BOMBAY HIGH COURT

Anant T. Sabnis

Vs.

Vasant Pratap Pandit

First Appeal No. 448 of 1978

(V.S. Deshpande and V.S. Kotwal, JJ.)

04.07.1979

JUDGMENT

V.S. Deshpande, J.

1. This appeal raises an important question as to whether the words 'assign' and 'transfer' in Section 15 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the Rent Act') include 'bequest', so as to render disposal of tenancy rights in any premises under a Will, ineffective ?

2. One Tarabai was the tenant of the premises in dispute. She died on September 21, 1963 without leaving any issue. She executed a will on December 15, 1958 in respect of her properties including her tenancy rights, bequeathing the same to her sister's son - Gopal and appointing plaintiff, her brother's son an Executor of the said Will.

3. The plaintiff obtained a probate of the Will on 6th July, 1965. The defendant is Legatee's another sister's grand son. He and his wife were staying with the deceased at the time of her death. Plaintiff called upon him to vacate. On defendant's refusal the plaintiff instituted the present suit for his eviction in the City Civil Court, Bombay. The defendant resisted the suit on the ground amongst others that the bequest of tenancy rights amounts to "transfer" and is prohibited under Section 15 of the Rent Act and, therefore, is ineffective and void and as such, plaintiff cannot claim to be Executor and claim defendant's eviction.

4. At the end the trial Court decreed the plaintiff's suit on the evidence led before him. He upheld the validity of the Will and the claim of the plaintiff to be its executor. He rejected the defendant's case that he was residing with the deceased as the member of her family at the time of her death and his case of having become the tenant of the premises on that ground and that plaintiff's right to possession was suspended. Plaintiff's claim to arrears of rent was rejected on the finding that

the defendant had paid rent to him. Bequest of the tenancy rights was found by him to be a 'transfer', and as such, not invalid. The plea of the tenant about Executor having consented to his occupation and having thus divested himself of his interest as Executor in the tenancy rights, was also rejected. The defendant challenges the validity of this decree in this Appeal.

5. It is not in dispute that Tenancy is governed by the Rent Act and continued to be contractual till the death of Tarabai. The only contention of Mr. Sakardande, the learned Advocate appearing for the defendant is that bequest by a tenant of the tenancy rights amounts to "transfer" within its meaning under Section 15 of the Rent Act and is, therefore, prohibited thereunder. It is not disputed that bequest would become void and probate to that effect would become ineffective if Section 14 is held to apply to such a bequest. Only question, therefore, is whether the words 'assign' and 'transfer' in Section 15 include bequest. The words 'assign' and 'transfer' in the context convey the same meaning.

6. Sub-section (1) of section 15 of the Rent Act reads as follows :-

> "Section 15(1). Notwithstanding anything contained in any law, but subject to any contract to the contrary, it shall not be lawful after the coming into operation of this Act for any tenant to sublet the whole or any part of the premises let to him or *to assign or transfer in any other manner his interest therein* and after the date of commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973, for any tenant to give on license the whole or part of such premises" (Italics supplied).

The proviso and sub-section (2) of Section 15 are not relevant. The section does, in the absence of any contract to the contrary, prohibit the tenant from (i) subletting the whole or any part of premises let him or (ii) assigning or transferring in any other manner his interest therein. The plaintiff does not claim that Tarabai had any contractual authority to so sublet, assign or transfer.

7. The words 'assign' and 'transfer' are not defined in the Rent Act. The dictionary meaning of the words should, therefore, prevail unless the context and setting suggest any expansion or modification. In the Murrey's Dictionary, the word 'assign' is indicated to mean 'to transfer or formally to make over to another'. According to Wharton's Law Lexicon, 14th Edition, the word 'assign denotes' generally 'to transfer property especially personal estate or set over a right to another'. In its generic sense, thus, the words 'assign' or 'transfer' include every kind of transfer of property from one to the other. The words "in any other manner' further go to emphasize that the words 'assign' and 'transfer' are wide enough to include any type of transfer including passing of the property from the testator to the legatee. There is no reason why the said words should not include disposal of the property under a Will.

8. It is true that the word 'transfer' ordinarily is not understood to cover any testamentary disposition. Rather, it is understood to convey transfer *inter vivos*, i.e. so an act by which a living

person gives away property in present or future to one or more other living persons. This is because of its such conception in the Transfer of Property Act itself. Sections 2(d) and 5 of the said Act expressly restrict its connotation excluding testamentary dispositions, successions and other forms of transfer by operating of law. In fact, the Act does not deal with those aspects of transfer, notwithstanding the same involving passing of the property from one to the other. There does not appear to be any reason why such a restricted conception of the word 'transfer' under the Transfer of Property Act should be imported in the Rent Act, in the absence of any indication to that effect in the Act itself. Any such legislative intent is ordinarily indicated by incorporating definitions in the Transfer of Property Act, in such enactments. Section 2(21) of Bombay Tenancy & Agricultural Act of 1948 in an illustration in point. Importing of such restricted connotation will not be justified merely because the Rent Act also deals with some aspects of the 'Leases' with which the Transfer of Property Act deals. Even if the Rent Act is assumed to be dealing with the Laws of Property in this sense, Legislature had to alter the age-old conceptions and notions of the rights and obligations of the landlord and tenants while enacting it, to meet a certain situation. This makes those conceptions and definitions inappropriate and also a misfit under the scheme of the Rent Act. It is true that the bequest becomes effective only after the death of the testator and is liable to be revoked at any time. This by itself, however, cannot make it anything but transfer. Even the restricted concept of 'transfer' *inter vivos* in Section 5 of the Transfer of Property Act contemplates its becoming effective at some future date in a given case. Bequest does result in the passing of the property from the testator to the legatee. It is no doubt different in its nature from the sale, mortgage, less-on gift. It is none-the-less, a transfer in its generic sense.

9. In the case of *Oriental M.P.W. v. Bhaskar*[1], this court had occasion to consider whether prohibition against assignment of the Director's Officer under Section 312 of the Indian Companies Act includes prohibition against disposal of such office under Will. Answer turned on whether the word 'assignment' in Section 312 include 'disposal of the office under a will'. The two learned Judges of the Division Bench differed and the case was referred to the third learned Judge. It was held that the word 'assign' does include such disposition by a Will. It is true the construction turned mainly on the scheme of the Act and the learned Judges did also note how the word conveys restricted meaning when used in the context of law of property. This case is still an authority to hold that the words 'assign' and 'transfer' in a given context can include testamentary disposition. We have already explained why restricted conception of 'transfer' under the Law of Property can have no relevance here. The observations by D.T. Desai, J. at page 1053, saying - "....it has not been disputed and could not be disputed by Mr. Maneksha that the meaning of the expression 'transfer' includes a transfer by an act *inter vivos* as well as by a testamentary disposition or direction" - are indeed revealing in this context.

10. The underlying object of Section 15 also militates against Legislature having intended to import such a restricted concept of the words therein. Relations between landlord and tenant are ordinarily the creatures of contract and are regulated by the Transfer of Property Act. The

growing scarcity of accommodation needed some protection to the tenants against evictions and exorbitant rents. The Rent Act was enacted to meet these needs, as indicated in the preamble. Section 12 affords immunity to the tenants evictions, notwithstanding any contract to the contrary, while Section 7 prevents the landlord from claiming anything in excess of the standard rent and permitted increases from the tenants, to ensure that the afforded immunity is not rendered illusory. Section 13 seeks to relax this community where landlord himself is the victim of the scarcity and needs the premises for his residence or for certain other relevant purposes or when the tenant renders himself unworthy of the extended protection due to his residence or for certain other relevant purposes or when the tenant renders himself unworthy of the extended protection due to his own acts or omissions as indicated therein.

[1]61 BLR 1045

11. Prohibition against transfer of tenancy rights by the tenants is just a corollary to the restrictions on the landlords and is aimed at protecting them, in turn, by preventing the tenants from abusing these protections by thrusting uncontemplated strangers as tenants on the landlords, willy-nilly, for monetary gain or favoring any friend or relative of theirs, and thus ensuring that the immunity against eviction is not expanded into license to dispose of premises as if it were their own and landlords rights are not invaded beyond what is strictly necessary. Contemplated protection is intended for the benefit of the tenants inducted by the landlords voluntarily and the members of his family residing with them and not for their unauthorised assigns, transferees or his favorites or strangers. Even all his lawful heirs are not included within the sweep of this protection. Prohibition appears to have been aimed at the very disposing power of the tenant over his tenancy rights and includes every voluntary transfer, contractual or otherwise. That the Legislature legalized certain unlawful sub-leases, or made even licensees as tenants in an anxiety to eradicate the identical evils, is besides the point.

12. Bequest of tenancy rights in this context stands on the same footing as any other transfer by sub-lease, sale assignment, gift, volition of the tenant in including uncontemplated strangers in the premises and thrusting them on the landlord, being the common element of these dispositions. It makes little difference to the invasion on the landlord's right whether such uncontemplated stranger is so inducted by the tenant for gain or just as a favor - invasion in either case having no nexus with the object underlying these protections. It is difficult to imagine why the Legislature could have intended to exclude such bequests from the sweep of the prohibited assignments and transfer under Section 15, when bequest is pregnant with the same evils as other transfers. The words 'transfer in any manner' in this context only go to signify inclusion of 'bequest' also therein.

13. It is not without significance that legatee is not included in the definition of the word 'tenant'. Section 5(11) of the Act defines it to mean 'a person who is liable to pay the rent or on whose account the rent is payable for any premises. Under sub-clauses (a) to (c) it is enlarged to include some others whom Legislature considered it necessary to protect. Clause (c) provides for the succession to the tenancy rights on the death of the tenant. Thus, this sub-clause (c) by providing

for the mode of succession, impliedly excludes successors from the purview of the width of the main clause. Secondly, it restricts the succession even by operation of law of inheritance to the persons and situations indicated therein and impliedly excluding all other heirs. In fact all the heirs are liable to be excluded if any other member of the family was staying with the tenant at the time of his death. Thirdly and more importantly, legatee is not included either in this sub-clause or any other sub-clauses. This demonstrates legislative intent to prohibit testamentary disposition of the tenancy rights. There is no other express provision to this effect in the Rent Act. It shall have to be traced only in Section 15 thereof by interpreting the word 'assign' and 'transfer' in their generic sense. This also fortifies our interpretation of these words.

14. There was some doubt if this definition excludes their heirs otherwise entitled to succession under the law of inheritance concerned. it was held by this Court in the case of *Rajaram v. Ramraja*[2], and other cases cited therein that clause (c) could not have any

[2] 80 BLR 12

effect on the heritability of the tenancy rights by the law of succession concerned and title of such heirs is not intended to be affected. In some of the cases, clause (c) is held to be applicable to statutory tenancies alone. In his commentary on the "Law of Rent Control" (1974 edition) at page 237, the learned Author Andhvarujina has relied on these cases in support of his view that bequests not being transfers are not prohibited under Section 15 thereof. The Legislature has, however, now nullified this judicial interpretation by substituting sub-clauses (c-1) and (c-2) in place of the original sub-clause (c), under the Amendment Act of 1978 with retrospective effect and declaring such interpretation to be contrary to its true intent. Legatees are excluded under new sub-clauses (c-1) and (c-2) in the same manner as they were excluded under the original sub-clause (c). Amended provisions, however, declare unequivocally sub-clauses (c-1) and (c-2) to be the only modes of succession to the tenancy rights.

15. Mr. Parekh, the learned Advocate appearing for the respondent plaintiff, contends that the a legatee acquires property only by the act of the Executor after probate is granted by the Court and clothing him with the authority to administer the estate. The property according to Mr. Parekh vests in the legatee by operation of law and such acquisition is distinguishable from the voluntary transfers or assignments prohibited under Section 15 of the Act. That prohibition against transfer under Section 15 is restricted to voluntary transfer and not to transfer by operations of law admits of no doubt. It is not relevant here to consider if anything in the Rent Act itself prevents transfer of tenancy rights by operation of law. The acquisition of any property by the legatee involves broadly three stages, namely :- (1) the act of making the will, (2) the death of the testator on which the bequest becomes effective and (3) delivery of possession to the legatee. While volition of the transfer figures only at the first stage, the process of law does intervene at the remaining two stages in cases where obtaining of the probate from Court and investing the Executor with powers to administer the estate become indispensable. It is so indispensable under the Indian Successions Act only in Presidency town of Bombay, Calcutta and Madras and not elsewhere. Right of the legatee even there, none the less springs from the

first voluntary act of making of the will, though, it becomes effective and is implemented at the second and third stages. These second and third stages do not make it any the less voluntary, nor such transfer or acquisition, an operation of law. Process of law, if and when intervenes, operates merely to effectuate the will, as in other cases of disputes, resultant proceedings, decrees and orders. The contention, therefore, is devoid of any substance.

16. Reliance was placed by Mr. Parekh on the judgment of the Kings Bench in the case of *Deod Goodbefere v. Bevan*[3], as also, the judgments of the Privy Council and Supreme Court, in the case of *Simon Christopher v. Alfred Christy*[4], and *Ebrahim Aboobaker v. Tek Chand Delwani*[5], The trial Court also relied on the same. In he Deod Goodbefere's case (supra), lease-hold rights stood vested in the official assignee on the lessee's being adjudged as insolvent by an order of the Court. Assignment thereof by the official assignee to the purchasers was challenged by the landlord relying on the prohibitory provision in the lease-deed. Such contractual prohibition was held by the Court to be ineffective against assignments made by the official assignee in discharge of his statutory duties, distinguishing the same from any voluntary transfers by the lessee. It is clear that

[3](1853) 3 M and page 353
[4] AIR 1939 PC 138
[5]56 BLR 6

lessee can have no voice in his being adjusted as insolvent, or consequential
vesting of his property including his lease-hold rights in the official assignee in pursuance of the insolvency Law, or subsequent assignment by him to the purchasers thereof. His being debtor and his inability to pay merely furnished an occasion for putting the process of law in motion.

17. In Christopher's case (supra), the lessee bequeathed his lease-hold rights in Government land to one of his sons though the lease-deed prohibited its assignment without lessors, i.e. Government's written consent. Validity of the bequest in spite of covenant against assignment, and Executor's act in handing over the property to the legatee was upheld by the Privy Council on the ground that lessee, under the term of the lease-deed itself, included his assigns and executors, apart from Crown having been held to have signified its assent by mutation of the legatee's name in the Revenue Record. This made it unnecessary for the Privy Council to decide if bequest did or did not an assignment and as such, a constitute breach of the covenant. The decision on the Executor's ministerial acts has no relevance to the point before us.

18. In the third case, one Aboobaker died while proceedings for declaring him as an intending evacuee under the Administration of Evacuee Property Act, 1950 were pending, leaving behind his heirs who were admittedly still in India. The Custodian then proceeded to declare the property as evacuee property, as if the said heirs were transferees from the intending Evacuee. The Supreme Court upheld the claim of the heirs that the property vested in heirs in India by operation of law of succession and such succession could not amount to 'transfer'. We are unable to see how the ratio of any of these cases can have any relevance to the point urged.

19. Our attention was further drawn by Mr. Parekh to a passage at page 496, para 1-1207 of

Woodfall's "Landlord and Tenant" 28th Edition Volume I, and (2) to a passage at page 558 para 447 of Hill and Redmans' "Landlord and Tenant" 16th Edition also and (3) to a passage at page 1948 of Andhyarujina's "Land of Rent Control" (1974 Edition). The learned authors have, no doubt, treated testamentary disposition of lease-hold rights at par with their transfer by operation of law and on that basis, indicated the same to be not violative of covenants against assignment in the lease-deed. A few of the cases referred to in the said passages were also cited before us by Mr. Parekh. Only one of the cases so cited i.e. 30 ER 351 (Seers v. Hind) turned out to be directly on the point. The concise summary of the report shows that the bequest is equated therein with succession by inheritance, both becoming effective, as they do, on the death of the property owner. i.e. 'the act of God'. Now, firstly the word 'assign' in its generic sense, includes all voluntary transfers, though it may include even statutory transfers in a given setting. All voluntary transfers need not, however, be contractual. Bequest in its essence is an unilateral act. Covenants against assignments are ordinarily directed against assignments by contract. This is all the more so in the context of the law of property. This is at any rate how the same appears to have been understood in the context in which the question cropped up for decision in the above case.

20. This case was decided in 1771 when the Rent Act provisions of needs for the restrictions of the disposal of property and rights therein were not even on the horizon. The distinction between contractual assignment or other non-contractual assignments was obviously not relevant. Secondly, except to the extent to which bequest seeks to deflect the course of succession by inheritance, the former and the later are open legal incidence. The equation of the one with the other is possible, in a given situation. Thirdly, unlike under the Indian Succession Act, obtaining of probate and vesting the Executor with the powers of administrator through the process of Court has been always indispensable in England. The intervention of the process of law thus was inevitable. The Court could have treated such acquisition this basis, as being by way of the operation of law, where origin of the right was not material. The ratio of the case and the passages from the learned authors can be of no assistance in the present context.

21. Our attention was also drawn by Mr. Parekh to certain observations by R.K. Megarry, Q.C. in "The Rent Acts" 10th Edition, at page 223 in particular and also at pages 211 and 274. It does appear that bequest of tenancy rights by a will is still considered to be at par with transfer by operation of law even after the enforcement of the Rent Acts in England. No recent case dealing with this point directly is cited in these passages and none was also cited before us. It is not in dispute that the English Rent Act does not contain any provision analogous to Section 15 of the Rent Act. It does, however, contain a provision corresponding to Section 13(1)93) of our Rent Act, under which act of subletting or assignment or transfer of tenancy rights furnishes to the landlord a ground for tenant's eviction. The absence of any provision in the English Rent Act such as Section 15 of our Rent Act makes all the difference to the legal position here. Any occasion of any bequest rendering tenant himself liable to eviction would never arise as such bequest does not become effective in his life-time. It may even remain unnoticed. Secondly, in

the absence of any statutory prohibition against transfer, legatee's title remains unaffected. Cases on the English Rent Act have thus no relevance to the interpretation of Section 15 of our Rent Act which seeks to cut at the root of the voluntary transfers of every specie.

22. Not much turns on the distinction recognised under the Companies' Act between transfer and transmission of shares to which our attention is drawn by Mr. Parekh. Transfer forms duly signed by the seller and purchaser are considered sufficient for transfer of the shares by sale from the one to the other, while transmission requires authority from the Court. This identical treatment to shares assigned by inheritance or under the will, cannot be construed to mean that the transfer of the shares under a Will is any thing but a voluntary transfer.

23. The provision of the Will bequeathing the tenancy rights of Tarabai to Gopal Masurkar is, thus, hit by prohibition against transfers contained in Section 15 of the Rent Act and is, therefore, ineffective, inoperative and void. No probate could have been granted in respect of such tenancy rights and the plaintiff Executor can claim no legal right whatsoever in respect of the same. Consequently, the plaintiff cannot be held to have any right to clam eviction of the defendant from the said premises. To this extent, this suit is liable to be dismissed.

24. Mr. Parekh then relies on Section 211 of the Indian Succession Act, 1925 and contends that even if bequest of the tenancy rights is held to be ineffective, the plaintiff Executor still remains the only legal representative of the deceased for all purposes and as such, is still entitled to get the possession from the trespasser like the defendant. Section 211 does make the Executor a legal representative of the testator for all purposes, and all the property of the deceased person does stand vested in him. The sweeping language of Section 211 does suggest as if intestate property also stands vested in the Executor. It must, however, be borne in mind that the Executor is liable to be appointed only with respect to the property bequeathed and not intestate property in respect of which appointment of an administrator is contemplated under Section 213 of the Indian Succession Act. The words 'all property' in sub-section (1), therefore, shall have to be restricted only to the property covered by the Will. Cases are not unknown where only a fraction of the property is bequeathed. Legislature could not have intended to extend the domain of the Executor of a such Will over entire property and suspend Hindus and Muslims to whom Section 213 of the Indian Succession Act does not apply, intestate property stands vested in the heirs immediately upon the death of the owner. The same property cannot be vested both in the Executor and also in the heirs.

25. On our finding, it shall have to be held that the tenancy rights in dispute, are not covered by the Will. As observed earlier, no probate could have granted in respect thereof. We are unable to see how the Executor can claim any right or title with respect to the such intestate property and for the same reason to claim possession of the premises from the defendant. He cannot claim to be the legal representative of the deceased.

26. Mr. Parekh relied on the judgment of a Division Bench of the Patna High Court reported in ILR Patna page 80. In that case, the Executor of the Will also have obtained letters of administration in respect of the intestate property. It is in his capacity as an administrator that the conveyance was executed by him in favour of the persons whom the property was agreed to be conveyed to by the deceased. Validity of the conveyance was upheld on the ground that administrator represented the estate of the deceased. The ratio of this case based on its peculiar facts can have no relevance in the present case.

27. The result, therefore, is that the appeal succeeds. The plaintiff's suit is liable to be dismissed and is accordingly dismissed. It is clear that the defendant does not bear any semblance of title. We do not, therefore, think that the defendant is entitled to any costs. There will be no order as to the costs as far as this appeal is concerned.
Appeal allowed.