

**Mrs. Kunhane and ors. Vs. Rent Controller Under the Act and anr.**

**Mrs. Kunhane and ors. Vs. Rent Controller Under the Act and anr.**

**SooperKanoon Citation :** [sooperkanoon.com/816294](http://sooperkanoon.com/816294)

**Court :** Chennai

**Decided On :** Sep-22-1983

**Reported in :** (1984)2MLJ185

**Appellant :** Mrs. Kunhane and ors.

**Respondent :** Rent Controller Under the Act and anr.

**Advocate for Pet/Ap. :** Mr. G.M. Nathan

**Judgement :**

ORDER

**T. Sathiadev, J.**

1. Petitioners herein are the legal heirs of late Abdullah Haji, who died on 17.11.1982.. Along with one K. Abdullah, he had taken on lease a building belonging to second respondent herein, for conducting a hotel named 'HOTEL NEW PARIS'. Second respondent filed a petition for eviction under Section 14(1)(b) of Act 18 of 1960 against them in R.C.O.P. No. 295/ 83 on the file of the Rent Controller, Coimbatore, and secured an order of eviction. After an appeal was preferred by tenants, second respondent filed C.R.P. No. 2008 of 1975 in this Court against the appellate order, wherein they pleaded for one a half years time to be granted to vacate the property, and after recording the memo of compromise, an order was passed on 15.9.1978, granting time till 15.3.1980 to deliver vacant possession of the property. In spite of such undertaking on 7.3.1980

late Abdullah Haji filed O.S. No. 477 of 1980, asking for a declaration that the order of eviction dated 23.9.1974 passed in R.CO.P. No. 295 of 1973, as confirmed, was invalid, as it was brought about by fraud, and hence, he was entitled to the grant of injunction. In the meanwhile, second respondent had filed an execution petition, and during its pendency, Abdullah Haji died on 17.11.1982, leaving behind the petitioners herein, as his lawful heirs. Executing court having refused to bring them on record in view of the definition of the term 'tenant' under Section 2(8) of the Act, this revision petition is preferred.

2. The relevant portion of Section 2(8) is as follows:

(ii) in the case of a non-residential building, had been in continuous association with the tenant for the purpose of carrying on the business of the tenant upto the death of the tenant and continues to carry on such business thereafter, and

a person continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a building by its tenant or a person to whom the collection of rents or fees in a public market, cart-stand or slaughter house or of rents for shops has been farmed out or leased by a municipal council or a panchayat union council or the Municipal Corporation of Madras or the Municipal Corporation of Madurai.

The following sections are also relevant.

Section 18: (1) Every order made under Sections 10, 14, 15, 16, and 17 and every order passed on appeal under Section 23 or on revision under Section 25 shall be executed by the Controller, as if, such order is an order of a civil court and for this purpose, the Controller shall have all the powers of a civil Court.

(2) An order passed in execution under Sub-section (1) shall not be subject to any appeal or revision.

Section 25:

(1) The High court may, on the application of any person aggrieved by an order of the appellate authority, call for and examine the record of the appellate authority,

to satisfy itself as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein and if in any case, it appears to the High Court that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, it may pass orders accordingly.

(2) Every application to the High Court for the exercise of its power under Sub-section (1) shall be preferred within one month from the date on which the order or proceeding to which the application relates is communicated to the applicant:

Provided that the High Court may, in its discretion, allow further time not exceeding one month for the filing of any such application, if it is satisfied that the applicant had sufficient cause for not preferring the application within the time specified in this sub-section.

Section 27:

(1) Any application made, appeal preferred, or proceeding taken, under this Act by or against any person, may, in the event of his death, be continued by or against his legal representatives.

2. Where any application, appeal or other proceeding could have been made, preferred or taken, under this Act by or against any person, such application, appeal or other proceeding may, in the event of his death, be made, preferred or taken by or against his legal representatives.

Mr. G.M. Nathan, learned Counsel for petitioners, contends that, in the light of Section 18 providing that an order of eviction passed is to be deemed as an order of Civil Court, and for the purpose of enforcing those orders when the Rent Controller is conferred with all the powers of Civil Court, Section 2(11), Orders 21 and 32 Civil Procedure Code are attracted. He submits that, Section 27 read with Section 2(8) and Rule 25 would be applicable only during the pendency of the proceedings taken under the Act, and as soon as the order is sought to be enforced by invoking Section 18, then Civil Procedure Code being attracted, all the lawful heirs of the deceased tenant would be entitled to come on record.

3. Mr.Sarvabhuman, learned Counsel for the second respondent, submits that, whenever a peculiar concept is carved out in a special enactment, it cannot be abdicated in execution proceedings, which have their origin from orders passed under the special enactment. By referring to the following passage in State of M.P. v. Orient Paper Mills (1977) 2 S.C.R. 162. he says that in execution proceedings such of those persons who could not have come on record till orders of eviction are passed, cannot be impleaded in execution proceedings, if the tenant is to die after execution petition is filed. The passage runs as follows:

It is the part of judicial prudence to decide an issue arising under the specific statute by confining the focus to that statutory compass as far as possible. Diffusion into wider jurisprudential areas is fraught with unwitting conflict or confusion. We, therefore, warn ourselves against venturing into the general law of real property except for minimal illumination thrown by rulings cited. In a large sense, there are no absolutes in legal propositions and human problems and so, in the jural cosmos of relativity, our observations here may not be good currency beyond the factual legal boundaries of sales tax situations under a specific statute.

4. A Division Bench of this Court in Haji Abdullah v. Sanjeeva Rao : (1979)2MLJ413 , took the view that, as the definition 'tenant' did not contemplate any person becoming a tenant after the death of the original tenant in respect of a non-residential building no other person could come within the definition of the term 'tenant' in Section 2(8) of the Act, and therefore the statutory tenancy came to an end on his death, and hence, his heirs in whatever capacity they may be placed and whatever relationship they had with the tenant could not be termed as 'tenants' of the premises within the meaning of the Act, and hence, cannot be brought on record, the death occasioned being during the pendency of the suit and not during the pendency of eviction proceedings.

5. Another Division Bench in Mahommed Sultan Moideen v. Official Trustee : (1978)1MLJ190 , taking note of the nature of definition of 'tenant' in Section 2(8) held that the primordial requirement contemplated therein has to be complied with and if there is no proof of means in the matter of living or in the matter of the continued association in the quandom mercantile activity of the deceased tenant,

they would not be entitled to the benefits of Act 18 of 1960. This was also a case which arose during the pendency of the eviction proceedings and not in execution stage. He then refers to *Govindasamy & Company v. Basheer* by P.A. : (1981)1MLJ373 , where it has been held that to clothe the legal representatives of a deceased tenant with the right as a statutory tenant, they must be, in the case of a non-residential building, continuously associated with the original statutory tenant for the purpose of carrying on the business of the original tenant upto the death of the tenant and should have continued to carry on such business thereafter, and if it is not made out, then the orders passed cannot be enforced against any of the legal representatives of the deceased tenant. The revision petition came to be filed against the order of the Appellate Authority, when execution was taken, and the tenant died 4 months prior to the filing of the execution. Hence, this decision also does not touch upon what ensues, if a tenant dies during the, pendency of proceedings initiated under Section 18 of the Act.

6. By adverting to Rule 32 which is identical with Rule 35 of the rules in force, a Division Bench of this Court in *Subramania Pillai v. Rajakkani Nadar* : AIR1971 Mad310 , has proceeded to hold that when a District Munsif, under Section 18, is functioning as a Court, the fiction enjoined is attracted to the eviction order and the entire procedure applicable to execution of a decree applies when such a fiction is created statutorily and that Rule 32 would have no application to the execution of an eviction order. Section 27(1) was taken note of and it was held that when Section 18 had provided for the procedure enshrined in the Civil Procedure Code to be followed, and the Act itself having not provided for any procedure for execution, the execution of an eviction order is not a proceeding under the Act, and hence provisions of Civil Procedure Code were attracted. In *N . R a m a n u j a m Naidu v. C. Panchanatha Mudaliar* : (1980)1MLJ232 , relying upon the reasoning adopted by the Division Bench in *Subramania Pillai v. Rajakkani Nadar* : AIR1971 Mad310 , with reference to Rule 32, it was held that even after amendment of Section 18, Rule 35 is not applicable to execution proceedings. Such of those orders which can be executed under Section 18, when statutorily directed to be treated as orders of Civil Courts and, if, for the purposes of execution the Rent Controller was to exercise all the powers of a civil Court, then provisions of Civil Procedure Code as far as may be, will be attracted,

7. Hence, for the purposes of passing orders, under the Act, as to who could be considered as a tenant, a limited applicability having been contemplated under Section 27(1) confining itself only to applications made, appeals preferred or proceedings taken under the Act, only such of the restricted categories as contemplated under the Act could be brought on record. In 83 L.W. 758, it was held that the execution of an eviction order is not a proceeding under the Act. Protection to a tenant under the Act being personal, as held in *J.C. Chatterjee v. Sri Kishan* : [1973]1SCR850 , during the pendency of the proceedings, on the death of the tenant, only the prescribed categories of persons are allowed to secure the benefits, which the tenant could have got, if he had survived the proceedings. On his death, during the pendency of execution proceedings, the property may be in the hands of his lawful heirs, who could not have claimed tenancy rights which had subsisted in the deceased tenant. To get possession from them, when the order is being executed as a decree of a civil court, naturally, such of those persons who can be brought within the folds of the executing Court are allowed to be brought on record as legal representatives, by invoking the provisions of Civil Procedure Code. A deeming provision having been made statutorily, all the incidents and consequences which follow in an executing court in enforcing a decree of a civil court would be available to the parties to the proceedings. Such an enlargement of rights having been conferred by the statute, restrictive applicability existing during the pendency of the proceedings cannot be applied after an execution petition is filed. Hence all the lawful heirs of the deceased tenant are to be brought on record as his legal representative. Therefore, revision is allowed. No costs.