

Chimandas and ors. Vs. Ehanwarlal

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Court : Rajasthan

Decided On : Nov-04-1976

Reported in : 1976WLN(UC)556

Judge : M.L. Joshi, J.

Appeal No. : S.B. Civil Revision No. 181 of 1976

Appellant : Chimandas and ors.

Respondent : Ehanwarlal

Disposition : Revision dismissed

Judgement :

M.L. Joshi, J.

1. This is a Civil Revision directed against the judgment of the learned District Judge, Ajmer, dated 11th of March, 1976 by which she dismissed the appeal of the respondent and affirmed the judgment of the learned Additional Civil Judge, Ajmer, in Civil Miscellaneous' Application No. 1 of 1976.

2. The facts out of which this revision arises may be stated in brief as follows : The respondent Bhanwarlal filed a suit for arrears of rent and ejection in respect of a house against one Natharmal in the Court of Munsif, Ajmer City West amongst others on the ground of default in payment of rent. The tenant Natharmal

contested the suit and denied that he had committed any default so as to warrant a decree of ejectment against him. He also contested the other grounds of ejectment. The learned Additional Civil Judge in whose court the case came to be transferred, decreed the suit holding, that-'Natharmal tenant had committed default in payment of, rent. Being aggrieved by the decree of the trial court, Natharmal filed appeal in the court of District Judge, which ultimately came to be transferred in the court of Additional District Judge, Ajmer. In the memo of appeal, Natharmal took a ground that he had not committed default in the payment of rent. Natharmal, however, died during the pendency of the appeal, on 24th of January, 1974, and his heirs were brought as his legal representatives on the record. In the appellate court, the legal representatives did not contest on the ground of default and conceded that they could not claim protection under the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, hereinafter called the Act as the protection under the Act had come to an end with the death of the statutory tenant, namely, deceased Natharmal. In view of this concession made by the learned Counsel for the appellant, the appellate court did not decide the point of default and other grounds based on the statutory protection available to the tenant under Section 13 of the Act. Before the appellate court the legal representatives only contended that the notice determining the tenancy was invalid and, therefore, the suit was liable to be dismissed. That contention however, did not find favour with the appellate court which dismissed the appeal and upheld the decree of the trial court.

3. The legal representatives of deceased Natharmal did not remain satisfied with the judgment of the first appellate court and moved this Court in second appeal. They, however, did not press the second', appeal as they had' entered into an arrangement with the plaintiff-landlord. It will be apt to reproduce the judgment of the High Court in second appeal which has a great bearing on the point in controversy. It reads as follows:

After the case was heard, learned Counsel for the appellant does not propose to press his appeal provided some time, is given to the appellants to surrender vacant possession of the suit house. Learned Counsel for the respondent has no objection to postpone the execution of the decree for some time. As a result of this

compromise, it is now agreed that the respondent-decree-holder will not execute the decree till 19.1.76 and the appellant will surrender vacant possession on or before the date and continue to pay or deposit the rent month by month according to law for this period.

Accordingly the appeal is dismissed and it is directed that the respondent.-decree-holder Mill not execute the decree till 19th January, 1976 and the appellant shall continue to pay or deposit rent month by month. There will be no order as to costs of this appeal.

The above mentioned judgment in second appeal was passed on 19th of March, 1975 and under the judgment the petitioners before me got the benefit of postponement of the execution of the decree for a period of about 10 months. A decree was, therefore, not executed in pursuance of arrangement entered into between the parties.

4. In the mean time the Rajasthan Premises (Control of Rent and Eviction) (Amendment) Ordinance No. XXVI of 1975 was promulgated on '29th of September, 1975 which was followed by an Act in similar terms. Under Clause (e) of Section 13A of the said Ordinance it was provided that no decree for eviction passed by any Court before the commencement of the Amendment Ordinance shall be executed against the surviving spouse, son, daughter and other heirs as were referred to in sub-Clause (b) of Clause (1) of Section 3 of the Act if such decree was solely passed on the ground referred to in Clause (d) of Section 13A. Relying upon the provisions of Clause (d) of Section 13A, the legal representatives of the deceased that is the petitioners before me moved an application in the court of Additional Civil Judge stating that decree passed against them was nullity in view of Clause (d) of Section 13A of the Act. It was inter alia stated in that application that decree in question was not passed on any of the grounds contained in Section 13 of the Act and so it was a nullity. The learned Additional Civil Judge observed that the petitioners in the High Court undertook to vacate the premises provided they were given time to vacate the same. The plaintiff landlord therefore agreed to grant, time and undertook that he would not execute the decree till 19th of January, 1976. The High Court, therefore, in view of the

arrangement entered into between the parties dismissed the appeal as having not pressed but, however directed that the landlord-respondent before me would not execute the decree for a period of about 10 months i.e. upto 19th of January, 1976. He, therefore, held that in that view of the matter it could not be said that decree was passed solely on the ground referred to in Clause (d) of Section 13A of the Act and consequently dismissed the appeal.

5. The judgment-debtors being aggrieved by the order of the learned Additional Civil Judge took the matter by way of execution appeal in the court of District Judge, Ajmer. It was urged before the learned District Judge that the decree of the trial court which was passed on the ground of default had merged into the decree of the appellate court and the decree of the appellate court wiped out the decree of the trial court for all purposes as when the appellate court decided the appeal the matter of default could not have been raised by the legal representatives of the deceased on account of the statutory bar subsisting against the legal representatives of a deceased statutory tenant. The learned District Judge, however, relying upon *Chhotelal v. Badri Parsad and Anr.* 0065/1960 held that a decree of the lower court cannot be said to be wiped out simply because the order was affirmed by the appellate court and held that as the decree of the trial court was passed on the ground of default and the same was affirmed by the appellate court so the decree of the appellate court will be none the less the decree passed on the ground of default. It did not agree to the argument based on the principle of merger relying upon the above mentioned authority in *Chhotelal v. Badriparsad and Anr.* 0065/1960. The appellate court further concurred with the other reasons given by the Additional Civil Judge and held that the decree was not a nullity and consequently dismissed the appeal. The judgment-debtor did not remain satisfied with the decree of the appellate court and, therefore, have now come up before this Court in revision.

6. The learned Counsel for the petitioners contended that after the termination of the tenancy Natharmal became a statutory tenant and he could occupy the premises only during his life time, and the Act did not provide any right to his legal representatives to continue as statutory tenants because that right could not devolve on them as it was personal to the statutory tenant. It has been therefore

submitted that the legal representatives could not claim perfection under Section 13 of the Act and it was in that view of the matter that they did not press the ground against default raised by their deceased father in appeal before the learned District Judge. It has been further submitted that the ground of default having not been raised on account of the statutory bar the same was never decided by the learned District Judge and, therefore, decree passed by the District Judge cannot be said to be a decree passed on the ground of default. The argument of the learned Counsel for the petitioner is that although the decree of the trial court was passed on the ground of default but that ground could not be legally raised and the decree of the trial court having merged into the decree of the District Judge the decree of the District Judge could not be said to have been passed on the ground of default so the provisions of Clauses (d) and (e) of Section 13A of the Act would be attracted and, therefore, the decree under execution will be deemed to be a nullity. In support of this contention, the learned Counsel for the petitioners has relied upon two decisions of the Supreme Court viz. *Anand Nivos Pvt. Ltd v. Anandji Kalyanji Pedhi* : [1964]4SCR892 and *Jagdish Chandra Chatterjee v. Shri Kishan and Anr.* (1972) 1 SCR 850. In these cases it has of course been held that the right of a statutory tenant to occupy the demise premises is only personal to him and on his death it could not devolve upon his legal representatives. But in later case of the Supreme Court, namely, *Damadilal and Anr. v. Parasram and Ors.* (1976) RCJ 717 the Bench of Three Judges of the Supreme Court has held that the interest of the statutory tenant is heritable and devolves upon his legal representatives. That case arose under the Madhya Pradesh Accommodation and the ratio to the above effect was laid down in the light of the definition of Section 2(1) of the Madhya Pradesh Accommodation Control Act 1961. It will be useful here to reproduce the definition clause relating to the tenant contained in the Madhya Pradesh Accommodation Control Act 1961 which reads: 'tenant to mean, unless the context otherwise requires:

a person by whom or on whose account or behalf the rent of any accommodation is, or, but for a contract express or implied, would be payable for any accommodation as sub-tenant & also includes any person occupying the accommodation as sub-tenant and also any person continuing in possession after the termination of his tenancy whether before or after the commencement of this

Act; but shall not include any person against whom any order or decree for eviction has been made.

It will be also useful here to extract the definition of tenant contained in the Rajasthan Premises (Control of Rent and Eviction) Act. Clause (vii) of Section 3 defines a tenant as under:

Tenant means the person by whom the rent is, or but for a contract express or implied would be, payable for any premises and includes any person holding or occupying the premises as a sub-tenant, or any person continuing in possession after the termination of the tenancy in his favour otherwise than under the provisions of this Act.

The definition of a tenant given under the Rajasthan Premises (Control of Rent and Eviction) Act is substantially analogous to one given under the Madhya Pradesh Accommodation Act. On the comparison of these definitions and further on the authority contained in *Damadilal and Anr. v. Parasram and Ors.* (1976) RCJ 717 the learned Counsel for the respondent has argued that the petitioner could have pressed the ground relating to the default in the appeal before the learned District Judge and he having not passed it the order of the trial court on the point of deceased Natharmal having become a defaulter in payment of rent has become final and so it cannot be said that the appellate decree was passed solely on the ground referred to in Clause (d) of Section 13A.

7. I have given my earnest consideration to the rival contentions. It is true that in *Anandnivas Pvt. Ltd. v. Anandji Kalyanji Pedhi* : [1964]4SCR892 and *Jagdish Chandra Chatterjee v. Shri Kishan and Anr.* (1972) 1 SCR 820 a Bench of two Judges of the Supreme Court has held that 'The statutory tenant had no interest in the premises occupied by him and he has no estate to assign or transfer...a statutory tenant is as we have already observed a person who on determination of his contractual right permitted to remain in accommodation so long as he observes and performs the conditions of the tenancy and pays the standard rent and permitted increase if any. His personal right of accommodation is incapable of being transferred or assigned and he having no interest in the property there is no estate on which sub-letting may operate.' But this view has not been approved in

the later judgment of the Supreme Court where-under it has been held that the right of a statutory tenant shall not terminate on his death and the tenancy would devolve upon his legal representatives who could claim statutory protection under the Rent Control Act in view of the wider definition contained in the Madhya Pradesh Accommodation Act. I have already stated that the definition given in the Madhya Pradesh Accommodation Act is substantially analogous to the one given in the Rajasthan Premises (Control of Rent and Eviction) Act, 1950. It, therefore, cannot be said with any amount of certainty that the decree passed is nullity under Clause (d) and (e) of Section 13A of the Act.

8. In view of the authority contained in *Damadi Ldl and Ors. v. Paras Ram and Ors.* (1976) RCJ 717, I would have sent the case back for deciding the point of default but at the request of the learned Counsel for the parties myself have examined the point of default. After hearing the arguments on this point, I am satisfied that the tenant had committed default in the matter of payment of rent. It is not disputed that the tenant remitted the rent under two money orders before the filing of the suit which were not accepted by the landlord. But it is also not disputed that thereafter the tenant did not take any step under Section 19A when the money orders were not accepted by the landlord. It was the duty of the tenant in order to escape from the incurring of default to deposit the amount under Section 19A, but that had not been done. In *Sobhraj v. Bhanwarlal* (1974) WLN 271 it has been held by Lodha, J. that in order to obtain immunity from being ejected as a defaulter despite the refusal by the landlord to accept the rent the tenant must make deposit under Section 19A and if that is not done then the tenant is a defaulter although he might have sent the rent initially under the money orders which were even refused by the landlord. Admittedly in this case the tenant did not deposit the rent under Section 19A. Therefore, no useful purpose will be served even to send the case back to the appellate court to examine the point of default.

9. There is yet another point which cannot be lost sight of. The petitioners, before me, in second appeal before the High Court agreed to vacate the premises if time was granted to them for vacating the disputed premises. The landlord agreed to grant time and it was in that view of the matter that the High Court while dismissing the appeal directed that the landlord should not execute the decree till 19th of

January. 1976, From the judgment of the High Court in second appeal it is evident that a compromise was arrived at between the parties and the legal representatives were ready to surrender the premises provided sometime was granted to them. The decree-holder granted time not to execute the decree till 19th of January, 1976. The legal representatives availed of the concession given by the landlord. It must be remembered that the revisional jurisdiction is of a discretionary nature and where substantial justice has been done this Court would not be inclined to invoke its revisional jurisdiction. If time would not have been granted by the landlord as prayed by the legal representatives of the deceased Natharmal they would have been thrown long back out of the demised premises and there could not have been any occasion for raising an argument of making an application of this nature before the learned Additional Civil Judge. The legal representatives have, therefore, by their conduct disentitled themselves to any relief and it will be not appropriate to invoke the discretionary powers in favour of such petitioners.

10. In view of the foregoing discussion I am not inclined to accept this revision. It is dismissed. In the facts and circumstances of the case there shall be no order as to costs.