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Court : Rajasthan

Decided On : Nov-12-1973

Reported in : 1973(6)WLN832

Judge : Kan Singh, J.

Appeal No. : S.B. Civil Second Appeal No. 303 of 1973

Appellant : Mohanlal and ors.

Respondent : The Jaipur Hosiery Mills Private Limited

Disposition : Appeal dismissed

Judgement :

Kan Singh, J.

1. The second appeal before me raises the question whether on the death of a tenant whose contractual tenancy had already been terminated during the pendency of a suit for eviction filed by the landlord, the landlord can get a decree for the eviction against the legal representatives of the deceased tenant in the same suit or he will be required to file a separate suit.

2. A few facts relevant for the disposal of the question may be recounted. The subject matter of the suit was a shop situated in Tripolia Bazar, Jaipur. It originally belonged to one Mukhia Jainarain and on his death it devolved on his heirs.

Defendant Sarwanlal, since deceased, was a tenant of the shop on a monthly rent of Rs. 62/-. After Jainarain's death Sarwanlal continued to pay the rent to his heirs. Sarwanlal's heirs, however, sold the shop to the plaintiff-respondent, the Jaipur Hosiery Mills Private Limited, by a registered sale deed dated 24-12-66. The right to recover the rent in arrears from the tenant was also assigned. The plaintiff respondent served a notice on 31-3-67 to Sarwanlal by registered post terminating his tenancy. This notice was delivered to Sarwanlal on 14-67. Sarwanlal was called upon to vacate the suit shop two months after the service of the notice or on such day from which he considered his monthly tenancy to expire. The plaintiff-respondent filed a suit against Sarwanlal on 6-7-67. The eviction was sought on the ground of bonafide personal necessity of the landlord and also on the ground of default in the payment of rent.

3. Sarwanlal contested the suit. He filed a written statement, He admitted the tenancy in favour of Jainarain and his heirs, but denied the sale of the shop in favour of the plaintiff. He farther denied the receipt of the notice terminating the tenancy. The bonafide personal necessity of the plaintiff for the suit shop was also denied and it was submitted that it had other shops at Jaipur in which it was having its business. Sarwanlal did not dispute that the rent was in arrears, but he pleaded that it had been tendered to the landlord and, therefore, he was not a defaulter. Sarwanlal further claimed that six month's notice-for the termination of the tenancy was required to be given.

4. During the pendency of the suits in the trial court Sarwanlal died and his legal representatives, the present appellants, were brought on record. The legal representatives raised a plea that the suit premises were on rent with Sarwanlal deceased as representing the family; Sarwanlal being the manager of the family. In other words, the legal representatives wanted to set up a case that Sarwanlal was not having the shop in his personal capacity. The learned trial Judge framed a number of issues. Both the parties produced their evidence. The learned Additional Munsif Magistrate No. 1, Jaipur City, before whom the suit was filed, decided the relevant issues in favour of the plaintiff and in consequence decreed the suit for eviction and for arrears of rent amounting to Rs. 826.68 paise.

5. Aggrieved, by the decree of the learned Additional Munsif the defendants went up in appeal to the court of the learned Additional District Judge No.2, Jaipur City. It was contended on behalf of the defendants before the lower appellate court that there was no sufficient evidence on record to establish the reasonable and bonafide necessity of the plaintiff for the suit shop. To meet the contention a two-fold argument was made on behalf of the plaintiff-respondent. In the first place, it was submitted that there was overwhelming evidence for showing that the plaintiff had a reasonable and bona fide necessity for the suit shop. The other alternative argument was that as Sarwanlal was only a statutory tenant, on his death the protection against eviction under the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, hereinafter to be referred to as the 'Act', was not available to the legal representatives of the deceased tenant. Reliance was placed on J.C. Chatterjee v. S.K. Tandon : [1973]1SCR850. The learned Additional District Judge accepted the argument made on behalf of the plaintiff that according to J.C. Chatterjee's case : [1973]1SCR850 the protection against eviction under the Act was not available to the legal representatives of the deceased tenant whose tenancy had been terminated. Consequently according to the learned Judge, it was not necessary to consider the question whether the landlord had established his bonafide personal necessity for the suit shop. The learned Additional District Judge further negated the plea sought to be raised by the legal representatives that the suit shop had been taken by Sarwanlal in a representative capacity and, therefore, the legal representatives were themselves tenants on the property. Learned Additional District Judge observed that a legal representative impleaded under Order 22 Rule 4 Civil Procedure Code was only entitled to take any defence appropriate to his character as a legal representative of the deceased tenant and as Sarwanlal had admitted himself to be the tenant and had not pleaded that it was the joint family who were the tenants it was no longer open to the legal representatives to raise this question but they had to start from the stage the suit was when Sarwanlal died. Apart from this the learned Judge came to the conclusion that Sarwanlal was a tenant in his individual capacity. The question whether the tenancy has been properly terminated was also argued by the legal representatives of Sarwanlal. It was submitted that the notice was not delivered to Sarwanlal, but to his son Mohanlal. The learned Judge considered the evidence of

P.W. 1 Jamnadas and that of the postman Mohammed Rafique (P.W. 6) and reached the conclusion that the notice was delivered by the postman to Mohanlal son of Sarwanlal at the instance of Sarwanlal. The learned Judge also noted the circumstance that D.W. 1 Sirwanlal did not deny the receipt of notice, but simply stated that he had no knowledge of its service. The validity of the notice was assailed also on the ground that according to the agreement in the parties a six months' notice was required to be given by the landlord for determining the tenancy. The burden to prove this was on the defendant and as there was no reliable evidence on record that there was any agreement between the parties to that effect the learned Judge came to the conclusion that the notice cannot be held to be invalid for that reason. In the result, the learned Additional District Judge dismissed the appeal.

6. The appeal was argued at the admission stage on 30-7-73. Caveat was entered at that stage by the respondent. This appeal was admitted only on account of a newspaper report of a judgment delivered by the Delhi High Court on the question whether a separate suit would be necessary against the legal representatives or relief would be governed in the same suit when the defendant whose tenancy was terminated died during the pendency of the suit. Since then the judgment of the Delhi High Court has been reported in A.I.R. 1973 Delhi page 266 (Full Bench). The only question that merits consideration now is about the relief being given in the same suit. The other questions turn on findings of fact and the learned Counsel is not in a position to challenge the findings of the two courts in second appeal.

7. In *K.G. Malhotra v. Vijay Kumar* : AIR1973 Delhi265 the learned Judges were considering the provisions of the Delhi and Ajmer Rent Control Act (33 of 1952). The learned Judges held that the substantive part of Section 25 of the Act gave effect to the executability of order or decree for possession against all persons bound by it and any person in occupation of the premises is, therefore, liable to be evicted in execution of the order for eviction on the presumption that he is claiming through the deceased tenant. The legal representatives of the deceased tenant could also be included in such proceedings though, however, if the legal representatives have an independent title i.e. a title to occupy premises not

through someone other than the deceased tenant, they cannot be evicted in execution of the order for eviction. In the circumstances, applying the principles enunciated in J.C Chatterjee's case : [1973]1SCR850 the learned Judges reached the conclusion that the landlord was not required to file a separate suit against the legal representatives of a tenant whose contractual tenancy had already been terminated and who dies during the pendency of the suit for eviction, but relief can be given against the legal representatives of the deceased tenant in the same suit.

8. Precisely the same question was examined by a Division Bench of this Court of which I was a member in an unreported case--Damodardas v. Badri Narain and Ors., D.B Civil Special Appeal No. 3 of 1965, decided on 7-4-66. The essentials of our reasoning are contained in the following passage:

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 'he death of the tenant against his legal representatives and on a decree being given they can be evicted from the premises occupied by then. 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 AC and there after he has also to show that 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 get ting 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 111 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.

The matter is, therefore, not *res integra* even so far as this Court is concerned. I ought to mention that in *J.C. Chatterjee's case* AIR 1961 SC 986 the appeal was against the judgment of a learned Single Judge of this Court in S.B. Civil Second Appeal No. 380 of 1965, decided on 1-1-71 since reported in 1971 Weekly Law Notes Part 11 page 1. The learned Single Judge had followed the decision of the Division Bench in Damodardas's case. It is, therefore, not open to raise the contention that the relief for eviction against the legal representatives of the deceased tenant whose tenancy had already been determined could not be given in the same suit.

9. The appeal has thus no force and is hereby dismissed with costs. Six months time is, however, allowed to the appellant to vacate the suit premises, but this shall be subject to the condition that they pay all the arrears of compensation, if any,

within one month from today and thereafter go on paying compensation at the rate of rent till they vacate the premises.

10. Learned Counsel for the appellant orally prayed for grant of leave to appeal under Section 18 of the Rajasthan High Court Ordinance, 1949, but as I have simply followed the Division Bench case of this Court, there is no point in granting leave to appeal. The prayer for leave is refused.

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