

# RAJASTHAN HIGH COURT

LRs. of Tribhuvan Dutt

Vs.

Jai Narayan

S.B. Civil Misc Appeal No. 926 of 2008

(Dr. Vineet Kothari, J.)

23.07.2009

## JUDGMENT

**Dr. Vineet Kothari, J.**

1. This appeal was filed by the tenant Tribhuvan Dutt being aggrieved of the order dated 1.4.2008 passed by the Addl. District Judge No. 1, Jodhpur rejecting the application filed by the legal representatives of appellant defendant under Order 21 Rule 4 CPC read with Section 3(vii) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950.

2. The learned trial court has passed the eviction decree by allowing civil suit no. 130/94 (Jai Narain vs. Tribhuvan Dutt) on 1.12.2005. The defendant tenant preferred the appeal before the learned first appellate court namely civil appeal no. 39/2006. During the pendency of the said appeal, the defendant tenant Tribhuvan Dutt expired on 29/5/2007 and upon his death his son Om Prakash filed the said application under Order 22 Rule 4 CPC on 17/7/2007 seeking to bring on record the legal representatives of late Tribhuvan Dutt namely his wife Smt. Tulsi Devi and his three sons Om Prakash, Jagdish Prakash and Jai Prakash. The plaintiff respondent filed reply to the said application contesting the same on 3/8/2007 and after hearing both the parties the learned first appellate court rejected the said application under Order 22 Rule 4 CPC read with Section 3(vii)(b) of the Rent Control Act, 1950. Being aggrieved by the said order passed by the learned first appellate court on 1.8.2008, said legal representatives - applicants have approached this Court by way of present misc. appeal.

3. Learned counsel for the appellants Mr. K.S. Rathore vehemently submitted that the learned appellate court has erred in rejecting the said application under Order 22 Rule

4 read with Section 3(vii)(b) of the Act of 1950 as the wife and three sons of defendant tenant Tribhuvan Dutt squarely fell within the definition of legal representatives as defined under Section 2(11) CPC and since the tenancy is a heritable right which devolved upon these four legal representatives of the deceased appellant tenant Tribhuvan Dutt, they were entitled to be brought on record and were entitled to same protection under the Rent Control Act, 1950 as the appellant defendant was and, therefore, the present appeal deserves to be allowed and the impugned order dated 1.4.2008 deserves to be quashed and set aside.

4. He relied upon the following judgments in support of his contentions :

- (1) *Smt. Ramjeevani v. Narati Bai*,<sup>1</sup>
- (2) *Tara Chand v. Ram Prasad*,<sup>2</sup>
- (3) *Government of Karnataka & Ors. v. Gamma*,<sup>3</sup>
- (4) *M/s. Kanhiya Singh Santok Singh & Ors. v. Kartar Singh*,<sup>4</sup>
- (5) *Vinay Kr. Khambate v. Vinay Kr. Aggarwal & Ors.*<sup>5</sup>
- (6) *Mahendra Kumar v. Lalchand & Anr.*,<sup>6</sup>
- (7) *Kedar Lal & Ors. v. L.Rs. Of Ram Dayal*,<sup>7</sup>

5. On the side opposite, Mr. H.R. Soni, learned counsel for the respondent plaintiff vehemently submitted that the present appeal has no merit as admittedly none of the so called legal representatives namely wife and the three sons of the appellant defendant tenant Tribhuvan Dutt were carrying on the business in the suit premises which was commercial in nature up to the date of his death and, therefore, they did not fall within the amended provision of Section (vii) (b) of the Act of 1950 and, therefore, they could not be brought on record and the learned first appellate court was perfectly justified in rejecting the said application under Order 22 Rule 4 CPC.

6. He drew the attention of this Court towards the statement of appellant defendant himself dated 18/10/2005 as DW.1 before the learned trial court reproduced at page 5 of the impugned order, in which the said appellant defendant Tribhuvan Dutt himself stated before the Court that he has three sons and no daughters and none of the sons was working with him in his business as Om Prakash was working in a factory, Jagdish Prakash was doing his own business in Mumbai and Jai Prakash was serving in a color company in Bhilwara. In view of this, learned trial court did not believe the averments made by the applicant in the application under Order 22 Rule 4 CPC that the one of the applicants Shri Jai Prakash was working in the business with his father and upon his falling ill he looked after the business upto the date of his death on 29/5/2007. Learned appellate court also noticed that no evidence in this regard was

produced by the applicants and in view of the statement of appellant-defendant-tenant himself before the learned trial court that none of the sons carried on the business in the suit premises with their father, the said legal representatives could not be brought on record.

7. Mr. H.R. Soni further drew the attention of this Court towards the statement of Shri Kishan, dated 6/9/2005, sister's son of appellant defendant Tribhuvan Dutt recorded by the learned trial court in which he has stated that he was doing the business with appellant defendant Tribhuvan Dutt for last many years. However, this fact was not stated by the applicants in the application under Order 22 Rule 4 CPC. Mr. Soni, therefore, submitted that in view of the admitted position that none of the legal representatives claiming to come on record was carrying on business with the appellant defendant-tenant upto the date of his death and, therefore, they did not fall within the definition of tenant under Section 3(vii)(b) of the Act of 1950 and, therefore, the impugned order of the learned appellate court dated 1.4.2008 was unassailable.

8. He relied upon the following decisions in support of his submissions:

- (1) *Tara Chand & Anr. v. Ram Prasad*,<sup>8</sup>
- (2) *Chiman Lal & Anr. v. Narendra Kumar*,<sup>9</sup>
- (3) *Mohd. Kasam & Ors. v. Ghasi Lal*,<sup>10</sup>
- (4) *Navneet Rai v. Otmal*,<sup>11</sup>
- (5) *Bhajni Devi & Anr. v. Ram Ratan & Anr* <sup>12</sup>
- (6) *Dwarkadass v. Narayandass*,<sup>13</sup>
- (7) *L.Rs. Of Mishrimal v. L.Rs. Of SukhaLal & Ors.*,<sup>14</sup>
- (8) *L.Rs. of Mishri Mal v. L.Rs. Of Sukh Lal & Anr., Special Leave* <sup>15</sup>to
- (9) *Mahendra Rai Baxi v. Smt. Laxmi Devi & Anr.*,<sup>16</sup>

9. Having heard learned counsels, this Court is of the opinion that there is no force in this appeal as the impugned order of first appellate court dated 1.4.2008 deserves to be maintained.

10. The legal position in regard to Section 3(vii)(b) of the Rajasthan Rent Control Act, 1950 was settled by the Apex court in *Tara Chand v. Ram Ratan* (supra) following the earlier decision in *Gian Devi Anand v. Jeevan Kumar & Ors.* (supra). Both these judgments have been discussed and followed by Rajasthan High Court in the judgment cited above including the judgment rendered by this Bench in the case of *Mahendra Rai Baxi v. Smt. Laxmi Devi & Anr.* Decided on 1/5/2009 itself. Following

the aforesaid Supreme Court decisions, this Court concluded as under:-

"13. The aforesaid judgment relied upon by the learned counsel for the appellant defendant, in the opinion of this Court, does not militate against the above referred judgments relied upon by the learned counsel for the plaintiff respondents and does not lay down that such legal heirs of statutory tenant after his death would not be covered by the provisions of State Rent Control Act and besides protection available under the State Rent Control Act would not be bound by obligations and grounds of eviction established under the State Rent Control Act. Therefore, irrespective of the heirs of the Statutory tenant stepping into the shoes of statutory tenant upon his death, it is only proper to hold that such legal heirs would also be bound by all the rights and obligations of the State Rent Control Act as the original tenant was, as laid down by the Hon'ble Supreme Court in *Tara Chand v. Ram Prasad* and *Smt. Gian Devi Anand v. Jeevan Kumar and others* (supra).

14. This court finds no force in the submissions made by Mr. M.C. Bhoot, learned counsel for the appellant defendant that clause (b) of sub-section (vii) of Section 3, while referring to the words, "in the event of death of the person as is referred to in sub-clause (a)" only refers to the types of tenants other than contractual tenant. In the opinion of this court, the said words refer to both tenants as referred to in clause (a) of Section 3 (vii) of the Act defining the term 'tenant' namely; (i) Contractual Tenant and (ii) Statutory Tenant. Thus, right of inheritance of tenancy even by the legal heir of a statutory tenant is limited and circumscribed by words, "ordinarily carrying on the business with him in such premises as member of his family upto this death". Thus, if such legal heir of the statutory tenant is not carrying on the business upto his death, he would not fall within the definition of tenant at all and thus would not be entitled to any protection under the Rent Control Act. There is further no force in the submission of learned counsel for the appellant defendant that such legal heir of statutory tenant even if not entitled to the protection under the Rent Control Act, would be entitled to protection under the provisions of Transfer of Property Act and thus entitled to a fresh notice terminating his tenancy under Section 106 of the Transfer of Property Act. Since, eviction is governed by the special law namely Rajasthan Premises (Control of Rent and Eviction) Act, 1950, there is no question of going beyond the scope of the Act and extending the protection under the general law to such legal heir of the statutory tenant after the death of the statutory tenant. Proceedings even at the appellate stage continue to be

governed by the special law namely; Rent Control Act and, therefore, this contention of the learned counsel for the appellant defendant deserves to be rejected and is accordingly rejected.

15. In the present case, it is also worth noting that death of statutory tenant or the original tenant Mahendra Rai Baxi took place after filing of the suit, whereas, in the case involved before the Hon'ble Supreme Court in Jagdish Chandra Sinha (supra) the death of statutory tenant took place prior to the filing of the suit. Since filing of eviction suit itself amounts to termination of tenancy and as per the law laid down by the Constitution Bench in *V. Dhanpal Chettiar v. Yashodai Ammal* (supra) no notice terminating the tenancy under Section 106 of the Transfer of Property Act prior to filing of the eviction suit is necessary, such an extended protection for the legal heir of the statutory tenant as canvassed by the learned counsel for the appellant defendant is neither envisaged in law nor can be otherwise given to him and such legal heir having admittedly not carried on the business with the original tenant or so called statutory tenant upto his death, is not entitled to any additional or extra privilege or protection other than the one enjoyed by the original tenant himself and the eviction decree passed against the original tenant would equally bind the said legal heir and sub-lettee."

11. Thus, the substantial questions of law framed by the Court in aforesaid second appeal were answered by this Court in the following manner:

"20. In view of aforesaid legal position and factual matrix, this Court has no hesitation in holding that the eviction decree passed by the courts below against the appellant defendant deserves to be maintained and there is no force in the appeal filed by the legal heir of the original tenant Mahendra Rai Baxi and the substantial questions of law formulated above are answered in favor of the respondent plaintiff and against the defendant as follows :

(i) Question No. 1 is answered like this that provisions of Section 3(vii)(b) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 applies to a case where the suit was brought against the contractual tenant or statutory tenant both and there is no requirement in law for terminating his tenancy in accordance with Section 106 of Transfer of Property Act before filing of the such suit and upon death of such tenant his legal heirs ordinarily carrying on business with him upto his death are entitled to same protection, rights and obligations which the original tenant was so entitled, or was subject to.

(ii) Question No. 2 is answered like this that heir of deceased tenant Mahendra

Rai Baxi would inherit the tenancy upon his death subject to conditions stipulated in Section 3(vii)(b) of the Act and such tenancy would inherit in legal heir of the deceased statutory tenant only if he was carrying on the business with him upto his death.

(iii) Question No. 3 is answered in the manner that the contract of tenancy comes to an end with the filing of suit for eviction against the tenant in accordance with law laid down by Hon'ble Supreme Court in *V. Dhanpal Chettier v. Yashodai Ammal*,<sup>17</sup>

12. In view of aforesaid decision of this Court following the Supreme Court decisions, the contentions of learned counsel for the appellant that the Full Bench decision of this Court in case of Ram Jeevani (supra) still holds the field and deserves to be followed cannot be sustained. The said judgment being in conflict with the later decision of the Supreme Court in the case of *Tara Chand v. Ram Prasad* (supra) stands impliedly overruled and this has already been said by coordinate bench of this Court in case of *Chiman Lal v. Narendra Kumar* (supra). Thus, it is very clear that though tenancy rights are heritable, in order to fall within the definition of tenant the legal representative in the matter is governed by the Rent Control Act, 1950, which is a special law and the legal representative of the deceased tenant has to fulfill the conditions and requirements of Section 3(vii)(b) of the Rent Control Act, 1950 and unless he or she is carrying on the business with the deceased tenant upto the date of his death, he cannot fall within the definition of tenant under Section 3(vii)(b) of the Act of 1950, therefore, cannot be taken on record to pursue the litigation and claim such heritable rights merely because as per the personal succession laws, he or she would fall within the definition of legal representative under Section 2(11) CPC. Since on the facts of the present case the learned first appellate court has categorically found that these four relatives of the deceased appellant-tenant namely his wife and three sons were not carrying or continue to carry on business with the deceased appellant-tenant upto the date of his death on 29/5/2007, which finding of fact based on relevant material could not be rebutted by the learned counsel for the appellants, this Court is of the clear opinion that the learned first appellate court has not erred in rejecting the application under Order 22 Rule 4 CPC read with Section 3(vii)(b) of the Rent Control Act, 1950.

13. This appeal being devoid of merit is accordingly dismissed. No order as to costs.

Appeal dismissed.

Cases Referred.

1. 1991(1) R.L.W. 222
2. 1990(2) RCR(Rent) 158 : 1990 UJ (SC) 157
3. 2008(1) SRJ 227
4. 2009(1) RCR(Rent) 382 : 2009(2) RAJ 579 : AIR 2009 SC 1600
5. 2007(1) RCR(Rent) 343 : 2007(2) RAJ 299 : AIR 2007 SC 2436
6. 2001(2) RCR(Civil) 116 : AIR 2001 Supreme Court 807 : RLW 40 2001(1) SC 156
7. 2007(4) RLW 2848
8. (1990)3 SCC 526
9. 1996(1) RCR(Rent) 24 : 1995(2) RLW (Raj) 415
10. 2004(1) RCR(Rent) 429 : 2003(3) DNJ (Raj) 1477 : RLW 2004(1) Raj. 60
11. 1995(1) RCR(Rent) 262 : 1994(2) RLW 32
12. 1999 WLC (Raj.) UC 58
13. 2006 CJ (Rent Control) 554 : RLW 2007(1) Raj. 446
14. 2006(2) DNJ (Raj.) 1117 : RLW 2006(4) Raj. 2890
15. Appeal (Civil) No. 17385/2006
16. S.B. Civil Second Appeal No. 117/1997 decided on 1/5/2009
17. 1979(2) RCR(Rent) 352 : AIR 1979 SC 1745