense and would mean all those who are connected by blood relationship or marriage, and are therefore to be considered as belonging to the family. It is not also possible to accept the contention that even in the case of Hindu families girls who are married and go to the husband's families are not of the family of their father or cease to

[9] AIR 1943 Cal 635

belong to the family of the father. Whatever may be the concept at one time, under the existing law, even married daughters take substantial interest in the family and the family property. Thus, the prevailing concept as to "family", far from being restricted, has been considerably expanded by creating interest in the family and substantial interest for many persons who had no such interest in the property, such as widows of predeceased heirs, or even married or unmarried daughters or widowed daughters. Thus the whole concept has been enlarged by legislation and it would be putting too narrow a construction on the concept of 'the word "family" in Hindu law if married daughters are considered to be outside the family. I am inclined to accept the literal interpretation and hold that even married daughters may be said to be of the family.

18. Another aspect of the question may be considered so far as the facts of the case are concerned. The interest claimed is an interest in the leasehold property. That interest is claimed by defendants 9 to 11 who are admittedly residing out of the town in which the premises are located. The nexus which creates a relationship between the lessors and the defendants claiming interest in the leasehold is the leasehold property which is occupied by defendants 1 to 8. The

question is whether there could be implied in such circumstances a jointness in interest which would clothe the persons in occupation the capacity to receive notice or to do acts which will be binding on all those joint tenants. It is urged on behalf of the defendants that the moment it is held that the leasehold interest is inherited as ten-ants-in-common with defined shares inter se among them, the capacity of any one of those tenants-in-common to represent the other is at an end. Such a capacity to represent others could only be assumed or inferred in the case of persons who own only as joint tenants, but never in case of persons who hold as tenants-in-common. I find it difficult to accept this interpretation. If there is a unity of interest, common enjoyment and possession of the property, if all these joint tenants hold qua landlord as one tenant, if each of these joint tenants had an interest in the whole of the leasehold, if the acts of any one of them are the acts of all such tenants, such as act of re-entry or act of wrongful conversion, then it is difficult to hold why a notice received by one of them should not have the effect of a valid notice in respect of all on whom the notice is meant to operate. There is sufficient community of interest and joint interest inter se in them which clothes everyone of them with a representative, character vis-a-vis the landlord. I therefore hold agreeing with the Court below, that notice to one ; of them was enough and served as a good notice I to all as the notice was meant to be/ operative against all the joint tenants.

19. In this case there is one more aspect which cannot be lost sight of, that the only person who could validly make a grievance of improper termination of the lease was defendant No. 11. Obviously she has displayed no interest in the litigation either in the first Court or in this Court. She has not filed any written statement contesting the claim. She suffered a decree in the Court of the District Judge. She has not cared to file any appeal challenging that decree, ft is also doubtful whether such a plea could be raised as a plea in law at the instance of the tenants who have in fact received the notice. Apart from this aspect and having held that the notice served on 10-7-61 meant for persons having interest in the leasehold is a good notice to all when it is found to have been served on defendants 1 to 8 and 9 and 10 it must be held that the tenancy has been validly terminated.

20. The result is that the appeal fails and is dismissed with costs.

Appeal dismissed.