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Court : Rajasthan

Decided On : Nov-13-1973

Reported in : 1973(6)WLN799

Judge : Kan Singh, J.

Appeal No. : S.B. Civil Regular Second Appeal No. 195 of 1973

Appellant : Smt. Gauri and ors.

Respondent : Smt. Brijkanwar Devi

Judgement :

Kan Singh, J.

1. This is a second appeal arising out of a suit for eviction. I
2. The suit premises are situate at Chowk Panigraha, Ajmer (house No.19/477). They were taken on rent by one Shri Harjamal for Rs. 20 50 per month. The tenancy was oral and commenced from the 1st of each calendar month. The plaintiff respondent terminated the tenancy of Harjamal and then filed a suit against him for arrears of rent and eviction in the court of Munsif, Ajmer City (West), Ajmer, on the ground of bonafide personal necessity The suit was later on transferred to the court of Munsif, Ajmer District, Ajmer. The learned Munsif dismissed it on 5-9-1967. Aggrieved by the judgment and decree of the learned

Munsif, the landlord went up in appeal to the court of the District Judge, Ajmer. The learned District Judge transferred the appeal to the Civil Judge, Ajmer. During the pendency of the appeal Harjamal died on 27th February, 1968. The appellant landlord before the learned Civil Judge, however, filed an application for impleading the legal representatives of deceased Harjamal on 1st July, 1968, that is, beyond the period of limitation and the appeal was accordingly treated as one that had abated (vide order of Civil Judge dated 18th August, 1969). On 20th of January, 1970, the landlord filed the second suit against the legal representatives of Harjamal for arrears of rent as well as for eviction. It was pleaded that the suit premises were required for the family needs of the landlord. The landlord further took the stand that on the death of Harjamal, his legal representatives were not entitled to the protection under Section 13 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter to be called 'the Act'). The defendants Mst. Gauri wife of Harjamal and others contested the suit. It was pleaded by them that the tenancy rights that Harjamal had in the suit bouse devolved upon them as heirs & legal representatives in accordance with the Hindu Law, with the result that the defendants were entitled to continue in the property on the same terms and conditions on which Harjamal was residing there. The bonafide personal necessity of the landlord was also denied. The defendants further denied that the rent had been in arrears.

3. The learned Munsif, Ajmer City (West), Ajmer, before whom the suit was filed, decreed the suit for eviction against the defendants. Aggrieved by the decree of the learned Munsif the defendants went up in appeal to the court of learned District Judge, Ajmer, who transferred the appeal to the learned Additional Civil Judge, Ajmer. The learned Additional Civil Judge affirmed the findings of the learned Munsif and dismissed the appeal. It is in these circumstances that the defendants have come in further appeal to this Court.

4. Learned Counsel for the appellants has raised a question of law and put it in the forefront. He submits that Harjamal being; a statutory tenant the defendants could not be sued as tenants or statutory tenants, but only a title suit could be brought against them on payment of the necessary Court-fee as trespassers. The question, therefore, arises whether the legal representatives of a deceased tenant whose

tenancy had been determined according to law could be sued for eviction in the same manner as the deceased tenant, if alive, could have been sued for the recovery of the property.

5. So far as the question whether the protection available to a statutory tenant under Section 13 of the Act could be claimed by his heirs after his death or not is concerned, their Lordships of the Supreme Court have held in a number of cases, and I need cite only one, namely, *J.G Chatterjee and Ors. v. Shri Sri Kishan Tandon and Anr.* : [1973]1SCR850 that the heirs of the deceased tenant whose tenancy had been determined cannot claim the statutory protection. Also the question whether on the death of a tenant whose contractual tenancy had already been determined during the pendency of a suit for eviction filed by the landlord the possession of the premises against the legal representatives of the deceased tenant could be claimed in the same suit has been settled by a Division Bench of this Court in an un-reported case *Damodar Das v. Badri Narain and Ors.* (D.B. Civil Special Appeal No. 3 of 1965, decided on 7th April, 1966). The relevant observations may be read in extenso.

We have not been impressed by Mr. Agarwal's argument that the landlord will have to file a separate suit against the present respondents if he wants to evict them. Mr. Agarwal has candidly conceded that under the general law a suit for eviction commenced against a tenant could be continued on the death of the tenant against his legal representatives and on a decree being given they can be evicted from the premises occupied by them, Mr. Agarwal seeks to draw a distinction in the case of a statutory tenant. He submits that the cause of action against such person arises only under the Act and once that right of the statutory tenant under the Act has come to an end with his death no right remains subsisting against his heirs. We however find ourselves unable to bifurcate the cause of action so as to limit it to be one under the Act alone. As already observed by us, a landlord seeking eviction has to show that he has fulfilled the requirements of the Transfer of Property Act and thereafter he has also to show that he satisfies the conditions laid down in Section 13 of the Act, so that the immunity granted by that section to the tenant is not available. As such we are not convinced that cause of action should be narrowed down only to the facts

necessary to be established for getting over the ban created by Section 13 of the Act. The term cause of action will comprise a bundle of all essential facts necessary for the plaintiff to prove before he can succeed and it will be as much necessary for the plaintiff to prove that he has properly determined the tenancy in accordance with Section 114 of the Transfer of Property Act, as it would be to show that the ban imposed by Section 13 of the Act against his getting the relief stands removed. If, by operation of law the ban imposed by Section 13 of the Act stands lifted against the landlord then in such a situation his cause of action will be founded only on the existence of the tenancy and its determination according to the provisions of the Transfer of Property Act. Such a right of action, to our mind, will survive against the legal representatives of a deceased tenant. Right to get possession of one's property is not in the nature of a personal right, but it relates to property and hence can be enforced against the legal representatives of an adversary after his death.

It is true the legal representatives will be able to raise all the defences which were open to the deceased tenant under the general law, but as the Rent Control Act does not provide for any devolution of such right claimable under Section 13 of the Act in favour of the legal heirs of a deceased tenant, as per dicta of their Lordships of the Supreme Court in *Anand Niwas Private Ltd. v. Anandji Kalyanji's Pedhi and Ors.* such immunity cannot be claimed by the present respondents. As we have already observed that on 1-2-1961 Damodardas had given a notice to Radha Vallabh that the shop should be vacated and it is not contested before us that tenancy was not terminated according to law by this notice. We are, therefore, unable to accept Mr. Agarwal's contention as sound.

6. In a recent case, a Full Bench of the Delhi High Court has held likewise in the case reported as *K.G. Malhotra v. Vijay Kumar* : AIR1973 Delhi265 : 1973 RCR 475. The learned Judges, inter alia, referred to Order 21, Rule 35 Civil Procedure Code which lays down that where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property. The legal representatives of a tenant claiming through him are

undoubtedly bound by the decree. The learned Judges of the Delhi High Court went on to observe that any person in occupation of the premises is liable to be evicted in execution of the order for eviction on the presumption that he is claiming through the deceased tenant. From this premise they came to the conclusion that the civil court can, therefore, pass a decree for the possession of the premises against the legal representative of the deceased tenant in the same proceedings in the suit. I ought to mention that as pointed out by the learned Judges if, however, the legal representatives have an independent title, that is, a title to occupy the premises not through the deceased tenant but in their own right or through someone other than the deceased tenant, then they cannot be evicted in execution of the order for eviction. Here the question is in a slightly different form. The statutory tenant had not died during the pendency of the suit but the present suit was filed when the statutory tenant was already dead. There is no manner of doubt that the immunity available to the deceased tenant under Section 13 of the Act would not be available to the legal representatives of such tenant. The limited question is whether the plaintiff landlord will have to bring the suit against the legal representatives as trespassers or he could sue them in the same manner as he could have sued the deceased tenant. This matter, in my view, should be governed by the provisions of the C.P.C.

7. Section 2(11) of the Civil Procedure Code defines the term 'legal representative' to mean a person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. This definition clearly includes a person on whom the estate of the deceased devolves even if he is not in actual possession of the estate. Of many heirs those who are in possession bonafide represent the estate of the deceased. As was pointed out in Damodardas's case, the term 'cause of action' will comprise a bundle of all essential facts necessary for the plaintiff to prove before he can succeed and in a suit for eviction of a tenant the cause of action will not only comprise the essential fact about the existence of the tenancy and its determination under the general law but also the fact that the protection to the tenant under Section 13 of the Act is not available in the events that had happened. On the death of the statutory tenant the landlord will not be required to

make any averment concerning the statutory immunity under the Act. Nevertheless, the other essential facts under the general law regarding cause of action for eviction will have to be made out. The cause of action in a suit for eviction against a tenant has to be based not only on the general law, namely, the Transfer of Property Act but has also to be founded on the relevant provisions of the rent control legislation. If the rent control legislation were not in force, then there could be no manner of doubt that the heirs of a deceased tenant could have been sued, on the death of the tenant, in the same manner as the deceased tenant himself if he were alive, that is, it was not necessary for the landlord to sue the heirs of the deceased tenant on the basis of title on payment of the Court fee for a title suit. The rent control legislation has the effect of only putting a brake or embargo on the exercise of the landlord's right to evict a tenant after terminating the tenancy. The death of the statutory tenant only results in the removal of that brake or embargo and in the words of their Lordships of the Supreme Court the landlord's right to get possession of the property springs into action. Therefore, the heirs of the deceased tenant whose tenancy had been determined before his death could be sued in the like manner the tenant himself could have been sued, as after the tenant's death it is such heirs who represent his estate within the meaning of Section 2(11) C.P.C.

8. Learned Counsel for the appellants invited my attention to *ML Mohanarangai Chetty v. Official Assignee, Madras* : AIR1965 Mad334 and *Gauri Shankar v. Smt. Shakuntla Devi and Ors.* In the Madras case the question arose whether the Official Assignee on the adjustment of a tenant before could take possession of the property occupied by the tenant who had become a statutory tenant on the determination of the tenancy under the Madras Buildings (Lease and Rent Control) Act. The learned Judge observed that the tenant being the statutory tenant had only a personal right to occupy the premises as a tenant and as the personal right was not properly within the meaning of Section 17 of Presidency Town Insolvency Act, as would vest in Official Assignee on the adjudication of such tenant as insolvent and the Official Assignee had no right to retain the keys of the premises taken from the possession of the insolvent. The immunity or protection against eviction enjoyed by a tenant under the rent control legislation, on the determination of his tenancy, is certainly not his property but it is only a statutory privilege and,

therefore, there could be no vesting of such property in the Official Assignee, but the question here is different, namely, whether the legal representatives of the deceased tenant could be sued in the same manner as the deceased tenant could be sued if he were alive.

9. In the Punjab case AIR 1968 Punj 302, the question that arose for consideration was whether Section 7 of the Court-Fees Act would govern the determination of Court-fees payable in suits for eviction where lessee had only a personal right to remain in possession and has no estate in the property. The learned Chief Justice observed that on the death of the tenant his heirs could not be tenants of any type and not even tenants holding over and, therefore, the suit against them would be as trespassers with the result that court-fee would be payable according to Section 7 of the Court Fees Act. The question of Court-Fee had not been raised in the present case and, therefore, I do not think I am called upon to go into it. In what manner the legal representatives of a deceased tenant could be sued is a matter which is governed by the Civil Procedure Code, and as in my view for the purposes of a suit it is the legal heirs of the deceased tenant who represent his estate, they could be sued in the same manner as the deceased could have been sued if he were alive. Though the question of hardship is not quite relevant but it is not out of place to point out that if the view advocated by learned Counsel were accepted, then it would mean that on the death of a statutory tenant his legal heirs would become trespassers over-night and if they were sued otherwise than as legal representatives of the deceased as trespassers simpliciter, then not only they may be saddled with damages for commission of trespass on property but eventually the burden of the Court-fee on being sued as trespassers would fall on them. If they take the position that they are trespassers, then I am afraid, the defences under the general law, namely, the Transfer of Property Act may not also be available to them. Such a result could not have been intended by the legislature in conferring immunity under Section 13 of the Act to tenants. In other words, so far as sueability of legal representatives on the death of a deceased tenant is concerned, the matter was left to be governed by the general law as no provision to the contrary was made in the Act.

10. For the above reasons, I am unable to accept the contention raised by learned Counsel. The appeal has thus no force and is accordingly hereby dismissed with costs.

11. Learned Counsel finally submitted that the appellants had been living on the premises for almost 18 years and they will be put to hardship if they are asked to vacate at once. In the circumstances, it is ordered that the appellants shall not be evicted for five months from today provided they pay all the arrears of rent, if any, within one month from today and then go on paying compensation at the rate of rent month by month by the 15th of the following month till they vacate the premises.

12. Learned Counsel orally prayed for leave to appeal under Section 18 of the Rajasthan High Court Ordinance, 1949, but in the circumstances, the prayer was refused.

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